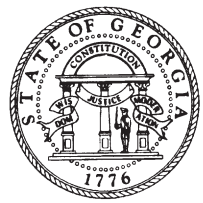
OFFICIAL CODE OF GEORGIA ANNOTATED

With Provision for Subsequent Pocket Parts

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The Code Revision Commission
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and
The Editorial Staff of LexisNexis®



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Volume 13

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Title 15. Courts

(Chapters 1 through 11A)

Including Acts of the 2020 Session of the General Assembly of Georgia
and Annotations taken from the Georgia Reports
and the Georgia Appeals Reports

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THE STATE OF GEORGIA

OFFICE OF SECRETARY OF STATE

I, Brad Raffensperger, Secretary of State of the State of Georgia, do hereby certify that

the statutory portion of the Official Code of Georgia Annotated contained in this volume is a true and correct copy of such material as enacted by the General Assembly of Georgia; all as the same appear on file and record in this office.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of my office, at the Capitol, in the City of Atlanta, this 18th Day of September, in the year of our Lord Two Thousand and Twenty and of the Independence of the United States of America the Two Hundred and Forty-Fifth.

Brad Raffensperger

Brad Raffensperger, Secretary of State

Preface

This volume cumulates and replaces the 2015 edition of Volume 13 of the Official Code of Georgia Annotated, as supplemented by the 2019 Cumulative Supplement. The 2015 Volume 13 and its supplement may be recycled or, if so desired, retained for historical purposes.

This volume contains all laws specifically codified in Title 15, Chapters 1 through 11A, by the General Assembly through the 2020 Session. This volume also contains case annotations reflecting decisions posted to LexisNexis® through August 7, 2020. These annotations will appear in the following traditional reporter sources: Georgia Supreme Court Opinions; Georgia Appeals Court Opinions; Southeastern Reporter, Second Series; Supreme Court Reporter; Federal Reporter, Third Series; Federal Supplement, Second Series; Federal Rules Decisions; and Bankruptcy Reporter. As official and traditional citations become available, substitutions for the LexisNexis® citations will be made.

Additionally, LexisNexis® has prepared annotations and references to Attorney General Opinions, law reviews, and other research sources that we hope will be beneficial as you utilize this product. A complete listing of those sources is as follows: Official and Unofficial Attorney General Opinions; Opinions of the Judicial Qualifications Commission; Advisory Opinions of the State Disciplinary Board of the State Bar; Formal Advisory Opinions of the State Disciplinary Board of the State Bar, issued by the Supreme Court of Georgia; Emory Law Journal; Georgia Law Review; Georgia State University Law Review; John Marshall Law Review; Mercer Law Review; Georgia State Bar Journal; American Law Reports; American Jurisprudence 2d; American Jurisprudence Pleading and Practice, American Jurisprudence Proof of Facts; American Jurisprudence Trials; Corpus Juris Secundum; and Uniform Laws Annotated. Also included, where appropriate, are cross references to the Official Code of Georgia Annotated. This volume retains amendment notes and effective date notes for Acts passed during the 2018, 2019 and 2020 Sessions of the General Assembly. In order to determine the changes which were made or the effective date applied to a Code section by an Act passed prior to the 2018 Session of the General Assembly, the user should consult the Georgia Laws.

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User's Guide

In order to assist both the legal profession and the layperson in obtaining the maximum benefit from the Official Code of Georgia Annotated, a User's Guide containing comments and information on the many features found within the Code has been included in Volume 1 of the Official Code of Georgia Annotated.

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Law reviews. — For article, "The Majority That Wasn't: Stare Decisis, Majority Rule, and the Mischief of Quorum Requirements," see 58 Emory L. J. 831 (2009). For article, "'Clientless' Prosecutors," see 51 Ga. L. Rev. 693 (2017). For article, "Reconstructing Professionalism," see 51 Ga. L. Rev. 807 (2017).

RESEARCH REFERENCES

Am. Jur. Trials. — Judicial Technology in the Courts, 44 Am. Jur. Trials 1.

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15-1-1. Where judicial power vested.

The judicial power is vested in such tribunals as are created by the Constitution of this state, such other inferior courts as are or may be established by law, and such persons as are or may be specially invested with powers of a judicial nature.

History. — Orig. Code 1863, § 197; Code 1868, § 191; Code 1873, § 203; Code 1882, § 203; Civil Code 1895, § 4043; Civil Code 1910, § 4640; Code 1933, § 24-101.

Cross references. — Judicial power of the state, Ga. Const. 1983, Art. VI, Sec. I, Para. I.

JUDICIAL DECISIONS

Cited in Kitson v. Hawke, 136 Ga. App. 92, 220 S.E.2d 28 (1975).

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Am. Jur. 2d. — 20 Am. Jur. 2d, Courts, § 1 et seq.

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15-1-2. No jurisdiction by consent; waiver of personal jurisdiction.

Parties may not give jurisdiction to a court by consent, express or implied, as to the person or subject matter of an action. However, lack of jurisdiction of the person may be waived, insofar as the rights of the parties are concerned, but not so as to prejudice third persons.

History. — Orig. Code 1863, § 3389; Code 1868, § 3408; Code 1873, § 3460; Code 1882, § 3460; Civil Code 1895, § 5079; Civil Code 1910, § 5663; Code 1933, § 24-112.

Law reviews. — For article discussing aspects of third party practice (impleader) under the Georgia Civil Practice Act, see 4 Ga. St. B. J. 355 (1968). For article, "Current Problems with Venue in Georgia," see 12 Ga. St. B. J. 71 (1975).

For comment on Musgrove v. Musgrove, 213 Ga. 610, 100 S.E.2d 577 (1957), upholding the validity of divorce decree granted in county other than residence of defendant when defendant now plaintiff, admittedly waived process and consented to trial elsewhere, see 20 Ga. B. J. 548 (1958).

JUDICIAL DECISIONS

Analysis

General Consideration
Subject Matter Jurisdiction
Effect of Lack of Jurisdiction
Waiver
Rights of Third Persons

General Consideration

This Code section is a codification of preexisting law. Central Bank v. Gibson, 11 Ga. 453 (1852).

Language in the latter part of this Code section does not mean that parties can confer upon a court, by agreement or waiver, jurisdiction as to a subject matter. The statute was a codification of the preexisting law, and it has been declared that it was the same in effect after the adoption of the Code as before that time. Rosenthal v. Langley, 180 Ga. 253, 179 S.E. 383, appeal dismissed, 295 U.S. 720, 55 S. Ct. 916, 79 L. Ed. 1674 (1935).

Code section does not mean that parties can confer subject matter jurisdiction on court. — Last sentence of this Code section does not mean that parties, by agreement or waiver, can confer jurisdiction of subject matter on the court, and as to the subject matter the court is limited by the power conferred upon the court by law. Champion v. Rakes, 155 Ga. App. 134, 270 S.E.2d 272 (1980).

Extent of relief against nonresident not served in this state. — Extent of available judicial relief in reference to alimony against a nonresident defendant, who is not personally served in this state, or does not acknowledge service, or who does not voluntarily submit to the jurisdiction of the court by appearing and pleading, is confined to the seizure and utilization of such property as the defendant may own, situated within the jurisdiction of the court. Hicks v. Hicks, 193 Ga. 446, 18 S.E.2d 754 (1942).

Suit brought in county where neither defendant resided. — Suit to remove from the record a certain year's support proceeding as a cloud upon the title of described land in plaintiff's possession was one in equity and not one respecting title to land, and should have been brought in the county of a defendant against whom substantial relief was sought; since the suit was brought in a county where neither defendant resided, the court was without jurisdiction of the subject matter and such jurisdiction could not be conferred by consent or waived by the parties. Sweatman v. Roberts, 213 Ga. 112, 97 S.E.2d 320 (1957).

Forum selection clause cannot confer subject matter jurisdiction. — Trial court erred in entering an order enjoining the appellants from the appellants alleged continuing trespass on the appellee's premises because the trial court lacked subject matter jurisdiction as the premises were located in South Carolina; and the forum selection clause could not confer subject matter jurisdiction to the trial court as forum selection clauses did not address subject matter jurisdiction, but rather personal jurisdiction. MSM Poly, LLC v. Textile Rubber & Chem. Co., 353 Ga. App. 538, 839 S.E.2d 4 (2020).

Attachment proceedings. — If a defendant in an attachment, at the time the attachment was issued and levied, resided in the county where it was returnable, but prior to the filing of the declaration changed the defendant's domicile to another county, the court wherein the attachment was pending did not have jurisdiction to render a general judgment against the defendant since the defendant had not appeared and made a defense, nor replevied the property levied upon. Varn v. Chapman, 137 Ga. 300, 73 S.E. 507 (1912).

Appeals. — Without proper and timely filing of a notice of appeal, dismissal is required in spite of the fact of consent given by opposing counsel to the late appeal as parties may not give jurisdiction to a court by consent, express or implied, as to the person or subject matter of an action. Clark v. State, 182 Ga. App. 752, 357 S.E.2d 109 (1987).

Appellate court needs to assess jurisdiction before proceeding. — Appellate court was unable to address the merits of the business owner's appeal because the court was unable to determine whether the court had subject matter jurisdiction as it was necessary to determine if the power company properly filed a motion for contempt or impermissibly attempted to initiate a new civil action. Cowart v. Georgia Power Company, 354 Ga. App. 748, 841 S.E.2d 426 (2020).

Cited in Walker v. Grand Int'l Bhd. of Locomotive Eng'rs, 186 Ga. 811, 199 S.E. 146 (1938); Calhoun ex rel. Chapman v. Gulf Oil Corp., 189 Ga. 414, 5 S.E.2d 902 (1939); Toler v. Goodin, 74 Ga. App. 468, 40 S.E.2d 214 (1946); Tatum v. Tatum, 203 Ga. 406, 46 S.E.2d 915 (1948); Berger v. Noble, 81 Ga. App. 34, 57 S.E.2d 844 (1950); Porter v. Employers Liab. Ins. Co., 85 Ga. App. 497, 69 S.E.2d 384 (1952); Curtis v. Curtis, 215 Ga. 367, 110 S.E.2d 668 (1959); Biddinger v. Fletcher, 224 Ga. 501, 162 S.E.2d 414 (1968); Louisville & Nashville R.R. v. Bush, 131 Ga. App. 405, 206 S.E.2d 58 (1974); Vector Co. v. Star Enters., Inc., 131 Ga. App. 569, 206 S.E.2d 636 (1974); National Serv. Indus., Inc. v. Vafla Corp., 694 F.2d 246 (11th Cir. 1982); Newell v. Brown, 187 Ga. App. 9, 369 S.E.2d 499 (1988); Mitchell v. Mitchell, 220 Ga. App. 682, 469 S.E.2d 540 (1996); Merritt v. City of Warner Robins, 243 Ga. App. 693, 534 S.E.2d 149 (2000); Blue Cross & Blue Shield of Ga., Inc. v. Deal, 244 Ga. App. 700, 536 S.E.2d 590 (2000); Gallagher v. Fiderion Group, LLC, 300 Ga. App. 434, 685 S.E.2d 387 (2009); State v. Baxter, 300 Ga. 268, 794 S.E.2d 49 (2016); Ultra Group of Companies, Inc. v. Alli, 352 Ga. App. 71, 833 S.E.2d 751 (2019); Mathenia v. Brumbelow, 843 S.E.2d 582, No. S19G0426, 2020 Ga. LEXIS 353 (2020).

Subject Matter Jurisdiction

Agreement of parties. — Jurisdiction cannot be conferred upon a court or administrative body, such as the Department of Industrial Relations (now State Board of Workers' Compensation), by the agreement or consent, past or present, of the parties if jurisdiction over the subject matter of the claim or controversy does not actually exist. City Council v. Reynolds, 50 Ga. App. 482, 178 S.E. 485 (1935).

Subject Matter Jurisdiction (Cont'd)

Jurisdiction of subject matter of suit cannot be conferred by agreement or consent, or be waived or "based on an estoppel of a party to deny that it exists." Langston v. Nash, 192 Ga. 427, 15 S.E.2d 481 (1941).

Consent of parties cannot give court jurisdiction of subject matter when the court has none by law, and if the court discovers from the record that a judgment has been rendered by a court having no jurisdiction of the subject matter, and the case is brought to the Georgia Supreme Court for review upon writ of error (see now O.C.G.A. §§ 5-6-49 and 5-6-50), the Supreme Court will of the court's own motion reverse the judgment. Sweatman v. Roberts, 213 Ga. 112, 97 S.E.2d 320 (1957).

Waiver. — As to the subject matter, the jurisdiction of a court is limited by the power conferred upon the court by law, and cannot be given additional jurisdiction by waiver. Thomas v. Calhoun Nat'l Bank, 157 Ga. 475, 121 S.E. 808 (1924).

Subject matter jurisdiction is not amenable to waiver. In re C.F., 199 Ga. App. 858, 406 S.E.2d 279 (1991).

Equity jurisdiction. — Although an agreement by parties is entitled to consideration, the parties cannot by waiver or consent confer equity jurisdiction on a court when the court is otherwise without jurisdiction. Sherrer v. Hale, 248 Ga. 793, 285 S.E.2d 714 (1982).

Waiver as to rights of parties. — Parties, by consent, express or implied, cannot give jurisdiction to court as to the person or the subject matter. It may be waived, however, as to the person, so far as the rights of the parties themselves are concerned. Lott v. City of Waycross, 152 Ga. 237, 110 S.E. 217 (1921).

Provision in agreement ineffective to confer jurisdiction. — Provision in an agreement to submit to arbitration for an appeal to the superior court is ineffective to confer on the superior court jurisdiction to entertain the appeal. Jurisdiction as to the subject matter cannot be conferred by consent. Georgia Power Co. v. Friar, 47 Ga. App. 675, 171 S.E. 210 (1933), aff'd, 179 Ga. 470, 175 S.E. 807 (1934).

Jurisdiction held not conferred by implied consent. — When the City of Augusta and claimant, a member of the city's fire department, made a written agreement for the payment of a stipulated weekly compensation to the claimant as an "employee" for the claimant's temporary total disability, and the Department of Industrial Relations (now State Board of Workers' Compensation) made an award confirming the agreement, without any question being presented as to whether the claimant was actually an employee or an officer of the city, and the claimant, after the conclusion of the payments under such agreement and award, filed a new application to the department for additional compensation to cover a permanent partial loss of use of the claimant's left hand resulting from the original injury, and when under the undisputed facts presented at the hearing of the second claim, and the foregoing rulings, the claimant was actually a public officer and not an employee of the city within the intent of the Workers' Compensation Act (O.C.G.A. T. 34, C. 9), it was error for the department to take jurisdiction of the new and additional claim since jurisdiction could not be thus imposed by implied consent any more than by the express consent of the city. City Council v. Reynolds, 50 Ga. App. 482, 178 S.E. 485 (1935).

No jurisdiction by consent after time for exercising such has expired. — If jurisdiction may not be given by consent before the time is ripe for jurisdiction to attach, jurisdiction may not be given by consent after the time for exercising jurisdiction has expired. Pal Theatre, Inc. v. Tarver, 60 Ga. App. 817, 5 S.E.2d 277 (1939).

Effect of Lack of Jurisdiction

Power of court over subject matter is sine qua non to valid judgment, and may not be waived by consent of the parties. Champion v. Rakes, 155 Ga. App. 134, 270 S.E.2d 272 (1980).

Judgment is nullity absent jurisdiction. — Suit in a court having no jurisdiction of the subject matter resulting in a judgment for the defendant is a nullity. Western Union Tel. Co. v. Taylor, 84 Ga. 408, 11 S.E. 396, 8 L.R.A. 189 (1890).

Void judgment will be reversed on review. — When, in consideration of a case, it is discovered from the record that a judgment has been rendered by a court having no jurisdiction of the subject matter, that judgment will be reversed. Cutts v. Scandrett, 108 Ga. 620, 34 S.E. 186 (1899).

Invalid decision is not res judicata. — If a court is wholly without jurisdiction of a given subject matter, an attempted decision of issues on that subject is invalid, and will not operate as res judicata in a subsequent suit concerning the subject matter in a court of competent jurisdiction. Dix v. Dix, 132 Ga. 630, 64 S.E. 790 (1909).

No consent or waiver of parties can make void judgment legal. — If the court has no jurisdiction over the subject matter of a suit, parties cannot confer jurisdiction by agreement. The judgment in a case where the court is without jurisdiction is void, and no consent or waiver of the parties litigant can make it a legal judgment of a court of law or equity. O'Brien v. Harris, 105 Ga. 732, 31 S.E. 745 (1898).

Appellate court could not address the merits of the defendant's enumerations of errors as the power company did not properly invoke the jurisdiction of the trial court when the company attempted to initiate a new civil action by filing a contempt proceeding because an action for contempt was ancillary to the primary action and, as such, was not a pleading but a motion; thus, it was improper for the power company to initiate a new civil action to enforce contempt of an order from a prior case, and the trial court was without jurisdiction to consider the power company's improperly filed contempt proceeding. Cowart v. Georgia Power Company, 354 Ga. App. 748, 841 S.E.2d 426 (2020).

Waiver

Jurisdiction of person may be waived. — This section has been construed to permit a party to waive lack of jurisdiction over the party's person. McGahee v. Hilton & Dodge Lumber Co., 112 Ga. 513, 37 S.E. 708 (1900); Sanford v. Tanner, 114 Ga. 1005, 41 S.E. 668 (1902).

It is permissible to waive jurisdiction over the person provided the court has jurisdiction of the subject matter of the suit. Southern Express Co. v. B.R. Elec. Co., 126 Ga. 472, 55 S.E. 254 (1906).

Jurisdiction of a person may be waived. Harper v. Allen, 41 Ga. App. 736, 154 S.E. 651 (1930).

Jurisdiction of a person may be waived in connection with acknowledgement of service. Georgia Creosoting Co. v. Moody, 41 Ga. App. 701, 154 S.E. 294 (1930).

Consent to jurisdiction through forum selection clause. — O.C.G.A. § 15-1-2 did not prohibit a party from waiving the defense of lack of personal jurisdiction by consensually subjecting itself to jurisdiction of the court through a forum selection clause in a contract. Apparel Resources Int'l, Ltd. v. Amersig S.E., Inc., 215 Ga. App. 483, 451 S.E.2d 113 (1994).

Filing of general demurrer (now motion to dismiss) is equivalent to plea to merits within this rule. Harper v. Allen, 41 Ga. App. 736, 154 S.E. 651 (1930).

Failure to plead jurisdiction waives irregularities. — If a defendant appears and pleads to the merits, without pleading to the jurisdiction and without any protestation as to process or service, the defendant thereby admits the jurisdiction of the court and waives all irregularities of the process, or of the absence of process and the service thereof. Harper v. Allen, 41 Ga. App. 736, 154 S.E. 651 (1930).

Defendant's appearance in support of motion. — In case of a judgment void for want of personal service of process, the defendant does not waive the question of jurisdiction or validate the void judgment by an appearance after judgment in support of a motion to set the judgment aside. Hicks v. Hicks, 193 Ga. 446, 18 S.E.2d 754 (1942).

Rights of Third Persons

Language refers to interferences with legal rights of third persons. — The language "but not so as to prejudice third persons" does not refer to mere inconvenience and expense in defending an action properly brought, but to interferences with legal rights of third persons. Odgen Equip. Co. v. Talmadge Farms,

Rights of Third Persons (Cont'd)

Inc., 132 Ga. App. 834, 209 S.E.2d 260 (1974).

Parties may not waive jurisdiction to prejudice of third parties. — Parties defendant to an equitable action who appear and plead to the merits without excepting to the jurisdiction thereby waive any objection to the jurisdiction of the person so far as those defendants are concerned; but parties cannot waive jurisdiction to the prejudice of third parties. White v. North Ga. Elec. Co., 139 Ga. 587, 77 S.E. 789 (1913).

Purchasers from defendant are bound by defendant's waiver. — Though a defendant may not so waive a want of jurisdiction as to defendant's person as to affect third persons, yet purchasers from defendant whose rights originate after the judgment against defendant's rendered after such waiver by defendant are bound by defendant's waiver on the principle of estoppel. Glennville Bank v. Deal, 146 Ga. 127, 90 S.E. 958 (1916).

Error to join another party when no jurisdiction. — When, to an action at law brought by a resident of Polk County against a defendant residing in Fulton County, an answer in the nature of a cross action (now counterclaim) was filed, in which substantial equitable relief was prayed against the plaintiff and a third party who was also a resident of Polk County, it was erroneous to make the latter, over defendant's objection, a party, and to refuse on defendant's motion to dismiss the cross action as to defendant, the ground of such objection and motion being that the court had no jurisdiction to grant as to defendant the relief sought. Terhune v. Pettit, 195 Ga. 793, 25 S.E.2d 660 (1943).

Section on point where third parties involved. — Since former Code 1933, § 3-202 (see now O.C.G.A. § 9-10-30) can be reconciled with Ga. Const. 1976, Art. VI, Sec. XIV, Para. III (see now Ga. Const. 1983, Art. VI, Sec. II, Para. III), as to venue of equity cases only on the ground of waiver, then former Code 1933, § 24-112 (see now O.C.G.A. § 15-1-2), and particularly the latter portion thereof, was directly on point in a case involving third parties. Terhune v. Pettit, 195 Ga. 793, 25 S.E.2d 660 (1943).

RESEARCH REFERENCES

Am. Jur. 2d. — 20 Am. Jur. 2d, Courts, § 90 et seq.

C.J.S. — 21 C.J.S., Courts, § 71 et seq.

ALR. — Discretion of court to refuse to entertain action for nonstatutory tort occurring in another state or country, 32 A.L.R. 6; 48 A.L.R.2d 800.

Necessity as justifying action by judicial or administrative officer otherwise disqualified to act in particular case, 39 A.L.R. 1476.

Litigant's participation on merits, after objection to jurisdiction of person made under special appearance or the like has been overruled, as waiver of objection, 93 A.L.R. 1302; 62 A.L.R.2d 937.

Decree of divorce or separation as subject to attack because suit was brought in wrong county or judicial district, 130 A.L.R. 94.

Consent decree as affecting title to real estate in another state, 2 A.L.R.2d 1188.

Objection before judgment to jurisdiction of court over subject matter as constituting general appearance, 25 A.L.R.2d 833.

Validity of contractual provision limiting place or court in which action may be brought, 31 A.L.R.4th 404.

15-1-3. Powers of courts generally.

Every court has power:

(1) To preserve and enforce order in its immediate presence and, as near thereto as is necessary, to prevent interruption, disturbance, or hindrance to its proceedings;

(2) To enforce order before a person or body empowered to conduct a judicial investigation under its authority;

(3) To compel obedience to its judgments, orders, and process and to the orders of a judge out of court in an action or proceeding therein;

(4) To control, in the furtherance of justice, the conduct of its officers and all other persons connected with a judicial proceeding before it, in every matter appertaining thereto;

(5) To administer oaths in an action or proceeding pending therein and in all other cases when it may be necessary in the exercise of its powers and duties;

(6) To amend and control its processes and orders, so as to make them conformable to law and justice, and to amend its own records, so as to make them conform to the truth; and

(7) To correct its own proceedings before final judgment.

History. — Orig. Code 1863, §§ 200, 3428; Code 1868, §§ 194, 3448; Code 1873, §§ 206, 3499; Code 1882, §§ 206, 3499; Civil Code 1895, §§ 4047, 5118; Civil Code 1910, §§ 4644, 5702; Code 1933, §§ 24-104, 81-1202.

Cross references. — Powers of courts with regard to management of churches, § 14-5-45.

Law reviews. — For article comparing sections of the Georgia Civil Practice Act with preexisting provisions of the Georgia Code, see 3 Ga. St. B. J. 295 (1967). For article, "The Civil Jurisdiction of State and Magistrate Courts," see 24 Ga. St. B. J. 29 (1987). For annual survey of domestic relations law, see 58 Mercer L. Rev. 133 (2006).

JUDICIAL DECISIONS

Analysis

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General Consideration

Inherent powers. — Every court possesses inherent powers not specifically granted. Johnson v. State, 177 Ga. 881, 171 S.E. 699 (1933).

Inherent power of courts should never be impaired or destroyed to such an extent that the court cannot exercise a power necessary to the court's proper functioning. Evans v. State, 69 Ga. App. 178, 24 S.E.2d 861 (1943).

Transfer of cause to another court. — Unless expressly authorized, a court has no authority to transfer a case from itself to another court, and thereby give the other court possession of the case to hear and determine the case, although the other court would have had jurisdiction of the cause if the case had come to the court by due process. Burgess v. Nabers, 122 Ga. App. 445, 177 S.E.2d 266 (1970), but see Ga. Const. 1983, Art. VI, Sec. I, Para. VIII.

Appointment of foreperson of grand jury. — In the absence of a statute to the contrary, the judge of the superior court has inherent power as the presiding officer of the court to appoint the foreperson of a grand jury from the number of those duly selected and required to serve. This authority vested in the judge by law is not affected by the custom of permitting the members of the grand jury to elect a foreperson. Peeples v. State, 178 Ga. 675, 173 S.E. 850 (1934).

Refusal to accept pro se filings. — Trial court properly refused to accept plaintiff's pro se filings since plaintiff was represented by counsel at the time of the filings. Jacobsen v. Haldi, 210 Ga. App. 817, 437 S.E.2d 819 (1993).

Expert evaluation of criminal defendant. — Superior court of the county in which defendant was convicted of murder had authority, on defendant's motion for new trial, to order an expert evaluation of defendant, who was incarcerated beyond the boundaries of the county in which the court sat. Zant v. Brantley, 261 Ga. 817, 411 S.E.2d 869 (1992).

Board of Workers' Compensation does not have same powers or jurisdiction as courts. — Georgia Industrial Commission (now State Board of Workers' Compensation) is not a court of general jurisdiction, nor even of limited common-law jurisdiction, but is an industrial commission made so by express terms of the act of the legislature to administer the act's provisions as provided therein. As such, the administrative commission possesses only such jurisdiction, powers, and authority as are conferred upon the commission by the legislature, or such as arise therefrom by necessary implication to carry out the full and complete exercise of the powers granted. No power of reopening or rehearing a case on the case's merits, in which a decree has been entered, and of determining anew the liability or nonliability of the employer, is granted, except as provided by former Code 1933, § 114-709 (see now O.C.G.A. § 34-9-104). Dempsey v. Chevrolet Div., 102 Ga. App. 408, 116 S.E.2d 509 (1960). (See also Ga. Const. 1983, Art. VI, Sec. I, Para. I specifically empowering General Assembly to confer quasi-judicial powers on agencies).

Magistrate's power in dispossessory proceeding. — Magistrate court had the authority to enter an order in a dispossessory action directing the landlord to perform repairs to the tenant's apartment since a magistrate court was entitled to exercise such powers as were necessary in aid of the court's jurisdiction, or to protect or effectuate the court's judgments. H. J. Russell & Co. v. Manuel, 264 Ga. App. 273, 590 S.E.2d 250 (2003).

Clarification of new trial order in criminal action. — In an action in which a superior court granted defendant's motion for a new trial, as amended, based on a finding that a jury charge was erroneous and harmful, a second order which clarified that the new trial was to be held on only one of the multiple offenses of which defendant had been convicted was a proper clarification order under O.C.G.A. § 15-1-3(6), rather than an improper reconsideration order; the content and context of the second order indicated that the order was clearly for clarification purposes, based on the state's request for clarification, and the superior court had previously denied reconsideration of the new trial order because reconsideration was requested out of term. Barlow v. State, 279 Ga. 870, 621 S.E.2d 438 (2005).

Cited in Nichols v. State, 17 Ga. App. 593, 87 S.E. 817 (1916); Smith v. State, 36 Ga. App. 37, 135 S.E. 102 (1926); Barge v. Ownby, 170 Ga. 440, 153 S.E. 49 (1930); Grand Chapter, OES v. Wolfe, 175 Ga. 867, 166 S.E. 755 (1932); Spence v. Miller, 176 Ga. 96, 167 S.E. 188 (1932); Fielding v. M. Rich & Bros. Co., 46 Ga. App. 785, 169 S.E. 383 (1933); Brooks v. Sturdivant, 177 Ga. 514, 170 S.E. 369 (1933); Georgia Power Co. v. Ozburn, 53 Ga. App. 797, 187 S.E. 154 (1936); Benton v. State, 58 Ga. App. 633, 199 S.E. 561 (1938); Bradley v. Simpson, 59 Ga. App. 844, 2 S.E.2d 238 (1939); Bankers Health & Life Ins. Co. v. Kimberly, 60 Ga. App. 128, 3 S.E.2d 148 (1939); Loomis v. State, 78 Ga. App. 153, 51 S.E.2d 13 (1948); Alred v. Celanese Corp. of Am., 205 Ga. 371, 54 S.E.2d 240 (1949); Banister v. Hubbard, 82 Ga. App. 813, 62 S.E.2d 761 (1950); McCartney v. McCartney, 217 Ga. 200, 121 S.E.2d 785 (1961); White v. State, 105 Ga. App. 616, 125 S.E.2d 239 (1962); Smith v. Hartrampf, 106 Ga. App. 603, 127 S.E.2d 814 (1962); Crudup v. State, 106 Ga. App. 833, 129 S.E.2d 183 (1962); Crudup v. State, 218 Ga. 819, 130 S.E.2d 733 (1963); Boatright v. Sosebee, 108 Ga. App. 19, 132 S.E.2d 155 (1963); A.A. Parker Produce, Inc. v. Mercer, 221 Ga. 449, 145 S.E.2d 237 (1965); Boockholdt v. Brown, 224 Ga. 737, 164 S.E.2d 836 (1968); Davis v. State, 127 Ga. App. 76, 192 S.E.2d 538 (1972); Van Keuren v. Loomis, 128 Ga. App. 136, 195 S.E.2d 776 (1973); Camp v. Fidelity Bankers Life Ins. Co., 129 Ga. App. 590, 200 S.E.2d 332 (1973); Welch v. State, 130 Ga. App. 18, 202 S.E.2d 223 (1973); Camera Shop, Inc. v. GAF Corp., 130 Ga. App. 88, 202 S.E.2d 241 (1973); Emmett v. State, 232 Ga. 110, 205 S.E.2d 231 (1974); Murphy v. State, 132 Ga. App. 654, 209 S.E.2d 101 (1974); Nations v. State, 234 Ga. 709, 217 S.E.2d 287 (1975); Speagle v. Nationwide Mut. Fire Ins. Co., 138 Ga. App. 384, 226 S.E.2d 459 (1976); Lowe v. State, 141 Ga. App. 433, 233 S.E.2d 807 (1977); McClain v. McClain, 241 Ga. 162, 243 S.E.2d 879 (1978); Gresham v. Rogers, 147 Ga. App. 189, 248 S.E.2d 225 (1978); Kelly v. State, 149 Ga. App. 222, 253 S.E.2d 860 (1979); Dennis v. State, 170 Ga. App. 630, 317 S.E.2d 874 (1984); Muff v. State, 254 Ga. 45, 326 S.E.2d 454 (1985); Smith v. State, 174 Ga. App. 647, 331 S.E.2d 14 (1985); Urban Medical Hosp. v. Seay, 179 Ga. App. 874, 348 S.E.2d 315 (1986); In re K.B., 188 Ga. App. 199, 372 S.E.2d 476 (1988); Chan v. W-East Trading Corp., 199 Ga. App. 76, 403 S.E.2d 840 (1991); Sunbelt Specialties v. Keith, 201 Ga. App. 167, 410 S.E.2d 364 (1991); Zeitman v. McBrayer, 201 Ga. App. 767, 412 S.E.2d 287 (1991); Rollins v. Southern Mtg. Co., 207 Ga. App. 215, 427 S.E.2d 581 (1993); Walton v. State, 207 Ga. App. 787, 429 S.E.2d 158 (1993); Marlowe v. Lott, 212 Ga. App. 679, 442 S.E.2d 487 (1994); In re Siemon, 264 Ga. 641, 449 S.E.2d 832 (1994); State v. Hall, 229 Ga. App. 194, 493 S.E.2d 718 (1997); Smith v. State, 245 Ga. App. 743, 538 S.E.2d 825 (2000); Blanton v. Duru, 247 Ga. App. 175, 543 S.E.2d 448 (2000); Harvey v. Lindsey, 251 Ga. App. 387, 554 S.E.2d 523 (2001); Wingate Land & Dev., LLC v. Robert C. Walker, Inc., 252 Ga. App. 818, 558 S.E.2d 13 (2001); Johnson v. State, 258 Ga. App. 33, 572 S.E.2d 669 (2002); Cheek v. State, 265 Ga. App. 15, 593 S.E.2d 55 (2003); Whitley v. Piedmont Hosp., Inc., 284 Ga. App. 649, 644 S.E.2d 514 (2007); Gary v. Gowins, 283 Ga. 433, 658 S.E.2d 575 (2008); In re Hadaway, 290 Ga. App. 453, 659 S.E.2d 863 (2008); McAlister v. Abam-Samson, 318 Ga. App. 1, 733 S.E.2d 58 (2012); Devlin v. Devlin, 339 Ga. App. 520, 791 S.E.2d 840 (2016).

Discretion of Court

Discretion in regulating and controlling business of court is necessarily confided to judge. Simpkins v. State, 149 Ga. App. 763, 256 S.E.2d 63 (1979).

Pursuant to the court's inherent power under O.C.G.A. § 15-1-3(3) and (4), the superior court did not abuse the court's discretion, or usurp the authority of the county sheriff by ordering the sheriff to transport county jail inmates represented by the county public defender to the county courthouse for pre-arraignment meetings as those actions helped to ensure that the inmates received effective assistance of counsel. Brown v. Incarcerated Pub. Defender Clients Div. 3, 288 Ga. App. 859, 655 S.E.2d 704 (2007), cert. denied, 2008 Ga. LEXIS 406 (Ga. 2008).

Discretion of Court (Cont'd)

Power to order defense counsel access to inmates. — Orders directing prison or jail authorities to allow visits by defense team members under appropriately specified conditions are proper; trial courts have authority to control, in the furtherance of justice, the conduct of their officers and all other persons connected with a judicial proceeding before them. State v. Rowe, 843 S.E.2d 537, No. S20A0504, 2020 Ga. LEXIS 345 (May 18, 2020).

Requiring party to submit to physical examination. — It is within the discretion of the court to require the plaintiff, suing for a physical injury alleged to be permanent, to submit to an examination by competent physicians. Richmond & D.R.R. v. Childress, 82 Ga. 719, 9 S.E. 602, 14 Am. St. R. 189, 3 L.R.A. 808 (1889).

Physical exam not required. — No abuse of discretion arises when an examination is not ordered. City of Cedartown v. Brooks, 2 Ga. App. 583, 59 S.E. 836 (1907).

Decision to retain jury. — Decision of retaining jury in session lies within discretion of court. Simpkins v. State, 149 Ga. App. 763, 256 S.E.2d 63 (1979).

Requiring a jury to deliberate until the hour of 4 A.M. is not such an abuse of discretion requiring reversal if the jury already reached an agreement on two of three counts and indicated the jury was making progress toward reaching agreement on the third and last count. Simpkins v. State, 149 Ga. App. 763, 256 S.E.2d 63 (1979).

Denial of mistrial. — Since the defendant contended the trial court erred in refusing to grant a mistrial based on plaintiff's behavior in that while plaintiff testified plaintiff was unresponsive, sobbed constantly, and made direct emotional speeches to the jury, but the record indicated that the trial court was monitoring plaintiff's testimony and instructed plaintiff on several occasions to be more responsive, no manifest abuse of discretion by the trial court in denying the motion for mistrial was found. Southern Ry. v. Lawson, 256 Ga. 798, 353 S.E.2d 491 (1987).

Denial of sanctions for defense counsel's improper remarks informing the jury that opposing counsel was representing plaintiffs on a contingent-fee basis was not an abuse of discretion since issues as to the amount of damages, addressed by the improper remarks, were not reached by the jury, and therefore no harm resulted. Stoner v. Eden, 199 Ga. App. 135, 404 S.E.2d 283, cert. denied, 199 Ga. App. 907, 404 S.E.2d 283 (1991).

Appellate review of discretion. — Discretion of the judges in all matters pertaining to contempt of their authority and mandates will never be controlled unless grossly abused. Crute v. Crute, 86 Ga. App. 96, 70 S.E.2d 727 (1952).

Discretion in regulating and controlling the business of the court is necessarily confided to the judge, who is invested with wide discretion in the exercise of which a reviewing court should never interfere unless it is made to appear that wrong or oppression has resulted from an abuse of discretion. Atlanta Newspapers, Inc. v. Grimes, 216 Ga. 74, 114 S.E.2d 421, appeal dismissed, 364 U.S. 290, 81 S. Ct. 63, 5 L. Ed. 2d 39 (1960); Barkett v. Jones, 142 Ga. App. 835, 237 S.E.2d 400 (1977).

If the legal rights of the parties are not prejudiced or denied, a reviewing court will not interfere with the discretion of the trial court in matters of practice in the hearing and disposition of causes before the court unless this discretionary power has been exercised in an illegal, unjust, or arbitrary manner. Bradford v. Parrish, 111 Ga. App. 167, 141 S.E.2d 125 (1965); Grossman v. Glass, 143 Ga. App. 464, 238 S.E.2d 569 (1977).

Reviewing court will not undertake to control the wide discretion vested in the trial court in the exercise of this fundamental power unless it is made to appear that wrong or oppression has resulted from an abuse of such discretion reposed in the court. Young v. Champion, 142 Ga. App. 687, 236 S.E.2d 783 (1977).

Denial of motion to correct judgment proper. — Trial court properly denied a motion to correct a judgment entered against two debtors and the debtors' guarantors, five years and eight months after the expiration of the term of court in which the judgment was entered, as the

debtors failed to show any entitlement to relief or exception as to why the debtors could not have timely sought the relief requested, and O.C.G.A. § 15-1-3(6) was unavailing because that section did not enable a court to change a judgment in substance or in any material respect. De La Reza v. Osprey Capital, LLC, 287 Ga. App. 196, 651 S.E.2d 97 (2007), cert. denied, No. S07C1928, 2007 Ga. LEXIS 819 (Ga. 2007).

Preserving and Enforcing Order

Duty of administering justice and maintaining dignity and authority of court. — Every court's judges are charged with the duty of administering justice and with maintaining the dignity and authority of the court. Johnson v. State, 177 Ga. 881, 171 S.E. 699 (1933).

Power to control proceeding of court is subject to proviso that in so doing a judge does not take away or abridge any right of a party under the law. State v. Colquitt, 147 Ga. App. 627, 249 S.E.2d 680 (1978).

Inherent power to preserve and enforce order. — Every court has power to preserve and enforce order in the court's immediate presence, and as near thereto as is necessary to prevent interruption, disturbance, or hindrance to the court's proceedings. Atlanta Newspapers, Inc. v. Grimes, 216 Ga. 74, 114 S.E.2d 421, appeal dismissed, 364 U.S. 290, 81 S. Ct. 63, 5 L. Ed. 2d 39 (1960).

It is fundamental that every court possesses inherent power to preserve and enforce order and compel obedience to the court's judgments and orders, to control the conduct of the court's officers and all other persons connected with the judicial proceedings before the court, and to inflict summary punishment for contempt upon any person failing and refusing to obey any lawful order. Jackson v. State, 225 Ga. 553, 170 S.E.2d 281 (1969); Farmer v. Holton, 146 Ga. App. 102, 245 S.E.2d 457 (1978), overruled on other grounds, In re Crane, 253 Ga. 667, 324 S.E.2d 443 (1985), cert. denied, 440 U.S. 958, 99 S. Ct. 1499, 59 L. Ed. 2d 771 (1979).

Court may control conduct of press. — Courts have the power to determine the manner in which the courts shall operate in order to administer justice with dignity and decorum, and in such manner as shall be conducive to fair and impartial trials, and ascertainment of the truth uninfluenced by extraneous matters or distractions, and may stop conduct of representatives of the press in any field of activity interfering with the orderly conduct of court procedure or creating distractions interfering therewith. Atlanta Newspapers, Inc. v. Grimes, 216 Ga. 74, 114 S.E.2d 421, appeal dismissed, 364 U.S. 290, 81 S. Ct. 63, 5 L. Ed. 2d 39 (1960).

Spoliation of evidence. — Trial court did not err by precluding the testimony of defendant's expert regarding possible causes of an accident deduced from an examination of the wrecked car as a sanction for the spoliation of the vehicle against an order of the court directing preservation. R.A. Siegel Co. v. Bowen, 246 Ga. App. 177, 539 S.E.2d 873 (2000).

Trial court erred in attributing bad faith to the plaintiff based upon the wrecker service's destruction of the truck because there was no way to construe the evidence so as to conclude that the wrecker service was acting as the plaintiff's agent when the service disregarded counsel's repeated requests to preserve the truck, and the striking of the plaintiff's complaint as a sanction was an abuse of discretion. Wilkins v. City of Conyers, 47 Ga. App. 469, 819 S.E.2d 885 (2018).

Power to punish for contempt. — All courts are clothed with the inherent power to punish for contempt. West v. Field, 181 Ga. 152, 181 S.E. 661 (1935).

Discretion as to contempt power. — Question whether contempt has been committed is for trial court, and that court's adjudication will not be interfered with unless there has been an abuse of discretion. Berman v. Berman, 232 Ga. 342, 206 S.E.2d 447 (1974); Rutledge v. State, 151 Ga. App. 615, 260 S.E.2d 743 (1979).

Disobedience to lawful court order. — Disobedience to lawful order of court is obstruction of justice, and for such a violation the court, in order to compel respect or compliance, may punish for contempt. Griggers v. Bryant, 239 Ga. 244, 236 S.E.2d 599 (1977).

Summary contempt power. — Although summary punishment is always

Preserving and Enforcing Order (Cont'd)

and rightly regarded with disfavor, there is no doubt that the summary contempt power is still available to courts, under the appropriate circumstances, to control judicial proceedings. Farmer v. Strickland, 652 F.2d 427 (5th Cir. 1981), cert. denied, 455 U.S. 944, 102 S. Ct. 1440, 71 L. Ed. 2d 656 (1982).

Court may apply less harsh sanctions. — Under certain circumstances, the court may decide the sanctions provided by statute are too severe and apply less harsh measures under the court's inherent power to enforce obedience. Millholland v. Oglesby, 223 Ga. 230, 154 S.E.2d 194 (1967).

Notice and hearing on constructive contempt. — In cases of constructive contempt of court if the alleged contumacious conduct is disobedience to a mandate of the court, not an act in the presence of the court or so near thereto as to obstruct the administration of justice, the law requires that a rule nisi issue and be served upon the accused, giving the accused notice of the charges against the accused, and that the accused be given an opportunity to be heard. Anthony v. Anthony, 240 Ga. 155, 240 S.E.2d 45 (1977).

Purpose of notice to accused. — Notice given by the rule nisi is to afford the accused a reasonable time in which to prepare the accused's defense to the charge that the accused has violated the court's order. Anthony v. Anthony, 240 Ga. 155, 240 S.E.2d 45 (1977).

Contempt of order when actual notice exists. — Person may be held in contempt of a court order entered in a proceeding in which the person was not a party, if it is shown that the person sought to be held in contempt had actual notice of the order. Anthony v. Anthony, 240 Ga. 155, 240 S.E.2d 45 (1977).

Probate court may punish for contempt. — Court of ordinary (now probate court) has jurisdiction of matters pertaining to the estates of deceased persons, jurisdiction over administrators, jurisdiction to compel administrators to account for the assets of an estate in their possession or custody, and jurisdiction in such cases to attach and punish for contempt. Melton v. Jenkins, 50 Ga. App. 615, 178 S.E. 754 (1935).

Order containing contempt of court provision valid. — Judge of superior court, upon a finding that the administrator had in the administrator's possession, custody, and control, money which belonged to the estate of the deceased, and which the administrator failed and refused to pay into court for distribution among the heirs at law, as directed by a valid judgment of the court of ordinary (now probate court), acted within the judge's powers, not only in rendering a judgment ordering that the administrator pay the amount which the administrator held to the several heirs at law, to be applied against the judgment rendered in the court of ordinary (now probate court), but also in ordering that upon the administrator's failure to do so within seven days the administrator be adjudged in contempt of court and be committed to the common jail of the county. Lewis v. Grovas, 62 Ga. App. 625, 9 S.E.2d 282 (1940).

Whether undisputed conduct amounts to contempt is question of law. — It is a question of law for the court to decide whether the courtroom conduct which is factually undisputed amounts to criminal contempt of court. Farmer v. Strickland, 652 F.2d 427 (5th Cir. 1981), cert. denied, 455 U.S. 944, 102 S. Ct. 1440, 71 L. Ed. 2d 656 (1982).

Evidence not required for contempt in judge's presence. — When the contempt occurs totally in the presence of the judge, there is no necessity for the production of evidence. Indeed, there is no burden of persuading the trier of fact as there is no fact finding process to be conducted. Farmer v. Strickland, 652 F.2d 427 (5th Cir. 1981), cert. denied, 455 U.S. 944, 102 S. Ct. 1440, 71 L. Ed. 2d 656 (1982).

No evidentiary standard of proof required for conduct in judge's presence. — If the contumacious conduct is committed in the presence of the court in the immediate view of the judge, it is unnecessary for the court to apply any evidentiary standard of proof in order to summarily hold the contemnor in con-

tempt of court. Farmer v. Strickland, 652 F.2d 427 (5th Cir. 1981), cert. denied, 455 U.S. 944, 102 S. Ct. 1440, 71 L. Ed. 2d 656 (1982).

Protection of client's rights no excuse. — Once an objection has been made by an attorney and the court has made the court's considered ruling, subsequent contumacious conduct will not be excused merely for the fact that the conduct was committed by an officer of the court during court proceedings in an attempt to protect the rights of the attorney's client. Farmer v. Strickland, 652 F.2d 427 (5th Cir. 1981), cert. denied, 455 U.S. 944, 102 S. Ct. 1440, 71 L. Ed. 2d 656 (1982).

Shackling of defendant. — Because the record did not reveal any specific actions of the appellant justifying the use of restraints, the shackling of the appellant, which continued throughout the trial, injected partiality into the trial, infringed upon the appellant's presumption of innocence and prevented the fundamental fairness which attends a trial by jury. Pace v. State, 212 Ga. App. 489, 442 S.E.2d 307 (1994).

Use of an electronic prisoner restraint device shielded from the jury's view was permissible. Young v. State, 269 Ga. 478, 499 S.E.2d 60 (1998), overruled on other grounds, 287 Ga. 242, 695 S.E.2d 255 (2010).

Trial court did not abuse the court's discretion by ordering the defendant to wear a restraint belt during trial as the defendant pointed to no assertions that the defendant made during the trial that wearing the restraint belt had an adverse effect on the defendant or that the belt prevented the defendant from assisting the defendant's attorney. Campbell v. State, 333 Ga. App. 829, 777 S.E.2d 507 (2015).

Compelling Obedience to Judgments, Orders, and Process

Judgment or decree to enforce prior judgment. — If it is brought to the attention of the judge that the judge's judgment upon the same issue in granting an interlocutory injunction against the enforcement of certain tax assessments by the mayor and council is being set at naught and disregarded, the judge can entertain an ancillary proceeding and render such judgment or decree as would enforce the judge's prior judgment until it should be reversed; and an objection based on lack of jurisdiction of the judge to issue an injunction upon the amendment is without merit. City of Macon v. Ries, 180 Ga. 371, 179 S.E. 529 (1935).

Power of Court of Appeals to enforce judgments. — Court of Appeals has the power to entertain a petition for mandamus or prohibition in order to enforce the court's judgments. Raybestos-Manhattan, Inc. v. Moran, 248 Ga. 461, 284 S.E.2d 256 (1981).

Change in venue does not eliminate court's power. — When the venue is changed, the first court does not lose power to enforce the court's judgment changing the venue. Ruffin v. State, 28 Ga. App. 40, 110 S.E. 311 (1921).

Superior court rendering the final order placing the custody of the parties' minor child in the appellant retains jurisdiction to enforce the court's order by attachment for contempt, notwithstanding the fact that subsequent to the rendition of the order the appellant may have removed the appellant's residence to another county. Ogletree v. Watson, 223 Ga. 618, 157 S.E.2d 464 (1967).

Jurisdiction to enforce retained despite change of residence. — Superior court, awarding alimony in virtue of the court's jurisdiction originally invoked by plaintiff in divorce suit, had jurisdiction to enforce the court's payment by attachment for contempt against the plaintiff after the plaintiff changed the plaintiff's residence to another county. Curtright v. Curtright, 187 Ga. 122, 200 S.E. 711 (1938).

Trial court retained jurisdiction to enforce stock levy order and to compel judgment debtor to reconvey corporate assets. — Trial court that ordered a judgment debtor to convey shares of stock to the court for levy and execution retained jurisdiction for the purpose of enforcing the levy orders, pursuant to O.C.G.A. § 15-1-3(3) and Ga. Const. 1983, Art. VI, Sec. I, Para. IV, and compelling the debtor to reconvey assets of the corporation to the judgment creditor, the new shareholder. Clark v. Chapman, 301 Ga.

Compelling Obedience to Judgments, Orders, and Process (Cont'd)

App. 117, 687 S.E.2d 146 (2009).

Action should not be dismissed because of witness' disobedience to court order. — Action by a father for the loss of the services of his minor child should not be dismissed because the child, after reaching majority, refused to obey an order of the court in which the action was pending requiring the child to submit to a physical examination. Bagwell v. Atlanta Consol. S. Ry., 109 Ga. 611, 34 S.E. 1018, 47 L.R.A. 486 (1900).

Interference with receiver's possession of property. — One who dispossesses the receiver of property consigned to that person by the court dispossesses the court, and of course becomes in contempt of court; and one may be punished for contempt and the property may be restored. A contempt of court being complete by dispossessing the receiver, the fact that no injunctive order has been passed does not affect the case. Coker v. Norman, 162 Ga. 351, 133 S.E. 740 (1926).

Refusal to answer writ of certiorari. — When a person has been tried and convicted in the county court, and has petitioned the judge of the superior court for a writ of certiorari, and the petition is sanctioned, and the writ issued, and the judge of the county court refuses to answer as required by the writ, the judge of the superior court, in term time, has power to attach the county court judge for contempt. Pittman v. Hagans, 91 Ga. 107, 16 S.E. 659 (1892).

Party late for trial. — Public housing tenant's answer was struck since the tenant was five minutes late for trial after having been warned not to be late. Truitt v. Housing Auth., 235 Ga. App. 92, 507 S.E.2d 781 (1998).

Enforcement of custody provisions of Georgia divorce judgment. — Georgia court which issued a divorce judgment that has not been modified by a court of another state with jurisdiction to do so may hear a Georgia-resident, non-custodial parent's allegations of contumacious conduct leveled against the nonresident custodial parent; a Georgia court has the statutory power to compel obedience to the court's judgments, as well as the inherent power to enforce the court's orders through contempt proceedings, and the Uniform Child Custody Jurisdiction Act, O.C.G.A. § 19-9-81 et seq., does not provide the exclusive means by which a party may seek enforcement of the custody provisions of a Georgia judgment. Dyer v. Surratt, 266 Ga. 220, 466 S.E.2d 584 (1996).

Authority to strike wife's pleadings in divorce for nonappearance. — It was not an abuse of discretion for a trial court to strike a wife's pleadings in a divorce after the wife failed to appear at a final custody hearing because: (1) O.C.G.A. § 15-1-3 gave the trial court such authority for the wife's wilful refusal to participate; (2) the wife was warned to check for notices of upcoming hearing dates; and (3) despite proper notice, the wife chose not to participate or state why. Pennington v. Pennington, 291 Ga. 165, 728 S.E.2d 230 (2012).

Revocation of bail bond for violations. — Since the defendant was charged with battery against a specific female victim, the trial court had authority to revoke defendant's bail bond following defendant's violation of conditions thereof that forbade the defendant to threaten, harass, stalk, or abuse the victim. Clarke v. State, 228 Ga. App. 219, 491 S.E.2d 450 (1997).

Refusal of order to testify. — Defendant's criminal contempt conviction was reversed as the trial court relied on another court's ex parte immunity grant in ordering the defendant to testify and neither court made a finding that defendant's testimony was "necessary to the public interest" as required by former O.C.G.A. § 24-9-28 (see now O.C.G.A. § 24-5-507); the state had to grant a valid immunity as broad in scope as the privilege the state replaced and show the applicability of that state immunity to the witness. In re Long, 276 Ga. App. 306, 623 S.E.2d 181 (2005).

Trial court's failure to use proper Fifth Amendment analysis. — Trial court did not engage in the required analysis for a witness asserting a Fifth Amendment privilege, but merely declared that answering the questions con-

cerning knowledge of the court's order regarding removing a child from a father's home would not incriminate the witness; at a minimum, such knowledge would establish a link in the chain of evidence needed to prove the witness was in contempt of that order and the trial court's finding of contempt based on the witness's refusal to answer the question was improper. In re Tidwell, 279 Ga. App. 734, 632 S.E.2d 690 (2006).

Conduct of Officers and Other Persons

Paragraph (4) codifies ancient right. — Paragraph (4) is a codification of a right which has inhered in courts from ancient times. Lowe v. Taylor, 180 Ga. 654, 180 S.E. 223 (1935).

Order for deposit into court registry authorized. — In a trespass action against a sign leasing corporation for unauthorized placement of a sign, the trial court did not abuse the court's discretion in ordering the corporation to deposit income from operation of the sign into the court's registry. Courtesy Leasing, Inc. v. Christian, 266 Ga. 187, 465 S.E.2d 443 (1996).

Broad powers given to trial courts by paragraph (4) of O.C.G.A. § 15-1-3 to manage the cases over which the courts preside authorized the trial court to order the deposit into the registry of funds. Such funds were due by the plaintiffs to the defendants under a prior settlement agreement which the plaintiffs alleged was breached by the defendants since the action made entitlement to the funds an issue and, under the allegations of the complaint, the plaintiffs may have been excused from further performance under the agreement by the defendants' breach. Eichelkraut v. Camp, 236 Ga. App. 721, 513 S.E.2d 267 (1999).

Inherent power. — Courts have the inherent power to adequately control, in furtherance of justice, officers, parties, jurors, witnesses, and others connected with a pending case. Crosby v. Potts, 8 Ga. App. 463, 69 S.E. 582 (1910).

Control is essential. — It is essential that control of persons referred to in paragraph (4) be exercised in a matter which is before the court. Lowe v. Taylor, 180 Ga. 654, 180 S.E. 223 (1935).

Attorney conduct. — Attorney at law admitted to practice in the courts of this state is an officer of the courts, and as such, is as much subject to the power of the court to control the conduct of persons present in the courtroom as others are subject thereto. Kellar v. State, 226 Ga. 432, 175 S.E.2d 654 (1970).

Contempt against a lawyer was affirmed when the lawyer failed to appear at the call of the client's case, failed to file a conflict letter, failed to notify the trial court of the lawyer's unavailability, failed to notify the client that the lawyer would not be in court, and, after being haled into court to explain the lawyer's conduct, the lawyer failed to acknowledge that the lawyer had not complied with Ga. Unif. Super. Ct. R. 17.1(B) regarding notification of conflicts and had, thus, inconvenienced both the court and the lawyer's client, and lastly, displayed contumacious behavior at the contempt hearing. In re Herring, 268 Ga. App. 390, 601 S.E.2d 839 (2004).

Contempt against lawyer without consideration of evidence erroneous. — Juvenile court erred by summarily holding an attorney in contempt based on a per se rule. The juvenile court determined that a per se rule existed that an attorney was in contempt when the attorney claimed ineffectiveness against themselves, but no such per se rule existed and, therefore, it was error to have adjudicated the attorney in contempt. Morris v. State, 295 Ga. App. 579, 672 S.E.2d 531 (2009).

Self-representation. — As the right to represent oneself does not evaporate when an attorney is hired, a court errs in barring a party from representing oneself because an appearance has been made for the attorney by other attorneys; however, the court is not required to accept random appearances and filings by both the client and attorneys. If a party and the party's attorneys are unable to coordinate their efforts so that they speak with one voice, the court is empowered to appoint a leading counsel who shall be the spokesperson. Cherry v. Coast House, Ltd., 257 Ga. 403, 359 S.E.2d 904 (1987), cert. denied, 484 U.S. 1060, 108 S. Ct. 1015, 98 L. Ed. 2d 981 (1988).

Disclosure by plaintiff applying for relief. — Court has inherent power to

Conduct of Officers and Other Persons (Cont'd)

enforce disclosure by plaintiff applying to the court's forum for relief. Millholland v. Oglesby, 223 Ga. 230, 154 S.E.2d 194 (1967).

Court can compel attendance of witness under the court's power to control all persons connected with a judicial proceeding before the court. Western & Atl. R.R. v. Denmead, 83 Ga. 351, 9 S.E. 683 (1889).

Bail or jail of witness to secure presence. — Court, in order to secure the presence of a witness in a criminal case, and to prevent the witness leaving the jurisdiction of the court prior to the trial, may require that the witness give bail for the witness's appearance, and, in default of the witness's giving bail, cause the witness to be held in confinement. Crosby v. Potts, 8 Ga. App. 463, 69 S.E. 582 (1910).

If it is necessary in order to secure the attendance of a witness at court to make the witness testify, the court has ample authority to secure the witness's attendance by requiring the witness to give bail, or in default thereof, to go to jail. Pullen v. Cleckler, 162 Ga. 111, 132 S.E. 761 (1926).

Imprisonment of witness defaulting on bond. — No court should order a witness to be imprisoned in default of bond, except from grave necessity; unless the witness's testimony is material and important, and unless there is strong likelihood that, if the witness is not restrained by confinement or bond, the witness will violate the mandates of the subpoena and flee the limits of the state, the power should not be exercised. Lowe v. Taylor, 180 Ga. 654, 180 S.E. 223 (1935).

"Extraordinary service" not illegal such that witness could refuse to testify. — In a contempt proceeding against a witness for refusing to testify, arising in a proceeding by a solicitor general (now district attorney) to revoke a previous order of the court admitting certain persons to practice law, which main proceeding was not a technical motion in arrest or motion to set aside, but was an independent proceeding quasi in rem at law, and invoked control by the court over the court's own officers, "extraordinary service" ordered by the court was not illegal so as to permit the witness to refuse to testify. Simpson v. Bradley, 189 Ga. 316, 5 S.E.2d 893 (1939), cert. denied, 310 U.S. 643, 60 S. Ct. 1105, 84 L. Ed. 1410 (1940).

Payment for court reporting services. — O.C.G.A. § 15-1-3 gives no authority, by in personam order, to compel the payment of private contractual obligations incurred by an attorney for court reporting services. Augustine v. Clifton, 248 Ga. 553, 284 S.E.2d 432 (1981).

Claim for money in attorney's hands by person other than client. — When, as the result of a lawsuit instituted by an attorney for a client, money has come into the hands of the attorney, the defendant in that suit who claims title to the money, but who is not the client of the attorney, cannot enforce the client's claim by rule against the attorney. Blanch v. Roberson, 69 Ga. App. 423, 25 S.E.2d 720 (1943).

Money in hands of attorney. — Right to rule an attorney, for money alleged to be in the attorney's hands as such, depends upon the existence of the relation of attorney and client and is limited to the client. Haygood v. Haden, 119 Ga. 463, 46 S.E. 625 (1904); Blanch v. Roberson, 69 Ga. App. 423, 25 S.E.2d 720 (1943).

Party sanctioned. — Trial court was within the court's authority to strike the party's answer and counterclaim and to bar the presentation of evidence after the party failed to personally appear throughout the litigation and disregarded multiple orders. Bayless v. Bayless, 280 Ga. 153, 625 S.E.2d 741 (2006).

No intimidation of defendant. — There was no merit to the defendant's claim of ineffective assistance of counsel in that the trial court intimidated the defendant by admonishing the defendant about making objections during the trial; since the defendant was represented by counsel, the defendant had no right to personally make evidentiary objections or otherwise assume the role of co-counsel. Phillips v. State, 278 Ga. App. 439, 629 S.E.2d 130 (2006).

Oaths

Authority of commissioners to administer oaths. — If a court is composed of commissioners, any one of the commissioners may administer oaths. Broadwater v. State, 10 Ga. App. 458, 73 S.E. 691 (1912).

Competency of reader of oath immaterial when in presence of court. — When the reading of the oath by another person is in the presence of the court, the competency of the person reading the oath is immaterial. Richards v. State, 131 Ga. App. 362, 206 S.E.2d 93 (1974).

Court's job to swear witnesses. — With regard to a defendant's convictions for incest and child molestation, the trial judge did not exhibit undue bias against the defense by reminding defense counsel that the swearing of witnesses fell within the dominion of the court. Hubert v. State, 297 Ga. App. 71, 676 S.E.2d 436 (2009).

Amendments

1. In General

Power to amend is broad and liberal. — Power to amend process given under the authority of paragraph (6) of this section is fully as broad and liberal as that allowed for the amendment of other pleadings. Everett v. McCary, 93 Ga. App. 474, 92 S.E.2d 112 (1956).

Death of party. — Fact that the husband died prior to the entry of the judgment nunc pro tunc would not alter the power of the court to complete and amend the court's records so as to make the records speak the truth. Moore v. Moore, 229 Ga. 600, 193 S.E.2d 608 (1972).

Effect of correction on nonparties. — Judgment cannot be corrected so as to bind person not party to suit. Thompson v. American Mtg. Co., 122 Ga. 39, 49 S.E. 751 (1905).

Application for discretionary appeal from probation revocation. — Defendant's filing of an application for discretionary appeal from a revocation of probation acted as a supersedeas to the same extent as a notice of appeal and thereby deprived the trial court of jurisdiction to enter an amended revocation order. Bryson v. State, 228 Ga. App. 84, 491 S.E.2d 184 (1997).

2. Scope of Power to Amend

Power to render records truthful. — All courts have inherent power to amend their records to speak the truth. Vaughn v. Fitzgerald, 112 Ga. 517, 37 S.E. 752 (1900).

Every court has the power to amend and control the court's processes and orders so as to make the orders conform to law and justice, and to amend the court's records to conform to the truth. Cox v. LeRoy, 130 Ga. App. 388, 203 S.E.2d 863 (1973).

Every court has the inherent power and duty to correct the court's own records to make the records speak truth. Willis v. Jackson, 148 Ga. App. 432, 251 S.E.2d 341 (1978).

Court may correct court's own records. — If based solely on the record, and without the necessity for the introduction of extrinsic evidence, the court may, on the court's own motion and without notice, enter a judgment and decree correcting the court's own records nunc pro tunc at a later date; and since such entry simply perfects the record as between the parties the entry relates back to the time when the entry should have been entered, although a different rule would apply to sureties, intervening bona fide purchasers, or innocent third parties. Swindell v. Swindell, 208 Ga. 727, 69 S.E.2d 197 (1952); Moore v. Moore, 229 Ga. 600, 193 S.E.2d 608 (1972).

Correction of errors and mistakes. — Every court, whether the court exercises exclusive or concurrent jurisdiction, is vested with inherent power to control and amend the court's records, judgments, and processes, and to correct errors and mistakes in those records, judgments, and processes. Ellis v. Clarke, 173 Ga. 618, 160 S.E. 780 (1931).

Court whose sole purpose is to deal fairly and do justice to all parties can accomplish this purpose only by acting upon true and correct records; and if errors or mistakes are found in the court's records, whether they be honest mistakes or deliberate alterations, the court in the exercise of the court's inherent power can

Amendments (Cont'd)
2. Scope of Power to Amend (Cont'd)

and should correct all such records. Beecher v. Carter, 189 Ga. 234, 5 S.E.2d 648 (1939).

Motion to vacate order must be based on meritorious reason. — While a motion to vacate an order or judgment is one addressed to the court's sound discretion, such a motion should not be granted unless founded upon a meritorious reason. Drain Tile Mach., Inc. v. McCannon, 80 Ga. App. 373, 56 S.E.2d 165 (1949).

3. Timing of Changes and Relation Back

Control during term over orders and judgments. — Court of record has plenary control of the court's orders and judgments during term rendered, and may amend, correct, modify, supplement, or vacate the orders and judgments; the exercise of this power during the term will not be disturbed unless there is an abuse thereof. Drain Tile Mach., Inc. v. McCannon, 80 Ga. App. 373, 56 S.E.2d 165 (1949).

During the term at which a judgment or ruling is made, the judge, in the exercise of the judge's own discretion to correct errors and to promote justice, has plenary power to amend, modify, revise, supplement, or even supersede, revoke, or vacate such previous judgment or ruling. Shockley v. Henselee, 114 Ga. App. 227, 150 S.E.2d 689 (1966).

Final order must be set aside during same term entered. — Trial judge can set aside a final order entered provided that the order is set aside during the same term in which the order is entered. Donnelly v. Stynchcombe, 246 Ga. 118, 269 S.E.2d 10 (1980).

Power to correct at subsequent term. — Judge had power at the subsequent term, in the direct proceeding against the defendant, after due notice and a hearing, to correct the paper inadvertently signed as a sentence and entered upon the minutes of the court, so that the paper conforms to the actual sentence orally pronounced. Pulliam v. Jenkins, 157 Ga. 18, 121 S.E. 679 (1923).

Revising judgment at subsequent term. — Judgment may be revised or amended, or entered of record, nunc pro tunc, on proper motion, at a term subsequent to that at which the judgment was rendered so as to make the judgment speak the truth of the decision that was actually rendered, or to make the judgment conform to the verdict; but the judgment must be amended by an inspection of the record, including the pleadings and the verdict, without resort to extraneous evidence. Allen v. Community Loan & Inv. Corp., 78 Ga. App. 611, 51 S.E.2d 872 (1949).

Amendment of judgment after term and after affirmation on appeal. — Court may amend a judgment to make the judgment conform to the verdict, not only after the term in which the judgment was rendered, but after the case has been affirmed by an appellate court. Kerr v. Noble, 124 Ga. App. 722, 185 S.E.2d 807 (1971).

Notice of change made at subsequent term. — If done at same term, court may make correction without notice to anyone; if at a subsequent term, the correction must be upon notice to the parties at interest. Ellis v. Clarke, 173 Ga. 618, 160 S.E. 780 (1931).

Material amendments at subsequent term require notice. — Judgment regular on the judgment's face cannot at a subsequent term be amended in a material respect, even though the amendment makes the judgment conform to the original judgment as orally rendered if there has been no proceeding brought for that purpose, with due notice to parties whose rights are to be affected. Crowell v. Crowell, 191 Ga. 36, 11 S.E.2d 190 (1940).

Amendment to assert statute of limitations defense. — Trial court did not abuse the court's discretion by permitting the insurance company to amend the company's answer to raise a statute-of-limitations defense to the tree service company owner's (owner's) personal injury claims after the entry of the pre-trial order because the owner failed to show any prejudice since the other defendants had raised the statute-of-limitations defense by the time the insurance company did, so the owner was on notice that the

defense would be considered by the trial court. Popham v. Landmark Am. Ins. Co., 340 Ga. App. 603, 798 S.E.2d 257 (2017).

Disposition of motion to revise or vacate. — Motion to revise or vacate an order or judgment not founded on a verdict made during the term at which rendered cannot be determined by any fixed rule, but the disposition thereof by the court depends on the circumstances of the case. Drain Tile Mach., Inc. v. McCannon, 80 Ga. App. 373, 56 S.E.2d 165 (1949).

Incorrect docket entry that case is settled. — Entry on the issue docket of a superior court that a case is settled is prima facie true and cannot be collaterally attacked; but, in the absence of a signed order entered on the minutes of the court, such docket entry does not constitute a dismissal of the case, and may be set aside in a direct proceeding for that purpose in the exercise of the authority of the court to correct the court's records to make the records speak the truth. Head v. Yeomans, 189 Ga. 335, 6 S.E.2d 704 (1939).

Relation back of amendment to judgment. — Based solely on the record, and without the necessity for the introduction of extrinsic evidence, the court may, on the court's own motion and without notice, enter such judgment and decree nunc pro tunc at a later date; and since such entry simply perfects the record, as between the parties the entry relates back to the time when the entry should have been entered. Swindell v. Swindell, 208 Ga. 727, 69 S.E.2d 197 (1952); Moore v. Moore, 229 Ga. 600, 193 S.E.2d 608 (1972).

Amendment to judgment to make the judgment conform to the verdict relates back to that which was amended. Further, the court may act on the court's own motion if a nunc pro tunc judgment is based solely on the record. Kerr v. Noble, 124 Ga. App. 722, 185 S.E.2d 807 (1971).

Judgment nunc pro tunc. — Generally, a judgment entered nunc pro tunc relates back to the time when the judgment should have been entered and completes the record. If there are no intervening equities, the judgment so entered will sustain a plea of res judicata between the parties as to the matter involved in the litigation. Walden v. Walden, 128 Ga. 126, 57 S.E. 323 (1907).

Trial court did not err in entering a final divorce decree nunc pro tunc and ordering monthly installments of lump-sum alimony to begin almost five months before entry of the judgment because entry of the judgment nunc pro tunc and commencement of lump-sum alimony soon after the verdict was advantageous to a common law husband as the monthly payments thereof were $500 less than the monthly amount of temporary alimony. Norman v. Ault, 287 Ga. 324, 695 S.E.2d 633 (2010).

Trial court's entry of a divorce decree nunc pro tunc under O.C.G.A. § 15-1-3(6), which eliminated a "transition period" from supervised to unsupervised visitation between the husband and the children, was error as the court had orally announced that the court was providing the transition period for the welfare of the parties' two children. Sigal v. Sigal, 289 Ga. 814, 716 S.E.2d 206 (2011).

4. Restrictions on Substantive Changes

Substantive or material changes in judgment barred. — This section does not enable a court to change a judgment in substance or in any material respect. Crowell v. Crowell, 191 Ga. 36, 11 S.E.2d 190 (1940).

No power to include what was not actually decided. — Power to amend and revise does not include power to supply judicial omissions so as to include what a court might or should have decided, but did not actually so decide. Allen v. Community Loan & Inv. Corp., 78 Ga. App. 611, 51 S.E.2d 872 (1949).

Amendment of judgment so as not to follow verdict of jury not allowed. — When founded on verdicts of a jury, and not the acts of the judge, the court may not amend the judgment so as not to follow the verdict. Cox v. LeRoy, 130 Ga. App. 388, 203 S.E.2d 863 (1973); Wimberly v. Medaris, 143 Ga. App. 805, 240 S.E.2d 200 (1977).

Additional pleadings with material changes not allowed after judgment. — While the superior court has the power and duty of correcting errors in the court's records, this rule does not authorize the court to allow, filed subsequent to judgment, additional pleadings which will ma-

Amendments (Cont'd)
4. Restrictions on Substantive Changes (Cont'd)

terially change the pleadings on which the judgment was rendered; hence, if the plaintiff's amended motion for a new trial was heard and overruled, the trial judge did not err in disallowing a second amendment to the motion, offered several weeks after the date of the judgment overruling the original motion for the purpose of perfecting the assignments of error contained in the first amendment to the motion for a new trial. Nickerson v. Porter, 189 Ga. 671, 7 S.E.2d 231 (1940).

Modification of order denying attorney's fees not authorized. — If the trial court determined as a matter of law that there was no claim under an insurance policy, there could be no recovery of attorney's fees under O.C.G.A. § 33-4-6, and the court was without power to modify the court's order denying an attorney's fees award to plaintiff after the term of court expired in which that order was made. State Farm Mut. Auto. Ins. Co. v. Johnson, 242 Ga. App. 591, 530 S.E.2d 492 (2000).

5. Clerical Corrections

Court may order clerk to correct clerical error. — If the clerk of the superior court, in issuing the writ of certiorari, made a clerical error in dating the writ, the judge of that court may pass an order authorizing the clerk to correct such error so as to make the writ bear the true date of issuance. Neal v. Neal, 122 Ga. 804, 50 S.E. 929 (1905).

Substantive changes not allowed. — Power of courts to correct clerical errors and misprints and to make the record speak the truth by nunc pro tunc amendments after the term does not enable the courts to change their judgments in substance or in any material respect. Rogers v. Rigell, 183 Ga. 455, 188 S.E. 704 (1936).

Clerical omission or irregularity may be cured by amendment. — If the process contains a command to the defendant to appear in court at a certain time for a specified purpose, and if this process is actually executed by the proper officer, the mere fact that the formal direction to the officer to execute the process is omitted therefrom would be at most a mere clerical omission or irregularity, which could be cured by amendment. Gay v. Sylvania Cent. Ry., 79 Ga. App. 362, 53 S.E.2d 713 (1949).

6. Illustrative Cases

Process is amendable so as to be made to "conform to law and justice." Minsk v. Cook, 48 Ga. App. 567, 173 S.E. 446 (1934).

Process properly served its purpose despite defect. — If, by virtue of a process, although defective, a defendant has been properly served by one lawfully authorized to effect the service, although the process was not so directed to the officer, and if that process has properly put the defendant on notice of the proceeding, and when defendant's appearance will be required, such process has properly served its purpose. Gay v. Sylvania Cent. Ry., 79 Ga. App. 362, 53 S.E.2d 713 (1949).

Continuing jurisdiction to enter judgment on jury verdict. — Court of record, in the exercise of the court's inherent power, has continuing jurisdiction to enter judgment on a jury verdict at any time. Jefferson v. Ross, 250 Ga. 817, 301 S.E.2d 268 (1983) (overruling Maroska v. Williams, 146 Ga. App. 130, 245 S.E.2d 470 (1978)).

Failure to state length of sentence. — Record which fails to state length of sentence may be corrected. Tyler v. State, 125 Ga. 46, 53 S.E. 818 (1906).

Transcript of charge to jury may be corrected. Georgia Ry. & Elec. Co. v. Carroll, 143 Ga. 93, 84 S.E. 434 (1915).

Failure to instruct jury to pronounce determinate sentence. — Since the jury pronounced an indeterminate sentence of three to five years, when in fact the jury should have been instructed to pronounce a determinate sentence, and the court, evidently convinced of the error, changed the sentence to three years, any errors involved were trifling and were harmless. Powell v. State, 115 Ga. App. 791, 156 S.E.2d 188 (1967).

Record of judgment is amendable to show true relation of parties as disclosed

by execution. Safford v. Banks, 69 Ga. 289 (1882).

Record of illegal judgment. — Judge of a court of record may of the judge's own motion, when approving the minutes at the close of the term, expunge therefrom a judgment which the court is, as to the subject matter, without jurisdiction to render. Scott v. Hughes, 124 Ga. 1000, 53 S.E. 453 (1906).

Setting aside judgment. — Failure of a defendant to appear and plead, in consequence of a misunderstanding between defendant and defense counsel, does not afford a meritorious reason for granting a motion to set aside a judgment, even though made during the term when the judgment was yet in the breast of the court. Drain Tile Mach., Inc. v. McCannon, 80 Ga. App. 373, 56 S.E.2d 165 (1949).

Laches not grounds for vacating dismissal. — Laches of plaintiff is not a sufficient reason for the court to exercise the court's plenary power and vacate an order dismissing a case for want of prosecution since neither the plaintiff nor plaintiff's counsel are present on the call of the case for trial. Drain Tile Mach., Inc. v. McCannon, 80 Ga. App. 373, 56 S.E.2d 165 (1949).

Power of court to enter order accurately reflecting trial of case. — Trial court, if no adverse rights have intervened, has jurisdiction nunc pro tunc to enter an order of dismissal accurately reflecting what occurred upon the trial of the case. Israel v. Joe Redwine Ins. Agency, 120 Ga. App. 14, 169 S.E.2d 347 (1969).

Power to require clerk to recall incorrect execution. — It was within the power of the court to compel obedience to the court's judgments, orders, and process in an action or proceeding therein. This general power conferred by the law upon the courts and the specific power providing for rule nisi against officers contained in former Code 1933, § 24-209 (see now O.C.G.A. § 15-13-4) authorized a proceeding when an execution was issued by the clerk contrary to the terms of the judgment and was paid by the defendant in fi. fa. and marked satisfied by the clerk. The court had the power to have the clerk recall such an execution and offer to refund the money paid to the clerk by the defendant in fi. fa. Miller Serv., Inc. v. Miller, 77 Ga. App. 413, 48 S.E.2d 761 (1948).

Corrections of mistake in minutes must not prejudice rights of third person. Barefield v. Bryan, 8 Ga. 463 (1850).

Entry of order 24 years after issuance. — If an order granted 24 years previously had not been placed upon the minutes of the court by the clerk, the judge ordered it done in order to make the minutes speak the truth. Ellis v. Clarke, 173 Ga. 618, 160 S.E. 780 (1931).

Reducing oral order to writing. — Language "amend its own records" includes amending the record by reducing to writing an order which had previously existed only as an oral statement and was, therefore, not properly a part of the record at all, although it had been recognized as such during the trial of the case. Maloy v. Planter's Whse. & Lumber Co., 142 Ga. App. 69, 234 S.E.2d 807 (1977).

If the plaintiff files an amendment to the plaintiff's complaint and a motion to add parties, a proposed (unsigned) order granting the motion is placed in the file at the same time as the motion, a hearing on the motion is held, and the trial court, in the exercise of the court's discretion, orally grants the motion, all within the limitations period, but, through oversight, the court omits the actual signing of the order, the trial court does not err in later entering a nunc pro tunc order so as to correct the court's own oversight and to make the record speak the truth. Savannah Iron & Fence Corp. v. Mitchell, 168 Ga. App. 252, 308 S.E.2d 569 (1983).

Motion to revoke or set aside order of incorporation. — Motion to revoke and set aside an order of incorporation on the grounds that the movant had acquired prior use to the name used by the corporation, that its use would cause confusion and cloud titles of petitioners' property, and that it was improvidently granted because the movant was not given notice before the order of incorporation, and praying that it be set aside, is not an equity case within the meaning of that term as used in Ga. Const. 1976, Art. VI, Sec. II, Para. IV (see now Ga. Const. 1983, Art. VI, Sec. VI, Paras. II, III), defining

Amendments (Cont'd)
6. Illustrative Cases (Cont'd)

the jurisdiction of the Supreme Court. The grounds of the motion are not relievable only in equity. On the contrary, the motion is one to set aside an order of the court on an alleged legal ground and a court has jurisdiction with rule nisi or process to grant the relief prayed. Methodist Episcopal Church S., Inc. v. Decell, 60 Ga. App. 843, 5 S.E.2d 66 (1939).

Coerced compliance with settlement agreement outside term. — If county and jail inmates entered a settlement agreement whereby the county would take steps over an 18-month period to improve health services, but the county was held in contempt and given the opportunity to purge itself of contempt, the mere fact that the trial court's later order was beyond the original 18 month settlement terms did not prevent the trial court from finding the county had not purged the contempt; the expiration of the term did not halt the trial court's lawful efforts to coerce compliance, particularly when those efforts began long before the agreement was due to expire. DeKalb County v. Adams, 262 Ga. App. 243, 585 S.E.2d 178 (2003).

Error to deny motion to set aside consent order when one party did not consent. — Because both a wife and her counsel read and signed a settlement agreement reached during a divorce hearing, the agreement was enforceable even though some details remained to be decided, and it could not be rescinded based on a claimed error in the award of a home to the husband. However, a consent order based on the agreement should have been set aside under O.C.G.A. § 15-1-3(6) because the wife did not consent to the order and the trial court had the duty to determine whether the agreement was equitable. Buckner v. Buckner, 294 Ga. 705, 755 S.E.2d 722 (2014).

Revival of dormant judgment in workers' compensation cases. — In an action wherein a workers' compensation claimant revived a lump-sum judgment of $37,747.08 plus accrued interest, which had become dormant against an employer, the trial court properly refused to amend the 2006 judgment that revived the judgment to provide for weekly disability payments as the term of court ended and, therefore, the trial court had no authority to amend or alter that 2006 judgment. However, the trial court should have issued a writ of execution for the payments that became due after July 27, 2000, as those payments had not become dormant. Taylor v. Peachbelt Props., 293 Ga. App. 335, 667 S.E.2d 117 (2008).

Disqualification of counsel. — Trial court did not err by granting the wife's motion to disqualify counsel in a wrongful death action after finding that the lawyers repeatedly and intentionally contacted the wife's expert with the objective of interfering with the expert's appearance as a witness; the natural and foreseeable result of co-counsel's phone calls to the witness's employer was to have the expert pressured into withdrawing from the case. WellStar Health Sys. v. Kemp, 324 Ga. App. 629, 751 S.E.2d 445 (2013).

OPINIONS OF THE ATTORNEY GENERAL

Choice of forum. — Courts of Georgia may not restrict the suitor's choice of forum when jurisdiction of a cause of action is vested in more than one court. 1983 Op. Att'y Gen. No. U83-50.

Reduction of sentence to writing. — Trial judge is ultimately responsible for reducing sentence to writing, even though this duty may be delegated to another officer; in any event, the judge must sign the sentence. 1970 Op. Att'y Gen. No. U70-85.

Ensuring safety during habeas corpus proceeding. — Court, assisted by the sheriff of the county, is responsible for undertaking measures necessary to ensure the safety of the court during a habeas corpus proceeding; however, this does not relieve the Board of Corrections from any of the Board's constitutional duties for the custody of inmates. 1973 Op. Att'y Gen. No. 73-57.

Dismissal of arrest warrant. — Arrest warrant may be dismissed by the issuing judicial officer at the request of the prosecutor prior to the warrant's execu-

tion and need not be dismissed by the court having jurisdiction over the trial of the case. 1985 Op. Att'y Gen. No. U85-27.

Magistrate may prevent interference with constable. — Justice of peace (now magistrate) may prevent interference with a constable in making levy through contempt processes. 1965-66 Op. Att'y Gen. No. 65-63.

Magistrate court may, sua sponte, order the release of arrestees who have been arrested without a warrant if no warrant has been procured as required by O.C.G.A. § 17-4-62, and if an individual has been arrested with a warrant, but has not been afforded a first appearance hearing within 72 hours of the individual's arrest as required by O.C.G.A. § 17-4-26. 1988 Op. Att'y Gen. No. U88-14.

Control of courtroom. — Department of Public Safety officers are permitted to carry their service weapons and handguns into courthouses, but O.C.G.A. § 16-11-30 does not authorize the officers' entry into courtrooms where the courthouse's security plan and/or judges of that court have directed otherwise. 2017 Op. Att'y Gen. No. 17-5.

RESEARCH REFERENCES

Am. Jur. 2d. — 20 Am. Jur. 2d, Courts, § 36 et seq.

C.J.S. — 21 C.J.S., Courts, § 41 et seq.

ALR. — Power of court to amend indictment, 7 A.L.R. 1516; 68 A.L.R. 928.

Power of court to issue or to honor letters rogatory, 9 A.L.R. 966; 108 A.L.R. 384.

Forcing party or prosecuting witness to withdraw or not to institute action or proceeding as contempt of court, 23 A.L.R. 187.

Contempt for disobedience of mandamus, 30 A.L.R. 148.

Formality in authentication of judicial acts, 30 A.L.R. 700.

Procuring or attempting to procure witness to leave jurisdiction as contempt, 33 A.L.R. 607.

Inability to comply with judgment or order as defense to charge of contempt, 40 A.L.R. 546; 76 A.L.R. 390; 120 A.L.R. 703.

Power of judiciary to compel legislature to make apportionment of representatives or election districts as required by Constitution, 46 A.L.R. 964.

Judicial power in respect to consolidation or merger of railroads, 51 A.L.R. 1249.

What courts or officers have power to punish for contempt, 54 A.L.R. 318; 73 A.L.R. 1185.

Assaulting, threatening, or intimidating witness as contempt of court, 55 A.L.R. 1230; 52 A.L.R.2d 1297.

Authority of judge in respect of unfinished business of another judge, 58 A.L.R. 848.

Discretion of court to refuse jurisdiction of action against ancillary executor of administrator, 79 A.L.R. 1324.

Disciplinary power of court in respect of suretyship in judicial proceedings, 91 A.L.R. 889.

Power and duty of court as to continuation of action or prosecution upon refusal of city, county, or district attorney to proceed therewith, 103 A.L.R. 1253.

Power and duty of court to keep its files and records free from scandalous matter, 111 A.L.R. 879.

Discretion of trial court in criminal case as to permitting or denying view of premises where crime was committed, 124 A.L.R. 841.

Failure or refusal to surrender possession or disclose whereabouts of property in replevin as contempt, 130 A.L.R. 632.

Power to include separate acts of contempt in a single contempt proceeding, 160 A.L.R. 1104.

Dismissal of action for failure or refusal of plaintiff to obey court order, 4 A.L.R.2d 348; 56 A.L.R.3d 1109; 27 A.L.R.4th 61; 32 A.L.R.4th 212; 3 A.L.R.5th 237.

Right to punish for contempt for failure to obey court order or decree either beyond power or jurisdiction of court or merely erroneous, 12 A.L.R.2d 1059.

Blood grouping tests, 46 A.L.R.2d 1000.

Pleading and burden of proof, in contempt proceedings, as to ability to comply with order for payment of alimony or child support, 53 A.L.R.2d 591.

Prejudicial effect of trial judges remarks, during civil jury trial, disparaging

the litigants, the witnesses, or the subject matter of the litigation, 83 A.L.R.2d 1128; 35 A.L.R.5th 1.

Trial court's appointment, in civil case, of expert witness, 95 A.L.R.2d 390.

Prejudicial effect, in argument or summation in civil case, of attacks upon opposing counsel, 96 A.L.R.2d 9.

Power of courts or other public agencies, in the absence of statutory authority, to order compulsory medical care for adult, 9 A.L.R.3d 1391.

Attorney's inaction as excuse for failure to timely prosecute action, 15 A.L.R.3d 674.

Power of court to make or permit amendment of indictment with respect to allegations as to property, objects, or instruments, other than money, 15 A.L.R.3d 1357.

Inherent power of court to compel appropriation or expenditure of funds for judicial purposes, 59 A.L.R.3d 569.

Power of court to impose standard of personal appearance or attire, 73 A.L.R.3d 353.

Power of trial court to dismiss prosecution or direct acquittal on basis of prosecutor's opening statement, 75 A.L.R.3d 649.

Right of injured party to award of compensatory damages or fine in contempt proceedings, 85 A.L.R.3d 895.

Disruptive conduct of accused in presence of jury as ground for mistrial or discharge of jury, 89 A.L.R.3d 960.

Attorney's failure to attend court, or tardiness, as contempt, 13 A.L.R.4th 122.

Validity, propriety, and effect of allowing or prohibiting media's broadcasting, recording, or photographing court proceedings, 14 A.L.R.4th 121.

Court's witnesses (other than expert) in state criminal prosecution, 16 A.L.R.4th 352.

Power of court, in absence of statute, to order psychiatric examination of accused for purpose of determining mental condition at time of alleged offense, 17 A.L.R.4th 1274.

Emotional manifestations by victim or family of victim during criminal trial as ground for reversal, new trial, or mistrial, 31 A.L.R.4th 229.

Calling and interrogation of witnesses by court under Rule 614 of the Federal Rules of Evidence, 53 A.L.R. Fed. 498.

15-1-4. Extent of contempt power.

(a) The powers of the several courts to issue attachments and inflict summary punishment for contempt of court shall extend only to cases of:

(1) Misbehavior of any person or persons in the presence of such courts or so near thereto as to obstruct the administration of justice;

(2) Misbehavior of any of the officers of the courts in their official transactions;

(3) Disobedience or resistance by any officer of the courts, party, juror, witness, or other person or persons to any lawful writ, process, order, rule, decree, or command of the courts;

(4) Violation of subsection (a) of Code Section 34-1-3, relating to prohibited conduct of employers with respect to employees who are required to attend judicial proceedings; and

(5) Violation of a court order relating to the televising, videotaping, or motion picture filming of judicial proceedings.

(b) No person shall be imprisoned for contempt for failing or refusing to pay over money under any order, decree, or judgment of any court of

law or any other court of this state when he denies that the money ordered or decreed to be paid over is in his power, custody, or control until he has a trial by jury in accordance with the following provisions:

(1) The allegation of the plaintiff, receiver, referee, or any other person or persons that the defendant accused of contempt has a certain sum of money within his power, custody, or control, which he is withholding or refuses or fails to pay over, and the denial of the defendant that he has the power, custody, or control of the money shall form the issue to be tried by the jury, and the jury shall decide the issue of fact;

(2) The issue being made, a bond may be required in the discretion of the court for the appearance of the defendant for trial, which bond shall be of sufficient size to ensure the attendance of the defendant to appear and answer the final judgment or decree in the case and shall be approved by the judge. On failure of the defendant to appear, the bond shall be forfeited as in criminal cases. If bond is required but not posted the defendant may be committed to jail for safekeeping until trial; and

(3) The judge presiding shall cause questions to be propounded in writing to the jury and every question propounded shall be answered by the jury in its verdict. Upon the answers made, the judge shall adjudge or decree whether the defendant is in contempt. Either party shall have the right to move for a new trial and to appeal as in other civil cases.

(c) When a person who is gainfully employed violates an order of the court granting temporary or permanent alimony or child support and the judge finds the person in contempt of court, the sentencing judge may sentence the respondent to a term of confinement in a diversion center and participation in a diversion program if such a program has been established by a county pursuant to the provisions of Article 5 of Chapter 3 of Title 42.

History. — Orig. Code 1863, § 4593; Code 1868, § 4614; Code 1873, § 4711; Code 1882, § 4711; Ga. L. 1892, p. 65, § 1; Civil Code 1895, § 4046; Civil Code 1910, § 4643; Code 1933, § 24-105; Ga. L. 1987, p. 1156, § 2; Ga. L. 1990, p. 590, § 1; Ga. L. 1996, p. 649, § 2; Ga. L. 1996, p. 734, § 1; Ga. L. 2015, p. 422, § 5-1/HB 310.

Cross references. — Contempt generally, Ga. Const. 1983, Art. I, Sec. II, Para. IV.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1987, subsection (b), as enacted by Ga. L. 1987, p. 1156, § 2, was redesignated as subsection (c).

Pursuant to Code Section 28-9-5, in 1996, the (1) designation was deleted from subsection (c).

Editor's notes. — Ga. L. 2015, p. 422, § 6-1/HB 310, not codified by the General Assembly, provides, in part, that the amendment by this Act shall apply to sentences entered on or after July 1, 2015.

Law reviews. — For article, "The Appellate Judiciary of Georgia and Contempt Out of Court," see 2 Ga. L. Rev. 341 (1968). For article discussing the validity of contempt of court sanctions based upon a party's disobedience of an injunction constituting a void prior restraint of

constitutionally-protected activity, see 7 Ga. L. Rev. 246 (1973). For article, "Contempt of Court in Georgia," see 23 Ga. St. B. J. 66 (1987). For article on the 2015 amendment of this Code section, see 32 Ga. St. U.L. Rev. 231 (2015). For article, "How Not to Get Thrown in Jail," see 22 Ga. Bar. J. 17 (June 2017).

For comment on Atlanta Newspapers, Inc. v. State, 101 Ga. App. 105, 113 S.E.2d 148 (1960), see 12 Mercer L. Rev. 284 (1960). For comment on Renfroe v. State, 104 Ga. App. 362, 121 S.E.2d 811 (1961), see 24 Ga. B. J. 544 (1962). For comment, "Civil Contempt and Child Sexual Abuse Allegations: A Modern Solomon's Choice?," see 40 Emory L. J. 203 (1991).

JUDICIAL DECISIONS

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General Consideration

Use of contumacious language in court. — Fact that the court has made a ruling which seems completely unjustified or beyond the authority of the court does not give the aggrieved party the license to use contumacious language in the presence of the court concerning such a ruling. White v. State, 105 Ga. App. 616, 125 S.E.2d 239, rev'd on other grounds, 218 Ga. 290, 127 S.E.2d 668 (1962).

Acts occurring before domestication of foreign judgment. — Trial court's contempt power is not limited to contempt acts occurring after date of domestication of foreign judgment. Martin v. Martin, 244 Ga. 68, 257 S.E.2d 903 (1979).

Presenting motion in good faith. — Attorney may not be held in contempt of court merely for presenting in good faith a motion which the attorney has a right to make, nor may an attorney be held in contempt merely because, having filed such a motion, the attorney fails to prevail on the motion. In re McLarty, 152 Ga. App. 399, 263 S.E.2d 194 (1979).

Lack of intent to violate order. — Contemnor's testimony that contemnor had no intent to violate an order is not binding on the court. Schiselman v. Trust Co. Bank, 246 Ga. 274, 271 S.E.2d 183 (1980).

Cited in Smith v. State, 36 Ga. App. 37, 135 S.E. 102 (1926); Evans v. White, 178 Ga. 262, 172 S.E. 913 (1934); Wilkins v. Jordan, 50 Ga. App. 119, 177 S.E. 344 (1934); Benton v. State, 58 Ga. App. 633, 199 S.E. 561 (1938); Poss v. Norris, 197 Ga. 513, 29 S.E.2d 705 (1944); Alred v. Celanese Corp. of Am., 205 Ga. 371, 54 S.E.2d 240 (1949); Thomas v. Hubert, 84 Ga. App. 710, 66 S.E.2d 924 (1951); City of

Macon v. Massey, 214 Ga. 589, 106 S.E.2d 23 (1958); Palmer v. Bunn, 218 Ga. 244, 127 S.E.2d 372 (1962); Crudup v. State, 218 Ga. 819, 130 S.E.2d 733 (1963); Henderson v. State Bd. of Exmrs., 221 Ga. 536, 145 S.E.2d 559 (1965); Aetna Life Ins. Co. v. Greene, 116 Ga. App. 783, 159 S.E.2d 87 (1967); Brown v. State, 226 Ga. 114, 172 S.E.2d 666 (1970); Haire v. Branch, 129 Ga. App. 164, 199 S.E.2d 127 (1973); Zimmerman v. Zimmerman, 131 Ga. App. 567, 206 S.E.2d 583 (1974); Murphy v. State, 132 Ga. App. 654, 209 S.E.2d 101 (1974); Jones v. State, 134 Ga. App. 611, 215 S.E.2d 483 (1975); Hall v. Hall, 242 Ga. 15, 247 S.E.2d 754 (1978); In re Pruitt, 249 Ga. 190, 288 S.E.2d 208 (1982); Carter v. Data Gen. Corp., 162 Ga. App. 379, 291 S.E.2d 99 (1982); In re Henritze, 181 Ga. App. 560, 353 S.E.2d 58 (1987); In re Victorine, 230 Ga. App. 209, 495 S.E.2d 864 (1998); Affatato v. Considine, 305 Ga. App. 755, 700 S.E.2d 717 (2010).

Powers of Courts

1. In General

Disobeying or resisting lawful order. — Several courts of this state have power to attach and punish for contempt any party who disobeys or resists any lawful order granted by such courts. Crawford v. Manning, 12 Ga. App. 54, 76 S.E. 771 (1912).

Compliance with intent and spirit of decrees. — Trial court has power to see that there be compliance with the intent and spirit of the court's decrees and no party should be permitted to take advantage of the letter of a decree to the detriment of the other party. Davis v. Davis, 243 Ga. 421, 254 S.E.2d 370 (1979); Kaufmann v. Kaufmann, 246 Ga. 266, 271 S.E.2d 175 (1980).

Trial judge best qualified to determine contempt. — Trial judge is the one best qualified to determine whether or not the plaintiff, as a witness, placed oneself in contempt. Crute v. Crute, 86 Ga. App. 96, 70 S.E.2d 727 (1952).

Misbehavior of officer of court. — Powers of court are applicable to misbehavior of any officer of the court in the officers' official transactions. West v. Field, 181 Ga. 152, 181 S.E. 661 (1935).

O.C.G.A. § 15-1-4(a)(2) is intended to impose upon officers of the courts engaged in the officers' official transactions a higher duty to the court than is demanded of the broader group of individuals listed in § 15-1-4(a)(3) who are arguably subject to the contempt powers only for failure to comply with those commands of the court spread upon the record in written form. In re Smith, 211 Ga. App. 493, 439 S.E.2d 725 (1993).

Indictable act may be treated as contempt. — That given act may be indictable does not deprive court of power of dealing with the act as contempt of court. Bradley v. State, 111 Ga. 168, 36 S.E. 630, 78 Am. St. R. 157, 50 L.R.A. 691 (1900).

Court may handle contempt at any time. — Court has jurisdiction and is empowered to deal with the matter of contempt at any time during the progress of the litigation before the court. West v. Field, 181 Ga. 152, 181 S.E. 661 (1935).

Court may not modify previous decree in contempt order; however, a court may always interpret and clarify the court's own orders. The test to determine whether an order is clarified or modified is whether the clarification is reasonable or whether the clarification is so contrary to the apparent intention of the original order as to amount to a modification. Kaufmann v. Kaufmann, 246 Ga. 266, 271 S.E.2d 175 (1980).

Confinement for contempt was abuse of discretion since father demonstrated inability to pay child support. — Despite the fact that sufficient evidence supported a civil contempt finding, the trial court erred in continuing a father's incarceration after the father established an inability to pay the child support arrearage and the court lacked any authority to confine the father in a diversion center or to place the father in a work release program pursuant to O.C.G.A. § 15-1-4(c). Gallaher v. Breaux, 286 Ga. App. 375, 650 S.E.2d 313 (2007).

Civil contempt for failing to pay child support and alimony. — Supreme Court of Georgia has long held that a person is not entitled to a jury trial on the issue of ability to pay or contempt for

Powers of Courts (Cont'd)
1. In General (Cont'd)

failure to pay alimony and child support and while none of the opinions appear to address the plain meaning of O.C.G.A. § 15-1-4(b) or its similarly worded predecessor statutes, this is ultimately of no consequence as the Georgia Court of Appeals is bound by these decisions and must apply them. Bernard v. Bernard, 347 Ga. App. 429, 819 S.E.2d 688 (2018).

2. Limits Imposed by Legislature

Limits on exercise of power. — This Code section is designed to limit courts in exercise of contempt power. Wood v. Georgia, 370 U.S. 375, 82 S. Ct. 1364, 8 L. Ed. 2d 569 (1962).

Power to define, classify, and punish contempt. — All constitutional courts have the inherent power to define and punish contempt and this right was not denied or limited by this section. Jones v. State, 39 Ga. App. 1, 145 S.E. 914 (1928); Evans v. State, 69 Ga. App. 178, 24 S.E.2d 861 (1943); Vines v. State, 69 Ga. App. 175, 24 S.E.2d 864 (1943).

Power of constitutional court to define and classify contempt of court was not limited by this section. Cobb v. State, 187 Ga. 448, 200 S.E. 796, answer conformed to, 59 Ga. App. 695, 2 S.E.2d 116 (1939).

Power to define may not be abridged or taken away by legislature. — As to courts created by the Constitution, the right to define contempt cannot be abridged or taken away by legislative action. In re Fite, 11 Ga. App. 665, 76 S.E. 397 (1912).

If the court is created by the Constitution, the legislature cannot, without express constitutional authority, define what is contempt, and declare that the court shall have jurisdiction over no acts except those specified. Cobb v. State, 187 Ga. 448, 200 S.E. 796, answer conformed to, 59 Ga. App. 695, 2 S.E.2d 116 (1939).

Georgia Const. 1976, Art. I, Sec. II, Para. VI (see now Ga. Const. 1983, Art. I, Sec. II, Para. IV) does not confer authority upon the legislature to define what is contempt, and to declare that the court shall have jurisdiction over no acts except those specified, because the power to punish contempt is inherent in every court of record. Wood v. State, 103 Ga. App. 305, 119 S.E.2d 261 (1961), rev'd on other grounds, 370 U.S. 375, 82 S. Ct. 1364, 8 L. Ed. 2d 569 (1962).

Legislature has power to prescribe punishment. — Georgia Const. 1976, Art. I, Sec. II, Para. VI (see now Ga. Const. 1983, Art. I, Sec. II, Para. IV) does not confer authority to define contempt, but only the power to prescribe the punishment after conviction. Cobb v. State, 187 Ga. 448, 200 S.E. 796, answer conformed to, 59 Ga. App. 695, 2 S.E.2d 116 (1939).

Limits on power of judges to punish contempt. — Whatever may have been the power of judges at common law to adjudge, as for a contempt of court, any person for an act done or writing published calculated to bring the court or the judge into contempt and lower the person's authority, the power of the judges in Georgia to punish for a criminal contempt of court was limited by law as provided in this section. Townsend v. State, 54 Ga. App. 627, 188 S.E. 560 (1936).

This Code section, insofar as the statute sought to limit the jurisdiction of a constitutional court to punish contempts to certain specified acts, is not binding upon such courts; the courts may go beyond the provisions of the statute in order to preserve and enforce the court's constitutional powers by treating as contempt acts which clearly invade the court's powers. Cobb v. State, 187 Ga. 448, 200 S.E. 796, answer conformed to, 59 Ga. App. 695, 2 S.E.2d 116 (1939); Atlanta Newspapers, Inc. v. State, 216 Ga. 399, 116 S.E.2d 580 (1960); Wood v. State, 103 Ga. App. 305, 119 S.E.2d 261 (1961), rev'd on other grounds, 370 U.S. 375, 82 S. Ct. 1364, 8 L. Ed. 2d 569 (1962).

3. Inherent Powers

Power to punish contempt is inherent in every court of record. Cobb v. State, 187 Ga. 448, 200 S.E. 796, answer conformed to, 59 Ga. App. 695, 2 S.E.2d 116 (1939).

Inherent power of courts should never be impaired or destroyed to such an extent that the courts cannot exercise a power necessary to the court's proper functioning. Evans v. State, 69 Ga.

App. 178, 24 S.E.2d 861 (1943).

This Code section did not restrict the inherent power of the court to punish for contempt, but criminal contempt involves some disrespectful or contumacious conduct towards the court. In re Brookins, 153 Ga. App. 82, 264 S.E.2d 560 (1980).

Power to punish direct criminal contempt. — Courts have inherent power to punish direct criminal contempts committed in the court's presence summarily and without hearing, the judge being aware by use of the judge's own senses of what has transpired. Martin v. Waters, 151 Ga. App. 149, 259 S.E.2d 153 (1979).

Summary contempt power available although disfavored. — Although summary punishment is always and rightly regarded with disfavor, there is no doubt that the summary contempt power is still available to courts, under appropriate circumstances, to control judicial proceedings. Farmer v. Strickland, 652 F.2d 427 (5th Cir. 1981), cert. denied, 455 U.S. 944, 102 S. Ct. 1440, 71 L. Ed. 2d 656 (1982).

Inherent and legislative authority to punish for contempt. — Constitutional courts of Georgia have inherent and legislative authority to punish for contempt any person in disobedience of the court's judgments, orders, and processes. In re Boswell, 148 Ga. App. 519, 251 S.E.2d 596 (1978).

Courts have inherent power to preserve and enforce order. — It is fundamental that every court possesses the inherent power to preserve and enforce order and compel obedience to the court's judgments and orders, to control the conduct of the court's officers and all other persons connected with the judicial proceedings before the court and to inflict summary punishment for contempt upon any person failing and refusing to obey any unlawful order of such court. Farmer v. Holton, 146 Ga. App. 102, 245 S.E.2d 457 (1978), cert. denied, 440 U.S. 958, 99 S. Ct. 1499, 59 L. Ed. 2d 771 (1979), overruled on other grounds, In re Crane, 253 Ga. 667, 324 S.E.2d 443 (1985).

Contempt

1. In General

Removal, concealment, or destruction of documents. — It is contempt of court to remove, conceal, or destroy, for the purpose of defeating the court's jurisdiction, documents which are known to be the subject matter of proceedings pending before the court. Crute v. Crute, 86 Ga. App. 96, 70 S.E.2d 727 (1952).

Contempt will lie for failure to pay alimony award even though the decree contains no specific command to pay. Martin v. Martin, 244 Ga. 68, 257 S.E.2d 903 (1979).

Motion which contains false accusations and filed to denigrate court. — Motion which contains knowingly false accusations against the court and which is filed for the purpose of denigrating the court or impugning the court's integrity must certainly be characterized as contumacious. In re McLarty, 152 Ga. App. 399, 263 S.E.2d 194 (1979).

Contempt of grand jury. — Whether the contempt be regarded as one of the court or of the grand jury, the result is the same since if there is a contempt of the grand jury, this is also a contempt of the court, as the grand jury is a constituent part of the court, and anyone whose conduct interferes with or has a tendency to obstruct the grand jury may be found to be in contempt. Wood v. State, 103 Ga. App. 305, 119 S.E.2d 261 (1961), rev'd on other grounds, 370 U.S. 375, 82 S. Ct. 1364, 8 L. Ed. 2d 569 (1962).

Intimidation of witnesses. — It is contempt of court to threaten or to endeavor to intimidate a witness in a pending action. Renfroe v. State, 104 Ga. App. 362, 121 S.E.2d 811 (1961), for comment, see 24 Ga. B. J. 544 (1962), overruled on other grounds, In re Crane, 253 Ga. 667, 324 S.E.2d 443 (1985).

Any interference or attempt to interfere with witnesses by means of bribery, intimidation, inducements, or other unlawful means, in order to induce the witnesses to testify falsely, or to change or modify the witnesses' testimony, or to suppress facts, constitutes contempt, which it is the duty

Contempt (Cont'd)
1. In General (Cont'd)

of the courts to guard against zealously and to punish. Renfroe v. State, 104 Ga. App. 362, 121 S.E.2d 811 (1961), for comment, see 24 Ga. B. J. 544 (1962), overruled on other grounds, In re Crane, 253 Ga. 667, 324 S.E.2d 443 (1985).

Procuring witness to testify in case contrary to previous testimony. — It is contempt of court to attempt by unlawful means to procure a witness to testify in a case contrary to the witness's previous testimony, even though the testimony so sought is the truth. Renfroe v. State, 104 Ga. App. 362, 121 S.E.2d 811 (1961), for comment, see 24 Ga. B. J. 544 (1962), overruled on other grounds, In re Crane, 253 Ga. 667, 324 S.E.2d 443 (1985).

Statements intended to coerce witness. — It was contempt of court for the accused to make to the father and brother of the witness statements intending that the statements should be communicated to the witness since such statements naturally tended to coerce and were expected to coerce the witness. Herring v. State, 165 Ga. 254, 140 S.E. 491 (1927); Herring v. State, 37 Ga. App. 594, 141 S.E. 89 (1928).

Refusal of appointed counsel to represent defendant. — Having invoked the judicial powers of the court in relation to a motion for new trial, an attorney appointed to represent an indigent defendant has the responsibility to resolve the issues presented thereby within the parameters of time established by the court. By utterly ignoring the scheduled date and thereafter stating categorically that the attorney would no longer represent the defendant, the attorney exposes oneself to a contempt action. Jordan v. State, 166 Ga. App. 627, 305 S.E.2d 165 (1983).

Offering proof in jury's absence. — Summary punishment for contempt was authorized since counsel insisted on making a tender of proof after the jury was excused for the night and without the judge's approval instead of waiting for the jury to begin the jury's deliberations the next day. Heilman v. DOT, 162 Ga. App. 547, 290 S.E.2d 189 (1982), overruled on other grounds, Metropolitan Atlanta Rapid Transit Auth. v. Funk, 263 Ga. 385, 435 S.E.2d 196 (1993).

What contempt order regarding child support must contain. — Words "willful refusal" and "ability to pay" are not words of art which must appear in every contempt order regarding child support. Rather, it is only necessary that the order specify sufficient facts to show that the respondent was in contempt of court. Floyd v. Floyd, 247 Ga. 551, 277 S.E.2d 658 (1981).

Confinement for failure to pay child support. — When, on motion for contempt, an order is entered requiring payment of sums for child support which are past due, a person can be ordered to jail by a subsequent order, entered after a hearing finding that the prior order has been disobeyed. Floyd v. Floyd, 247 Ga. 551, 277 S.E.2d 658 (1981).

Suspension of sheriff not authorized punishment. — Superior court was authorized to inflict summary punishment for contempt predicated upon the wilful failure of a sheriff, an officer of the court, to obey an oral direction by the court to transfer a defendant to a jail in another county, but was not authorized to temporarily suspend the sheriff, an elected officer, from the sheriff's position. In re Irvin, 171 Ga. App. 794, 321 S.E.2d 119 (1984), modified on other grounds, 254 Ga. 251, 328 S.E.2d 215 (1985).

Sheriff's failure to obey unfiled order. — Sheriff, as an officer of the court, could be held in contempt for failure to produce documents pursuant to a court order which, although not filed, was reduced to writing and delivered into the hands of sworn deputies for service on the sheriff. In re Smith, 211 Ga. App. 493, 439 S.E.2d 725 (1993).

Protection of client's rights no excuse. — Once an objection has been made by an attorney and the court has made the court's considered ruling, subsequent contumacious conduct will not be excused merely for the fact that the conduct was committed by an officer of the court during court proceedings in an attempt to protect the rights of the attorney's client. Farmer v. Strickland, 652 F.2d 427 (5th Cir. 1981), cert. denied, 455 U.S. 944, 102 S. Ct. 1440,

71 L. Ed. 2d 656 (1982).

Failure to answer calendar calls. — Evidence that the attorney failed to answer two calendar calls was sufficient to support a judgment of contempt. In re Brant, 230 Ga. App. 283, 496 S.E.2d 321 (1998).

Failure to pay wife car insurance proceeds. — In a civil contempt order in a divorce case, the husband was properly ordered to pay $1,500 for each day that passed without him paying the wife insurance proceeds after he had disregarded a consent order to title a car in the wife's name and an oral order to pay her the insurance proceeds after the car was totalled, and he could avoid the daily payments simply by paying the proceeds; furthermore, the fact that the order to pay the proceeds was oral did not mean that the order was ineffective as a matter of law. Chatfield v. Adkins-Chatfield, 282 Ga. 190, 646 S.E.2d 247 (2007).

Evidence sufficient for contempt. — Evidence was clearly sufficient under the reasonable doubt standard to find the appellants in willful contempt for disobedience or resistance by an officer of the court to a lawful command of the court. In re Farmer, 212 Ga. App. 372, 442 S.E.2d 251 (1994).

Trial court properly held a corporation in civil contempt after the corporation ordered services from a credit bureau pursuant to a temporary restraining order (TRO), yet the corporation refused to pay for the services since the TRO did not require that the corporation order services, the corporation ordered services after the credit bureau refused to provide the corporation with the new select service, the corporation failed to meet the corporation's burden of proof to show that the corporation was unable to pay for the services, no balance sheets or lists of assets and liabilities were presented, and there was no showing that the corporation made an effort to borrow the money or to make partial payments. Hamilton Capital Group, Inc. v. Equifax Credit Info. Servs., 266 Ga. App. 1, 596 S.E.2d 656 (2004).

Landowners were properly held in civil contempt for violating subdivision's restrictive covenants; using one of their two lots for ingress and egress to their other lot and maintaining a road between the lots were violations of the covenants, and the trial court's judgment provided that the landowners refrain from further covenant violations. Korowotny v. Outback Prop. Owners Ass'n, 291 Ga. App. 236, 661 S.E.2d 857 (2008).

Criminal contempt finding against an attorney and an order disallowing the attorney from seeking payment from the county for legal services to two indigent defendants under a theory of quantum meruit was upheld as the attorney failed to appear in court as commanded, provided no notice of a scheduling conflict, and failed to show that the attorney made any attempt to comply with Ga. Unif. St. Ct. R. 17.1. In re Otuonye, 279 Ga. App. 468, 631 S.E.2d 500 (2006).

Attorneys were properly held in criminal contempt under O.C.G.A. § 15-1-4(a)(3). To the extent that the attorneys believed that the trial court erred by ordering the attorneys to proceed based on an alleged conflict of interest, the attorney's remedy was to appeal, not to disobey the trial court's direct order. Britt v. State, 282 Ga. 746, 653 S.E.2d 713 (2007).

Attorney was properly found in direct criminal contempt under O.C.G.A. § 15-1-4 for failure to appear at trial because while the attorney claimed that the attorney did not receive seven days' notice of the trial date under Ga. Unif. Super. Ct. R. 32.1, the attorney's remedy was to seek a continuance as the attorney had received the trial court's directive to appear by fax and telephone call. In re Beckstrom, 295 Ga. App. 179, 671 S.E.2d 215 (2008).

Summary contempt finding improper against attorney. — Juvenile court erred by summarily holding an attorney in contempt based on a per se rule. The juvenile court determined that a per se rule existed that an attorney was in contempt when the attorney claimed ineffectiveness against themselves, but no such per se rule existed and, therefore, it was error to have adjudicated the attorney in contempt. Morris v. State, 295 Ga. App. 579, 672 S.E.2d 531 (2009).

Order holding an attorney in contempt pursuant to O.C.G.A. § 15-11-5 and oth-

Contempt (Cont'd)
1. In General (Cont'd)

erwise was improper because, inter alia, the trial court immediately imposed punishment and did not provide the attorney the opportunity to speak in the attorney's own behalf, the attorney was not put on notice that a continuation of the offending conduct would have constituted contempt, it was highly unlikely that the attorney's allegedly offending conduct should have had any impact on the deliberations of the factfinder, a juvenile judge, and the trial court acted without warning and had obviously lost the court's patience with the attorney and the attorney's client and imposed sanctions for contempt when other actions might have achieved the same result without the disruption to the case that these contempt citations had caused. In re Hughes, 299 Ga. App. 66, 681 S.E.2d 745 (2009).

2. Civil and Criminal Contempt

Civil and criminal contempt compared. — Contempt may be civil or criminal; in the former, the proceeding in attachment is to enforce compliance with an order of court made for the protection of some right of the complaining party, while in criminal contempt, the proceeding is to punish the offender for disrespect to or contumacious conduct towards the court. Wagner v. Commercial Printers, Inc., 203 Ga. 1, 45 S.E.2d 205 (1947).

Contempt of court may be either civil or criminal, and criminal contempt, either direct or indirect. A direct criminal contempt relates to contumacious conduct, whether by word or deed, committed in the actual presence of the court. An indirect, or constructive contempt, consists of contumacious conduct outside the presence of the court which amounts to an obstruction of the administration of justice. Clark v. State, 90 Ga. App. 330, 83 S.E.2d 45 (1954).

Basis for contempt action. — Basis for contempt action is "willful" refusal to comply with judgment or order of court. Griggers v. Bryant, 239 Ga. 244, 236 S.E.2d 599 (1977).

Attachment for contempt is either civil or criminal, or both; in the former, the attachment, being remedial, is merely to compel obedience to an order requiring the payment of money, or to do some act for the benefit of a party litigant, and when the party ordered fails to comply, not out of disrespect to the court, but for other causes within or outside the party's control. Evans v. White, 178 Ga. 262, 172 S.E. 913 (1934).

"Criminal contempt" defined. — "Criminal contempt" is that which involves some disrespectful or contumacious conduct toward the court. It involves action by the court to compel respect thereto, to vindicate the court's authority, and to enforce the lawful processes and actions of the court. It is direct and punishable summarily without notice and opportunity to be heard if committed in the presence of the court, and is exempt from those due process requirements. Farmer v. Holton, 146 Ga. App. 102, 245 S.E.2d 457 (1978), cert. denied, 440 U.S. 958, 99 S. Ct. 1499, 59 L. Ed. 2d 771 (1979), overruled on other grounds, In re Crane, 253 Ga. 667, 324 S.E.2d 443 (1985).

"Direct criminal contempt" defined. — "Direct criminal" contempt is one involving misbehavior in presence of court or so near thereto as to obstruct the administration of justice. Martin v. Waters, 151 Ga. App. 149, 259 S.E.2d 153 (1979); In re Jones, 198 Ga. App. 228, 401 S.E.2d 278 (1990), aff'd, 205 Ga. App. 166, 421 S.E.2d 538 (1992).

"Criminal contempt" with unconditional imprisonment. — "Criminal contempt" with unconditional imprisonment may be used to preserve the court's authority and to punish disobedience of the court's orders. Hopkins v. Hopkins, 244 Ga. 66, 257 S.E.2d 900 (1979).

"Civil contempt" defined. — "Civil contempt" is conditional punishment which coerces contemnor to comply with court order. Hopkins v. Hopkins, 244 Ga. 66, 257 S.E.2d 900 (1979).

Civil contempt for failing to pay child support and alimony. — Trial court's orders finding an ex-husband in civil contempt for failing to pay his ex-wife child support and alimony and incarcerating him until he purged the contempt were affirmed because the evidence established he was willfully failing or refusing

to pay as he was living a comfortable life, drew a significant salary per month, had cash accounts with thousands of dollars in them, and no evidence of debt or borrowing money was presented. Bernard v. Bernard, 347 Ga. App. 429, 819 S.E.2d 688 (2018).

Proceedings originating as "civil contempt" may require "criminal contempt" treatment. — Court may find that a contempt proceeding originated and pursued by a party seeking "civil contempt" should be treated as one for "criminal contempt." Schiselman v. Trust Co. Bank, 246 Ga. 274, 271 S.E.2d 183 (1980).

No right to counsel in direct criminal contempt case against court officer. — Trial court had the power to inflict summary punishment on the contemnor as the contemnor was, as required by statute, an officer of the court (an attorney) who committed misbehavior in representing a client in the courtroom as the contemnor refused to proceed with the client's defense once the trial court denied the contemnor's request for continuance; also, the trial court did not violate the contemnor's rights as the contemnor did not have a right to a hearing or a right to counsel in the contemnor's direct criminal contempt case. In re Willis, 259 Ga. App. 5, 576 S.E.2d 22 (2002).

Authority to enforce child support. — Given the court's continuing, exclusive jurisdiction, a trial court possessed authority to enforce the child support provisions of a divorce decree prospectively and as to past violations. In exercising that authority, the trial court, as a matter of Georgia law, was able to impose contempt sanctions for willful violations of the court's decree. Baars v. Freeman, 288 Ga. 835, 708 S.E.2d 273 (2011).

Contempt power in divorce action. — Trial court erred in holding that the court lacked subject matter jurisdiction to hold the daughter in contempt of the divorce decree under O.C.G.A. § 15-1-4(a)(3) because the daughter, acting as the ex-husband's power of attorney, had full knowledge of the order requiring the payment of the retirement benefits and aided in the non-payment of the funds in violation of the divorce decree and settlement agreement. Sullivan v. Bunnell, 340 Ga. App. 283, 797 S.E.2d 499 (2017).

Evidence of criminal contempt sufficient. — Evidence that the defendant directed loud, threatening comments toward several of the state's witnesses, engaging in behavior that created a clear and present danger to the orderly administration of justice was sufficient to support the trial court's finding that the defendant was guilty of criminal contempt. Moton v. State, 332 Ga. App. 300, 772 S.E.2d 393 (2015).

Evidence was sufficient to support the trial court's finding of criminal contempt because the attorney voluntarily signed three petitions for scire facias without ensuring that the proper case number had been assigned to them; the attorney's actions were not merely negligent as the actions were in derogation of the attorney's responsibilities and duties as an officer of the court; although the attorney took some steps to remedy the discrepancy, the attorney did not follow through and personally ensure that the proper case number was utilized before filing the fourth petition; and the attorney did not do everything the attorney could have to ensure compliance with the trial court's orders not to file a fourth identical petition. In re Dillon, 344 Ga. App. 200, 808 S.E.2d 436 (2017), cert. denied, No. S18C0718, 2018 Ga. LEXIS 517 (Ga. 2018).

No waiver of counsel shown in contempt proceeding. — Trial court judgment finding the defendant, an attorney, in criminal contempt was reversed because there was no evidence that the attorney waived the right to counsel. In re Thompson, 339 Ga. App. 106, 793 S.E.2d 462 (2016).

No right to jury trial for contempt in paying support. — Ex-husband was not entitled to a jury trial because the Supreme Court of Georgia has long held that a person is not entitled to a jury trial on the issue of ability to pay or contempt for failure to pay alimony and child support. Bernard v. Bernard, 347 Ga. App. 429, 819 S.E.2d 688 (2018).

3. Acts Not Constituting Contempt

No contempt if court order violated not directed at person. — Person can-

Contempt (Cont'd)
3. Acts Not Constituting Contempt (Cont'd)

not be held in contempt when court order violated was not directed at that person or there was no active interference with the performance of the court order. Yarbrough v. First Nat'l Bank, 143 Ga. App. 399, 238 S.E.2d 758 (1977).

Absence of judgment on jury verdict. — While the failure to comply with a judgment of court ordering one to pay alimony as found by a jury is punishable as a contempt, if, in the trial of a divorce action, before the jury's verdict is made the judgment of the court, the defendant, in whose favor a verdict for alimony has been returned, moves for a mistrial which is granted, the plaintiff cannot subsequently be held in contempt of court for failure to pay alimony as found by the jury since no judgment was ever entered upon the verdict. Harris v. Harris, 213 Ga. 751, 101 S.E.2d 706 (1958).

Failure to pay money judgment. — If a court of equity should render a simple decree for money on a simple money verdict, the failure to pay the decree would not be contempt, nor could compulsory process against the person of the party in default be resorted to in order to enforce payment. London v. London, 149 Ga. App. 805, 256 S.E.2d 33 (1979).

Refusal or failure to pay money judgments is in no sense a contempt of court and imprisonment for such failure would be imprisonment for debt pure and simple. London v. London, 149 Ga. App. 805, 256 S.E.2d 33 (1979).

Agreement with court by one not party to pending cause. — Mere informal and voluntary agreement which is entered into with the court by one who is not a party to a cause pending before the court and in which there is no express command or prohibition of court directed to such volunteer may not constitute the basis for contempt proceedings predicated upon the failure of the volunteer to honor the agreement. In re Norris, 154 Ga. App. 173, 267 S.E.2d 788 (1980).

Remarks by nonparty to separation agreement that allegedly violate the agreement. — It was error to hold a mother's friend in criminal contempt of a separation agreement on the ground that the friend had made disparaging remarks to a child about the child's father. The alleged comments did not occur in the trial court's presence, but were repeated by the child in an in camera conference, so there was no direct contempt; furthermore, there was no constructive contempt because the friend was not a party to the separation agreement and was not shown to have had notice of the provision the friend allegedly violated; moreover, the friend had not received due process in that the friend had no notice of the allegations and was not given the opportunity to defend against the allegations or even to respond to the allegations. In re Harris, 289 Ga. App. 334, 657 S.E.2d 259 (2008).

Failure to obey order of court without jurisdiction not contempt. — While an unsuperseded order within the jurisdiction of a court must be obeyed, even though erroneous, and disobedience thereof is a contempt of court, yet if the court is without jurisdiction the order is a nullity, and a failure to obey the order is not a contempt. Campbell v. Gormley, 185 Ga. 65, 194 S.E. 177 (1937).

Failing and refusing to appear in accordance with bond. — If one indicted for a bailable offense has been arrested and has given bond for one's appearance and fails to appear, one can be rearrested on a new warrant, but there is no law in this state authorizing one's punishment for contempt of court for failing and refusing to appear in accordance with the terms of the bond. Paseur v. State, 152 Ga. App. 599, 263 S.E.2d 500 (1979).

Publication in newspaper about pending case. — Because the United States Supreme Court opinion construed language, "or so near thereto as to obstruct the administration of justice," in a federal statute similar to language in this section so as to refer only to geographical nearness and not to an act committed away from the courthouse, the Georgia Court of Appeals was constrained to hold that a publication made in a newspaper about a pending case cannot be contempt of court so as to be summarily punishable. Atlanta Newspapers, Inc. v. State, 101 Ga.

App. 105, 113 S.E.2d 148 (1960) for comment, see 12 Mercer L. Rev. 284 (1960).

Null decree. — Remarriage of the parties to original divorce decree nullified that decree and restored the parental rights of the parties to the same extent as if no divorce had been granted; consequently, the defendant could not be held in contempt for failing to comply with that decree. Warren v. Warren, 213 Ga. 81, 97 S.E.2d 349 (1957).

No contempt when once enjoined act now permitted. — If the basis for an injunction no longer exists because the authority to do that which was prohibited is subsequently granted, an action for contempt will not lie. Partain v. City of Royston, 248 Ga. 420, 284 S.E.2d 15 (1981).

Refusal to obey unreasonable visitation order. — Mother would not be held in contempt of court for denying father court-ordered child visitation rights since the order was unreasonable in that the father had been indicted for molesting the child, the child was to be a witness against the father, and the child became physically ill when told about the impending visit. Beckham v. O'Brien, 176 Ga. App. 518, 336 S.E.2d 375 (1985).

Late arrival of district attorney for court appearance. — A 15-minute delay in county solicitor's (now district attorney) arrival for a court appearance while the solicitor was conducting business of the State Court of Coffee County, Georgia, did not constitute a sufficient predicate from which any rational trier of fact would find the essential elements of the criminal contempt charge against the solicitor without reasonable doubt. In re Hayes, 185 Ga. App. 818, 366 S.E.2d 204 (1988).

Evidence of contempt not sufficient. — Children of the fiduciary's incompetent ward failed to show that the fiduciary was in contempt of a settlement agreement since the fiduciary, who was the ward's second wife, failed to turn over the family heirloom silver to the children, but the agreement only required that the fiduciary do so "to the extent such heirlooms can be located," and the children failed to carry the children's burden of proof that the fiduciary had the silver and would not or could not turn the silver over to the children. Head v. Head, 234 Ga. App. 469, 507 S.E.2d 214 (1998).

Order regarding custody of a child directed to natural mother, not to prospective parent and counsel. — Trial court erred in holding a prospective adopter and the adopter's attorney in criminal contempt for purportedly willfully violating an order regarding the custody of the minor child at issue as the trial court's order regarding custody of the child was directed to the obligations of the natural mother only and no willful disobedience of the order was shown by the adopter and the attorney filing for a change of custody in another county to which the adopter had moved. In re Hadaway, 290 Ga. App. 453, 659 S.E.2d 863 (2008).

4. Contempt and Free Speech

No protection for contempt of court. — Constitutional right of freedom of speech or of press was not intended as refuge for the contemner or slanderer or libelor. Contempt of court, slander, and libel constitute abuses of the privilege for the commission of which the offenders are justly and lawfully punishable. In re Fite, 11 Ga. App. 665, 76 S.E. 397 (1912).

Constitutional guaranties do not bar punishment for contempt. — Due process, freedom of speech, and equal protection clauses of the Constitution of the United States do not bar punishment for contempt of court. Wood v. State, 103 Ga. App. 305, 119 S.E.2d 261 (1961), rev'd on other grounds, 370 U.S. 375, 82 S. Ct. 1364, 8 L. Ed. 2d 569 (1962).

No protection under free speech for certain acts. — If an order of court forbidding the use of threats, violence, and intimidation for the purpose of preventing others from engaging in employment during a labor strike is violated, the violator can find no protection under the constitutional guaranty of free speech. Lassiter v. Swift & Co., 204 Ga. 561, 50 S.E.2d 359 (1948).

Contempt of court is abuse of liberty of free speech. — Punishment for contempt of court is not prevented by the constitutional guaranty of freedom of speech since contempt of court is an abuse of the liberty of speech. Wood v. State, 103

Contempt (Cont'd)
4. Contempt and Free Speech (Cont'd)

Ga. App. 305, 119 S.E.2d 261 (1961), rev'd on other grounds, 370 U.S. 375, 82 S. Ct. 1364, 8 L. Ed. 2d 569 (1962).

Contempt not to be used to expose errors in judgment. — Errors in judgment or unsubstantiated opinions may be exposed, but not through punishment for contempt for expression. Under our system of government, counterargument and education are the weapons available to expose these matters, not abridgment of the rights of free speech and assembly. Wood v. Georgia, 370 U.S. 375, 82 S. Ct. 1364, 8 L. Ed. 2d 569 (1962).

Procedure

1. In General

Divorce and alimony proceedings. — Contempt applications must be filed in county where divorce and alimony decree was entered, and this is so regardless of the fact that the respondent (the alleged contemnor) may not be a resident of that county, either having moved therefrom after the decree was entered or perhaps having never resided there. Austin v. Austin, 245 Ga. 487, 265 S.E.2d 788 (1980).

Rulings on motions to dismiss. — Contempt of court cannot be properly punished by rulings upon demurrers (now motions to dismiss) to the petition. Atlantic Ref. Co. v. Farrar, 171 Ga. 371, 155 S.E. 327 (1930).

Whether undisputed conduct amounts to contempt is question of law. — It is a question of law for the court to decide whether the courtroom conduct which is factually undisputed amounts to criminal contempt of court. Farmer v. Strickland, 652 F.2d 427 (5th Cir. 1981), cert. denied, 455 U.S. 944, 102 S. Ct. 1440, 71 L. Ed. 2d 656 (1982).

Knowledge of restraining order. — An order restraining the defendant from indorsing and cashing a check fairly comprehended disposition of the proceeds in the event of the collection of the funds by the defendant; and if the defendant, having cashed the check and received the proceeds before being served and informed of the restraining order, disposed of such proceeds after knowledge of the restraining order, the court did not err in adjudging the defendant in contempt for so doing. Reid v. McRae, 190 Ga. 323, 9 S.E.2d 176 (1940).

Violator may be held in contempt until court order set aside. — Until a court order concerning a divorce settlement is set aside for whatever reason, the party protesting the order can be held in contempt for violating the order's provisions. Paisley v. Huddlestun, 244 Ga. 418, 260 S.E.2d 478 (1979).

O.C.G.A. § 9-11-6(d) has no application to citation for contempt. — Ga. L. 1967, p. 226, §§ 5 and 6 (see now O.C.G.A. § 9-11-6(d)) applied to written motions in a pending case and had no application to a citation for contempt which was an independent proceeding authorized under former Code 1933, § 24-105 (see now O.C.G.A. § 15-1-4). Gibson v. Gibson, 234 Ga. 528, 216 S.E.2d 824 (1975).

When court should call upon fellow judge to adjudicate contempt charges. — In a criminal contempt proceeding in which the trial judge has been called upon to rule on an attack on the judge's own impartiality and when marked personal feelings are manifested on both sides, the court should call upon one of the trial judge's fellow judges to adjudicate the contempt charges. In re McLarty, 152 Ga. App. 399, 263 S.E.2d 194 (1979).

Substitute judge may be preferable to handle contempt after trial. — If a judge does not act the instant the contempt is committed, but waits until the end of the trial, on balance, it is generally wise if the marks of the unseemly conduct have left personal stings to ask a fellow judge to take the judge's place. Spruell v. State, 148 Ga. App. 99, 250 S.E.2d 807 (1978).

Summary punishment for contempt may be delayed until after trial. — While the trial judge, upon the occurrence in the judge's presence of contempt, may immediately and summarily punish the contempt, summary punishment may be delayed until after trial if the trial judge believes that the exigencies of the trial require such action. Spruell v.

State, 148 Ga. App. 99, 250 S.E.2d 807 (1978).

Award of custody of minor child to plaintiff was erroneous in proceeding for contempt as the question of custody of a child was not before the court. Warren v. Warren, 213 Ga. 81, 97 S.E.2d 349 (1957).

Contempt punishment cannot be mingled with judgment in proceeding to obtain damages and injunction. — Court can apply the proper punishment for any contempt that exists, but that cannot be mingled with a judgment in a proceeding to obtain damages and injunction ad interim. Atlantic Ref. Co. v. Farrar, 171 Ga. 371, 155 S.E. 327 (1930).

No appeal absent final judgment. — If the trial court issues an order finding the appellant in contempt of court but does not impose punishment, no final judgment has been entered and the case is still pending in the court below and an appeals court cannot review the lower court's decision. In re Crudup, 149 Ga. App. 214, 253 S.E.2d 802 (1979).

Compelling disclosure of attorney's knowledge as to client. — Though, as a general rule, all communications on the part of the client to an attorney are privileged, and therefore the attorney cannot be compelled to disclose the communications, still, in a civil proceeding, if there is evidence sufficient to authorize the court to adjudge that the attorney knows the identity and residence of the client, and the injury is restricted to that question alone, the attorney may be compelled to disclose the attorney's knowledge as to the residence of the client in order that the client may be served with a copy of the petition and process since otherwise the rights of the petitioner, if any, would be denied. West v. Field, 181 Ga. 152, 181 S.E. 661 (1935).

Right to rule attorney is limited to client. — Provision of law for a summary rule against an attorney at law is penal in its nature and must be strictly construed; consequently, the right to rule an attorney for money alleged to be in the attorney's hands as such attorney depends on the existence of the relation of attorney and client and is limited to the client. Blanch v. Roberson, 69 Ga. App. 423, 25 S.E.2d 720 (1943).

Right to rule an attorney at law and compel the attorney to pay over money which the attorney has collected is limited to the client. It follows that if, as the result of a lawsuit instituted by an attorney for the client, money has come into the hands of the attorney, the defendant in that suit who claims title to the money, but who is not the client of the attorney, cannot enforce the client's claim by rule against the attorney. Blanch v. Roberson, 69 Ga. App. 423, 25 S.E.2d 720 (1943).

2. Procedural Issues

A. Proof

Burden and standard of proof. — Under the law, the burden is on the moving party to show the facts necessary to establish contempt. This burden must be carried by clear and convincing evidence. While proof beyond a reasonable doubt is not required, the authorities sometimes say that more than preponderance of proof is required. FTC v. Blaine, 308 F. Supp. 932 (N.D. Ga. 1970).

Burden of establishing the fact of contempt is on the party asserting contempt. Martin v. Waters, 151 Ga. App. 149, 259 S.E.2d 153 (1979).

Charge imposed additional burden on plaintiffs. — Only burden resting on the plaintiffs was to prove that the defendants disobeyed the injunction in the manner alleged in the petition. If the charge imposed upon the plaintiffs the additional burden of establishing the right to have the plant closed, this was an additional burden of proof impossible to carry, for as this court has pointed out, under the law of contempt, such relief was not available in the proceedings to have the defendants cited for disobedience of an injunction granted in a case when no money or other property was sued for. A charge imposing a heavier or different burden than that required by the law of the case is hurtful error and requires the granting of a new trial. Bennett v. Bagwell & Stewart, Inc., 216 Ga. 290, 116 S.E.2d 288 (1960).

Burden of proof in civil contempt case. — Defendant was charged with civil contempt in that the act complained of was one in violation of an injunctive order

Procedure (Cont'd)
2. Procedural Issues (Cont'd)
A. Proof (Cont'd)

which was issued to protect the right of the employer to be free from violence towards the employer's property or the employer's employees and those persons seeking to work for the employer, either upon the employer's property or at any place; being a civil case a preponderance of the evidence would be sufficient to authorize a verdict against the defendant. Wagner v. Commercial Printers, Inc., 203 Ga. 1, 45 S.E.2d 205 (1947).

Order recited facts which warranted contempt finding. — If the order holding the defendant in contempt recited that the conduct found to be contumacious occurred in open court and in the presence of the court and that the contemnee willfully refused to obey the court's orders and repeatedly attempted to argue after having been fully heard, and after the opinion of the court had been pronounced, and that the conduct of defendant was intended by the defendant to be contemptuous of the court and that the conduct interfered with the lawful administration of justice, the order recited facts which warranted the trial judge in holding the defendant in contempt of court. Boatright v. State, 106 Ga. App. 801, 128 S.E.2d 559 (1962).

Evidence that individuals had actual knowledge of court order necessary for finding of contempt. — To sustain a judgment holding individuals who were not parties to main suit and were not named in court order forbidding the use of threats, violence, and intimidation in labor dispute in contempt, the evidence must show that those individuals acted after having actual knowledge of the court's order. Lassiter v. Swift & Co., 204 Ga. 561, 50 S.E.2d 359 (1948).

Sufficient evidence to establish contempt if defendant's purpose to influence juror. — Evidence authorized a finding that the defendant was guilty of contempt in that there was a deliberate purpose or calculation to improperly influence a juror designate (one who had been drawn as a juror), and that that purpose or calculation was accompanied by a definite act or declaration on the part of the contemnor in an effort to carry that purpose of calculation into effect; the failure of the undertaking was immaterial except as to the punishment to be inflicted. Summers v. State ex rel. Boykin, 66 Ga. App. 648, 19 S.E.2d 28 (1942).

Violation of decree presumed deliberate. — Without evidence to show otherwise, it is assumed that a person violates a decree deliberately. Sanborn v. Sanborn, 224 Ga. 792, 164 S.E.2d 563 (1968).

Contempt committed in judge's presence. — If the contumacious conduct is committed in the presence of the court in the immediate view of the judge, it is unnecessary for the court to apply any evidentiary standard of proof in order to summarily hold the contemnor in contempt of court. Farmer v. Strickland, 652 F.2d 427 (5th Cir. 1981), cert. denied, 455 U.S. 944, 102 S. Ct. 1440, 71 L. Ed. 2d 656 (1982).

When the contempt occurs totally in the presence of the judge, there is no necessity for the production of evidence. Indeed, there is no burden of persuading the trier of fact as there is no fact-finding process to be conducted. Farmer v. Strickland, 652 F.2d 427 (5th Cir. 1981), cert. denied, 455 U.S. 944, 102 S. Ct. 1440, 71 L. Ed. 2d 656 (1982).

Elements of proof in child support cases. — Both a parent's ability to pay child support and a parent's willful refusal to do so are essential to finding the parent in contempt for failure to pay such support in accordance with a court order. Floyd v. Floyd, 247 Ga. 551, 277 S.E.2d 658 (1981).

B. Defenses

Defenses to both civil and criminal contempt are that the order was not sufficiently definite and certain, was not violated, or that the violation was not willful (e.g., inability to pay or comply). Schiselman v. Trust Co. Bank, 246 Ga. 274, 271 S.E.2d 183 (1980).

Inability to comply with order. — Ordinarily, one charged with contempt of court for failure to comply with a court order makes a complete defense by proving that one is unable to comply. A court will not imprison a witness for failure to

produce documents which one does not have unless one is responsible for the document's unavailability, or is impeding justice by not explaining what happened to the documents. FTC v. Blaine, 308 F. Supp. 932 (N.D. Ga. 1970).

Thing ordered done must be within power against whom order directed. — It is essential to constitute contempt that thing ordered to be done be within power of person against whom order is directed. In re Brookins, 153 Ga. App. 82, 264 S.E.2d 560 (1980).

Court's sentence in defendant's absence is void. — Sentence of court, imposed upon defendant in defendant's absence, is absolutely void, and cannot be enforced against the defendant. Martin v. Waters, 151 Ga. App. 149, 259 S.E.2d 153 (1979).

C. Enforcement of Orders

Tardiness or failure of party or witness to appear. — If a witness or litigant who has been ordered to appear at a given time is tardy in arrival, or does not make an appearance as ordered, the question arises whether the delay or nonappearance was a willful and contumacious flaunting of the appearance ordered by the rule nisi, whether it was accidental, or whether it was due to some unavoidable cause; the normal procedure when a party or witness who has been ordered to appear does not do so is to arrest a party or witness under a bench warrant at which time the cause of the delay can be inquired. Martin v. Waters, 151 Ga. App. 149, 259 S.E.2d 153 (1979).

Procedure when person failed to respond to rule nisi. — Proper course to pursue is to issue an attachment for the person who has failed to respond to the rule nisi for contempt, have the person arrested and brought into court, and to deal with the person in the manner provided by law. Martin v. Waters, 151 Ga. App. 149, 259 S.E.2d 153 (1979).

Court retains jurisdiction to enforce payment of alimony by attachment for contempt. — Superior court awarding alimony by virtue of the court's jurisdiction originally invoked by plaintiff in a divorce suit had jurisdiction to enforce payment by attachment for contempt against plaintiff after plaintiff changed plaintiff's residence to another county. Curtright v. Curtright, 187 Ga. 122, 200 S.E. 711 (1938).

Enforcement of alimony judgment through contempt for nonpayment. — Valid judgment for alimony may be enforced by attachment for contempt for nonpayment not arising from lack of ability to pay since the judgment goes further and expressly commands the payment of support which is a duty in which society has a substantial interest. Wilson v. Chumney, 214 Ga. 120, 103 S.E.2d 552 (1958).

Attachment of county court judge by superior court. — When a person has been tried and convicted in the county court, and has petitioned the judge of the superior court for a writ of certiorari, and the petition is sanctioned, and the writ issued, and the judge of the county court refuses to answer as required by the writ, the judge of the superior court, in term time, has power to attach the county court judge for contempt. Pittman v. Hagans, 91 Ga. 107, 16 S.E. 659 (1892).

Appropriation of funds by receiver. — If a receiver has been directed by the court to deposit a fund arising from the sale of the property of the debtor in banks, subject to be withdrawn only on the debtor's check when the check has been countersigned by the judge presiding in the court which appointed the receiver, and in violation of the receiver's duty, and in disregard of the order of the court, the receiver obtains such fund from the banks on checks not countersigned, and appropriates the checks to the receiver's own use, then, regardless of the question whether or not the bank is liable for such wrongful payment, such receiver is in direct contempt of the court, whose officer the judge is. The receiver may be attached and punished for contempt in disregarding the orders of the court, and also for a failure or refusal, when so ordered, to pay into court the fund so misappropriated. Evans v. White, 178 Ga. 262, 172 S.E. 913 (1934).

Failure to recognize custody of receiver. — If a receiver is appointed for goods which are stored in a warehouse, such goods are in the possession of the

Procedure (Cont'd)
2. Procedural Issues (Cont'd)
C. Enforcement of Orders (Cont'd)

receiver, and the custody of the property by the receiver of the court is the custody of the court, and a failure of the warehouseman to recognize such possession by the receiver and by the court would subject the warehouseman to attachment for contempt. United Bonded Whse., Inc. v. Jackson, 208 Ga. 552, 67 S.E.2d 761 (1951).

Refusal to comply with order. — If a judgment is passed in a habeas corpus case, awarding the custody of a minor child to the child's grandparents, and requiring the grandparents to surrender the child to the child's father at stated intervals upon the father's application therefor, and the grandparents refuse to comply with this provision in the order, the grandparents may be attached and punished for contempt. Crawford v. Manning, 12 Ga. App. 54, 76 S.E. 771 (1912).

Acts of attorneys which do not constitute misbehavior as officer of court. — While attorneys as officers of the court are under a duty to maintain the integrity and dignity of the court and respect for the court's authority, for acts committed outside the presence of the court which do not constitute misbehavior as an officer of the court in an official transaction or disobedience or resistance of any lawful writ, etc., of the court, attorneys are no more amenable to attachment and summary punishment for contempt of court than are other persons. Townsend v. State, 54 Ga. App. 627, 188 S.E. 560 (1936).

Misbehavior of attorney as officer of court may properly be punished by attachment for contempt. West v. Field, 181 Ga. 152, 181 S.E. 661 (1935).

Enforcement of order against representative of party. — Since a court has the authority to hold any witness in contempt for failing or refusing to appear and testify on a relevant matter, a fortiori the power lies to enforce the court's order as to a matter in furtherance of the jurisdiction of the court to one representing oneself to be counsel for a party before the court. In re Boswell, 148 Ga. App. 519, 251 S.E.2d 596 (1978).

3. Due Process

Contemnor entitled to due process requirements. — Due process demands that the contemnor be cited, given notice, and allowed an opportunity to defend or excuse oneself. Moody v. State, 131 Ga. App. 355, 206 S.E.2d 79 (1974).

Opportunity to be heard. — If a criminal contempt act is not in the court's immediate presence, due process requires that the accused be given an opportunity to be heard. Martin v. Waters, 151 Ga. App. 149, 259 S.E.2d 153 (1979).

Written notice of alleged indirect contempt. — Requirement of reasonable notice in a case involving an alleged indirect contempt is not satisfied by a showing that the accused was present in court at the time of trial and adjudication and had actual notice then and there of what was going on, but rather contemplates and necessitates a written notice fairly and fully informing the accused of the specific acts of contempt with which the accused is charged, and so given as to afford a reasonable time to make a defense. Crocker v. Crocker, 132 Ga. App. 587, 208 S.E.2d 602 (1974).

Respondent entitled to notice of allegations of contempt. — Respondent in a citation for contempt is entitled to be apprised of the acts which respondent is charged with committing in violation of the injunctive order so that the respondent may be prepared to defend against such allegations on the hearing. Hortman v. Georgia Bd. of Dental Exmrs., 214 Ga. 560, 105 S.E.2d 732 (1958).

Moving party's pleadings put contemnor on notice that proceeding is civil and criminal. — If a person is on notice that the person is being tried for contempt and the movant seeks "such other sanctions as is appropriate to ensure the enforcement and the observance" of the court's order or seeks "such other relief as may be appropriate," the contemnor is on notice that the proceeding is both civil and criminal in nature and that criminal sanctions may be imposed in an appropriate case. Schiselman v. Trust Co. Bank, 246 Ga. 274, 271 S.E.2d 183 (1980).

Issuance and service of rule nisi required if constructive contempt al-

leged. — In cases of constructive contempt of court, if the alleged contumacious conduct is disobedience to a mandate of the court, not an act in the presence of the court or so near thereto as to obstruct the administration of justice, the law requires that a rule nisi issue and be served upon the accused, giving the accused notice of the charges against the accused, and that the accused be given an opportunity to be heard. Crocker v. Crocker, 132 Ga. App. 587, 208 S.E.2d 602 (1974).

Failure to give requisite rule nisi to alleged contemner may be waived. Crocker v. Crocker, 132 Ga. App. 587, 208 S.E.2d 602 (1974).

Waiver of failure to give requisite rule nisi cannot be imputed unless it be shown that the notice was unequivocally waived. Crocker v. Crocker, 132 Ga. App. 587, 208 S.E.2d 602 (1974).

Purpose of notice given by rule nisi. — Notice given by rule nisi is to afford accused reasonable time in which to prepare the accused's defense to the charge that the accused violated the court's order. Crocker v. Crocker, 132 Ga. App. 587, 208 S.E.2d 602 (1974).

No requirement for service of rule nisi if contemner voluntarily appears. — If a contemner voluntarily appears and defends against the contempt proceedings, it is not required that the contemner be served with a rule nisi. Crocker v. Crocker, 132 Ga. App. 587, 208 S.E.2d 602 (1974).

Omission of word "criminal" in notice of contempt proceeding is not fatal if the notice fully described the conduct charged, there is no showing that the contemnor was prejudiced by the failure to clearly denominate the nature of the contempt proceeding, and the contemnor was accorded all rights due a defendant in a "criminal contempt" proceeding. Schiselman v. Trust Co. Bank, 246 Ga. 274, 271 S.E.2d 183 (1980).

Direct summary criminal contempt in presence of court is exempt from two due process requirements. — There is a type of contempt of court which is exempt from the due process requirements of notice and hearing. This is the direct summary criminal contempt "arising in the presence of the court which tends to scandalize it and hinder or obstruct the orderly processes of the administration of justice, the preservation of order and decorum in the court," etc., and which is committed "in the face of" or "in the immediate presence of" the judge. Moody v. State, 131 Ga. App. 355, 206 S.E.2d 79 (1974).

Direct summary criminal contempt which arises in the presence of the court and tends to scandalize it and hinder or obstruct the orderly processes of the administration of justice, the preservation of order and decorum in the court, etc., is exempt from the due process requirements of notice and hearing. Spruell v. State, 148 Ga. App. 99, 250 S.E.2d 807 (1978); In re McLarty, 152 Ga. App. 399, 263 S.E.2d 194 (1979).

Discretion of court to allow hearing if direct contempt. — If a direct contempt is committed in the presence of the court, the offender is not entitled as a matter of right to a hearing before the court; the court may act on the court's own knowledge of the facts and proceed to impose punishment for the contempt; or the court may in the court's discretion allow a hearing; the refusal to allow a hearing does not deprive the defendant of the due process of law guaranteed by the state and federal Constitutions. Martin v. Waters, 151 Ga. App. 149, 259 S.E.2d 153 (1979).

If contempt is direct or in presence of court, no service of any commitment is necessary. Hall v. Martin, 177 Ga. 238, 170 S.E. 41 (1933).

4. Jury Trials

No constitutional right to jury trial. — Power to punish contempts summarily is incident to courts of record, and to try a case of contempt without the intervention of a jury violates no constitutional provision. In re Fite, 11 Ga. App. 665, 76 S.E. 397 (1912).

Defendants in a contempt case do not have a constitutional right to a jury trial even on pure questions of fact. Bennett v. Bagwell & Stewart, Inc., 216 Ga. 290, 116 S.E.2d 288 (1960).

Right to a jury trial did not extend to special summary proceedings including show cause hearings since the issue was

Procedure (Cont'd)
4. Jury Trials (Cont'd)

whether a party should be held in civil contempt for violation of a previously issued injunction or order. Peacock v. Spivey, 278 Ga. App. 338, 629 S.E.2d 48 (2006).

Trial court did not err in refusing to allow for a jury trial regarding the contempt action against the ex-husband relating to a child support and attorney fee arrearage because the Georgia Supreme Court has long held that a person is not entitled to a jury trial on the issue of ability to pay or contempt for failure to pay alimony and child support. McCarthy v. Ashment, 353 Ga. App. 270, 835 S.E.2d 745 (2019).

No trial by jury except if expressly provided by statute. — Respondent in contempt proceedings is not entitled to a trial by jury except if a jury trial is expressly provided by statute. Branch v. Branch, 219 Ga. 601, 135 S.E.2d 269 (1964).

Determination of questions of fact. — Every court has power to compel obedience to the court's judgments, orders, and processes; and in a proceeding for contempt growing out of the alleged violation by the defendant therein of a mandamus absolute, the judge can determine all questions of fact without the intervention of a jury, except in the cases provided for in this section. Gaston v. Shunk Plow Co., 161 Ga. 287, 130 S.E. 580 (1925).

Class of contempt proceedings wherein jury trial is required. — Respondent was not entitled to a trial by a jury in a contempt proceeding on the issue of whether or not the respondent violated an injunctive order prohibiting the respondent from practicing dentistry without a license as such case did not fall within the class of proceedings for contempt provided for in this section wherein a jury trial was required. Hortman v. Georgia Bd. of Dental Exmrs., 214 Ga. 560, 105 S.E.2d 732 (1958).

Refusal to pay alimony. — If there is a refusal to pay alimony, a court of record may punish for contempt without a jury trial. Lee v. Lee, 97 Ga. 736, 25 S.E. 174 (1896); Briesnick v. Briesnick, 100 Ga. 57, 28 S.E. 154 (1896); Stokes v. Stokes, 126 Ga. 804, 55 S.E. 1023 (1906).

This section does not require a jury trial if the respondent was cited for refusing to pay alimony judgment. Branch v. Branch, 219 Ga. 601, 135 S.E.2d 269 (1964).

Proceedings in chancery. — Presiding judge, if the judge deems it proper, may determine for oneself, without aid of a jury, all questions of fact arising upon the auditor's report; but inasmuch as the case upon which the contempt proceedings were founded is one in which the court is exercising chancery powers, this court sees no reason why the judge may not, if such course seems advisable to the judge, invoke the aid of a jury in arriving at a proper conclusion upon the questions of fact presented. It is a matter of discretion as to what method the judge will adopt to arrive at the actual truth to be ascertained. Bennett v. Bagwell & Stewart, Inc., 216 Ga. 290, 116 S.E.2d 288 (1960).

Interference with Administration of Justice

Misbehavior and disobedience that obstructs administration of justice. — This section shall extend only to cases of misbehavior of any person or persons in the presence of the courts or so near thereto as to obstruct the administration of justice, the misbehavior of any of the officers of the courts in the officer's official transactions, and the disobedience or resistance by any officer of the courts, party, juror, witness, or other person or persons to any lawful writ, process, order, rule, decree, or command of the courts. Wood v. State, 103 Ga. App. 305, 119 S.E.2d 261 (1961), rev'd on other grounds, 370 U.S. 375, 82 S. Ct. 1364, 8 L. Ed. 2d 569 (1962).

Because sufficient evidence existed to support a criminal contempt finding against an attorney based on that attorney's refusal to obey the trial judge's order to continue the representation of the attorney's criminal client, the trial judge was authorized to summarily find the attorney in contempt of court for directly disobeying an order of the court, misbehaving in the presence of the court, and obstructing the administration of justice.

Lee v. State, 283 Ga. App. 369, 641 S.E.2d 615 (2007).

Misbehavior not in immediate presence of court. — Although misbehavior so as to obstruct the administration of justice is being subject to "summary punishment," that must yield to the fundamental constitutional right to due process of law if the misbehavior is not in the immediate presence of the court, so that it may "act on its own knowledge of the facts," summary punishment is not authorized, and due process demands that the contemnor be cited, given notice, and allowed an opportunity to defend or excuse the contemnor. McDaniel v. State, 202 Ga. App. 409, 414 S.E.2d 536 (1992).

Disobedience to lawful order of court is obstruction of justice, and for such a violation the court, in order to compel respect or compliance, may punish for contempt. Griggers v. Bryant, 239 Ga. 244, 236 S.E.2d 599 (1977).

Obstruction of justice is abuse of liberty of speech and press. — Constitution of Georgia guarantees the liberty of speech and of the press but does not protect an abuse of that liberty and obstructing the administration of justice by the courts of this state is an abuse of that liberty and will subject the abuser to punishment for contempt of court. McGill v. State, 209 Ga. 500, 74 S.E.2d 78 (1953); Atlanta Newspapers, Inc. v. State, 216 Ga. 399, 116 S.E.2d 580 (1960).

Liberty of press subordinate to independence of judiciary and administration of justice. — Inherent power of the courts to punish any publication calculated to interfere with the administration of justice is not restricted by the constitutional guaranties of liberty of the press for liberty of the press is subordinate to the independence of the judiciary and the proper administration of justice. McGill v. State, 209 Ga. 500, 74 S.E.2d 78 (1953).

No contempt if newspaper articles do not obstruct administration of justice. — Criticisms in newspaper articles which do not obstruct the administration of justice in the court do not constitute contempt of court. Townsend v. State, 54 Ga. App. 627, 188 S.E. 560 (1936).

Defective rule for contempt when publications could not have obstructed justice. — Rule for contempt issued by superior court judge based on a series of newspaper articles is fatally defective if the publications complained of were true, the publication related to a matter in another court and in no wise referred to the court issuing the rule and if the publication could not have obstructed or impaired the administration of justice in the court. McGill v. State, 209 Ga. 500, 74 S.E.2d 78 (1953).

Sufficient showing that alleged conduct could obstruct administration of justice needed. — Alleged conduct of the defendant in uttering a certain phrase to the solicitor general (now district attorney) in the presence of the grand jury was not in the immediate presence or "face" of the court, but was under this section "so near thereto as to obstruct the administration of justice," provided the alleged conduct of the contemnor showed that such conduct could obstruct the administration of justice. Adams v. State, 89 Ga. App. 882, 81 S.E.2d 507 (1954).

Objectionable question by attorney. — Attorney's question in a criminal trial that purportedly "elicited testimony that his client was not found guilty at ... previous trial" did not justify a finding of contempt. In re Healy, 241 Ga. App. 266, 526 S.E.2d 616 (1999).

Misbehavior by attorney found. — Trial court did not err in the manner in which the court handled the defendant's summary punishment for contempt of court for misbehavior in the court's presence or so near thereto as to obstruct the administration of justice after the defendant failed to appear before the trial court with the client the defendant was representing, particularly given the defendant's representation to the trial court via telephone that the defendant would be in court in a few minutes. In re Omole, 258 Ga. App. 725, 574 S.E.2d 912 (2002).

Discretion of Court

Regulating behavior of court officers. — Trial court has very wide discretion in regulating and controlling the behavior of court officers in the conduct of the proceedings before the court, and this discretion will not be interfered with unless flagrantly abused. In re McLarty, 152

Discretion of Court (Cont'd)

Ga. App. 399, 263 S.E.2d 194 (1979).

Determining whether orders violated. — In cases of contempt, the trial judge is vested with discretion in determining whether the judge's orders have been violated and how such infringements should be treated, and the Supreme Court will not disturb the judge's judgment unless it appears that the judge has abused the judge's discretion. Reid v. McRae, 190 Ga. 323, 9 S.E.2d 176 (1940).

Trial court in contempt case has wide discretion to determine whether orders have been violated. The court's determination will not be disturbed on appeal in the absence of an abuse of discretion. Kaufmann v. Kaufmann, 246 Ga. 266, 271 S.E.2d 175 (1980).

Judgment not disturbed absent abuse of discretion. — Judgment rendered on a hearing of a contempt case will not be disturbed by the Supreme Court unless the judge has grossly abused the sound discretion vested in the judge in such a case. Wagner v. Commercial Printers, Inc., 203 Ga. 1, 45 S.E.2d 205 (1947).

Trial court's adjudication of contempt will not be interfered with unless there is a gross, enormous, or flagrant abuse of discretion. Renfroe v. State, 104 Ga. App. 362, 121 S.E.2d 811 (1961), overruled on other grounds, In re Crane, 253 Ga. 667, 324 S.E.2d 443 (1985), for comment, see 24 Ga. B. J. 544 (1962).

Discretion of the judges of the superior courts in all matters pertaining to contempt of the judges' authority and mandates will never be controlled unless grossly abused. White v. State, 105 Ga. App. 616, 125 S.E.2d 239, rev'd on other grounds, 218 Ga. 290, 127 S.E.2d 668 (1962); Miller v. Kaylor, 116 Ga. App. 668, 158 S.E.2d 260 (1967).

It is fundamental that every court possesses the inherent power to preserve and enforce order and compel obedience to the court's judgments and orders, to control the conduct of the court's officers and all other persons connected with the judicial proceedings before the court, and to inflict summary punishment for contempt upon any person failing and refusing to obey any lawful order of such court. An appellate court will not undertake to control the wide discretion vested in the trial court in the exercise of this fundamental power unless it is made to appear that wrong or oppression has resulted from an abuse of such discretion reposed in the court. Jackson v. State, 225 Ga. 553, 170 S.E.2d 281 (1969); Young v. Champion, 142 Ga. App. 687, 236 S.E.2d 783 (1977).

Questions of contempt if committed in the actual presence of the court are for the court treated with contempt, and the trial court's adjudication of contempt will not be interfered with unless there is a flagrant abuse of discretion. Farmer v. Holton, 146 Ga. App. 102, 245 S.E.2d 457 (1978), cert. denied, 440 U.S. 958, 99 S. Ct. 1499, 59 L. Ed. 2d 771 (1979), overruled on other grounds, In re Crane, 253 Ga. 667, 324 S.E.2d 443 (1985).

Denial of sanctions for defense counsel's improper remarks informing the jury that opposing counsel was representing plaintiffs on a contingent-fee basis was not an abuse of discretion since issues as to the amount of damages, addressed by the improper remarks, were not reached by the jury, and therefore no harm resulted. Stoner v. Eden, 199 Ga. App. 135, 404 S.E.2d 283, cert. denied, 199 Ga. App. 907, 404 S.E.2d 283 (1991).

Failure to establish conflict of interest. — Trial court did not abuse the court's discretion by not disqualifying the ex-wife's attorney after an alleged conflict of interest was established because the attorney denied there was a conflict after having talked briefly to the ex-husband's mother, and filed an affidavit from the law firm's administrator to that effect. McCarthy v. Ashment, 353 Ga. App. 270, 835 S.E.2d 745 (2019).

OPINIONS OF THE ATTORNEY GENERAL

Magistrate may prevent interference with constable. — Justice of peace (now magistrate) may prevent interference with a constable in making a levy through contempt processes. 1965-66 Op. Att'y Gen. No. 65-63.

RESEARCH REFERENCES

Am. Jur. 2d. — 17 Am. Jur. 2d, Contempt, §§ 68 et seq., 117, 123, 199, 205 et seq. 4 Am. Jur. 2d, Appellate Review, § 200 et seq.

C.J.S. — 17 C.J.S., Contempt, §§ 7 et seq., 85. 50A C.J.S., Juries, § 147 et seq.

ALR. — Restitution as purging contempt in violating injunction, 2 A.L.R. 169.

Necessity of affidavit or sworn statement as foundation for constructive contempt, 2 A.L.R. 225; 41 A.L.R.2d 1263.

What courts or officers have power to punish for contempt, 8 A.L.R. 1543; 54 A.L.R. 318; 73 A.L.R. 1185.

Contempt: violation of injunction by one not a party to injunction suit, 15 A.L.R. 386.

Assault as contempt of court, 18 A.L.R. 212; 55 A.L.R. 1230; 52 A.L.R.2d 1297.

Procuring or attempting to procure witness to leave jurisdiction as contempt, 21 A.L.R. 247; 33 A.L.R. 607.

Inability to comply with judgment or order as defense to charge of contempt, 22 A.L.R. 1256; 31 A.L.R. 649; 40 A.L.R. 546; 76 A.L.R. 390; 120 A.L.R. 703.

Forcing party or prosecuting witness to withdraw or not to institute action or proceeding as contempt of court, 23 A.L.R. 187.

Decree or order which merely declares rights of parties without an express command or prohibition as basis of contempt proceeding, 29 A.L.R. 134.

Communicating with grand jury as contempt, 29 A.L.R. 489.

Affidavit to disqualify judge as contempt, 29 A.L.R. 1273.

Contempt for disobedience of mandamus, 30 A.L.R. 148.

Contempt in addressing letter to court or judge with regard to a pending case, 31 A.L.R. 1239.

Conduct of juror in respect of verdict as basis of charge of contempt, 32 A.L.R. 436.

Conduct pending receivership as contempt of court, 39 A.L.R. 6; 48 A.L.R. 241.

Preventing, obstructing, or delaying service or execution of search warrant as contempt, 39 A.L.R. 1354.

Duty of attorney to call witness or to procure or aid in procuring his attendance, 56 A.L.R. 174.

Commitment for contempt in failing to obey order of court as purging one of contempt, 56 A.L.R. 701.

Necessity that hearing be allowed before imposition of punishment for contempt, 57 A.L.R. 545.

Criticism of attitude of the court or judge toward violations of liquor law as contempt, 58 A.L.R. 1001.

Shadowing, or tampering or communicating with, jurors as contempt, 63 A.L.R. 1269.

Punishment of election officers for contempt, 64 A.L.R. 1019.

Refusal to keep promise to waive privilege against self-incrimination as contempt, 69 A.L.R. 855.

Criticism of court's appointment of receiver as contempt, 97 A.L.R. 903.

Refusal or failure of clerk of court to comply with direction of court or judge upon ground of its invalidity or supposed invalidity as contempt, 119 A.L.R. 1380.

Legislative power to abridge, limit, or regulate power of courts with respect to contempt, 121 A.L.R. 215.

Misconduct by jurors as contempt, 125 A.L.R. 1274.

Impersonation or false statement by juror as to his identity as ground for new trial, 127 A.L.R. 717.

Failure or refusal to surrender possession or disclose whereabouts of property in replevin as contempt, 130 A.L.R. 632.

Reversal, modification, dismissal, dissolution, or resettlement of injunction order or judgment as affecting prior disobedience as contempt, 148 A.L.R. 1024.

Necessity and sufficiency of making and recording subsidiary or detailed findings supporting adjudication of direct contempt, 154 A.L.R. 1227.

Freedom of speech and press as limitation on power to punish for contempt, 159 A.L.R. 1379.

Power to include separate acts of contempt in a single contempt proceeding, 160 A.L.R. 1104.

Fine for contempt as provable or dischargeable in bankruptcy, 163 A.L.R. 389.

Seizure or impoundment of property in contempt cases, 167 A.L.R. 713.

Right to punish for contempt for failure

to obey court order or decree either beyond power or jurisdiction of court or merely erroneous, 12 A.L.R.2d 1059.

Punishment of civil contempt in other than divorce cases by striking pleading or entering default judgment or dismissal against contemner, 14 A.L.R.2d 580.

Procuring perjury as contempt, 29 A.L.R.2d 1157.

Bail jumping after conviction, failure to surrender or to appear for sentencing, and the like, as contempt, 34 A.L.R.2d 1100.

Limitations statute applicable to criminal contempt proceedings, 38 A.L.R.2d 1131.

Contempt: acts or conduct outside of courtroom or jury room as in federal court's presence, within 18 USC § 401(1), 42 A.L.R.2d 970.

Impeachment of witness by showing conviction of contempt, 49 A.L.R.2d 845.

Pleading and burden of proof, in contempt proceedings, as to ability to comply with order for payment of alimony or child support, 53 A.L.R.2d 591.

Allowance of attorneys' fees in contempt proceedings, 55 A.L.R.2d 979; 43 A.L.R.3d 793.

Sufficiency of notice to, or service upon, contemnor's attorney in civil contempt proceedings, 60 A.L.R.2d 1244.

Who may institute civil contempt proceedings, 61 A.L.R.2d 1083.

Published article or broadcast as direct contempt of court, 69 A.L.R.2d 676.

Use of affidavits to establish contempt, 79 A.L.R.2d 657.

Admissibility, in contempt proceeding against witness, of evidence of incriminating nature of question as to which he invoked privilege against self-incrimination, 88 A.L.R.2d 463.

Perjury or false swearing as contempt, 89 A.L.R.2d 1258.

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Right to counsel in contempt proceedings, 52 A.L.R.3d 1002.

Mortgagor's interference with property subject to order of foreclosure and sale as contempt of court, 54 A.L.R.3d 1242.

Picketing of court or judge as contempt, 58 A.L.R.3d 1297.

Assault on attorney as contempt, 61 A.L.R.3d 500.

Attorney's addressing allegedly insulting remarks to court during course of trial as contempt, 68 A.L.R.3d 273.

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Contempt for violation of compromise and settlement the terms of which were approved by court not incorporated in court order, decree, or judgment, 84 A.L.R.3d 1047.

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Acquittal of criminal charges other than contempt as precluding contempt proceedings relating to same transaction, 88 A.L.R.3d 1089.

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Violation of state court order by one other than party as contempt, 7 A.L.R.4th 893.

Attorney's failure to attend court, or tardiness, as contempt, 13 A.L.R.4th 122.

Validity, propriety, and effect of allowing or prohibiting media's broadcasting, recording, or photographing court proceedings, 14 A.L.R.4th 121.

Oral communications insulting to particular state judge, made to third party out of judge's physical presence, as criminal contempt, 30 A.L.R.4th 155.

Attorney's use of objectionable questions in examination of witness in state judicial proceeding as contempt of court, 31 A.L.R.4th 1279.

Contempt based on violation of court order where another court has issued contrary order, 36 A.L.R.4th 978.

Intoxication of witness or attorney as contempt of court, 46 A.L.R.4th 238.

Validity and construction of state court's order precluding publicity or comment about pending civil case by counsel, parties, or witnesses, 56 A.L.R.4th 1214.

Propriety of using contempt proceeding to enforce property settlement award or order, 72 A.L.R.4th 298.

Contempt: state court's power to order indefinite coercive fine or imprisonment to exact promise of future compliance with court's order — anticipatory contempt, 81 A.L.R.4th 1008.

Profane or obscene language by party, witness, or observer during trial proceedings as basis for contempt citation, 29 A.L.R.5th 702.

Right to appointment of counsel in contempt proceedings, 32 A.L.R.5th 31.

Holding jurors in contempt under state law, 93 A.L.R.5th 493.

Media's dissemination of material in violation of injunction or restraining order as contempt — federal cases, 91 A.L.R. Fed. 270.

15-1-5. Effect of rules of court.

The rules of the respective courts, legally adopted and not in conflict with the Constitution of the United States or of this state, or the laws thereof, are binding and must be observed.

History. — Orig. Code 1863, § 198; Code 1868, § 192; Code 1873, § 204; Code 1882, § 204; Civil Code 1895, § 4044; Civil Code 1910, § 4641; Code 1933, § 24-106.

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Rules are binding on practitioners and must be observed. — Rules of the Court of Appeals, promulgated by the court pursuant to the court's rule-making authority, are binding on those who practice in the court and must be observed. Crider v. State, 115 Ga. App. 347, 154 S.E.2d 743 (1967).

Construction placed upon the court's own rules by court is generally conclusive. Roberts v. Kuhrt, 119 Ga. 704, 46 S.E. 856 (1904).

Common-law rule may apply to equity case. Central Bank v. Johnson & Smith, 56 Ga. 225 (1876); Fletcher v. Renfroe, 56 Ga. 674 (1876).

Superior court rules may apply in city court. Chance v. State, 97 Ga. 346, 23 S.E. 832 (1895).

Untimeliness under local rule. — If there was no pretrial order issued in a case, an amended complaint supported by affidavit which was filed and served on the day preceding the hearing could not prop-

erly be disallowed based upon untimeliness under the local rule. Gilbert v. Decker, 165 Ga. App. 11, 299 S.E.2d 65 (1983).

Result of failure to follow rules. — Appellants successfully argued that the record was utterly devoid of any indication that the procedure in O.C.G.A. § 15-9-13 was followed in order to authorize the superior court judge to sit over the probate of the decedent's will. No written order was entered pursuant to Uniform Probate Court Rule 3 for the appointment of the superior court judge to act in the probate judge's absence. Thus, the superior court judge was not sitting over the probate proceedings in replacement for the recused probate court judge. Because the superior court lacks subject matter jurisdiction to hear the probate of a will, it follows that the judgment rendered by the superior court here was a nullity and void. Carpenter v. Carpenter, 276 Ga. 746, 583 S.E.2d 852 (2003).

Cited in Hill v. State, 73 Ga. App. 293, 36 S.E.2d 191 (1945); Bearden v. Nash, 88 Ga. App. 722, 77 S.E.2d 541 (1953); Barfield v. State, 89 Ga. App. 204, 79 S.E.2d 68 (1953); King v. Skinner, 101 Ga. App. 102, 112 S.E.2d 789 (1960); Cel-Ko Bldrs. & Developers, Inc. v. BX Corp., 136 Ga. App. 777, 222 S.E.2d 94 (1975); Perdue v. Tyler, 241 Ga. 299, 245 S.E.2d 276 (1978).

RESEARCH REFERENCES

ALR. — Power of court to prescribe rules of pleadings, practice, or procedure, 110 A.L.R. 22; 158 A.L.R. 705.

Right to counsel in contempt proceedings, 52 A.L.R.3d 1002.

15-1-6. Court's acts not invalid without clerk.

The acts of a court shall not lack validity for the want of a clerk. Whenever there is no clerk, or none to be had, or the clerk is incapable of discharging his duty, and any court performs that duty itself, its action as such is valid.

History. — Orig. Code 1863, § 203; Code 1868, § 197; Code 1873, § 209; Code 1882, § 209; Civil Code 1895, § 4050; Civil Code 1910, § 4647; Code 1933, § 24-109.

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Justice court (now magistrate court) had no clerk created by law. Park v. Callaway, 128 Ga. 119, 57 S.E. 229 (1907).

RESEARCH REFERENCES

Am. Jur. 2d. — 20 Am. Jur. 2d, Courts, § 1 et seq.

15-1-7. Grounds for impeachment.

It shall be unlawful for any Justice of the Supreme Court, Judge of the Court of Appeals, or judge of the superior courts to receive for himself or any member of his family, either directly or indirectly, any favor from any railroad company or any free railroad pass or any like favor not enjoyed by the general public from any telephone, telegraph,

or express company or like quasi-public corporation. Any violation of this Code section shall be a ground for impeachment.

History. — Ga. L. 1904, p. 72, § 2; Civil Code 1910, § 324; Code 1933, § 24-103.
Cross references. — Impeachment, Ga. Const. 1983, Art. III, Sec. VII.
Law reviews. — For article, "Judicial Retirement, Discipline and Removal," see 3 Ga. St. B. J. 197 (1966). For article discussing the inefficiency of mandamus and impeachment as remedies for judicial inaction, see 5 Ga. St. B. J. 467 (1969).

RESEARCH REFERENCES

Am. Jur. 2d. — 46 Am. Jur. 2d, Judges, § 16 et seq.
C.J.S. — 48A C.J.S., Judges, § 84.
ALR. — Carriers: free passes to public officials or employees, 8 A.L.R. 682. Constitutionality of statute authorizing issuance of passes by carriers, 33 A.L.R. 373.

15-1-8. When judge or judicial officer disqualified.

(a) No judge or Justice of any court, magistrate, nor presiding officer of any inferior judicature or commission shall:

(1) Sit in any case or proceeding in which he is pecuniarily interested;

(2) Preside, act, or serve in any case or matter when such judge is related by consanguinity or affinity within the third degree as computed according to the civil law to any party interested in the result of the case or matter; or

(3) Sit in any case or proceeding in which he has been of counsel, nor in which he has presided in any inferior judicature, when his ruling or decision is the subject of review, without the consent of all parties in interest. In all cases in which the presiding judge of the superior court was employed as counsel before his appointment as judge, he shall preside in such cases if the opposite party or counsel agree in writing that he may preside, unless he declines to do so.

(b) No judge or Justice of any court, magistrate, nor presiding officer of any inferior judicature or commission shall be disqualified from sitting in any case or proceeding because of the fact that he is a policyholder or is related to a policyholder of any mutual insurance company which has no capital stock.

(c) Nothing in this Code section shall be construed as applying to the qualifications of trial jurors.

(d) In all cases in which a part-time judge has a conflict because such judge or his or her partner or associate represents a governmental agency or entity, a subdivision of government, or any other client, the judge will recuse himself or herself or, with the permission of the

parties, transfer the case to the state or superior court, but such judge will not otherwise be disqualified or prohibited from serving as attorney for such governmental entities.

History. — Laws 1801, Cobb's 1851 Digest, p. 460; Code 1863, § 199; Ga. L. 1868, p. 129, § 2; Code 1868, § 193; Code 1873, § 205; Ga. L. 1880-81, p. 58, § 1; Code 1882, § 205; Civil Code 1895, § 4045; Civil Code 1910, § 4642; Code 1933, § 24-102; Ga. L. 1935, p. 396, § 1; Ga. L. 1943, p. 322, §§ 1, 2; Ga. L. 1983, p. 884, § 4-1; Ga. L. 1984, p. 22, § 15; Ga. L. 1993, p. 981, § 1; Ga. L. 2016, p. 242, § 1/SB 262.

Cross references. — Mutual insurers generally, T. 33, C. 14. Disqualified or not participating judges, Rules of the Supreme Court of Georgia, Rule 56. Notice of cause for disqualification or recusal, Rules of the Court of Appeals of the State of Georgia, Rule 8. Recusal, Uniform Rules for the Superior Courts, Rule 25. Impartial and diligent performance of judicial duties, Georgia Code of Judicial Conduct, Canon 3.

Law reviews. — For article, "Wills, Trusts & Administration of Estates," see 53 Mercer L. Rev. 499 (2001).

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General Consideration

Opinions limiting grounds for disqualification to only those enumerated in O.C.G.A. § 15-1-8 overruled. — Because in Stephens v. Stephens, 249 Ga. 700, 292 S.E.2d 689 (1982) the Supreme Court made clear that Canon 3E of The Code of Judicial Conduct provides "a broader rule of disqualification" than that provided in O.C.G.A. § 15-1-8, and both the statute and the canon provide grounds for recusal, to the extent that the below cases follow the prior rule, the following opinions are overruled: Bevil v. State, 220 Ga. App. 1, 467 S.E.2d 586 (1996); Johnson v. State, 208 Ga. App. 453, 430 S.E.2d 821 (1993); Brannen v. Prince, 204 Ga. App. 866, 421 S.E.2d 76 (1992); Mapp v. State, 204 Ga. App. 647, 420 S.E.2d 615 (1992). Gillis v. City of Waycross, 247 Ga. App. 119, 543 S.E.2d 423 (2000).

Timing of objection relative to judge's disqualification. — Objection relative to the disqualification of a judge by reason of relationship or interest should generally be brought to the judge's attention before petitioning for the writ of prohibition. Riner v. Flanders, 173 Ga. 43, 159 S.E. 693 (1931).

Circumstances under which justice disqualified. — When the Constitution under consideration increased the membership of the Supreme Court from six to seven, and a justice had been appointed to fill the seventh place, and thus the very

existence of the office the justice occupied was dependent upon the outcome of the case under consideration, since the justice's participation in the case would presuppose the validity of the instrument under attack the justice should not participate because the validity of the instrument should be determined by the court as constituted prior to the alleged adoption of the instrument under which the justice claimed office. Wheeler v. Board of Trustees, 200 Ga. 323, 37 S.E.2d 322 (1946).

When considering the issue of disqualification, both O.C.G.A. § 15-1-8 and Canon 3C of the Code of Judicial Conduct should be considered and applied. Kurtz v. State, 233 Ga. App. 186, 504 S.E.2d 51 (1998).

Workers' compensation. — Since former Code 1933, § 114-101 et seq. (see now O.C.G.A. T. 34, C. 9) provided for a different judicial procedure than cases at common law, the apparent conflict between former Code 1933, § 114-708 (see now O.C.G.A. § 34-9-103), wherein provision was clearly made for the single director who made the workers' compensation award to participate with the full board in review of the award, and former Code 1933, § 24-102 (see now O.C.G.A. § 15-1-8), providing for the disqualification of a judicial officer in a case in which the officer had presided in any inferior judicature, when the officer's ruling or decision was the subject of review, must be resolved in favor of the participation of the single director with the full board in accordance with the plain intention of the General Assembly as disclosed by the language of former Code 1933, § 114-708 (see now O.C.G.A. § 34-9-103). Wiley v. Bituminous Cas. Co., 76 Ga. App. 862, 47 S.E.2d 652 (1948).

Effect of judge's disqualification. — Granting of a motion to make a later term the appearance term and to perfect service in the meantime necessarily requires the exercise of a judicial function, facts are to be considered, and the judgment should be made accordingly, and therefore it cannot be said that the orders drawn into question in this case were mere formal or ministerial acts such as could have been performed irrespective of the judge's disqualification to preside at other stages of the proceeding. Smith v. Queen Ins. Co. of Am., 41 Ga. App. 587, 153 S.E. 785 (1930).

Disqualification does not extend to formal acts for bringing case. — Disqualification will not extend to mere formal acts designed to bring a case before a proper tribunal for adjudication, but will prohibit the hearing of the case or the making or passing of any order in relation thereto which is justiciable in its nature including orders for the purpose of extending time for service and appearance and issuance of new process. Smith v. Queen Ins. Co. of Am., 41 Ga. App. 587, 153 S.E. 785 (1930).

Act of judicial nature by disqualified judge is voidable. Allen v. State, 102 Ga. 619, 29 S.E. 470 (1897).

Violation of basic philosophy for judge to act as own trier of fact. — For a judicial officer to bring one's own case before oneself as a trier of fact violates the basic philosophy on which the judicial system is founded, that every phase of litigation is to be heard and decided by a disinterested magistrate. Bonds v. Powl, 140 Ga. App. 140, 230 S.E.2d 133 (1976).

Disqualification of trial judge will not cause release of prisoner on writ of habeas corpus. — Prisoner under sentence by a court of competent jurisdiction will not be released on writ of habeas corpus because of the disqualification of the judge who presided in the trial court. Wood v. Clarke, 188 Ga. 697, 4 S.E.2d 659 (1939).

Cited in Field v. Manly, 185 Ga. 464, 195 S.E. 406 (1938); Burgess v. Simmons, 191 Ga. 322, 12 S.E.2d 323 (1940); Bryant v. Mitchell, 195 Ga. 135, 23 S.E.2d 410 (1942); Galloway v. Merrill, 213 Ga. 633, 100 S.E.2d 443 (1957); Mathews v. Mathews, 220 Ga. 247, 138 S.E.2d 382 (1964); Garland v. State, 110 Ga. App. 756, 140 S.E.2d 46 (1964); Williams v. Mayor of Athens, 122 Ga. App. 465, 177 S.E.2d 581 (1970); Edwards v. Wheaton, 227 Ga. 424, 181 S.E.2d 48 (1971); Paine v. Lowndes County Bd. of Tax Assessors, 124 Ga. App. 233, 183 S.E.2d 474 (1971); Southeastern Fid. Ins. Co. v. Fluellen, 128 Ga. App. 877, 198 S.E.2d 407 (1973); Mann v. Malone, 231 Ga. 397, 202 S.E.2d 63 (1973); Cauley v. State, 130 Ga. App. 278, 203 S.E.2d 239

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(1973); Cross v. State, 136 Ga. App. 400, 221 S.E.2d 615 (1975); Dungee v. State, 237 Ga. 218, 227 S.E.2d 746 (1976); Collins v. State, 141 Ga. App. 121, 232 S.E.2d 635 (1977); Pierce v. Moore, 244 Ga. 739, 261 S.E.2d 647 (1979); Cobb County Bd. of Tax Assessors v. Sibley, 248 Ga. 383, 283 S.E.2d 452 (1981); Johnson v. State, 208 Ga. App. 453, 430 S.E.2d 821 (1993); Bevil v. State, 220 Ga. App. 1, 467 S.E.2d 586 (1996).

Construction of Statutory Language

1. In General

Language of this Code section, being remedial in nature, should be liberally construed, and the word "cause" (now "case") should not be limited to a suit or proceeding in court. Murray County v. Pickering, 195 Ga. 182, 23 S.E.2d 436 (1942).

Liberal construction of words "of counsel" intended. — Words "of counsel" in this section cannot be so restricted as to include only representation in a suit or proceeding in court. That section must be given a liberal construction so as to effect the intent of the legislature. Scogin v. State, 138 Ga. App. 859, 227 S.E.2d 780 (1976); King v. State, 246 Ga. 386, 271 S.E.2d 630 (1980).

2. Party

"Party" construed. — Word "party" referred to would include any one pecuniarily interested in the result of the case, and would not be limited to a person who is a party to the record. Dobbins v. City of Marietta, 148 Ga. 467, 97 S.E. 439 (1918); Parks v. Citizens Bank, 40 Ga. App. 523, 150 S.E. 438 (1929).

Word "party" will include any person who is pecuniarily interested in the result of the suit, although not a party to the record and not necessarily bound by the judgment therein. Smith v. Queen Ins. Co. of Am., 41 Ga. App. 587, 153 S.E. 785 (1930).

Proper construction to be placed upon the word "party" is the broad meaning which would include any one pecuniarily interested in the result of the case, and not the narrow and technical meaning which would limit the rule to a person who was a party to the record. Dennard v. State, 46 Ga. App. 513, 168 S.E. 311 (1933).

Word "party" as used in this section is not restricted to technical limitation of party to case, but includes those who are interested in the result of the case, although not parties to the case. Georgia Power Co. v. Watts, 184 Ga. 135, 190 S.E. 654 (1937); Gray v. Barlow, 241 Ga. 347, 245 S.E.2d 299 (1978).

Interest of person not party to record which will disqualify judge is pecuniary interest in result of litigation. Gray v. Barlow, 241 Ga. 347, 245 S.E.2d 299 (1978).

3. Pecuniary Interest

Construction of "pecuniarily interested." — Words "pecuniarily interested," as employed in this section, should be construed to mean pecuniarily interested "in one side or the other of the case — a loss in the subject matter, or a gain dependent upon the result of the issue." Dennard v. State, 46 Ga. App. 513, 168 S.E. 311 (1933).

"Pecuniary interest" means direct pecuniary interest in result of particular case. Robinson v. State, 86 Ga. App. 375, 71 S.E.2d 677 (1952).

"Pecuniary interest" does not include interest in costs. — History of this section confirms the view that the "pecuniary interest" in a cause or proceeding referred to does not include an interest in the costs. Dennard v. State, 46 Ga. App. 513, 168 S.E. 311 (1933).

Pecuniary interest in costs is not synonymous with "pecuniary interest" in case. — Costs are the fees allowed officers of courts for their services in a judicial proceeding; though incidental to a suit are independent of the issue. There is no liability upon a party for costs until judgment, fixing that liability, and pecuniary interest in costs, the amount of which is fixed by law, is not synonymous with "pecuniary interest" in a case. Wellmaker v. Terrell, 3 Ga. App. 791, 60 S.E. 464 (1908).

Exhaustive Grounds for Disqualification

Statutory grounds exclusive. — It is the general rule that statutory grounds of disqualification are exclusive. Elliott v. Hipp, 134 Ga. 844, 68 S.E. 736, 137 Am. St. R. 272, 20 Ann. Cas. 423 (1910); Luke v. Batts, 11 Ga. App. 783, 76 S.E. 165 (1912).

Statutory grounds are exhaustive. — Statutory grounds of disqualification of judicial officer, as contained in this section, are exhaustive. York v. State, 42 Ga. App. 453, 156 S.E. 733 (1931); Scott v. State, 53 Ga. App. 61, 185 S.E. 131 (1936), aff'd, 184 Ga. 164, 190 S.E. 582 (1937); De Krasner v. Boykin, 54 Ga. App. 38, 186 S.E. 749 (1936); Blakeman v. Harwell, 198 Ga. 165, 31 S.E.2d 50 (1944); Jones v. State, 219 Ga. 848, 136 S.E.2d 358, cert. denied, 379 U.S. 935, 85 S. Ct. 330, 13 L. Ed. 2d 345 (1964); Daniel v. Yow, 226 Ga. 544, 176 S.E.2d 67 (1970).

This section sets forth the statutory grounds for disqualification of a judicial officer. Those grounds have been held to be exhaustive. J.B. v. State, 139 Ga. App. 545, 228 S.E.2d 712 (1976).

Prejudice or bias not based on pecuniary or relationship interest. — Grounds of disqualification of a judge, set forth in this section, are exhaustive, and do not include alleged prejudice or bias that is not based on a pecuniary or relationship interest. Elder v. Camp, 193 Ga. 320, 18 S.E.2d 622 (1942); Columbian Peanut Co. v. Pope, 69 Ga. App. 26, 24 S.E.2d 710 (1943); Smith v. State, 74 Ga. App. 777, 41 S.E.2d 541, cert. denied, 332 U.S. 772, 68 S. Ct. 86, 92 L. Ed. 357 (1947); Yeargin v. Hamilton Mem. Hosp., 229 Ga. 870, 195 S.E.2d 8 (1972).

Bias or prejudice is not legal ground for disqualification. — Circumstances in which a trial judge may be disqualified are set out in this section. These grounds are exhaustive, and bias or prejudice on the part of a judge is not legal ground for disqualification. Stevenson v. Stevenson, 222 Ga. 47, 148 S.E.2d 388 (1966).

Courts may not add other grounds of disqualification. — In order to disqualify a judge there must exist a ground authorized by law to disqualify the judge; it is not for the courts to add other grounds of disqualification. Blakeman v. Harwell, 198 Ga. 165, 31 S.E.2d 50 (1944); Mapp v. State, 204 Ga. App. 647, 420 S.E.2d 615 (1992).

Pecuniary Interest or Relationship

1. In General

Relationship to one of defendants. — If an injunction was granted against several defendants, and later an attachment proceeding was brought against some of the defendants for an alleged violation of such injunction, the judge of the superior court was not disqualified to hear and determine the attachment proceeding because of a relationship to one of the defendants against whom the injunction was issued, but who was not among the parties charged in the attachment proceeding, and who did not appear to have any interest therein. Tomlin v. Rome Stove & Range Co., 183 Ga. 183, 187 S.E. 879 (1936).

Relationship of defendant to wife of judge. — Fact that the wife of the judge who entered the default was a first cousin to the wife of the defendant does not disqualify the judge. Edison Provision Co. v. Armour & Co., 51 Ga. App. 213, 179 S.E. 829 (1935).

Judge not disqualified by having worked with crime victim. — Judge is not prohibited from presiding over a criminal case in which the alleged victim is one with whom the judge has worked by either O.C.G.A. § 15-1-8 or Canon 3 of the Code of Judicial Conduct. Smith v. State, 189 Ga. App. 27, 375 S.E.2d 69 (1988).

Membership in organization not per se disqualification. — Judge is not per se disqualified to try a cause when one of the parties to which is a church, lodge, or society of which the judge is a member. Blakeman v. Harwell, 198 Ga. 165, 31 S.E.2d 50 (1944).

Son of judge prosecuting not disqualifying. — If in a criminal prosecution, the son of the judge trying the case is assisting in the prosecution of the case but would not reap any pecuniary gain personally by reason of the conviction, such an interest is one which is not direct, certain, and immediate so as to require

Pecuniary Interest or Relationship (Cont'd)
1. In General (Cont'd)

the judge to disqualify oneself. DeLoach v. State, 78 Ga. App. 482, 51 S.E.2d 539 (1949).

Judge erred in holding oneself qualified to preside if prohibited relationship existed. — If the judge of the trial court was disqualified by virtue of a relationship within the prohibited degree to one of the attorneys for the plaintiff, who was the judge's brother, and who, by virtue of the nature of the attorney's employment, had a pecuniary interest in the subject matter of the litigation, the trial judge erred in holding oneself qualified to preside in the case. Western & Atl. R.R. v. Michael, 43 Ga. App. 703, 160 S.E. 93 (1931), aff'd, 175 Ga. 1, 165 S.E. 37 (1932).

No new trial when relationship to judge discovered after trial. — If a judge presiding in the trial of a criminal case is related to the defendant within the fourth (now sixth) degree of consanguinity, and neither the defendant nor defendant's counsel has knowledge of the existence of such relationship until after the trial, the mere fact that such relationship existed will not require the grant of a new trial. Parker v. State, 146 Ga. 131, 90 S.E. 859 (1916); Dixon v. State, 26 Ga. App. 13, 105 S.E. 39 (1920).

Writ of prohibition will lie to restrain judge from proceeding in action in which the judge is disqualified by reason of interest or relationship, although the court over which the judge presides may have jurisdiction of the cause. Riner v. Flanders, 173 Ga. 43, 159 S.E. 693 (1931).

Circumstances where pecuniary interest disqualification ineffective. — Although the justices of the Supreme Court may be disqualified on account of pecuniary interest in the subject matter of the litigation, nevertheless the Supreme Court justices must decide such a case if there is no other tribunal to do so, and none can be legally constituted. Wheeler v. Board of Trustees, 200 Ga. 323, 37 S.E.2d 322 (1946).

2. Interest of Judge

At common law, judge must have had interest in case, or the judge was not disqualified. Roberts v. Roberts, 115 Ga. 259, 41 S.E. 616, 90 Am. St. R. 108 (1902); Tibbs v. City of Atlanta, 125 Ga. 18, 53 S.E. 811 (1906).

Judge is not disqualified because judge is interested in subject to be decided if judge has no direct and immediate interest in the judgment to be pronounced. To work a disqualification, the interest must be a direct, certain, and immediate interest, and not one which is indirect, incidental, or remote. DeLoach v. State, 78 Ga. App. 482, 51 S.E.2d 539 (1949).

To work disqualification, interest must be direct, certain, and immediate interest, and not one which is indirect, incidental, or remote. A judge is not disqualified because the judge is interested in the question to be decided if the judge has no direct and immediate interest in the judgment to be pronounced. Beasley v. Burt, 201 Ga. 144, 39 S.E.2d 51 (1946).

Interest which disqualifies a judge from presiding in case is a direct pecuniary, or direct property interest, or one which involves some individual right or privilege in the subject matter of the litigation whereby a liability or pecuniary gain must occur on the event of the suit. Blakeman v. Harwell, 198 Ga. 165, 31 S.E.2d 50 (1944).

Interest which disqualifies judge from presiding in case is a direct pecuniary or property interest in the subject matter of the litigation whereby a liability or pecuniary gain would occur on the outcome of the suit. Adams v. McGehee, 211 Ga. 498, 86 S.E.2d 525 (1955).

O.C.G.A. §§ 15-1-8, 15-6-4, and 15-19-58 did not conflict with one another so as to be unconstitutional because O.C.G.A. § 15-1-8 provided that judges should not be disqualified from sitting in a proceeding because the judge was a policyholder of any mutual insurance company; O.C.G.A. § 15-6-4 provided for qualifications for state superior court judges, and O.C.G.A. § 15-19-58 allowed the state bar to seek injunctive relief against parties engaging in the unauthorized practice of law. Alyshah v. Georgia, No. 1:06-CV-0928-TWT, 2006 U.S. Dist. LEXIS 66546 (N.D. Ga. Sept. 1, 2006),

aff'd, 230 Fed. Appx. 949 (11th Cir. Ga. 2007).

Disqualifying interest may be personal one to judge, but the general rule is that the interest must be pecuniary in nature, and not remote, uncertain, speculative, or merely incidental with a distinction between a property interest and such interest as results from a feeling of sympathy or bias that would disqualify a juror. Blakeman v. Harwell, 198 Ga. 165, 31 S.E.2d 50 (1944).

To work disqualification, liability or pecuniary gain or relief to judge must occur upon event of suit, not result remotely in the future from the general operation of laws and government upon the status fixed by the decision. Beasley v. Burt, 201 Ga. 144, 39 S.E.2d 51 (1946).

Requirement of impartiality disqualifies judge from acting in case in which judge has interest. Blakeman v. Harwell, 198 Ga. 165, 31 S.E.2d 50 (1944).

Interest of judge in bank not party to proceeding does not act as disqualification. — Fact that the judge was a stockholder in a different bank which held a lien on a portion of the land in controversy would not disqualify the judge to preside in a proceeding to enjoin trespass, such other bank not being a party, and no question as to the validity or priority of the bank's lien being involved. Manry v. First Nat'l Bank, 195 Ga. 163, 23 S.E.2d 662 (1942).

Depositor creditor relationship to bank disqualified judge to act in proceedings. — Judge of the superior court, who is a depositor creditor of an insolvent bank in the charge of the state superintendent of banks (now commissioner of banking and finance) for purposes of liquidation, is pecuniarily interested and therefore disqualified to act in a suit for accounting, injunction, and receiver instituted by a principal against an agent and the superintendent of banks seeking to recover an interest in dividends due to an estate in control of the agent for the principal, which the superintendent of banks has wrongfully applied to the individual debt of the agent, and enjoining other similar impending misapplication of dividends due to the estate. Gaskins v. Gaskins, 181 Ga. 124, 181 S.E. 850 (1935).

Salary supplement from county did not constitute a pecuniary interest or partiality. — Although the judges of a judicial circuit received a salary supplement from a county, the judges did not have a direct pecuniary interest in the outcome of a lawsuit, accordingly, there was no basis for recusal of the judges based on a financial interest or partiality under O.C.G.A. § 15-1-8(a)(1) and Ga. Code Jud. Conduct Canon 3(E)(1)(c)(iii). Jones County v. A Mining Group, LLC, 285 Ga. 465, 678 S.E.2d 474 (2009).

Common interest with general taxpayers not disqualification. — Interest which a judge has in a public matter in common with other general taxpayers is not sufficient to disqualify the judge. The judge's interest must be direct and immediate before the judge will be disqualified. City of Valdosta v. Singleton, 197 Ga. 194, 28 S.E.2d 759 (1944).

Crime victim's relationship to a county commissioner did not require disqualification of superior court judges because the commission provided supplemental salaries to sitting judges. Kelly v. State, 238 Ga. App. 691, 520 S.E.2d 32 (1999).

Signing petition did not disqualify probate judge from calling and holding special election. — Fact that the ordinary (now probate judge) was one of those who signed, as an individual, a petition requesting the call of a special election for the purpose of submitting to the qualified voters of the county the question of taxing, legalizing, and controlling alcoholic beverages and liquors did not show that the ordinary (now probate judge) was disqualified because the ordinary (now probate judge) was pecuniarily interested in the matter before the ordinary (now probate judge), or that the ordinary (now probate judge) was otherwise disqualified from calling and holding the special election. McCluney v. Stembridge, 206 Ga. 321, 57 S.E.2d 203 (1950).

Judge's ownership of stock. — Probate court judge's ownership of stock in a bank which was a party to the proceeding disqualified the judge from hearing the matter pursuant to paragraph (a)(1) of

Pecuniary Interest or Relationship (Cont'd)
2. Interest of Judge (Cont'd)

O.C.G.A. § 15-1-8 and the judge should have granted a motion to recuse. White v. SunTrust Bank, 245 Ga. App. 828, 538 S.E.2d 889 (2000).

3. Disqualification

It is pecuniary interest of attorney in result of case which disqualifies judge when one or more of the counsel for a party in whose behalf the fees are asked is related to the judge within the degree referred to in the statute declaring when a judge should be disqualified. Roberts v. Roberts, 115 Ga. 259, 41 S.E. 616, 90 Am. St. R. 108 (1902); Chadwick v. State, 87 Ga. App. 900, 75 S.E.2d 260 (1953).

Relationship to counsel for party will disqualify judge only when counsel has pecuniary interest in case. Young v. Harris, 146 Ga. 333, 91 S.E. 37 (1916).

Judge not disqualified unless related attorney has interest in litigation. — Judge is not disqualified to preside in a case on ground of relationship to one of the attorneys for the plaintiff within the degree of relationship that would disqualify the judge, unless the attorney related to the judge has an interest in the litigation. Atlantic Coast Line R.R. v. McDonald, 50 Ga. App. 856, 179 S.E. 185, cert. denied, 296 U.S. 621, 56 S. Ct. 143, 80 L. Ed. 441 (1935).

Disqualification required when judge's spouse an equity partner in law firm representing a party to a case. — Supreme court justice disqualified self from any case in which lawyers from a law firm represented a party because the justice's spouse was an equity partner who normally shared the firm's profits from all cases, and O.C.G.A. § 15-1-8 and Ga. Code Jud. Conduct Canon 3(E)(1)(c)(iii) required disqualification from all cases in which the firm represented a party; disqualification is required when a judge has a spouse who is an equity partner at the law firm representing a party to a case because it is imperative that the public has faith and trust in the impartiality of the justice system, and any appearance of impropriety that may exist is enhanced when the relative at issue is the judge's spouse. Friends of the Chattahoochee, Inc. v. Longleaf Energy Assocs., LLC, 285 Ga. 859, 684 S.E.2d 632 (2009).

Close relationship of party to presiding judge will be presumed beneficial, and not prejudicial, to that party, and if waived by the opposite party affords no ground for a new trial. Guthrie v. Peninsular Naval Stores Co., 26 Ga. App. 458, 107 S.E. 260, cert. denied, 26 Ga. App. 801 (1921).

Relationship to stockholder of corporation. — Judge is disqualified to sit in a case in which a corporation is a party, when a holder of stock of the corporation is related to the judge by consanguinity or affinity within the sixth degree, according to the civil law, whether the stockholder is a party to the case or not, and that is true of the holder of "preferred stock" which pays a fixed dividend of income out of the earned profits of the corporation. Georgia Power Co. v. Watts, 184 Ga. 135, 190 S.E. 654 (1937).

Relationship to mayor of city as party. — Close familial relationship between the mayor, who was the judge's mother, and the judge could impede the impartiality of the judge's judgment in presiding over the adjudication of matters involving the city; such a perceived bias or prejudice suffices for disqualification. In re Judge No. 97-61, 269 Ga. 425, 499 S.E.2d 319 (1998).

Judge not disqualified if relative's interest is insufficient. — Just as a judge is not disqualified merely because of an interest in some abstract legal question that is presently involved and which may arise in some future litigation affecting the judge or the judge's property rights, so an interest of like nature by the judge's relative would not disqualify the judge. In neither case would there be pecuniary interest in the result of the litigation within the meaning of the law. City of Valdosta v. Singleton, 197 Ga. 194, 28 S.E.2d 759 (1944).

Plaintiff unharmed by defendant's wife's relationship to judge. — It was not an abuse of discretion to deny the plaintiff's motion to set aside the verdict and judgment on the ground that the

original trial judge, as the second cousin of the defendant's wife, was disqualified because the judge was allegedly related within a prohibited degree of consanguinity since the relationship was not revealed to the parties until after the verdict, and since the plaintiff was not harmed by the alleged disqualification in that the trial judge to whom the case was assigned after the original judge disqualified oneself entered judgment for the plaintiff. Roper v. Durham, 256 Ga. 845, 353 S.E.2d 476 (1987).

Payment of bonus to judge's son. — Mere fact that attorney representing party to pending case might give a bonus to a judge's son, the judge's new associate, at end of year is too remote and speculative to work disqualification of the judge. Stephens v. Stephens, 249 Ga. 700, 292 S.E.2d 689 (1982).

Disqualification not removed by death of family member. — Disqualification of a judge to preside in a case in which the husband of the judge's sister is a stockholder in a corporation which is a party is not removed upon the death of the sister, if she leaves children, issue of the marriage, in life at the time of the trial. Georgia Power Co. v. Moody, 186 Ga. 343, 197 S.E. 844 (1938).

Bias or Prejudice

Bias or prejudice not disqualification. — This section does not provide that bias or prejudice is a ground to disqualify a trial judge from presiding in the case. Jones v. State, 219 Ga. 848, 136 S.E.2d 358, cert. denied, 379 U.S. 935, 85 S. Ct. 330, 13 L. Ed. 2d 345 (1964); P.D. v. State, 151 Ga. App. 662, 261 S.E.2d 413 (1979).

Personal bias or prejudice is not ground of disqualification, and the statutory grounds of disqualification are exhaustive. Clenney v. State, 229 Ga. 561, 192 S.E.2d 907 (1972).

Prejudice, bias, or prejudgment ordinarily not ground of disqualification. — Prejudice or bias on the part of the judge, not based on interest, nor on any other ground not named in the statute, is, as a general rule, not assignable as a ground for disqualification. Tibbs v. City of Atlanta, 125 Ga. 18, 53 S.E. 811 (1906).

This section, providing under what circumstances judges shall be disqualified, specifies only matters in which the judges have a pecuniary interest or are related within the sixth degree to any party interested in the result of the matter. The statutory grounds named in that section are exhaustive. Prejudice, bias, or prejudgment or even an exhibition or partisan feeling, when not arising from these grounds, is ordinarily not assignable as a ground of disqualification. Robinson v. State, 86 Ga. App. 375, 71 S.E.2d 677 (1952).

Prejudice or bias not based on pecuniary or relationship interest. — Prejudice or bias, not based on interest, will not disqualify the ordinary (now probate judge) from presiding in a contest. Moore v. Dugas, 166 Ga. 493, 143 S.E. 591 (1928).

Alleged prejudice or bias of a judge, which is not based on an interest either pecuniary or relationship to a party within a prohibited degree, affords no legal ground of disqualification. Jones v. State, 219 Ga. 848, 136 S.E.2d 358, cert. denied, 379 U.S. 935, 85 S. Ct. 330, 13 L. Ed. 2d 345 (1964); McRae v. State, 116 Ga. App. 407, 157 S.E.2d 646 (1967); Daniel v. Yow, 226 Ga. 544, 176 S.E.2d 67 (1970); P.D. v. State, 151 Ga. App. 662, 261 S.E.2d 413 (1979).

Prejudice or bias against party's attorney not per se grounds for disqualification. — Any alleged prejudice or bias against the party's attorney rather than the party personally is not, per se, grounds for disqualification. Mann v. State, 154 Ga. App. 677, 269 S.E.2d 863 (1980); Head v. State, 160 Ga. App. 4, 285 S.E.2d 735 (1981); Baxter v. State, 176 Ga. App. 154, 335 S.E.2d 607 (1985).

Requirements for alleged bias to be disqualifying. — In order to be disqualifying, alleged bias of judge must stem from an extrajudicial source and result in an opinion on the merits on some basis other than what the judge learned from the judge's participation in the case. Carter v. State, 246 Ga. 328, 271 S.E.2d 475 (1980).

For recusal, the alleged bias or prejudice of the trial judge needed to be of such a nature and intensity to prevent the defendant from obtaining a trial uninflu-

Bias or Prejudice (Cont'd)

enced by the court's prejudgment. Bitt Int'l Co. v. Fletcher, 259 Ga. App. 406, 577 S.E.2d 276 (2003).

Allegations of prejudice which are insufficient grounds for disqualification. — Allegations of judicial prejudice against counsel based upon events or circumstances occurring outside the ambit of the then pending action are not sufficient grounds for disqualification of the judge. Mann v. State, 154 Ga. App. 677, 269 S.E.2d 863 (1980).

Prior knowledge of facts of case has relevance merely as to any bias or prejudice of judge. It does not make the judge an "invisible witness" or a visible witness and provides no legal ground for the judge's disqualification. Stevenson v. Stevenson, 222 Ga. 47, 148 S.E.2d 388 (1966).

Approval of order by judge does not show bias or prejudice to prevent review. — Simply because a judge has approved the order in a case does not show bias or prejudice so as to prevent the judge from reviewing the judge's action fairly and impartially. Daniel v. Yow, 226 Ga. 544, 176 S.E.2d 67 (1970).

State of Georgia did not violate O.C.G.A. § 9-4-7 or O.C.G.A. § 15-1-8 by arresting and incarcerating plaintiff for contempt after the plaintiff willfully violated a consent order enjoining the unauthorized practice of law because such claims were barred by the Eleventh Amendment in that the state had not waived sovereign immunity. Alyshah v. Georgia, No. 1:06-CV-0928-TWT, 2006 U.S. Dist. LEXIS 66546 (N.D. Ga. Sept. 1, 2006), aff'd, 230 Fed. Appx. 949 (11th Cir. Ga. 2007).

Circumstances under which judge should disqualify oneself. — Under Canon 3C(1)(a) of the Georgia Code of Judicial Conduct, a judge should disqualify oneself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances when the judge has a personal bias or prejudice concerning a party or the party's lawyer; consequently, if bias or prejudice of a judge has been shown concerning a party, it is error for the judge to hear and decide the case. Savage v. Savage, 234 Ga. 853, 218 S.E.2d 568 (1975); Mann v. State, 154 Ga. App. 677, 269 S.E.2d 863 (1980).

Judicial prejudice does not arise from unfavorable rulings. — Defendant's complaints of bias and prejudice stemmed from the trial court's rulings with which the defendant did not agree, such as allowing into evidence the document defendant signed agreeing not to return to the airport and not allowing into evidence a prior judge's statements in a trial for a similar charge that resulted in an acquittal; these rulings did not show bias against the defendant simply because the rulings were favorable to the prosecution and violated neither O.C.G.A. § 15-1-8 nor Ga. Code Jud. Conduct Canon 3(E). Williams v. State, 257 Ga. App. 589, 571 S.E.2d 571 (2002).

Cases in Which Judge Has Served of Counsel

Case where judge "has been of counsel" means particular case being tried, and the fact that the judge has represented the party in another case will not disqualify the judge. Cox v. State, 85 Ga. App. 702, 70 S.E.2d 100 (1952).

Judge in case in which judge was consulted at bar. — Trial judge should have had no part of case concerning which the judge had been consulted while at bar. Mendenhall v. Hopper, 453 F. Supp. 977 (S.D. Ga. 1978), aff'd, 591 F.2d 1342 (5th Cir. 1979).

Earlier representation of party. — If judge participated in negotiations on plaintiff's behalf, such judge is disqualified from sitting on case to which plaintiff is a party. Smith v. Queen Ins. Co. of Am., 41 Ga. App. 587, 153 S.E. 785 (1930).

If an attorney advises a person that a certain instrument or permit or license gives the person a legal right, and afterwards a controversy arises between such person and another as to whether or not it does confer such right, and the attorney has come to the bench, the attorney cannot sit in judgment between those persons in that controversy, but is disqualified to do so by virtue of such professional relation to the former party on the subject of that controversy. Smith v. Queen Ins. Co.

of Am., 41 Ga. App. 587, 153 S.E. 785 (1930).

No disqualification if representation not in same cause or matter. — Fact that the ordinary (now probate judge) of county of administratrix's residence had as a practicing attorney represented administratrix in the application as an individual for appointment as administratrix in another county did not disqualify the ordinary (now probate judge) to approve the new bond and to issue the certificate necessary in transferring the administration of administratrix's residence since these acts were not in the same cause or matter in which the ordinary (now probate judge) had been of counsel. Head v. Waldrup, 197 Ga. 500, 29 S.E.2d 561 (1944).

"Of counsel" disqualification not applicable. — Judge is not disqualified to preside in a given case merely because previously, as an attorney at law for one or both of the parties, the judge may have drawn the contract on which the action or defense is founded. Luke v. Batts, 11 Ga. App. 783, 76 S.E. 165 (1912); Carson v. Blair, 31 Ga. App. 60, 121 S.E. 517 (1923), cert. denied, 31 Ga. App. 811, 122 S.E. 260 (1924).

Georgia district attorney is "of counsel" in all criminal cases or matters pending in the district attorney's circuit; this includes the investigatory stages of matters preparatory to the seeking of an indictment as well as the pendency of the case. King v. State, 246 Ga. 386, 271 S.E.2d 630 (1980).

Judge who was district attorney when defendant was sentenced should not have participated in later ex parte proceedings by defendant to correct alleged clerical errors in the court's records of the judge's sentence, although the judge did not personally prosecute the defendant. Prater v. State, 222 Ga. App. 486, 474 S.E.2d 684 (1996).

Previous activities of judge would serve as grounds for disqualification. — Investigation of criminal activities in the county, including those of the defendant, conducted by the G.B.I. under authorization from the trial court judge during the judge's former tenure as district attorney was a matter in which the judge "served as a lawyer" within the meaning of Canon 3C(1)(b) of the Georgia Code of Judicial Conduct, and "in which the judge has been of counsel" within the meaning of this section. King v. State, 246 Ga. 386, 271 S.E.2d 630 (1980).

No violation if record does not show judicial officer has been "of counsel" in proceeding. — If the record did not show that the attorney who acted as the judicial officer in an appealed attachment proceeding ever acted as attorney for the appellee in any way which involved the subject matter of the appeal, there was no violation of this section. Kitson v. Hawke, 231 Ga. 157, 200 S.E.2d 703 (1973).

Judge may sit in cause or proceeding if agreement in writing. — No judge or justice of any court can sit in any cause or proceeding in which the judge has been of counsel unless the opposite party or that party's counsel agrees in writing that the judge may preside. Faulkner v. Walker, 36 Ga. App. 636, 137 S.E. 909 (1927).

Order ratifying sale based on original order when judge was counsel is voidable. East Rome Town Co. v. Cochran, 81 Ga. 359, 8 S.E. 737 (1889).

Previous Judicial Contact

Presiding at earlier criminal inquiry. — Judge of the superior court is not disqualified from presiding at the trial of an indictment merely because previously thereto the judge held a court of inquiry and bound the prisoner over. Smith v. State, 74 Ga. App. 777, 41 S.E.2d 541, cert. denied, 332 U.S. 772, 68 S. Ct. 86, 92 L. Ed. 357 (1947).

Presiding at earlier hearing on request for restraining order. — In a prosecution for family violence aggravated assault, the fact that the trial court had issued the victim a temporary restraining order (TRO) did not require the court to recuse itself sua sponte because: 1) it did not violate O.C.G.A. § 15-1-8(a)(3) since the TRO was not the subject of review at the defendant's criminal trial; and 2) there was no showing under Ga. Code Jud. Conduct Canon 3(E)(1) that the trial court's "impartiality might reasonably be questioned."

Previous Judicial Contact (Cont'd)

Hargrove v. State, 299 Ga. App. 27, 681 S.E.2d 707 (2009).

Trial judge not disqualified to preside over perjury charge. — Trial judge in a charge of perjury is not disqualified for the reason that the judge presided in the trial of a case in which the alleged perjury was committed. Smith v. State, 74 Ga. App. 777, 41 S.E.2d 541, cert. denied, 332 U.S. 772, 68 S. Ct. 86, 92 L. Ed. 357 (1947).

No error in overruling motion to disqualify. — Since the only ground in a motion to disqualify a judge in a criminal trial was that the judge's decision at the interlocutory hearing would depend on the "legality and constitutionality" of the judge's own previous order, which the movant attacked, the judge did not err in overruling the motion and in declining to have another judge pass upon the case. Elder v. Camp, 193 Ga. 320, 18 S.E.2d 622 (1942).

Court properly denied the defendant's motion for an out-of-time appeal based on the defendant's contention that, four days before the defendant entered the defendant's guilty plea in 2000, the trial judge erroneously denied the defendant's motion to recuse the trial judge because the fact that the trial judge in the judge's previous capacity as district attorney prosecuted the defendant on another charge not currently pending before the judge was not, alone, a ground for disqualification and the trial judge ensured that the judge's name was redacted as district attorney from the previous indictment. Leverette v. State, 291 Ga. 834, 732 S.E.2d 255 (2012).

Trial of case if judge drew indictment. — Judge is not qualified to try a criminal case in which the judge personally drew the indictment and otherwise participated. Faulkner v. Walker, 36 Ga. App. 636, 137 S.E. 909 (1927).

Judge who is party to contract cannot determine if the contract has been completed. Mayor of Macon v. Huff, 60 Ga. 221 (1878).

Personal knowledge of facts in case. — Judge is not disqualified because judge may have personal knowledge of some facts involved in case. Atlantic & Birmingham Ry. v. Mayor of Cordele, 128 Ga. 293, 57 S.E. 493 (1907).

No disqualification if judge consulted on another matter or cause. — Judge is not disqualified to try a murder case merely because the judge was consulted as to the method of distribution of the estate before the judge's appointment. Woolfolk v. State, 85 Ga. 69, 11 S.E. 814 (1890).

Knowing waiver required to allow participation. — By requiring the consent of the parties, paragraph (a)(3) of O.C.G.A. § 15-1-8 requires a knowing waiver; thus, an employer did not waive the employer's right to challenge the review board's decision regarding a workers' compensation award since it was not disclosed that the administrative law judge who originally issued the award would be participating in the matter as a member of the review board. Arrow Co. v. Hall, 212 Ga. App. 365, 441 S.E.2d 794 (1994).

Denial of due process if judge fails to disqualify. — Failure by a judge to disqualify oneself which serves to deprive the defendant of an unbiased trier of fact is a denial of due process. Mendenhall v. Hopper, 453 F. Supp. 977 (S.D. Ga. 1978), aff'd, 591 F.2d 1342 (5th Cir. 1979).

Judge's former law firm's pecuniary interests in recovery as disqualification. — While the judge might not have been required to grant a motion to recuse under the circumstances in the case, it could not be concluded that by a voluntary recusal the judge acted improperly, based on the possible appearance of impropriety resulting from the judge's former law firm's pecuniary interests in recovering against defendant hospital's insurer. Head v. Brown, 259 Ga. App. 855, 578 S.E.2d 555 (2003).

Judge's prior prosecution of defendant. — Trial court did not err by denying defendant's motion for a new trial which asserted that the trial court erred since the county district attorney's office and the trial judge should have recused themselves from the case, sua sponte, as a result of a district attorney previously representing defendant on unrelated criminal charges, and the trial judge's prior prosecution of the defendant in 1994

as the evidence undisputedly showed that the defendant and defense counsel were aware of the potential conflicts at the onset of the prosecution and made deliberate, strategic decisions not to seek disqualification of either the county district attorney's office or the trial judge. Lemming v. State, 292 Ga. App. 138, 663 S.E.2d 375 (2008).

Recusal

Procedure when trial judge presented with motion to recuse. — When a trial judge in a case pending in that court is presented with a motion to recuse accompanied by an affidavit, the judge's duty will be limited to passing upon the legal sufficiency of the affidavit, and if, assuming all the facts alleged in the affidavit to be true, recusal would be warranted, then another judge must be assigned to hear the motion to recuse. State v. Fleming, 245 Ga. 700, 267 S.E.2d 207 (1980); Mann v. State, 154 Ga. App. 677, 269 S.E.2d 863 (1980); Penney v. State, 157 Ga. App. 737, 278 S.E.2d 460 (1981); Riggins v. State, 159 Ga. App. 791, 285 S.E.2d 579 (1981).

Judge did not err in failing to recuse oneself. — Trial judge did not err in refusing to recuse oneself, and in failing to refer the matter to an appropriate forum, although the defendant sued the judge in connection with this prosecution, since the defendant had shown no cause for speculation that the judge was so influenced by the filing of a lawsuit as to have infected the trial with personal bias and prejudice. Mapp v. State, 204 Ga. App. 647, 420 S.E.2d 615 (1992).

If the judge in a criminal prosecution had no knowledge during the trial of the judge's spouse's representation of the victim in a civil action against the defendant, the judge was not obligated to recuse oneself. Robertson v. State, 225 Ga. App. 389, 484 S.E.2d 18 (1997).

Juvenile court judge was not required to grant a recusal motion because of the judge's "contempt" for home schooling since the hearing transcript did not show any bias, much less contempt, but that the judge attempted to clarify the exact terms of the juvenile's probation; such did not exemplify a display of deep antagonism which made a fair trial impossible. In the Interest of A.H., 259 Ga. App. 608, 578 S.E.2d 247 (2003).

Defendant's argument on appeal that the trial judge should have been recused because the judge had previously heard the evidence during an earlier probation revocation hearing was waived because the defendant failed to make a written motion; further, there was no duty for the judge to have recused oneself sua sponte as there was no violation of a specific standard of O.C.G.A. § 15-1-8 or of Ga. Code Jud. Conduct Canon 3(E)(1)(a), which was the only possibly applicable prohibition in that Canon, as no bias or prejudice was shown. Phillips v. State, 267 Ga. App. 733, 601 S.E.2d 147 (2004).

In a drug trafficking case, the trial judge did not err in failing to sua sponte move for recusal because the judge was the district attorney when the defendant was previously convicted of drug charges and because the judge had recently presided over the defendant's probation revocation hearing. The defendant failed to present any citations to the record showing specific conduct or remarks by the trial judge that would have supported a claim that the judge harbored a bias toward the defendant to the extent that sua sponte recusal was necessary. Brown v. State, 307 Ga. App. 99, 704 S.E.2d 227 (2010).

Trial judge's refusal to sua sponte recuse oneself after being made aware that the judge was named as a defendant in a federal lawsuit the defendant filed pro se on the same day that the defendant's criminal trial commenced was not error since the defendant failed to show any cause for speculation that the judge was so influenced by the filing of a lawsuit as to have been infected with a bias of such intensity that it prevented the defendant from obtaining a fair trial. Robinson v. State, 312 Ga. App. 736, 719 S.E.2d 601 (2011).

Trial judge did not err by failing to recuse oneself because the defendant did not move for a recusal and there was no duty for a trial judge to sua sponte recuse oneself absent a violation of a specific standard of O.C.G.A. § 15-1-8 or Ga. Code Jud. Conduct Canon 3. Fitzpatrick v.

Recusal (Cont'd)

State, 317 Ga. App. 873, 733 S.E.2d 46 (2012).

Judge was not related to the mother in a divorce action as it was the judge's son that was married to the mother's aunt and, thus, the judge was not required to be recused. Lacy v. Lacy, 320 Ga. App. 739, 740 S.E.2d 695 (2013).

Trial judge in a divorce case was not required to be recused because the mother's reference on a social networking website to a meeting between the judge and the mother's father did not support a conclusion that a reasonable person would have considered the judge biased and impartial in the divorce action. Lacy v. Lacy, 320 Ga. App. 739, 740 S.E.2d 695 (2013).

Trial court did not err by failing to recuse based on the trial judge's alleged extra-judicial professional contact and involvement with the county school superintendent, about whom the defendants made the false report of a crime, through the trial judge's position at a local college because the defendants cited to no evidence that the two had any actual contact or involvement, much less of the extent of such a relationship; and the defendants cited to no evidence regarding actual involvement between the trial court and the school board; thus, the defendants' allegations simply were not enough reasonably to call into question the trial judge's impartiality. Marlow v. State, 339 Ga. App. 790, 792 S.E.2d 712 (2016).

Trial judge did not err in failing to recuse based on having been previously involved in a serious automobile accident with the defendant's uncle because the defendant never filed a motion to recuse the judge despite knowing about an alleged auto accident before the trial and only waited until being tried, convicted, and sentenced to raise the issue. Shelton v. State, 350 Ga. App. 774, 830 S.E.2d 335 (2019).

Defendant could not use defendant's own misconduct, in engaging in harassing telephone calls to the judge's chambers and the judge's appropriate response thereto, as grounds to compel the judge to recuse oneself. Baptiste v. State, 229 Ga. App. 691, 494 S.E.2d 530 (1997).

Remarks which are ill-advised, but not heard by jury. — Even though judge's remarks may be ill-advised, if the remarks are not expressed before the jury that tried the case and could not have influenced the decision of the jury, no reversible error appears. Harkey v. State, 159 Ga. App. 112, 282 S.E.2d 648 (1981).

Judge has duty to deny legally insufficient motion. — It is as much the duty of a judge not to grant the motion to recuse when the motion is legally insufficient as it is to recuse when the motion is meritorious. The simple filing of an affidavit does not automatically disqualify a judge. Penney v. State, 157 Ga. App. 737, 278 S.E.2d 460 (1981).

Motion to recuse properly denied. — In a buyer's action against sellers and an executor for specific performance of land purchase agreements, the trial court did not err when the court denied the buyer's motion to recuse on the ground that the presiding judge had previously sold property to the executor because the real estate transaction that formed the basis of the motion to recuse was completed on April 12, 2004, which was well before the outbreak of the dispute in January 2007; there is no Georgia authority for the proposition that a judge previously represented by counsel in an unrelated matter must be recused from a case in which the same counsel represents a party now appearing. Simprop Acquisition Co. v. L. Simpson Charitable Remainder Unitrust, 305 Ga. App. 564, 699 S.E.2d 860 (2010).

Judge should have assigned motion to recuse to another judge. — Trial judge erred in not assigning a motion to recuse to another judge as a reasonable question about the judge's impartiality was raised by affidavits stating that: 1) the judge's nephew had represented a party in the dispute that led to the lawsuit; 2) a partner from the nephew's law firm represented that party in the litgation; and 3) the partner talked to the trial judge about the case. Mayor & Aldermen of Savannah v. Batson-Cook Co., 291 Ga. 114, 728 S.E.2d 189 (2012).

Strategic decision not to move for recusal was not ineffective assistance and did not warrant a new trial. — Defendant's ineffective assistance of coun-

sel claim did not warrant a new trial in a prosecution for rape, kidnapping, aggravated stalking, and two counts of stalking; because of a variety of factors including the limited nature of a state witness's trial testimony, defense counsel made a strategic decision not to seek recusal of the trial judge, who was the brother of the challenged witness, and counsel discussed with the defendant the reasons for not seeking recusal. Pirkle v. State, 289 Ga. App. 450, 657 S.E.2d 560 (2008).

Motion to recuse improperly denied. — Decisions to deny a motion to recuse because the motion and affidavit did not meet the requirements of Ga. Unif. Super. Ct. R. 25.3 are reviewed de novo. Therefore, the following appellate decisions that employed the abuse of discretion standard were overruled: Moore v. State, 722 S.E.2d 160 (2012); Grant v. State, 695 S.E.2d 420 (2010); Ga. Kidney & Hypertension Spec. v. FreseniuUSA Marketing, 662 S.E.2d 245 (2008); Adams v. State, 659 S.E.2d 711 (2008); Keller v. State, 648 S.E.2d 714 (2007); Hill v. Clayton County Bd. of Commrs., 640 S.E.2d 38 (2006); and In re J.E.T., 604 S.E.2d 623 (2004). Mayor & Aldermen of Savannah v. Batson-Cook Co., 291 Ga. 114, 728 S.E.2d 189 (2012).

Sexual relationship with public defender meant judge should be recused. — Trial court properly granted five defendants a new trial because the trial judge violated both O.C.G.A. § 15-1-8 and Ga. Code Jud. Conduct Canon 3 by failing to be recused for each trial as a result of a sexual relationship between the judge and the public defender who represented either the defendants or their codefendants. State v. Wakefield, 324 Ga. App. 587, 751 S.E.2d 199 (2013).

Waiver

Disqualification of judge may be waived. — While a judge is disqualified when related to any party interested in the results of the case by consanguinity or affinity within the sixth degree, according to the civil law, whether a party to the case or not, that disqualification may be waived. Georgia Power Co. v. Watts, 184 Ga. 135, 190 S.E. 654 (1937).

Waiver may be express or implied. — Disqualification of a presiding judge on account of relationship to a party or to one of the attorneys who has a contingent fee in the case may be waived, expressly or impliedly. Shuford v. Shuford, 141 Ga. 407, 81 S.E. 115 (1914).

Waiver of disqualification of judge may be effected expressly by agreement, or impliedly by proceeding without objection with the trial of the case with knowledge of the disqualification. Georgia Power Co. v. Watts, 184 Ga. 135, 190 S.E. 654 (1937); J.B. v. State, 139 Ga. App. 545, 228 S.E.2d 712 (1976).

Disqualification is waived by failing to make point, having knowledge of disqualification, during trial. Shuford v. Shuford, 141 Ga. 407, 81 S.E. 115 (1914); Morris v. State, 18 Ga. App. 759, 90 S.E. 729 (1916).

Consent of parties. — No judge can preside in any case in which the judge is related to either party within the fourth (now sixth) degree of consanguinity or affinity, without the consent of all the parties at interest. Burch v. State, 18 Ga. App. 290, 89 S.E. 341 (1916); Dennard v. State, 46 Ga. App. 513, 168 S.E. 311 (1933).

This section expressly contemplates that disqualified judge may preside with consent of parties at interest; such disqualification may be waived, and it is not essential that the waiver be made expressly or in writing. Wood v. Clarke, 188 Ga. 697, 4 S.E.2d 659 (1939).

Written consent of the parties is necessary if the judge was formerly counsel, while a waiver based on relationship may be oral. Shope v. State, 106 Ga. 226, 32 S.E. 140 (1898).

Waiver of disqualification need not be in writing. — Provision that no ordinary (now probate judge) may preside in any case or matter when the ordinary (now probate judge) is related by affinity or consanguinity to any party interested in the result of the case within the sixth degree may be waived, and such waiver need not be in writing. Byrd v. Riggs, 211 Ga. 493, 86 S.E.2d 285 (1955).

Disqualification does not absolutely rob court of jurisdiction. — Since disqualification is a thing which

Waiver (Cont'd)

may be waived, the disqualification's existence does not absolutely rob the court of jurisdiction in the particular case so that the court's action is coram non judice and may be collaterally attacked. Wood v. Clarke, 188 Ga. 697, 4 S.E.2d 659 (1939).

Judge of other circuit may act and preside in absence of waiver of disqualification. — When the judge is disqualified because of relationship "to any party interested in the result of the case or matter," the judge's disqualification may be waived by all of the parties, and in the absence of such a waiver, the judge of any other circuit, who is qualified, may act and preside for the disqualified resident judge. Howard v. Warren, 206 Ga. 838, 59 S.E.2d 503 (1950).

RESEARCH REFERENCES

Am. Jur. 2d. — 46 Am. Jur. 2d, Judges, § 80 et seq.

C.J.S. — 48A C.J.S., Judges, § 107 et seq.

ALR. — Constitutionality of statute making mere filing of affidavit of bias or prejudice sufficient to disqualify judge, 5 A.L.R. 1275; 46 A.L.R. 1179.

Time for asserting disqualification of judge, and waiver of disqualification, 5 A.L.R. 1588; 73 A.L.R.2d 1238.

Powers of judge who has attained constitutional age limit, 25 A.L.R. 27.

Residence or ownership of property in city or other political subdivision which is party to or interested in action as disqualifying judge, 33 A.L.R. 1322.

Necessity as justifying action by judicial or administrative officer otherwise disqualified to act in particular case, 39 A.L.R. 1476.

Necessity of including averment as to time when prejudice was discovered in affidavit contemplated by statute entitling parties to substitution of another judge upon filing affidavit of prejudice or unfairness of judge, 93 A.L.R. 239.

Right of judge not legally disqualified to decline to act in legal proceeding upon personal grounds, 96 A.L.R. 546.

What is "civil action" or "civil proceeding" within statute relating to disqualification of judge or change of venue, 102 A.L.R. 397.

Disqualifying relationship by affinity in case of judge or juror as affected by dissolution of marriage, 117 A.L.R. 800.

Disqualification of judge who presided at trial or of juror as ground of habeas corpus, 124 A.L.R. 1079.

Right to change of judges, on issues raised by petition for writ of error coram nobis, 161 A.L.R. 540.

Disqualification of judge in pending case as subject to revocation or removal, 162 A.L.R. 641.

Reviewability of action of judge in disqualifying himself, 162 A.L.R. 654.

Interest of judge in an official or representative capacity, or relationship of judge to one who is a party in an official or representative capacity, as disqualification, 10 A.L.R.2d 1307.

Relationship to attorney as disqualifying judge, 50 A.L.R.2d 143.

Disqualification of judge in proceedings to punish contempt against or involving himself or court of which he is a member, 64 A.L.R.2d 600.

Prior representation or activity as attorney or counsel as disqualifying judge, 72 A.L.R.2d 443; 16 A.L.R.4th 550.

Prohibition as appropriate remedy to prevent allegedly disqualified judge from proceeding with case, 92 A.L.R.2d 306.

Intervenor's right to disqualify judge, 92 A.L.R.2d 1110.

Propriety and prejudicial effect of suggestion or comments by judge as to compromise or settlement of civil case, 6 A.L.R.3d 1457.

Disqualification of judge for having decided different case against litigant, 21 A.L.R.3d 1369.

Disqualification of judge on ground of being a witness in the case, 22 A.L.R.3d 1198.

Disqualification of judge because of his or another's holding or owning stock in corporation involved in litigation, 25 A.L.R.3d 1331.

Disqualification of original trial judge to sit on retrial after reversal or mistrial, 60 A.L.R.3d 176.

Disqualification of judge by state, in

criminal case, for bias or prejudice, 68 A.L.R.3d 509.

Affidavit or motion for disqualification of judge as contempt, 70 A.L.R.3d 797.

Disqualification of judge, justice of the peace, or similar judicial officer for pecuniary interest in fines, forfeitures, or fees payable by litigants, 72 A.L.R.3d 375.

Membership in fraternal or social club or order affected by a case as ground for disqualification of judge, 75 A.L.R.3d 1021.

Validity and application of state statute prohibiting judge from practicing law, 17 A.L.R.4th 829.

Waiver or loss of right to disqualify judge by participation in proceedings — modern state civil cases, 24 A.L.R.4th 870.

Disqualification of judge because of assault or threat against him by party or person associated with party, 25 A.L.R.4th 923.

Disqualification of judge in state proceedings to punish contempt against or involving himself in open court and in his actual presence, 37 A.L.R.4th 1004.

Disqualification of judge because of political association or relation to attorney in case, 65 A.L.R.4th 73.

Disqualification from criminal proceeding of trial judge who earlier presided over disposition of case of coparticipant, 72 A.L.R.4th 651.

Disqualification of judge for bias against counsel or litigant, 54 A.L.R.5th 575.

Disqualification of judge based on property-ownership interest in litigation which consists of more than mere stock — state cases, 56 A.L.R.5th 783.

Prior representation or activity as prosecuting attorney as disqualifying judge from sitting or acting in criminal case, 85 A.L.R.5th 471.

Disqualification of judge for having decided different case against litigant — state cases, 85 A.L.R.5th 547.

Laws governing judicial recusal or disqualification in state proceeding as violating federal or state constitution, 91 A.L.R.5th 437.

Construction of provision in Federal Criminal Procedure Rule 42(b) that if contempt charges involve disrespect to or criticism of judge, he is disqualified from presiding at trial or hearing except with defendant's consent, 3 A.L.R. Fed. 420.

Timeliness of affidavit of disqualification of trial judge under 28 USCS § 144, 141 A.L.R. Fed 311.

Propriety and prejudicial effect in civil trial of federal judge's disparaging remarks concerning party, witness or attorney, 144 A.L.R. Fed. 363.

Disqualification of judge under 28 USCA § 455(b)(4), providing for disqualification where judge has financial or other interest in proceeding, 163 A.L.R. Fed. 575.

15-1-9. When judge not disqualified.

Any judge, irrespective of his relationship to a party to the case or his interest in the case, shall be qualified to try any civil case in his court where there is no defense filed in the case, except where either party to the case objects to the related judge.

History. — Ga. L. 1933, p. 187, § 1; Code 1933, § 24-111.

Cross references. — Pleadings and motions generally, § 9-11-7 et seq. Default judgments generally, § 9-11-55.

JUDICIAL DECISIONS

Cited in Georgia Power Co. v. Watts, 184 Ga. 135, 190 S.E. 654 (1937); Calhoun ex rel. Chapman v. Gulf Oil Corp., 189 Ga. 414, 5 S.E.2d 902 (1939).

RESEARCH REFERENCES

ALR. — Affidavit to disqualify judge as contempt, 29 A.L.R. 1273.

Residence or ownership of property in city or other political subdivision which is party to or interested in action as disqualifying judge, 33 A.L.R. 1322.

Necessity as justifying action by judicial or administrative officer otherwise disqualified to act in particular case, 39 A.L.R. 1476.

Constitutionality of statute making mere filing of affidavit of bias or prejudice sufficient to disqualify judge, 46 A.L.R. 1179.

Right of judge not legally disqualified to decline to act in legal proceeding upon personal grounds, 96 A.L.R. 546.

Disqualification of judge who presided at trial or of juror as ground of habeas corpus, 124 A.L.R. 1079.

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Disqualification of judge because of his or another's holding or owning stock in corporation involved in litigation, 25 A.L.R.3d 1331.

Disqualification of original trial judge to sit on retrial after reversal or mistrial, 60 A.L.R.3d 176.

Disqualification of judge, justice of the peace, or similar judicial officer for pecuniary interest in fines, forfeitures, or fees payable by litigants, 72 A.L.R.3d 375.

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Prior representation or activity as prosecuting attorney as disqualifying judge from sitting or acting in criminal case, 85 A.L.R.5th 471.

Disqualification of judge for having decided different case against litigant — state cases, 85 A.L.R.5th 547.

15-1-9.1. Requesting judicial assistance from other courts.

(a) As used in this Code section, the term:

(1) "Administrative judge" means a superior court judge or senior judge of the superior court elected within an administrative district as provided by Code Section 15-5-4.

(2) "Chief judge" means the judge most senior in time of service or, if applicable, the judge to whom the administrative duties of a court have been assigned.

(3) "Judge" includes Justices, judges, senior judges, magistrates, and every other such judicial officer of whatever name existing or created.

(4) "Part-time judge" means a judge who serves on a continuing or periodic basis but who is permitted by law to devote time to some other profession or occupation and whose compensation for that reason is less than that of a full-time judge.

(b)(1) If assistance is needed from a judge outside of the county, a superior court judge of this state or the chief judge of a class of courts other than an appellate court may make a request for judicial assistance in the court served by said requesting judge to the administrative judge of the judicial administrative district in which said requesting judge's court is located, if any of the following circumstances arises:

(A) A judge of the requesting court is disqualified for any cause from presiding in any matter pending before the court;

(B) A judge of the requesting court is unable to preside because of disability, illness, or absence;

(C) A judge of the requesting court is unable to preside because such judge is performing ordered military duty as such term is defined in Code Section 38-2-279; or

(D) A majority of the judges of the requesting court determines that the business of the court requires the temporary assistance of an additional judge or additional judges.

(2) If assistance is needed from a judge from the same county, the chief judge of any court within such county of this state may make a written request for assistance to the chief judge of any other court within such county, a senior judge of the superior court, a retired judge, or a judge emeritus of any court within the county. The request by the chief judge may be made if any of the following circumstances arises:

(A) A judge of the requesting court is disqualified for any cause from presiding in any matter pending before the court;

(B) A judge of the requesting court is unable to preside because of disability, illness, or absence;

(C) A judge of the requesting court is unable to preside because such judge is performing ordered military duty as such term is defined in Code Section 38-2-279;

(D) A majority of the judges of the requesting court determines that the business of the court requires the temporary assistance of an additional judge or additional judges; or

(E) A majority of the judges of the requesting court determines that the business of the court requires the permanent assistance of an additional judge or additional judges. If the requesting court is a state or superior court, the assisting judge or assisting judges may hear and decide matters otherwise in the exclusive jurisdiction of the state or superior court without regard to time, type of case, or limitations contained in the rules of such state or superior

court; provided, however, that a chief magistrate or magistrate may serve as a permanent assisting judge only in counties having a population of 180,000 or more according to the United States decennial census of 1990 or any future such census.

(3) When a petition for habeas corpus is filed challenging for the first time state court proceedings resulting in a death sentence, the clerk of the superior court acting on behalf of the chief judge shall make a request for judicial assistance to the president of The Council of Superior Court Judges of Georgia. Within 30 days of receipt of a request for judicial assistance, the president of The Council of Superior Court Judges of Georgia shall, under guidelines promulgated by the executive committee of said council, assign the case to a judge of a circuit other than the circuit in which the conviction and sentence were imposed.

(4) In petitions under this article challenging for a second or subsequent time a state court proceeding resulting in a death sentence, the chief judge of the court where the petition is filed may make a request for judicial assistance to the president of The Council of Superior Court Judges of Georgia upon certifying that the business of the court will be impaired unless assistance is obtained. Within 30 days of receipt of a request for judicial assistance, the president of The Council of Superior Court Judges of Georgia shall, under guidelines promulgated by the executive committee of said council, assign the case to a judge of a circuit other than the circuit in which the conviction and sentence were imposed.

(c) A chief judge of a requesting court or assisting court shall be presumed to act with the consent of all judges of the court. However, if a judge of a court shall insist, all judges of that court shall vote upon whether to ratify the action taken by the chief judge under this Code section.

(d)(1) If the chief judge is unable because of disability, illness, or absence to make a request for assistance, a majority of the judges of the court may make such a request for him. If a court is served by only one judge who, himself, is unable to make a request because of disability, illness, or absence, or when the judge or judges of the court fail to procure assistance in the event of the absence, illness, disability, or disqualification of one of the judges, and it is satisfactorily made to appear to the Governor that any regular or special term of any court will not be held or continued in session because of such failure to procure assistance, the Governor shall request the administrative judge of the judicial administrative district within which district the court in need of assistance lies to assign another judge to hold the regular or special term of such court. However, no judge shall be named or assigned to hold court when the time fixed by

law for holding the term of court conflicts with the holding of any regular or special term already called by him in his own court.

(2) If a vacancy shall occur in the judicial office for which the Governor has had to request assistance from the administrative judge of the judicial administrative district in a situation wherein the conditions exist as provided in paragraph (1) of this subsection, the Governor may appoint a judge of a court of record as an interim judge to fill temporarily such vacancy until the vacancy is permanently filled as provided by law.

(e) The administrative judge of the district receiving a request for assistance shall designate a judge to preside as requested. The designated judge may consent to preside in the requesting court provided he is otherwise qualified to serve as a judge in the requesting court. The qualifications of residency within a particular political or geographic subdivision of the state shall not apply to a designated judge. The designation shall be made in writing and delivered to the judge requesting assistance.

(f) The written designation shall identify the court in need of assistance, the county where located, the time period covered, the specific case or cases for which assistance is sought if applicable, and the reason that assistance is needed. The written designation shall be filed and recorded on the minutes of the clerk of the court requesting assistance. Any amendment to the designation shall be written, filed, and recorded as is the original designation.

(g) A judge rendering assistance in accordance with this Code section shall discharge all the duties and shall exercise all of the powers and authority of a judge of the court in which he is presiding.

(h) The governing authority responsible for funding the operation of the requesting court shall bear the expenses of the judge rendering assistance in accordance with this Code section, except that such judges presiding in the appellate or superior courts in accordance with this Code section shall be compensated by state funds appropriated or otherwise available for the operation of these courts.

(i) Senior judges of the superior courts, senior judges appointed pursuant to Code Section 15-1-9.3, part-time judges, and retired judges or judges emeritus of the state courts shall receive the amount of compensation and payment for expenses as provided by Code Section 15-1-9.2. All other judges rendering assistance in accordance with this Code section shall be entitled to actual travel and lodging expenses but shall not be entitled to any additional compensation for this assistance.

(j) The court reporter, support personnel, facilities, equipment, and supplies necessary to perform the duties requested shall be provided to

any judge rendering assistance in accordance with this Code section by the requesting court, unless otherwise agreed.

(k) In the event that the judge requesting assistance is a superior court judge other than a chief judge, then a copy of the assignment shall also be filed with the chief judge of the court to be assisted.

(l) As an alternative to the other provisions of this Code section, any judge other than a superior court judge may, under the circumstances described in subparagraph (b)(1)(B) or (b)(1)(C) of this Code section, request judicial assistance from any other judge who is not a superior court judge and who is otherwise qualified; and the judge so requested may agree to so serve. When one judge serves in the court of another pursuant to this subsection, a written designation by the requesting judge shall be filed and recorded on the minutes in the same general manner as provided for in subsection (f) of this Code section and the provisions of subsection (h) of this Code section shall apply with respect to the payment of expenses. The provisions of this subsection are supplementary to the provisions of the other subsections of this Code section.

(m) This Code section shall be supplementary to other laws relating to the authorization of replacement judges.

(n) Notwithstanding the provisions of this Code section, a senior judge shall not be assigned, designated, or preside in any criminal case involving a capital offense for which the death penalty may be imposed once the state has filed a notice of its intention to seek the death penalty; provided, however, that a senior judge may be assigned, designated, or preside in such a case if the judge had previously been assigned or designated and presided over such case while serving as an elected superior court judge prior to attaining senior judge status.

History. — Code 1981, § 15-1-9.1, enacted by Ga. L. 1983, p. 961, § 1; Ga. L. 1984, p. 22, § 15; Ga. L. 1985, p. 245, § 1; Ga. L. 1988, p. 1958, § 1; Ga. L. 1990, p. 8, § 15; Ga. L. 1990, p. 343, § 1; Ga. L. 1990, p. 497, § 1; Ga. L. 1990, p. 920, § 1; Ga. L. 1995, p. 381, § 7; Ga. L. 1996, p. 1231, § 1; Ga. L. 1998, p. 268, § 1; Ga. L. 2000, p. 421, § 1; Ga. L. 2008, p. 540, § 1/SB 11; Ga. L. 2008, p. 846, § 1/HB 1245.

Cross references. — Judges authorized to exercise power outside own court, Ga. Const. 1983, Art. VI, Sec. I, Para. III. Retired state court judges providing judicial assistance, § 15-7-25. Senior judges of superior courts, § 47-8-1 et seq. Requests for assistance of senior judges, Ga. Unif. Sup. Ct. R. 18.2. Request for judicial assignment, Ga. Unif. Sup. Ct. R. 44.2.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1990, paragraph (a)(3), as added by Ga. L. 1990, p. 920, § 1, was redesignated as paragraph (a)(4), since Ga. L. 1990, p. 497, § 1, also added a paragraph (a)(3).

Editor's notes. — Ga. L. 1995, p. 381, § 1, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Death Penalty Habeas Corpus Reform Act of 1995'."

Law reviews. — For note on the 1995 amendment of this Code section, see 12 Ga. St. U.L. Rev. 18 (1995).

JUDICIAL DECISIONS

Analysis

General Consideration
Authority of Court
Duration of Appointment
Other

General Consideration

Code section permits appointment without apparent limitation. — O.C.G.A. § 15-1-9.1 permits the mutual appointment of judges by judges to sit in every judicial office in the state without apparent limitation. Dominguez v. Enterprise Leasing Co., 197 Ga. App. 664, 399 S.E.2d 269 (1990).

Procedure on vacation of judgeship while habeas action pending. — Capital habeas corpus cases assigned to a superior court judge who vacates the judgeship while the habeas action is pending should be returned to the president of the Council of Superior Court Judges for reassignment. Potts v. Zant, 263 Ga. 634, 437 S.E.2d 325 (1993).

Judge appointed to fill vacancy created by resignation. — Judgment entered by a judge, who was appointed by the chief county magistrate judge upon a request for "assistance" made by the superior court chief judge, was not void, even though the judge was appointed to fill a vacancy created by the resignation of a superior court judge, which vacancy should have been filled by the governor. Dominguez v. Enterprise Leasing Co., 197 Ga. App. 664, 399 S.E.2d 269 (1990).

Effect of failure to object to appointment. — If there was no objection to the appointment of a magistrate sitting as a superior court judge prior to the commencement of the trial, the issue of whether the order of appointment complied with the statute was not preserved for appeal. Bennett v. Jones, 218 Ga. App. 714, 463 S.E.2d 158 (1995); Albright v. Peterson, 247 Ga. App. 203, 539 S.E.2d 919 (2000).

Substitution of trial judge after death was proper. — Defendant failed to show any harm resulting from the substitution of the trial judge after the death of the original trial judge, and O.C.G.A. § 15-1-9.1(b)(2)(B) permitted the substitution by necessity. Collins v. State, 326 Ga. App. 181, 756 S.E.2d 269 (2014).

Appellate review precluded. — Defendants' failure to raise defendant's O.C.G.A. § 15-1-9.1 claims prior to the trial precluded appellate review of issues relating to the appointment of the trial judge. Oliver v. State, 273 Ga. App. 754, 615 S.E.2d 846 (2005).

Defendant was not entitled to a new trial merely because the order appointing the senior judge under O.C.G.A. § 15-1-9.1(b)(2) was defective as that issue was raised for the first time in the new trial motion which precluded appellate review. Williams v. State, 290 Ga. App. 829, 661 S.E.2d 563 (2008).

Cited in Hornsby v. Odum, 198 Ga. App. 472, 402 S.E.2d 56 (1991); Moore v. American Suzuki Motor Corp., 203 Ga. App. 189, 416 S.E.2d 807 (1992); Hernandez v. Resolution Trust Corp., 210 Ga. App. 538, 436 S.E.2d 534 (1993); Lucas v. Lucas, 273 Ga. 240, 539 S.E.2d 807 (2000); Smith v. Guest Pond Club, Inc., 277 Ga. 143, 586 S.E.2d 623 (2003); Lewis v. McDougal, 276 Ga. 861, 583 S.E.2d 859 (2003); Fraser v. State, 283 Ga. App. 477, 642 S.E.2d 129 (2007).

Authority of Court

Authority of recused judge to select replacement. — Although a recused state court judge was without authority to select the judge's own replacement, defendants waived any objection to the appointed judge sitting as trial judge since the parties stipulated to the qualification of the specially appointed judge to preside over the trial. State v. Evans, 187 Ga. App. 649, 371 S.E.2d 432 (1988), overruled on other grounds, 268 Ga. 75, 485 S.E.2d 491 (1997).

Senior judge had authority to sign an order to conclude a matter the senior

Authority of Court (Cont'd)

judge had earlier presided over, even though the senior judge had been authorized by the chief judge of the circuit "to preside" on four specific days prior to the date the senior judge signed the order. Morris v. Clark, 189 Ga. App. 228, 375 S.E.2d 616 (1989).

Validity of designation. — O.C.G.A. § 15-1-9.1 does not require that the designation of a judge be made by the chief judge of the requesting court and the fact that a designation was not filed in the court minutes until the day after commencement of a trial did not violate the authority of the designated judge such that the entire proceeding would be rendered void. Marsh v. Resolution Trust Corp., 211 Ga. App. 216, 439 S.E.2d 75 (1993).

Order designating magistrate judge to assist the Superior Court of Fulton County was valid since: (1) the order explicitly provided the length of service; (2) the order designated the scope of the magistrate judge's duties such as assisting with the routine matters that would normally appear before the presiding judge, and other matters arising therefrom; and (3) the order cloaked the magistrate judge with all the authority and powers exercised by the Fulton County Superior Court judges regularly presiding in the Atlanta Judicial Circuit. Giles v. State, 257 Ga. App. 65, 570 S.E.2d 375 (2002).

Magistrate presiding over petitioner's trial for rape and kidnapping with bodily harm was not tainted by fact that the trial court designated the magistrate to preside over the trial; the designation involved an intra-county designation and intra-county designations were not required to comply with O.C.G.A. § 15-1-9.1(f) in order for the magistrate to validly preside over a trial. Lewis v. McDougal, 276 Ga. 861, 583 S.E.2d 859 (2003).

Georgia Supreme Court's overruling of Hicks v. State, 231 Ga. App. 552, 499 S.E.2d 341 (1998) to the extent the decision held that an intra-county designation order had to comply with O.C.G.A. § 15-1-9.1(f), the Georgia appellate courts' rejection of the contention that the failure to file the designation on the minutes of the court prior to the commencement of the proceedings voided the proceedings, and defendant's failure to challenge the designation of the trial court to preside over defendant's trial until after the trial occurred meant that the validity of the trial court's presiding over the trial could not be reviewed on appeal, and, thus, could not be a ground for reversal. Cammer v. State, 263 Ga. App. 277, 587 S.E.2d 656 (2003).

There was no error in a magistrate presiding over the defendant's trial as O.C.G.A. § 15-1-9.1(f) applied only when a request for magistrate judges to assist trial court judges was for a judge outside the county. Salgado v. State, 268 Ga. App. 18, 601 S.E.2d 417 (2004).

O.C.G.A. § 15-1-9.1(b)(2) requires only that one judge of the requesting court be unable to preside over the case because the plaintiff presented no evidence to show that this requirement was not met, the judge held proper jurisdiction to preside over the plaintiff's case and was immune from the plaintiff's lawsuit. Bush v. Reeves, No. 1:05-CV-1315-TWT, 2005 U.S. Dist. LEXIS 38050 (N.D. Ga. Dec. 22, 2005).

Authority of superior court judge to reconsider and revoke order of designated judge. — Superior court judge had the authority to reconsider and revoke a pretrial bond that was set by another judge who was presiding in the superior court judge's place by designation; the designated judge should not have granted the bond to the defendant after expressly finding that the defendant was likely to intimidate witnesses or otherwise interfere with the administration of justice. Rooney v. State, 217 Ga. App. 850, 459 S.E.2d 601 (1995).

Magistrate judge had authority to issue permanent restraining order. — Defendant's stalking convictions, based on violations of a permanent restraining order (PRO), were not invalid on grounds the PRO was issued by a magistrate judge, as the chief judge of superior court, as authorized by O.C.G.A. § 15-1-9.1(b)(2), had requested magistrates to assist the superior court by hearing petitions under the Georgia Stalking Statute, O.C.G.A. § 16-5-94. Seibert v. State, 294 Ga. App. 202, 670 S.E.2d 109 (2008).

Magistrate had authority to accept guilty plea, but superior court judge could set aside sentence. — Although a magistrate who was appointed to preside at a county drug court pursuant to O.C.G.A. § 15-1-9.1(b)(2) had authority to accept a defendant's guilty plea to marijuana possession, the superior court judge had the power to set aside the sentence, which was not reduced to writing, pursuant to O.C.G.A. § 17-7-93(b), and give notice of intent to impose a harsher sentence. Surh v. State, 303 Ga. App. 380, 693 S.E.2d 501, cert. denied, No. S10C1274, 2010 Ga. LEXIS 705 (Ga. 2010).

Appointment not improper. — Because defendant's claim that a trial judge was not properly appointed under O.C.G.A. § 15-1-9.1(b)(2) was first raised on a motion for new trial, the motion was thus untimely; in any event, the judge's previous appointments by separate orders to preside over other superior court matters for specified periods of time did not render the judge a de facto superior court judge in violation of the constitutional requirement that all superior court judges be elected, Ga. Const. 1983, Art. VI, Sec. VII, Para. I, and thus defendant failed to establish that counsel's failure to object to the allegedly improper appointment of the judge was ineffective assistance. Moreland v. State, 279 Ga. 641, 619 S.E.2d 626 (2005).

It was proper under O.C.G.A. § 15-1-9.1(b)(2) for the chief judge of the magistrate court to appoint one of the magistrates to hear superior court cases after the chief judge of the superior court made a written request for judicial assistance. Dorsey v. State, 291 Ga. App. 706, 662 S.E.2d 800 (2008).

Duration of Appointment

Request for assistance was temporary. — Trial court erred in ruling on the constitutionality of O.C.G.A. § 15-1-9.1(b)(2)(D) as the intra-county request for judicial assistance was for temporary assistance pursuant to § 15-1-9.1(b)(2)(C) since the judicial order setting forth the request and response for judicial assistance was of limited duration and was subject to termination at any time, upon receipt of 30 days' notice from the superior, state, or juvenile court announcing that court's withdrawal. Earl v. Mills, 278 Ga. 128, 598 S.E.2d 480 (2004).

Indefinite appointment of assistant judges or district attorney. — State court judge does not have the authority to order the indefinite appointment of assistant judges or solicitors (now district attorneys) whose positions are not authorized by local law or to finance those positions through a court-created fund comprised of moneys withheld from the county treasury. Cramer v. Spalding County, 261 Ga. 570, 409 S.E.2d 30 (1991).

Order appointing judge held invalid. — Trial court correctly granted the defendant's motion to suppress evidence seized from the defendant's computer because the order appointing a visiting judge to sign the warrant for the search failed to specify either the scope or length of the assisting judge's service, violating the standards required under O.C.G.A. § 15-1-9.1(f), and rendering the warrant null. State v. Kelley, 302 Ga. App. 850, 691 S.E.2d 890 (2010).

Request for intra-county judicial assistance not permanent. — Superior, state, and juvenile courts did not take improper permanent action by renewing an order requesting intra-county judicial assistance, which made the order span two terms of court. Earl v. Mills, 278 Ga. 128, 598 S.E.2d 480 (2004).

Other

Separate court not created. — Intra-county request for judicial assistance under O.C.G.A. § 15-1-9.1(b)(2)(C) did not create a separate court, but was a constitutionally-permitted request for intra-county judicial assistance since the request and response set out the matters to be handled by the two juvenile court judges, who had agreed to assist the superior court; accordingly, the intra-county request and response were neither an unconstitutional creation of a class of court in violation of Ga. Const. 1983, Art. VI, Sec. I, Para. I, nor an unconstitutional usurpation of legislative authority by members of the judiciary in violation of Ga. Const. 1983, Art. VI, Sec. I, Para. VII. Earl v. Mills, 278 Ga. 128, 598 S.E.2d 480 (2004).

OPINIONS OF THE ATTORNEY GENERAL

Part-time judges of magistrate court and part-time referees of juvenile court. — Both part-time judges of the magistrate court and part-time referees of the juvenile court may be assigned to hear cases in the superior court so long as they meet the qualifications of judges of the superior court as provided in O.C.G.A. § 15-6-4. 1989 Op. Att'y Gen. No. U89-7.

"Judge" does not include administrative law judges. — Term "judge" as used in O.C.G.A. § 15-1-9.1(a)(3) does not include administrative law judges or other quasi-judicial officers not within the judicial branch of government. 1992 Op. Att'y Gen. No. U92-16.

Assistance to state courts by replacement probate judge. — Replacement probate judge appointed in good faith pursuant to O.C.G.A. § 15-9-13(a) may provide assistance to state courts so long as that individual satisfies the qualifications of judges of the state courts under O.C.G.A. § 15-7-21(a)(1), and the request for assistance complies with the terms specified by subsection (f) of O.C.G.A. § 15-1-9.1. 1994 Op. Att'y Gen. No. U94-12.

Appointment of superior court judge on retirement. — Senior superior court judge, who is not being appointed in that senior judge capacity pursuant to O.C.G.A. § 15-1-9.1, may be appointed to serve as a part-time state-funded juvenile court judge and, so long as the hours worked annually do not exceed 1040 hours, there is no effect on the senior judge's retirement. 2000 Op. Atty. Gen. No. U2000-9.

Authority to set and amend bonds. — Once the clerk of the superior court properly files an indictment or once a valid accusation is entered, the superior court has exclusive jurisdiction over the case, including all bond issues, unless the court invokes the court's authority to delegate jurisdiction to the magistrate court under subsection (e) of O.C.G.A. § 15-1-9.1 or O.C.G.A. § 17-6-1. 1997 Op. Att'y Gen. No. 97-19.

15-1-9.2. Senior judge of superior courts.

(a) The office of senior judge of the superior courts is created, and judges of the superior courts or former judges of the superior courts may become senior judges as follows:

(1) Any judge of the superior courts who retires pursuant to the provisions of Chapter 8 or Chapter 23 of Title 47 and any such judge who receives a disability retirement benefit under such chapter may become a senior judge beginning on the effective date of the judge's retirement; and

(2) Any judge of the superior courts, whether or not said judge is a member of the retirement system created by Chapter 23 of Title 47, who ceases holding office as a judge of the superior courts and who has at least ten years of service as a judge of the superior courts at the time of ceasing to hold office and who is not eligible for appointment to the office of senior judge under any other law of this state may become a senior judge.

(a.1) Notwithstanding the provisions of subsection (a) of this Code section, any Justice of the Supreme Court of Georgia, Judge of the

Court of Appeals, superior court judge, state court judge, magistrate court judge, or juvenile court judge who ceases holding office as a judge and who has a total of ten years of service in any combination of such offices or a total of nine years of service in any combination of such offices plus at least one year of service as chairperson of the State Board of Workers' Compensation may become a senior judge. Said combination must include at least five years' service as a Justice of the Supreme Court, Judge of the Court of Appeals, or judge of the superior court or at least five years as total served in combination as Justice of the Supreme Court, Judge of the Court of Appeals, or judge of the superior court.

(a.2) Senior judge status as provided in this Code section shall be acquired by a qualified former judge's applying to the Governor for appointment as senior judge. The Governor shall appoint each qualified applicant as a senior judge.

(b) The chief judge of any appellate or superior court of this state may make a written request for assistance to a senior judge. The request by the chief judge may be made if one of the following circumstances arise:

(1) A judge of the requesting court is disqualified for any cause from presiding in any matter pending before the court;

(2) A judge of the requesting court is unable to preside because of disability, illness, or absence; or

(3) A majority of the judges of the requesting court determines that the business of the court requires the temporary assistance of an additional judge or additional judges as provided for in Code Section 15-1-9.1.

(c) An active judge may call upon a senior judge to serve in an emergency or when the volume of cases or other unusual circumstances cause such service to be necessary in order to provide for the speedy and efficient disposition of the business of the circuit.

(d)(1) Senior judges serving as judges of an appellate or superior court under this Code section or any other provision of law shall receive compensation from state funds for each day of service, in the amount of the annual state salary of a judge of the applicable court, divided by 235. In addition to such compensation, such senior judges shall receive their actual expenses or, at the judge's option, in the event of service outside the county of the judge's residence, the same per diem expense authorized by law for members of the General Assembly and shall receive mileage at the same rate as other state employees for such services. Such compensation, expenses, and mileage shall be paid from state funds appropriated or otherwise

available for the operation of the appellate or superior courts, upon a certificate by the senior judge as to the number of days served or the expenses and mileage. Such compensation shall not affect, diminish, or otherwise impair the payment or receipt of any retirement or pension benefits, when applicable, of such judge.

(2) Senior judges serving as judges of any court other than an appellate or superior court under this Code section or any other provision of law shall receive compensation for each day of service, in the amount of the annual salary of a judge of the applicable court, divided by 235. In addition to such compensation, such senior judges shall receive their actual expenses or, at the judge's option, in the event of service outside the county of the judge's residence, the same per diem expense authorized by law for members of the General Assembly and shall receive mileage at the same rate as state employees for such services. Such compensation, expenses, and mileage shall be paid from funds appropriated or otherwise available for the operation of the applicable court, upon a certificate by the senior judge as to the number of days served or the expenses and mileage. Such compensation shall not affect, diminish, or otherwise impair the payment or receipt of any retirement or pension benefits, when applicable, of such judge.

(e) Notwithstanding the provisions of this Code section, a senior judge shall not be assigned, designated, or preside in any criminal case involving a capital offense for which the death penalty may be imposed once the state has filed a notice of its intention to seek the death penalty; provided, however, that a senior judge may be assigned, designated, or preside in such a case if the judge had previously been assigned or designated and presided over such case while serving as an elected superior court judge prior to attaining senior judge status.

History. — Code 1981, § 15-1-9.2, enacted by Ga. L. 1989, p. 832, § 1; Ga. L. 1995, p. 916, § 1; Ga. L. 1998, p. 268, § 2; Ga. L. 1998, p. 513, § 3; Ga. L. 1998, p. 1666, § 1; Ga. L. 1999, p. 81, § 15; Ga. L. 2000, p. 421, § 2; Ga. L. 2001, p. 1102, § 1; Ga. L. 2008, p. 846, § 2/HB 1245.

Code Commission notes. — In 1998, Ga. L. 1998, p. 513, § 3 and Ga. L. 1998, p. 1666, § 1 both amended subsection (d). Pursuant to Code Section 28-9-5, subsection (d) is set out as amended by Ga. L. 1998, p. 1666, § 1.

JUDICIAL DECISIONS

Constitutionality. — Even though the position of senior judge is not an elected position, Ga. Const. 1983, Art. VI, Sec. I, Para. III, allows a senior judge to exercise judicial power in the superior courts when the assistance of a senior judge is necessary. O.C.G.A. §§ 15-1-9.2 and 47-8-61 are simply the statutory enactments pursuant to the constitution. Smith v. Langford, 271 Ga. 221, 518 S.E.2d 884 (1999).

There is no merit to the argument that the authorization for the service of senior judges conflicts with Ga. Const. 1983, Art. VI, Sec. I, Para. I, vesting judicial power in designated courts, because creation of

the position of senior judge does not establish a separate judicial forum. Smith v. Langford, 271 Ga. 221, 518 S.E.2d 884 (1999).

Waiver of challenge to senior judge. — Defendant's claim that defendant's conviction was void because the senior judge who presided over the trial was not properly appointed pursuant to the requirements of O.C.G.A. § 15-1-9.2 had to be rejected as defendant's claim that the appointment was not properly made was waived by defendant's failure to raise the claim until defendant filed defendant's motion for a new trial. Hurst v. State, 260 Ga. App. 708, 580 S.E.2d 666 (2003).

Claim of insufficiency of judicial appointment untimely. — Defendant's claim that defendant's convictions were void because the order appointing the senior judge who presided over defendant's trial was insufficient under O.C.G.A § 15-1-9.2(b) was not asserted until the motion for new trial and was therefore untimely. Strozier v. State, 277 Ga. 78, 586 S.E.2d 309 (2003).

15-1-9.3. Senior judge of state court, probate court, or juvenile court; capital cases.

(a)(1) Any state court judge or juvenile court judge who retires pursuant to the provisions of Chapter 23 of Title 47 after having served for ten or more years in any combination of service as a judge of a state court or juvenile court may be appointed a senior judge of the type of court from which the judge retired.

(2) Any state court or juvenile court judge, whether or not said judge is a member of the retirement fund created by Chapter 23 of Title 47, who ceases holding office as a judge and who has at least ten years in any combination of service as judge of a state court or juvenile court at the time of ceasing to hold office and who is not eligible for appointment to the office of senior judge under any other law of this state may be appointed as a senior judge as provided in this Code section.

(3) No judge of a state court or juvenile court who retires because of disability pursuant to the provisions of Chapter 23 of Title 47 shall be eligible for appointment as a senior judge pursuant to the provisions of this Code section.

(4) In this paragraph, "probate court" has the same meaning as set out in paragraph (2) of Code Section 15-9-120. Any judge of the probate court who ceases holding office as a judge of the probate court after serving as such for at least ten years and who has not been appointed to the office of senior judge under any other law of this state may be appointed as a senior judge as provided in this Code section.

(b) Upon becoming eligible for appointment pursuant to the provisions of this Code section, a judge who ceases to hold office may become a senior judge and in that capacity may be called upon to serve as a justice or judge in any court of this state.

(c) Senior judge status shall be acquired by a qualified former judge's applying to the Governor for appointment as senior judge. The Governor shall appoint each qualified applicant as a senior judge.

(d) The judge of any court of this state may make a written request for assistance to a senior judge. The request by the judge may be made if one of the following circumstances arise:

(1) A judge of the requesting court is disqualified for any cause from presiding in any matter pending before the court;

(2) A judge of the requesting court is unable to preside because of disability, illness, or absence; or

(3) A majority of the judges of the requesting court determines that the business of the court requires the temporary assistance of an additional judge or additional judges as provided for in Code Section 15-1-9.1.

(e) An active judge may call upon a senior judge to serve in an emergency or when the volume of cases or other unusual circumstances cause such service to be necessary in order to provide for the timely and efficient disposition of the business of the court.

(f) A senior judge shall receive compensation and expenses as provided in subsection (d) of Code Section 15-1-9.2.

(g) Notwithstanding the provisions of this Code section, a senior judge shall not be assigned, designated, or preside in any criminal case involving a capital offense for which the death penalty may be imposed once the state has filed a notice of its intention to seek the death penalty; provided, however, that a senior judge may be assigned, designated, or preside in such a case if the judge had previously been assigned or designated and presided over such case while serving as an elected superior court judge prior to attaining senior judge status.

History. — Code 1981, § 15-1-9.3, enacted by Ga. L. 1992, p. 1112, § 4; Ga. L. 1998, p. 513, § 3; Ga. L. 2000, p. 421, § 3; Ga. L. 2000, p. 838, § 1; Ga. L. 2008, p. 846, § 3/HB 1245.

RESEARCH REFERENCES

Am. Jur. 2d. — 46 Am. Jur. 2d, Judges, §§ 15, 55 et seq.

15-1-10. Removal of court records; storage.

(a) No records or papers of any court shall be removed out of the county, except in cases of invasion whereby the same may be endangered, by order of the court, or as otherwise provided in this Code section.

(b) Notwithstanding any other provision of this Code section, such records may be stored in accordance with the provisions of subsection (b) of Code Section 15-6-86 or subsection (c) of this Code section.

(c) With the prior written consent of the governing authority of the county or municipality and the prior written consent of the chief judge, judge of the probate court, or chief magistrate of the affected court, the clerk of each superior court, state court, probate court, magistrate court, juvenile court, or municipal court in this state is authorized, but not required, to create and maintain digital copies of records, pleadings, orders, writs, process, and other documents submitted to or issued by the court in criminal, quasi-criminal, juvenile, or civil proceedings or in any proceedings involving the enforcement of ordinances of local governments. All digital copies created pursuant to this subsection shall be accurate copies of the original documents and shall be stored and indexed in such manner as to be readily retrievable in the office of the clerk during normal business hours. It shall be the duty of the clerk to provide and maintain software and computers, readers, printers, and other necessary equipment in sufficient numbers to permit the retrieval, duplication, and printing of such digitally stored documents in a timely fashion when copies are requested. A copy of such digitally stored document retrieved by the clerk shall be admissible in all courts in the same manner as the original document. If a backup copy is created pursuant to the process prescribed by subsections (b) and (c) of Code Section 15-6-62, the clerk is authorized to destroy the original document. This subsection shall not apply to documents or records which have been ordered sealed by the court nor to documents which are placed in evidence in a proceeding. The costs of creating and storing digital copies of documents and providing the necessary software and equipment to retrieve and reproduce such documents shall be paid from funds available for the operation of the court. The provisions of this subsection shall constitute an additional and alternative method of records management and shall not supersede or repeal Code Section 15-6-62, 15-6-62.1, 15-6-86, or 15-6-87.

History. — Orig. Code 1863, § 201; Code 1868, § 195; Code 1873, § 207; Code 1882, § 207; Civil Code 1895, § 4048; Civil Code 1910, § 4645; Code 1933, § 24-108; Ga. L. 1997, p. 925, § 1; Ga. L. 2005, p. 1505, § 1/HB 254; Ga. L. 2012, p. 173, § 2-2/HB 665.

JUDICIAL DECISIONS

Carrying of original papers and records from one court to another should be condemned and checked by the judges of the superior court. Rogers v. Tillman, 72 Ga. 479 (1884).

RESEARCH REFERENCES

Am. Jur. 2d. — 20 Am. Jur. 2d, Courts, § 22 et seq.
C.J.S. — 21 C.J.S., Courts, § 245.

15-1-10.1. Standards in determining grant of requests for televising, videotaping, or motion picture filming of judicial proceedings.

(a) It is declared to be the purpose and intent of the General Assembly that certain standards be considered by the courts in determining whether to grant requests for the televising, videotaping, or motion picture filming of judicial proceedings. Such standards are intended to provide an evaluation of the impact on the public interest and the rights of the parties in open judicial proceedings, the impact upon the integrity and dignity of the court, and whether the proposed activity would contribute to the enhancement of or detract from the ends of justice.

(b) In considering a request for the televising, videotaping, or motion picture filming of judicial proceedings, the court shall consider the following factors in determining whether to grant such request:

(1) The nature of the particular proceeding at issue;

(2) The consent or objection of the parties or witnesses whose testimony will be presented in the proceedings;

(3) Whether the proposed coverage will promote increased public access to the courts and openness of judicial proceedings;

(4) The impact upon the integrity and dignity of the court;

(5) The impact upon the administration of the court;

(6) The impact upon due process and the truth finding function of the judicial proceeding;

(7) Whether the proposed coverage would contribute to the enhancement of or detract from the ends of justice;

(8) Any special circumstances of the parties, victims, witnesses, or other participants such as the need to protect children or factors involving the safety of participants in the judicial proceeding; and

(9) Any other factors which the court may determine to be important under the circumstances of the case.

(c) The court may hear from the parties, witnesses, or other interested persons and from the person or entity requesting coverage during the court's consideration of the factors set forth in this Code section.

(d) This Code section shall not apply to the use of electronic or photographic means for the presentation of evidence or the perpetuation of a record.

(e) The court in its discretion may grant requests made under this Code section for all or portions of judicial proceedings.

History. — Code 1981, § 15-1-10.1, enacted by Ga. L. 1996, p. 734, § 2.

Cross references. — Freedom of speech and press, U.S. Const., amend. 1 and Ga. Const. 1983, Art. I, Sec. I, Para V. Use of electronic devices in courtrooms and recording of judicial proceedings, Unif. Sup. Ct. Rule 22.

Editor's notes. — Ga. L. 1996, p. 734, § 2, not codified by the General Assembly, provides that the amendment to this Code section is applicable to all judicial proceedings held on or after July 1, 1996.

Law reviews. — For article, "The Case Against Closure: Open Courtrooms After Presley v. Georgia," see 16 (No. 2) Ga. St. B. J. 10 (2010).

JUDICIAL DECISIONS

Discretion of court. — Decision whether electronic media will be allowed in the courtroom is not governed by the principle that there must be "clear and convincing proof" that closure is necessary to prevent a "clear and present danger" to the right of a fair trial, rather, the decision is a question for the trial court's discretion. WALB-TV, Inc. v. Gibson, 269 Ga. 564, 501 S.E.2d 821 (1998).

In ruling on a request for electronic and photographic coverage of judicial proceedings, a trial court should bear in mind Georgia's policy favoring open judicial proceedings, and, although the decision whether to allow electronic and photographic coverage of a trial is within the discretion of the trial court, if a trial court denies such coverage, there must be a factual basis in the record that supports the denial. Morris Communs., LLC v. Griffin, 279 Ga. 735, 620 S.E.2d 800 (2005).

Although O.C.G.A. § 15-1-10.1(b)(2) permits a trial court to consider the objection of the parties or witnesses whose testimony will be presented in the proceedings, when considering a request for electronic media coverage of a trial, a party's objection must set forth an adequate ground for denying the request and the record must contain some factual basis supporting that ground. Morris Communs., LLC v. Griffin, 279 Ga. 735, 620 S.E.2d 800 (2005).

Despite finding that the presence of cameras in the courtroom during a pending criminal trial would be harmful to the rights of the defendant, the state, and the potential jurors, given the small and limited space in the courtroom, because the superior court failed to provide a factual basis for denying a newspaper's request to record those proceedings, the court abused the court's discretion, warranting reversal of the denial. Savannah Morning News v. Jeffcoat, 280 Ga. App. 634, 634 S.E.2d 830 (2006).

Trial court erred in excluding a camera and denying a purported student's request to make video recordings of the criminal calendar proceedings because the trial court erred in the court's application of O.C.G.A. § 15-1-10.1 and did not properly consider the factors set forth therein. McLaurin v. Ott, 327 Ga. App. 488, 759 S.E.2d 567 (2014).

Consent of parties or witnesses. — Consent of the parties is not a prerequisite to the trial court's decision with regard to the televising of proceedings; O.C.G.A. § 15-1-10.1(b)(2) provides that the consent or objection of the parties or witnesses is but one factor for the trial court to consider in making the court's discretionary determination. Smith v. Gwinnett County, 270 Ga. 424, 510 S.E.2d 525, cert. denied, 527 U.S. 1003, 119 S. Ct. 2338, 144 L. Ed. 2d 236 (1999).

Findings sufficient to support denial of coverage. — Because the murder

trials of two defendants were to be conducted separately, denial of coverage of the first trial was justified based on findings that due process rights would be jeopardized because testimony at the first trial would be similar to that introduced at the later trial and could create a tainted jury pool for the second trial. WALB-TV, Inc. v. Gibson, 269 Ga. 564, 501 S.E.2d 821 (1998).

O.C.G.A. § 15-1-10.1 does not specifically list jurors' desire for privacy as a factor to be considered in ruling on a request for photographic and electronic coverage of a trial, but it does authorize a trial court to consider any special circumstances of the participants in the proceedings, including concerns regarding the safety of the participants, and to consider any other factors which the court may determine to be important under the circumstances of the case. Morris Communs., LLC v. Griffin, 279 Ga. 735, 620 S.E.2d 800 (2005).

Findings insufficient to support denial of coverage. — Since the murder trials of two defendants were to be conducted separately, denial of coverage of the second trial was not justified based on due process concerns and the distraction posed by the camera's presence. WALB-TV, Inc. v. Gibson, 269 Ga. 564, 501 S.E.2d 821 (1998).

When a newspaper moved for still camera coverage of a murder trial, it was error, under Ga. Unif. Super. Ct. R. 22 and O.C.G.A. § 15-1-10.1, to deny the motion because no facts supported the trial court's findings that the motion should be denied because: (1) defendant objected, and to insure due process and a fair trial; (2) jurors wanted to protect their privacy; (3) a camera would not increase the openness of the proceedings; and (4) a camera would impact on the court's administration and detract from the ends of justice, given the courtroom's small size. Morris Communs., LLC v. Griffin, 279 Ga. 735, 620 S.E.2d 800 (2005).

Cameras allowed in courtroom. — Although the defendant's allegations that the defendant was harassed and abused by officers at the jail where the defendant was held were troubling if true, the defendant failed to demonstrate how such actions, which (even if true) occurred outside the courtroom, impacted upon the due process and the truth-finding function of the judicial proceedings; thus, the trial court did not abuse the court's discretion in allowing cameras in the courtroom. Roberts v. State, 344 Ga. App. 324, 810 S.E.2d 169 (2018).

15-1-11. Attendance of judges and court personnel at educational programs.

(a) Judges of the courts of this state, the clerks thereof, and the prosecuting officials and public defenders, both full-time and part-time, attached thereto are authorized to attend institutes, seminars, conferences, and other programs of an educational nature in order to become better informed and better qualified relative to the duties of their offices and the more effective administration thereof.

(b) The expense incurred in connection with the attendance at such institutes, seminars, conferences, and other programs shall be a proper expenditure of public funds. Any such person, prior to attendance at any of the above, must obtain approval therefor from the governing authority of any county or municipality located in whole or in part within the jurisdiction of the court to which the applicant is attached. When approval has been received, the expense of attendance shall be paid out of the public funds of such county or municipality or out of the funds provided for the operation of the court involved, upon the proper itemized expense voucher's being submitted.

(c) This Code section shall be cumulative of other provisions of law and shall not be construed as repealing, restricting, or limiting alternative provisions for accomplishing the same purpose.

History. — Code 1933, § 24-113, enacted by Ga. L. 1968, p. 1191, § 1; Ga. L. 1990, p. 8, § 15.

Cross references. — Continuing judicial education, Uniform State Court Rules, Rule 43.

JUDICIAL DECISIONS

Cited in American Fed'n of State, County & Mun. Employees v. Rowe, 121 Ga. App. 99, 172 S.E.2d 866 (1970); Thompson v. Clarkson Power Flow, Inc., 149 Ga. App. 284, 254 S.E.2d 401 (1979).

OPINIONS OF THE ATTORNEY GENERAL

Legislature intended for governing authority to bear expense. — Legislature, in granting to counties and municipalities sole authority to approve such attendance, intended for the approving county or municipal authority to bear the expense incurred in connection with such attendance; the judge should seek reimbursement from the governing authority which approved the judge's attendance. 1969 Op. Att'y Gen. No. 69-354.

Georgia Justice (Magistrate) Courts Training Council seminars. — Former Code 1933, § 24-113 (see now O.C.G.A. § 15-1-11) was available to cities and counties who wish to reimburse justices of the peace (now magistrates) for expenses incurred in attending Georgia Justice (Magistrate) Courts Training Council seminars pursuant to Ga. L. 1978, p. 894. 1980 Op. Att'y Gen. No. U80-14.

15-1-12. Compensation of probate court judges and superior court clerks for certain services.

(a) The judges of the probate court who by law are vested with the management of the county business and for whom no compensation is provided and the clerks of the superior courts, for public services in relation to which no compensation is provided by law, shall be compensated in accordance with this Code section.

(b) Such officers shall state their respective claims in writing and make an affidavit to the correctness and justice thereof. After the services are rendered, the claims so made out and verified shall be submitted to the grand juries of their respective counties at any regular term at which a grand jury is impaneled, provided that, if the statement is not submitted at that term or at the next succeeding term at which a grand jury is impaneled, such claim for services shall be barred. The grand juries may in their discretion require other proof of the justness and correctness of such claims and, when satisfied that the claims are just and correct, may allow the sum claimed or so much thereof as they may deem right and proper. When allowed, the judge of the probate court of the county or other authority levying county taxes shall assess so much with the other county taxes as will pay the same, which, when

collected and paid over to the county treasurer of such county, shall be paid to the parties without further order, he taking a proper receipt therefor.

(c) The compensation provided for in this Code section shall be in full compensation of such officers for such services.

History. — Ga. L. 1871-72, p. 51, §§ 1, 2; Code 1873, § 3697; Ga. L. 1880-81, p. 92, §§ 1, 2; Code 1882, § 3697; Civil Code 1895, § 5402; Civil Code 1910, § 6001; Ga. L. 1929, p. 169, § 1; Code 1933, § 24-110; Ga. L. 1999, p. 81, § 15.

Cross references. — Minimum annual salary for clerks of superior court, § 15-6-88. Minimum salaries for judges of probate court, § 15-9-63.

JUDICIAL DECISIONS

Compensation not charge on county funds. — This section requires the imposition of a tax to pay claims for extra compensation and does not render them a charge upon the general funds of the county. Lumpkin County v. Williams, 94 Ga. 657, 21 S.E. 849 (1894).

Local law not in conflict. — Local Act of February 21, 1873, imposing upon the Board of County Commissioners of Franklin County the duty "to audit and allow all claims against the county for extra service rendered by any county officer," was not repealed by the general Act of 1881 contained in this section. Franklin County v. Crow, 128 Ga. 458, 57 S.E. 784 (1907).

Claim must be for public services. — If it does not appear that claims are for public services, the claims will not be allowed. Greer v. Turner County, 138 Ga. 558, 75 S.E. 578 (1912).

Cited in White County v. Bell, 98 Ga. 400, 25 S.E. 558 (1896).

OPINIONS OF THE ATTORNEY GENERAL

Compensation of probate judge if no appropriation made. — Ordinary (now probate judge) was not authorized to assess the costs incurred in examining the nomination petition against the candidate submitting the petition; if no appropriations are made to cover such expenses, the ordinary (now probate judge) may be compensated for the ordinary's (now probate judge) services pursuant to the method prescribed in this section. 1968 Op. Att'y Gen. No. 68-233.

Payment of sheriff for attending and assisting with inquest. — If there was no law which authorizes the payment or fixed the fee for a sheriff attending and assisting in the holding of an inquest, the sheriff could be paid under this section. 1960-61 Op. Att'y Gen. p. 99.

Sheriff and justice of peace (now magistrate) are entitled to certain fees in criminal cases whether or not cases are nolle prossed. 1962 Op. Att'y Gen. p. 126.

RESEARCH REFERENCES

Am. Jur. 2d. — 46 Am. Jur. 2d, Judges, § 50 et seq.

C.J.S. — 21 C.J.S., Courts, § 121 et seq. 48A C.J.S., Judges, § 84.

15-1-13. Prior removal from judicial office as affecting qualification for judicial office.

(a) In addition to any other qualification for judicial office, if a person has been removed from any judicial office upon order of the Supreme Court after review, that person shall not be eligible to be elected or appointed to any judicial office in this state until seven years have elapsed from the time of such removal.

(b) This Code section shall not apply with respect to any removal from office in which the order of the Supreme Court was entered prior to April 9, 1996.

History. — Code 1981, § 15-1-13, enacted by Ga. L. 1996, p. 747, § 1.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1996, "April 9, 1996" was substituted for "the effective date of this Code section" at the end of subsection (b).

Both Ga. L. 1996, p. 747 and Ga. L. 1996, p. 748 enacted a Code Section 15-1-13. Pursuant to Code Section 28-9-5, in 1996, Code Section 15-1-13 as enacted by Ga. L. 1996, p. 748, was redesignated as Code Section 15-13-36.

15-1-14. Rules and requirements for foreign language and hearing impaired interpreters.

(a) The Supreme Court of Georgia shall establish rules and requirements for foreign language interpreters and interpreters for the hearing impaired utilized in the courts of this state and provide for the administration and enforcement of such rules. The Administrative Office of the Courts shall administer such rules, requirements, and enforcement.

(b) The Supreme Court may establish fees to be paid by persons desiring certification to cover the costs of certifying, regulating, and training court qualified interpreters.

(c) The Supreme Court may enter into and participate in the Consortium for Language Access in the Courts and in other similar multistate agreements and cooperative programs for the training, testing, and certification of interpreters. Such consortia, multistate agreements, and cooperative programs may:

(1) Utilize the auspices and services of the National Center for State Courts;

(2) Provide for the common development, sharing, and distribution of tests, standards, educational materials, and programs and related work, and further provide for the copyright and other protection of intellectual property;

(3) Charge fees for membership and other services and retain funds;

(4) Provide for governance and management; and

(5) Perform such other services and functions as may be reasonably related to such purposes and functions.

History. — Code 1981, § 15-1-14, enacted by Ga. L. 2000, p. 838, § 2; Ga. L. 2011, p. 99, § 20/HB 24.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2000 and in 2001, "multistate" was substituted for "multi-state" twice in the introductory paragraph (now subsection (c)).

Editor's notes. — Ga. L. 2011, p. 99, § 101/HB 24, not codified by the General Assembly, provides, in part, that this Act shall apply to any motion made or hearing or trial commenced on or after January 1, 2013.

Law reviews. — For article, "Dancing with the Big Boys: Georgia Adopts (most of) the Federal Rules of Evidence," see 63 Mercer L. Rev. 1 (2011). For article, "Evidence," see 27 Ga. St. U.L. Rev. 1 (2011). For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 1 (2011).

15-1-15. Drug court divisions.

(a)(1) Any court that has jurisdiction over any criminal case which arises from the use, sale, possession, delivery, distribution, purchase, or manufacture of a controlled substance, noncontrolled substance, dangerous drug, or other drug may establish a drug court division to provide an alternative to the traditional judicial system for disposition of such cases.

(2) In any case which arises from the use, addiction, dependency, sale, possession, delivery, distribution, purchase, or manufacture of a controlled substance, noncontrolled substance, dangerous drug, or other drug or is ancillary to such conduct and the defendant meets the eligibility criteria for the drug court division, the court may assign the case to the drug court division:

(A) Prior to the entry of the sentence, if the prosecuting attorney consents;

(B) As part of a sentence in a case; or

(C) Upon consideration of a petition to revoke probation.

(3) Each drug court division shall establish a planning group to develop a work plan. The planning group shall include the judges, prosecuting attorneys, public defenders, community supervision officers, and persons having expertise in the field of substance abuse. The work plan shall address the operational, coordination, resource, information management, and evaluation needs of the drug court division. The work plan shall include drug court division policies and practices related to implementing the standards and practices developed pursuant to paragraph (4) of this subsection. The work plan shall ensure a risk and needs assessment is used to identify the likelihood of recidivating and identify the needs that, when met,

reduce recidivism. The work plan shall ensure that drug court division eligibility shall be focused on moderate-risk and high-risk offenders as determined by a risk and needs assessment. The drug court division shall combine judicial supervision, treatment of drug court division participants, and drug testing.

(4)(A) The Council of Accountability Court Judges of Georgia shall establish standards and practices for drug court divisions taking into consideration guidelines and principles based on current research and findings published by the National Drug Court Institute and the Substance Abuse and Mental Health Services Administration, relating to practices shown to reduce recidivism of offenders with drug abuse problems. Standards and practices shall include, but shall not be limited to, the use of a risk and needs assessment to identify the likelihood of recidivating and identify the needs that, when met, reduce recidivism. The Council of Accountability Court Judges of Georgia shall update its standards and practices to incorporate research, findings, and developments in the drug court field. Each drug court division shall adopt policies and practices that are consistent with the standards and practices published by the Council of Accountability Court Judges of Georgia.

(B) The Council of Accountability Court Judges of Georgia shall provide technical assistance to drug court divisions to assist them with the implementation of policies and practices, including, but not limited to, guidance on the implementation of risk and needs assessments in drug court divisions.

(C) The Council of Accountability Court Judges of Georgia shall create and manage a certification and peer review process to ensure drug court divisions are adhering to the Council of Accountability Court Judges of Georgia's standards and practices and shall create a waiver process for drug court divisions to seek an exception to the Council of Accountability Court Judges of Georgia's standards and practices. In order to receive state appropriated funds, any drug court division established on and after July 1, 2013, shall be certified pursuant to this subparagraph or, for good cause shown to the Council of Accountability Court Judges of Georgia, shall receive a waiver from the Council of Accountability Court Judges of Georgia.

(D) On and after July 1, 2013, the award of any state funds for a drug court division shall be conditioned upon a drug court division attaining certification or a waiver by the Council of Accountability Court Judges of Georgia. On or before September 1, the Council of Accountability Court Judges of Georgia shall publish an annual report listing certified drug court divisions.

(E) The Council of Accountability Court Judges of Georgia and the Georgia Council on Criminal Justice Reform shall develop and manage an electronic information system for performance measurement and accept submission of performance data in a consistent format from all drug court divisions. The Council of Accountability Court Judges of Georgia shall identify elements necessary for performance measurement, including, but not limited to, recidivism, the number of moderate-risk and high-risk participants in a drug court division, drug testing results, drug testing failures, participant employment, the number of participants who successfully complete the program, and the number of participants who fail to complete the program.

(F) On or before July 1, 2015, and every three years thereafter, the Council of Accountability Court Judges of Georgia shall conduct a performance peer review of the drug court divisions for the purpose of improving drug court division policies and practices and the certification and recertification process.

(5) The court instituting the drug court division may request the prosecuting attorney for the jurisdiction to designate one or more prosecuting attorneys to serve in the drug court division and may request the public defender, if any, to designate one or more assistant public defenders to serve in the drug court division.

(6) The clerk of the court instituting the drug court division or such clerk's designee shall serve as the clerk of the drug court division.

(7) The court instituting the drug court division may request community supervision officers and other employees of the court to perform duties for the drug court division. Such employees shall perform duties as directed by the judges of the drug court division.

(8) The court instituting the drug court division may enter into agreements with other courts and agencies for the assignment of personnel from other courts and agencies to the drug court division.

(9) Expenses for salaries, equipment, services, and supplies incurred in implementing this Code section may be paid from state funds, funds of the county or political subdivision implementing such drug court division, federal grant funds, and funds from private donations.

(10) As used in this Code section, the term "risk and needs assessment" means an actuarial tool, approved by the Council of Accountability Court Judges of Georgia and validated on a targeted population, scientifically proven to determine a person's risk to recidivate and to identify criminal risk factors that, when properly addressed, can reduce that person's likelihood of committing future criminal behavior.

(b)(1) Each drug court division shall establish criteria which define the successful completion of the drug court division program.

(2) If the drug court division participant successfully completes the drug court division program prior to the entry of judgment, the case against the drug court division participant may be dismissed by the prosecuting attorney.

(3) If the drug court division participant successfully completes the drug court division program as part of a sentence imposed by the court, the sentence of the drug court division participant may be reduced or modified.

(4) Any plea of guilty or nolo contendere entered pursuant to this Code section may not be withdrawn without the consent of the court.

(c) Any statement made by a drug court division participant as part of participation in such court, or any report made by the staff of the court or program connected to the court, regarding a participant's substance usage shall not be admissible as evidence against the participant in any legal proceeding or prosecution; provided, however, if the participant violates the conditions of his or her participation in the program or is terminated from the drug court division, the reasons for the violation or termination may be considered in sanctioning, sentencing, or otherwise disposing of the participant's case.

(d) Nothing contained in this Code section shall be construed to permit a judge to impose, modify, or reduce a sentence below the minimum sentence required by law.

(e) Notwithstanding any provision of law to the contrary, drug court division staff shall be provided, upon request, with access to all records relevant to the treatment of the drug court division participant from any state or local government agency. All such records and the contents thereof shall be treated as confidential, shall not be disclosed to any person outside of the drug court division, and shall not be subject to Article 4 of Chapter 18 of Title 50, relating to open records, or subject to subpoena, discovery, or introduction into evidence in any civil or criminal proceeding. Such records and the contents thereof shall be maintained by the drug court division and originating court in a confidential file not available to the public.

(f) Any fees received by a drug court division from a drug court division participant as payment for substance abuse treatment and services shall not be considered as court costs or a fine.

(g) The court may have the authority to accept grants and donations and other proceeds from outside sources for the purpose of supporting the drug court division. Any such grants, donations, or proceeds shall be retained by the drug court division for expenses.

History. — Code 1981, § 15-1-15, enacted by Ga. L. 2005, p. 1505, § 2/HB 254; Ga. L. 2012, p. 899, § 2-1/HB 1176; Ga. L. 2015, p. 422, § 5-2/HB 310; Ga. L. 2015, p. 519, § 5-1/HB 328.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2005, "or other drug" was substituted for "other drug," in the first sentence of paragraph (a)(2).

Editor's notes. — Ga. L. 2012, p. 899, § 9-1(a)/HB 1176, not codified by the General Assembly, provides: "This Act shall become effective on July 1, 2012, and shall apply to offenses which occur on or after that date. Any offense occurring before July 1, 2012, shall be governed by the statute in effect at the time of such offense and shall be considered a prior conviction for the purpose of imposing a sentence that provides for a different penalty for a subsequent conviction for the same type of offense, of whatever degree or level, pursuant to this Act."

Ga. L. 2015, p. 422, § 6-1/HB 310, not codified by the General Assembly, provides, in part, that the amendment by this Act shall apply to sentences entered on or after July 1, 2015.

Law reviews. — For article, "Maintaining Judicial Independence in Drug Courts," see 13 Ga. St. B. J. 14 (2008). For article, "Courts: General Provisions," see 28 Ga. St. U.L. Rev. 293 (2011). For article on the 2012 amendment of this Code section, see 29 Ga. St. U.L. Rev. 290 (2012). For article on the 2015 amendment of this Code section, see 32 Ga. St. U.L. Rev. 231 (2015).

For note, "Give It to Me, I'm Worth It: The Need to Amend Georgia's Record Restriction Statute to Provide Ex-Offenders with a Second Chance in the Employment Sector," see 52 Ga. L. Rev. 267 (2017).

15-1-16. Mental health court divisions.

(a) As used in this Code section, the term:

(1) "Developmental disability" shall have the same meaning as set forth in Code Section 37-1-1.

(2) "Mental illness" shall have the same meaning as set forth in Code Section 37-1-1.

(3) "Risk and needs assessment" means an actuarial tool, approved by the Council of Accountability Court Judges of Georgia and validated on a targeted population, scientifically proven to determine a person's risk to recidivate and to identify criminal risk factors that, when properly addressed, can reduce that person's likelihood of committing future criminal behavior.

(b)(1) To achieve a reduction in recidivism and symptoms of mental illness among mentally ill offenders in criminal cases and to increase their likelihood of successful rehabilitation through early, continuous, and intense judicially supervised treatment, any court that has jurisdiction over a criminal case in which a defendant has a mental illness or developmental disability, or a co-occurring mental illness and substance abuse disorder, may establish a mental health court division to provide an alternative to the traditional judicial system for disposition of such cases. A mental health court division will bring together mental health professionals, local social programs, and intensive judicial monitoring.

(2) In any criminal case in which a defendant suffers from a mental illness or developmental disability, or a co-occurring mental illness and substance abuse disorder, and the defendant meets the eligibility criteria for the mental health court division, the court may refer the case to the mental health court division:

(A) Prior to the entry of the sentence, if the prosecuting attorney consents;

(B) As part of a sentence in a case; or

(C) Upon consideration of a petition to revoke probation.

(3) Each mental health court division shall establish a planning group to develop a written work plan. The planning group shall include judges, prosecuting attorneys, sheriffs or their designees, public defenders, community supervision officers, and persons having expertise in the field of mental health. The work plan shall address the operational, coordination, resource, information management, and evaluation needs of the mental health court division. The work plan shall include mental health court division policies and practices related to implementing the standards and practices developed pursuant to paragraph (4) of this subsection. The work plan shall ensure a risk and needs assessment is used to identify the likelihood of recidivating and identify the needs that, when met, reduce recidivism. The work plan shall ensure that mental health court division eligibility shall be focused on moderate-risk and high-risk offenders as determined by a risk and needs assessment. The mental health court division shall combine judicial supervision, treatment of mental health court division participants, and drug and mental health testing. Defendants charged with murder, murder in the second degree, armed robbery, rape, aggravated sodomy, aggravated sexual battery, aggravated child molestation, or child molestation shall not be eligible for entry into the mental health court division, except in the case of a separate court supervised reentry program designed to more closely monitor mentally ill offenders returning to the community after having served a term of incarceration. Any such court supervised community reentry program for mentally ill offenders shall be subject to the work plan as provided for in this paragraph.

(4)(A) The Council of Accountability Court Judges of Georgia shall establish standards and practices for mental health court divisions taking into consideration guidelines and principles based on current research and findings published by expert organizations, including, but not limited to, the United States Substance Abuse and Mental Health Services Administration, the Council of State Governments Consensus Project, and the National GAINS Center, relating to practices shown to reduce recidivism of offenders with

mental illness or developmental disabilities. Standards and practices shall include, but shall not be limited to, the use of a risk and needs assessment to identify the likelihood of recidivating and identify the needs that, when met, reduce recidivism. The Council of Accountability Court Judges of Georgia shall update its standards and practices to incorporate research, findings, and developments in the mental health court field. Each mental health court division shall adopt policies and practices that are consistent with the standards and practices published by the Council of Accountability Court Judges of Georgia.

(B) The Council of Accountability Court Judges of Georgia shall provide technical assistance to mental health court divisions to assist them with the implementation of policies and practices, including, but not limited to, guidance on the implementation of risk and needs assessments in mental health court divisions.

(C) The Council of Accountability Court Judges of Georgia shall create and manage a certification and peer review process to ensure mental health court divisions are adhering to the Council of Accountability Court Judges of Georgia's standards and practices and shall create a waiver process for mental health court divisions to seek an exception to the Council of Accountability Court Judges of Georgia's standards and practices. In order to receive state appropriated funds, any mental health court division established on and after July 1, 2013, shall be certified pursuant to this subparagraph or, for good cause shown to the Council of Accountability Court Judges of Georgia, shall receive a waiver from the Council of Accountability Court Judges of Georgia.

(D) On and after July 1, 2013, the award of any state funds for a mental health court division shall be conditioned upon a mental health court division attaining certification or a waiver by the Council of Accountability Court Judges of Georgia. On or before September 1, the Council of Accountability Court Judges of Georgia shall publish an annual report listing certified mental health court divisions.

(E) Pursuant to Code Section 15-5-24, the Administrative Office of the Courts shall develop and manage an electronic information system for performance measurement and accept submission of performance data in a consistent format from all mental health court divisions. The Council of Accountability Court Judges of Georgia shall identify elements necessary for performance measurement, including, but not limited to, recidivism, the number of moderate-risk and high-risk participants in a mental health court division, drug testing results, drug testing failures, the number of participants who successfully complete the program, and the number of participants who fail to complete the program.

(F) On or before July 1, 2015, and every three years thereafter, the Council of Accountability Court Judges of Georgia shall conduct a performance peer review of the mental health court divisions for the purpose of improving mental health court division policy and practices and the certification and recertification process.

(5) The court instituting the mental health court division may request the district attorney for the judicial circuit or solicitor-general for the state court for the jurisdiction to designate one or more prosecuting attorneys to serve in the mental health court division and may request the circuit public defender, if any, to designate one or more assistant public defenders to serve in the mental health court division.

(6) The clerk of the court instituting the mental health court division or such clerk's designee shall serve as the clerk of the mental health court division.

(7) The court instituting the mental health court division may request other employees of the court to perform duties for the mental health court division. Such employees shall perform duties as directed by the judges of the mental health court division.

(8) The court instituting the mental health court division may enter into agreements with other courts and agencies for the assignment of personnel from other courts and agencies to the mental health court division, including probation supervision.

(9) Expenses for salaries, equipment, services, and supplies incurred in implementing this Code section may be paid from state funds, funds of the county or political subdivision implementing such mental health court division, federal grant funds, and funds from private donations.

(c)(1) Each mental health court division shall establish written criteria that define the successful completion of the mental health court division program.

(2) If the mental health court division participant successfully completes the mental health court division program prior to the entry of judgment, the case against the mental health court division participant may be dismissed by the prosecuting attorney.

(3) If the mental health court division participant successfully completes the mental health court division program as part of a sentence imposed by the court, the sentence of the mental health court division participant may be reduced or modified.

(4) Any plea of guilty or nolo contendere entered pursuant to this Code section shall not be withdrawn without the consent of the court.

(d) Any statement made by a mental health court division participant as part of participation in such court, or any report made by the staff of the court or program connected to the court, regarding a participant's mental health shall not be admissible as evidence against the participant in any legal proceeding or prosecution; provided, however, that if the participant violates the conditions of his or her participation in the division or is terminated from the mental health court division, the reasons for the violation or termination may be considered in sanctioning, sentencing, or otherwise disposing of the participant's case.

(e) Nothing contained in this Code section shall be construed to permit a judge to impose, modify, or reduce a sentence below the minimum sentence required by law.

(f) Notwithstanding any provision of law to the contrary, mental health court division staff shall be provided, upon request, with access to all records relevant to the treatment of the mental health court division participant from any state or local government agency, except records declared confidential by Code Section 49-5-40 to which access may be obtained pursuant to Code Section 49-5-41. All records and the contents thereof shall be treated as confidential, shall not be disclosed to any person outside of the mental health court division, and shall not be subject to Article 4 of Chapter 18 of Title 50 or subject to subpoena, discovery, or introduction into evidence in any civil or criminal proceeding. Such records and the contents thereof shall be maintained by the mental health court division and originating court in a confidential file not available to the public.

(g) Any fees received by a mental health court division from a mental health court division participant as payment for mental health treatment and services shall not be considered as court costs or a fine.

(h) The court shall have the authority to accept grants and donations and other proceeds from outside sources for the purpose of supporting the mental health court division. Any such grants, donations, or proceeds shall be retained by the mental health court division for expenses.

History. — Code 1981, § 15-1-16, enacted by Ga. L. 2011, p. 224, § 1/SB 39; Ga. L. 2012, p. 899, § 2-2/HB 1176; Ga. L. 2014, p. 444, § 2-1/HB 271; Ga. L. 2014, p. 866, § 15/SB 340; Ga. L. 2015, p. 5, § 15/HB 90; Ga. L. 2015, p. 422, § 5-3/HB 310; Ga. L. 2015, p. 519, § 5-2/HB 328.

Editor's notes. — Ga. L. 2012, p. 899, § 9-1(a)/HB 1176, not codified by the General Assembly, provides: "This Act shall become effective on July 1, 2012, and shall apply to offenses which occur on or after that date. Any offense occurring before July 1, 2012, shall be governed by the statute in effect at the time of such offense and shall be considered a prior conviction for the purpose of imposing a sentence that provides for a different penalty for a subsequent conviction for the same type of offense, of whatever degree or level, pursuant to this Act."

Ga. L. 2015, p. 422, § 6-1/HB 310, not

codified by the General Assembly, provides, in part, that the amendment by this Act shall apply to sentences entered on or after July 1, 2015.

Law reviews. — For article on the 2011 enactment of this Code section, see 28 Ga. St. U.L. Rev. 293 (2011). For article, "Courts: General Provisions," see 28 Ga. St. U.L. Rev. 293 (2011). For article on the 2012 amendment of this Code section, see 29 Ga. St. U.L. Rev. 290 (2012). For article on the 2015 amendment of this Code section, see 32 Ga. St. U.L. Rev. 231 (2015).

For note, "Give It to Me, I'm Worth It: The Need to Amend Georgia's Record Restriction Statute to Provide Ex-Offenders with a Second Chance in the Employment Sector," see 52 Ga. L. Rev. 267 (2017).

15-1-17. Veterans court divisions.

(a) As used in this Code section, the term:

(1) "VA" means the United States Department of Veterans Affairs.

(2) "Veteran" means a person who is a former member of the armed forces of the United States or a state's National Guard.

(b)(1) Any court that has jurisdiction over criminal cases may establish a veterans court division to provide an alternative to the traditional judicial system for disposition of cases in which the defendant is a veteran.

(2) In any criminal case in which a defendant is a veteran and the defendant meets the eligibility criteria for the veterans court division, the court may refer the case to the veterans court division:

(A) Prior to the entry of the sentence, if the prosecuting attorney consents;

(B) As part of a sentence in a case; or

(C) Upon consideration of a petition to revoke probation.

(3) Each veterans court division shall establish a planning group to develop a written work plan. The planning group shall include judges, prosecuting attorneys, sheriffs or their designees, public defenders, community supervision officers, and persons having expertise in services available to veterans. The work plan shall address the operational, coordination, resource, information management, and evaluation needs of the veterans court division. The work plan shall include veterans court division policies and practices related to implementing the standards and practices developed pursuant to paragraph (4) of this subsection. The veterans court division shall combine judicial supervision, treatment of veterans court division participants, and drug and mental health testing. The work plan shall include eligibility criteria for the veterans court division. Defendants charged with murder, armed robbery, rape, aggravated sodomy, aggravated sexual battery, aggravated child molestation, or child molestation shall not be eligible for entry into the veterans court

division, except in the case of a separate court supervised reentry program designed to more closely monitor veterans returning to the community after having served a term of incarceration. Any such court supervised community reentry program for mentally ill offenders shall be subject to the work plan as provided for in this paragraph.

(4)(A) The Council of Accountability Court Judges of Georgia shall adopt standards and practices for veterans court divisions, taking into consideration guidelines and principles based on available current research and findings published by experts on veterans' health needs and treatment options, including, but not limited to, the VA and the Georgia Department of Veterans Service. The Council of Accountability Court Judges of Georgia shall update its standards and practices to incorporate research, findings, and developments in the veterans court field if any such research, findings, or developments are created. Each veterans court division shall adopt policies and practices that will be consistent with any standards and practices published by the Council of Accountability Court Judges of Georgia.

(B) The Council of Accountability Court Judges of Georgia shall provide technical assistance to veterans court divisions to assist them with the implementation of policies and practices, including, but not limited to, guidance on the implementation of risk and needs assessments in veterans court divisions.

(C) The Council of Accountability Court Judges of Georgia shall create and manage a certification and peer review process to ensure veterans court divisions are adhering to the Council of Accountability Court Judges of Georgia's standards and practices and shall create a waiver process for veterans court divisions to seek an exception to the Council of Accountability Court Judges of Georgia's standards and practices. In order to receive state appropriated funds, any veterans court division established on and after July 1, 2017, shall be certified pursuant to this subparagraph or, for good cause shown to the Council of Accountability Court Judges of Georgia, shall receive a waiver from the Council of Accountability Court Judges of Georgia.

(D) On and after July 1, 2017, the award of any state funds for a veterans court division shall be conditioned upon a veterans court division attaining certification or a waiver by the Council of Accountability Court Judges of Georgia. On or before September 1, the Council of Accountability Court Judges of Georgia shall publish an annual report listing certified veterans court divisions.

(E) The Council of Accountability Court Judges of Georgia and the Georgia Council on Criminal Justice Reform shall develop and

manage an electronic information system for performance measurement and accept submission of performance data in a consistent format from all veterans court divisions. The Council of Accountability Court Judges of Georgia shall identify elements necessary for performance measurement, including, but not limited to, recidivism, the number of moderate-risk and high-risk participants in a veterans court division, drug testing results, drug testing failures, participant employment, the number of participants who successfully complete the program, and the number of participants who fail to complete the program.

(F) On or before July 1, 2018, and every three years thereafter, the Council of Accountability Court Judges of Georgia shall conduct a performance peer review of the veterans court divisions for the purpose of improving veterans court division policies and practices and the certification and recertification process.

(5) The court instituting the veterans court division may request the district attorney for the judicial circuit or solicitor-general for the state court for the jurisdiction to designate one or more prosecuting attorneys to serve in the veterans court division and may request the circuit public defender, if any, to designate one or more assistant public defenders to serve in the veterans court division.

(6) The clerk of the court instituting the veterans court division or such clerk's designee shall serve as the clerk of the veterans court division.

(7) The court instituting the veterans court division may request other employees of the court to perform duties for the veterans court division. Such employees shall perform duties as directed by the judges of the veterans court division.

(8) The court instituting the veterans court division may enter into agreements with other courts and agencies for the assignment of personnel from other courts and agencies to the veterans court division, including probation supervision.

(9) Expenses for salaries, equipment, services, and supplies incurred in implementing this Code section may be paid from state funds, funds of the county or political subdivision implementing such veterans court division, federal grant funds, and funds from private donations.

(c)(1) Each veterans court division shall establish written criteria that define the successful completion of the veterans court division program.

(2) If the veterans court division participant successfully completes the veterans court division program prior to the entry of

judgment, the case against the veterans court division participant may be dismissed by the prosecuting attorney.

(3) If the veterans court division participant successfully completes the veterans court division program as part of a sentence imposed by the court, the sentence of the veterans court division participant may be reduced or modified.

(4) Any plea of guilty or nolo contendere entered pursuant to this Code section shall not be withdrawn without the consent of the court.

(d) Any statement made by a veterans court division participant as part of participation in such court, or any report made by the staff of the court or program connected to the court, regarding a participant's mental health shall not be admissible as evidence against the participant in any legal proceeding or prosecution; provided, however, that if the participant violates the conditions of his or her participation in the division or is terminated from the veterans court division, the reasons for the violation or termination may be considered in sanctioning, sentencing, or otherwise disposing of the participant's case.

(e) Nothing contained in this Code section shall be construed to permit a judge to impose, modify, or reduce a sentence below the minimum sentence required by law.

(f) Notwithstanding any provision of law to the contrary, veterans court division staff shall be provided, upon request, with access to all records relevant to the treatment of the veterans court division participant from any state or local government agency, except records declared confidential by Code Section 49-5-40 to which access may be obtained pursuant to Code Section 49-5-41. All records and the contents thereof shall be treated as confidential, shall not be disclosed to any person outside of the veterans court division, and shall not be subject to Article 4 of Chapter 18 of Title 50 or subject to subpoena, discovery, or introduction into evidence in any civil or criminal proceeding. Such records and the contents thereof shall be maintained by the veterans court division and originating court in a confidential file not available to the public.

(g) Any fees received by a veterans court division from a veterans court division participant as payment for veterans services shall not be considered as court costs or a fine.

(h) The court shall have the authority to accept grants, donations, and other proceeds from outside sources for the purpose of supporting the veterans court division. Any such grants, donations, or proceeds shall be retained by the veterans court division for expenses and shall be accounted for as set forth in subparagraph (b)(4)(F) of this Code section.

History. — Code 1981, § 15-1-17, enacted by Ga. L. 2014, p. 79, § 2/SB 320; Ga. L. 2015, p. 422, § 5-4/HB 310; Ga. L. 2015, p. 519, § 5-3/HB 328; Ga. L. 2017, p. 585, § 1-1/SB 174.

Cross references. — Returning Veterans Task Force, § 38-4-90 et seq.

Editor's notes. — Ga. L. 2014, p. 79, § 1/SB 320, not codified by the General Assembly, provides that: "The General Assembly recognizes that veterans have provided and continue to provide an invaluable service to our country and this state. In connection with a veteran's service, some servicemen and servicewomen have incurred physical, emotional, or mental impairments which cause or contribute to behaviors that may draw a veteran into the criminal justice system. The General Assembly has determined that having dedicated veterans court divisions is important to address the specialized treatment needs of veterans and that there are resources, services, and treatment options that are unique to veterans that may best facilitate a veteran's reentry into society."

Ga. L. 2015, p. 422, § 6-1/HB 310, not codified by the General Assembly, provides, in part, that the amendment by this Act shall apply to sentences entered on or after July 1, 2015.

Law reviews. — For article, "The Emory Law Volunteer Clinic for Veterans: Serving Those Who Served," see 19 Ga. St. B. J. 26 (Feb. 2014). For article on the 2015 amendment of this Code section, see 32 Ga. St. U.L. Rev. 231 (2015). For annual survey of criminal law, see 67 Mercer L. Rev. 31 (2015). For article on the 2017 amendment of this Code section, see 34 Ga. St. U.L. Rev. 115 (2017).

RESEARCH REFERENCES

C.J.S. — 21 C.J.S., Courts, § 7.

15-1-18. Council of Accountability Court Judges of Georgia; creation; membership; funding; support.

(a) As used in this Code section, the term:

(1) "Accountability court" means a superior, state, or juvenile court that has a drug court division, mental health court division, veterans court division, or operating under the influence court division or a juvenile court that has a family treatment court division.

(2) "Council" means the Council of Accountability Court Judges of Georgia.

(b) There is created an accountability court judges' council to be known as the "Council of Accountability Court Judges of Georgia." Such council shall be composed of the judges, senior judges, and judges emeriti of the accountability courts of this state.

(c) The council shall be authorized to organize itself and to develop a constitution and bylaws. The council shall promulgate rules and regulations as it deems necessary. The council shall annually elect a chairperson from among its membership. The council may appoint such committees as it considers necessary to carry out its duties and responsibilities, including appointing judges serving in other courts to serve in an advisory capacity to the council.

(d) It shall be the purpose of the council to effectuate the constitutional and statutory responsibilities conferred upon it by law and to

further the improvement of accountability courts, the quality and expertise of the judges thereof, and the administration of justice.

(e) Expenses of the administration of the council shall be paid from state funds appropriated for that purpose, from federal funds available to the council for such purpose, or from other appropriate sources. The council shall be authorized to accept and use gifts, grants, and donations for the purposes of carrying out this Code section. The council shall be authorized to accept and use property, both real and personal, and services for the purposes of carrying out this Code section.

(f) The Criminal Justice Coordinating Council shall provide technical services to the council and shall assist the council in complying with all its legal requirements.

(g) The Administrative Office of the Courts shall provide the council with office space and administrative support, including staff for record keeping, reporting, and related administrative and clerical functions.

(h) Appropriations to the Administrative Office of the Courts for functions transferred to the Criminal Justice Coordinating Council pursuant to this Code section shall be transferred as provided in Code Section 45-12-90. Personnel previously employed by the Administrative Office of the Courts and equipment and facilities of the Administrative Office of the Courts shall likewise be transferred to the Criminal Justice Coordinating Council. Such transfers shall be as determined by the director of the Administrative Office of the Courts.

History. — Code 1981, § 15-1-18, enacted by Ga. L. 2015, p. 519, § 5-4/HB 328; Ga. L. 2016, p. 443, § 1-1/SB 367.

Law reviews. — For article on the 2016 amendment of this Code section, see 33 Georgia St. U.L. Rev. 139 (2016).

RESEARCH REFERENCES

Am. Jur. 2d. — 46 Am. Jur.2d, Judges, § 1 et seq.

15-1-19. Creation of operating under the influence court divisions; organization and functions.

(a)(1) As used in this subsection, the term "risk and needs assessment" means an actuarial tool, approved by the Council of Accountability Court Judges of Georgia and validated on a targeted population, scientifically proven to determine an individual's risk to recidivate and to identify criminal risk factors that, when properly addressed, can reduce such individual's likelihood of committing future criminal behavior.

(2) Any superior, state, or juvenile court that has jurisdiction over a violation of Code Section 40-6-391 or 52-7-12 may establish an

operating under the influence court division to provide an alternative to the traditional judicial system for disposition of such cases.

(3) In any case which arises from a violation of Code Section 40-6-391 or 52-7-12 or is ancillary to such conduct and the defendant meets the eligibility criteria for the operating under the influence court division, the court may assign the case to the operating under the influence court division:

(A) Prior to the entry of the sentence, if the prosecuting attorney consents;

(B) As part of a sentence in a case; or

(C) Upon consideration of a petition to revoke probation.

(4) Each operating under the influence court division shall establish a planning group to develop a work plan. The planning group shall include the judges, prosecuting attorneys, public defenders, community supervision officers, probation officers serving pursuant to Article 6 of Chapter 8 of Title 42, and persons having expertise in the field of substance abuse. The work plan shall address the operational, coordination, resource, information management, and evaluation needs of the operating under the influence court division. The work plan shall include operating under the influence court division policies and practices related to implementing the standards and practices developed pursuant to paragraph (5) of this subsection. The work plan shall ensure a risk and needs assessment is used to identify the likelihood of recidivating and identify the needs that, when met, reduce recidivism. The work plan also shall ensure that operating under the influence court division eligibility shall be focused on moderate-risk and high-risk offenders as determined by a risk and needs assessment. The operating under the influence court division shall combine judicial supervision, treatment of operating under the influence court division participants, and drug testing.

(5)(A) The Council of Accountability Court Judges of Georgia shall establish standards and practices for operating under the influence court divisions, taking into consideration guidelines and principles based on current research and findings that are published by the National Drug Court Institute, the National Center for DWI Courts, and the Substance Abuse and Mental Health Services Administration and related to practices shown to reduce recidivism of offenders with alcohol or drug abuse problems. Standards and practices shall include, but shall not be limited to, the use of a risk and needs assessment to identify the likelihood of recidivating and identify the needs that, when met, reduce recidivism. The Council of Accountability Court Judges of Georgia shall update its standards and practices to incorporate research, findings, and develop-

ments in the operating under the influence court field. Each operating under the influence court division shall adopt policies and practices that are consistent with the standards and practices published by the Council of Accountability Court Judges of Georgia.

(B) The Council of Accountability Court Judges of Georgia shall provide technical assistance to operating under the influence court divisions to assist them with the implementation of policies and practices, including, but not limited to, guidance on the implementation of risk and needs assessments in operating under the influence court divisions.

(C) The Council of Accountability Court Judges of Georgia shall create and manage a certification and peer review process to ensure operating under the influence court divisions are adhering to the Council of Accountability Court Judges of Georgia's standards and practices and shall create a waiver process for operating under the influence court divisions to seek an exception to the Council of Accountability Court Judges of Georgia's standards and practices. In order to receive state appropriated funds, any operating under the influence court division established on and after July 1, 2017, shall be certified pursuant to this subparagraph or, for good cause shown to the Council of Accountability Court Judges of Georgia, shall receive a waiver from the Council of Accountability Court Judges of Georgia.

(D) On and after July 1, 2017, the award of any state funds for an operating under the influence court division shall be conditioned upon an operating under the influence court division attaining certification or a waiver by the Council of Accountability Court Judges of Georgia. On or before September 1, the Council of Accountability Court Judges of Georgia shall publish an annual report listing certified operating under the influence court divisions.

(E) The Council of Accountability Court Judges of Georgia shall develop and manage an electronic information system for performance measurement and accept submission of performance data in a consistent format from all operating under the influence court divisions. The Council of Accountability Court Judges of Georgia shall identify elements necessary for performance measurement, including, but not limited to, recidivism, the number of moderate-risk and high-risk participants in an operating under the influence court division, drug testing results, drug testing failures, participant employment, the number of participants who successfully complete the program, and the number of participants who fail to complete the program.

(F) On or before July 1, 2017, and every three years thereafter, the Council of Accountability Court Judges of Georgia shall conduct a performance peer review of the operating under the influence court divisions for the purpose of improving operating under the influence court division policies and practices and the certification and recertification process.

(6) A court instituting the operating under the influence court division may request the prosecuting attorney for the jurisdiction to designate one or more prosecuting attorneys to serve in the operating under the influence court division and may request the public defender, if any, to designate one or more assistant public defenders to serve in the operating under the influence court division.

(7) The clerk of court for the court that is instituting the operating under the influence court division or such clerk's designee shall serve as the clerk of the operating under the influence court division.

(8) The court instituting the operating under the influence court division may request community supervision officers, probation officers serving pursuant to Article 6 of Chapter 8 of Title 42, and other employees of the court to perform duties for the operating under the influence court division. Such individuals shall perform duties as directed by the judges of the operating under the influence court division.

(9) The court instituting the operating under the influence court division may enter into agreements with other courts, agencies, and private corporations, private enterprises, private agencies, or private entities providing services pursuant to Article 6 of Chapter 8 of Title 42 for the assignment of personnel from such other entities to the operating under the influence court division.

(10) Expenses for salaries, equipment, services, and supplies incurred in implementing this Code section may be paid from state funds, funds of the county or political subdivision implementing such operating under the influence court division, federal grant funds, and funds from private donations.

(b)(1) Each operating under the influence court division shall establish criteria which define the successful completion of the operating under the influence court division program.

(2) If the operating under the influence court division participant successfully completes the operating under the influence court division program as part of a sentence imposed by the court:

(A) A judge presiding in such court division shall not order the dismissal of any offense involving or arising from a violation of Code Section 40-6-391 or 52-7-12; and

(B) A judge presiding in such court division shall not order the restriction or vacation of a conviction of any offense involving or arising from a violation of Code Section 40-6-391 or 52-7-12.

(3) If the operating under the influence court division participant successfully completes the operating under the influence court division program as part of a sentence imposed by the court, the sentence of the operating under the influence court division participant may be reduced or modified.

(4) Any plea of guilty or nolo contendere entered pursuant to this Code section shall not be withdrawn without the consent of the court.

(c) Any statement made by an operating under the influence court division participant as part of participation in such court division, or any report made by the staff of such court division or program connected to such court division, regarding a participant's substance usage shall not be admissible as evidence against the participant in any legal proceeding or prosecution; provided, however, that, if the participant violates the conditions of his or her participation in the program or is terminated from the operating under the influence court division, the reasons for the violation or termination may be considered in sanctioning, sentencing, or otherwise disposing of the participant's case.

(d) Notwithstanding any provision of law to the contrary, operating under the influence court division staff shall be provided, upon request, with access to all records relevant to the treatment of the operating under the influence court division participant from any state or local government agency. All such records and the contents thereof shall be treated as confidential, shall not be disclosed to any person outside of the operating under the influence court division, and shall not be subject to Article 4 of Chapter 18 of Title 50, relating to open records, or subject to subpoena, discovery, or introduction into evidence in any civil or criminal proceeding. Such records and the contents thereof shall be maintained by the operating under the influence court division and originating court in a confidential file not available to the public.

(e) Any fees received by an operating under the influence court division from an operating under the influence court division participant as payment for substance abuse treatment and services shall not be considered as court costs or a fine.

(f) The court may have the authority to accept grants, donations, and other proceeds from outside sources for the purpose of supporting the operating under the influence court division. Any such grants, donations, or proceeds shall be retained by the operating under the influence court division for expenses.

History. — Code 1981, § 15-1-19, enacted by Ga. L. 2016, p. 443, § 1-2/SB 367.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2016, Code Section 15-1-19, as enacted by Ga. L. 2016, p. 806, § 1/HB 808, was redesignated as Code Section 15-1-21.

Law reviews. — For article on the 2016 enactment of this Code section, see 33 Georgia St. U.L. Rev. 139 (2016).

RESEARCH REFERENCES

Am. Jur. 2d. — 20 Am. Jur. 2d, Courts, § 11.

C.J.S. — 21 C.J.S., Courts, § 7.

15-1-20. Definitions; restrictions on dissemination of criminal history record information; conditions under which inspection, copying, and use of restricted criminal history record information available.

(a) As used in this Code section, the term:

(1) "Accountability court" means a superior or state court that has a drug court division, mental health court division, or veterans court division or a juvenile court that has a family treatment court division.

(2) "Criminal history record information" shall have the same meaning as set forth in Code Section 35-3-30.

(3) "Criminal justice agencies" shall have the same meaning as set forth in Code Section 35-3-30.

(4) "Restrict," "restricted," or "restriction" means that criminal history record information shall not be disclosed or otherwise made available to any private persons or businesses pursuant to Code Section 35-3-34 or to governmental agencies or licensing and regulating agencies pursuant to Code Section 35-3-35.

(b) When a case is assigned to an accountability court and the defendant is required to complete a drug court division program, mental health court division program, veterans court division program, or family treatment court division program, as applicable, prior to the entry of the judgment, in contemplation that the defendant's case will be dismissed or nolle prossed, the court may, in its discretion, restrict the dissemination of the defendant's criminal history record information by the Georgia Crime Information Center for the prosecution of the case assigned to such court. The court shall specify the date such restriction shall take effect. The court may revoke such order at any time.

(c)(1) Criminal history record information restricted pursuant to this Code section shall always be available for inspection, copying, and use:

(A) To criminal justice agencies for law enforcement or criminal investigative purposes or for purposes of criminal justice agency employment;

(B) To judicial officials;

(C) By the Judicial Qualifications Commission;

(D) By a prosecuting attorney or public defender who submits a sworn affidavit to the clerk of court that attests that such information is relevant to a criminal proceeding;

(E) Pursuant to a court order; and

(F) By an individual who is the subject of restricted criminal history record information upon court order.

(2) The confidentiality of such information shall be maintained insofar as practical.

History. — Code 1981, § 15-1-20, enacted by Ga. L. 2016, p. 443, § 1-3/SB 367.

Law reviews. — For article on the 2016 enactment of this Code section, see 33 Georgia St. U.L. Rev. 139 (2016).

RESEARCH REFERENCES

Am. Jur. 2d. — 20 Am. Jur. 2d, Courts, § 22 et seq.

C.J.S. — 21 C.J.S., Courts, § 243 et seq.

15-1-21. Judicial Qualifications Commission created; powers, composition, and appointment; term and removal of member; procedures; confidentiality.

(a) Pursuant to Article VI, Section VII, Paragraph VI of the Constitution, there is hereby created the Judicial Qualifications Commission, which shall have the power to discipline, remove, and cause involuntary retirement of judges in accordance with such Paragraph. As used in this Code section, the term "commission" means the Judicial Qualifications Commission.

(b) The commission shall consist of ten members who shall be subject to confirmation by the Senate.

(c) From January 1, 2017, until June 30, 2017, the members of the commission shall be as follows:

(1) Two judges of any court of record, appointed by the Supreme Court;

(2) One member of the State Bar of Georgia who shall have been an active status member of the State Bar of Georgia for at least ten years and shall be a registered voter of this state, appointed by the

President of the Senate from a list of at least ten nominees from the board of governors of the State Bar of Georgia; provided, however, that if a nominee is not selected from such list, the board of governors shall submit another slate of ten nominees;

(3) One member of the State Bar of Georgia who shall have been an active status member of the State Bar of Georgia for at least ten years and shall be a registered voter of this state, appointed by the Speaker of the House of Representatives from a list of at least ten nominees from the board of governors of the State Bar of Georgia; provided, however, that if a nominee is not selected from such list, the board of governors shall submit another slate of ten nominees;

(4) One citizen member, who shall be a registered voter of this state but shall not be a member of the State Bar of Georgia, appointed by the Speaker of the House of Representatives;

(5) One citizen member, who shall be a registered voter of this state but shall not be a member of the State Bar of Georgia, appointed by the President of the Senate; and

(6) One member of the State Bar of Georgia, who shall have been an active status member of the State Bar of Georgia for at least ten years and shall be a registered voter of this state, appointed by the Governor to serve as chairperson of the commission.

(d) Effective July 1, 2017, the commission shall be reconstituted. The members serving on the commission immediately prior to July 1, 2017, shall cease to serve on that date, but such prior members shall be eligible for reappointment to succeed themselves or to fill another position on the commission as further set forth in subsection (f) of this Code section. The powers, functions, and duties of the former commission with regard to the investigation, discipline, removal, and involuntary retirement of judges are transferred to the commission created effective July 1, 2017; provided, however, that the formal advisory opinions, pending and former complaints and disciplinary actions, records, orders, contracts, agreements with judges, and rules of the former commission shall be retained by the commission created effective July 1, 2017. Appropriations to the former commission for functions transferred to the commission created effective July 1, 2017, shall be transferred to the commission created effective July 1, 2017, as provided for in Code Section 45-12-90. Personnel previously employed by the former commission and the equipment and facilities of the former commission for functions transferred to the commission created effective July 1, 2017, shall likewise be transferred to the commission created effective July 1, 2017.

(e)(1) Effective July 1, 2017, the commission shall be divided into a seven-member investigative panel and a three-member hearing panel.

(2) The investigative panel shall be responsible for:

(A) The investigative, prosecutorial, and administrative functions of the commission;

(B) Promulgating rules of the commission as set forth in subsection (j) of this Code section;

(C) The selection of an individual to serve as the director of the commission who shall be an active status member of the State Bar of Georgia and who shall not engage in the practice of law, other than to represent the commission, or serve in a judicial capacity; and

(D) Authorization of employment of such additional staff as the commission deems necessary to carry out the powers assigned to the commission.

(3) The hearing panel shall be responsible for:

(A) Adjudicating formal charges filed by the investigative panel;

(B) Making recommendations to the Supreme Court as to disciplinary and incapacity orders; and

(C) Issuing formal advisory opinions on its own initiative or on the recommendation of the investigative panel, subject to review by the Supreme Court, regarding the Georgia Code of Judicial Conduct.

(f)(1) As used in this subsection, the term:

(A) "Attorney" means a lawyer who has been an active status member of the State Bar of Georgia for at least ten years and is a registered voter in this state.

(B) "Citizen" means an individual who is neither an attorney nor a judge and who is a registered voter in this state.

(C) "Judge" means an elected or appointed public official who presides over a court of record.

(2) The State Bar of Georgia may recommend to the respective appointing authorities a list of the names of individuals for consideration to serve as attorney commission members.

(3)(A) The seven members of the commission's investigative panel shall be appointed as follows:

(i) One attorney member shall be appointed by the Governor and shall serve a term of four years; provided, however, that the initial appointment shall be for two years, and thereafter, successors to such member shall serve terms of four years;

(ii) Two judge members shall be appointed by the Supreme Court and each shall serve terms of four years; provided, however, that the initial appointments shall be for two and four years, respectively, as designated by the Supreme Court for each appointment, and thereafter, successors to such members shall serve terms of four years;

(iii) Two members, consisting of one attorney and one citizen, shall be appointed by the President of the Senate and each shall serve terms of four years; provided, however, that the initial appointment of the attorney member shall be for four years and the initial appointment of the citizen member shall be for one year, and thereafter, successors to such members shall serve terms of four years; and

(iv) Two members, consisting of one attorney and one citizen, shall be appointed by the Speaker of the House of Representatives and each shall serve terms of four years; provided, however, that the initial appointment of the attorney member shall be for three years and the initial appointment of the citizen member shall be for two years, and thereafter, successors to such members shall serve terms of four years.

(B) The investigative panel members shall annually elect a chairperson and vice chairperson for such panel.

(4)(A) The three members of the commission's hearing panel shall be appointed as follows:

(i) One citizen member shall be appointed by the Governor for a term of four years and his or her successors shall serve terms of four years; and

(ii) One judge member and one attorney member shall be appointed by the Supreme Court and each shall serve terms of four years; provided, however, that the initial appointment of the judge member shall be for three years and the initial appointment of the attorney member shall be for one year, and thereafter, successors to such members shall serve terms of four years.

(B) The judge member shall serve as the presiding officer of such panel.

(5) All members' initial terms shall begin on July 1, 2017, and their successors' terms shall begin on July 1 following their appointment.

(6) A commission member shall be eligible to serve so long as he or she retains his or her status as an attorney, citizen, or judge, but a vacancy shall be created by operation of law when he or she no longer has the designation for which he or she was appointed. Any vacancy

for a member shall be filled by the appointing authority, and such appointee shall serve the balance of the vacating member's unexpired term; provided, however, that if the appointing authority fails to fill a vacancy within 60 days of being notified of such vacancy by the commission, the Governor shall appoint a replacement member from the same category of member. Any member of the commission may serve two full terms. Any member appointed pursuant to subsection (c) of this Code section, for an initial term as provided by this subsection, or to fill a vacancy may serve an additional two full terms.

(g)(1) The names of the appointees required by this Code section shall be submitted by the appointing authorities to the Senate no later than the third Monday in January. Any member appointed to the commission shall serve until the Senate confirms such appointee, and if an individual's name is not submitted by such deadline, he or she shall not be eligible for confirmation.

(2) If an appointee is not confirmed by the Senate, the appointing authority shall promptly submit another appointee's name, notwithstanding the deadline expressed in paragraph (1) of this subsection.

(3) If the Senate is not in session at the time an appointee's term begins or a vacancy is created, an appointee for such term or to fill such vacancy shall be effective until his or her name can be submitted to the Senate and his or her appointment can be confirmed at the next regular session.

(h) Members and staff of the hearing panel shall not engage in any ex parte communications regarding a disciplinary or incapacity matter of a judge, including with members and staff of the investigative panel.

(i)(1) Each member of the commission shall be entitled to vote on any matter coming before his or her respective panel unless otherwise provided by rules adopted by the commission concerning recusal. The chairperson of the investigative panel and the presiding officer of the hearing panel shall retain a vote on all matters except those in which such chairperson or presiding officer has been recused. No commission member present at a panel meeting shall abstain from voting unless he or she is recused. The rules of the commission shall establish grounds for recusal and the process for allowing a temporary replacement of a commission member in such circumstance.

(2)(A) As used in this paragraph, the term "for cause" shall include indictment for or conviction of a felony or any offense involving moral turpitude; misconduct, malpractice, malfeasance, misfeasance, nonfeasance, or incapacity; failure to attend three or more panel meetings or hearings in a one-year period without good and sufficient reason; or abstaining from voting, unless recused.

(B) Removal of a panel member for cause shall be by a unanimous vote of all of the appointing authorities for the members of that particular panel.

(3) A quorum of the investigative panel shall require at least four members to be present and shall consist of at least one judge, one attorney, and one citizen. A quorum of the hearing panel shall require all members to be present. A decision by a panel shall be by majority vote of the members present except for minor procedural or administrative matters assigned to the director, chairperson, or presiding officer, as applicable, for a decision as provided by the rules of the commission.

(4)(A) Members of the commission shall serve without compensation but shall receive the same daily expense allowance as members of the General Assembly receive, as set forth in Code Section 28-1-8, for each day such member is in physical attendance at a panel meeting or hearing, plus either reimbursement for actual transportation costs while traveling by public transportation or the same mileage allowance for use of a personal motor vehicle in connection with such attendance as members of the General Assembly receive.

(B) Notwithstanding subparagraph (A) of this paragraph, no member shall receive such expense allowance or travel reimbursement if he or she is entitled to receive an expense allowance, travel reimbursement, or salary for performance of duties as a state employee.

(C) Expense allowances and travel reimbursement shall be paid from moneys appropriated or otherwise available to the commission.

(j) The investigative panel shall promulgate rules for the commission's governance which comport with due process and are not otherwise provided by the Georgia Constitution or this Code section; provided, however, that such rules shall be effective only upon review and adoption by the Supreme Court. Such rules shall allow for a full investigation of a judge only upon the approval of the investigative panel, not upon the request of an individual panel member or the director. When a commission member receives information relating to the conduct of a judge, such member shall provide such information to the commission's director for appropriate action.

(k)(1) All information regarding a disciplinary or incapacity matter of a judge shall be kept confidential by the investigative panel and commission staff before formal charges are filed; provided, however, that if prior to filing formal charges such judge and investigative panel agree to a satisfactory disposition of a disciplinary matter other

than by a private admonition or deferred discipline agreement, a report of such disposition shall be publicly filed in the Supreme Court.

(2) After the filing and service of formal charges:

(A) With respect to an incapacity matter of a judge, all pleadings, information, hearings, and proceedings shall remain confidential; and

(B) With respect to a disciplinary matter of a judge, all pleadings and information shall be subject to disclosure to the public and all hearings and proceedings shall be open and available to the public except to the extent that such pleadings and information or hearings and proceedings could be properly sealed or closed by a court as provided by law.

(3) With respect to administrative and other matters, all records and information shall be subject to disclosure to the public and all meetings, or portions thereof, shall be open and available to the public except to the extent such records, information, and meetings would:

(A) Disclose disciplinary matters of a judge protected in paragraph (1) of this subsection;

(B) Disclose incapacity matters of a judge protected in paragraph (1) or subparagraph (A) of paragraph (2) of this subsection;

(C) Be considered a matter subject to executive session, if the commission were considered to be an agency under Chapter 14 of Title 50; or

(D) Not be required under Code Section 50-18-72, if the commission were considered to be an agency.

(4) The work product of the commission and its staff and the deliberations of the commission shall remain confidential.

(l) Notwithstanding subsection (k) of this Code section, information regarding a disciplinary or incapacity matter of a judge may be disclosed or the confidentiality of such information may be removed, when:

(1) The privilege of confidentiality has been waived by the individual who was the subject of the commission's investigation; or

(2) The commission's rules provide for disclosure:

(A) In the interest of justice and to protect the public;

(B) When an emergency situation exists; or

(C) When a judge is under consideration for another state or federal position.

(m) Information submitted to the commission or its staff, and testimony given in any proceeding before the commission or one of its panels, shall be absolutely privileged, and no civil action predicated upon such information or testimony shall be instituted against any complainant, witness, or his or her counsel.

(n) A respondent who is recommended for public reprimand, censure, limitation on the performance of judicial duties, suspension, retirement, or removal shall be entitled to a copy of the proposed record to be filed with the Supreme Court, and if the respondent has objections to it, to have the record settled by the hearing panel's presiding officer. The hearing panel's recommendation as to an order in a disciplinary or incapacity matter shall be reviewed by the Supreme Court in accordance with its rules and the rules of the commission.

(o) When a judge knows that he or she is under investigation by the commission and a commission member is representing a party before such judge, the judge shall be disqualified from presiding over such matter.

History. — Code 1981, § 15-1-21, enacted by Ga. L. 2016, p. 806, § 1/HB 808; Ga. L. 2017, p. 157, § 2-2/HB 126.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2016, Code Section 15-1-19, as enacted by Ga. L. 2016, p. 806, § 1/HB 808, was redesignated as Code Section 15-1-21.

Editor's notes. — Ga. L. 2016, p. 806, § 2/HB 808, provided, in part, that this Code section "shall become effective on January 1, 2017, only if an amendment to the Constitution abolishing the existing Judicial Qualifications Commission and requiring the General Assembly to create and provide by general law for the composition and manner of appointment of a new Judicial Qualifications Commission, with such commission having the power to discipline, remove, and cause involuntary retirement of judges, and providing for exceptions to certain disclosures is ratified by the voters at the November, 2016, state-wide general election. If such an amendment is not so ratified, then this Act shall not become effective and shall stand repealed on January 1, 2017." That amendment was ratified by the voters in the November 2016 General Election.

Ga. L. 2017, p. 157, § 1-1/HB 126, not codified by the General Assembly, provides: "Part I of this Act shall be known and may be cited as 'The Judicial Qualifications Commission Improvement Act of 2017.'"

JUDICIAL DECISIONS

Petition for quo warranto challenging appointment required leave of court. — Judge's petition for a writ of quo warranto challenging the qualifications of members of the Judicial Qualifications Commission was due to be dismissed because the judge failed to obtain leave of court to file the petition for quo warranto as required by the plain language of the quo warranto statute, O.C.G.A. § 9-6-60. Crawford v. Balli, 355 Ga. App. 297, 844 S.E.2d 236 (2020).

RESEARCH REFERENCES

C.J.S. — 48A C.J.S., Judges, § 87 et seq.

15-1-22. Exclusive agreement for electronic filing service prohibited.

On and after January 1, 2019, no court or clerk of court shall enter into any exclusive agreement or contract that prohibits more than one electronic filing service provider to serve a court or clerk of court; provided, however, that such prohibition shall not require a court or clerk of court to enter into more than one agreement or contract with an electronic service provider.

History. — Code 1981, § 15-1-22, enacted by Ga. L. 2018, p. 550, § 1A-2/SB 407.

Effective date. — This Code section became effective July 1, 2018.

Law reviews. — For article on the 2018 enactment of this Code section, see 35 Ga. St. U.L. Rev. 45 (2018).

RESEARCH REFERENCES

C.J.S. — 21 C.J.S., Courts, § 156 et seq.

CHAPTER 2

SUPREME COURT

Article 1

General Provisions

Sec.
15-2-1. One supreme judicial district.
15-2-1.1. Number of Justices.
15-2-2. When Justice providentially prevented from attending.
15-2-3. Oath of Justices; compensation.
15-2-4. Place of sessions; terms of court.
15-2-5. Place of hearing oral argument.
15-2-6. Duty of Justices to attend; quorum; adjournment.
15-2-7. Adjournment for providential cause.
15-2-8. Powers of court generally.
15-2-9. Answers to questions certified by federal courts.
15-2-10. Procedure for increasing the number of Supreme Court Justices.
15-2-11 through 15-2-15 [Repealed].
15-2-16. Reversal and affirmance; minutes and reports to show concurrences and dissents.
15-2-17. Rules for regulating Supreme Court's proceedings.
15-2-18. Power to prescribe and revise rules of practice and procedure in courts of state; ratification by General Assembly; assistance of bar committee.
15-2-19. Law assistants.
15-2-20. Officers of court.
15-2-21. Employment and salaries of court staff.
15-2-22. Sheriff of Supreme Court.
15-2-23. Compensation of sheriff [Repealed].
15-2-24. Compensation of officers and employees.
15-2-25. Books, supplies, and services.

Article 2

Clerk of the Supreme Court

15-2-40. Term of office; oath.
15-2-41. Deputy clerks.
15-2-42. Employees in clerk's office.
15-2-43. Duties of clerk.
15-2-44. How costs taxed; notice of appeal and transcript not recorded.
15-2-45. Compensation; disposition of fees.
15-2-46. Disposition of costs.
15-2-47. Attorneys liable for costs.

Cross references. — Generally, Ga. Const. 1983, Art. VI, Sec. VI, Para. I et seq. Qualifications for Justices of Supreme Court, Ga. Const. 1983, Art. VI, Sec. VII, Para. II. Compensation and allowances for Justices of Supreme Court, Ga. Const. 1983, Art. VI, Sec. VII, Para. V and § 45-7-1 et seq.

ARTICLE 1

GENERAL PROVISIONS

Law reviews. — For article, "Courts: Juvenile Justice Reform," see 30 Ga. St. U. L. Rev. 63 (2013).

15-2-1. One supreme judicial district.

The entire state shall constitute one supreme judicial district.

History. — Orig. Code 1863, § 46; Code 1868, § 44; Code 1873, § 42; Code 1882, § 42; Civil Code 1895, § 5493; Civil Code 1910, § 6098; Code 1933, § 24-3701.

15-2-1.1. Number of Justices.

The Supreme Court shall consist of nine Justices.

History. — Code 1981, § 15-2-1.1, enacted by Ga. L. 1987, p. 324, § 1; Ga. L. 2016, p. 883, § 4-1/HB 927.

Editor's notes. — Ga. L. 2016, p. 883, § 1-1/HB 927, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Appellate Jurisdiction Reform Act of 2016.'"

Ga. L. 2016, p. 883, § 6-1(d)/HB 927, not codified by the General Assembly, provides that: "Part IV of this Act shall only become effective if funds are appropriated for the purpose of Part IV of this Act in an appropriations Act enacted at the 2016 regular session of the General Assembly. If funds are so appropriated, then Part IV of this Act shall become effective on July 1, 2016, for purposes of making the initial appointments of the Supreme Court Justices created by this Act, and for all other purposes Part IV of this Act shall become effective on January 1, 2017. If funds are not so appropriated, then Part IV of this Act shall not become effective and shall stand repealed on July 1, 2016." Funds were appropriated at the 2016 regular session.

Law reviews. — For article on the 2016 amendment of this Code section, see 33 Georgia St. U.L. Rev. 205 (2016).

15-2-2. When Justice providentially prevented from attending.

Whenever one or more of the Justices of the Supreme Court are unable from providential cause to preside in any case and the parties desire a full bench, it shall be the duty of the remaining Justices to designate a judge or judges of the superior court to preside in the place of the absent Justice or Justices of the Supreme Court.

History. — Ga. L. 1888, p. 40, § 1; Civil Code 1895, § 5506; Civil Code 1910, § 6109; Code 1933, § 24-4008.

JUDICIAL DECISIONS

Cited in Johnson v. Walls, 185 Ga. 177, 194 S.E. 380 (1937); Stokes v. Fortson, 234 F. Supp. 575 (N.D. Ga. 1964).

RESEARCH REFERENCES

Am. Jur. 2d. — 46 Am. Jur. 2d, Judges, § 218 et seq.

C.J.S. — 48A C.J.S., Judges, §§ 37, 40, 41.

15-2-3. Oath of Justices; compensation.

(a) Before entering on the discharge of their duties, the Justices shall take the oath prescribed for judges of the superior courts, along with all other oaths required for civil officers.

(b)(1) The annual salary of each Justice of the Supreme Court shall be as specified in Code Section 45-7-4. Such salary shall be paid in equal monthly installments.

(2) The Justices shall receive expenses and allowances as provided in Code Section 45-7-20. If a Justice resides 50 miles or more from the judicial building in Atlanta, such Justice shall also receive a mileage allowance for the use of a personal motor vehicle when devoted to official business as provided for in Code Section 50-19-7, for not more than one round trip per calendar week to and from the Justice's residence and the judicial building in Atlanta by the most practical route, during each regular and extraordinary session of court. In the event a Justice travels by public carrier for any part of a round trip as provided above, such Justice shall receive a travel allowance of actual transportation costs for each such part in lieu of the mileage allowance. Transportation costs incurred by a Justice for air travel to and from the Justice's residence to the judicial building in Atlanta shall be reimbursed only to the extent that such costs do not exceed the cost of travel by personal motor vehicle. All allowances provided for in this paragraph shall be paid upon the submission of proper vouchers.

(3) If a Justice resides 50 miles or more from the judicial building in Atlanta, such Justice shall also receive the same daily expense allowance as members of the General Assembly receive, as set forth in Code Section 28-1-8, for not more than 35 days during each term of court. Such days shall be utilized only when official court business is being conducted. All allowances provided for in this paragraph shall be paid upon the submission of proper vouchers.

(c) The salary provided for in subsection (b) of this Code section shall be the total compensation to be paid by the state to the officials named in subsection (a) of this Code section and shall be in lieu of any and all other amounts to be paid from state funds.

History. — Orig. Code 1863, §§ 205, 1578; Code 1868, §§ 199, 1640; Code 1873, §§ 212, 1646; Code 1882, §§ 212, 1646; Civil Code 1895, §§ 287, 5502; Ga. L. 1904, p. 72, § 1; Civil Code 1910, §§ 322, 6107; Code 1933, §§ 24-4004, 24-4005; Ga. L. 1957, p. 205, §§ 1, 3, 4; Ga. L. 1962, p. 3, §§ 1, 3; Ga. L. 1966, p. 72, § 1; Ga. L. 1970, p. 19, § 1; Ga. L. 1993, p. 1402, § 3; Ga. L. 2007, p. 424, § 1/HB 120; Ga. L. 2015, p. 919, § 1-1/HB 279; Ga. L. 2017, p. 122, § 1-1/HB 5.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1993, "subsection (b)" was substituted for "subsection (a)" in subsection (c).

Law reviews. — For article discussing judicial compensation, see 14 Ga. St. B. J. 110 (1978). For article, "Annual Survey of Georgia Law: June 1, 2015 — May 31, 2016: Special Contribution: Open Chambers Revisited: Demystifying the Inner Workings and Culture of the Georgia Court of Appeals," see 68 Mercer L. Rev. 1 (2016).

RESEARCH REFERENCES

Am. Jur. 2d. — 46 Am. Jur. 2d, Judges, § 10.

C.J.S. — 21 C.J.S., Courts, § 121 et seq. 48A C.J.S., Judges, § 23.

15-2-4. Place of sessions; terms of court.

(a) The Supreme Court shall sit at the seat of government.

(b) Unless the Supreme Court by rule or order chooses to extend its terms of court, the terms shall be as follows:

(1) December term beginning the first Monday in December;

(2) April term beginning the first Monday in April; and

(3) August term beginning the first Monday in August.

(c) Each term shall continue until the business for that term has been disposed of by the court, provided that, unless sooner closed by order of the court, the August term shall end on November 18, the December term shall end on March 31, and the April term shall end on July 17. No judgment in a second-term case, other than a judgment on a motion for reconsideration in such case, shall be rendered during the last 15 days of any term. Disposition of first-term cases may be made during nonterm periods.

History. — Laws 1845, Cobb's 1851 Digest, p. 448; Code 1863, § 3158; Code 1868, § 3170; Code 1873, § 3238; Code 1882, § 3238; Ga. L. 1884-85, p. 45, § 1; Civil Code 1895, § 5494; Civil Code 1910, § 6099; Code 1933, § 24-3801; Ga. L. 1935, p. 161, § 1; Ga. L. 1983, p. 956, § 1; Ga. L. 1991, p. 430, § 1; Ga. L. 1993, p. 360, § 1; Ga. L. 2000, p. 1, § 1; Ga. L. 2016, p. 883, § 5-1/HB 927.

Editor's notes. — Ga. L. 2016, p. 883, § 1-1/HB 927, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Appellate Jurisdiction Reform Act of 2016.'"

Ga. L. 2016, p. 883, § 6-1(e)/HB 927, not codified by the General Assembly, provides that: "Part V of this Act shall become effective on December 5, 2016, and upon such date the December term of court shall begin as provided by this Act; provided, however, that the term of court which began on the first Monday in September, 2016, under the former provisions of Code Section 15-2-4 shall end on December 16, 2016."

Law reviews. — For article on the 2016 amendment of this Code section, see 33 Georgia St. U.L. Rev. 205 (2016).

JUDICIAL DECISIONS

Rulemaking authority. — Supreme Court has the authority under the Constitution to determine cases under such regulations as are prescribed by it. This was so because former Ga. Const. 1945, Art. VI, Sec. II, Para. VII, prevailed over this section. Fuller v. State, 232 Ga. 581, 208 S.E.2d 85 (1974).

Although former Ga. Const. 1945, Art. VI, Sec. II, Para. VII, relied upon in Fuller v. State, 232 Ga. 581, 208 S.E.2d 85 (1974), was not included in either the 1976 or the 1983 Constitution, the Supreme Court still may establish under the Supreme Court's inherent power whatever rules are necessary to determine the

cases which come before the court. Shore v. Shore, 253 Ga. 183, 318 S.E.2d 57 (1984).

Power to suspend rules. — Inherent power to make rules includes the concomitant power to suspend the rules in an appropriate case, enabling the Supreme Court to decide a case within the last 15 days of a term. Shore v. Shore, 253 Ga. 183, 318 S.E.2d 57 (1984).

Cited in Kinney v. Crow, 186 Ga. 851, 199 S.E. 198 (1938); Ramsey v. State, 212 Ga. 381, 92 S.E.2d 866 (1956); Tamplin v. State, 235 Ga. 774, 221 S.E.2d 455 (1975); R.J. v. State, 143 Ga. App. 213, 237 S.E.2d 691 (1977); Haygood v. City of Doraville, 256 Ga. 566, 350 S.E.2d 766 (1986); Stuckey v. Richardson, 188 Ga. App. 147, 372 S.E.2d 458 (1988); Namik v. Wachovia Bank of Ga., 279 Ga. 250, 612 S.E.2d 270 (2005); Gordon v. Dennis, 347 Ga. App. 110, 817 S.E.2d 561 (2018).

RESEARCH REFERENCES

Am. Jur. 2d. — 20 Am. Jur. 2d, Courts, § 16 et seq.

C.J.S. — 21 C.J.S., Courts, § 149 et seq.

ALR. — Validity of court's judgment rendered on Sunday or holiday, 85 A.L.R.2d 595.

15-2-5. Place of hearing oral argument.

The Supreme Court may hear oral argument at places other than the seat of government. Reasonable notice shall be given of such hearings.

History. — Code 1933, § 24-3804, enacted by Ga. L. 1979, p. 1107, § 1.

RESEARCH REFERENCES

Am. Jur. 2d. — 20 Am. Jur. 2d, Courts, § 20.

C.J.S. — 21 C.J.S., Courts, § 151 et seq.

15-2-6. Duty of Justices to attend; quorum; adjournment.

It shall be the duty of all the Justices of the Supreme Court to attend each term thereof. However, if, from providential cause, any of the Justices cannot attend the court, the court may be held by a quorum as defined by Article VI, Section VI, Paragraph I of the Constitution of this state. If less than a quorum attend, the Justices attending may adjourn the court to any time agreed upon by the attending Justices.

History. — Laws 1845, Cobb's 1851 Digest, p. 448; Code 1863, § 3159; Code 1868, § 3171; Code 1873, § 3239; Ga. L. 1877, p. 94, § 2; Code 1882, § 3239; Civil Code 1895, § 5495; Civil Code 1910, § 6100; Code 1933, § 24-3802; Ga. L. 1945, p. 212, § 1; Ga. L. 1983, p. 3, § 50.

RESEARCH REFERENCES

Am. Jur. 2d. — 20 Am. Jur. 2d, Courts, § 32.

C.J.S. — 21 C.J.S., Courts, § 181 et seq.

15-2-7. Adjournment for providential cause.

When from providential cause the Supreme Court cannot be held at the time and place designated by law, it may be adjourned by order of the Justices or by a quorum thereof, in either term time or vacation, to some other convenient time and place; and the session then held shall be valid. Notice shall be given of such adjournment if possible.

History. — Orig. Code 1863, § 3160; Code 1868, § 3172; Code 1873, § 3240; Code 1882, § 3240; Civil Code 1895, § 5496; Civil Code 1910, § 6101; Code 1933, § 24-3803.

RESEARCH REFERENCES

Am. Jur. 2d. — 20 Am. Jur. 2d, Courts, § 20.

C.J.S. — 21 C.J.S., Courts, § 142 et seq.

15-2-8. Powers of court generally.

The Supreme Court has authority:

(1) To exercise appellate jurisdiction, and in no appellate case to hear facts or examine witnesses;

(2) To hear and determine all cases, civil and criminal, that may come before it; to grant judgments of affirmance or reversal, or any other order, direction, or decree required therein; and, if necessary, to make a final disposition of a case in the manner prescribed elsewhere in this Code;

(3) To grant any writ necessary to carry out any purpose of its organization or to compel any inferior tribunal or officers thereof to obey its order;

(4) To appoint its own officers and to commission any person to execute any specific order it may make;

(5) To establish, amend, and alter its own rules of practice and to regulate the admission of attorneys to the practice of law;

(6) To punish for contempt by the infliction of a fine as high as $500.00 or imprisonment not exceeding ten days, or both; and

(7) To exercise such other powers, not contrary to the Constitution of this state, as given to it by law. This paragraph shall not be interpreted to abrogate the inherent power of the court.

History. — Laws 1845, Cobb's 1851 Digest, pp. 450, 452; Code 1863, §§ 211, 4180; Code 1868, §§ 205, 4219; Code 1873, §§ 218, 4284; Code 1882, §§ 218, 4284; Civil Code 1895, § 5498; Penal Code 1895, § 1068; Civil Code 1910, § 6103; Penal Code 1910, § 1095; Code 1933, § 24-3901; Ga. L. 1986, p. 279, § 1; Ga. L. 2003, p. 334, § 1.

Cross references. — Exercise by Su-

preme Court of appellate jurisdiction generally, § 5-6-1 et seq. Review of death sentences by Supreme Court, § 17-10-35 et seq. Power of Justices of Supreme Court to appoint hearing examiners to hold hearings regarding continued involuntary hospitalization or habilitation of the mentally ill, §§ 37-3-84, 37-7-84.

Law reviews. — For article, "Jury Trials in Contempt Cases," see 20 Ga. B. J. 297 (1957).

For note on the 2003 amendment to this Code section, see 20 Ga. St. U.L. Rev. 175 (2003).

For comment on Sams v. Olah, 225 Ga. 497, 169 S.E.2d 790 (1969), as to the constitutionality of the State Bar Act (see now O.C.G.A. § 15-19-30 et seq.), see 21 Mercer L. Rev. 355 (1969). For comment, "Encroachment, Loss of Five Yards: Government Attorneys and the No-Contact Rule's Place in Civil False Claims Act Investigations," see 68 Mercer L. Rev. 877 (2017).

JUDICIAL DECISIONS

Analysis

General Consideration
Affirmance and Reversal
Powers over Inferior Tribunals
Power to Establish Rules of Practice and Regulate Admission to Bar

General Consideration

Not a court of first instance. — Supreme Court is in no respect a court of first instance. Vanderford v. Brand, 126 Ga. 67, 54 S.E. 822, 9 Ann. Cas. 617 (1906).

No review of questions not ruled on by trial judge. — Supreme Court is a court for the correction of errors, and has no original jurisdiction; the Supreme Court will not pass upon questions on which no ruling has ever been made by a trial judge. South View Cem. Ass'n v. Hailey, 199 Ga. 478, 34 S.E.2d 863 (1945).

If defendant in custody proceeding raises for first time on appeal, factual issues and an attack on the validity of the divorce, the questions cannot be considered by the Supreme Court. Beggs v. Beggs, 208 Ga. 415, 67 S.E.2d 135 (1951).

Constitutionality of statutes. — If constitutional questions are raised for the first time in a petition for certiorari to the superior court from a judgment rendered in a recorder's court of Atlanta, the superior court could not consider, and the Supreme Court is without jurisdiction to review, the assignment of error that the ordinance under which the plaintiff in error was convicted in the recorder's court is unconstitutional. Worth v. Borough of Atlanta, 175 Ga. 377, 165 S.E. 245 (1932).

If statutes are not attacked as being unconstitutional in the trial court, such an attack, enumerated as error and argument in the brief of counsel before the Supreme Court, will not be passed upon. Turk v. State Hwy. Dep't, 226 Ga. 245, 174 S.E.2d 791 (1970).

Certification of question authorized. — Court of Appeals was authorized to certify a question to the Supreme Court as to the constitutionality of retroactive application of the cap on damages recoverable against the state provided in O.C.G.A. § 50-21-26. Department of Human Resources v. Phillips, 223 Ga. App. 520, 478 S.E.2d 598 (1996).

Case sent by mistake to Court of Appeals retained on docket of Supreme Court. — If a case is sent to the Court of Appeals by mistake, and the case is transmitted therefrom and decided to be within the jurisdiction of the Supreme Court, such case will be retained and entered on the docket of that court for hearing and determination. Dawson v. State, 130 Ga. 127, 60 S.E. 315 (1908); Mitchell v. Masury, 132 Ga. 360, 64 S.E. 275 (1909).

Cited in Kelley v. State, 49 Ga. 12 (1873); Central R.R. & Banking Co. v. Kent, 91 Ga. 687, 18 S.E. 850 (1893); Comer v. Dufour, 95 Ga. 376, 22 S.E. 543, 51 Am. St. R. 89, 30 A.L.R. 300 (1895); Lester v. Wright, 145 Ga. 15, 88 S.E. 403 (1916); Smyly v. Globe & Rutgers Fire Ins.

General Consideration (Cont'd)

Co., 28 Ga. App. 776, 113 S.E. 220 (1922); Tice Co. v. Evans, 32 Ga. App. 385, 123 S.E. 742 (1924); Gore v. Humphries, 163 Ga. 106, 135 S.E. 481 (1926); Allen v. State, 164 Ga. 669, 139 S.E. 415 (1927); Wilkes County v. Mayor of Washington, 167 Ga. 181, 145 S.E. 47 (1928); Hornady v. Goodman, 167 Ga. 555, 146 S.E. 173 (1928); Burkhalter v. De Loach, 171 Ga. 384, 155 S.E. 513 (1930); AT & T Co. v. Sewell, 172 Ga. 787, 158 S.E. 800 (1931); Griffin v. Booth, 176 Ga. 1, 167 S.E. 294 (1932); Brooks v. Sturdivant, 177 Ga. 514, 170 S.E. 369 (1933); Jones v. Ellis, 182 Ga. 380, 185 S.E. 510 (1936); McRae v. Sears, 183 Ga. 133, 187 S.E. 664 (1936); Hadden v. Fuqua, 194 Ga. 621, 22 S.E.2d 377 (1942); Singleton v. State, 196 Ga. 136, 26 S.E.2d 736 (1943); Weatherford v. Weatherford, 204 Ga. 553, 50 S.E.2d 323 (1948); Parks v. State, 206 Ga. 675, 58 S.E.2d 142 (1950); Campbell v. Powell, 206 Ga. 768, 58 S.E.2d 829 (1950); Woods v. State, 117 Ga. App. 546, 160 S.E.2d 922 (1968); Lamb v. Nabers, 224 Ga. 396, 162 S.E.2d 336 (1968); Wallace v. Wallace, 225 Ga. 102, 166 S.E.2d 718 (1969); Raybestos-Manhattan, Inc. v. Moran, 248 Ga. 461, 284 S.E.2d 256 (1981); Waldrip v. Head, 272 Ga. 572, 532 S.E.2d 380 (2000); Duke v. State, 306 Ga. 171, 829 S.E.2d 348 (2019).

Affirmance and Reversal

Duty of Supreme Court. — It is the duty of the Supreme Court not only to grant judgments of affirmance or reversal, but any other order, direction, or decree required, and if necessary to make a final disposition of the cause. Harris v. Hull, 70 Ga. 831 (1883).

General authority of Supreme Court. — Supreme Court is authorized to make final disposition of a case and to give the case such direction as is consistent with the law and justice applicable to the case, and as will prevent the unnecessary protraction of litigation. Robinson v. Wilkins, 74 Ga. 47 (1884); Ross v. Rambo, 195 Ga. 100, 23 S.E.2d 687 (1942).

One great purpose in establishing the Supreme Court (or the Court of Appeals) was to terminate suits, and with this view, it is made the court's duty not only to grant judgments of affirmance or reversal, but any other order, direction, or decree required, and if necessary to make a final disposition of the cause, and the court is empowered to give to the cause in the court below such direction as may be consistent with the law and justice of the case. Gray v. Watson, 54 Ga. App. 885, 189 S.E. 616 (1936).

General authority of Court of Appeals. — Under Ga. Const. 1976, Art. VI, Sec. II, Para. VIII (see now Ga. Const. 1983, Art. VI, Sec. V, Para. III), the Court of Appeals has, as to cases within the court's peculiar jurisdiction, the same powers as the Supreme Court has within that court's jurisdiction. Finley v. Southern Ry., 5 Ga. App. 722, 64 S.E. 312 (1909).

Court of Appeals may make final disposition of the case and give such directions as are consistent with the law and justice applicable to the cause and as will prevent unnecessary protraction of litigation. Parks v. Parks, 89 Ga. App. 725, 80 S.E.2d 837 (1954).

Amendment of judgment by Court of Appeals. — Court of Appeals has power to direct that verdict and judgment be so amended as to meet the ends of justice and comply with the law. Parks v. Parks, 89 Ga. App. 725, 80 S.E.2d 837 (1954).

Reviewing court to apply law existing at time of judgment. — Reviewing court should apply law as the law exists at the time of the court's judgment rather than the law prevailing at rendition of judgment under review, and may therefore reverse a judgment that was correct at the time the judgment was rendered and affirm a judgment that was erroneous at the time, if the law has been changed in the meantime and if such application of the new law will impair no vested right under the prior law. Osteen v. Osteen, 244 Ga. 445, 260 S.E.2d 321 (1979).

Judgment affirmed when in accordance with direction of Supreme Court. — If judgment of a lower court is in accordance with the direction of the Supreme Court, the judgment will be affirmed. Loyd v. Hicks, 32 Ga. 499 (1861).

Distinction between reversals for different reasons. — Dismissal of a writ

of error (see now O.C.G.A. §§ 5-6-49 and 5-6-50) because a judgment of reversal would be in effect a nullity is a different thing from the reversal of a judgment upon proof of facts which have transpired since the judgment was rendered. In the one instance, review is refused because review would be useless, while in the other instance, to reverse the judgment of the lower court would be to hold that the judge erred because of the proof of the existence of facts which have occurred since the judge's judgment was rendered, and hence were not before the judge when the judge made the decision. Marietta Chair Co. v. Henderson, 119 Ga. 65, 45 S.E. 725 (1903).

Harmless error if execution of amended judgment conforms to original judgment. — If court erred in amending judgment but execution conformed to the original judgment, the error was harmless and correctible. Kicklighter v. Burkhalter, 177 Ga. 187, 170 S.E. 75 (1933) (decided prior to Civil Practice Act of 1966).

If sentence is partly illegal, Supreme Court will direct that illegal part be stricken out. Newman v. State, 101 Ga. 534, 28 S.E. 1005 (1897).

If fine imposed is excessive, the sentence may be corrected by reducing the fine. Phillips v. City of Atlanta, 87 Ga. 62, 13 S.E. 201 (1891).

Fine for contempt that exceeds the legal amount may be corrected by reducing the fine. Warner v. Martin, 124 Ga. 387, 52 S.E. 446 (1905).

Reversal of judgment in cases of multiple defendants. — Appellate court can reverse the judgment as to only one of three defendants if a joint motion for new trial is filed, and, a fortiori, it can reverse the judgment as to one defendant only if the appellants themselves separate the appellants' cause by filing separate motions for new trial and coming to the court on separate bills of exceptions (see now O.C.G.A. §§ 5-6-49 and 5-6-50). Gray v. Watson, 54 Ga. App. 885, 189 S.E. 616 (1936).

Powers over Inferior Tribunals

Power to compel signing of bill of exceptions. — Supreme Court has power to compel a judge to sign a bill of exceptions (see now O.C.G.A. §§ 5-6-49 and 5-6-50), if the judge unlawfully refuses to do so. Taylor v. Reese, 108 Ga. 379, 33 S.E. 917 (1899).

Appellate courts have authority to require judge of trial court to sign bill of exceptions (see now O.C.G.A. §§ 5-6-49 and 5-6-50) by means of mandamus. Garland v. Tanksley, 99 Ga. App. 201, 107 S.E.2d 866 (1959).

Limits on authority to grant mandamus. — Appellate courts do not have the authority to grant mandamus to compel a superior court judge to approve brief of evidence presented to the judge in connection with a motion for new trial pending in that court. Central R.R. v. Miller, 91 Ga. 83, 16 S.E. 256 (1892).

Limits on authority to compel grant of supersedeas. — Appellate courts do not have the authority to compel grant of supersedeas to stay execution of judgment in criminal case while pending on bill of exceptions (see now O.C.G.A. §§ 5-6-49 and 5-6-50). Spann v. Clark, 47 Ga. 369 (1872); Vanderford v. Brand, 126 Ga. 67, 54 S.E. 822, 9 Ann. Cas. 617 (1906).

Power of Supreme Court greater than superior court. — Powers of the Supreme Court are much more ample in the matter of awarding direction than are those of the superior court to shape what may be termed special proceedings or results without direction from the Supreme Court. Powell v. Augusta & S.R.R., 77 Ga. 192, 3 S.E. 757 (1886).

Appellate court may not aid litigant absent writ of error. — Appellate court cannot aid a petitioner in taking any step in the superior court in a case pending in that court if no writ of error (see now O.C.G.A. §§ 5-6-49 and 5-6-50) has been sued out or applied for, except for the purpose of preventing the case from becoming moot and thus divesting the court of jurisdiction. Garland v. Gray, 108 Ga. App. 303, 132 S.E.2d 834 (1963).

Power to Establish Rules of Practice and Regulate Admission to Bar

For discussion of constitutionality of Ga. L. 1963, p. 70, § 1 (see now O.C.G.A. § 15-19-30 et seq.), relating to establishment of a unified bar, and

Power to Establish Rules of Practice and Regulate Admission to Bar (Cont'd)

the relative power of the legislative and judiciary to establish disciplinary rules and regulations for attorneys, see Sams v. Olah, 225 Ga. 497, 169 S.E.2d 790 (1969), cert. denied, 397 U.S. 914, 90 S. Ct. 916, 25 L. Ed. 2d 94 (1970).

Creation of unified state bar is judicial function. — In proposing that the Supreme Court create a unified bar, the General Assembly did not have the authority to circumscribe the court by denying the court the right to adopt rules and regulations on the court's own initiative. Since the court had the power to create the State Bar, the court must necessarily also have the power to make rules for the government of this administrative arm of the court. Sams v. Olah, 225 Ga. 497, 169 S.E.2d 790 (1969), cert. denied, 397 U.S. 914, 90 S. Ct. 916, 25 L. Ed. 2d 94 (1970).

State Bar Act authorizes adoption of disciplinary rules and regulations. — Purpose of Ga. L. 1963, p. 70, § 1 (see now O.C.G.A. § 15-19-30 et seq.) was to initiate the creation of the State Bar of Georgia. That law eliminated any conflicting claims of coordinate branches of government to such power. Furthermore, that law's adoption encouraged the court to exercise the court's inherent power in this regard. In response thereto, but in the exercise of an inherent judicial function, the Supreme Court acted and the State Bar of Georgia was created. Although the article was not essential for such action, it is a valid legislative enactment and not subject to constitutional attack. The rules and regulations are therefore not a nullity. Sams v. Olah, 225 Ga. 497, 169 S.E.2d 790 (1969), cert. denied, 397 U.S. 914, 90 S. Ct. 916, 25 L. Ed. 2d 94 (1970).

Promulgation of rule absent statutory provision. — In absence of statutory provision, when no rule has been prescribed, the Supreme Court will promulgate a rule. McCowan v. Brooks, 113 Ga. 384, 39 S.E. 112 (1901).

Disqualification of an attorney to represent codefendants must be raised prior to trial; otherwise, any disqualification could result in manufactured error. Brown v. State, 247 Ga. 298, 275 S.E.2d 52 (1981), overruled on other grounds, Wilson v. Zant, 249 Ga. 373, 290 S.E.2d 442 (1982).

RESEARCH REFERENCES

Am. Jur. 2d. — 20 Am. Jur. 2d, Courts, § 55 et seq.

ALR. — Change of former decisions by court of last resort as ground of relief from decrees or orders rendered or entered in the interval in other cases, 95 A.L.R. 708.

Injunction by appellate court to protect subject matter of appeal or preserve status quo as between the parties, 133 A.L.R. 1105.

Right of accused to attack indictment or information after reversal or setting aside of conviction, 145 A.L.R. 493.

Propriety of disposition of pending action involving controversy within religious society or other nonprofit association, by ordering election, 158 A.L.R. 182.

Extraterritorial effect of valid award of custody of child of divorced parents, in absence of substantial change in circumstances, 35 A.L.R.3d 520.

Attorney's failure to attend court, or tardiness, as contempt, 13 A.L.R.4th 122.

Small claims: jurisdiction limits as binding on appellate court, 67 A.L.R.4th 1117.

Civil actions removable from state court to federal court under 28 USCA § 1443, 159 A.L.R. Fed. 377.

Who is "person acting under" officer of United States or any agency thereof for purposes of availability of right to remove state action to federal court under 28 U.S.C.A. § 1442(a)(1), 166 A.L.R. Fed. 297.

15-2-9. Answers to questions certified by federal courts.

(a) The Supreme Court of this state, by rule of court, may provide that when it shall appear to the Supreme Court of the United States, to any circuit court of appeals or district court of the United States, or to the Court of Appeals or the District Court of the District of Columbia that there are involved in any proceeding before it questions of the laws of this state which are determinative of the case and there are no clear controlling precedents in the decisions of the Supreme Court of this state, such federal court may certify the questions of the laws of this state to the Supreme Court of this state for answers to the questions of state law, which certificate the Supreme Court of this state may answer by written opinion.

(b) The Court of Appeals shall not have jurisdiction to consider any question certified under this Code section by transfer or otherwise.

History. — Code 1933, § 24-3902, enacted by Ga. L. 1977, p. 577, § 1; Ga. L. 2003, p. 337, § 1.

Cross references. — Certification of questions from federal courts as to Georgia law, Rules of the Supreme Court of the State of Georgia, Rule 37.

Law reviews. — For article, "Federal Courts, State Law and Certification," see 23 Ga. St. B. J. 120 (1987). For essay on Georgia conflict of laws questions in contracts cases in the eleventh circuit and certification reform, see 11 Ga. St. U.L. Rev. 531 (1995).

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No federal rule requires use of certification. Miree v. United States, 242 Ga. 126, 249 S.E.2d 573 (1978).

No certification for moot questions. — While federal district courts could certify open questions of law under the Georgia state constitution and relevant state statutes to the Supreme Court of Georgia under Ga. Const. 1983, Art. VI, Sec. VI, Para. IV, O.C.G.A. § 15-2-9, and Ga. Sup. Ct. R. 46 — 48, because the direct actions by plaintiff insureds against defendant insurer were barred by O.C.G.A. § 33-7-11 for failure to have first obtained a judgment against their uninsured motorists, the insureds' request for certification of a question of law to the Supreme Court of Georgia, to determine whether Georgia precedent prohibited the insurer from asserting set-offs in the payment of uninsured motorist personal injury claims, was not warranted. Harden v. State Farm Mut. Auto. Ins. Co., No. 08-15008, 2009 U.S. App. LEXIS 16095 (11th Cir. July 22, 2009) (Unpublished).

Question certified as to state insurance law. — Question was certified to the state supreme court pursuant to O.C.G.A. § 15-2-9 as to whether a notice of cancellation, properly given by an insurer after the premium was past due, was ineffective under O.C.G.A. § 33-24-44 because the notice provided the insured an opportunity to keep the policy in force by paying the past due premium within the 10-day statutory period. Infinity Gen. Ins. Co. v. Reynolds, 570 F.3d 1228 (11th Cir. 2009).

Question certified. — Because the question of whether bank directors and officers might be subject to claims for ordinary negligence was debatable under Georgia law, the issue was certified to the state supreme court. FDIC v. Skow, 741 F.3d 1342 (11th Cir. 2013).

Because the appeal seemed to present questions of state law that had not yet been decided by the Georgia appellate courts, three questions were certified to the Supreme Court of Georgia. Piedmont Office Realty Trust v. Xl Speciality Ins. Co., 769 F.3d 1291 (11th Cir. 2014).

Question not certified. — Court's rea-

soning was not transformed from a principled decision to a conjectural conclusion simply because the court chose not to rely on legal theories that had either not been recognized in this state or that did not apply to the facts presented. As such, certification to the Georgia Supreme Court was inappropriate. Gold Cross EMS, Inc. v. Children's Hosp. of Ala., No. 113-081, 2015 U.S. Dist. LEXIS 70564 (S.D. Ga. June 1, 2015), aff'd, No. 15-14369, 2016 U.S. App. LEXIS 7622 (11th Cir. Ga. 2016).

Cited in Szczepanski v. GMAC, 558 F.2d 732 (5th Cir. 1977); Miree v. United States, 565 F.2d 1354 (5th Cir. 1978); Insurance Co. v. Meyer, 565 F.2d 1357 (5th Cir. 1978); Wansor v. George Hantscho Co., 570 F.2d 1202 (5th Cir. 1978); Szczepanski v. GMAC, 571 F.2d 317 (5th Cir. 1978); Wansor v. George Hantscho Co., 580 F.2d 726 (5th Cir. 1978); Miree v. United States, 588 F.2d 453 (5th Cir. 1979); Balboa Ins. Co. v. A.J. Kellos Constr. Co., 247 Ga. 393, 276 S.E.2d 599 (1981); United States v. Aretz, 248 Ga. 19, 280 S.E.2d 345 (1981); First Nat'l Bank v. United States, 634 F.2d 212 (5th Cir. 1981); Aretz v. United States, 635 F.2d 485 (5th Cir. 1981); Allstate Ins. Co. v. Young, 638 F.2d 31 (5th Cir. 1981); Aretz v. United States, 660 F.2d 531 (5th Cir. 1981); Continental Am. Life Ins. Co. v. Griffin, 251 Ga. 412, 306 S.E.2d 285 (1983); Martin Luther King, Jr., Ctr. for Social Change, Inc. v. American Heritage Prods., 694 F.2d 674 (11th Cir. 1983); Harlan v. Six Flags Over Ga., Inc., 699 F.2d 521 (11th Cir. 1983); General Tel. Co. v. Trimm, 706 F.2d 1117 (11th Cir. 1983); Lamb v. McDonnell-Douglas Corp., 712 F.2d 466 (11th Cir. 1983); Robinson v. Parrish, 720 F.2d 1548 (11th Cir. 1983); Griffin v. Continental Am. Life Ins. Co., 722 F.2d 671 (11th Cir. 1984); Smith v. Universal Underwriters Ins. Co., 732 F.2d 129 (11th Cir. 1984); Abney v. Cox Enters., 777 F.2d 1521 (11th Cir. 1985); Jordan v. TG & Y Stores Co., 256 Ga. 16, 342 S.E.2d 665 (1986); Gulf Life Ins. Co. v. Folsom, 256 Ga. 400, 349 S.E.2d 368 (1986); Gulf Life Ins. Co. v. Folsom, 806 F.2d 225 (11th Cir. 1986); Southern Guar. Corp. v. Doyle, 256 Ga. 790, 353 S.E.2d 510 (1987); St. Joseph Hosp. v. Celotex Corp., 854 F.2d 426 (11th Cir. 1988); Johnson Controls, Inc. v. Safeco Ins. Co. of Am., 913 F.2d 907 (11th Cir. 1990); W.R. Grace & Co. v. Mouyal, 959 F.2d 219 (11th Cir. 1992); Granite State Ins. Co. v. Nord Bitumi U.S., Inc., 959 F.2d 911 (11th Cir. 1992); Bradway v. American Nat'l Red Cross, 965 F.2d 991 (11th Cir. 1992); Kitchen v. CSX Transp., Inc., 19 F.3d 601 (11th Cir. 1994); United States Fid. and Guar. Co. v. Park 'N Go of Ga., Inc., 66 F.3d 273 (11th. Cir. 1995); Doyle v. Volkswagenwerk Aktiengel-Ellschaft, 81 F.3d 139 (11th Cir. 1996); Colonial Oil Indus., Inc. v. Underwriters, 106 F.3d 960 (11th Cir. 1997); Boardman Petro., Inc. v. Federated Mut. Ins. Co., 119 F.3d 883 (11th Cir. 1997); Waldrip v. Head, 272 Ga. 572, 532 S.E.2d 380 (2000); Hallum v. Provident Life & Accident Ins. Co., 289 F.3d 1350 (11th Cir. 2002); Baillie Lumber Co. v. Thompson, 391 F.3d 1315 (11th Cir. 2004); Hardin v. NBC Universal, Inc., 283 Ga. 477, 660 S.E.2d 374 (2008); Trinity Outdoor, LLC v. Cent. Mut. Ins. Co., 285 Ga. 583, 679 S.E.2d 10 (2009); Mooney v. Webster, 300 Ga. 283, 794 S.E.2d 31 (2016).

RESEARCH REFERENCES

ALR. — Right of federal courts in passing upon the validity or construction of state statute or constitutional provision, or rights and obligations accruing thereunder, to exercise their own judgment independent of latest state court decisions thereon rendered subsequent to the accrual of the right in question, 97 A.L.R. 515.

15-2-10. Procedure for increasing the number of Supreme Court Justices.

The additional justiceships created in 2016 shall be appointed by the Governor for a term beginning January 1, 2017, and continuing through December 31, 2018, and until their successors are elected and qualified. Their successors shall be elected in the manner provided by law for the election of Supreme Court Justices at the nonpartisan judicial election in 2018, for a term of six years beginning on January 1, 2019, and until their successors are elected and qualified. Future successors shall be elected at the nonpartisan judicial election each sixth year after such election for terms of six years and until their successors are elected and qualified. They shall take office on the first day of January following the date of the election.

History. — Code 1981, § 15-2-10, enacted by Ga. L. 2016, p. 883, § 4-2/HB 927.

Editor's notes. — Ga. L. 2016, p. 883, § 1-1/HB 927, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Appellate Jurisdiction Reform Act of 2016.'"

Former Code Section 15-2-10, pertaining to separation of court into two divisions, was repealed by Ga. L. 1983, p. 956, § 2, effective July 1, 1983. The former Code section was based on Ga. L. 1895, p. 15, § 1; Ga. L. 1896, p. 42, §§ 1, 3; Civil Code 1910, § 6110; Code 1933, § 24-4010; and Ga. L. 1981, Ex. Sess., p. 8.

Law reviews. — For article on the 2016 amendment of this Code section, see 33 Georgia St. U.L. Rev. 205 (2016).

RESEARCH REFERENCES

Am. Jur. 2d. — 46 Am. Jur.2d, Judges, § 7 et seq.

C.J.S. — 48A C.J.S., Judges, § 17 et seq.

15-2-11 through 15-2-15.

Reserved. Repealed by Ga. L. 1983, p. 956, § 2, effective July 1, 1983.

Editor's notes. — Code Sections 15-2-11 through 15-2-15, relating to separation of court into two divisions, were based on Ga. L. 1895, p. 15, § 1; Ga. L. 1896, p. 42, §§ 1, 3; Civil Code 1910, §§ 6111, 6112, 6113, 6114, 6115; Code 1933, §§ 24-4009, 24-4011, 24-4012, 24-4013, 24-4014; Ga. L. 1981, Ex. Sess., p. 8; and Ga. L. 1983, p. 3, § 50. For current provisions requiring a majority of the court to hear and determine cases, see Ga. Const. 1983, Art. VI, Sec. VI, Para. I.

Ga. L. 2008, p. 324, § 15/SB 455, reserved the designations of these Code sections.

15-2-16. Reversal and affirmance; minutes and reports to show concurrences and dissents.

(a) In all cases decided by the Supreme Court, the concurrence of a majority of the Justices shall be essential to a judgment of reversal. If the Justices are evenly divided, the judgment of the court below shall

stand affirmed. In all cases decided by the court, with at least a quorum but less than nine Justices, the concurrence of at least five shall be essential to the rendition of a judgment.

(b) Both the minutes and the printed official reports shall show how many and which Justices concurred in each judgment rendered and which, if any, dissented therefrom.

History. — Ga. L. 1896, p. 42, § 5; Civil Code 1910, § 6116; Code 1933, § 24-4015; Ga. L. 1983, p. 956, § 3; Ga. L. 2016, p. 883, § 4-3/HB 927.

Editor's notes. — Ga. L. 2016, p. 883, § 1-1/HB 927, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Appellate Jurisdiction Reform Act of 2016.'"

Law reviews. — For article on the 2016 amendment of this Code section, see 33 Georgia St. U.L. Rev. 205 (2016).

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Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 6-1611, are included in the annotations for this Code section.

Trial court affirmed if Supreme Court evenly divided. — In case of a decision by entire court of six justices, if the court is evenly divided, the judgment of the trial court stands affirmed by operation of law. Inter-City Coach Lines v. City of Atlanta, 170 Ga. 905, 154 S.E. 352 (1930) (decided under Ga. Const. 1877, Art. VI, Sec. II, Para. VIII).

"Full bench rule" repealed. — "Full bench rule" wherein unanimous decisions of Supreme Court could not be overruled except by unanimous decisions has been repealed; stability and certainty in law are desirable, but when a majority of the court determines that stability must give way to justice, then justice prevails. Hall v. Hopper, 234 Ga. 625, 216 S.E.2d 839 (1975) (decided under former Code 1933, § 6-1611).

Cited in Irby v. Allen & Co., 161 Ga. 858, 131 S.E. 910 (1926); Ward v. Big Apple Super Mkts. of Bolton Rd., Inc., 223 Ga. 756, 158 S.E.2d 396 (1967).

15-2-17. Rules for regulating Supreme Court's proceedings.

The Supreme Court shall have full power and authority to make all rules, not in conflict with the Constitution or laws of this state, as may be necessary for carrying the Constitution into effect and regulating the court's proceedings thereunder. To these ends it may, by rules, provide and declare when the court shall sit, how its minutes shall be kept, and how the cases upon its dockets shall be apportioned; and it generally may make all regulations as to practice and procedure which experience may show to be convenient and expedient for the proper transaction of its business, with due regard to the rights of the parties and counsel concerned.

History. — Ga. L. 1896, p. 42, § 4; Civil Code 1910, § 6117; Code 1933, § 24-4016; Ga. L. 1983, p. 956, § 4.

Cross references. — Rules of the Supreme Court of Georgia.

Editor's notes. — The Supreme Court has adopted rules pursuant to this Code section, entitled "Rules of the Supreme Court of the State of Georgia."

Law reviews. — For comment on Crider v. State, 115 Ga. App. 347, 154 S.E.2d 743 (1967), holding that enumer-

ated errors must be supported by specific reference to the trial transcript, see 4 Ga. St. B. J. 265 (1967).

JUDICIAL DECISIONS

Time for filing enumeration of errors and briefs is fixed by court rules and not by law alone. Horton v. Western Contracting Corp., 113 Ga. App. 613, 149 S.E.2d 542 (1966).

15-2-18. Power to prescribe and revise rules of practice and procedure in courts of state; ratification by General Assembly; assistance of bar committee.

(a) The Supreme Court and the Justices thereof shall have the power to prescribe, modify, and repeal rules of procedure, pleading, and practice in civil actions and proceedings in the courts of this state and of practice and procedure for appeal or review in all cases, civil and criminal, to or from any of the courts or tribunals of this state. The rules shall not abridge, enlarge, or modify the substantive rights of any litigant.

(b) Whenever the Supreme Court adopts or prescribes any rules under this Code section, the rules shall be reported by the court to the General Assembly at the next regular session thereof or at an extraordinary session authorized by law to consider and ratify them. The rules shall not take effect until they have been ratified and confirmed by the General Assembly by an Act or resolution thereof.

(c) The Supreme Court is authorized to repeal, modify, or amend any rule adopted or prescribed by it, but no repeal, modification, or amendment shall be effective until it has been ratified by an Act or resolution of the General Assembly.

(d) The Supreme Court shall appoint a committee or committees from the bar of this state to aid in the preparation of rules.

(e) This Code section shall not be construed as constituting an abandonment or disclaimer of the power of the General Assembly to enact laws regulating procedure in the courts of this state.

History. — Ga. L. 1945, p. 145, §§ 1-5.

Cross references. — Requirement of uniform rules of practice and procedure for courts of each class, Ga. Const. 1983, Art. VI, Sec. I, Para. V; Ga. Const. 1983, Art. VI, Sec. IX, Para. I.

Law reviews. — For comment on Crider v. State, 115 Ga. App. 347, 154 S.E.2d 743 (1967), see 4 Ga. St. B. J. 265 (1967).

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Rule making authorization applies to any court or tribunal. — This section does not limit rule making authorization to "appeal or review" to appellate courts, but specifically states "to or from any of the courts or tribunals of this state." Fair v. State, 220 Ga. 750, 141 S.E.2d 431 (1965).

Authority to prescribe motions for new trials. — This section authorizes court to prescribe rules as to motions for new trial in criminal or civil cases. Fair v. State, 220 Ga. 750, 141 S.E.2d 431 (1965).

No authority to prescribe criminal rules of procedure. — This section does not authorize court to prescribe rules of procedure, pleading, and practice in trial of criminal cases. Wilson v. State, 215 Ga. 775, 113 S.E.2d 607 (1960); Fair v. State, 220 Ga. 750, 141 S.E.2d 431 (1965).

Cited in Maxwell v. Arnold, 76 Ga. App. 576, 46 S.E.2d 623 (1948).

15-2-19. Law assistants.

The Justices of the Supreme Court shall be authorized to appoint law assistants for the use of the court and to remove them at pleasure. The law assistants shall have been admitted to the bar of this state as practicing attorneys; provided, however, that an individual who graduated from law school but who is not a member of the bar of this state may be appointed as a law assistant so long as he or she is admitted to the bar of this state within one year of such appointment. It shall be the duty of the law assistants to attend all sessions of the court, if so ordered, and generally to perform the duties incident to the role of law assistant.

History. — Code 1933, § 24-4301, enacted by Ga. L. 1946, p. 102, § 4; Ga. L. 1950, p. 342, § 1; Ga. L. 1952, p. 399, § 5; Ga. L. 2016, p. 883, § 1-2/HB 927.

Editor's notes. — Ga. L. 2016, p. 883, § 1-1/HB 927, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Appellate Jurisdiction Reform Act of 2016.'"

Law reviews. — For article on the 2016 amendment of this Code section, see 33 Georgia St. U.L. Rev. 205 (2016).

RESEARCH REFERENCES

Am. Jur. 2d. — 46 Am. Jur. 2d, Judges, § 26.

15-2-20. Officers of court.

The officers of the Supreme Court are a clerk, a reporter and an assistant reporter, a sheriff, and stenographers.

History. — Orig. Code 1863, § 213; Code 1868, § 207; Code 1873, § 220; Code 1882, § 220; Civil Code 1895, § 5507; Ga. L. 1896, p. 46, § 1; Civil Code 1910, § 6119; Code 1933, § 24-4001.

RESEARCH REFERENCES

Am. Jur. 2d. — 20 Am. Jur. 2d, Courts, § 1 et seq.

C.J.S. — 21 C.J.S., Courts, § 121 et seq.

15-2-21. Employment and salaries of court staff.

The Supreme Court may employ and fix the salaries of such stenographers, clerical assistants, and employees as may be deemed necessary by the court. Their salaries shall be paid by the clerk from the appropriations for the operation of the Supreme Court.

History. — Ga. L. 1943, p. 387, § 10.

RESEARCH REFERENCES

C.J.S. — 21 C.J.S., Courts, § 121 et seq.

15-2-22. Sheriff of Supreme Court.

The sheriff of the Supreme Court shall be appointed by the Justices for such term as may be specified by the order of appointment, not to exceed six years.

History. — Ga. L. 1882-83, p. 74, § 2; Civil Code 1895, § 5523; Civil Code 1910, § 6135; Code 1933, § 24-4401.

RESEARCH REFERENCES

Am. Jur. 2d. — 20 Am. Jur. 2d, Courts, § 1 et seq.

C.J.S. — 21 C.J.S., Courts, § 121 et seq. 80 C.J.S., Sheriffs and Constables, §§ 1 et seq., 51 et seq.

15-2-23. Compensation of sheriff.

Reserved. Repealed by Ga. L. 1993, p. 1402, § 4, effective July 1, 1993.

Editor's notes. — This Code section was based on Ga. L. 1916, p. 142, § 1; Ga. L. 1918, p. 227, § 1; Ga. L. 1919, p. 285, § 1; Code 1933, § 24-4402; Ga. L. 1952, p. 399, § 4; and Ga. L. 1981, Ex. Sess., p. 8.

15-2-24. Compensation of officers and employees.

The Justices of the Supreme Court are authorized to fix the annual compensation of the officers and employees of the court, provided that the total salaries and expenses of the court shall be within the amount of money available for such purposes.

History. — Orig. Code 1863, § 1578; Code 1868, § 1640; Code 1873, § 1646; Code 1882, § 1646; Civil Code 1895, § 287; Civil Code 1910, § 322; Ga. L. 1904, p. 72, § 1; Code 1933, § 24-4005; Ga. L. 1957, p. 205, § 5.

15-2-25. Books, supplies, and services.

The Supreme Court shall purchase such books, pamphlets, or other publications and such other supplies and services as the Justices thereof may deem necessary. The cost thereof shall be paid by the clerk out of the appropriations for the operation of the Supreme Court.

History. — Ga. L. 1943, p. 387, § 12.

RESEARCH REFERENCES

C.J.S. — 21 C.J.S., Courts, §§ 3, 4.

ARTICLE 2

CLERK OF THE SUPREME COURT

Law reviews. — For article, "Courts: Juvenile Justice Reform," see 30 Ga. St. U. L. Rev. 63 (2013).

15-2-40. Term of office; oath.

The clerk of the Supreme Court shall hold his office for six years unless removed for incapacity, improper conduct, or neglect of duty. Before entering upon his duties, he shall take an oath faithfully to discharge them and shall also take all other oaths required of civil officers.

History. — Laws 1845, Cobb's 1851 Digest, p. 451; Code 1863, § 214; Code 1868, § 208; Code 1873, § 221; Code 1882, § 221; Civil Code 1895, § 5508; Civil Code 1910, § 6120; Code 1933, § 24-4101.

RESEARCH REFERENCES

Am. Jur. 2d. — 15A Am. Jur. 2d, Clerks of Court, §§ 4, 7.

C.J.S. — 21 C.J.S., Courts, §§ 106 et seq., 121 et seq., 324 et seq.

15-2-41. Deputy clerks.

The clerk of the Supreme Court may appoint one or more deputies, in his discretion, under such rules as the court may adopt and shall be responsible for the faithful performance of their duties. When so appointed, the powers and duties of the deputy clerks shall be the same as those of the clerk.

History. — Laws 1845, Cobb's 1851 Digest, p. 451; Code 1863, § 215; Code 1868, § 209; Code 1873, § 222; Code 1882, § 222; Civil Code 1895, § 5509; Civil Code 1910, § 6121; Code 1933, § 24-4102.

RESEARCH REFERENCES

Am. Jur. 2d. — 15A Am. Jur. 2d, Clerks of Court, §§ 28, 40 et seq.

C.J.S. — 21 C.J.S., Courts, § 344 et seq.

15-2-42. Employees in clerk's office.

The clerk of the Supreme Court, with the approval of the court, may employ such stenographers, clerical assistants, and employees as may be necessary for the performance of the duties in the office of the clerk. Their salaries shall be paid by the clerk from the appropriations for the operation of the Supreme Court.

History. — Ga. L. 1943, p. 387, § 5.

15-2-43. Duties of clerk.

The clerk of the Supreme Court shall have the following duties:

(1) To keep an office at the seat of government where all books, records, archives, and the seal of the court shall remain;

(2) To attend all sessions of the court and obey all its lawful orders;

(3) To keep fair and regular minutes of the court's proceedings, a record of its judicial acts, a docket of its cases, and such other books as the court may require;

(4) To certify, when required, upon payment of the lawful fees, all minutes, records, or files of the court;

(5) To arrange the cases on the docket and to give notice in one of the newspapers printed at the place where the court is to be held, 20 days prior to its session, of the order of arrangement;

(6) To make out a remittitur of every case, together with a certificate of the amount of the costs and by whom paid, which remittitur shall consist of a copy of the judgment of the court as entered on the minutes, and nothing more, and to transmit the remittitur as provided by the rules of the Supreme Court;

(7) To issue and sign all writs and processes of every description issued under the authority of the court;

(8) To administer oaths and affidavits in all cases, to take acknowledgments, and to attest deeds, mortgages, and other written instruments of like character;

(9) To collect all costs due on cases in the Supreme Court and to pay over to the Office of the State Treasurer all money arising from costs collected;

(10) On or before the fifth day of each and every month, to submit in writing to the Office of the State Treasurer, with a copy to the state auditor, a full and fair statement of each case in which costs have been collected during the month preceding the report, showing the amount collected and the amount not collected. If any balance due by the clerk has not been collected, aside from costs due in indigency cases, or has been collected but not paid over, then the clerk shall be liable to be ruled by the Office of the State Treasurer in the Supreme Court, in term time, on the same terms as other officers are ruled; and

(11) To discharge whatever other duties may be required by law or the court or which necessarily appertain to the office.

History. — Laws 1845, Cobb's 1851 Digest, p. 451; Ga. L. 1851-52, p. 214, § 3; Ga. L. 1855-56, p. 199, § 5; Ga. L. 1857, p. 93, § 1; Code 1863, § 216; Code 1868, § 210; Code 1873, § 223; Ga. L. 1875, p. 87, §§ 2, 3; Code 1882, § 223; Civil Code 1895, § 5510; Ga. L. 1900, p. 57, § 1; Civil Code 1910, § 6122; Code 1933, § 24-4103; Ga. L. 1943, p. 387, §§ 1, 2; Ga. L. 1983, p. 956, § 5; Ga. L. 1993, p. 1402, § 5; Ga. L. 2010, p. 863, § 2/SB 296.

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Costs of case brought in forma pauperis. — Parties who bring cases to the Supreme Court upon pauper affidavits are not altogether relieved from liability for the costs. It follows that when a judgment of reversal is entered in such a case it is the duty of the clerk of the Supreme Court to tax the costs in the case and enter the costs on the remittitur. Sigman v. Austin, 112 Ga. 570, 37 S.E. 894 (1901).

Cited in DeKalb County v. Deason, 221 Ga. 237, 144 S.E.2d 446 (1965).

RESEARCH REFERENCES

Am. Jur. 2d. — 15A Am. Jur. 2d, Clerks of Court, § 20 et seq.

C.J.S. — 21 C.J.S., Courts, § 334 et seq.

15-2-44. How costs taxed; notice of appeal and transcript not recorded.

(a) When judgment is pronounced in any case, the clerk shall tax the costs thereof, which shall be entered without charge on the minutes at the foot of the judgment. The clerk shall make no charge for attaching the seal to the remittitur, nor for any precept issued by him, nor for anything except services actually rendered.

(b) The clerk shall not record the notice of appeal, transcript, or record from the court below.

History. — Laws 1847, Cobb's 1851 Digest, p. 454; Laws 1850, Cobb's 1851 Digest, p. 454; Ga. L. 1851-52, p. 214, §§ 1, 2; Ga. L. 1855-56, p. 202, § 1; Code 1863, § 217; Code 1868, § 211; Code 1873, § 224; Code 1882, § 224; Civil Code 1895, § 5512; Civil Code 1910, § 6124; Code 1933, § 24-4105.

15-2-45. Compensation; disposition of fees.

(a) The clerk of the Supreme Court shall receive as salary for services a sum as set by the Justices of the Supreme Court, payable in equal monthly installments from the appropriations for the operation of the Supreme Court.

(b) All fees coming to the clerk of the Supreme Court shall be the property of the state and the same shall be paid into the state treasury.

History. — Ga. L. 1875, p. 87, § 1; Code 1882, § 225a; Civil Code 1895, § 5514; Civil Code 1910, § 6126; Code 1933, § 24-4107; Ga. L. 1952, p. 399, §§ 1, 2; Ga. L. 1993, p. 1402, § 6.

15-2-46. Disposition of costs.

The funds arising from costs in the Supreme Court shall be paid into the general funds of the state.

History. — Ga. L. 1875, p. 87, § 2; Code 1882, § 223a; Civil Code 1895, § 5511; Civil Code 1910, § 6123; Code 1933, § 24-4104; Ga. L. 1943, p. 387, § 3.

RESEARCH REFERENCES

Am. Jur. 2d. — 15A Am. Jur. 2d, Clerks of Court, § 29.
C.J.S. — 21 C.J.S., Courts, § 339.

15-2-47. Attorneys liable for costs.

Every attorney who argues or presents a case to the Supreme Court is liable to the clerk for costs except in an indigency case.

History. — Laws 1845, Cobb's 1851 Digest, p. 451; Code 1863, § 218; Code 1868, § 212; Code 1873, § 225; Code 1882, § 225; Civil Code 1895, § 5513; Civil Code 1910, § 6125; Code 1933, § 24-4106.

Cross references. — Bill of costs, payment of costs, filing of affidavit of indigence, § 5-6-4. Legal defense of indigents generally, T. 17, C. 12.

JUDICIAL DECISIONS

Purpose of Code section. — It is the purpose of this Code section to make the collection of costs due in Supreme Court reasonably certain. Sigman v. Austin, 112 Ga. 570, 37 S.E. 894 (1901).

Cross-bill of exceptions. — Costs are

taxed against attorney for plaintiff in error in cross-bill of exceptions (see now O.C.G.A. §§ 5-6-49 and 5-6-50). Kehler & Bros. v. G.W. Jack Mfg. Co., 55 Ga. 639 (1876); In re Kenan, 109 Ga. 819, 35 S.E. 312 (1900).

RESEARCH REFERENCES

Am. Jur. 2d. — 15A Am. Jur. 2d, Clerks of Court, § 29.
C.J.S. — 21 C.J.S., Courts, § 339.

CHAPTER 3

COURT OF APPEALS

Sec.
15-3-1. Composition; divisions; how case is heard; decisions as precedent; oral arguments; assistance of other judges.
15-3-2. Terms of court.
15-3-3. Jurisdiction over certain crimes.
15-3-3.1. Appellate jurisdiction of Court of Appeals.
15-3-4. Election and term of office of Judges of Court of Appeals.
15-3-5. Oath of Judges; compensation.
15-3-6. Compensation of officers and employees.
15-3-7. Disposition of fees.
15-3-8. Compensation of sheriff of court [Repealed].
15-3-9. Law assistants.
15-3-10. Employment and salaries of staff.
15-3-11. Appointment of deputy clerk and employees by clerk of court.
15-3-12. Books, supplies, and services.
15-3-13. Voluntary preappeal settlement conference procedure.

Cross references. — Generally, Ga. Const. 1983, Art. VI, Sec. V, Para. I et seq. Qualifications for Judges of Court of Appeals, Ga. Const. 1983, Art. VI, Sec. VII, Para. II. Compensation and allowances for Judges of Court of Appeals, Ga. Const. 1983, Art. VI, Sec. VII, Para. V and § 45-7-1 et seq.

15-3-1. Composition; divisions; how case is heard; decisions as precedent; oral arguments; assistance of other judges.

(a) **Composition.** The Court of Appeals shall consist of 15 Judges who shall elect one of their number as Chief Judge, in such manner and for such time as may be prescribed by rule or order of the court.

(b) **Divisions.** The court shall sit in divisions composed of three Judges in each division. The assignment of Judges to each division shall be made by the Chief Judge, and the personnel of the divisions shall from time to time be changed in accordance with rules prescribed by the court. The Chief Judge shall designate the Presiding Judges of the divisions and shall, under rules prescribed by the court, distribute the cases among the divisions in such manner as to equalize their work as far as practicable.

(c) **How cases heard.**

(1) Except as provided in paragraph (2) of this subsection, each division shall hear and determine, independently of the others, the cases assigned to it. Two Judges shall constitute a quorum of a division.

(2) The Court of Appeals may provide by rule for certain cases to be heard and determined by more than a single division and the manner

in which those Judges will be selected for such cases. When a case is heard and determined by more than a single division, nine Judges shall be necessary to constitute a quorum.

(d) **Decisions as precedent.** The Court of Appeals shall provide by rule for the establishment of precedent and the manner in which prior decisions of the court may be overruled.

(e) **Oral arguments.** The Court of Appeals may hear oral arguments at places other than the seat of government. Reasonable notice shall be given of such hearings.

(f) **Assistance of other judges; procedure.** Whenever the court unanimously determines that the business of the court requires the temporary assistance of an additional judge or additional judges or one additional panel, the court may request the assistance of senior appellate judges as provided in Chapter 3A of this title or senior superior court judges. The Judge whose case assignment is transferred to the additional judge shall not vote on the case.

History. — Ga. L. 1916, p. 56, § 1; Code 1933, § 24-3501; Ga. L. 1945, p. 232, §§ 1-3; Ga. L. 1960, p. 158, § 1; Ga. L. 1961, p. 140, § 1; Ga. L. 1967, p. 538, § 1; Ga. L. 1982, p. 3, § 15; Ga. L. 1987, p. 291, § 1; Ga. L. 1995, p. 916, § 2; Ga. L. 1996, p. 405, § 1; Ga. L. 1998, p. 513, § 4; Ga. L. 1999, p. 10, § 1; Ga. L. 2015, p. 919, § 1-2/HB 279; Ga. L. 2016, p. 883, § 2-1/HB 927.

Cross references. — Divisions, Rules of the Court of Appeals of the State of Georgia, Rule 18.

Editor's notes. — Ga. L. 2016, p. 883, § 1-1/HB 927, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Appellate Jurisdiction Reform Act of 2016.'"

Law reviews. — For article, "Eleventh Circuit Survey: January 1, 2013 — December 31, 2013: Special Contribution: Open Chambers: Demystifying the Inner Workings and Culture of the Georgia Court of Appeals," see 65 Emory L. J. 831 (2014). For article, "Division of Labor: The Modernization of the Supreme Court of Georgia and Concomitant Workload Reduction Measures in the Court of Appeals," see 30 Ga. St. U.L. Rev. 925 (2014). For article, "Researching Georgia Law," see 34 Ga. St. U.L. Rev. 741 (2015). For article, "Annual Survey of Georgia Law: June 1, 2015 — May 31, 2016: Special Contribution: Open Chambers Revisited: Demystifying the Inner Workings and Culture of the Georgia Court of Appeals," see 68 Mercer L. Rev. 1 (2016). For article on the 2016 amendment of this Code section, see 33 Georgia St. U.L. Rev. 205 (2016).

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Constitutionality. — This section does not violate Ga. Const. 1976, Art. VI, Sec. II, Para. VIII (see now Ga. Const. 1983, Art. VI, Sec. V) on grounds that the General Assembly did not have power to provide for the appointment of additional judges, or power to divide the court into two divisions giving each division power to decide cases independently of the other division, or to assign all criminal cases to one of the divisions. Joseph v. State, 148 Ga. 166, 96 S.E. 229 (1918); Fountain v. State, 149 Ga. 519, 101 S.E. 294 (1919); McCall v. State, 150 Ga. 81, 103 S.E. 428 (1920).

Quo warranto denied challenging appointment of judges. — Trial court's denial of the challenger's petition for a writ of quo warranto was affirmed because the newly created positions on the Georgia

Court of Appeals qualified as vacancies under Ga. Const. 1983, Art. VI, Sec, VII, Para. III; thus, the governor had the authority to appoint judges to the vacancies created by amended O.C.G.A. § 15-3-1(a). Clark v. Deal, 298 Ga. 893, 785 S.E.2d 524 (2016).

Under this Code section, the rule of stare decisis applies, which means that older case law must control. Sharpe v. Seaboard Coast Line R.R., 528 F.2d 546 (5th Cir. 1976).

When the Court of Appeals created two competing lines of cases that stood for opposing propositions with respect to the application of Georgia's Rape Shield Statute, O.C.G.A. § 24-4-412, to evidence introduced by the state, the Court of Appeals was obligated to continue to rely on the older precedent from that court until such time as the older law was properly overruled by that court or reversed or overruled by the Supreme Court of Georgia. White v. State, 305 Ga. 111, 823 S.E.2d 794 (2019).

Power of judges to decide case. — Since two (now five or six) judges constitute a quorum, the judges may decide cases pending before the judges. Fountain v. State, 149 Ga. 519, 101 S.E. 294 (1919).

Dissent requires consideration by full court. — This section requires that full court consider any case in which one of the judges of a division may dissent. Fortson v. Caudell, 74 Ga. App. 276, 39 S.E.2d 579 (1946); Jones v. Cannady, 78 Ga. App. 453, 51 S.E.2d 551 (1949); Irvindale Farms, Inc. v. W.O. Pierce Dairy, Inc., 78 Ga. App. 670, 51 S.E.2d 712 (1949); Hall v. Beavers, 78 Ga. App. 722, 51 S.E.2d 879 (1949); Atlanta & W. Point R.R. v. Gilbert, 82 Ga. App. 244, 60 S.E.2d 787 (1950); Dorsey v. Georgia R.R. Bank & Trust Co., 82 Ga. App. 237, 60 S.E.2d 828 (1950).

Overruling by a single division of court. — Prior decision of the court of appeals was overruled in part by a single division of the court after consultation with the other nondisqualified judges. Temple v. Hillegass, 344 Ga. App. 454, 810 S.E.2d 625 (2018).

Cited in Gainesville Midland R.R. v. Allen, 72 Ga. App. 736, 35 S.E.2d 12 (1945); Smith v. Swann, 73 Ga. App. 144, 35 S.E.2d 787 (1945); Hicks v. Hicks, 73 Ga. App. 561, 37 S.E.2d 418 (1946); Jacobs v. State, 73 Ga. App. 550, 37 S.E.2d 438 (1946); Commercial Auto Loan Corp. v. Baker, 73 Ga. App. 534, 37 S.E.2d 636 (1946); Southern Ry. v. Brackett, 73 Ga. App. 648, 37 S.E.2d 642 (1946); Progressive Life Ins. Co. v. Archer, 73 Ga. App. 639, 37 S.E.2d 713 (1946); Hoxie v. Americus Auto. Co., 73 Ga. App. 686, 37 S.E.2d 808 (1946); Murphy v. Hunt, 73 Ga. App. 707, 37 S.E.2d 823 (1946); Georgia Power Co. v. Roper, 73 Ga. App. 826, 38 S.E.2d 91 (1946); Murray v. Anderson, 73 Ga. App. 771, 38 S.E.2d 131 (1946); Monroe Motor Express v. Jackson, 74 Ga. App. 148, 38 S.E.2d 863 (1946); American Fid. & Cas. Co. v. Jackson, 74 Ga. App. 159, 38 S.E.2d 871 (1946); Metropolitan Life Ins. Co. v. Milton, 74 Ga. App. 160, 38 S.E.2d 885 (1946); Western & Atl. R.R. v. Gardner, 74 Ga. App. 599, 40 S.E.2d 672 (1946); Martin v. Gurley, 74 Ga. App. 642, 40 S.E.2d 787 (1946); Northern Freight Lines v. Ledford, 75 Ga. App. 508, 43 S.E.2d 757 (1947); Grand Trunk W.R.R. v. Barge, 75 Ga. App. 646, 44 S.E.2d 281 (1947); Jones v. Blackburn, 75 Ga. App. 791, 44 S.E.2d 555 (1947); Phillips v. Sinclair Ref. Co., 76 Ga. App. 34, 44 S.E.2d 671 (1947); Southeastern Newspapers, Inc. v. Walker, 76 Ga. App. 57, 44 S.E.2d 697 (1947); Glens Falls Indem. Co. v. Gottlieb, 76 Ga. App. 70, 44 S.E.2d 706 (1947); Roberson v. State, 76 Ga. App. 25, 44 S.E.2d 924 (1947); Clarke v. Woodward, 76 Ga. App. 181, 45 S.E.2d 473 (1947); Gill v. Skinker, 76 Ga. App. 315, 45 S.E.2d 818 (1947); Auld v. Colonial Stores, Inc., 76 Ga. App. 329, 45 S.E.2d 827 (1947); Dodd v. Callaway, 76 Ga. App. 629, 46 S.E.2d 740 (1948); Jackson v. Moultrie Prod. Credit Ass'n, 76 Ga. App. 768, 47 S.E.2d 127 (1948); First Nat'l Bank v. Southern Cotton Oil Co., 76 Ga. App. 779, 47 S.E.2d 288 (1948); Metropolitan Life Ins. Co. v. Lathan, 77 Ga. App. 6, 47 S.E.2d 596 (1948); Presley v. Presley, 77 Ga. App. 99, 47 S.E.2d 647 (1948); Hughes v. Kistler, 76 Ga. App. 885, 47 S.E.2d 663 (1948); American Mut. Liab. Ins. Co. v. Benford, 77 Ga. App. 93, 47 S.E.2d 673 (1948); Davis v. Fulton Nat'l Bank, 77 Ga. App. 400, 48 S.E.2d 773 (1948); Ivey v. Hall, 77 Ga. App. 350, 48 S.E.2d 788 (1948); Buchanan

v. Hieber, 78 Ga. App. 434, 50 S.E.2d 815 (1948); Lyons v. Georgia Power Co., 78 Ga. App. 445, 51 S.E.2d 459 (1949); Walker Elec. Co. v. Sullivan, 79 Ga. App. 13, 52 S.E.2d 477 (1949); Sumter Milling & Peanut Co. v. Singletary, 79 Ga. App. 111, 53 S.E.2d 181 (1949); Kimberly v. Reed, 79 Ga. App. 137, 53 S.E.2d 208 (1949); Stanley v. Amos, 79 Ga. App. 297, 53 S.E.2d 568 (1949); Barton v. State, 79 Ga. App. 380, 53 S.E.2d 707 (1949); Milton Bradley Co. v. Cooper, 79 Ga. App. 302, 53 S.E.2d 761 (1949); Baggett v. Jackson, 79 Ga. App. 460, 54 S.E.2d 146 (1949); Klein v. Maryland Cas. Co., 79 Ga. App. 560, 54 S.E.2d 277 (1949); Grogan v. Herrington, 79 Ga. App. 505, 54 S.E.2d 284 (1949); J.C. Pirkle Mach. Co. v. Lester, 79 Ga. App. 512, 54 S.E.2d 298 (1949); Grimes v. State, 79 Ga. App. 489, 54 S.E.2d 302 (1949); Atlantic Coast Line R.R. v. Brand, 79 Ga. App. 552, 54 S.E.2d 312 (1949); Ford v. S.A. Lynch Corp., 79 Ga. App. 481, 54 S.E.2d 320 (1949); Western & Atl. R.R. v. Burnett, 79 Ga. App. 530, 54 S.E.2d 357 (1949); Whitlock v. Wilson, 79 Ga. App. 747, 54 S.E.2d 474 (1949); Western & Atl. R.R. v. Wright, 79 Ga. App. 733, 54 S.E.2d 655 (1949); Westbrook v. Beusse, 79 Ga. App. 654, 54 S.E.2d 693 (1949); Wallace v. Virginia Sur. Co., 80 Ga. App. 50, 55 S.E.2d 259 (1949); Goforth v. Fidelity & Cas. Co., 80 Ga. App. 121, 55 S.E.2d 656 (1949); City of Griffin v. First Fed. Sav. & Loan Ass'n, 80 Ga. App. 217, 55 S.E.2d 771 (1949); McDowall Transp., Inc. v. Gault, 80 Ga. App. 445, 56 S.E.2d 161 (1949); McDade v. West, 80 Ga. App. 481, 56 S.E.2d 299 (1949); Gaines v. State, 80 Ga. App. 512, 56 S.E.2d 772 (1949); Landers v. Davis, 80 Ga. App. 766, 57 S.E.2d 459 (1950); Owens v. Maddox, 80 Ga. App. 867, 57 S.E.2d 826 (1950); Aetna Cas. & Sur. Co. v. Fulmer, 81 Ga. App. 97, 57 S.E.2d 865 (1950); Hall v. Kendall, 81 Ga. App. 592, 59 S.E.2d 421 (1950); Atlantic Coast Line R.R. v. Dupriest, 81 Ga. App. 773, 59 S.E.2d 767 (1950); Cromer v. Dinkler, 82 Ga. App. 227, 60 S.E.2d 482 (1950); Davis v. Atlanta Gas Light Co., 82 Ga. App. 460, 61 S.E.2d 510 (1950); Sylvania Cent. Ry. v. Gay, 82 Ga. App. 486, 61 S.E.2d 587 (1950); Melton v. Helms, 83 Ga. App. 71, 62 S.E.2d 663 (1950); Carter v. Rich's, Inc., 83 Ga. App. 188, 63 S.E.2d 241 (1951); Register v. Andris, 83 Ga. App. 632, 64 S.E.2d 196 (1951); Chastain v. L. Moss Music Co., 83 Ga. App. 570, 64 S.E.2d 205 (1951); Goodwin v. Allen, 83 Ga. App. 615, 64 S.E.2d 212 (1951); American Mut. Liab. Ins. Co. v. Duncan, 83 Ga. App. 863, 65 S.E.2d 59 (1951); Hertz Driv-Ur-Self Stations, Inc. v. Benson, 83 Ga. App. 866, 65 S.E.2d 191 (1951); Consolidated Stores, Inc. v. Towler, 84 Ga. App. 28, 65 S.E.2d 419 (1951); St. Paul-Mercury Indem. Co. v. Alexander, 84 Ga. App. 207, 65 S.E.2d 694 (1951); Haswell v. Haswell, 84 Ga. App. 651, 67 S.E.2d 148 (1951); Troup v. State, 85 Ga. App. 138, 68 S.E.2d 195 (1951); Hurt & Quin, Inc. v. St. Malyon, 85 Ga. App. 164, 68 S.E.2d 213 (1951); Annis v. State, 85 Ga. App. 188, 68 S.E.2d 473 (1951); Wright v. Central of Ga. Ry., 85 Ga. App. 654, 69 S.E.2d 902 (1952); Domin v. State, 85 Ga. App. 676, 70 S.E.2d 39 (1952); Bibb Mfg. Co. v. Cowan, 85 Ga. App. 816, 70 S.E.2d 386 (1952); Wall v. First State Bank, 86 Ga. App. 118, 70 S.E.2d 917 (1952); Aderhold v. Zimmer, 86 Ga. App. 204, 71 S.E.2d 270 (1952); Albert v. Albert, 86 Ga. App. 560, 71 S.E.2d 904 (1952); Hall v. First Nat'l Bank, 87 Ga. App. 142, 73 S.E.2d 252 (1952); Craig-Tourial Leather Co. v. Reynolds, 87 Ga. App. 360, 73 S.E.2d 749 (1952); Gardner v. Celanese Corp., 88 Ga. App. 642, 76 S.E.2d 817 (1953); Banks County v. Stark, 88 Ga. App. 368, 77 S.E.2d 33 (1953); Hammond v. State, 88 Ga. App. 804, 77 S.E.2d 836 (1953); Fidelity & Cas. Co. v. Swain, 90 Ga. App. 615, 83 S.E.2d 345 (1954); Life Ins. Co. v. Lawler, 211 Ga. 246, 85 S.E.2d 1 (1954); Dennison v. State, 91 Ga. App. 143, 85 S.E.2d 179 (1954); Estes v. Collum, 91 Ga. App. 186, 85 S.E.2d 561 (1954); Adams v. Ricks, 91 Ga. App. 494, 86 S.E.2d 329 (1955); Hayes v. National Life & Accident Ins. Co., 92 Ga. App. 540, 88 S.E.2d 750 (1955); Pack v. State, 93 Ga. App. 737, 92 S.E.2d 824 (1956); Henderson v. Henderson, 94 Ga. App. 64, 93 S.E.2d 822 (1956); Logue v. State, 94 Ga. App. 777, 96 S.E.2d 209 (1956); Adams v. State, 95 Ga. App. 295, 97 S.E.2d 711 (1957); Henderson v. State, 95 Ga. App. 830, 99 S.E.2d 270 (1957); Henry & Hutchinson, Inc. v. Slack, 96 Ga. App. 56, 99 S.E.2d 465 (1957); Republic of Cuba v.

Arcade Bldg. of Savannah, Inc., 104 Ga. App. 848, 123 S.E.2d 453 (1961); Godby v. Hein, 107 Ga. App. 481, 130 S.E.2d 511 (1963); Huddleston Concrete Co. v. Safeco Ins. Co. of Am., 186 Ga. App. 531, 368 S.E.2d 117 (1988); State v. Chambers, 194 Ga. App. 609, 391 S.E.2d 657 (1990); Republic Title Company, LLC v. Freeport Title and Guaranty, Inc., 351 Ga. App. 408, 829 S.E.2d 172 (2019).

RESEARCH REFERENCES

Am. Jur. 2d. — 20 Am. Jur. 2d, Courts, § 29 et seq.
20 Am. Jur. 2d, Courts, §§ 32, 125 et seq.

15-3-2. Terms of court.

The terms of the Court of Appeals shall be the same as the terms of the Supreme Court.

History. — Ga. L. 1935, p. 161, § 2.
Cross references. — Terms of Supreme Court, § 15-2-4.

JUDICIAL DECISIONS

Cited in Stuckey v. Richardson, 188 Ga. App. 147, 372 S.E.2d 458 (1988); Gordon v. Dennis, 347 Ga. App. 110, 817 S.E.2d 561 (2018).

15-3-3. Jurisdiction over certain crimes.

Pursuant to Article VI, Section V, Paragraph III of the Constitution of this state, the Court of Appeals shall have jurisdiction of the trial and correction of errors of law in cases involving the crimes of armed robbery, rape, and kidnapping wherein the death penalty has not been imposed.

History. — Ga. L. 1977, p. 710, § 1; Ga. L. 1983, p. 3, § 50.
Cross references. — Kidnapping, § 16-5-40. Rape, § 16-6-1. Armed robbery, § 16-8-41.

RESEARCH REFERENCES

Am. Jur. 2d. — 20 Am. Jur. 2d, Courts, § 53 et seq.

15-3-3.1. Appellate jurisdiction of Court of Appeals.

(a) Pursuant to Article VI, Section VI, Paragraph III of the Constitution of this state, the Court of Appeals rather than the Supreme Court shall have appellate jurisdiction in the following classes of cases:

(1) Cases involving title to land;

(2) All equity cases, except those cases concerning proceedings in which a sentence of death was imposed or could be imposed and those cases concerning the execution of a sentence of death;

(3) All cases involving wills;

(4) All cases involving extraordinary remedies, except those cases concerning proceedings in which a sentence of death was imposed or could be imposed and those cases concerning the execution of a sentence of death;

(5) All divorce and alimony cases; and

(6) All other cases not reserved to the Supreme Court or conferred on other courts.

(b) This Code section shall not otherwise affect the jurisdiction of the Supreme Court or the Court of Appeals.

History. — Code 1981, § 15-3-3.1, enacted by Ga. L. 2016, p. 883, § 3-1/HB 927.

Editor's notes. — Ga. L. 2016, p. 883, § 1-1/HB 927, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Appellate Jurisdiction Reform Act of 2016.'"

Ga. L. 2016, p. 883, § 6-1(c)/HB 927, not codified by the General Assembly, provides that: "Part III of this Act shall become effective on January 1, 2017, and shall apply to cases in which a notice of appeal or application to appeal is filed on or after such date."

Law reviews. — For article on the 2016 enactment of this Code section, see 33 Georgia St. U.L. Rev. 205 (2016). For annual survey of wills, trusts, guardianships, and fiduciary administration, see 68 Mercer L. Rev. 321 (2016). For annual survey on real property law, see 70 Mercer L. Rev. 209 (2018).

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Supreme Court had jurisdiction over post conviction motion seeking transcript in murder case. — Supreme Court of Georgia had jurisdiction over an appeal from a post-conviction motion seeking a transcript from a defendant's original murder case under Ga. Const. 1983, Art. VI, Sec. VI, Para. III(8), and the motion was not a motion in the nature of mandamus subject to the Court of Appeals' jurisdiction under O.C.G.A. § 15-3-3.1. Henderson v. State, 303 Ga. 241, 811 S.E.2d 388 (2018).

Jurisdiction in death penalty proceedings. — Prisoner's appeal in a suit seeking records from the prisoner's criminal case, which was not filed under the criminal docket numbers but as a separate civil mandamus petition, was not within the Supreme Court of Georgia's murder jurisdiction under Ga. Const. 1983, Art. VI, Sec. VI, Para. III(8); however, it was within the court's jurisdiction over extraordinary remedies in death penalty proceedings under O.C.G.A. § 15-3-3.1(4). Still, the appeal was dismissed for failure to comply with O.C.G.A. § 42-12-8. Brock v. Hardman, 303 Ga. 729, 814 S.E.2d 736 (2018).

Cited in McCoy v. Bovee, 300 Ga. 759, 796 S.E.2d 679 (2017); Merch. Law Firm, P.C. v. Emerson, 301 Ga. 609, 800 S.E.2d 557 (2017); Ga. Ass'n of Prof'l Process Servers v. Jackson, 302 Ga. 309, 806 S.E.2d 550 (2017); Howard v. Howard, 302 Ga. 451, 807 S.E.2d 379 (2017); Faison v. Faison, 344 Ga. App. 600, 811 S.E.2d 431 (2018); Peterson v. Peterson, 303 Ga. 211, 811 S.E.2d 309 (2018); Wallace v. Wallace, 345 Ga. App. 764, 813 S.E.2d 428 (2018).

RESEARCH REFERENCES

Am. Jur. 2d. — 4 Am. Jur. 2d, Appellate Review, § 75 et seq.

C.J.S. — 4 C.J.S., Appeal and Error, § 46 et seq.

15-3-4. Election and term of office of Judges of Court of Appeals.

(a) The Judges of the Court of Appeals shall be elected at the general primary in each even-numbered year in the manner in which Justices of the Supreme Court are elected. The election of the Judges shall be as follows:

(1) Successors to the Judges serving in judgeships which existed prior to 1999 shall be elected as follows:

(A) Successors to any Judges whose terms expired at the end of 1998 shall be elected at the general election in 2004 and each sixth year thereafter;

(B) Successors to any Judges whose terms expire at the end of 2000 shall be elected at the general election in 2000 and each sixth year thereafter;

(C) Successors to any Judges whose terms expire at the end of 2002 shall be elected at the general election in 2002 and each sixth year thereafter; and

(D) Successors to any Judges whose terms expire at the end of 2004 shall be elected at the general election in 2004 and each sixth year thereafter; and

(2) Successors to the two Judges serving in the judgeships created in 1999 shall be elected at the 2000 general election and each sixth year thereafter.

The terms of the Judges shall begin on January 1 following their election and, except as provided above, shall continue for six years and until their successors are qualified. They shall be commissioned accordingly by the Governor.

(b) The additional judgeships created in 2015 shall be appointed by the Governor for a term beginning January 1, 2016, and continuing through December 31, 2018, and until their successors are elected and qualified. Their successors shall be elected in the manner provided by law for the election of Judges of the Court of Appeals at the nonpartisan judicial election in 2018, for a term of six years beginning on January 1, 2019, and until their successors are elected and qualified. Future successors shall be elected at the nonpartisan judicial election each sixth year after such election for terms of six years and until their successors are elected and qualified. They shall take office on the first day of January following the date of the election.

History. — Ga. L. 1916, p. 56, § 2; Code 1933, § 24-3502; Ga. L. 1960, p. 158, § 2; Ga. L. 1961, p. 140, § 2; Ga. L. 1985, p. 149, § 15; Ga. L. 1996, p. 405, § 2; Ga. L. 1999, p. 10, § 2; Ga. L. 2014, p. 866, § 15/SB 340; Ga. L. 2015, p. 919, § 1-2A/HB 279.

Cross references. — Election and term of office generally, Ga. Const. 1983, Art. VI, Sec. VII, Para. I and § 21-2-9.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1999, "Judges" was substituted for "judges" in paragraph (2) (now paragraph (a)(2)).

Editor's notes. — Ga. L. 1999, p. 10, § 3, not codified by the General Assembly, provides that: "The initial judges to serve in the two judgeships created by this Act shall be appointed by the Governor for terms to expire at the end of 2000."

Law reviews. — For article, "The Selection and Tenure of Judges," see 2 Ga. St. B. J. 281 (1966). For article, "Annual Survey of Georgia Law: June 1, 2015 — May 31, 2016: Special Contribution: Open Chambers Revisited: Demystifying the Inner Workings and Culture of the Georgia Court of Appeals," see 68 Mercer L. Rev. 1 (2016).

JUDICIAL DECISIONS

Quo warranto denied challenging appointment of judges. — Trial court's denial of the challenger's petition for a writ of quo warranto was affirmed because the newly created positions on the Georgia Court of Appeals qualified as vacancies under Ga. Const. 1983, Art. VI, Sec. VII, Para. III; thus, the governor had the authority to appoint judges to the vacancies created by amended O.C.G.A. § 15-3-1(a). Clark v. Deal, 298 Ga. 893, 785 S.E.2d 524 (2016).

15-3-5. Oath of Judges; compensation.

(a) Before entering on the discharge of their duties, the Judges shall take the oath prescribed for judges of the superior courts, along with all other oaths required for civil officers.

(b)(1) The annual salary of each Judge of the Court of Appeals shall be as specified in Code Section 45-7-4. Such salary shall be paid in equal monthly installments.

(2) The Judges shall receive expenses and allowances as provided in Code Section 45-7-20. If a Judge resides 50 miles or more from the judicial building in Atlanta, such Judge shall also receive a mileage allowance for the use of a personal motor vehicle when devoted to official business as provided for in Code Section 50-19-7, for not more than one round trip per calendar week to and from the Judge's residence and the judicial building in Atlanta by the most practical route, during each regular and extraordinary session of court. In the event a Judge travels by public carrier for any part of a round trip as provided above, such Judge shall receive a travel allowance of actual transportation costs for each such part in lieu of the mileage allowance. Transportation costs incurred by a Judge for air travel to and from the Judge's residence to the judicial building in Atlanta shall be reimbursed only to the extent that such costs do not exceed the cost of travel by personal motor vehicle. All allowances provided for in this paragraph shall be paid upon the submission of proper vouchers.

(3) If a Judge resides 50 miles or more from the judicial building in Atlanta, such Judge shall also receive the same daily expense allowance as members of the General Assembly receive, as set forth in Code Section 28-1-8, for not more than 35 days during each term of court. Such days shall be utilized only when official court business is being conducted. All allowances provided for in this paragraph shall be paid upon the submission of proper vouchers.

(c) The salary provided for in subsection (b) of this Code section shall be the total compensation to be paid by the state to the officials named in subsection (b) of this Code section and shall be in lieu of any and all other amounts to be paid from state funds.

History. — Orig. Code 1863, § 205; Code 1868, § 199; Code 1873, § 212; Code 1882, § 212; Civil Code 1895, § 5502; Ga. L. 1906, p. 24, § 3; Civil Code 1910, §§ 330, 6107; Code 1933, §§ 24-3503, 24-4004; Ga. L. 1957, p. 205, §§ 2-4; Ga. L. 1962, p. 3, §§ 2, 3; Ga. L. 1966, p. 72, § 2; Ga. L. 1970, p. 19, § 2; Ga. L. 1983, p. 3, § 12; Ga. L. 1993, p. 1402, § 7; Ga. L. 2007, p. 424, § 2/HB 120; Ga. L. 2015, p. 919, § 1-2B/HB 279; Ga. L. 2017, p. 122, § 1-2/HB 5.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2007, "Judge" was substituted for "Justice" in the middle of the third sentence of paragraph (b)(2).

Law reviews. — For article discussing judicial compensation, see 14 Ga. St. B. J. 110 (1978). For article, "Annual Survey of Georgia Law: June 1, 2015 — May 31, 2016: Special Contribution: Open Chambers Revisited: Demystifying the Inner Workings and Culture of the Georgia Court of Appeals," see 68 Mercer L. Rev. 1 (2016).

RESEARCH REFERENCES

Am. Jur. 2d. — 46 Am. Jur. 2d, Judges, §§ 10, 26, 50 et seq.

C.J.S. — 48A C.J.S., Judges, §§ 23, 84.

15-3-6. Compensation of officers and employees.

The Judges of the Court of Appeals are authorized to fix the annual compensation of the officers and employees of their court, provided that the total salaries and expenses of the court shall be within the amount of money available for such purposes.

History. — Ga. L. 1906, p. 24, § 3; Civil Code 1910, § 330; Code 1933, § 24-3503; Ga. L. 1957, p. 205, § 5.

15-3-7. Disposition of fees.

All fees coming to the clerk of the Court of Appeals shall be the property of the state and the same shall be paid into the state treasury.

History. — Ga. L. 1917, p. 99, § 2; Code 1933, § 24-3505; Ga. L. 1943, p. 387, § 7; Ga. L. 1945, p. 235, § 1; Ga. L. 1947, p. 686, § 2; Ga. L. 1952, p. 179, §§ 1-3.

RESEARCH REFERENCES

C.J.S. — 48A C.J.S., Judges, § 91.

15-3-8. Compensation of sheriff of court.

Reserved. Repealed by Ga. L. 1993, p. 1402, § 8, effective July 1, 1993.

Editor's notes. — This Code section was based on Ga. L. 1918, p. 227, § 1; Ga. L. 1919, p. 280, § 1; Code 1933, § 24-3507; Ga. L. 1952, p. 179, § 4; and Ga. L. 1981, Ex. Sess., p. 8.

15-3-9. Law assistants.

(a) The Judges of the Court of Appeals shall be authorized to appoint law assistants for the use of the court and to remove them at pleasure. Each law assistant of the Court of Appeals shall have been admitted to the bar of this state as a practicing attorney; provided, however, that an individual who graduated from law school but who is not a member of the bar of this state may be appointed as a law assistant so long as he or she is admitted to the bar of this state within one year of such appointment.

(b) It shall be the duty of a law assistant to attend all sessions of the court, if so ordered, and generally to perform the duties incident to the role of law assistant.

History. — Ga. L. 1920, p. 272, § 1; Code 1933, § 24-3508; Ga. L. 1946, p. 77, §§ 1, 2; Ga. L. 1950, p. 343, § 1; Ga. L. 1952, p. 179, § 5; Ga. L. 2016, p. 883, § 1-3/HB 927.

Editor's notes. — Ga. L. 2016, p. 883, § 1-1/HB 927, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Appellate Jurisdiction Reform Act of 2016.'"

Law reviews. — For article on the 2016 amendment of this Code section, see 33 Georgia St. U.L. Rev. 205 (2016).

JUDICIAL DECISIONS

Law assistants must obey judge's orders. — Law assistant is assigned a particular judge whose orders in reference to the work required of the assistant must be obeyed. Johnson v. United States Fid. & Guar. Co., 93 Ga. App. 336, 91 S.E.2d 779 (1956).

RESEARCH REFERENCES

C.J.S. — 21 C.J.S., Courts, § 121 et seq.

15-3-10. Employment and salaries of staff.

The Court of Appeals may employ and fix the salaries of stenographers, clerical assistants, and such other employees as may be deemed necessary by the court; and the salaries therefor shall be paid by the clerk from the appropriations for the operation of the Court of Appeals.

History. — Ga. L. 1943, p. 387, § 11.

RESEARCH REFERENCES

C.J.S. — 21 C.J.S., Courts, § 121 et seq.

15-3-11. Appointment of deputy clerk and employees by clerk of court.

(a) The clerk of the Court of Appeals may appoint a deputy clerk of court, in his discretion, under such rules as the court may adopt, the clerk being responsible for the faithful performance of the duties of the deputy clerk. The powers and duties of the deputy clerk shall be the same as those of the clerk.

(b) The clerk of the Court of Appeals, with the approval of the court, may also employ such stenographers, clerical assistants, and employees as may be necessary for the performance of the duties in the office of the clerk. Their salaries shall be paid by the clerk from the appropriations for the operation of the Court of Appeals.

History. — Ga. L. 1917, p. 99, §§ 1, 2; Ga. L. 1921, p. 239, § 2; Ga. L. 1925, p. 144, § 1; Code 1933, §§ 24-3504, 24-3506; Ga. L. 1943, p. 387, § 8.

RESEARCH REFERENCES

Am. Jur. 2d. — 15A Am. Jur. 2d, Clerks of Court, § 41 et seq.

C.J.S. — 21 C.J.S., Courts, § 344 et seq.

15-3-12. Books, supplies, and services.

The Court of Appeals shall purchase such books, pamphlets, or other publications and such other supplies and services as the Judges thereof may deem necessary. The cost thereof shall be paid by the clerk out of the appropriations for the operation of the Court of Appeals.

History. — Ga. L. 1943, p. 387, § 13.

15-3-13. Voluntary preappeal settlement conference procedure.

(a) The Court of Appeals of Georgia is authorized to establish by rule of court a voluntary preappeal settlement conference procedure. In furtherance of such a procedure, the court is authorized to provide by rule for the extension of time for the filing of the record, enumerations of error, briefs, or other matters for which time of filing is otherwise prescribed by statute.

(b) The Court of Appeals shall utilize Senior Appellate Court Justices and Judges and senior superior court judges as settlement conference judges.

(c) Settlement conference judges shall be entitled to receive the same travel, per diem, and pay allowances now or hereafter authorized to be paid to senior judges of the superior courts when called.

(d) Any rules or amendments thereto adopted pursuant to this Code section shall be submitted to the State Bar of Georgia, the Judiciary Committee of the House of Representatives, and the Judiciary Committee of the Senate at least 30 days before such rules or amendments shall become effective. The Court of Appeals shall receive and consider such comments as shall be made by such organization or committees.

History. — Code 1981, § 15-3-13, enacted by Ga. L. 1988, p. 1856, § 1.

Cross references. — Appellate settlement conferences, Rules of the Court of Appeals of the State of Georgia, Rule 46.

CHAPTER 3A

SENIOR APPELLATE COURT JUSTICES AND JUDGES

Sec.
15-3A-1. Definitions.
15-3A-2. Creation of offices; eligibility; application; appointment.
15-3A-3. Powers.
15-3A-4. Travel, per diem, and pay allowances.
15-3A-5. Basis for resignation.
15-3A-6. Applicability.

Cross references. — Rules for service of senior judges, Uniform Rules for the Superior Courts, Rule 18.

15-3A-1. Definitions.

As used in this chapter, the term:

(1) "Senior Appellate Court Judge" means a Judge, Presiding Judge, or Chief Judge of the Court of Appeals appointed to the office created by this chapter.

(2) "Senior Appellate Court Justice" means an Associate Justice, Presiding Justice, or Chief Justice of the Supreme Court appointed to the office created by this chapter.

History. — Code 1981, § 15-3A-1, enacted by Ga. L. 1987, p. 291, § 2.

15-3A-2. Creation of offices; eligibility; application; appointment.

There is created the office of Senior Appellate Court Justice and the office of Senior Appellate Court Judge. Any Justice of the Supreme Court or Judge of the Court of Appeals who retires pursuant to the provisions of laws of the state retirement system applicable to such Justice or Judge at the time of such Justice's or Judge's retirement may, at such Justice's or Judge's option, be eligible for appointment by the Governor to the office of Senior Appellate Court Justice or Judge. Any former member of the Supreme Court or Court of Appeals who is retired or who retires on or after March 26, 1987, pursuant to the laws of the retirement system applicable to such Justice or Judge at the time of such Justice's or Judge's retirement may, at such Justice's or Judge's option, become eligible for appointment to the office of Senior Appellate Court Justice or Judge upon written application being made to the Governor. All persons appointed to the office of Senior Appellate Court Justice or Judge shall hold such office for life, subject to the same laws,

rules, and regulations for removal or discipline of sitting members of the Supreme Court and Court of Appeals. A Senior Appellate Court Justice or Judge, while holding that office, shall not be eligible for election or appointment to any other nonjudicial public office in this state, and such Senior Appellate Court Justice or Judge may not practice law during such Justice's or Judge's tenure as a Senior Appellate Court Justice or Judge. For purposes of this Code section, participation as an arbitrator shall not be deemed the practice of law.

History. — Code 1981, § 15-3A-2, enacted by Ga. L. 1987, p. 291, § 2; Ga. L. 1988, p. 13, § 15.

15-3A-3. Powers.

A Senior Appellate Court Justice or Judge may exercise judicial power in the Supreme Court, Court of Appeals, superior court, and all other courts of this state upon the request and the consent of a majority of the judges of the requesting court.

History. — Code 1981, § 15-3A-3, enacted by Ga. L. 1987, p. 291, § 2.

15-3A-4. Travel, per diem, and pay allowances.

A Senior Appellate Court Justice or Judge while serving in any of the courts provided for in Code Section 15-3A-3 shall be entitled to receive the same travel, per diem, and pay allowances now or hereafter authorized to be paid to senior judges of the superior court when called. Such compensation, expenses, and mileage shall be paid from state funds appropriated or otherwise available for the operation for any of such courts, upon a certificate by the Senior Appellate Court Justice or Judge as to the number of days served or the expenses and mileage incurred. Such compensation shall not affect, diminish, or otherwise impair the payment or receipt of any retirement or pension benefits of such Senior Appellate Court Justice or Judge.

History. — Code 1981, § 15-3A-4, enacted by Ga. L. 1987, p. 291, § 2.

15-3A-5. Basis for resignation.

If a Senior Appellate Court Justice or Judge determines to seek nonjudicial elective public office, accepts appointment to a public office, practices law, or for any reason determines that senior status provided for in this chapter is no longer desirable, such Justice or Judge shall resign such Justice's or Judge's office and submit such Justice's or

Judge's resignation to the Governor. Such resignation shall not affect or impair such Justice's or Judge's retirement pay and benefits.

History. — Code 1981, § 15-3A-5, enacted by Ga. L. 1987, p. 291, § 2.

15-3A-6. Applicability.

This chapter shall apply only to those retired or retiring members of the Supreme Court and Court of Appeals who expressly indicate in writing to the Governor that they desire appointment to the office of Senior Appellate Court Justice or Judge.

History. — Code 1981, § 15-3A-6, enacted by Ga. L. 1987, p. 291, § 2.

CHAPTER 4

REPORTER OF THE SUPREME COURT AND COURT OF APPEALS

Sec.		Sec.	
15-4-1.	Term of office; oaths.	15-4-4.	Assistant reporter.
15-4-2.	Duties.	15-4-5.	Compensation.
15-4-3.	Publication of synopsis in lieu of entire decision.	15-4-6.	Employment and salaries of staff.

15-4-1. Term of office; oaths.

The reporter of the Supreme Court and Court of Appeals holds his office for the same term and on the same conditions as the clerk of the Supreme Court and, before entering upon his duties, must take the same oaths.

History. — Laws 1845, Cobb's 1851 Digest, p. 452; Laws 1847, Cobb's 1851 Digest, p. 453; Code 1863, § 219; Code 1868, § 213; Code 1873, § 226; Code 1882, § 226; Civil Code 1895, § 5515; Civil Code 1910, § 6127; Code 1933, § 24-4201.

OPINIONS OF THE ATTORNEY GENERAL

Simultaneous service of judicial secretary. — A judicial secretary appointed pursuant to O.C.G.A. § 15-6-25 may not simultaneously serve the same court as an official court reporter because such an arrangement would prevent the secretary from complying with O.C.G.A. § 45-10-1 and providing the state with a full day's work for a full day's pay. 2016 Op. Att'y Gen. No. U16-2.

RESEARCH REFERENCES

Am. Jur. 2d. — 20 Am. Jur. 2d, Courts, § 1 et seq.

C.J.S. — 21 C.J.S., Courts, § 121 et seq.

15-4-2. Duties.

It is the reporter's duty:

(1) To attend all sessions of the Supreme Court and the Court of Appeals personally or by sending his assistant; and

(2) To publish the decisions of the Supreme Court and of the Court of Appeals in accordance with Article 2 of Chapter 18 of Title 50.

History. — Laws 1845, Cobb's 1851 Digest, p. 452; Code 1863, § 221; Code 1868, § 215; Code 1873, § 228; Ga. L. 1875, p. 88, § 1; Code 1882, § 228; Ga. L. 1882-83, p. 76, § 1; Civil Code 1895, § 5517; Civil Code 1910, § 6129; Code 1933, § 24-4203; Ga. L. 1972, p. 458, § 1.

15-4-3. Publication of synopsis in lieu of entire decision.

The Justices or Judges may direct the reporter to omit the publication in full of such cases as, in their opinion, may be understood from the written synopsis of the points decided, made by them at the time of the decision, and the reporter shall publish only the synopsis in such cases.

History. — Ga. L. 1875, p. 88, § 1; Code 1882, § 228; Civil Code 1895, § 5518; Civil Code 1910, § 6130; Code 1933, § 24-4204.

Law reviews. — For comment discussing the operation of stare decisis, in light of Walton v. Benton, 191 Ga. 548, 13 S.E.2d 185 (1941), see 3 Ga. B. J. 62 (1941).

15-4-4. Assistant reporter.

The reporter, with the consent of the court, under such rules as the court may adopt, may appoint an assistant reporter whose duties shall be the same as the reporter's.

History. — Orig. Code 1863, § 220; Code 1868, § 214; Code 1873, § 227; Code 1882, § 227; Ga. L. 1888, p. 35, § 1; Civil Code 1895, § 5519; Civil Code 1910, § 6131; Code 1933, § 24-4205.

JUDICIAL DECISIONS

Cited in Blackstone v. Blackstone, 282 Ga. App. 515, 639 S.E.2d 369 (2006).

15-4-5. Compensation.

The salaries of the reporter and the assistant reporter of the Supreme Court and Court of Appeals shall be payable in equal monthly installments, one-half from the appropriations for the operation of the Supreme Court and one-half from the appropriations for the operation of the Court of Appeals.

History. — Orig. Code 1863, § 1578; Code 1868, § 1640; Code 1873, § 1646; Ga. L. 1878-79, p. 158, § 5; Code 1882, § 228e; Ga. L. 1888, p. 35, § 1; Civil Code 1895, §§ 5516, 5519; Civil Code 1910, §§ 6128, 6131; Code 1933, §§ 24-4202, 24-4205; Ga. L. 1950, p. 309, § 1; Ga. L. 1953, Jan.-Feb. Sess., p. 51, § 1; Ga. L. 1993, p. 1402, § 9.

OPINIONS OF THE ATTORNEY GENERAL

Appropriations for state reports directed to reporter. — Because the reporter is primarily responsible for the production of the reports, and because it is the reporter's responsibility to furnish a manuscript of the decisions to the state publisher and to ascertain proper performance by the publisher, and because failure of a report to be published is directly attributable to the reporter, the state reporter is the proper budget unit to which appropriations for the state reports should be directed. 1971 Op. Att'y Gen. 71-103.

RESEARCH REFERENCES

C.J.S. — 77 C.J.S., Reports, § 7.

15-4-6. Employment and salaries of staff.

The Supreme Court and the Court of Appeals shall employ and fix the salaries of such stenographers, clerical assistants, and employees as are necessary for the performance of the duties in the offices of the reporter and assistant reporter of decisions of such courts. The salaries of such employees shall be paid by the clerks of the respective courts, one-half each by each court from the appropriations for the operation of the respective courts.

History. — Ga. L. 1943, p. 387, § 9.

CHAPTER 5

ADMINISTRATION OF COURTS OF RECORD GENERALLY

Article 1

Judicial Administration

Sec.
15-5-1. Short title.
15-5-2. Judicial administration districts.
15-5-3. District councils created.
15-5-4. Election of district administrative judge; term; removal.
15-5-5. Duties of district administrative judge.
15-5-6. Administrative assistant; duties; compensation.

Article 2

Judicial Council

15-5-20. Judicial Council of Georgia; powers and duties; membership.
15-5-21. Promulgation of rules for transcripts and court reporters' fees.
15-5-21.1. Development and utilization of uniform misdemeanor citation and complaint form.
15-5-22. Administrative Office of the Courts.
15-5-23. Director of Administrative Office of the Courts.
15-5-24. Duties of Administrative Office of the Courts.
15-5-25. Effect of article on authority of courts.
15-5-26. Proposals for pilot programs involving nonuniform courts.

Article 3

Court Documents

Sec.
15-5-40. Letter-sized paper to be accepted.

Article 4

Court Cost Overpayments

15-5-50. Minimum amount for refund.

Article 5

Council of Superior Court Judges

15-5-60. Contract for administrative functions, services, and equipment.

Article 6

Georgia Courts Automation Commission

15-5-80. Definitions.
15-5-80.1. Georgia Courts Automation Commission.
15-5-81. Advisory council to commission.
15-5-82. Authority of commission; appointment of committees.
15-5-83. Commission assigned to Supreme Court; authority to receive and expend appropriations.

Article 7

Georgia Council of Court Administrators

15-5-100. Creation of Georgia Council of Court Administrators.

ARTICLE 1

JUDICIAL ADMINISTRATION

Law reviews. — For article, "Courts: Juvenile Justice Reform," see 30 Ga. St. U. L. Rev. 63 (2013).

15-5-1. Short title.

This article shall be known and may be cited as "The Judicial Administration Act of 1976."

History. — Ga. L. 1976, p. 782, § 1.

15-5-2. Judicial administration districts.

Ten judicial administration districts of more or less equal population in each district are created within this state. The boundaries of the ten judicial administration districts, to the extent possible, shall follow the boundaries existing on July 1, 1976, of the ten United States congressional districts, except that each judicial circuit existing on July 1, 1976, shall remain intact and shall not be placed in more than one judicial administration district. The Governor, after conferring with the superior court judges, shall establish by July 1, 1976, the original boundaries of each judicial administration district pursuant to this Code section. The ten administrative judges provided for in this article may provide for any necessary changes in the boundaries of such districts not inconsistent with this Code section.

History. — Ga. L. 1976, p. 782, § 2.

15-5-3. District councils created.

A district council for each judicial administration district is created, composed of all judges of the superior courts within the district. The superior court judge in each district having seniority in number of years as a superior court judge shall serve as presiding officer of the district council. Each district council shall meet at least once a year and as often as required to discuss administrative problems peculiar to the district and otherwise to perform its duties. Each district council shall establish rules, by majority vote, which shall cover the right to call additional meetings and procedures for handling the administrative work of the council.

History. — Ga. L. 1976, p. 782, § 3.

15-5-4. Election of district administrative judge; term; removal.

The judges of each district council shall elect a superior court judge or a senior judge of the superior court to serve for a two-year term as an "administrative judge" within the district. The district administrative judge shall serve until his successor is elected and qualified; provided, however, that the district administrative judge may be removed at any time by a two-thirds' vote of all judges comprising the district council.

The duties of the administrative judge shall be additional duties which shall not be construed to diminish his other responsibilities.

History. — Ga. L. 1976, p. 782, § 4; Ga. L. 1985, p. 149, § 15.

15-5-5. Duties of district administrative judge.

The duties and authority of each district administrative judge shall be as follows:

(1) To request, collect, and receive information from the courts of record within his district pursuant to uniform rules promulgated by the ten administrative judges; and

(2) To authorize and assign any superior court judge within the district to sit on any type of case or to handle other administrative or judicial matters within the district; provided, however, that the assignment shall be made with the consent of the assigned judge and with the consent of the majority of the judges of the circuit to which the assignment is made and that the assignment shall be made subject to rules promulgated by the district council by a majority vote of the superior court judges within the district.

History. — Ga. L. 1976, p. 782, § 6.

JUDICIAL DECISIONS

Procurement of senior judge from outside district. — O.C.G.A. § 15-5-5(2) does not prevent an administrative judge from procuring the services of a senior judge from outside the administrative district because superior court judges, including senior judges, have jurisdiction to act in any circuit other than their own when the resident judge is disqualified. Shoemake v. Woodland Equities, Inc., 252 Ga. 389, 313 S.E.2d 689 (1984).

Assignment of a senior judge from outside the administrative district is valid under the provisions of paragraph (2) of O.C.G.A. § 15-5-5. Henderson v. Glen Oak, Inc., 179 Ga. App. 380, 346 S.E.2d 842 (1986), aff'd, 256 Ga. 619, 351 S.E.2d 640 (1987).

15-5-6. Administrative assistant; duties; compensation.

Each district administrative judge is authorized to hire a full-time assistant adequately trained in the duties of court administration. The assistant shall assist in the duties of the district administrative judge, provide general court administrative services to the district council, and otherwise perform such duties as may be assigned to him or her by the district administrative judge. Each assistant shall be an employee of the judicial branch of the state government and shall be in the unclassified service as defined by Code Section 45-20-2. The assistant shall be compensated in an amount and manner to be determined by uniform rules adopted by the ten administrative judges. Each assistant

shall be compensated out of funds made available for such purposes within the judicial branch of the government. Additional funds shall be made available for needed clerical and other office operating costs of the assistant.

History. — Ga. L. 1976, p. 782, § 5; Ga. L. 2009, p. 745, § 2/SB 97; Ga. L. 2012, p. 446, § 2-9/HB 642.

Editor's notes. — Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: "Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act." This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: "Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90."

ARTICLE 2

JUDICIAL COUNCIL

Law reviews. — For article, "Courts: Juvenile Justice Reform," see 30 Ga. St. U. L. Rev. 63 (2013).

15-5-20. Judicial Council of Georgia; powers and duties; membership.

(a) The Supreme Court shall create a Judicial Council of Georgia, which council shall have such powers, duties, and responsibilities as may be provided by law or as may be provided by rule of the Supreme Court.

(b) Members of the council and their terms shall be as provided by the Supreme Court. The members of the council shall receive no compensation for their services but shall be reimbursed for their actual expenses incurred in the performance of their duties as members of the council.

History. — Ga. L. 1945, p. 155, §§ 1-3; Ga. L. 1973, p. 288, §§ 1, 2; Ga. L. 1983, p. 956, § 6; Ga. L. 1984, p. 22, § 15.

Cross references. — Powers and duties of Judicial Council regarding regulation of practice of court reporting, § 15-14-20 et seq.

JUDICIAL DECISIONS

Judicial Council of Georgia and Board of Court Reporting were part of the judiciary and therefore excluded from coverage. — Judicial Council of Georgia and the Board of Court Reporting of the Judicial Council of Georgia fell within "the judiciary," as that term was used in O.C.G.A. § 50-13-2(1) of the Administrative Procedure Act, O.C.G.A. § 50-13-1 et seq., and therefore were exempt from the coverage of the Act and immune from a suit challenging a court

reporter ethics rule the board adopted. Judicial Council v. Brown & Gallo, LLC, 288 Ga. 294, 702 S.E.2d 894 (2010).

Cited in Wallace v. Wallace, 225 Ga. 102, 166 S.E.2d 718 (1969).

15-5-21. Promulgation of rules for transcripts and court reporters' fees.

(a) The Judicial Council shall promulgate rules and regulations which shall:

(1) Provide for and set the fees to be charged by all official court reporters in this state for attending court, taking stenographic notes, and recording the evidence;

(2) Provide for and set the fees to be charged by all official court reporters in this state for furnishing transcripts of the evidence and for other proceedings furnished by the official court reporters in all civil and criminal cases in this state;

(3) Provide for a minimum per diem fee for official court reporters, which fee may be supplemented by the various counties within the circuits to which the court reporters are assigned; and

(4) Provide for the form and style of the transcripts, which shall be uniform throughout the state.

(b) The Judicial Council shall amend its rules and regulations providing for and setting the fees to be charged by all official court reporters whenever the council shall deem it necessary and proper.

(c) This Code section shall not apply to those court reporters taking and furnishing transcripts of depositions or taking and furnishing transcripts of nonjudicial functions, nor to any independent contracts of any reporters.

(d) A rule or regulation promulgated by the Judicial Council pursuant to this Code section shall not become effective unless that council provides to the chairperson of the Judiciary Committee of the House of Representatives, the chairperson of the Judiciary, Non-civil Committee of the House of Representatives, the chairperson of the Judiciary Committee of the Senate, and the chairperson of the Special Judiciary Committee of the Senate, at least 30 days prior to the date that the council intends to adopt such rule or regulation, written notice which includes an exact copy of the proposed rule or regulation and the intended date of its adoption. After July 1, 1986, no rule or regulation adopted by the Judicial Council pursuant to this Code section shall be valid unless adopted in conformity with this subsection. A proceeding to contest any rule or regulation on the grounds of noncompliance with this subsection must be commenced within two years from the effective date of the rule or regulation.

History. — Ga. L. 1975, p. 852, §§ 1, 2; Ga. L. 1986, p. 956, § 1; Ga. L. 1988, p. 13, § 15; Ga. L. 2009, p. 303, § 19/HB 117; Ga. L. 2010, p. 878, § 15/HB 1387.

Cross references. — Preparation of transcripts of evidence and proceedings for purposes of bringing appeal, § 5-6-41. Compensation of court reporter in cases before an auditor, § 9-7-23. Court reporters generally, § 15-14-1 et seq.

Editor's notes. — Ga. L. 2009, p. 303, § 20/HB 177, not codified by the General Assembly, provides that: "This Act is intended to reflect the current internal organization of the Georgia Senate and House of Representatives and is not otherwise intended to change substantive law. In the event of a conflict with any other Act of the 2009 General Assembly, such other Act shall control over this Act."

JUDICIAL DECISIONS

Cited in Holloway v. State, 178 Ga. App. 141, 342 S.E.2d 363 (1986).

OPINIONS OF THE ATTORNEY GENERAL

Supplement to minimum per diem. — Judicial Council has authority to promulgate rules and regulations which would allow local governing authorities to pay a supplement in addition to the minimum per diem otherwise provided. 1976 Op. Att'y Gen. No. U76-11.

Effect of section on prior local laws and general laws of local application. — Prior local laws and general laws of local application which provided that a court reporter could charge a party or attorney for that party a fee different from those fees authorized by rules and regulations of the Judicial Council under authority of this section are repealed by implication to the extent that conflicts exist; however, to the extent that such local laws and general laws of local application provide for extraordinary compensation to court reporters to be paid by governmental units, those laws are valid. 1976 Op. Att'y Gen. No. U76-11.

15-5-21.1. Development and utilization of uniform misdemeanor citation and complaint form.

The Judicial Council of Georgia shall develop a uniform misdemeanor citation and complaint form for use by all law enforcement officials who are empowered to arrest individuals for misdemeanors and local ordinance violations. Such form shall serve as the citation, summons, accusation, or other instrument of prosecution of the offense or offenses for which the accused is charged and as the record of the disposition of the matter by the court before which the accused is brought, and shall contain such other matter as the council shall provide. Each such form shall have a unique identifying number which shall serve as the docket number for the court having jurisdiction of the accused. The Judicial Council of Georgia shall promulgate rules for each class of court for the use of such citations.

History. — Code 1981, § 15-5-21.1, enacted by Ga. L. 2018, p. 550, § 2-1/SB 407.

Effective date. — This Code section became effective July 1, 2018.

Law reviews. — For article on the 2018 enactment of this Code section, see 35 Ga. St. U.L. Rev. 45 (2018).

15-5-22. Administrative Office of the Courts.

There is created the Administrative Office of the Courts, which shall serve as the staff for the Judicial Council.

History. — Ga. L. 1973, p. 288, § 3.

15-5-23. Director of Administrative Office of the Courts.

The Judicial Council shall appoint a director of the Administrative Office of the Courts who shall serve at the pleasure of the Judicial Council. The director shall be the executive head of the Administrative Office of the Courts and shall perform such duties as provided in Code Section 15-5-24 or as may be delegated to him by the Judicial Council. The director shall devote his full time to his official duties. The director shall receive compensation and expenses as authorized by the Judicial Council. With the approval of the Judicial Council, the director shall appoint such assistants and clerical and secretarial employees as are necessary to enable him to perform his duties and shall fix their compensation.

History. — Ga. L. 1973, p. 288, § 4.

RESEARCH REFERENCES

ALR. — What Constitutes "Point Source" of Pollution Subject to Control by Provisions of Clean Water Act (33 U.S.C.A. § 1362(14)), 29 A.L.R. Fed. 3d 10.

15-5-24. Duties of Administrative Office of the Courts.

Under the supervision and direction of the Judicial Council, the Administrative Office of the Courts shall perform the following duties:

(1) Consult with and assist judges, administrators, clerks of court, and other officers and employees of the court pertaining to matters relating to court administration and provide such services as are requested;

(2) Examine the administrative and business methods and systems employed in the offices related to and serving the courts and make recommendations for necessary improvement;

(3) Compile statistical and financial data and other information on the judicial work of the courts and on the work of other offices related to and serving the courts, which data and information shall be provided by the courts;

(4) Analyze data relating to civil cases and on or before the first day of October each year provide such data, analysis, or both data and

analysis to the courts and agencies of the judicial branch, agencies of the executive branch, and the chairpersons of the Senate Judiciary Committee and the House Committee on Judiciary;

(5) Examine the state of the dockets and practices and procedures of the courts and make recommendations for the expedition of litigation;

(6) Act as fiscal officer and prepare and submit budget estimates of state appropriations necessary for the maintenance and operation of the judicial system;

(7) Formulate and submit recommendations for the improvement of the judicial system;

(8) Perform such additional duties as may be assigned by the Judicial Council; and

(9) Prepare and publish in print or electronically an annual report on the work of the courts and on the activities of the Administrative Office of the Courts.

History. — Ga. L. 1973, p. 288, § 5; Ga. L. 2000, p. 850, § 4; Ga. L. 2010, p. 838, § 10/SB 388; Ga. L. 2017, p. 632, § 2-3/SB 132.

Cross references. — Development and operation of civil case information system, § 15-6-97.1.

Administrative rules and regulations. — Legal assistance to families victimized by domestic violence project, Official Compilation of the Rules and Regulations of the State of Georgia, Grants of Judicial Council of Georgia Administrative Office of the Courts, Rule 297-1-.01.

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarities of the statutory provisions, decisions under Ga. L. 1945, p. 155 are included in the annotations for this Code section.

Power to investigate Board of Pardons and Paroles. — It is not possible to deduce from any of the duties enumerated in Ga. L. 1945, p. 155, the power of making an investigation of the State Board of Pardons and Paroles by the Judicial Council. 1948-49 Op. Att'y Gen. p. 415 (decided under Ga. L. 1945, p. 155).

15-5-25. Effect of article on authority of courts.

This article shall not be construed as limiting or affecting the authority of any court.

History. — Ga. L. 1973, p. 288, § 6.

15-5-26. Proposals for pilot programs involving nonuniform courts.

(a) Any proposal for a pilot program of limited duration involving courts which are not uniform within their classes, as authorized by Article VI, Section I, Paragraph X of the Constitution, shall be submitted to the Judicial Council for review and evaluation before it is considered by the General Assembly.

(b) Such a proposal may be submitted by any of the following:

(1) The Governor;

(2) A member of the General Assembly;

(3) The chief judge of one of the courts affected by such proposal; or

(4) The governing authority of a county affected by such proposal.

(c) Such a proposal shall be submitted to the Judicial Council during the year preceding the year in which a bill establishing a pilot program is considered by the General Assembly.

(d) The Judicial Council shall adopt policies and procedures regarding the submission and evaluation of such proposals which shall set out, at a minimum, the form and contents of the submission, the recommended date for submission, and internal procedures for developing recommendations regarding proposals. The Judicial Council shall make copies of its policies and procedures regarding submissions available upon request to members of the General Assembly, members of the judiciary, county governing authorities, and the public.

(e) The Judicial Council shall submit to the General Assembly a report evaluating each such proposal submitted and recommending adoption, adoption after modification, or rejection of each such proposal by the General Assembly. The Judicial Council shall provide the report or reports to the members of the General Assembly no later than December 31 of the year prior to consideration of a bill establishing any pilot projects in the General Assembly.

History. — Code 1981, § 15-5-26, enacted by Ga. L. 1996, p. 1077, § 1.

ARTICLE 3

COURT DOCUMENTS

Law reviews. — For article, "Courts: Juvenile Justice Reform," see 30 Ga. St. U. L. Rev. 63 (2013).

15-5-40. Letter-sized paper to be accepted.

Any pleading or other document filed in any court of record may be prepared on letter-sized paper; and no clerk of any court of record shall refuse to accept for filing any pleading or other document for the reason that it is on letter-sized paper.

History. — Code 1981, § 15-5-40, enacted by Ga. L. 1983, p. 531, § 1; Ga. L. 1984, p. 22, § 15.

Cross references. — Format of documents, Rules of the Supreme Court of the State of Georgia, Rule 17. Filing with clerk's office, Rules of the Court of Appeals of the State of Georgia, Rule 1.

JUDICIAL DECISIONS

Cited in Best Jewelry Mfg. Co. v. Reed Elsevier Inc., 334 Ga. App. 826, 780 S.E.2d 689 (2015).

ARTICLE 4

COURT COST OVERPAYMENTS

Law reviews. — For article, "Courts: Juvenile Justice Reform," see 30 Ga. St. U. L. Rev. 63 (2013).

15-5-50. Minimum amount for refund.

No court of record in this state shall be required to refund any overpayment of court costs in an amount not exceeding $5.00 or to collect any due court costs in an amount of less than $5.00 over the initial filing fee.

History. — Code 1981, § 15-5-50, enacted by Ga. L. 1984, p. 1149, § 2.

ARTICLE 5

COUNCIL OF SUPERIOR COURT JUDGES

Law reviews. — For article, "Courts: Juvenile Justice Reform," see 30 Ga. St. U. L. Rev. 63 (2013).

15-5-60. Contract for administrative functions, services, and equipment.

The Council of Superior Court Judges of Georgia shall be authorized to provide for or contract for administrative functions, services, and equipment necessary for the fulfillment of the responsibilities of the

superior courts with funds appropriated or otherwise available for the operation of the superior courts of the state.

History. — Code 1981, § 15-5-60, enacted by Ga. L. 1987, p. 622, § 1; Ga. L. 2008, p. 577, § 1/SB 396.

ARTICLE 6

GEORGIA COURTS AUTOMATION COMMISSION

Cross references. — Development and operation of civil case information system, § 15-6-97.1.

Law reviews. — For article, "Courts: Juvenile Justice Reform," see 30 Ga. St. U. L. Rev. 63 (2013).

15-5-80. Definitions.

As used in this article, the term:

(1) "Commission" means the Georgia Courts Automation Commission.

(2) "Council" means the advisory council to the commission.

History. — Code 1981, § 15-5-80, enacted by Ga. L. 2005, p. 60, § 15/HB 95.

Editor's notes. — Ga. L. 2005, p. 60, § 15/HB 95, renumbered former Code Section 15-5-80 as present Code Section 15-5-80.1.

15-5-80.1. Georgia Courts Automation Commission.

(a) There shall be a Georgia Courts Automation Commission. The commission created in this article shall be a successor to the Georgia Courts Automation Commission created by 1990 Resolution Act No. 98; HR 849; Ga. L. 1990, p. 979.

(b) The commission shall consist of 11 members. One member shall be the Chief Justice of the Supreme Court of Georgia or his designee; and the remaining members shall be appointed by the Chief Justice as follows:

(1) One Judge of the Court of Appeals of Georgia;

(2) Three superior court judges;

(3) One superior court clerk;

(4) One state court judge;

(5) One juvenile court judge;

(6) One probate court judge;

(7) One magistrate court judge; and

(8) One municipal court judge.

All members of the commission shall serve at the pleasure of the Chief Justice.

(c) The Chief Justice shall appoint the chairman of the commission, and the commission shall elect a vice chairman who shall preside in the absence of the chairman. The commission may elect such other officers as it deems advisable and shall establish such quorum, attendance, and other rules as it deems necessary for the most efficient operation of the commission. The commission may meet at such times and places within the state as the commission deems necessary.

(d) All members of the commission shall serve without compensation but may be reimbursed for travel and other expenses in carrying out their official duties in the same manner as other state officials and employees. Members of the commission who are state officials or employees shall be reimbursed for such expenses from funds of their respective state departments and agencies. All members of the commission who are not state officials or employees shall be reimbursed for such expenses from funds appropriated or otherwise available to the judicial branch of state government.

History. — Code 1981, § 15-5-80, enacted by Ga. L. 1991, p. 634, § 1; Code 1981, § 15-5-80.1, as redesignated by Ga. L. 2005, p. 60, § 15/HB 95.

15-5-81. Advisory council to commission.

(a) There shall be an advisory council to the Georgia Courts Automation Commission. The advisory council shall consist of the director of the Georgia Bureau of Investigation or the director's designee, the commissioner of corrections or the commissioner's designee, the commissioner of community supervision or the commissioner's designee, the commissioner of public safety or the commissioner's designee, the chairperson of the State Board of Pardons and Paroles or the chairperson's designee, the director of the Administrative Office of the Courts or the director's designee, the director of the Criminal Justice Coordinating Council or the director's designee, the director of the Governor's Office for Children and Families or the director's designee, and the executive director of the Georgia Technology Authority or the executive director's designee.

(b) The members of the advisory council shall be notified of and entitled to attend all meetings of the commission and shall be afforded an opportunity to review and comment on all proposed official actions of the commission other than actions relating solely to the internal organization and internal affairs of the commission.

(c) All members of the advisory council shall serve without compensation but may be reimbursed for travel and other expenses in carrying

out their official duties in the same manner as other state officials and employees. Members of the advisory council who are state officials or employees shall be reimbursed for such expenses from funds of their respective state departments and agencies. All members of the advisory council who are not state officials or employees shall be reimbursed for such expenses from funds appropriated or otherwise available to the judicial branch of state government.

History. — Code 1981, § 15-5-81, enacted by Ga. L. 1991, p. 634, § 1; Ga. L. 1992, p. 6, § 15; Ga. L. 2002, p. 1323, § 1; Ga. L. 2005, p. 60, § 15/HB 95; Ga. L. 2008, p. 568, § 10/HB 1054; Ga. L. 2008, p. 577, § 2/SB 396; Ga. L. 2015, p. 422, § 5-6/HB 310.

Cross references. — Programs and protection for children, T. 49, C. 5, A. 6.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1991, "director" was substituted for "Director" near the end of subsection (a).

Editor's notes. — Ga. L. 2008, p. 568, § 1/HB 1054, not codified by the General Assembly, provides: "This Act may be cited as the 'Children and Family Services Strengthening Act of 2008.'"

Ga. L. 2008, p. 568, § 2/HB 1054, not codified by the General Assembly, provides: "The General Assembly finds that well-intentioned efforts over the years have resulted in the creation of several agencies focused on preventing child abuse and juvenile delinquency, on serving at-risk families and troubled youth, and on promoting the improvement of our state's child welfare system. The General Assembly further finds that the work of some of these agencies overlaps, and that the at-risk families and troubled children of Georgia will be more efficiently and effectively served by consolidating the Children and Youth Coordinating Council with the Children's Trust Fund Commission, by placing the functions of the Georgia Child Fatality Review Panel under the supervision of the Child Advocate for the Protection of Children, and by encouraging these consolidated agencies to collaborate to create a consistent vision for serving the needs of our state's families in need."

Ga. L. 2015, p. 422, § 6-1/HB 310, not codified by the General Assembly, provides, in part, that the amendment by this Act shall apply to sentences entered on or after July 1, 2015.

Law reviews. — For article on the 2015 amendment of this Code section, see 32 Ga. St. U.L. Rev. 231 (2015).

15-5-82. Authority of commission; appointment of committees.

(a) The commission shall be authorized to:

(1) Define, implement, and administer a state-wide courts automation system including data collection, networking, data storage, retrieval, processing, and distribution;

(2) Coordinate and cooperate with the state's chief information officer with regard to planning, implementation, and administration of a state-wide courts automation system to take advantage of existing state resources where possible;

(3) Participate in agreements, contracts, and networks necessary or convenient for the performance of the duties specified in this paragraph and paragraph (2) of this subsection and for the release of the information from civil case filing and disposition forms;

(4) Administer federal, state, local, and other public or private funds made available to it for implementation of the courts automation system;

(5) Coordinate state-wide strategies and plans for incorporating county and local governments into the courts automation system, including review of requirements of the several state agencies for documents, reports, and forms and the consolidation, elimination, or conversion of such documents, reports, and forms to formats compatible with electronic transmittal media;

(6) Establish policies and procedures, rules and regulations, and technical and performance standards for county and local government access to the courts automation system network; and

(7) Offer advisory services to county and local governments to assist in guiding their efforts toward automating their court procedures and operations.

(b) The chairperson of the commission may designate and appoint committees to perform such functions as he or she may determine to be necessary. The commission may, either by itself or through such committees, hold hearings, conduct investigations, and take any other action necessary or desirable to implement the courts automation system in a deliberate, effective, and timely manner. The commission shall make an annual report of its progress to the Chief Justice, the Governor, the President of the Senate, and the Speaker of the House of Representatives.

(c) The commission may use the funds available to it for providing to the judicial branch, officials, authorities, agencies, or instrumentalities of this state or a political subdivision of this state access to data bases which are beneficial to the operation of the courts and are accessible through the commission or through the Georgia Technology Authority, provided that access to any such data base shall be conditioned upon the consent of the department, agency, or other entity having the right to grant such access. The commission may also expend funds as necessary for appropriate access to such data bases by the courts.

(d) Nothing in this article shall be so construed as to require any office of a court to accept additional workload generated by establishment of an electronic transfer of information capability from any other office of the county or local government, including court offices. Each such office shall continue to have sole responsibility for transmitting information required of it, either manually or electronically.

History. — Code 1981, § 15-5-82, enacted by Ga. L. 1991, p. 634, § 1; Ga. L. 1992, p. 6, § 15; Ga. L. 2000, p. 850, § 5; Ga. L. 2001, p. 4, § 15; Ga. L. 2017, p. 632, § 2-4/SB 132.

Code Commission notes. — Pursuant

to Code Section 28-9-5, in 2000, "the" was substituted for "the the" following "such data to" in paragraph (a)(4) and "Georgia Technology Authority" was substituted for "GeorgiaNet Authority" in the first sentence of subsection (c).

15-5-83. Commission assigned to Supreme Court; authority to receive and expend appropriations.

(a) The commission shall be assigned for administrative purposes to the Supreme Court, in the same manner as executive branch agencies are assigned to executive branch departments under Code Section 50-4-3.

(b) The commission is authorized to receive and expend such appropriations as may be expressly provided by the General Assembly together with such federal funds and other funds as may be made available from public or private sources.

History. — Code 1981, § 15-5-83, enacted by Ga. L. 1991, p. 634, § 1.

ARTICLE 7

GEORGIA COUNCIL OF COURT ADMINISTRATORS

Law reviews. — For article, "Courts: Juvenile Justice Reform," see 30 Ga. St. U. L. Rev. 63 (2013).

15-5-100. Creation of Georgia Council of Court Administrators.

(a) As used in this Code section, the term "council" means the Georgia Council of Court Administrators.

(b) There is created the Georgia Council of Court Administrators. The council shall be composed of the full-time court administrators and managers of all courts within this state. The council is authorized to organize itself and to develop a constitution and bylaws. The council is authorized to elect such officers, including an executive committee, as it shall deem advisable to carry out its duties and responsibilities. The council is authorized to appoint advisory committees and establish the membership and duties thereof. In addition to the full-time members of the council, the council is authorized to provide for special classes of nonvoting memberships for honorary members, students and teachers of court administration, and those persons who have retired from positions involving the administration and management of courts.

(c) It shall be the purpose of the council to effectuate the responsibilities conferred upon it by law, to further the improvement of the courts and the administration of justice, to assist the court administrators and managers throughout the state in the execution of their duties,

and to promote and assist in the training of court administrators, managers, and support personnel.

(d) Expenses of the administration of the council shall be paid from state funds appropriated for that purpose, from federal funds available to the council for that purpose, or from other appropriate sources.

(e) The council shall be a legal entity and an agency of the State of Georgia; shall have perpetual existence; may contract; may own property; may accept funds, grants, and gifts from any public or private source for use in defraying the expenses of the council; may adopt and use an official seal; may establish a principal office; may employ such administrative or clerical personnel as may be necessary and appropriate to fulfill its necessary duties; and shall have other powers, privileges, and duties as may be reasonable and necessary for the proper fulfillment of its purposes and duties.

History. — Code 1981, § 15-5-100, enacted by Ga. L. 1997, p. 1536, § 1; Ga. L. 2005, p. 60, § 15/HB 95.

CHAPTER 5A

STATE-WIDE BUSINESS COURT

Sec.
15-5A-1. Establishment.
15-5A-2. Terms of court; location; presiding judge; venue; transferring of case.
15-5A-3. Authority of court.
15-5A-4. Process for bringing a claim before court; filings.
15-5A-5. Filing fees; fees submitted to state treasury.
15-5A-6. Number of judges and divisions; operational date; qualifications for judge.
15-5A-7. Appointment of judges; initial appointment and term; service area.
15-5A-8. Judicial oath and supplemental oath.
15-5A-9. Salary and compensation of judges.
15-5A-10. Authority to make rules and revisions; creation of panel for revisions; guidelines for acceptance of cases; required rules.
15-5A-11. Clerk; appointment; term; compensation.
15-5A-12. Location of offices; designation of electronic filing system.
15-5A-13. Appointment of law assistants; role.
15-5A-14. Employment and compensation of other personnel.
15-5A-15. Purchasing of supplies.
15-5A-16. Assignment for budgetary and administrative purposes.

Effective date. — This chapter became effective May 7, 2019.

Editor's notes. — On July 31, 2020, the Supreme Court of Georgia passed the following order: "It is hereby ordered that the Uniform Rules for the Superior Courts shall be applicable on an interim basis in the Georgia State-wide Business Court, except that wherever the words 'superior court' or 'superior courts' appear in the Rules, the words 'Georgia State-wide Business' shall apply in lieu of the word 'superior.'

"Such Rules shall remain applicable until they are superseded by final approval of permanent Uniform Rules for the Georgia State-wide Business Court."

Law reviews. — For article on the 2019 enactment of this chapter, see 36 Ga. St. U.L. Rev. 1 (2019). For annual survey on trial practice and procedure, see 71 Mercer L. Rev. 305 (2019). For article, "2019 Legislative Review," see 24 Ga. St. B.J. 28 (June 2019).

RESEARCH REFERENCES

Am. Jur. 2d. — 20 Am. Jur. 2d, Courts, § 11.

C.J.S. — 21 C.J.S., Courts, § 11 et seq.

15-5A-1. Establishment.

There shall be a state-wide business court as provided for in Article VI of the Constitution of this state to be known as the Georgia State-wide Business Court. Nothing in this chapter shall preclude a superior court from creating or continuing an existing business court division for its circuit on or after May 7, 2019, or preclude a state court

from creating or continuing an existing business court division on or after May 7, 2019, in the manner provided by law.

History. — Code 1981, § 15-5A-1, enacted by Ga. L. 2019, p. 845, § 1-1/HB 239; Ga. L. 2020, p. 493, § 15/SB 429.

The 2020 amendment, effective July 29, 2020, part of an Act to revise, modernize, and correct the Code, substituted "on or after May 7, 2019" for "on or after the May 7, 2019" near the end of the second sentence of this Code section.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2019, "May 7, 2019," was substituted for "the effective date of this chapter" in two places in the second sentence.

15-5A-2. Terms of court; location; presiding judge; venue; transferring of case.

(a) The terms of court for the Georgia State-wide Business Court shall be the same as the terms of court for the Supreme Court.

(b) The Georgia State-wide Business Court shall sit at the seat of government in Atlanta or shall sit in Macon-Bibb County and shall conduct proceedings and trials in locations as provided for in this Code section.

(c)(1) All cases before the Georgia State-wide Business Court may have pretrial proceedings conducted at the seat of government, in Atlanta, in Macon-Bibb County, or, in the sole discretion of the judge of the Georgia State-wide Business Court to whom the case is assigned, conducted via video, telephone, or other efficient technological means as may be deemed necessary or useful to conserve the resources of the parties or the court.

(2) At the request of any party to a case, the judge of the Georgia State-wide Business Court to whom the case is assigned may, in his or her sole discretion, conduct any pretrial proceeding in the county in which the trial of such case shall be conducted pursuant to the Constitution of this state.

(d) The judge of the Georgia State-wide Business Court to whom a case is assigned shall preside over a bench trial unless any party requests a jury trial. If such request is made, the judge of the Georgia State-wide Business Court to whom the case is assigned shall preside over such jury trial. Any trial of a case before the Georgia State-wide Business Court shall take place in the county where venue is proper pursuant to subsection (e) of this Code section.

(e) Proper venue in the Georgia State-wide Business Court shall be as provided:

(1) In Code Section 9-10-93 or 14-2-510 or as otherwise prescribed by law or the Constitution of this state when initiating a civil action that has not already been filed in superior court or state court;

provided, however, that, if more than one venue is proper, then the party initiating the civil action in the Georgia State-wide Business Court shall select among the proper venues at the time of filing in the Georgia State-wide Business Court;

(2) In the pleadings, if proper, that initiated the civil action in superior court or state court when petitioning the Georgia State-wide Business Court for removal or transfer; provided, however, that, if venue is improper in the pleading that initiated the civil action in superior court or state court, then venue shall be set by the judge of the Georgia State-wide Business Court; or

(3) By the parties when all parties agree on the proper venue.

(f) When the judge of the Georgia State-wide Business Court is disqualified from presiding over a case or proceeding pursuant to the Georgia Code of Judicial Conduct or Code Section 15-1-8, the case shall be transferred to another judge of the Georgia State-wide Business Court, if applicable, and if no other judge of the Georgia State-wide Business Court may preside over such case, then the Supreme Court shall order a sitting judge of the Court of Appeals, the superior court, or the state court to sit by designation as a judge of the Georgia State-wide Business Court.

History. — Code 1981, § 15-5A-2, enacted by Ga. L. 2019, p. 845, § 1-1/HB 239; Ga. L. 2020, p. 493, § 15/SB 429.

The 2020 amendment, effective July 29, 2020, part of an Act to revise, modernize, and correct the Code, revised capitalization in paragraph (e)(2).

15-5A-3. Authority of court.

(a) Except as provided in subsection (b) of this Code section, pursuant to the process provided for in Code Section 15-5A-4, the Georgia State-wide Business Court shall have authority to:

(1) Exercise concurrent jurisdiction and the powers of a court of equity, to the extent that such powers are exercised:

(A) Notwithstanding the amount in controversy, where equity relief is requested in claims:

(i) Arising under Part 1 of Article 1 of Chapter 9 of Title 9, the "Georgia Arbitration Code";

(ii) Arising under Part 2 of Article 1 of Chapter 9 of Title 9, the "Georgia International Commercial Arbitration Code," for which an application may be made to a court of this state;

(iii) Arising under Article 27 of Chapter 1 of Title 10, the "Georgia Trade Secrets Act of 1990";

(iv) Involving securities, including, but not limited to, disputes arising under Chapter 5 of Title 10, the "Georgia Uniform Securities Act of 2008";

(v) Arising under Title 11, the "Uniform Commercial Code";

(vi) Arising under Chapter 2 of Title 14, the "Georgia Business Corporation Code";

(vii) Arising under Chapter 8 of Title 14, the "Uniform Partnership Act";

(viii) Arising under Chapter 9 of Title 14, the "Georgia Revised Uniform Limited Partnership Act";

(ix) Arising under Chapter 9A of Title 14, the "Uniform Limited Partnership Act";

(x) Arising under Chapter 11 of Title 14, the "Georgia Limited Liability Company Act";

(xi) That relate to the internal affairs of businesses, including, but not limited to, rights or obligations between or among business participants regarding the liability or indemnity of business participants, officers, directors, managers, trustees, or partners;

(xii) Arising under federal law over which courts of this state have concurrent jurisdiction;

(xiii) Where the complaint includes a professional malpractice claim arising out of a business dispute;

(xiv) Involving tort claims between or among two or more business entities or individuals as to their business or investment activities relating to contracts, transactions, or relationships between or among such entities or individuals;

(xv) For breach of contract, fraud, or misrepresentation between businesses arising out of business transactions or relationships;

(xvi) Arising from e-commerce agreements; technology licensing agreements, including, but not limited to, software and biotechnology license agreements; or any other agreement involving the licensing of any intellectual property right, including, but not limited to, an agreement relating to patent rights; and

(xvii) Involving commercial real property; and

(B) Where damages are requested the amount in controversy shall be at least:

(i) One million dollars for claims under subparagraph (A) of this paragraph involving commercial real property; or

(ii) Five hundred thousand dollars for claims under subparagraph (A) of this paragraph not involving commercial real property;

(2) Have supplemental jurisdiction over all pending claims that are so related to the claims in cases provided for under paragraph (1) of this subsection that such pending claims form part of the same case or controversy;

(3) Punish contempt by fines not exceeding $1,000.00, by imprisonment not exceeding 20 days, or both; and

(4) Exercise such other powers, not contrary to the Constitution, as are or may be given to such a court by law.

(b) The Georgia State-wide Business Court shall not have authority to exercise jurisdiction over claims arising under federal or state law, as applicable, involving:

(1) Physical injury inflicted upon the body of a person or death;

(2) Mental or emotional injury inflicted upon a person;

(3) Physical contact of an insulting or provoking nature with the body of a person;

(4) A threat of physical violence toward another person;

(5) Matters arising under Title 19;

(6) Residential landlord and tenant disputes;

(7) Foreclosures;

(8) Individual consumer claims involving a retail customer of goods or services who uses or intends to use such goods or services primarily for personal, family, or household purposes; provided, however, that this paragraph shall not be construed to preclude the court from exercising jurisdiction over mass actions or class actions involving such individual consumer claims; or

(9) Collections in matters involving a family owned farm entity as defined in Code Section 48-5-41.1 or an individual farmer.

History. — Code 1981, § 15-5A-3, enacted by Ga. L. 2019, p. 845, § 1-1/HB 239.

15-5A-4. Process for bringing a claim before court; filings.

(a) Except as provided in subsection (b) of this Code section, all claims provided for under Code Section 15-5A-3 may only come before the Georgia State-wide Business Court by:

(1) Any party filing a pleading with the Georgia State-wide Business Court to initiate a civil action that is not already pending in superior court or state court unless any defendant within 30 days after receipt by all defendants, through service of process, of a copy of the initial pleading setting forth the claim for relief upon which such action is based objects and petitions the Georgia State-wide Business Court to transfer such action to the superior court or state court with which venue is otherwise proper. The judge of the Georgia State-wide Business Court shall then compel transfer of the case to such superior court or state court, unless the action involves a contract claim or dispute where all parties are business entities and such contract provides that such dispute shall come before the Georgia State-wide Business Court;

(2) All parties to a civil action already filed in superior court or state court agreeing to remove the action to the Georgia State-wide Business Court and then filing such agreement with the Georgia State-wide Business Court, provided that the petition for removal is filed within 60 days of such action being filed in superior court or state court; or

(3) Any party to a civil action already filed in superior court or state court filing with the Georgia State-wide Business Court a petition to transfer such action to the Georgia State-wide Business Court; provided, however, that:

(A) Such a petition to transfer is filed within 60 days after receipt by all defendants, through service of process as provided in Code Section 9-11-4, of a copy of the initial pleading setting forth the claim for relief upon which such action is based. The judge of the Georgia State-wide Business Court, after considering the petition to transfer and all timely responses from the other party or parties in the case, shall thereafter determine whether the case is within the jurisdiction of the Georgia State-wide Business Court, and with a presumption that the civil action remains in the court of filing, the judge may enter an order compelling the transfer of the case to the Georgia State-wide Business Court unless a party objects within 30 days of the filing of the petition to transfer; or

(B) Such a petition to transfer is filed within 60 days after receipt by all defendants, through service of process as provided in Code Section 9-11-5 or as otherwise provided by law, of a copy of an

amended pleading, motion, order, or other document from which the party petitioning to transfer may first ascertain that the case is transferable. The judge of the Georgia State-wide Business Court, after considering the petition to transfer and all timely responses from the other party or parties in the case, shall thereafter determine whether the case is within the jurisdiction of the Georgia State-wide Business Court, and with a presumption that the civil action remains in the court of filing, the judge may enter an order compelling transfer of the case to the Georgia State-wide Business Court unless a party objects within 30 days of the filing of the petition to transfer.

(b) Notwithstanding subsection (a) of this Code section, the Georgia State-wide Business Court may transfer to the appropriate superior court or state court any and all claims filed in the Georgia State-wide Business Court and may reject acceptance of any and all petitions to transfer or petitions for removal to the Georgia State-wide Business Court, even if such claims are within the jurisdiction of the Georgia State-wide Business Court.

(c) Notwithstanding any other law, when the superior court or state court where a claim is pending receives a certified copy of an order issued by the Georgia State-wide Business Court transferring or removing such civil action to the Georgia State-wide Business Court pursuant to paragraph (2) or (3) of subsection (a) of this Code section, such superior court or state court shall certify the transfer or removal from the superior court or state court to the Georgia State-wide Business Court.

(d)(1) A pleading, petition, or other document as provided in subsection (a) of this Code section that is filed with the Georgia State-wide Business Court shall be deemed filed as of the time of its receipt by the filing service provider of the Georgia State-wide Business Court.

(2) Where such pleading, petition, or other document is filed within an applicable statute of limitations, such filing shall toll that applicable statute of limitations and such statute of limitations shall remain tolled until the date that the Georgia State-wide Business Court accepts or rejects acceptance of the pleading, petition, or other document as provided in subsection (a) of this Code section.

History. — Code 1981, § 15-5A-4, enacted by Ga. L. 2019, p. 845, § 1-1/HB 239; Ga. L. 2020, p. 493, § 15/SB 429.

The 2020 amendment, effective July 29, 2020, part of an Act to revise, modernize, and correct the Code, substituted "remains" for "remain" in the middle of the second sentence of subparagraphs (a)(3)(A) and (a)(3)(B).

15-5A-5. Filing fees; fees submitted to state treasury.

(a) The fee for filing a case with, or having a case transferred or removed to, the Georgia State-wide Business Court shall be $3,000.00, to be paid by:

(1) The party or parties filing the action in, or seeking transfer to, the Georgia State-wide Business Court under paragraph (1) or (3) of subsection (a) of Code Section 15-5A-4; or

(2) An equal allocation across all parties to an agreement seeking removal of the case to the Georgia State-wide Business Court under paragraph (2) of subsection (a) of Code Section 15-5A-4.

(b) All fees collected by the clerk of the Georgia State-wide Business Court pursuant to this Code section shall be the property of the state, and the same shall be paid into the state treasury.

History. — Code 1981, § 15-5A-5, enacted by Ga. L. 2019, p. 845, § 1-1/HB 239; Ga. L. 2020, p. 493, § 15/SB 429.

The 2020 amendment, effective July 29, 2020, part of an Act to revise, modernize, and correct the Code, revised punctuation in subsection (b).

15-5A-6. Number of judges and divisions; operational date; qualifications for judge.

(a) The Georgia State-wide Business Court shall consist of one judge and one division.

(b) The court shall commence operations on January 1, 2020, and may commence accepting cases on August 1, 2020.

(c) No individual shall be a judge of the Georgia State-wide Business Court unless, at the time of his or her appointment, he or she has:

(1) Been a resident of this state and a citizen of the United States for at least seven years;

(2) Been admitted to practice law in this state for at least seven years; and

(3) At least 15 years of legal experience as an attorney or judge in complex business litigation, which experience shall be presumed by law as being met by virtue of appointment and approval under Code Section 15-5A-7.

History. — Code 1981, § 15-5A-6, enacted by Ga. L. 2019, p. 845, § 1-1/HB 239.

15-5A-7. Appointment of judges; initial appointment and term; service area.

(a) The judge of the Georgia State-wide Business Court shall be appointed by the Governor, subject to approval by a majority vote of the Senate Judiciary Committee and a majority vote of the House Committee on Judiciary. The Senate Judiciary Committee and the House Committee on Judiciary shall be authorized to meet jointly or separately, while in or out of a legislative session, as called in the discretion of each such chairperson, with notice provided by the chairpersons to such committee members, to consider the approval of such appointment.

(b)(1) The initial judge of the Georgia State-wide Business Court shall be appointed by July 1, 2019, and approved by December 31, 2019, or within three months of the Governor's appointment, whichever is later, and the judge shall serve an initial term beginning on August 1, 2020.

(2) Beginning on January 1, 2020, such initial judge may perform the administrative duties required for establishing the Georgia State-wide Business Court and, if so, shall receive compensation as a judge of the Georgia State-wide Business Court beginning on such date and for such purposes.

(3)(A) The judge of the Georgia State-wide Business Court shall serve for a term of five years and may be reappointed for any number of consecutive terms so long as he or she meets the qualifications of appointment at the time of each appointment and shall be reappointed and reapproved in the same manner as provided for in subsection (a) of this Code section.

(B) Vacancies in the office of judge of the Georgia State-wide Business Court shall be filled by appointment and approval in the same manner as provided for in subsection (a) of this Code section.

(4) The judge of the Georgia State-wide Business Court shall be deemed to serve the geographical area of this state.

History. — Code 1981, § 15-5A-7, enacted by Ga. L. 2019, p. 845, § 1-1/HB 239.

15-5A-8. Judicial oath and supplemental oath.

Before entering on the duties of his or her office, the judge of the Georgia State-wide Business Court shall take the oath required of all civil officers in addition to the following oath:

"I swear that I will administer justice without respect to person and do equal rights to the poor and the rich and that I will faithfully and impartially discharge and perform all the duties incumbent on me as judge of the Georgia State-wide Business Court, according to the best of my ability and understanding, and agreeably to the laws and Constitution of this state and the Constitution of the United States. So help me God."

History. — Code 1981, § 15-5A-8, enacted by Ga. L. 2019, p. 845, § 1-1/HB 239.

15-5A-9. Salary and compensation of judges.

(a)(1) The annual salary of the judge of the Georgia State-wide Business Court shall be as specified in Code Section 45-7-4. Such salary shall be paid in equal monthly installments.

(2) The judge of the Georgia State-wide Business Court shall receive expenses and allowances as provided for in Code Section 45-7-20. If the judge resides 50 miles or more from where the Georgia State-wide Business Court sits, such judge shall also receive a mileage allowance for the use of a personal motor vehicle when devoted to official business as provided for in Code Section 50-19-7, for not more than one round trip per calendar week to and from the judge's residence and where the Georgia State-wide Business Court sits by the most practical route, during each regular and extraordinary session of court. In the event the judge travels by public carrier for any part of a round trip as provided above, such judge shall receive a travel allowance of actual transportation costs for each such part in lieu of the mileage allowance. Transportation costs incurred by the judge for air travel to and from the judge's residence to where the Georgia State-wide Business Court sits shall be reimbursed only to the extent that such costs do not exceed the cost of travel by personal motor vehicle. All allowances provided for in this paragraph shall be paid upon the submission of proper vouchers.

(3) If the judge resides 50 miles or more from where the Georgia State-wide Business Court sits, such judge shall also receive the same daily expense allowance as members of the General Assembly receive, as set forth in Code Section 28-1-8, for not more than 35 days during each term of court. Such days shall be utilized only when official court business is being conducted. All allowances provided for in this paragraph shall be paid upon the submission of proper vouchers.

(b) The salary provided for in subsection (a) of this Code section shall be the total compensation to be paid by the state to the judge of the

Georgia State-wide Business Court and shall be in lieu of any and all other amounts to be paid from state funds.

History. — Code 1981, § 15-5A-9, enacted by Ga. L. 2019, p. 845, § 1-1/HB 239.

15-5A-10. Authority to make rules and revisions; creation of panel for revisions; guidelines for acceptance of cases; required rules.

(a) The judge of the Georgia State-wide Business Court shall have responsibility for creating and, when needed, making revisions to the rules of the Georgia State-wide Business Court and submitting such rules and revisions to the Supreme Court for approval prior to such rules or revisions taking effect; provided, however, that such rules shall conform to Chapter 11 of Title 9, the "Georgia Civil Practice Act," where related and applicable.

(b) The judge of the Georgia State-wide Business Court is authorized to empanel a commission of up to eight individuals, who may be judges, to assist the judge in the creation or revision of such rules; provided, however, that such individuals shall not receive compensation for being empaneled but may receive a daily expense allowance and travel cost reimbursement in the amount specified in Code Section 45-7-21.

(c) Such rules may include a matrix or guidelines for the acceptance of cases by the Georgia State-wide Business Court, including, but not limited to, such factors as the amount in controversy, the existence of novel or complex legal issues, and anticipated discovery issues needing the intervention of the Georgia State-wide Business Court.

(d) Such rules shall include:

(1) Guidelines and procedures for the filing of pleadings, petitions, motions, and all other documents, electronically or otherwise, with the Georgia State-wide Business Court; and

(2) A reasonable time within which the Georgia State-wide Business Court shall issue a decision on a matter before the court.

History. — Code 1981, § 15-5A-10, enacted by Ga. L. 2019, p. 845, § 1-1/HB 239.

15-5A-11. Clerk; appointment; term; compensation.

(a) There shall be a clerk of the Georgia State-wide Business Court. Such clerk shall be appointed by the Governor, subject to approval by a majority vote of the Senate Judiciary Committee and a majority vote of

the House Committee on Judiciary. The Senate Judiciary Committee and the House Committee on Judiciary shall be authorized to meet jointly or separately, while in or out of a legislative session, as called in the discretion of each such chairperson, with notice provided by the chairpersons to such committee members, to consider the approval of such appointment.

(b)(1) The initial clerk of the Georgia State-wide Business Court shall be appointed and approved by July 31, 2020, and shall serve an initial term beginning on August 1, 2020.

(2)(A) The clerk of the Georgia State-wide Business Court shall serve for a term of five years and may be reappointed for any number of consecutive terms and shall be reappointed and reapproved in the same manner as provided for in subsection (a) of this Code section.

(B) Vacancies in the office of clerk of the Georgia State-wide Business Court shall be filled by appointment of the Governor in the same manner as provided for in subsection (a) of this Code section.

(c) The annual compensation of the clerk of the Georgia State-wide Business Court shall be equal to the annual compensation provided for the clerk of the Court of Appeals.

History. — Code 1981, § 15-5A-11, enacted by Ga. L. 2019, p. 845, § 1-1/HB 239.

15-5A-12. Location of offices; designation of electronic filing system.

(a) The offices of the judge and clerk of the Georgia State-wide Business Court shall sit at the seat of government in Atlanta or shall sit in Macon-Bibb County pursuant to subsection (b) of Code Section 15-5A-2.

(b) The judge of the Georgia State-wide Business Court, in coordination with the clerk of the Georgia State-wide Business Court, shall be responsible for designating an electronic filing system.

History. — Code 1981, § 15-5A-12, enacted by Ga. L. 2019, p. 845, § 1-1/HB 239.

15-5A-13. Appointment of law assistants; role.

(a) The judge of the Georgia State-wide Business Court shall be authorized to appoint law assistants for the use of the court and to

remove them at pleasure. Each law assistant of the Georgia State-wide Business Court shall have been admitted to the bar of this state as a practicing attorney; provided, however, that an individual who graduated from law school but who is not a member of the bar of this state may be appointed as a law assistant so long as he or she is admitted to the bar of this state within one year of such appointment.

(b) It shall be the duty of a law assistant to attend all sessions of the court, if so ordered, and generally to perform the duties incident to the role of law assistant.

History. — Code 1981, § 15-5A-13, enacted by Ga. L. 2019, p. 845, § 1-1/HB 239.

15-5A-14. Employment and compensation of other personnel.

The judge of the Georgia State-wide Business Court may employ and fix the salaries of stenographers, clerical assistants, and such other employees as may be deemed necessary by the court; and the salaries therefor shall be paid by the clerk from the amount appropriated by the General Assembly for such purposes.

History. — Code 1981, § 15-5A-14, enacted by Ga. L. 2019, p. 845, § 1-1/HB 239.

15-5A-15. Purchasing of supplies.

The Georgia State-wide Business Court shall purchase such books, pamphlets, or other publications, whether in hard copy or digital format, and such other supplies and services as the judge of the Georgia State-wide Business Court may deem necessary. The costs thereof shall be paid by the clerk out of the amount appropriated by the General Assembly for such purposes.

History. — Code 1981, § 15-5A-15, enacted by Ga. L. 2019, p. 845, § 1-1/HB 239.

15-5A-16. Assignment for budgetary and administrative purposes.

The Georgia State-wide Business Court shall be a budget unit as defined in Part 1 of Article 4 of Chapter 12 of Title 45, the "Budget Act"; provided, however, that the Georgia State-wide Business Court shall be assigned for administrative purposes only to the Court of Appeals.

History. — Code 1981, § 15-5A-16, enacted by Ga. L. 2019, p. 845, § 1-1/HB 239.

CHAPTER 6

SUPERIOR COURTS

Article 1

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Article 2

Clerks of Superior Courts

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15-6-99. Re-creation of grantor and grantee indexes.
15-6-100. Clerk's expenditure of funds.

Cross references. — Generally, Ga. Const. 1983, Art. VI, Sec. IV. Compensation and allowances for judges of superior courts, Ga. Const. 1983, Art. VI, Sec. VII, Para. V and T. 45, C. 7. Proceedings before superior court for validation of bonds of counties or municipalities, § 36-82-20 et seq. Proceedings to validate revenue bonds issued under "Revenue Bond Law", § 36-82-73 et seq. Transfer of cases, Uniform Transfer Rules.

ARTICLE 1

GENERAL PROVISIONS

Law reviews. — For article, "Courts: Juvenile Justice Reform," see 30 Ga. St. U. L. Rev. 63 (2013).

15-6-1. Composition of judicial circuits.

The entire state is divided into judicial circuits, in reference to the jurisdiction and sessions of the superior courts, as follows:

(1) Alapaha Judicial Circuit, composed of the Counties of Atkinson, Berrien, Clinch, Cook, and Lanier;

(2) Alcovy Judicial Circuit, composed of the Counties of Newton and Walton;

(2.1) Appalachian Judicial Circuit, composed of the Counties of Fannin, Gilmer, and Pickens;

(3) Atlanta Judicial Circuit, composed of the County of Fulton;

(4) Atlantic Judicial Circuit, composed of the Counties of Bryan, Liberty, McIntosh, Tattnall, Evans, and Long;

(5) Augusta Judicial Circuit, composed of the Counties of Burke, Columbia, and Richmond;

(5.1) Bell-Forsyth Judicial Circuit, composed of the County of Forsyth;

(6) Blue Ridge Judicial Circuit, composed of the County of Cherokee;

(7) Brunswick Judicial Circuit, composed of the Counties of Appling, Camden, Glynn, Wayne, and Jeff Davis;

(8) Chattahoochee Judicial Circuit, composed of the Counties of Chattahoochee, Harris, Marion, Muscogee, Talbot, and Taylor;

(9) Cherokee Judicial Circuit, composed of the Counties of Bartow and Gordon;

(10) Clayton Judicial Circuit, composed of the County of Clayton;

(11) Cobb Judicial Circuit, composed of the County of Cobb;

(12) Conasauga Judicial Circuit, composed of the Counties of Murray and Whitfield;

(13) Cordele Judicial Circuit, composed of the Counties of Dooly, Wilcox, Crisp, and Ben Hill;

(14) Coweta Judicial Circuit, composed of the Counties of Carroll, Coweta, Heard, Meriwether, and Troup;

(15) Dougherty Judicial Circuit, composed of the County of Dougherty;

(15.1) Douglas Judicial Circuit, composed of the County of Douglas;

(16) Dublin Judicial Circuit, composed of the Counties of Laurens, Johnson, Twiggs, and Treutlen;

(17) Eastern Judicial Circuit, composed of the County of Chatham;

(17.1) Enotah Judicial Circuit, composed of the Counties of Towns, Union, Lumpkin, and White;

(18) Flint Judicial Circuit, composed of the County of Henry;

(19) Griffin Judicial Circuit, composed of the Counties of Spalding, Pike, Upson, and Fayette;

(20) Gwinnett Judicial Circuit, composed of the County of Gwinnett;

(21) Houston Judicial Circuit, composed of the County of Houston;

(22) Lookout Mountain Judicial Circuit, composed of the Counties of Catoosa, Dade, Chattooga, and Walker;

(23) Macon Judicial Circuit, composed of the Counties of Bibb, Crawford, and Peach;

(24) Middle Judicial Circuit, composed of the Counties of Emanuel, Jefferson, Washington, Toombs, and Candler;

(25) Mountain Judicial Circuit, composed of the Counties of Habersham, Rabun, and Stephens;

(26) Northeastern Judicial Circuit, composed of the Counties of Hall and Dawson;

(27) Northern Judicial Circuit, composed of the Counties of Elbert, Hart, Madison, Oglethorpe, and Franklin;

(28) Ocmulgee Judicial Circuit, composed of the Counties of Baldwin, Greene, Jasper, Jones, Morgan, Putnam, Wilkinson, and Hancock;

(29) Oconee Judicial Circuit, composed of the Counties of Dodge, Montgomery, Pulaski, Telfair, Bleckley, and Wheeler;

(30) Ogeechee Judicial Circuit, composed of the Counties of Bulloch, Effingham, Jenkins, and Screven;

(31) Pataula Judicial Circuit, composed of the Counties of Clay, Early, Miller, Quitman, Randolph, Terrell, and Seminole;

(31.1) Paulding Judicial Circuit, composed of the County of Paulding;

(32) Piedmont Judicial Circuit, composed of the Counties of Barrow, Jackson, and Banks;

(32.1) Rockdale Judicial Circuit, composed of the County of Rockdale;

(33) Rome Judicial Circuit, composed of the County of Floyd;

(34) South Georgia Judicial Circuit, composed of the Counties of Baker, Calhoun, Decatur, Grady, and Mitchell;

(35) Southern Judicial Circuit, composed of the Counties of Brooks, Colquitt, Echols, Lowndes, and Thomas;

(36) Southwestern Judicial Circuit, composed of the Counties of Lee, Macon, Schley, Stewart, Sumter, and Webster;

(37) Stone Mountain Judicial Circuit, composed of the County of DeKalb. The judges of the Stone Mountain Judicial Circuit, when the business of the circuit does not require their attention, may aid in the disposition of the business of the Atlanta Judicial Circuit;

(38) Tallapoosa Judicial Circuit, composed of the Counties of Haralson and Polk;

(39) Tifton Judicial Circuit, composed of the Counties of Tift, Irwin, Worth, and Turner;

(40) Toombs Judicial Circuit, composed of the Counties of Glascock, Lincoln, McDuffie, Taliaferro, Warren, and Wilkes;

(40.1) Towaliga Judicial Circuit, composed of the Counties of Butts, Monroe, and Lamar;

(41) Waycross Judicial Circuit, composed of the Counties of Pierce, Coffee, Charlton, Ware, Bacon, and Brantley; and

(42) Western Judicial Circuit, composed of the Counties of Clarke and Oconee.

History. — Orig. Code 1863, § 46; Code 1868, § 44; Ga. L. 1869, p. 20, §§ 1, 3; Ga. L. 1870, p. 37, § 1; Ga. L. 1870, p. 38, § 1; Ga. L. 1871-72, p. 32, § 1; Code 1873, § 42; Ga. L. 1874, p. 43, § 1; Ga. L. 1880-81, p. 112, § 1; Code 1882, § 42; Ga. L. 1884-85, p. 108, §§ 1, 4; Ga. L. 1887, p. 48, §§ 1, 2; Ga. L. 1890-91, p. 95, § 1; Civil Code 1895, § 4339; Ga. L. 1897, p. 44, § 2; Ga. L. 1899, p. 49, § 1; Ga. L. 1905, p. 52, § 2; Ga. L. 1905, p. 55, § 2; Ga. L. 1905, p. 58, § 2; Ga. L. 1905, p. 60, § 2; Ga. L. 1905, p. 62, § 1; Ga. L. 1905, p. 63, § 2; Ga. L. 1906, p. 28, § 1; Ga. L. 1906, p. 50, § 1; Ga. L. 1907, p. 67, § 1; Ga. L. 1907, p. 70, § 1; Ga. L. 1909, p. 94, § 1; Ga. L. 1909, p. 102, § 1; Ga. L. 1909, p. 107, § 1; Ga. L. 1910, p. 63, § 1; Civil Code 1910, § 4870; Ga. L. 1911, p. 81, § 1; Ga. L. 1911, p. 87, § 1; Ga. L. 1912, p. 38, § 1; Ga. L. 1912, p. 41, § 1; Ga. L. 1912, p. 101, § 1; Ga. L. 1913, p. 64, § 1; Ga. L. 1914, p. 23, § 2; Ga. L. 1914, p. 27, § 1; Ga. L. 1914, p. 29, § 1; Ga. L. 1914, p. 33, § 1; Ga. L. 1916, p. 62, § 1; Ga. L. 1917, p. 44, § 1; Ga. L. 1917, p. 69, § 1; Ga. L. 1919, p. 68, § 1; Ga. L. 1919, p. 109, § 1; Ga. L. 1919, p. 110, § 1; Ga. L. 1920, p. 19, § 1; Ga. L. 1920, p. 34, § 1; Ga. L. 1920, p. 38, § 1; Ga. L. 1920, p. 48, § 1; Ga. L. 1920, p. 52, § 1; Ga. L. 1923, p. 68, § 1; Ga. L. 1923, p. 76, § 1; Ga. L. 1924, p. 39, § 1; Code 1933, § 24-2501; Ga. L. 1949, p. 266, § 7; Ga. L. 1950, p. 23, § 7; Ga. L. 1951, p. 184, § 6; Ga. L. 1952, p. 84, § 1; Ga. L. 1956, p. 95, § 5; Ga. L. 1958, p. 125,

§ 4; Ga. L. 1960, p. 110, § 6; Ga. L. 1963, p. 182, § 12; Ga. L. 1964, Ex. Sess., p. 7, § 7; Ga. L. 1964, Ex. Sess., p. 220, § 1; Ga. L. 1969, p. 427, § 7; Ga. L. 1972, p. 152, § 7; Ga. L. 1980, p. 563, §§ 1, 7; Ga. L. 1982, p. 439, §§ 1, 3; Ga. L. 1983, p. 761, § 2; Ga. L. 1984, p. 22, § 15; Ga. L. 1992, p. 1786, § 2; Ga. L. 1998, p. 220, § 1; Ga. L. 1999, p. 67, §§ 11, 12; Ga. L. 2002, p. 405, § 3-1.

Cross references. — Authority of General Assembly as to composition of judicial circuits, Ga. Const. 1983, Art. VI, Sec. I, Para. VII.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1998, paragraph (18.1) was redesignated as paragraph (5.1).

Pursuant to Code Section 28-9-5, in 2008, "and" was added at the end of paragraph (41).

Editor's notes. — Ga. L. 1983, p. 761, § 1, not codified by the General Assembly, provided for creation of a new judicial circuit of the superior courts of this state, to be known as the Appalachian Judicial Circuit, which circuit shall be composed of the Counties of Fannin, Gilmer, and Pickens, and further provided for the offices of the judge of the superior court and district attorney of the Appalachian Judicial Circuit.

Ga. L. 1992, p. 1786, § 1, not codified by the General Assembly, provided for creation of the Enotah Judicial Circuit, for the offices of the judge and district attorney, and for the transfer of pending litigation from the superior courts of Towns, Lumpkin, and White counties.

Ga. L. 1992, p. 1786, § 5, not codified by the General Assembly, provides: "For the purposes of the appointment of the judges and district attorney of the Enotah Judicial Circuit to take office on July 1, 1992, this Act shall become effective upon its approval by the Governor or upon its becoming law without his approval. For all other purposes, this Act shall be effective on July 1, 1992." The effective date of this Act was April 6, 1992.

Ga. L. 1998, p. 220, § 9, not codified by the General Assembly, creates the Bell-Forsyth Judicial Circuit and provides for transfer of certain matters to the superior court of that circuit from the superior court of Forsyth County which were pending at such time as it was part of the Blue Ridge Judicial Circuit.

Ga. L. 1998, p. 220, § 10, subsections (b) and (c), not codified by the General Assembly, provide that: "(b) If there is no judge of the Blue Ridge Judicial Circuit in office on July 1, 1998, who is a resident of Forsyth County, this Act shall become effective upon its approval by the Governor or upon its becoming law without such approval for the purposes of the appointment of the initial judge of the Bell-Forsyth Judicial Circuit pursuant to subsection (d) of Section 8 of this Act, except that the provision of Section 1 of this Act which decreases the number of judges in the Blue Ridge Circuit shall become effective December 31, 2000, upon the expiration of the terms of office of the judges of the Blue Ridge Judicial Circuit.

"(c) Except as provided in subsections (a) and (b) of this section and notwithstanding the provisions of Code Section 1-3-4.1, this Act shall become effective July 1, 1998." The references to Section 1 and Section 8 of this Act in Ga. L. 1998, p. 220, § 10, should probably be to Section 2 and Section 9, respectively, of that Act.

Ga. L. 1999, p. 67, §§ 1-10, not codified by the General Assembly, provided for creation of the Towaliga Judicial Circuit, for the offices of the judge and district attorney, for the transfer of pending litigation from the superior courts of Butts, Monroe, and Lamar counties, and other similar matters.

Ga. L. 2002, p. 405, §§ 1-1 through 2-4, not codified by the General Assembly, provided for the creation of the Paulding Judicial Circuit, for the offices of the judge and district attorney, for the transfer of pending litigation from the Superior Court of Paulding County at the time it was a part of the Tallapoosa Judicial Circuit, and other similar matters.

JUDICIAL DECISIONS

Code section is an alphabetical list of circuits. — This section simply listed in alphabetical order the various judicial circuits and gave the counties composing the different circuits. Norris v. McDaniel, 207 Ga. 232, 60 S.E.2d 329 (1950).

Banishment as condition of probation must be to at least one entire judicial circuit. — Although the legislature has expressly provided that banishment is a valid term and condition of probation, the trial court cannot banish a probationer to any area within the state that does not consist of at least one entire judicial circuit. Because Toombs County was part of the five-county Middle Judicial Circuit, which also included Emanuel, Jefferson, Washington, and Candler Counties, the trial court was not statutorily authorized to banish the defendant from the entire state, except for Toombs County. Regent v. State, 333 Ga. App. 350, 774 S.E.2d 213 (2015), vacated on other grounds, 339 Ga. App. 885, 795 S.E.2d 190 (Ga. Ct. App. 2016).

Cited in Sellers v. City of Summerville, 81 Ga. App. 406, 58 S.E.2d 855 (1950); Barfield v. Aiken, 209 Ga. 483, 74 S.E.2d 100 (1953); Barksdale v. Ricketts, 233 Ga. 60, 209 S.E.2d 631 (1974); Whiddon v. State, 160 Ga. App. 777, 287 S.E.2d 114 (1982); State v. Thompson, 284 Ga. App. 744, 644 S.E.2d 889 (2007); Terry v. Hamrick, 284 Ga. 24, 663 S.E.2d 256 (2008); Spence v. State, 295 Ga. App. 583, 672 S.E.2d 538 (2009); Cosby v. Lewis, 308 Ga. App. 668, 708 S.E.2d 585 (2011); Luangkhot v. State, 292 Ga. 423, 736 S.E.2d 397 (2013).

15-6-2. (For effective date, see note.) Number of judges.

The number of judges for each of the superior courts for each of the judicial circuits shall be as follows:

(1) Alapaha Circuit	2
(2) Alcovy Circuit	5
(2.1) Appalachian Circuit	3
(3) Atlanta Circuit	20
(4) Atlantic Circuit	4
(5) Augusta Circuit	8
(5.1) Bell-Forsyth Circuit	3
(6) Blue Ridge Circuit	3
(7) Brunswick Circuit	5
(8) Chattahoochee Circuit	7
(9) Cherokee Circuit	4
(10) Clayton Circuit	5
(11) (For effective date, see note.) Cobb Circuit	11
(12) Conasauga Circuit	4
(13) Cordele Circuit	3

(14) Coweta Circuit 7
(15) Dougherty Circuit 3
(15.1) Douglas Circuit 3
(16) Dublin Circuit 3
(17) Eastern Circuit 6
(17.1) Enotah Circuit 3
(18) (For effective date, see note.) Flint Circuit 4
(19) Griffin Circuit 5
(20) Gwinnett Circuit 11
(21) Houston Circuit 3
(22) Lookout Mountain Circuit 4
(23) Macon Circuit 5
(24) Middle Circuit 2
(25) Mountain Circuit 2
(26) Northeastern Circuit 5
(27) Northern Circuit 3
(28) Ocmulgee Circuit 5
(29) Oconee Circuit 3
(30) (For effective date, see note.) Ogeechee Circuit 4
(31) Pataula Circuit 2
(31.1) Paulding Circuit 3
(32) Piedmont Circuit 4
(32.1) Rockdale Circuit 2
(33) Rome Circuit 4
(34) South Georgia Circuit 2
(35) Southern Circuit 5
(36) Southwestern Circuit 3
(37) Stone Mountain Circuit 10
(38) Tallapoosa Circuit 2
(39) Tifton Circuit 2
(40) Toombs Circuit 2

(40.1) Towaliga Circuit 2
(41) Waycross Circuit 4
(42) Western Circuit 4

History. — Ga. L. 1982, p. 3, § 15; Ga. L. 1982, p. 428, §§ 1, 5; Ga. L. 1982, p. 434, § 1; Ga. L. 1982, p. 436, § 1; Ga. L. 1982, p. 439, §§ 1, 4; Ga. L. 1982, p. 501, §§ 1, 2; Ga. L. 1983, p. 761, § 3; Ga. L. 1984, p. 22, § 15; Ga. L. 1984, p. 434, § 1; Ga. L. 1984, p. 451, § 5; Ga. L. 1984, p. 469, § 1; Ga. L. 1984, p. 472, § 1; Ga. L. 1986, p. 160, § 1; Ga. L. 1986, p. 163, § 1; Ga. L. 1986, p. 417, § 1; Ga. L. 1986, p. 423, § 4; Ga. L. 1987, p. 279, § 9; Ga. L. 1987, p. 331, § 1; Ga. L. 1987, p. 410, § 1; Ga. L. 1987, p. 1145, § 1; Ga. L. 1988, p. 223, § 1; Ga. L. 1988, p. 234, § 1; Ga. L. 1989, p. 180, § 1; Ga. L. 1989, p. 188, § 1; Ga. L. 1989, p. 196, § 1; Ga. L. 1989, p. 200, § 1; Ga. L. 1989, p. 203, § 1; Ga. L. 1989, p. 205, § 1; Ga. L. 1990, p. 471, § 1; Ga. L. 1990, p. 474, § 1; Ga. L. 1990, p. 489, § 1; Ga. L. 1990, p. 497, § 2; Ga. L. 1991, p. 276, § 1; Ga. L. 1991, p. 278, § 1; Ga. L. 1991, p. 280, §§ 1, 12; Ga. L. 1991, p. 288, § 1; Ga. L. 1992, p. 328, § 1; Ga. L. 1992, p. 1668, § 1; Ga. L. 1992, p. 1786, § 3; Ga. L. 1992, p. 2067, § 1; Ga. L. 1992, p. 2776, §§ 1, 12; Ga. L. 1995, p. 1077, § 1; Ga. L. 1998, p. 220, §§ 2, 3; Ga. L. 1999, p. 40, § 1; Ga. L. 1999, p. 49, § 1; Ga. L. 1999, p. 67, §§ 13, 14; Ga. L. 2000, p. 205, § 1; Ga. L. 2001, p. 1060, §§ 1, 2; Ga. L. 2002, p. 405, §§ 3-2, 3-3; Ga. L. 2002, p. 851, § 1; Ga. L. 2005, p. 964, § 1-1/HB 97; Ga. L. 2006, p. 1024, § 1-1/HB 1073; Ga. L. 2007, p. 695, § 1-1/HB 118; Ga. L. 2008, p. 491, § 1-1/HB 1163; Ga. L. 2012, p. 166, § 1-1/SB 356; Ga. L. 2013, p. 570, §§ 1-1, 2-1/HB 451; Ga. L. 2014, p. 189, §§ 1-1, 2-1/HB 742; Ga. L. 2015, p. 919, § 2-2/HB 279; Ga. L. 2016, p. 183, § 1/HB 804; Ga. L. 2017, p. 191, § 1/HB 138; Ga. L. 2019, p. 4, § 1/HB 21; Ga. L. 2019, p. 504, § 1/HB 28; Ga. L. 2020, p. 338, § 1-1/HB 786.

Delayed effective date. — Paragraphs (11), (18), and (30), as set out above, become effective January 1, 2022. For versions of paragraphs (11), (18), and (30) in effect until January 1, 2022, see the 2020 amendment note.

The 2019 amendments. — The first 2019 amendment, effective April 2, 2019, for purposes of making the initial appointments of the judges to fill the superior court judgeships created by this Act, and effective January 1, 2020, for all other purposes, substituted "11" for "10" at the end of paragraph (20). The second 2019 amendment, effective May 6, 2019, for purposes of making the initial appointments of the judges to fill the superior court judgeships created by this Act, and effective January 1, 2020, for all other purposes, substituted "5" for "4" at the end of paragraph (19).

The 2020 amendment, effective July 29, 2020, for purposes of making the initial appointments of the judges to fill the superior court judgeships created by this Act, and effective January 1, 2022, for all other purposes, substituted "11" for "10" in paragraph (11), substituted "4" for "3" in paragraph (18), and substituted "4" for "3" in paragraph (30).

Cross references. — Authority of General Assembly with regard to designation of number of judges for judicial circuits, Ga. Const. 1983, Art. VI, Sec. I, Para. VII.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1998, paragraph (18.1) was redesignated as paragraph (5.1).

Editor's notes. — Ga. L. 1999, p. 40, §§ 2-5, not codified by the General Assembly, provided for the appointment of an additional judge to the Northeastern Judicial Circuit as authorized by paragraph (26) and provided for terms, election of successors, powers, duties, dignity, jurisdiction, privileges, immunities, and other similar matters.

Ga. L. 1999, p. 49, §§ 2-9, not codified by the General Assembly, provided for the appointment of an additional judge to the Southwestern Circuit as authorized by paragraph (36) and provided for terms, election of successors, powers, duties, jurisdiction, privileges, immunities, compensation, salary, county supplement, ex-

pense allowance, and other similar matters.

Ga. L. 1999, p. 67, §§ 1-10, not codified by the General Assembly, provided for the creation of the Towaliga Judicial Circuit, for the offices of the judge and district attorney, for transfer of pending litigation from the superior courts of Butts, Lamar, and Monroe counties, and other similar matters.

Ga. L. 2000, p. 205, §§ 2-6, not codified by the General Assembly, provided for the appointment of an additional judge to the Atlanta Judicial Circuit as authorized by paragraph (3) and provided for terms, election of successors, powers, duties, dignity, jurisdiction, privileges, immunities, and other similar matters.

Ga. L. 2000, p. 205, §§ 7-10, not codified by the General Assembly, provided for the appointment of an additional judge to the Bell-Forsyth Judicial Circuit as authorized by paragraph (5.1) and provided for terms, election of successors, powers, duties, dignity, jurisdiction, privileges, immunities, and other similar matters.

Ga. L. 2000, p. 205, §§ 11-17, as amended by Ga. L. 2013, p. 570, § 4-1/HB 451, and by Ga. L. 2013, p. 896, § 1/HB 506, not codified by the General Assembly, provided for the appointment of an additional judge to the Chattahoochee Judicial Circuit as authorized by paragraph (8) and provided for terms, election of successors, powers, duties, dignity, jurisdiction, privileges, immunities, and other similar matters.

Ga. L. 2000, p. 205, §§ 18-22, not codified by the General Assembly, provided for the appointment of an additional judge to the Cobb Judicial Circuit as authorized by paragraph (11) and provided for terms, election of successors, powers, duties, dignity, jurisdiction, privileges, immunities, and other similar matters.

Ga. L. 2000, p. 205, §§ 23-28, not codified by the General Assembly, provided for the appointment of an additional judge to the Tallapoosa Judicial Circuit as authorized by paragraph (38) and provided for terms, election of successors, powers, duties, dignity, jurisdiction, privileges, immunities, and other similar matters.

Ga. L. 2000, p. 205, §§ 29-32, not codified by the General Assembly, provided for the appointment of an additional judge to the Towaliga Judicial Circuit as authorized by paragraph (40.1) and provided for terms, election of successors, powers, duties, dignity, jurisdiction, privileges, immunities, and other similar matters.

Ga. L. 2001, p. 1060, §§ 3-7, not codified by the General Assembly, provided for the appointment of an additional judge to the Augusta Judicial Circuit as authorized by paragraph (5) and provided for terms, election of successors, powers, duties, dignity, jurisdiction, privileges, immunities, and other similar matters.

Ga. L. 2001, p. 1060, §§ 8-16, not codified by the General Assembly, provided for the appointment of an additional judge to the Gwinnett Judicial Circuit as authorized by paragraph (20) and provided for terms, election of successors, powers, duties, dignity, jurisdiction, privileges, immunities, and other similar matters.

Ga. L. 2001, p. 1060, §§ 17-22, not codified by the General Assembly, provided for the appointment of an additional judge to the Rome Judicial Circuit as authorized by paragraph (33) and provided for terms, election of successors, powers, duties, dignity, jurisdiction, privileges, immunities, and other similar matters.

Ga. L. 2001, p. 1060, §§ 23-26, not codified by the General Assembly, provided for the appointment of an additional judge to the Atlanta Judicial Circuit as authorized by paragraph (3) and provided for terms, election of successors, powers, duties, dignity, jurisdiction, privileges, immunities, and other similar matters.

Ga. L. 2002, p. 851, §§ 2-8, not codified by the General Assembly, provided for the appointment of an additional judge to the Alcovy Judicial Circuit as authorized by paragraph (2) and provided for terms, election of successors, powers, duties, dignity, jurisdiction, privileges, immunities, and other similar matters.

Ga. L. 2005, p. 964, §§ 2-1 through 6-11/HB 97, not codified by the General Assembly, provided for the appointment of an additional judge to the Appalachian Judicial Circuit as authorized by paragraph (2.1), the Cherokee Judicial Circuit as authorized by paragraph (9), the Flint Judicial Circuit as authorized by paragraph (18), the Gwinnett Judicial Circuit

as authorized by paragraph (20), and the Southern Judicial Circuit as authorized by paragraph (35) and provided for terms, election of successors, powers, duties, dignity, jurisdiction, privileges, immunities, and other similar matters.

Ga. L. 2006, p. 1024, §§ 2-1 through 7-10/HB 1073, not codified by the General Assembly, provided for the appointment of an additional judge to the Blue Ridge Judicial Circuit, the Coweta Judicial Circuit, the Houston Judicial Circuit, and the Paulding Judicial Circuit and provided for terms, election of successors, powers, duties, dignity, jurisdiction, privileges, immunities, and other similar matters.

Ga. L. 2006, p. 1024, § 8-1/HB 1073, not codified by the General Assembly, provides that nothing in this Act shall be deemed to limit or restrict the inherent powers, duties, and responsibilities of superior court judges provided by the Constitution and statutes of the State of Georgia.

Ga. L. 2007, p. 695, §§ 2-1 through 2-5/HB 118, not codified by the General Assembly, provided for the appointment of an additional judge to the Cobb Judicial Circuit as authorized by paragraph (11) and provided for terms, election of successors, powers, duties, dignity, jurisdiction, privileges, immunities, and other similar matters.

Ga. L. 2007, p. 695, §§ 3-1 through 3-7/HB 118, not codified by the General Assembly, provided for the appointment of an additional judge to the Cordele Judicial Circuit as authorized by paragraph (13) and provided for terms, election of successors, powers, duties, dignity, jurisdiction, privileges, immunities, and other similar matters.

Ga. L. 2007, p. 695, §§ 4-1 through 4-11/HB 118, not codified by the General Assembly, provided for the appointment of an additional judge to the Dublin Judicial Circuit as authorized by paragraph (16) and provided for terms, election of successors, powers, duties, dignity, jurisdiction, privileges, immunities, and other similar matters.

Ga. L. 2007, p. 695, §§ 5-1 through 5-10/HB 118, not codified by the General Assembly, provided for the appointment of an additional judge to the Enotah Judicial Circuit as authorized by paragraph (17.1) and provided for terms, election of successors, powers, duties, dignity, jurisdiction, privileges, immunities, and other similar matters.

Ga. L. 2007, p. 695, §§ 6-1 through 6-9/HB 118, as amended by Ga. L. 2012, p. 166, § 4-1/SB 356, not codified by the General Assembly, provided for the appointment of an additional judge to the Gwinnett Judicial Circuit as authorized by paragraph (20) and provided for terms, election of successors, powers, duties, dignity, jurisdiction, privileges, immunities, and other similar matters.

Ga. L. 2007, p. 695, § 7-1/HB 118, not codified by the General Assembly, provides: "Nothing in this Act shall be deemed to limit or restrict the inherent powers, duties, and responsibilities of superior court judges provided by the Constitution and statutes of the State of Georgia."

Ga. L. 2008, p. 491, §§ 2-1 through 4-10/HB 1163, as amended by Ga. L. 2010, p. 566, §§ 1-3/HB 1140, not codified by the General Assembly, provided for the appointment of an additional judge to the Alcovy Judicial Circuit as authorized by paragraph (2), the Atlanta Judicial Circuit as authorized by paragraph (3), and the Brunswick Judicial Circuit as authorized by paragraph (7) and provided for terms, election of successors, powers, duties, dignities, jurisdiction, privileges, immunities, and other similar matters.

Ga. L. 2008, p. 491, § 5-1/HB 1163, not codified by the General Assembly, provides: "Nothing in this Act shall be deemed to limit or restrict the inherent powers, duties, and responsibilities of superior court judges provided by the Constitution and statutes of the State of Georgia."

Ga. L. 2012, p. 166, §§ 2-1 through 2-9/SB 356, not codified by the General Assembly, provided for the appointment of an additional judge to the Bell-Forsyth Judicial Circuit as authorized by paragraph (5.1) and provided for terms, election of successors, powers, duties, dignities, jurisdiction, privileges, immunities, and other similar matters.

Ga. L. 2012, p. 166, §§ 3-1 through 3-10/SB 356, not codified by the General

Assembly, provided for the appointment of an additional judge to the Piedmont Judicial Circuit as authorized by paragraph (32) and provided for terms, election of successors, powers, duties, dignities, jurisdiction, privileges, immunities, and other similar matters.

Ga. L. 2012, p. 166, § 5-1/SB 356, not codified by the General Assembly, provides: "Nothing in this Act shall be deemed to limit or restrict the inherent powers, duties, and responsibilities of superior court judges provided by the Constitution and statutes of the State of Georgia."

Ga. L. 2013, p. 570, §§ 1-2 through 1-4/HB 451, not codified by the General Assembly, provided for the appointment of an additional judge to the Chattahoochee Judicial Circuit, thereby increasing to seven the number of judges of said circuit.

Ga. L. 2013, p. 570, §§ 2-2 through 2-4/HB 451, not codified by the General Assembly, provided for the appointment of an additional judge to the Oconee Judicial Circuit, thereby increasing to three the number of judges of said circuit.

Ga. L. 2014, p. 189, §§ 1-2 through 1-11/HB 742, not codified by the General Assembly, provided for the appointment of an additional judge to the Coweta Judicial Circuit as authorized by paragraph (14) and provided for terms, election of successors, powers, duties, dignities, jurisdiction, privileges, immunities, and other similar matters.

Ga. L. 2014, p. 189, §§ 2-2 through 2-13/HB 742, not codified by the General Assembly, provided for the appointment of an additional judge to the Waycross Judicial Circuit as authorized by paragraph (41) and provided for terms, election of successors, powers, duties, dignities, jurisdiction, privileges, immunities, and other similar matters.

Ga. L. 2015, p. 919, §§ 2-2 through 2-13/HB 279, not codified by the General Assembly, provided for the appointment of an additional judge to the Western Judicial Circuit as authorized by paragraph (42) and provided for terms, election of successors, powers, duties, dignities, jurisdiction, privileges, immunities, and other similar matters.

Ga. L. 2015, p. 919, § 4-1(c)/HB 279, not codified by the General Assembly, provides that: "(c)(1) For purposes of making the initial appointments of the judge to fill the superior court judgeship created by Part II of this Act, Part II of this Act shall become effective upon its approval by the Governor or its becoming law without such approval.

"(2) For all other purposes, Part II of this Act shall become effective on April 1, 2016." This Act was signed by the Governor on May 6, 2015.

Ga. L. 2016, p. 183, §§ 2 through 11/HB 804, not codified by the General Assembly, provided for the appointment of an additional judge to the Clayton Judicial Circuit as authorized by paragraph (10) and provided for terms, election of successors, powers, duties, dignities, jurisdiction, privileges, immunities, and other similar matters.

Ga. L. 2017, p. 191, §§ 2 through 5/HB 138, not codified by the General Assembly, provided for the appointment of an additional judge to the Northeastern Circuit as authorized by paragraph (26) and provided for terms, election of successors, powers, duties, dignities, jurisdiction, privileges, immunities, and other similar matters.

Ga. L. 2019, p. 4, §§ 2 through 11/HB 21, not codified by the General Assembly, provided for the appointment of an additional judge to the Gwinnett Judicial Circuit as authorized by paragraph (20) and provided for terms, election of successors, powers, duties, dignities, jurisdiction, privileges, immunities, and other similar matters.

Ga. L. 2019, p. 504, §§ 2 through 12/HB 28, not codified by the General Assembly, provided for the appointment of an additional judge to the Griffin Judicial Circuit as authorized by paragraph (19) and provided for terms, election of successors, powers, duties, dignities, jurisdiction, privileges, immunities, and other similar matters.

Ga. L. 2020, p. 338, §§ 2-1 through 5-1/HB 786, not codified by the General Assembly, provided for the appointment of an additional judge to the Cobb, Flint, and Ogeechee Judicial Circuits as authorized by paragraphs (11), (18), and (30) and provided for terms, election of successors,

powers, duties, dignities, jurisdiction, privileges, immunities, and other similar matters.

Law reviews. — For article, "Annual Survey of Georgia Law: June 1, 2015 — May 31, 2016: Special Contribution: Open Chambers Revisited: Demystifying the Inner Workings and Culture of the Georgia Court of Appeals," see 68 Mercer L. Rev. 1 (2016).

JUDICIAL DECISIONS

Challenge under the Voting Rights Act (42 U.S.C. § 1973c) to the statutes which created additional superior court judgeships. — Brooks v. Georgia State Bd. of Elections, 790 F. Supp. 1156 (S.D. Ga. 1990).

OPINIONS OF THE ATTORNEY GENERAL

Salary supplements. — County could not provide for the payment of a lesser salary supplement from county funds for a newly appointed judge than that which the county provided for incumbent judges when the General Assembly provided that any salary supplements enacted by a county would also be applicable to the additional judge. 2002 Op. Att'y Gen. No. U2002-1.

Equal treatment amongst judges for support services. — Fulton County's obligation to accord equal treatment to all superior court judges of the Atlanta Judicial Circuit is applicable to all county funded support services, including staffing (e.g., law clerks, secretaries, court reporters, case managers and the like) and the operating budget required for a superior court judge to properly perform his or her constitutional and statutory duties. 2002 Op. Att'y Gen. No. U2002-6.

15-6-3. Terms of court.

The terms of court for the superior courts for each of the judicial circuits shall commence as follows:

(1) **Alapaha Circuit:**

(A) Atkinson County — First Monday in April and October.

(B) Berrien County — First Monday in February and August.

(C) Clinch County — Third Monday in March and September.

(D) Cook County — Second Monday in January and July.

(E) Lanier County — Fourth Monday in April and October;

provided, however, that if any term of court in the Alapaha Circuit begins on an official state holiday, the term of court shall commence on the following Tuesday; and if any other day within the term of court shall be an official state holiday, the court shall be closed for that holiday.

(2) **Alcovy Circuit:**

(A) Newton County — Second and third Mondays in January, April, July, and October.

(B) Walton County — First and second Mondays in February, May, August, and November.

(2.1) **Appalachian Circuit:**

(A) Fannin County — Second Monday in May and second Monday in November.

(B) Gilmer County — Second Monday in April and second Monday in October.

(C) Pickens County — Second Monday in March and second Monday in September.

(3) **Atlanta Circuit:**

Fulton County — First Monday in January, March, May, July, September, and November.

(4) **Atlantic Circuit:**

(A) Bryan County — Third Monday in March and first Monday in November.

(B) Evans County — First Monday in February and first Monday in August.

(C) Liberty County — Second Monday in February and September.

(D) Long County — First Monday in March and third Monday in August.

(E) McIntosh County — Third Monday in May and first Monday in December.

(F) Tattnall County — Third Monday in April and October.

(5) **Augusta Circuit:**

(A) Burke County — Fourth Monday in April and October.

(B) Columbia County — Fourth Monday in March and September.

(C) Richmond County — Third Monday in January, March, May, July, September, and November.

(5.1) **Bell-Forsyth Circuit:**

Forsyth County — Second Monday in March, July, and November.

(6) **Blue Ridge Circuit:**

Cherokee County — Second Monday in January, May, and September.

(7) **Brunswick Circuit:**

(A) Appling County — Second and third Mondays in February and third and fourth Mondays in October.

(B) Camden County — First Monday in April and November.

(C) Glynn County — Second Monday in March and September.

(D) Jeff Davis County — First and second Mondays in March; fourth Monday in September; and first Monday in October.

(E) Wayne County — Third and fourth Mondays in April and November.

(8) **Chattahoochee Circuit:**

(A) Chattahoochee County — Fourth Monday in March and September.

(B) Harris County — Second Monday in January, May, and September.

(C) Marion County — Fourth Monday in April and October.

(D) Muscogee County — First Monday in February, April, June, August, October, and December.

(E) Talbot County — Second Monday in March and November and third Monday in August.

(F) Taylor County — Second Monday in February, June, and October.

(9) **Cherokee Circuit:**

(A) Bartow County — First Monday in February, May, August, and November.

(B) Gordon County — First Monday in March, December, and June; and second Monday in September.

(10) **Clayton Circuit:**

Clayton County — First Monday in February, May, August, and November.

(11) **Cobb Circuit:**

Cobb County — Second Monday in January, March, May, July, September, and November.

(12) **Conasauga Circuit:**

(A) Murray County — Second Monday in February and August.

(B) Whitfield County — Second Monday in January and July.

(13) **Cordele Circuit:**

(A) Ben Hill County — Second and third Mondays in January; first, second, and third Mondays in April; third and fourth Mondays in June; and third and fourth Mondays in September and Monday following.

(B) Crisp County — Third and fourth Mondays in February and Monday following; third and fourth Mondays in May; first, second, and third Mondays in August; and second and third Mondays in November.

(C) Dooly County — First and second Mondays in February; fourth Monday in April and Monday following; third and fourth Mondays in July; and third and fourth Mondays in October.

(D) Wilcox County — Second and third Mondays in March; fourth Monday in August and Monday following; and first and second Mondays in December.

(14) **Coweta Circuit:**

(A) Carroll County — Second Monday in January and first Monday in April and third Monday in June and first Monday in October.

(B) Coweta County — First Monday in March and first Tuesday in September.

(C) Heard County — Third Monday in March and September.

(D) Meriwether County — Third Monday in February, May, August, and November.

(E) Troup County — First Monday in February, May, August, and November.

(15) **Dougherty Circuit:**

Dougherty County — Second Monday in January, March, May, July, September, and November.

(15.1) **Douglas Circuit:**

Douglas County — Second Monday in April and October.

(16) **Dublin Circuit:**

(A) Johnson County — Third Monday in March, June, September, and December.

(B) Laurens County — Fourth Monday in January, April, July, and October.

(C) Treutlen County — Third Monday in February and August.

(D) Twiggs County — Second Monday in January, April, July, and October.

(17) **Eastern Circuit:**

Chatham County — First Monday in March, June, September, and December.

(17.1) **Enotah Circuit:**

(A) Towns County — January 1 and July 1.

(B) Union County — January 1 and July 1.

(C) Lumpkin County — Fourth Monday in February and August.

(D) White County — First Monday in April and October.

(18) **Flint Circuit:**

Henry County — Fourth Monday in January, April, and October and second Monday in July.

(19) **Griffin Circuit:**

(A) Fayette County — Second Monday in March and second Monday in September.

(B) Pike County — Second Monday in March and second Monday in September.

(C) Spalding County — Second Monday in March and second Monday in September.

(D) Upson County — Second Monday in March and second Monday in September.

(20) **Gwinnett Circuit:**

Gwinnett County — First Monday in March, June, and December and second Monday in September.

(21) **Houston Circuit:**

Houston County — First Monday in January, April, July, and October.

(22) **Lookout Mountain Circuit:**

(A) Catoosa County — First Monday in March and second Monday in September.

(B) Chattooga County — First Monday in February and August.

(C) Dade County — First Monday in April and second Monday in October.

(D) Walker County — First Monday in May and November.

(23) **Macon Circuit:**

(A) Bibb County — First Monday in February, April, June, August, October, and December.

(B) Crawford County — Third and fourth Mondays in March and October.

(C) Peach County — First and second Mondays in March and August and third and fourth Mondays in November.

(24) **Middle Circuit:**

(A) Candler County — First and second Mondays in February and August.

(B) Emanuel County — Second Monday in January, April, July, and October.

(C) Jefferson County — Second Monday in May and November.

(D) Toombs County — Fourth Monday in February, May, August, and November.

(E) Washington County — First Monday in March, June, September, and December.

(25) **Mountain Circuit:**

(A) Habersham County — January 1 and July 1.

(B) Rabun County — January 1 and July 1.

(C) Stephens County — January 1 and July 1.

(26) **Northeastern Circuit:**

(A) Dawson County — First Monday in March and second Monday in September.

(B) Hall County — Second Monday in January, April, and July, and first Monday in October.

(27) **Northern Circuit:**

(A) Elbert County — Third Monday in January and fourth Monday in July.

(B) Franklin County — Third Monday in March and September.

(C) Hart County — Third Monday in February and August.

(D) Madison County — Third Monday in April and October.

(E) Oglethorpe County — Third Monday in May and November.

(28) **Ocmulgee Circuit:**

(A) Baldwin County — Second Monday in January, April, July, and October.

(B) Greene County — Fourth Monday in January, April, August, and November.

(C) Hancock County — Fourth Monday in March and September.

(D) Jasper County — Second Monday in February, May, August, and November.

(E) Jones County — First Monday in February and August and third Monday in April and October.

(F) Morgan County — First Monday in March, June, September, and December.

(G) Putnam County — Third Monday in March, June, September, and December.

(H) Wilkinson County — Fourth Monday in February, first Monday in April and October, and third Monday in August.

(29) **Oconee Circuit:**

(A) Bleckley County — Second Monday in March and July and fourth Monday in October, and there shall be a grand jury for each term.

(B) Dodge County — Third Monday in February, first Monday in June, and last Monday in September, and there shall be a grand jury for each term.

(C) Montgomery County — First Monday in February and second Monday in August, and there shall be a grand jury for each term.

(D) Pulaski County — Second Monday in April and September and first Monday in December, and there shall be a grand jury for each term.

(E) Telfair County — Third Monday in March and August and first Monday in November, and there shall be a grand jury for each term.

(F) Wheeler County — Last Monday in January and first Monday in August, and there shall be a grand jury for each term.

(30) **Ogeechee Circuit:**

(A) Bulloch County — First Monday in February, May, August, and November.

(B) Effingham County — First Monday in June and December.

(C) Jenkins County — First Monday in March and September.

(D) Screven County — Second Monday in January and first Monday in April, July, and October.

(31) **Pataula Circuit:**

(A) Clay County — Second Monday in March and September.

(B) Early County — Second Monday in January and July.

(C) Miller County — Third Monday in February and August.

(D) Quitman County — Fourth Monday in March and September.

(E) Randolph County — Second Monday in May and November.

(F) Seminole County — Third Monday in April and October.

(G) Terrell County — First Monday in June and December.

(31.1) **Paulding Circuit:**

Paulding County — Second Monday in January and July.

(32) **Piedmont Circuit:**

(A) Banks County — First Monday in February and August; and there shall be a grand jury for each term, but the grand jury shall not be required to be impaneled in the first day of each term.

(B) Barrow County — First Monday in February and August; and there shall be a grand jury for each term, but the grand jury shall not be required to be impaneled in the first day of each term.

(C) Jackson County — First Monday in February and August; and there shall be a grand jury for each term, but the grand jury shall not be required to be impaneled in the first day of each term.

(32.1) **Rockdale Circuit:**

Rockdale County — First Monday in January, April, July, and October.

(33) **Rome Circuit:**

Floyd County — Second Monday in January, March, July, and September and first Monday in May and November.

(34) **South Georgia Circuit:**

(A) Baker County — Third Monday in January and July.

(B) Calhoun County — Last Monday in May and November.

(C) Decatur County — First Monday in May and November.

(D) Grady County — Third Monday in March and September.

(E) Mitchell County — Third Monday in April and October.

(35) **Southern Circuit:**

(A) Brooks County — First Monday in April and October.

(B) Colquitt County — First Monday in February and August.

(C) Echols County — First Monday in February and August.

(D) Lowndes County — First Monday in March and first Tuesday immediately following first Monday in September.

(E) Thomas County — First Monday in April and October.

(36) **Southwestern Circuit:**

(A) Lee County — Fourth Monday in April and October.

(B) Macon County — Second Monday in May and November.

(C) Schley County — Second Monday in February and August.

(D) Stewart County — Third Monday in March and September.

(E) Sumter County — Fourth Monday in February, May, and August and the Monday following the fourth Thursday in November.

(F) Webster County — Second Monday in January and July.

(37) **Stone Mountain Circuit:**

DeKalb County — First Monday in January, March, May, July, September, and November.

(38) **Tallapoosa Circuit:**

(A) Haralson County — Third Monday in January and August.

(B) Polk County — Third Monday in March and July;

provided, however, that in the Tallapoosa Circuit, if the Monday set for the term of court to begin is a legal holiday, the term of court shall commence on the Tuesday next following that Monday.

(39) **Tifton Circuit:**

(A) Irwin County — Second Monday in February and second Monday in August.

(B) Tift County — Second Monday in March and second Monday in September.

(C) Turner County — Second Monday in April and second Monday in October.

(D) Worth County — Second Monday in January and second Monday in July.

(40) **Toombs Circuit:**

(A) Glascock County — Third Monday in February, May, August, and November.

(B) Lincoln County — Fourth Monday in January, third Monday in April, fourth Monday in July, and third Monday in October.

(C) McDuffie County — Second Monday in March, June, September, and December.

(D) Taliaferro County — Fourth Monday in February, May, August, and November.

(E) Warren County — Third Monday in January and first Monday in April, July, and October.

(F) Wilkes County — First Monday in February, May, August, and November.

(40.1) **Towaliga Circuit:**

(A) Butts County — Second Monday in January, April, July, and October.

(B) Lamar County — Second Monday in March, June, September, and December.

(C) Monroe County — Second Monday in February, May, August, and November.

(41) **Waycross Circuit:**

(A) Bacon County — Third Monday in April and October.

(B) Brantley County — Fourth Monday in February and August.

(C) Charlton County — Second Monday in February and August.

(D) Coffee County — Second Monday in March and September.

(E) Pierce County — Third Monday in March and September.

(F) Ware County — Second Monday in April and October.

provided, however, that the grand jury shall not be required to be impaneled on the first day of each new term but upon a date and time as scheduled by the court.

(42) **Western Circuit:**

(A) Clarke County — Second Monday in January, April, July, and October.

(B) Oconee County — Second Monday in March and September.

History. — Ga. L. 1982, p. 3, § 15; Ga. L. 1982, p. 439, §§ 1, 5; Ga. L. 1982, p. 536, § 2; Ga. L. 1982, p. 546, § 1; Ga. L. 1983, p. 3, § 12; Ga. L. 1983, p. 405, § 1; Ga. L. 1983, p. 415, § 1; Ga. L. 1983, p. 418, § 1; Ga. L. 1983, p. 761, § 4; Ga. L. 1984, p. 22, § 15; Ga. L. 1984, p. 331, § 1; Ga. L. 1984, p. 351, § 1; Ga. L. 1984, p. 439, § 1; Ga. L. 1984, p. 440, § 1; Ga. L. 1984, p. 498, § 1; Ga. L. 1985, p. 281, § 1; Ga. L. 1986, p. 230, § 1; Ga. L. 1986, p. 1526, § 1; Ga. L. 1987, p. 2, § 1; Ga. L. 1987, p. 37, § 1; Ga. L. 1987, p. 250, § 1; Ga. L. 1987, p. 294, § 1; Ga. L. 1987, p. 295, § 1; Ga. L. 1987, p. 296, § 1; Ga. L. 1988, p. 257, § 1; Ga. L. 1988, p. 258, § 1; Ga. L. 1988, p. 551, § 1; Ga. L. 1989, p. 283, § 1; Ga. L. 1990, p. 920, § 2; Ga. L. 1991, p. 372, § 1; Ga. L. 1992, p. 1786, § 4; Ga. L. 1993, p. 447, § 1; Ga. L. 1993, p. 805, § 1; Ga. L. 1994, p. 360, § 1; Ga. L. 1994, p. 1052, § 1; Ga. L. 1996, p. 829, § 1; Ga. L. 1998, p. 220, § 4; Ga. L. 1999, p. 67, § 15; Ga. L. 1999, p. 81, § 15; Ga. L. 1999, p. 158, § 1; Ga. L. 2000, p. 1242, § 1; Ga. L. 2000, p. 1312, § 1; Ga. L. 2002, p. 405, § 3-4; Ga. L. 2002, p. 468, §§ 1, 3; Ga. L. 2006, p. 701, § 1/SB 264; Ga. L. 2006, p. 873, §§ 1, 2/HB 1496; Ga. L. 2006, p. 893, § 1/HB 1423; Ga. L. 2007, p. 47, § 15/SB 103; Ga. L. 2007, p. 89, § 1/SB 177; Ga. L. 2007, p. 278, § 1/HB 53; Ga. L. 2008, p. 324, § 15/SB 455; Ga. L. 2009, p. 847, § 1/HB 216; Ga. L. 2013, p. 570, § 3-1/HB 451; Ga. L. 2014, p. 482, § 1/SB 386; Ga. L. 2018, p. 231, § 1/HB 808; Ga. L. 2019, p. 313, § 1/HB 296.

The 2018 amendment, effective January 1, 2019, deleted "second Monday in" preceding "October" in subparagraph (41)(A); substituted "February and August" for "January and second Monday in September" in subparagraph (41)(B); in subparagraph (41)(C), substituted "Second" for "Fourth", and substituted "August" for "September"; in subparagraph (41)(D), substituted "Second" for "Third", and substituted "September" for "October"; substituted "Third Monday in March and September" for "First Monday in May and first Monday in December" in subparagraph (41)(E); substituted "Second Monday in April and October" for "First Monday in April and second Monday in November" in subparagraph (41)(F); and substituted "the grand jury shall not be required to be impaneled on the first day of each new term but upon a date and time as scheduled by the court" for "if any term of court in the Waycross Circuit begins on an official state holiday, the term of court shall commence on the following Tuesday; and if any other day within the term of court shall be an official state holiday, the court shall be closed for that holiday" in the proviso of the ending undesignated paragraph of paragraph (41).

The 2019 amendment, effective July 1, 2019, substituted "Second Monday in January, April, and July, and first Monday in October" for "First Monday in May and November and second Monday in January and July" in subparagraph (26)(B).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1998, paragraph (18.1) was redesignated as paragraph (5.1).

Pursuant to Code Section 28-9-5, in 1999, punctuation was revised in subparagraphs (29)(B) and (29)(C) and in subparagraph (40.1)(A).

Editor's notes. — Ga. L. 1999, p. 67, §§ 1-10, not codified by the General Assembly, provided for the creation of the Towaliga Judicial Circuit, for the offices of the judge and district attorney, for transfer of pending litigation from the superior courts of Butts, Lamar, and Monroe counties, and other similar matters.

Ga. L. 2002, p. 468, § 4, not codified by the General Assembly, provides that: "As Section 2 of this Act provides for the Tifton Judicial Circuit, the November, 2002, term of court in Irwin County shall continue until the second Monday in February, 2003; the December, 2002, term of

court in Tift County shall continue until the second Monday in March 2003; the October, 2002, term of court in Turner County shall continue until the second Monday in April 2003; and the October, 2002, term of court in Worth County shall continue until the second Monday in January, 2003." The reference to Section 2 of the Act should be to Section 3 of the Act.

JUDICIAL DECISIONS

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General Consideration

Equal protection. — O.C.G.A. § 15-6-3, combined with O.C.G.A. § 17-7-171, does not deprive defendants of equal protection of the law despite the possibility of relatively longer trial waitings than in those circuits with more terms of court per year. Henry v. State, 263 Ga. 417, 434 S.E.2d 469 (1993).

Ga. L. 1996, p. 627, which establishes two terms of court for the City Court of Atlanta, is constitutional and does not violate equal protection. Cross v. State, 272 Ga. 282, 528 S.E.2d 241 (2000).

When the legislature deals with superior courts in fixing the terms at which the courts are to be held in the several counties, the legislature does so by general and not by special legislation. Burge v. Mangum, 134 Ga. 307, 67 S.E. 857 (1910); Geer v. Bush, 146 Ga. 701, 92 S.E. 47 (1917); Geer v. Colquitt Hdwe. & Furn. Co., 146 Ga. 811, 92 S.E. 515 (1917); Norris v. McDaniel, 207 Ga. 232, 60 S.E.2d 329 (1950).

Act fixing terms of a superior court and providing for attendance of grand juries thereat is a general law. Long v. State, 160 Ga. 292, 127 S.E. 842 (1925); Brown v. State, 242 Ga. 602, 250 S.E.2d 491 (1978).

Effect of amendment changing dates of terms of court. — Amendment of O.C.G.A. § 15-6-3, so as to change the dates of commencement of terms of court, was not an ex post facto law as applied to the defendant, who was not at any time entitled to discharge and acquittal of the offenses with which the defendant was charged. Aspinwall v. State, 201 Ga. App. 203, 410 S.E.2d 388 (1991).

If, due to an error in the enactment, an amendment changing the terms of court from four to two had not gone into effect at the time the defendant moved for acquittal, the defendant was entitled to acquittal for failure to try the defendant within the term when the defendant's speedy trial demand was made. Houston v. State, 217 Ga. App. 783, 459 S.E.2d 583 (1995).

Reconvening did not require re-swearing. — Although alternate jurors were substituted during the January term of court, the defendant pointed to no evidence that the January grand jury was ever formally discharged from the jury's duties prior to the end of the grand jury's term, thus, it continued to act within the jury's term of court and remained empowered to act until the last day of the jury's term and did not need to be re-sworn prior to returning to the defendant's second indictment. Durden v. State, 299 Ga. 273, 787 S.E.2d 697 (2016).

Speedy trial demand untimely. — Defendant was indicted for felony murder and other charges during the June 2014 term of the trial court; the defendant did not file a valid demand in that term or the subsequent September 2014 term; and the December 2014 term began on December 1, pursuant to O.C.G.A. § 15-6-3(20), making the defendant's December 5 speedy trial demand untimely under O.C.G.A. § 17-7-171(a). Johnson v. State, 300 Ga. 252, 794 S.E.2d 60 (2016).

Cited in May v. State, 179 Ga. App. 736, 348 S.E.2d 61 (1986); Wade v. State, 258 Ga. 324, 368 S.E.2d 482 (1988); Lowery v. State, 188 Ga. App. 411, 373 S.E.2d 261 (1988); Housing Auth. v. Parks, 189 Ga. App. 97, 374 S.E.2d 842 (1988); Parks v. Gwinnett County, 190 Ga. App. 807, 380

General Consideration (Cont'd)

S.E.2d 77 (1989); Kirk v. State, 194 Ga. App. 801, 392 S.E.2d 249 (1990); Holbrook v. General Elec. Capital Corp., 196 Ga. App. 382, 396 S.E.2d 253 (1990); Campbell v. State, 199 Ga. App. 25, 403 S.E.2d 882 (1991); Huff v. State, 201 Ga. App. 408, 411 S.E.2d 60 (1991); Bailey v. State, 209 Ga. App. 390, 433 S.E.2d 610 (1993); Groom v. State, 212 Ga. App. 133, 441 S.E.2d 259 (1994); McIver v. State, 212 Ga. App. 670, 442 S.E.2d 855 (1994); McKnight v. State, 215 Ga. App. 899, 453 S.E.2d 38 (1994); Baldwin v. State, 242 Ga. App. 205, 529 S.E.2d 201 (2000); Brooks v. State, 257 Ga. App. 515, 571 S.E.2d 504 (2002); Capital Cargo, Inc. v. Port of Port Royal, 261 Ga. App. 803, 584 S.E.2d 54 (2003); Cook v. State, 262 Ga. App. 446, 585 S.E.2d 743 (2003); Smith v. State, 263 Ga. App. 414, 587 S.E.2d 787 (2003); Masters v. Clark, 269 Ga. App. 537, 604 S.E.2d 556 (2004); Brown v. State, 275 Ga. App. 281, 620 S.E.2d 394 (2005); State v. Hitchcock, 285 Ga. App. 140, 645 S.E.2d 631 (2007); Kaiser v. State, 285 Ga. App. 63, 646 S.E.2d 84 (2007); LaFette v. State, 285 Ga. App. 516, 646 S.E.2d 725 (2007); Ingram v. State, 286 Ga. App. 662, 650 S.E.2d 743 (2007); Chishti v. State, 288 Ga. App. 230, 653 S.E.2d 830 (2007); Sallins v. State, 289 Ga. App. 391, 657 S.E.2d 309 (2008); Smith v. State, 283 Ga. 376, 659 S.E.2d 380 (2008); Jones v. State, 290 Ga. App. 490, 659 S.E.2d 875 (2008); Haupt v. State, 290 Ga. App. 616, 660 S.E.2d 383 (2008); Maples v. State, 293 Ga. App. 232, 666 S.E.2d 609 (2008); Coleman v. State, 293 Ga. App. 251, 666 S.E.2d 620 (2008); Taylor v. Peachbelt Props., 293 Ga. App. 335, 667 S.E.2d 117 (2008); Dasher v. State, 285 Ga. 308, 676 S.E.2d 181 (2009); Smith v. State, 297 Ga. App. 300, 676 S.E.2d 750 (2009); Tyner v. State, 298 Ga. App. 42, 679 S.E.2d 82 (2009); Thompson v. State, 286 Ga. 889, 692 S.E.2d 379 (2010); Walker v. State, 290 Ga. 696, 723 S.E.2d 894 (2012); PHF II Buckhead LLC v. Dinku, 315 Ga. App. 76, 726 S.E.2d 569 (2012); Sanusi v. Cmty. & S. Bank, 330 Ga. App. 198, 766 S.E.2d 815 (2014); Williams v. State, 331 Ga. App. 46, 769 S.E.2d 760 (2015); Charles v. State, 338 Ga. App. 688, 791 S.E.2d 584 (2016); Williams v. State, 339 Ga. App. 158, 793 S.E.2d 485 (2016); Brock v. RES-GA SCL, LLC, 340 Ga. App. 194, 796 S.E.2d 914 (2017); Blackmon v. Pena, 345 Ga. App. 7, 812 S.E.2d 112 (2018); Patterson v. State, 347 Ga. App. 105, 817 S.E.2d 557 (2018); Cason v. State, 348 Ga. App. 828, 823 S.E.2d 357 (2019); Gray v. State, 351 Ga. App. 703, 832 S.E.2d 857 (2019).

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Effect of motion filed before end of term. — Trial court did not err when the court modified an order granting defendant's motion for a new trial since the modification was made after the expiration of the term in which the order was entered and the state's motion for reconsideration, which sought to revive the conviction, was filed before the end of the term in which the court entered the order granting a new trial. Platt v. State, 200 Ga. App. 784, 409 S.E.2d 878, cert. denied, 200 Ga. App. 897, 409 S.E.2d 878 (1991).

Employee's motion for reconsideration of the dismissal of the employee's petition for judicial review of a denial of unemployment benefits, and the Fulton County Superior Court's order concerning the employee's motion, were untimely because the motion and decision were filed after the term of court in which the initial denial was made. Fed v. Butler, 327 Ga. App. 637, 760 S.E.2d 642 (2014).

After expiration of the term at which a judgment is entered, it is out of the power of the court to modify and revise the judgment in any matter of substance or in any matter affecting the merits; however, a default judgment may be set aside when the limited requirements of O.C.G.A. § 9-11-60(d)(2) are met. Lee v. Restaurant Mgt. Servs., 232 Ga. App. 902, 503 S.E.2d 59 (1998).

Regardless of whether O.C.G.A. § 17-10-1(f) applied to defendant's December 2003 motion to set aside a sentence, that motion, filed four-and-one-half years after the sentence was imposed, was far too late; the motion was not filed in the term in which the sentence was entered, within a year of the date upon which the sentence was imposed, nor within 120 days of the trial court's receipt of a

direct-appeal remittitur. Reynolds v. State, 272 Ga. App. 91, 611 S.E.2d 750 (2005).

Trial court erred by entering a second final decree of divorce pursuant to O.C.G.A. § 9-11-60(g) after the term of court in which the first final decree had been entered had already expired because there were no clerical mistakes made with respect to the first final decree; the alleged mistake by the clerk, if any, related to the clerk's failure to file the husband's premature motion for new trial and had nothing to do with any alleged clerical errors in the first order and, accordingly, the trial court could not "correct" any mistake relating to the handling of the husband's motion for new trial by issuing a "corrected" second order based on a first order that contained no clerical mistakes. Tremble v. Tremble, 288 Ga. 666, 706 S.E.2d 453 (2011).

Assuming that a clerk made a "clerical mistake" by failing to later stamp file a husband's premature motion for new trial as a "response" to the trial court's first final decree of divorce, such a clerical mistake could not be "corrected" by the trial court issuing a second final divorce decree after the May term of court had ended; in order for a clerical mistake to be corrected, the clerical mistake must appear and be corrected in the actual judgment, order, or other part of the record in which the mistake has arisen, O.C.G.A. § 9-11-60(g). Tremble v. Tremble, 288 Ga. 666, 706 S.E.2d 453 (2011).

Buyer of property at a sheriff's sale who was awarded attorney's fees against the former owner and the owner's attorney's limited liability partnership (LLP) was not entitled to amend the judgment to include the attorney and the attorney's later-formed limited liability company (LLC) because it did not seek to amend the order until a year later, outside the term of court of the original order. The addition of the attorney and the substitution of the LLP was substantive. Davis v. Crescent Holdings & Invs., LLC, 336 Ga. App. 378, 785 S.E.2d 51 (2016).

Court was without authority to vacate order outside of the term in which the order was entered. — Superior court was without jurisdiction to entertain an untimely motion to withdraw a guilty plea, filed outside the term of court in which the plea was entered; hence, the trial court properly denied the relief sought. Davis v. State, 274 Ga. 865, 561 S.E.2d 119 (2002).

Defendant's motion to vacate and set aside an order denying the defendant's motion in arrest of judgment was properly denied after the motion to vacate was filed 11 months after the denial of the motion in arrest of judgment, which was well beyond the respective terms of court in which the judgment of conviction and the denial of the motion in arrest of judgment were entered. Smith v. State, 257 Ga. App. 468, 571 S.E.2d 446 (2002).

Trial court improperly vacated the court's own order outside of the term in which the order was entered, so the order vacating the initial order was a nullity, but, as the initial order, which denied an application to modify or vacate an arbitration award, did not address a counterclaim seeking to confirm the arbitration award, it was not a final order, and so the later order confirming the award was affirmed. Tanaka v. Pecqueur, 268 Ga. App. 380, 601 S.E.2d 830 (2004).

Because the trial court lacked subject matter jurisdiction to modify a sentence in a term other than the term in which the sentence was imposed, and there was no claim that the sentence entered was void, an order vacating one sentence and reinstating another sentence was vacated and the matter was remanded with instructions for the trial court to dismiss the action for lack of subject matter jurisdiction. Barthell v. State, 286 Ga. App. 160, 648 S.E.2d 412 (2007).

Trial court properly denied a motion to withdraw a guilty plea to two counts of armed robbery because the motion was made after expiration of the term of court under O.C.G.A. § 15-6-3(11) in which the defendant was sentenced; thus, the trial court did not have jurisdiction to rule on the motion. Williams v. State, 301 Ga. App. 849, 689 S.E.2d 124 (2010).

Order dismissing the defendant's motion to withdraw a guilty plea was affirmed because the trial court properly vacated only a discrete portion of the sentence relating to an improper parole

Motions and Judgments (Cont'd)

condition and the remainder of the sentence was still in force; thus, the defendant had no absolute right to withdraw the plea since the motion to withdraw had to be filed within the term of court in which sentencing under the plea occurred. Thompson v. State, 348 Ga. App. 807, 824 S.E.2d 685 (2019).

Incorrectly styled motion timely filed due to court term. — When a trial court issued a child support order on February 14, 2012 and the father filed a motion for relief on February 28, 2012, the father's motion (although incorrectly styled a motion for J.N.O.V.) was timely as a new trial motion under O.C.G.A. § 5-5-40; it was also timely because, in DeKalb County, the January term of court ran from the first Monday in January until the first Monday in March, pursuant to O.C.G.A. § 15-6-3(37). Wheeler v. Akins, 327 Ga. App. 830, 761 S.E.2d 383 (2014).

Other

Withdrawal of guilty pleas. — Trial court properly denied defendant's motion to modify the defendant's sentence for theft by taking because, even assuming that defendant's motion could be treated as a motion to withdraw defendant's guilty plea, the court lost jurisdiction to grant the motion on that basis when the term of court in which the defendant was sentenced expired. Martin v. State, 266 Ga. App. 190, 596 S.E.2d 705 (2004).

Trial court lacked jurisdiction to allow the defendant to withdraw the defendant's guilty plea when the term of court in which that defendant was sentenced expired. Tabatabaee v. State, 266 Ga. App. 462, 597 S.E.2d 518 (2004).

Because the term of court when the defendant was sentenced expired, the trial court lacked jurisdiction to allow the defendant to withdraw a guilty plea. Thompson v. State, 279 Ga. App. 375, 631 S.E.2d 422 (2006).

Because Crisp County had multiple terms of court each year, and eight years passed before the defendant sought to withdraw the defendant's guilty plea, the trial court had no authority to permit the defendant to withdraw the plea. Brown v. State, 280 Ga. 658, 631 S.E.2d 687 (2006).

Because Rockdale County had four terms of court each year, and two full years passed before the defendant sought to withdraw a guilty plea, the trial court had no jurisdiction to permit withdrawal of the plea. Turner v. State, 281 Ga. 435, 637 S.E.2d 384 (2006), overruled on other grounds by Collier v. State, 834 S.E.2d 769, 2019 Ga. LEXIS 708 (Ga. 2019).

Defendant's challenge of the trial court's denial of the defendant's motion to withdraw the defendant's guilty plea failed because the defendant's motion was filed after the expiration of the term of court in which the plea was entered. Belcher v. State, 304 Ga. App. 645, 697 S.E.2d 300 (2010).

Plea counsel did not perform deficiently for failing to investigate a robbery charge in another county because the defendant's only available means to withdraw the defendant's guilty plea to the robbery charge was through habeas-corpus proceedings; the defendant's first mention of any challenge to the defendant's plea of guilty to the robbery charge was well beyond the term of court in which the defendant was sentenced. Murray v. State, 307 Ga. App. 621, 705 S.E.2d 726 (2011).

Because the court of appeals was unable to determine from the record upon which of two Mondays the May term of Walton Superior Court began, the court assumes, without deciding, that the defendant's motion to withdraw a guilty plea was timely filed; the language of O.C.G.A. § 15-6-3(2)(B) indicates that there are four terms in Walton County, Georgia and the superior court is authorized to begin the court's terms on either of those two Mondays. Burnett v. State, 309 Ga. App. 422, 710 S.E.2d 624 (2011).

Trial court lacked jurisdiction to entertain a defendant's motion to withdraw the defendant's guilty plea because, pursuant to O.C.G.A. § 15-6-3(39)(A), the defendant's motion was filed three weeks beyond the term of court in which the defendant was sentenced. Additionally, trial counsel was not required to advise the defendant of the effects of parole on the sentence. Hall v. State, 313 Ga. App. 670, 722 S.E.2d 392 (2012).

Judgment denying the defendant's motion to withdraw the guilty plea was vacated and the case remanded with direction to dismiss the motion because the term of court had expired and, therefore, the trial court lacked jurisdiction to permit the withdrawal of a guilty plea since the term of court in which the defendant was sentenced had expired. Branner v. State, 355 Ga. App. 137, 843 S.E.2d 26 (2020).

Defendant's attorney did not waive demand by agreeing to continuance. — Although a defendant's attorney agreed to a continuance in early December 2004, there was no evidence that the attorney agreed to continue the case past that term of court, which, pursuant to O.C.G.A. § 15-5-3, did not end until February 2005, and in which the case could have been tried and was required to be tried following defendant's speedy trial demand under O.C.G.A. § 17-7-170 in the prior court term. Thornton v. State, 301 Ga. App. 784, 689 S.E.2d 361 (2009).

15-6-4. Qualifications of judges.

(a) No individual shall be judge of the superior courts unless, at the time of his or her election, he or she has attained the age of 30 years, has been a citizen of the state for three years, has practiced law for seven years, and is a member in good standing with the State Bar of Georgia and has been duly reinstated to the practice of law in the event of his or her disbarment therefrom.

(b) The office of any superior court judge shall be vacated upon the disbarment or suspension from the practice of law of such judge by the Supreme Court whether voluntary or involuntary and upon order of the Supreme Court providing for such removal from office.

History. — Orig. Code 1863, § 234; Code 1868, § 228; Code 1873, § 238; Code 1882, § 238; Civil Code 1895, § 4312; Civil Code 1910, § 4836; Code 1933, § 24-2603; Ga. L. 1964, p. 363, § 1; Ga. L. 2017, p. 152, § 1/HB 88.

Cross references. — Qualifications of judges of superior courts, Ga. Const. 1983, Art. VI, Sec. VII, Para. II.

Law reviews. — For article, "The Selection and Tenure of Judges," see 2 Ga. St. B. J. 281 (1966).

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Plaintiff's challenge to the trial judge is without merit since it is not contested that this trial judge did not meet the qualifications to serve as a superior court judge. Moore v. American Suzuki Motor Corp., 203 Ga. App. 189, 416 S.E.2d 807 (1992).

O.C.G.A. §§ 15-1-8, 15-6-4, and 15-19-58 did not conflict with one another so as to be unconstitutional because § 15-1-8 provided that judges should not be disqualified from sitting in a proceeding because the judge was a policyholder of any mutual insurance company, § 15-6-4 provided for qualifications for state superior court judges, and § 15-19-58 allowed the state bar to seek injunctive relief against parties engaging in the unauthorized practice of law. Alyshah v. Georgia, No. 1:06-CV-0928-TWT, 2006 U.S. Dist. LEXIS 66546 (N.D. Ga. Sept. 1, 2006), aff'd, 230 Fed. Appx. 949 (11th Cir. Ga. 2007).

OPINIONS OF THE ATTORNEY GENERAL

Confirmation by Senate not necessary. — Individuals who are appointed by the Governor to the office of judge of the superior court, judge of the superior court emeritus (now senior judge), solicitor general (now district attorney), and solicitor general emeritus (now district attorney emeritus) do not have to be submitted to the state Senate for confirmation. 1960-61 Op. Att'y Gen. p. 101.

Part-time judges or referees. — Both part-time judges of the magistrate court and part-time referees of the juvenile court may be assigned to hear cases in the superior court so long as they meet the qualifications of judges of the superior court as provided in O.C.G.A. § 15-6-4. 1989 Op. Att'y Gen. No. U89-7.

RESEARCH REFERENCES

Am. Jur. 2d. — 46 Am. Jur. 2d, Judges, §§ 5, 6.

Am. Jur. Proof of Facts. — Disqualification of Trial Judge for Cause, 50 POF3d 449.

C.J.S. — 48A C.J.S., Judges, §§ 20, 21.

ALR. — Validity and construction of constitutional or statutory provisions making legal knowledge or experience a condition of eligibility for judicial office, 71 A.L.R.3d 498.

15-6-4.1. Election of judges.

Each judge of the superior courts shall be elected by the electors of the judicial circuit in which the judge is to serve.

History. — Code 1981, § 15-6-4.1, enacted by Ga. L. 1987, p. 328, § 1.

15-6-5. Restrictions on practice of law.

Following their election, the judges of the superior courts are prohibited from practicing law in any of the courts of this state, provided that they may practice until their qualification in any case in which they may have been actually employed before their election. They are also prohibited from practicing as attorneys, proctors, or solicitors in any district or circuit courts of the United States after their election or while in commission.

History. — Laws 1824, Cobb's 1851 Digest, p. 90; Laws 1843, Cobb's 1851 Digest, p. 91; Code 1863, § 235; Code 1868, § 229; Code 1873, § 239; Code 1882, § 239; Civil Code 1895, § 4313; Civil Code 1910, § 4837; Code 1933, § 24-2607.

Cross references. — Regulation of practice of law generally, § 15-19-50 et seq.

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Judge of superior court subject to disbarment proceedings. — That a lawyer is also a judge of the superior court and hence a constitutional officer and must have practiced law seven years at the time of the judge's election and is

prohibited from practicing law while serving as judge does not mean that the judge cannot at the same time be disbarred and the judge's license to practice law canceled as provided in former Code 1933, Ch. 5, T. 9 (see now O.C.G.A. § 15-19-30 et seq.). The two proceedings are provided for the accomplishment of entirely different results. Gordon v. Clinkscales, 215 Ga. 843, 114 S.E.2d 15 (1960).

Cited in Deutz-Allis Credit Corp. v. Phillips, 183 Ga. App. 760, 360 S.E.2d 29 (1987); Seay v. Cleveland, 270 Ga. 64, 508 S.E.2d 159 (1998); Miller v. Lomax, 333 Ga. App. 402, 773 S.E.2d 475 (2015).

OPINIONS OF THE ATTORNEY GENERAL

Duties of district attorney constitute practice of law. — Although a solicitor general (now district attorney) has only the state for a client in the performance of public duties, the solicitor general (now district attorney) is necessarily a "partisan in the cases" when appearing on behalf of the state; these duties do constitute the practice of law. 1965-66 Op. Att'y Gen. No. 66-189.

RESEARCH REFERENCES

Am. Jur. 2d. — 46 Am. Jur. 2d, Judges, § 46.

C.J.S. — 48A C.J.S., Judges, § 48.

ALR. — What amounts to practice of law within contemplation of constitutional or statutory provision which makes such practice a condition of eligibility to a judicial office or forbids it by one holding a judicial position, 106 A.L.R. 508.

Propriety and permissibility of judge engaging in practice of law, 89 A.L.R.2d 886.

Validity and application of state statute prohibiting judge from practicing law, 17 A.L.R.4th 829.

15-6-6. Oath of judges.

Before entering on the duties of their office, superior court judges must take the oath required of all civil officers and in addition they must take the following oath:

> "I swear that I will administer justice without respect to person and do equal rights to the poor and the rich and that I will faithfully and impartially discharge and perform all the duties incumbent on me as judge of the superior courts of this state, according to the best of my ability and understanding, and agreeably to the laws and Constitution of this state and the Constitution of the United States. So help me God."

History. — Orig. Code 1863, § 229; Code 1868, § 223; Code 1873, § 237; Code 1882, § 237; Civil Code 1895, § 4311; Civil Code 1910, § 4835; Code 1933, § 24-2605.

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Duties as to bond issuance. — Duties of judge of superior court with respect to issuance of bonds by counties or other political subdivisions are set forth in the statutes. Clinkscales v. State, 102 Ga. App. 670, 117 S.E.2d 229 (1960).

Motion for mistrial must be made at time of objectionable remarks. — Because a landlord did not waive a tenant's obligation to obtain casualty insurance, the tenant did not move for a mistrial based on the trial court's alleged objectionable remarks under O.C.G.A. §§ 9-10-7 and 15-6-6, and the trial court's jury instructions were proper, the trial court did not err in denying the tenant's motions for a JNOV or a new trial. Mahsa, Inc. v. Al-Madinah Petroleum, Inc., 276 Ga. App. 890, 625 S.E.2d 37 (2005).

Cited in Clemon v. State, 218 Ga. 755, 130 S.E.2d 745 (1963); Pfeiffer v. State, 173 Ga. App. 374, 326 S.E.2d 562 (1985).

RESEARCH REFERENCES

Am. Jur. 2d. — 46 Am. Jur. 2d, Judges, § 10.

C.J.S. — 48A C.J.S., Judges, § 23.

ALR. — Powers of judge who has attained constitutional age limit, 25 A.L.R. 27.

Civil liability of judicial officer for malicious prosecution or abuse of process, 64 A.L.R.3d 1251.

15-6-7. Effect of attachment of county to different judicial circuit.

A person who has been elected a judge of the superior courts of any circuit cannot be deprived of his office by attachment of the county in which he resides to a different judicial circuit; such person may continue to discharge the duties of his office as though he resided in the circuit.

History. — Orig. Code 1863, §§ 33, 236; Code 1868, §§ 31, 230; Code 1873, §§ 31, 240; Code 1882, §§ 31, 240; Civil Code 1895, § 4314; Civil Code 1910, § 4838; Code 1933, § 24-2608.

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Cited in Stokes v. Fortson, 234 F. Supp. 575 (N.D. Ga. 1964).

15-6-8. Jurisdiction and powers of superior courts.

The superior courts have authority:

(1) To exercise original, exclusive, or concurrent jurisdiction, as the case may be, of all causes, both civil and criminal, granted to them by the Constitution and laws;

(2) To exercise the powers of a court of equity;

(3) To exercise appellate jurisdiction from judgments of the probate or magistrate courts as provided by law;

(4) To exercise a general supervision over all inferior tribunals and to review and correct, in the manner prescribed by law, the judgments of:

(A) Magistrates;

(B) Municipal courts or councils;

(C) Any inferior judicature;

(D) Any person exercising judicial powers; and

(E) Judges of the probate courts, except in cases touching the probate of wills and the granting of letters of administration, in which a jury must be impaneled;

(5) To punish contempt by fines not exceeding $1,000.00, by imprisonment not exceeding 20 days, or both; and

(6) To exercise such other powers, not contrary to the Constitution, as are or may be given to such courts by law.

History. — Laws 1799, Cobb's 1851 Digest, p. 1135; Code 1863, § 242; Code 1868, § 236; Code 1873, § 246; Code 1882, § 246; Civil Code 1895, § 4320; Penal Code 1895, § 791; Civil Code 1910, § 4849; Penal Code 1910, § 791; Code 1933, § 24-2615; Ga. L. 1982, p. 974, §§ 1, 2; Ga. L. 1983, p. 884, § 3-10; Ga. L. 1987, p. 3, § 15; Ga. L. 2013, p. 561, § 1/SB 66.

Cross references. — Judicial dissolution of corporations, § 14-2-1430 et seq., § 14-3-1430 et seq. Exercise of contempt power generally, § 15-1-4. Requirement of availability of one judge in each circuit on primary or election days, § 21-2-412. Jurisdiction of superior courts to hear cases pertaining to primary or election contests, § 21-2-523. Proceedings before superior courts regarding exercise of power of eminent domain generally, § 22-2-130 et seq. Jurisdiction of superior courts over questions regarding determination of legal heirs and their interests, § 53-4-30.

Law reviews. — For article, "Jury Trials in Contempt Cases," see 20 Ga. B. J. 297 (1957). For survey article on legal ethics, see 34 Mercer L. Rev. 197 (1982). For article, "Contempt of Court in Georgia," see 23 Ga. St. B. J. 66 (1987). For annual survey of legal ethics decisions, see 58 Mercer L. Rev. 239 (2006). For article, "How Not to Get Thrown in Jail," see 22 Ga. Bar. J. 17 (June 2017).

JUDICIAL DECISIONS

Analysis

General Consideration
Contempt

General Consideration

Power of superior court is limited by this section. General Teamsters Local 528 v. Allied Foods, Inc., 228 Ga. 479, 186 S.E.2d 527 (1971), cert. denied, 405 U.S. 1041, 92 S. Ct. 1313, 31 L. Ed. 2d 582 (1972).

Power to issue injunctions. — Superior courts are empowered to issue injunctions, Ga. Const. 1983, Art. VI, Sec. I, Para. IV; O.C.G.A. § 15-6-8, and nothing in O.C.G.A. § 48-4-40(1) deprives the courts of that power in the arena of redemption of property following a tax sale. Am. Lien Fund, LLC v. Dixon, 286 Ga. 562, 690 S.E.2d 415 (2010).

Trial court had subject matter jurisdiction over a landowner's action seeking an interlocutory injunction requiring neighbors to move the neighbor's dock because the neighbors did not point to any federal law that would preempt the trial court as an appropriate forum for adjudicating the rights and remedies of the parties; there was no Congressional intent to preclude state action concurrently with the statu-

General Consideration (Cont'd)

tory and regulatory scheme establishing the authority of the Army Corps of Engineers over docks on the lake where the parties lived. Dillon v. Reid, 312 Ga. App. 34, 717 S.E.2d 542 (2011).

Jurisdiction of the superior courts is clearly defined by the Georgia Constitution and former Code 1873, § 246 (see now O.C.G.A. § 15-6-8). Trial of misdemeanor cases may be conferred upon inferior courts. Porter v. State, 53 Ga. 236 (1874).

Judicial powers historically vested in superior courts. — Superior courts have forever in history been the great reservoir of judicial power in which the judicial powers of the state were vested, and however other courts might be erected as a relief to it, to take cognizance of minor matters, the practice has been uniform to retain in this tribunal concurrent, and generally, even supervisory power over them. Smith v. State, 62 Ga. App. 733, 9 S.E.2d 714 (1940).

Limitation on supervisory control of superior courts. — Supervisory control of the superior court over inferior judicatories exists only for specified purposes, viz., either to correct errors in their proceedings in a particular case, or to command them to fulfill their official duties in such a case when, from any cause, a defect of legal justice would ensue from a failure or improper discharge of such duties; or to prohibit or arrest illegal proceedings by any officer of such courts when no other legal remedy or relief is given, and when such interference is required by some principle of right, necessity, and justice. This jurisdiction is exercised by writs designated by the statutes, such as the writ of certiorari, mandamus, or prohibition. Darden v. Ravan, 232 Ga. 756, 208 S.E.2d 846 (1974), overruled on other grounds Ricks v. State, 303 Ga. 567, 814 S.E.2d 318, 2018 Ga. LEXIS 288 (2018).

Jurisdiction over habeas corpus cases by all courts. — All superior courts have jurisdiction over subject matter of habeas corpus cases or cases in nature of habeas corpus. Hopkins v. Hopkins, 237 Ga. 845, 229 S.E.2d 751 (1976).

Jurisdiction over felony trials. — O.C.G.A. § 15-6-8 vests superior courts with exclusive subject matter jurisdiction over all felony trials. Goodrum v. State, 259 Ga. App. 704, 578 S.E.2d 484 (2003).

State did not have the right to appeal sentences imposed by the trial court contrary to a plea agreement under O.C.G.A. § 5-7-1(a)(6) because the sentences were not void; the sentences were within the 20-year range of punishments for robbery and aggravated assault, O.C.G.A. §§ 16-5-21(b) and 16-8-40(b), and the trial court had jurisdiction over the case, pursuant to Ga. Const. 1983, Art. VI, Sec. IV, Para. I, and O.C.G.A. § 15-6-8(1). State v. Harper, 279 Ga. App. 620, 631 S.E.2d 820 (2006) was overruled. State v. King, 325 Ga. App. 445, 750 S.E.2d 756 (2013).

Subject matter jurisdiction over employment cases. — Superior courts have subject matter jurisdiction over timely Title VII claims under the Civil Rights Act of 1964 filed pursuant to Equal Employment Opportunity Commission notification to the claimant that, the federal prerequisites for suit having been fulfilled, suit may be filed. Collins v. DOT, 208 Ga. App. 53, 429 S.E.2d 707 (1993).

Subject matter jurisdiction of breach of contract and fraud action. — Superior court had jurisdiction of an action for breach of contract and fraud involving an agreement between an employer and employee, even though the agreement provided that the parties "submit to the exclusive jurisdiction of the English Courts." Bradley v. British Fitting Group, Plc, 221 Ga. App. 621, 472 S.E.2d 146 (1996).

Subject matter jurisdiction over probate matter. — Trial court had subject matter jurisdiction to review the probate court's decision under Ga. Const. 1983, Art. VI, Sec. IV, Para. I and O.C.G.A. § 15-6-8(4)(E) to deny probate of the decedent's 1988 will and the parties' waiver of the statutory right to a jury trial did not deprive the trial court of subject matter jurisdiction to deny probate of the will. Mosley v. Lancaster, 296 Ga. 862, 770 S.E.2d 873 (2015).

Superior courts have concurrent jurisdiction with all inferior courts over misdemeanors. Smith v. State, 62

Ga. App. 733, 9 S.E.2d 714 (1940); Allen v. State, 85 Ga. App. 887, 70 S.E.2d 543 (1952); Lee v. State, 222 Ga. App. 389, 474 S.E.2d 281 (1996).

Extent of concurrent jurisdiction with magistrate courts. — Superior court is a court of general jurisdiction, and has concurrent jurisdiction with the justices' (now magistrate) courts in all civil cases if the amount involved is less than $100.00 (now $2,500.00). Phillips v. Rawls, 46 Ga. App. 200, 167 S.E. 189 (1932) (See now O.C.G.A. § 15-10-2 for jurisdiction of magistrate courts.).

Court first acquiring jurisdiction of prosecution retains jurisdiction. — While this section granted superior courts the power to exercise concurrent jurisdiction with inferior tribunals, the court first acquiring jurisdiction of the prosecution retained the jurisdiction to the exclusion of the others, so long as the court did not voluntarily and legally abandon the jurisdiction. McAuliffe v. Outz, 139 Ga. App. 62, 227 S.E.2d 807 (1976).

Superior court to review decisions only when presented under proper writ. — This section empowered the superior courts only to review the proceedings of inferior courts when the question was presented under the proper statutory writ, and if the court finds the proceedings to be irregular or invalid, to remand to the tribunal having jurisdiction of the case for reconsideration in accordance with the court's instructions. McAuliffe v. Outz, 139 Ga. App. 62, 227 S.E.2d 807 (1976).

Removing record from inferior court. — Entire record cannot be removed from inferior court to superior court by notice to officers to produce the record, or by a subpoena duces tecum directed to and served upon the court. In re Lester, 77 Ga. 143 (1886).

Authority to order expert evaluation of criminal defendant. — Superior court of the county in which defendant was convicted of murder had authority, on defendant's motion for new trial, to order an expert evaluation of defendant, who was incarcerated beyond the boundaries of the county in which the court sat. Zant v. Brantley, 261 Ga. 817, 411 S.E.2d 869 (1992).

Defendant in city court may apply to superior court. — If a suit for damages arising ex contractu is pending in a city court, the defendant, in order to avail oneself of an equitable setoff, may apply to the superior court to enjoin the proceeding in the city court and take jurisdiction of the entire controversy. Bibb Basket Co. v. Eufaula Bank & Trust Co., 42 Ga. App. 394, 156 S.E. 310 (1930).

Review of recorder's court decision lies in the superior court by writ of certiorari. McMillian v. City of Rockmart, 653 F.2d 907 (5th Cir. 1981).

Power of judge to appoint foreperson of grand jury. — In the absence of a statute to the contrary, the judge of the superior court has inherent power as the presiding officer of the court to appoint the foreperson of a grand jury from the number of those duly selected and required to serve. This authority vested in the judge by law is not affected by the custom of permitting the members of the grand jury to elect a foreperson. Peeples v. State, 178 Ga. 675, 173 S.E. 850 (1934).

Local Act providing for bill of exceptions (see now O.C.G.A. §§ 5-6-49 and 5-6-50) from city court to superior court is unconstitutional. Pope v. Jones, 79 Ga. 487, 4 S.E. 860 (1887), overruled on other grounds Ricks v. State, 303 Ga. 567, 814 S.E.2d 318 (2018).

Regulation of prices by court of products made and sold in this state not permitted. Southern Ice & Coal Co. v. Atlantic Ice & Coal Corp., 143 Ga. 810, 85 S.E. 1021 (1915).

Breach of payment bond contract. — Subcontractor's action against surety for breach of payment bond contract, bad faith, and attorney fees was within superior court's subject matter jurisdiction. Harry S. Peterson Co. v. National Union Fire Ins. Co., 209 Ga. App. 585, 434 S.E.2d 778 (1993).

Subject matter jurisdiction over business dispute. — In an action brought by a partner against another, the court did not err by vacating a consent order that incorporated a settlement agreement as the trial judge to whom the case had been reassigned had subject matter jurisdiction to vacate the previously entered order since the trial judge had subject matter jurisdiction over a cause of

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action pending before the court and control over orders and judgments during the term or following the term if the case is still pending. Further, since no final order had been entered in the matter and the case remained pending, the trial court had authority to reconsider the ruling made on the consent order, vacate the order, and order that the matter proceed to trial, irrespective of whether the case has been reassigned to a different trial judge. Internal Med. Alliance, LLC v. Budell, 290 Ga. App. 231, 659 S.E.2d 668 (2008).

Protection of judgments. — Trial court was empowered to protect a judgment the court entered by enjoining an arbitration proceeding on the grounds of res judicata and collateral estoppel. Mitcham v. Blalock, 268 Ga. 644, 491 S.E.2d 782 (1997).

Review by writ of certiorari precluded. — Defendant's petition for writ of certiorari was fatally and fundamentally flawed since the petition did not recite the provisions of the county statute under which the defendant was convicted, which prohibited loitering for drug-related purposes; thus, the appellate court had no context within which to review the evidence. Collier v. Merck, 261 Ga. App. 831, 584 S.E.2d 1 (2003).

Appellate jurisdiction lacking. — Since the superior court did not have appellate jurisdiction over rulings of a state court, there was no error in the state court's failure to process an appeal to the superior court within 10 days. Columbus Transmission Co. v. Murry, 277 Ga. App. 243, 626 S.E.2d 202 (2006).

Cited in Pullen v. Cleckler, 162 Ga. 111, 132 S.E. 761 (1926); Jones v. State, 39 Ga. App. 1, 145 S.E. 914 (1928); Brooks v. Sturdivant, 177 Ga. 514, 170 S.E. 369 (1933); Department of Indus. Relations v. Travelers' Ins. Co., 177 Ga. 669, 170 S.E. 883 (1933); Gavant v. Berger, 182 Ga. 277, 185 S.E. 506 (1936); Robitzsch v. State, 189 Ga. 637, 7 S.E.2d 387 (1940); Womack v. Celanese Corp. of Am., 205 Ga. 514, 54 S.E.2d 235 (1949); Alred v. Celanese Corp. of Am., 205 Ga. 371, 54 S.E.2d 240 (1949); Aiken v. Richardson, 210 Ga. 728, 82 S.E.2d 646 (1954); Fletcher v. Daniels, 211 Ga. 403, 86 S.E.2d 232 (1955); Rockefeller v. First Nat'l Bank, 213 Ga. 493, 100 S.E.2d 279 (1957); Hunt v. McCollum, 214 Ga. 809, 108 S.E.2d 275 (1959); Clarke County Sch. Dist. v. Madden, 99 Ga. App. 670, 110 S.E.2d 47 (1959); Cadle v. State, 101 Ga. App. 175, 113 S.E.2d 180 (1960); Holcomb v. Johnston, 216 Ga. 765, 119 S.E.2d 355 (1961); Henderson v. State Bd. of Exmrs., 221 Ga. 536, 145 S.E.2d 559 (1965); Stevenson v. Stevenson, 222 Ga. 47, 148 S.E.2d 388 (1966); Burson v. Bishop, 117 Ga. App. 602, 161 S.E.2d 518 (1968); Smith v. Robinson, 122 Ga. App. 693, 178 S.E.2d 697 (1970); Durham v. Spence, 228 Ga. 525, 186 S.E.2d 723 (1972); Bowen v. Bowen, 230 Ga. 670, 198 S.E.2d 862 (1973); Moody v. State, 131 Ga. App. 355, 206 S.E.2d 79 (1974); Wall v. Coleman, 393 F. Supp. 826 (S.D. Ga. 1975); McAuliffe v. Outz, 139 Ga. App. 62, 227 S.E.2d 807 (1976); Moody v. Mendenhall, 238 Ga. 689, 234 S.E.2d 905 (1977); Schuehler v. Pait, 239 Ga. 520, 238 S.E.2d 65 (1977); Wall v. T.J.B. Servs., Inc., 147 Ga. App. 364, 248 S.E.2d 685 (1978); Spruell v. State, 148 Ga. App. 99, 250 S.E.2d 807 (1978); Mitchell v. Excelsior Sales & Imports, Inc., 243 Ga. 813, 256 S.E.2d 785 (1979); Hopkins v. Hopkins, 244 Ga. 70, 257 S.E.2d 902 (1979); Goldgar v. Galbraith, 155 Ga. App. 429, 270 S.E.2d 833 (1980); Price v. Gibson, 246 Ga. 815, 272 S.E.2d 716 (1980); Mann v. State, 160 Ga. App. 527, 287 S.E.2d 325 (1981); Dunaway v. Clark, 536 F. Supp. 664 (S.D. Ga. 1982); Kariuki v. DeKalb County, 253 Ga. 713, 324 S.E.2d 450 (1985); General Accident Ins. Co. v. Wells, 179 Ga. App. 440, 346 S.E.2d 886 (1986); Smith v. Orkin Exterminating Co., 258 Ga. 705, 373 S.E.2d 740 (1988); Rowe v. Rowe, 195 Ga. App. 493, 393 S.E.2d 750 (1990); Hall v. State, 200 Ga. App. 585, 409 S.E.2d 221 (1991); Duffet v. E & W Properties, Inc., 208 Ga. App. 484, 430 S.E.2d 858 (1993); In re Mauldin, 242 Ga. App. 350, 529 S.E.2d 653 (2000); Harvey v. Lindsey, 251 Ga. App. 387, 554 S.E.2d 523 (2001); Johnson v. State, 258 Ga. App. 33, 572 S.E.2d 669 (2002); Manders v. Lee, 338 F.3d 1304 (11th Cir. 2003); Southeast Serv. Corp. v. Savannah Teachers Props., 263 Ga. App. 513, 588 S.E.2d 310 (2003); In the Interest of P.W., 289 Ga. App. 323,

657 S.E.2d 270 (2008); Durham v. Durham, 291 Ga. 231, 728 S.E.2d 627 (2012).

Contempt

Applicability to separate contemptuous acts. — O.C.G.A. § 15-6-8 is applicable to each separate act found by trial judge to be contemptuous. In re Pruitt, 249 Ga. 190, 288 S.E.2d 208 (1982).

Breach of restraining order. — This section applies when breach of temporary restraining order treated as single act, and costs may be awarded. Warner v. Martin, 124 Ga. 387, 52 S.E. 446, 4 Ann. Cas. 180 (1905).

Inapplicability to continuing contempt. — This section did not apply to a refusal to deliver funds or property to receiver appointed by court pending litigation. Cobb v. Black, 34 Ga. 162 (1865).

This section does not apply if the doing of an act is necessary to the administration of justice, and breach is treated as continuing. Howard v. Durand, 36 Ga. 346, 91 Am. Dec. 767 (1867); Drakeford v. Adams, 98 Ga. 722, 25 S.E. 833 (1896).

This section does not apply to a continuing contempt resulting from failure to comply with order requiring payment of alimony. Tindall v. Westcott, 113 Ga. 1114, 39 S.E. 450, 55 L.R.A. 225 (1901); Gray v. Gray, 127 Ga. 345, 56 S.E. 438 (1907).

Failure or refusal to comply with an order of court requiring the payment of alimony and attorney's fees was a continuing contempt, and the court may enter a judgment that the party so refusing be imprisoned until the party shall comply. In such case, the time of imprisonment was not within the limitation of this section that the duration of imprisonment must not exceed 20 days. Adkins v. Adkins, 242 Ga. 248, 248 S.E.2d 646 (1978).

Mother held in criminal contempt. — Order holding a mother in criminal contempt was upheld on appeal as a result of the mother's interference with the father's visitation time and since the trial court did not exceed the limit of 20 days of imprisonment as set forth in O.C.G.A. § 15-6-8(5), the punishment imposed did not exceed that which was authorized. Stanford v. Pogue, 340 Ga. App. 86, 796 S.E.2d 313 (2017).

Failure to pay ordered child support. — Parent who willfully refuses to pay child support which the parent is able to pay and which is required by an order of court may be found guilty of either civil or criminal contempt of court, or both. Ensley v. Ensley, 239 Ga. 860, 238 S.E.2d 920 (1977).

Party who has failed to pay child support under a court order when the party has the ability to pay may be found guilty of civil or criminal contempt and incarcerated under either. Hughes v. Georgia Dep't of Human Resources, 269 Ga. 587, 502 S.E.2d 233 (1998).

Lack of money and property impacting contempt. — Trial court erred in continuing the incarceration of a party for civil contempt since the party lacked the ability to purge oneself because the party lacked money and property. Hughes v. Georgia Dep't of Human Resources, 269 Ga. 587, 502 S.E.2d 233 (1998).

Continuous contempt. — Confinement may be extended indefinitely if the contempt is continuous. In re Pruitt, 249 Ga. 190, 288 S.E.2d 208 (1982).

Incarceration for over 20 days. — If the trial court ordered a party incarcerated for more than 20 days, the contempt order should have contained sufficient facts to support the court's finding of more than one contemptuous act. Gay v. Gay, 268 Ga. 106, 485 S.E.2d 187 (1997).

Contempt proceedings require due process. — Punishment of barring an attorney from a division of a superior court is not available for criminal contempt; the superior court's power to punish is limited by O.C.G.A. § 15-6-8. In re Siemon, 264 Ga. 641, 449 S.E.2d 832 (1994).

Defenses to contempt. — Defenses to both civil and criminal contempt are that the order was not sufficiently definite and certain, was not violated, or that the violation was not willful (e.g., inability to pay or comply). Schiselman v. Trust Co. Bank, 246 Ga. 274, 271 S.E.2d 183 (1980).

Counterclaim to contempt petition not permitted. — In a proceeding wherein a neighbor filed a contempt petition against another neighbor and the responding neighbor filed a counterclaim to the petition, the trial court upheld the

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finding of contempt on the part of the responding neighbor with regard to that party failing to comply with prior orders of the trial court in the parties' long-standing boundary dispute, but reversed the contempt finding with regard to the petitioning neighbor on the counterclaim. The trial court erred in allowing the responding neighbor to file a counterclaim to the contempt petition as a contempt proceeding was an ancillary matter related to the primary action and was more in the nature of a motion proceeding, not a situation where a pleading was allowed. Reece v. Smith, 292 Ga. App. 875, 665 S.E.2d 918 (2008).

Distinction between civil and criminal contempt. — If the contemnor is imprisoned for a specified unconditional period, the purpose is punishment and thus the contempt is criminal. If the contemnor is imprisoned only until the contemnor performs a specified act, the purpose is remedial and hence the contempt is civil. Ensley v. Ensley, 239 Ga. 860, 238 S.E.2d 920 (1977).

Most important factor in distinguishing civil and criminal contempt is the purpose of the contempt judgment. If the judgment's purpose is to coerce the contemnor into compliance with the court's order or to compensate the complainant for losses sustained, then the proceeding is civil; on the other hand, if the judgement's purpose is to punish or to vindicate the authority of the court, then the proceeding is criminal. Hopkins v. Jarvis, 648 F.2d 981 (5th Cir. 1981).

Despite the Georgia Supreme Court previously suggesting the ex-husband could be assessed for damages and repairs to the rental property, such a remedy could no longer serve the purpose of civil contempt to obtain future compliance with the divorce decree since the rental property was foreclosed upon and sold; thus, future compliance was no longer at issue and the trial court was authorized to impose unconditional criminal punishment for the ex-husband's prior acts of contumacy. Sponsler v. Sponsler, 353 Ga. App. 627, 838 S.E.2d 921 (2020).

Treating civil contempt as criminal contempt. — Court may find that contempt proceedings originated and pursued by party seeking civil contempt should be treated as one for criminal contempt. Schiselman v. Trust Co. Bank, 246 Ga. 274, 271 S.E.2d 183 (1980).

Findings of fact and conclusions of law are not required in motion for contempt. Adkins v. Adkins, 242 Ga. 248, 248 S.E.2d 646 (1978).

General phrasing of notice sufficient as to both civil and criminal charges. — If a person is on notice that the person is being tried for contempt and the movant seeks "such other sanctions as is appropriate to ensure the enforcement and the observance" of the court's order or seeks "such other relief as may be appropriate," the contemnor is on notice that the proceeding is both civil and criminal in nature and that criminal sanctions may be imposed in an appropriate case. Schiselman v. Trust Co. Bank, 246 Ga. 274, 271 S.E.2d 183 (1980).

When omission of word "criminal" in notice of contempt not fatal. — Omission of the word "criminal" in a notice of contempt proceeding is not fatal if the notice fully describes the conduct charged, there is no showing that the contemnor was prejudiced by the failure to clearly denominate the nature of the contempt proceeding, and the contemnor was accorded all rights due a defendant in a criminal contempt proceeding. Schiselman v. Trust Co. Bank, 246 Ga. 274, 271 S.E.2d 183 (1980).

Appeal must be filed with application pursuant to § 5-6-35. — Notice of appeal from a judgment of contempt regarding a domestic relations decree (finding violations by harassment, abuse, threats, assaults, annoyances, and willful refusal to make house payments as ordered), which judgment imposed a 20-day unconditional imprisonment, must be dismissed for failure to file an application for appeal pursuant to O.C.G.A. § 5-6-35(a)(2). Russo v. Manning, 252 Ga. 155, 312 S.E.2d 319 (1984).

Attorney fees. — Trial court was authorized to award attorney fees in a contempt action arising out of a divorce and alimony case, but the court should not have made payment a condition for purging the contempt without first allowing a

reasonable time to pay the fees. Gay v. Gay, 268 Ga. 106, 485 S.E.2d 187 (1997).

Attorney fees are not awardable in conjunction with a citation for criminal contempt. Rolleston v. Cherry, 237 Ga. App. 733, 521 S.E.2d 1, cert. denied, 528 U.S. 1046, 120 S. Ct. 580, 145 L. Ed. 2d 482 (1999).

Contempt order requiring the plaintiff to pay $ 17,296.53 in attorney fees and litigation costs under O.C.G.A. § 9-15-14 was affirmed on appeal because the trial court expressly stated that the amount was intended to prevent future violations of, and to coerce compliance with, the injunction issued against the plaintiff and no case law prohibited such a civil contempt sanction. Shooter Alley, Inc. v. City of Doraville, 341 Ga. App. 626, 800 S.E.2d 588 (2017).

Attorney fees cannot be awarded. — Trial court does not have authority to award attorney fees as punishment for contempt. Ragsdale v. Bryan, 235 Ga. 58, 218 S.E.2d 809 (1975).

Power of the superior court to punish contempt is limited by O.C.G.A. § 15-6-8, and there is no power to award attorney fees in contempt proceedings. DeKalb County v. Bolick, 249 Ga. 843, 295 S.E.2d 92 (1982); Eckerd Corp. v. Fayette County Bd. of Tax Assessors, 220 Ga. App. 454, 469 S.E.2d 285 (1996); Johnson v. Kaplan, 225 Ga. App. 53, 483 S.E.2d 292 (1997).

Attorney fees are not included in the permissible sanctions for contempt and may not be awarded. Rapaport v. Buckhead, 234 Ga. App. 363, 506 S.E.2d 690 (1998).

Attorney fees not permissible sanction for criminal contempt. — Contempt sanction against the redeeming creditor in the amount of $5,000.00 was vacated as the sanction related to the award of attorney fees as attorney fees were not permissible sanctions for criminal contempt, nor were attorney fees awardable in conjunction with a citation for criminal contempt. J. Michael Vince, LLC v. SunTrust Bank, 352 Ga. App. 791, 835 S.E.2d 809 (2019).

Attorney held in contempt. — "Sentence" of criminal defense attorney in trial court's order to conduct oneself properly as an attorney was actually the method by which the attorney could purge oneself of the contempt. Nothing in O.C.G.A. § 15-6-8(5) prohibits such an order. In re Booker, 195 Ga. App. 561, 394 S.E.2d 791 (1990).

Because the attorney's motion hearings in one county conflicted with what the attorney thought would be the simple entry of a plea in a second county, but the matter in the second county went to trial (partly because of the attorney's lack of communication with the client), and the attorney failed to appear, or give the second county seven days notice or prompt notice of the conflict, a contempt conviction was proper, a $500 fine, and a requirement to complete 25 hours of community service was not excessive. In re Holt, 262 Ga. App. 730, 586 S.E.2d 414 (2003).

Sanction included removal of attorney from appointed counsel list. — After a trial court held defendant, an attorney, in contempt for allegedly intentionally misstating information about a client during a bond hearing, the trial court acted within the court's authority under O.C.G.A. § 15-6-8(5) in directing that defendant's name was to be removed from the county appointed counsel list as the sanction simply addressed the administration of the court's business. In re Schoolcraft, 274 Ga. App. 271, 617 S.E.2d 241 (2005).

Suspension of sheriff not authorized. — Superior court was authorized to inflict summary punishment for contempt predicated upon the willful failure of a sheriff, an officer of the court, to obey an oral direction by the court to transfer a defendant to a jail in another county, but was not authorized to temporarily suspend the sheriff, an elected officer, from the position as sheriff. In re Irvin, 171 Ga. App. 794, 321 S.E.2d 119 (1984), modified on other grounds, 254 Ga. 251, 328 S.E.2d 215 (1985).

Willful violation of court order by sheriff. — Trial court did not err in finding a sheriff in criminal contempt for willful violation of the court's order directing the sheriff to transport to the county courthouse four named criminal defendants imprisoned at the county jail for the purpose of hearings in criminal cases be-

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cause the trial court was empowered to determine that the orderly administration of justice required the presence of the four prisoners at the courthouse and to order the sheriff to transfer the prisoners from the jail to the courthouse; the order was clear and did not direct the sheriff to send one deputy with four prisoners, and the sheriff had ample deputies and resources under the sheriff's control to comply with the court order. In re Bowens, 308 Ga. App. 241, 706 S.E.2d 694 (2011), cert. denied, No. S11C1123, 2011 Ga. LEXIS 581 (Ga. 2011).

Review of trial court decision. — Judgment of trial court in punishing contempt will not be disturbed unless it appears that there is no evidence to support the finding. Shafer v. State, 139 Ga. App. 360, 228 S.E.2d 382 (1976).

Trial court's adjudication of contempt will not be interfered with unless there is a gross, enormous, or flagrant abuse of discretion. Renfroe v. State, 104 Ga. App. 362, 121 S.E.2d 811 (1961), overruled on other grounds, In re Crane, 253 Ga. 667, 324 S.E.2d 443 (1985); Shafer v. State, 139 Ga. App. 360, 228 S.E.2d 382 (1976).

All violations of order need not be proved. — Fact that a petition for citation for contempt also charged a violation of a restraining order not based on the contempt order, which the evidence may have failed to show, did not render erroneous a judgment finding the party guilty and imposing penalties within the provisions of this section as for a single act. Carroll v. Celanese Corp. of Am., 205 Ga. 493, 54 S.E.2d 221 (1949), cert. denied, 338 U.S. 937, 70 S. Ct. 345, 94 L. Ed. 578 (1950).

Punishments not applicable to civil contempt. — Punishments which may be imposed for a criminal contempt set forth in O.C.G.A. § 15-6-8(5) do not apply to civil contempt sanctions. In re Harvey, 219 Ga. App. 76, 464 S.E.2d 34 (1995).

When the trial court ordered an appellant to pay a receiver's fees in order to be purged of civil contempt, this did not violate O.C.G.A. § 15-6-8(5) as the limitations imposed by this provision were not applicable to sanctions imposed for civil contempt. Huffman v. Armenia, 284 Ga. App. 822, 645 S.E.2d 23 (2007), cert. denied, 2007 Ga. LEXIS 554 (Ga. 2007).

Monetary limit of O.C.G.A. § 15-6-8(5) addresses the circumstance of criminal contempt and is not applicable to sanctions imposed for civil contempt; accordingly, the statute did not apply to an order requiring a husband to pay his wife $1,500 per day until he paid her certain insurance proceeds as the sanction was clearly remedial and thus was civil. Chatfield v. Adkins-Chatfield, 282 Ga. 190, 646 S.E.2d 247 (2007).

Fine in excess of statutory maximum. — Superior court's order punishing contempt by fine of $25,000 was vacated as in excess of the statutory maximum. Mathis v. Corrugated Gear & Sprocket, Inc., 263 Ga. 419, 435 S.E.2d 209 (1993).

Trial court's imposition of punishment for landlord's contempt, that of ordering the landlord to relocate the tenant to another apartment, pay all the expenses associated with the relocation, and reimburse the tenant for the cost of a new mattress and box-spring comparable to that which the tenant owned, not to exceed $500, was vacated as the trial court's contempt punishment could not exceed $500 and the court's order did not make it clear whether the sanction exceeded that amount. H. J. Russell & Co. v. Manuel, 264 Ga. App. 273, 590 S.E.2d 250 (2003).

Appellate court reversed that portion of the trial court's order imposing a fine of more than $1,500, which was the statutorily permitted amount for the professor's three acts adjudicated as criminal contempt at $500 per act. Murtagh v. Emory Univ., 321 Ga. App. 411, 741 S.E.2d 212 (2013), overruled on other grounds by SRM Group, Inc. v. Travelers Prop. Cas. Co. of Am., 308 Ga. 404, 841 S.E.2d 729 (2020).

Excessive criminal contempt fines prohibited. — Probate court's award of damages was reversed because the court could not construe the imposition of more than $19,000 as a fine for criminal contempt as acts of criminal contempt could be punished by fines not exceeding $500, and the imposing of damages for civil contempt violated the law because the probate court imposed damages uncondi-

tionally and there was no complaint in the record. In re Estate of Butler, No. A20A1272, 2020 Ga. App. LEXIS 430 (July 17, 2020).

Reduction of excessive fine. — If the fine initially imposed by the trial court was in excess of the fine authorized by this section, the trial court had authority to amend the court's order, reducing the fine to the statutory maximum. Shafer v. State, 139 Ga. App. 360, 228 S.E.2d 382 (1976); Mathis v. Corrugated Gear & Sprocket, Inc., 263 Ga. 419, 435 S.E.2d 209 (1993).

Order for a fine exceeding $500 was not in accord with O.C.G.A. § 15-6-8 because the trial court did not find more than one specific violation of the court's injunction. Lee v. Environmental Pest & Termite Control, Inc., 243 Ga. App. 263, 533 S.E.2d 116 (2000).

OPINIONS OF THE ATTORNEY GENERAL

Choice of forum. — Courts of Georgia may not restrict the suitor's choice of forum when jurisdiction of a cause of action is vested in more than one court. 1983 Op. Att'y Gen. No. U83-50.

Discretion of sheriff to choose when bond of traffic violator returnable. — Sheriff has the discretionary right to choose, from the circumstances involved in the offense, whether a misdemeanor violator of the traffic laws shall be required to give bond returnable to the superior court or shall be taken before the probate court upon request. 1952-53 Op. Att'y Gen. p. 51.

Appeal by Public Service Commission. — Public Service Commission as defendant in superior court action for injunction has right to appeal to Georgia Supreme Court. 1967 Op. Att'y Gen. No. 67-40.

RESEARCH REFERENCES

Am. Jur. 2d. — 20 Am. Jur. 2d, Courts, § 10.

ALR. — Mandamus to compel court to assume or exercise jurisdiction where it has erroneously dismissed the cause or refused to proceed on the ground of supposed lack of jurisdiction, 4 A.L.R. 582; 82 A.L.R. 1163.

Formality in authentication of judicial acts, 30 A.L.R. 700.

Right of state or federal court to protect litigants by enjoining proceedings in bankruptcy, 32 A.L.R. 979.

Jurisdiction of equity courts in the United States, without the aid of statute expressly conferring it, to entertain independent suit for alimony or separate maintenance without divorce or judicial separation, 141 A.L.R. 399.

Propriety of disposition of pending action involving controversy within religious society or other nonprofit association, by ordering election, 158 A.L.R. 182.

Jurisdiction of court to award custody of child domiciled in state but physically outside it, 9 A.L.R.2d 434.

Appealability of order relating to transfer, on jurisdictional grounds, of cause from one state court to another, 78 A.L.R.2d 1204.

Attorney's failure to attend court, or tardiness, as contempt, 13 A.L.R.4th 122.

Modern status of rule relating to jurisdiction of state court to try criminal defendant brought within jurisdiction illegally or as result of fraud or mistake, 25 A.L.R.4th 157.

Personal jurisdiction over nonresident manufacturer of component incorporated in another product, 69 A.L.R.4th 14.

Media's dissemination of material in violation of injunction or restraining order as contempt — federal cases, 91 A.L.R. Fed. 270.

15-6-9. Authority of judges generally.

The judges of the superior courts have authority:

(1) To grant for their respective circuits writs of certiorari, supersedeas, quo warranto, mandamus, habeas corpus, and bail in actions ex delicto;

(2) To entertain bills quia timet;

(3) To grant writs of injunction, prohibition, and ne exeat;

(4) To grant all other writs, original or remedial, either legal or equitable, which may be necessary to the exercise of their jurisdiction and which are not expressly prohibited;

(5) To hear and determine questions arising upon:

(A) Writs of habeas corpus or bail, when properly brought before them;

(B) All motions to grant, revive, or dissolve injunctions; and

(C) The giving of new security or the lessening of the amount of bail;

(6) To perform any and all other acts required of them at chambers;

(7) To hear and determine all motions to dismiss petitions for equitable relief, and all motions to revoke or change orders appointing receivers, after ten days' written notice has been given to the opposite party or his attorney by either party by service with a copy of such motion to dismiss or to revoke or change such order; and

(8) To administer oaths and to exercise all other powers necessarily appertaining to their jurisdiction or which may be granted them by law.

History. — Orig. Code 1863, § 243; Code 1868, § 237; Code 1873, § 247; Code 1882, § 247; Civil Code 1895, § 4321; Penal Code 1895, § 792; Civil Code 1910, § 4850; Penal Code 1910, § 792; Code 1933, § 24-2616; Ga. L. 1982, p. 3, § 15.

Cross references. — Writ of prohibition, § 9-6-40 et seq. Exclusive jurisdiction of superior courts over habeas corpus actions involving persons detained by virtue of sentence imposed by state court of record, § 9-14-43. Authority of superior court judges in certain counties to appoint judges of juvenile courts, § 15-11-50. Power of judges of superior courts to appoint court reporters, §§ 15-14-1, 15-14-3, 15-14-4. Mandamus proceedings relating to election laws in superior courts, §§ 21-2-32, 21-2-171. Ne exeat and quia timet, §§ 23-3-20 et seq., 23-3-40 et seq. Rules for service of senior judges, Uniform Superior Court Rules, Rule 18.

Law reviews. — For article, "The Writ of Habeas Corpus in Georgia," see 12 Ga. St. B. J. 20 (2007).

JUDICIAL DECISIONS

Duties of all judges. — Every court's judges are charged with the duty of administering justice and maintaining dignity and authority of the court. Johnson v. State, 177 Ga. 881, 171 S.E. 699 (1933).

Phrase "all other powers necessarily appertaining to their jurisdictions" is broad and comprehensive. Johnson v. State, 177 Ga. 881, 171 S.E. 699 (1933).

Sua sponte dismissals. — Trial court has inherent authority to dismiss sua sponte a complaint in an appropriate case. Georgia Receivables, Inc. v. Williams, 218 Ga. App. 313, 461 S.E.2d 280 (1995).

Trial court did not err in dismissing sua sponte a patient's battery claims in the absence of a motion for dismissal by the defendants, a dentist and related professional entities. A trial court had the inherent authority to dismiss sua sponte a complaint in an appropriate case; moreover, all of the defendants alleged the patient's failure to state a claim as an affirmative defense in their respective answers, and the entities specifically argued that the patient failed to state a claim for battery in the entities brief filed in response to the patient's motion to place the case on a trial calendar. Paden v. Rudd, 294 Ga. App. 603, 669 S.E.2d 548 (2008).

Blanket restrictions on pro se right of access. — Although a court may in some circumstances issue sua sponte dismissals pursuant to the court's inherent authority recognized in O.C.G.A. § 15-6-9, a blanket prefiling order entered outside of a pending suit, imposing restrictions on the pro se right of access, may not be issued without a hearing on the court's contemplated action. In re Carter, 235 Ga. App. 551, 510 S.E.2d 91 (1998).

Nature of writ of supersedeas. — Supersedeas is either a matter of statutory right, or vested in the discretion of the judge of the superior court under former Penal Code 1895, § 792 (see now O.C.G.A. § 15-6-9). Gustoso Cigar Mfg. Co. v. Ray, 117 Ga. 565, 43 S.E. 984 (1903); Montgomery v. King, 125 Ga. 388, 54 S.E. 135 (1906).

Granting supersedeas if no regular attempt made. — Under the power conferred upon judges of the superior courts by former Civil Code 1910, § 4850 (see now O.C.G.A. § 15-6-9) to grant supersedeas, the judge may, in the exercise of sound discretion, grant a supersedeas if the prevailing party is insolvent and irreparable injury is about to flow from enforcement of the judgment, although the losing party has made no attempt to obtain a supersedeas under former Civil Code 1910, § 6165 (see now O.C.G.A. § 5-6-46 or O.C.G.A. § 5-6-47) at or before the filing of a bill of exceptions (see now O.C.G.A. §§ 5-6-49 and 5-6-50). Biggers v. Hope, 176 Ga. 141, 167 S.E. 176 (1932).

Filing of notice of appeal in injunction cases does not serve as supersedeas. Citizens to Save Paulding County v. City of Atlanta, 236 Ga. 125, 223 S.E.2d 101 (1976).

Discretion in allowing writ of quo warranto. — Judge may refuse to allow a writ of quo warranto filed unless the writ makes out a prima facie case in favor of the petitioner. Stone v. Wetmore, 44 Ga. 495 (1871).

Appeal from denial of writ of quo warranto. — Writ of error (see now O.C.G.A. §§ 5-6-49 and 5-6-50) lies from the refusal of a judge of the superior court to grant leave to file an information in the nature of a writ of quo warranto. McWilliams v. Jacobs, 128 Ga. 375, 57 S.E. 509 (1907).

Court's discretionary power to appoint attorneys. — Courts have discretionary power independent of any statutory power to appoint attorneys to assist a prosecuting attorney in criminal cases. Mach v. State, 109 Ga. App. 154, 135 S.E.2d 467 (1964).

Authority to order expert evaluation of criminal defendant. — Superior court of the county in which defendant was convicted of murder had authority, on defendant's motion for new trial, to order an expert evaluation of the defendant, who was incarcerated beyond the boundaries of the county in which the court sat. Zant v. Brantley, 261 Ga. 817, 411 S.E.2d 869 (1992).

Authority to question defendant about motion to withdraw guilty

plea. — Defendant lost the statutory right to withdraw an Alford plea when the trial court announced the court's sentence, and the trial court did not abuse the court's discretion by denying the defendant's motion or by questioning the defendant about defendant's motion before the court issued the ruling. Harpe v. State, 254 Ga. App. 458, 562 S.E.2d 521 (2002).

Judge of superior court has power to appoint grand jury foreperson, notwithstanding the practice that the grand jury selects its own foreperson. Johnson v. State, 177 Ga. 881, 171 S.E. 699 (1933).

If judge of superior court requires grand jury to elect the jury's own foreperson, it is based upon authority delegated by the judge to the grand jury, and is equivalent to the exercise of the authority of the judge. Johnson v. State, 177 Ga. 881, 171 S.E. 699 (1933).

In the absence of any statute to the contrary, the judge of the superior court has inherent power as the presiding officer of the court to appoint the foreprson of a grand jury from the number of those duly selected and required to serve. This authority vested in the judge by law is not affected by the custom of permitting the members of the grand jury to elect a foreperson. Peeples v. State, 178 Ga. 675, 173 S.E. 850 (1934).

Authority of superior court judge replacing disqualified judge. — If the superior court judge was disqualified, the superior court judge of the other circuit may pass on an injunction without previous designation by the disqualified judge. Galloway v. Mitchell County Elec. Membership Corp., 190 Ga. 428, 9 S.E.2d 903 (1940).

If a superior court judge is disqualified, the superior court judge of another circuit may at interlocutory hearing pass chambers order on demurrer (now motion to dismiss). Galloway v. Mitchell County Elec. Membership Corp., 190 Ga. 428, 9 S.E.2d 903 (1940).

Bail amount. — Sheriff of city court bound to obey mandate of superior court lowering amount of bail fixed by the sheriff. Maddox v. Cowart, 155 Ga. 606, 118 S.E. 39 (1923).

Grant of bail not authorized. — While the trial court had authority to hear and determine the question of the inmate's request for bail under O.C.G.A. § 15-6-9(5)(A), the trial court exceeded the court's authority by granting bail to the inmate since the challenged sentence was originally imposed in a trial court of a different county. Under O.C.G.A. § 9-14-52(c), only the trial court that imposed the original sentence had authority to grant or deny the inmate's bail request. O'Donnell v. Durham, 275 Ga. 860, 573 S.E.2d 23 (2002).

Lower court to approve or disapprove certiorari bond before review. — Judge of superior court, at time of sanctioning petition for certiorari, has no authority to approve certiorari bond if the bond has not been approved or disapproved by the judge who tried the case. Clark v. Morris Plan Bank, 194 Ga. 522, 22 S.E.2d 147, answer conformed to, 68 Ga. App. 174, 22 S.E.2d 415 (1942).

Restraining order within court's power even though not requested. — Once the validity of a temporary restraining order (TRO) was established, there was no error in continuing the TRO in effect until another hearing could be held for a resolution of the issues in the case, this being within the trial judge's inherent power in order to preserve the status quo and the court's jurisdiction pending the final ruling; thus, the fact that the TRO had not been specifically prayed for by the plaintiffs did not invalidate the order. Stewart v. Brown, 253 Ga. 480, 321 S.E.2d 738 (1984).

Suspension of sheriff not authorized. — Superior court was authorized to inflict summary punishment for contempt predicated upon the willful failure of a sheriff, an officer of the court, to obey an oral direction by the court to transfer a defendant to a jail in another county, but was not authorized to temporarily suspend the sheriff, an elected officer, from the sheriff's position. In re Irvin, 171 Ga. App. 794, 321 S.E.2d 119 (1984), modified on other grounds, 254 Ga. 251, 328 S.E.2d 215 (1985).

Post-judgment discovery in aid of execution. — In action brought by bank against corporation seeking recovery on several notes and trade acceptances, as well as to recover an overdraft on a check-

ing account, the trial court was without authority to direct the appellants, sole stockholders in the corporation, to either return all collateral to the premises of the corporation or to provide a list of the equipment. The proper procedure for obtaining such information is by post-judgment discovery in aid of execution, pursuant to O.C.G.A. § 9-11-69 and appellee's contention that the order to provide a list was authorized pursuant to the trial court's inherent power to issue orders necessary to the exercise of the court's jurisdiction was without merit. Ponderosa Granite Co. v. First Nat'l Bank, 173 Ga. App. 105, 325 S.E.2d 591 (1984).

Appeal from civil contempt order. — While the appeal of an order finding a limited liability company (LLC) in civil contempt was pending, the LLC obtained a supersedeas under O.C.G.A. § 15-6-9, which stayed the application of the civil contempt order during the appeal. Therefore, the trial court erred in imposing civil contempt fines after issuance of the supersedeas. Stewart v. Tricord, LLC, 296 Ga. App. 834, 676 S.E.2d 229 (2009).

Cited in DeLacy v. Hurst, Purnell & Co., 83 Ga. 223, 9 S.E. 1052 (1889); Turner v. Cates, 90 Ga. 731, 16 S.E. 971 (1893); Cock v. Callaway, 141 Ga. 774, 82 S.E. 286 (1914); George v. Rothstein & Nelson, 35 Ga. App. 126, 132 S.E. 414 (1926); Dickey v. Morris, 166 Ga. 140, 142 S.E. 557 (1928); Sammons v. Nabers, 186 Ga. 161, 197 S.E. 284 (1938); Abney v. Harris, 208 Ga. 184, 65 S.E.2d 905 (1951); Rockefeller v. First Nat'l Bank, 213 Ga. 493, 100 S.E.2d 279 (1957); Central of Ga. Ry. v. City of Metter, 222 Ga. 74, 148 S.E.2d 661 (1966); Turner v. Bogle, 115 Ga. App. 710, 155 S.E.2d 667 (1967); Coweta Bonding Co. v. Carter, 230 Ga. 585, 198 S.E.2d 281 (1973); Turner v. Harper, 233 Ga. 483, 211 S.E.2d 742 (1975); Cook v. Howard, 134 Ga. App. 721, 215 S.E.2d 690 (1975); Jones v. State, 137 Ga. App. 612, 224 S.E.2d 473 (1976); Palmer v. State, 186 Ga. App. 892, 369 S.E.2d 38 (1988); Rowe v. Rowe, 195 Ga. App. 493, 393 S.E.2d 750 (1990); Durham v. Durham, 291 Ga. 231, 728 S.E.2d 627 (2012).

OPINIONS OF THE ATTORNEY GENERAL

Power of nonresident judge to hear matters when originating court in vacation. — Former Code 1933, §§ 24-2613 and 24-2617 (see now O.C.G.A. § 15-6-12), when read in light of former Code 1933, § 24-2616 and Ga. L. 1968, p. 1104, § 9 (see now O.C.G.A. §§ 9-11-40 and 15-6-9) conferred authority on a nonresident superior court judge in chambers in that judge's own circuit to hear and determine by interlocutory or final judgment, in accordance with Ga. L. 1968, p. 1104, § 9 (see now O.C.G.A. § 9-11-40(b)), any matter in a case from the originating superior court which arises while the originating superior court is in vacation. (However, see now O.C.G.A. § 15-6-19.) 1975 Op. Att'y Gen. No. U75-68.

RESEARCH REFERENCES

Am. Jur. 2d. — 46 Am. Jur. 2d, Judges, § 21.

C.J.S. — 48A C.J.S., Judges, § 62 et seq.

ALR. — Mandamus to compel court to assume or exercise jurisdiction where it has erroneously dismissed the cause or refused to proceed on the ground of supposed lack of jurisdiction, 4 A.L.R. 582; 82 A.L.R. 1163.

Mandamus to compel a court to take jurisdiction of a cause that it has erroneously dismissed for supposed insufficiency or lack of service, 4 A.L.R. 610.

Formality in authentication of judicial acts, 30 A.L.R. 700.

Necessity of raising objection to jurisdiction in court against which writ is sought as condition of application for writ of prohibition, 35 A.L.R. 1090.

Availability of writ of prohibition as means of controlling administrative or executive boards or officers, 115 A.L.R. 3; 159 A.L.R. 627.

Adequacy of remedy by appeal in criminal cases to preclude prohibition sought on the ground of lack or loss of jurisdiction, 141 A.L.R. 1262.

Right of party, in course of litigation, to challenge title or authority of judge or of person acting as judge, 144 A.L.R. 1207.

15-6-10. Discharge of duties.

Each of the judges of the superior courts shall discharge all the duties required of him by the Constitution and laws for the circuit for which he was elected or appointed and may also hold court and exercise other judicial functions for other circuits when permitted by law.

History. — Orig. Code 1863, § 239; Code 1868, § 233; Code 1873, § 243; Code 1882, § 243; Civil Code 1895, § 4317; Civil Code 1910, § 4846; Code 1933, § 24-2614.

JUDICIAL DECISIONS

Court having jurisdiction may invalidate fraudulent judgment. — An exception to the general rule that the several superior courts of this state have no extraterritorial jurisdiction enabling the court of one county to set aside a judgment rendered by that of a different county is the rule which provides that a court having jurisdiction of the person of one who has obtained a judgment by fraud may invalidate and set aside such judgment. Boroughs v. Belcher, 211 Ga. 273, 85 S.E.2d 422 (1955).

Cited in Luangkhot v. State, 292 Ga. 423, 736 S.E.2d 397 (2013).

RESEARCH REFERENCES

Am. Jur. 2d. — 46 Am. Jur. 2d, Judges, § 21 et seq.

C.J.S. — 48A C.J.S., Judges, § 78 et seq.

ALR. — Absence of judge from courtroom during trial of civil case, 25 A.L.R.3d 637.

15-6-11. Electronic filings of pleadings and documents; electronic payments and remittances; access; public disclosure.

(a) Pursuant to rules promulgated by the Criminal Case Data Exchange Board, on and after January 1, 2019, a superior court shall provide for the filing of pleadings in criminal cases and any other document related thereto and for the acceptance of payments and remittances by electronic means.

(b)(1) On and after January 1, 2019, except as provided in paragraph (3) of this subsection, all pleadings and any other document related thereto filed by an attorney to initiate a civil action or in a civil case in a superior court shall be filed by electronic means through the court's electronic filing service provider. Except as provided in paragraph (3) of this subsection, once a court has commenced mandatory electronic filings in civil cases, a clerk shall not accept, file, or docket

any pleading or any other form of paper document related thereto from an attorney in a civil case.

(2)(A) Except as provided in subparagraph (B) of this paragraph, a court's electronic filing service provider may charge a fee which shall be a recoverable court cost and only include a:

(i) One-time fee for electronically filing pleadings or documents in a civil action and the electronic service of pleadings, regardless of how many parties shall be served, which shall not exceed $30.00 per filer, per party. Such fee shall be paid at the time of the first filing on behalf of a party; provided that when filings are submitted via a public access terminal, upon the first filing not using such terminal, such fee shall be paid;

(ii) Supplemental fee of $5.00 for each filing made in a civil action after a party has made ten electronic filings in such civil action; and

(iii) Convenience fee for credit card and bank drafting services, which shall not exceed 3.5 percent plus a 30¢ payment services fee per transaction.

(B) No electronic filing service provider shall charge a fee pursuant to this paragraph for the filing of:

(i) Pleadings or documents filed by the Department of Law, the Office of Legislative Counsel, the Office of the Secretary of State, a district attorney in his or her official capacity, or a public defender in his or her official capacity;

(ii) Pleadings or documents filed on behalf of municipal corporations or county governments; or

(iii) Leave of absence or conflict notices filed pursuant to the Uniform Rules for the Superior Courts.

(C) With respect to the fee charged pursuant to division (i) of subparagraph (A) of this paragraph, the clerk of superior court shall retain $2.00 of the transaction fee and remit it to the governing authority of the county. No other portion of the transaction fee shall be remitted to any other office or entity of the state or governing authority of a county or municipality.

(D) An attorney, or party if he or she is pro se, shall be allowed unlimited access to view and download any pleading or document electronically filed in connection to the civil action in which he or she is counsel of record or pro se litigant, and an electronic service provider shall not be authorized to charge or collect a fee for such viewing or downloading.

(3) This subsection shall not apply to filings:

(A) In connection with:

(i) A pauper's affidavit;

(ii) Any validation of bonds as otherwise provided for by law;

(iii) Pleadings or documents filed under seal or presented to a court in camera or ex parte; or

(iv) Pleadings or documents to which access is otherwise restricted by law or court order;

(B) Made physically at the courthouse by an attorney or his or her designee or an individual who is not an attorney; provided, however, that the clerk shall require such pleadings or documents made physically at the courthouse by an attorney or his or her designee be submitted via a public access terminal in the clerk's office. The clerk shall not charge the fee as set forth in division (2)(A)(i) of this subsection for such filing but when payment is submitted by credit card or bank draft, the clerk may charge the convenience fee as set forth in division (2)(A)(iii) of this subsection;

(C) Made in a court located in an area that has been declared to be in a state of emergency pursuant to Article 3 of Chapter 3 of Title 38. The Judicial Council of Georgia shall provide rules for filings in such circumstances; or

(D) Made prior to the commencement of mandatory electronic filing for such court, wherein the filer shall continue to pay fees applicable to the case on the date of the first filing; provided, however, that a party may elect to make future filings through the court's electronic filing service provider and pay the applicable fees.

(4) The Judicial Council of Georgia shall make and publish in print or electronically such statewide minimum standards and rules as it deems necessary to carry out this Code section. Each clerk of superior court shall develop and enact policies and procedures necessary to carry out the standards and rules created by the Judicial Council of Georgia.

(c) Nothing in this Code section shall be construed to prevent a clerk's acceptance of payments and remittances by electronic means under the clerk's own authority.

(d) A superior court judge to whom the case is assigned and his or her staff shall, at all times, have access to all pleadings and documents electronically filed and such access shall be provided upon the physical acceptance of such pleadings and documents by the clerk.

(e) Any pleading or document filed electronically shall be deemed filed as of the time of its receipt by the electronic filing service provider.

A pleading or document filed electronically shall not be subject to disclosure until it has been physically accepted by the clerk. Upon such acceptance as provided for in this subsection, such pleading or document shall be publicly accessible for viewing at no cost to the viewer on a public access terminal available at the courthouse during regular business hours.

History. — Code 1981, § 15-6-11, enacted by Ga. L. 2016, p. 242, § 2/SB 262; Ga. L. 2018, p. 550, § 1-1/SB 407; Ga. L. 2019, p. 845, § 6-1/HB 239.

The 2018 amendment, effective July 1, 2018, substituted the present provisions of this Code section for the former provisions, which read: "By court rule or standing order, any superior court may provide for the filing of pleadings and any other documents and for the acceptance of payments and remittances by electronic means. Nothing in this Code section shall be construed to prevent a clerk's acceptance of payments and remittances by electronic means under the clerk's own authority."

The 2019 amendment, effective May 7, 2019, rewrote paragraphs (2) and (3) of subsection (b).

Editor's notes. — Former Code Section 15-6-11, pertaining to authority of certain courts to sit in sections, the clerk's duties, and the discretion of judges, was repealed by Ga. L. 1981, p. 3, § 2, effective April 1, 1982. The former Code section was based on Ga. L. 1878-79, p. 149, §§ 1-4; Code 1882, §§ 247a, 247b, 247c, 247d; Civil Code 1895, §§ 4335, 4336, 4337, 4338; Civil Code 1910, §§ 4866, 4867, 4868, 4869.

Law reviews. — For article on the 2018 amendment of this Code section, see 35 Ga. St. U.L. Rev. 45 (2018). For article on the 2019 amendment of this Code section, see 36 Ga. St. U.L. Rev. 1 (2019).

RESEARCH REFERENCES

C.J.S. — 21 C.J.S., Courts, § 11 et seq.

15-6-11.1. Superior court judges performing ordered military duty.

(a) Any judge of superior court who is performing ordered military duty, as defined in Code Section 38-2-279, shall be eligible for reelection in any primary or general election which may be held to elect a successor for the next term of office and may qualify in absentia as a candidate for reelection to such office. The performance of ordered military duty shall not create a vacancy in such office during the term for which such judge was elected.

(b) Where the giving of written notice of candidacy is required, any judge of superior court who is performing ordered military duty may deliver such notice by mail, agent, or messenger to the proper elections official. Any other act required by law of a candidate for public office may, during the time such official is on ordered military duty, be performed by an agent designated in writing by the absent public official.

History. — Code 1981, § 15-6-11.1, enacted by Ga. L. 2008, p. 540, § 2/SB 11.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2008, Code Section 15-6-11, as enacted by Ga. L. 2008, p. 540, § 2, was redesignated as Code Section 15-6-11.1.

Pursuant to Code Section 28-9-5, in 2008, a comma was deleted following "office" in the first sentence of subsection (a).

15-6-12. Judges' jurisdiction coextensive with limits of state; authority when serving in other circuits.

(a) The jurisdiction of the judges of the superior courts is coextensive with the limits of this state; they may act in circuits other than their own when authorized by law, but they are not compelled to alternate unless required by law.

(b) The authority granted in subsection (a) of this Code section to each judge in his own circuit may be exercised by any judge of another circuit whenever the resident judge is absent from the circuit so that the business thereof cannot be done as speedily as necessary, or is indisposed, or is interested in a case, or is laboring under any disqualification or inability to serve, or in case the circuit is, from any cause, without a judge. The grounds for the exercise of such authority should be shown.

History. — Laws 1806, Cobb's 1851 Digest, p. 460; Code 1863, §§ 238, 244; Code 1868, §§ 232, 238; Code 1873, §§ 242, 248, 5089; Code 1882, §§ 242, 248, 5136; Civil Code 1895, §§ 4316, 4322, 5839; Civil Code 1910, §§ 4832, 4845, 4851; Code 1933, §§ 24-2613, 24-2617.

Cross references. — Time and place of trial, § 9-11-40.

JUDICIAL DECISIONS

Superior court judge may preside in any circuit. Daniels v. Towers, 79 Ga. 785, 7 S.E. 120 (1887).

Superior court judges may alternate though neither are disqualified. Harrison & Co. v. Hall Safe & Lock Co., 64 Ga. 558 (1880).

Powers to which Code section applicable. — This Code section is applicable to the power of applying for mandamus. Glover v. Morris, 122 Ga. 768, 50 S.E. 956 (1905).

Former Civil Code 1895, § 5839 (see now O.C.G.A. § 15-6-12) was expressly applicable to powers conferred on judge by former Civil Code 1895, § 4321 (see now O.C.G.A. § 15-6-9). Burge v. Mangum, 134 Ga. 307, 67 S.E. 857 (1910).

This section is applicable to the power of granting injunctions. Carson v. Ennis, 146 Ga. 726, 92 S.E. 221, 1917E L.R.A. 650 (1917).

Designation of judge to act if resident judge is sick is not required. Pendergrass v. Duke, 144 Ga. 839, 88 S.E. 198 (1916).

Disqualification may be waived by all parties. — When the judge is disqualified because of a relationship "to any party interested in the result of the case or matter," the judge's disqualification may be waived by all of the parties, and in the absence of such a waiver, the judge of any other circuit, who is qualified, may act and preside for the disqualified resident judge. Howard v. Warren, 206 Ga. 838, 59 S.E.2d 503 (1950).

Effect of disqualification. — If the superior court judge was disqualified, the superior court judge of the other circuit may pass on an injunction without the previous designation by the disqualified judge. Galloway v. Mitchell County Elec.

Membership Corp., 190 Ga. 428, 9 S.E.2d 903 (1940).

Superior court judge of another circuit may at interlocutory hearing pass chambers order on demurrer (now motion to dismiss). Galloway v. Mitchell County Elec. Membership Corp., 190 Ga. 428, 9 S.E.2d 903 (1940).

Complaint seeking extraordinary relief must be sanctioned by resident judge of circuit before the complaint can be filed unless the resident judge is disqualified to act, and, in case of the judge's disqualification, by the judge of some other circuit, who is qualified. Howard v. Warren, 206 Ga. 838, 59 S.E.2d 503 (1950).

Example of interested judge. — Judge of the superior court, who is a depositor creditor of an insolvent bank in charge of the Superintendent of Banks (now commissioner of banking and finance) for purposes of liquidation, is pecuniarily interested and therefore disqualified to act in an action for accounting, injunction, and receiver, instituted by a principal against an agent and the superintendent (now commissioner), seeking to recover an interest in dividends due to an estate in control of the agent for the principal, which the superintendent (now commissioner) has wrongfully applied to the individual debt of the agent, and enjoining other similar impending misapplication of dividends due to the estate. Gaskins v. Gaskins, 181 Ga. 124, 181 S.E. 850 (1935).

Administrative judge may obtain senior judge from another district. — O.C.G.A. § 15-5-5(2) does not prevent an administrative judge from obtaining the services of a senior judge from outside the administrative district because superior court judges, including senior judges, have jurisdiction to act in any circuit other than their own when the resident judge is disqualified. Shoemake v. Woodland Equities, Inc., 252 Ga. 389, 313 S.E.2d 689 (1984).

Judge serving in another circuit may sign sentence as member of circuit. — If it appeared from the certificate of a judge overruling a motion to vacate a sentence that the judge was presiding in Fulton Superior Court at the time of resentencing, the passing and signing of the sentence by the judge was valid and the fact that the judge signed with the addition of the letters "A.J.C.," meaning the Atlanta Judicial Circuit, where the judge was at that time presiding, presented no reason why the sentence should have been set aside. Fluker v. State, 187 Ga. 418, 1 S.E.2d 29 (1939).

Court having jurisdiction may invalidate fraudulent judgment. — An exception to the general rule, that the several superior courts of this state have no extraterritorial jurisdiction enabling the court of one county to set aside a judgment rendered by that of a different county, is the rule which provides that a court having jurisdiction of the person of one who obtained a judgment by fraud may invalidate and set aside such judgment. Boroughs v. Belcher, 211 Ga. 273, 85 S.E.2d 422 (1955).

Absence of regular judge does not appear on record. — Since the record of a certiorari case showed that the petition was sanctioned by the judge of another circuit than that in which the case was pending, but did not show that the judge of the latter circuit was absent therefrom, but, upon a subsequent motion to dismiss the writ on that ground before the resident judge certified that the resident judge had, in fact, been absent and overruled the motion, such ruling was not error. Prescott v. Carter, 76 Ga. 103 (1885).

Motions to dismiss. — Petition presented to judge acting under authority of this section not subject to demurrer (now motion to dismiss) on ground that the petition did not allege that judge had jurisdiction. Roberson v. Orr, 158 Ga. 34, 122 S.E. 781 (1924).

Courts have no compulsory process outside boundaries of this state. Wallace v. State, 134 Ga. App. 708, 215 S.E.2d 703 (1975).

Cited in Cobb v. State, 59 Ga. App. 695, 2 S.E.2d 116 (1939); First Nat'l Ins. Co. of Am. v. Thain, 107 Ga. App. 100, 129 S.E.2d 381 (1962); Stokes v. Fortson, 234 F. Supp. 575 (N.D. Ga. 1964); Fuller v. Williams, 150 Ga. App. 730, 258 S.E.2d 538 (1979); Williams v. Fuller, 244 Ga. 846, 262 S.E.2d 135 (1979); Luangkhot v. State, 292 Ga. 423, 736 S.E.2d 397 (2013).

OPINIONS OF THE ATTORNEY GENERAL

Power of nonresident judge to hear matters when originating court in vacation. — Former Code 1933, §§ 24-2613 and 24-2617 (see now O.C.G.A. § 15-6-12), when read in light of former Code 1933, § 24-2616 and Ga. L. 1968, p. 1104, § 9 (see now O.C.G.A. §§ 9-11-40(b) and 15-6-9), confers authority on the nonresident superior court judge in chambers in the judge's own circuit to hear and determine by interlocutory or final judgment, in accordance with Ga. L. 1968, p. 1104, § 9, any matter in a case from the originating superior court which arises while the originating superior court is in vacation. (However, see now O.C.G.A. § 15-6-19.) 1975 Op. Att'y Gen. No. U75-68.

RESEARCH REFERENCES

Am. Jur. 2d. — 46 Am. Jur. 2d, Judges, § 21 et seq.

C.J.S. — 48A C.J.S., Judges, §§ 65, 79, 83.

ALR. — Authority of judge in respect of unfinished business of another judge, 54 A.L.R. 952; 58 A.L.R. 848.

Right of party, in course of litigation, to challenge title or authority of judge or of person acting as judge, 144 A.L.R. 1207.

15-6-13. Disqualified judge to procure replacement; failure as ground of impeachment.

(a) When from any cause a judge of the superior court is disqualified from presiding in a matter, he shall procure the services of another superior court judge to try the matter, even if he has to call for a special term of court for that purpose.

(b) Failure of a judge to comply with subsection (a) of this Code section within a reasonable time, when it is in his power to do so, is a ground of impeachment.

History. — Orig. Code 1863, §§ 246, 247; Code 1868, §§ 240, 241; Code 1873, §§ 250, 251; Code 1882, §§ 250, 251; Civil Code 1895, §§ 4326, 4328; Civil Code 1910, §§ 4855, 4857; Code 1933, §§ 24-2623, 24-2624.

Cross references. — Impeachment, Ga. Const. 1983, Art. III, Sec. VII. Judge's exercise of power outside own court, Ga. Const. 1983, Art. VI, Sec. I, Para. III. Recusal, Uniform Superior Court Rules, Rule 25.

Law reviews. — For article, "Judicial Retirement, Discipline and Removal," see 3 Ga. St. B. J. 197 (1966). For article discussing the inefficiency of mandamus and impeachment as remedies for judicial inaction, see 5 Ga. St. B. J. 467 (1969).

JUDICIAL DECISIONS

Former Civil Code 1910, §§ 4855, 4856, 4857, and 4858 (see now O.C.G.A. §§ 15-6-13 and 15-6-14) provided three methods to secure judge of another circuit, if the resident judge is disqualified for any of the reasons specified by former Civil Code 1910, § 4642 (see now O.C.G.A. § 15-1-8). Shuford v. Shuford, 141 Ga. 407, 81 S.E. 115 (1914).

Former Civil Code 1895, §§ 4326 and 4328 (see now O.C.G.A. § 15-6-13) did not apply to proceedings originating and triable in chambers, but former Civil Code 1895, §§ 4316, 4322, and 5839 (see now O.C.G.A. § 15-6-12) governed such cases. Glover v. Morris, 122 Ga. 768, 50 S.E. 956 (1905); Burge v. Mangum, 134 Ga. 307, 67 S.E. 857 (1910)

(decided prior to Ga. Const. 1976, Art. VI, Sec. IV, Para. VIII; see Ga. Const. 1983, Art. VI, Sec. I, Para. VI).

Third judge may hear rule nisi motion granted by replacement judge. — If rule nisi on motion is granted by a judge presiding for a regular judge, the motion may be heard by still another judge, procured by the disqualified judge of the circuit. Allen v. State, 102 Ga. 619, 29 S.E. 470 (1897).

Duty of judge limited if motion to recuse. — When a trial judge in a case pending in that court is presented with a motion to recuse accompanied by an affidavit, the judge's duty will be limited to passing upon the legal sufficiency of the affidavit, and if, assuming all the facts alleged in the affidavit to be true, recusal would be warranted, then another judge must be assigned to hear the motion to recuse. State v. Fleming, 245 Ga. 700, 267 S.E.2d 207 (1980).

If trial judge is disqualified in case, it is the trial judge's duty to provide a qualified judge. Dupriest v. Reese, 104 Ga. App. 805, 123 S.E.2d 161 (1961).

Exercise of discretion by disqualified judge with regard to selection of successor judge is properly limited to the disqualified judge's participation in the adoption by the judicial district of an impartial procedure for the selection. Ferry v. State, 245 Ga. 698, 267 S.E.2d 1 (1980).

This section does not apply to multi-judge judicial circuits and consequently a successor judge can be selected from the disqualified judge's own judicial circuit or judicial administrative district. Ferry v. State, 245 Ga. 698, 267 S.E.2d 1 (1980).

Assignment to judge in another circuit not required. — While this section empowers a judge to assign any case in which the judge is disqualified for any reason, there is no requirement that the case must be assigned to a judge in another circuit if there is a judge in the disqualified judge's own circuit who is not disqualified from hearing the case. Ferry v. State, 151 Ga. App. 436, 260 S.E.2d 351 (1979), aff'd, 245 Ga. 698, 267 S.E.2d 1 (1980).

State court judge may preside when properly designated. — State court judge is a member of the bar, and when properly designated, is competent to preside in the seat of a senior superior court judge who is unable to preside due to illness. Fielding v. Fielding, 236 Ga. 114, 223 S.E.2d 85 (1976).

Senior judge without jurisdiction to certify bill of exceptions. — Because a superior court judge emeritus (now senior judge) has not been granted constitutional or statutory authority to serve as a superior court judge, except when the Governor is authorized to call upon the judge to do so or the judge is selected to serve as such in a civil case under former Code 1933, § 24-2625 or § 24-2626 (see now O.C.G.A. § 15-6-13 or O.C.G.A. § 15-6-14), it necessarily follows that a superior court judge emeritus (now senior judge) not within these exceptions is wholly without jurisdiction or power to certify a bill of exceptions (see now O.C.G.A. §§ 5-6-49 and 5-6-50) in a case tried by a superior court judge. Chambers v. Wynn, 217 Ga. 381, 122 S.E.2d 571 (1961).

Cited in Paulk v. Smith, 56 Ga. App. 53, 192 S.E. 68 (1937); Cobb v. State, 59 Ga. App. 695, 2 S.E.2d 116 (1939).

RESEARCH REFERENCES

Am. Jur. 2d. — 46 Am. Jur. 2d, Judges, §§ 80 et seq., 168 et seq., 209 et seq.

C.J.S. — 48A C.J.S., Judges, § 163.

ALR. — Power of judge pro tempore or special judge, after expiration of period for which he was appointed, to entertain motion or assume further jurisdiction in case previously tried before him, 134 A.L.R. 1129.

Power of court to remove or suspend judge, 53 A.L.R.3d 882.

Misconduct in capacity as judge as basis for disciplinary action against attorney, 57 A.L.R.3d 1150.

Substitution of judge in state criminal trial, 45 A.L.R.5th 591.

15-6-14. Selection of replacement judge when disqualified judge fails to act.

(a) When from any cause the judge of the superior court or any city court is disqualified from presiding in any civil case and has failed to procure the services of a judge to try the case, then the parties litigant, by consent, may select any attorney of this state to preside in the case; the attorney so selected, when the consent is entered on the minutes, shall exercise all the functions of a judge in that case. Any senior judge of the superior courts may likewise be selected.

(b) In all cases mentioned in subsection (a) of this Code section, when the case or cases are reached in their order on the docket without an agreement by the parties as to the selection of an attorney to preside as judge, it shall be the duty of the clerk of the superior court or in his absence, the deputy clerk to select some competent attorney practicing in that court, who shall likewise have authority and preside in the case as aforesaid. Any senior judge of the superior courts may likewise be selected.

History. — Ga. L. 1878-79, p. 28, §§ 1, 2; Code 1868, § 241; Code 1873, §§ 250, 252; Code 1882, §§ 250, 252; Civil Code 1895, §§ 4327, 4329; Civil Code 1910, §§ 4856, 4858; Code 1933, §§ 24-2625, 24-2626; Ga. L. 1958, p. 295, §§ 1, 2.

History of Code section. — This Code section is partly derived from the decision in Steam Laundry Co. v. Thompson, 91 Ga. 47, 16 S.E. 198 (1892).

JUDICIAL DECISIONS

Constitutionality. — This section was not violative of either the letter or the spirit of the Constitution. Henderson v. Pope, 39 Ga. 361 (1869); Drawdy v. Littlefield, 75 Ga. 215 (1885); Bivins v. Bank of Richland, 109 Ga. 342, 34 S.E. 602 (1899).

There is no provision for appointment of member of the bar as judge pro hac vice in a criminal case. Castleberry v. State, 68 Ga. 49 (1881), overruled on other grounds, Ricks v. State, 303 Ga. 567, 814 S.E.2d 318, 2018 Ga. LEXIS 288 (2018).

Clerk need not attempt to secure services of other judge. — It is not essential to the validity of the act of the clerk in selecting the attorney to try the case that an effort should have been made by the judge to procure the services of another judge; or that the parties must have attempted and failed to agree in the selection of an attorney to try the case; or that the order appointing the attorney should first be spread upon the minutes of the court; or that one of the parties who was absent at the time of the selection by the clerk was not notified by the adversary of the party's intention to demand that the clerk select an attorney to preside in the case. Beck v. Henderson, 76 Ga. 360 (1886); Steam Laundry Co. v. Thompson, 91 Ga. 47, 16 S.E. 198 (1892); Robinson v. McArthur, 166 Ga. 611, 144 S.E. 19 (1928).

Judge pro hac vice cannot be selected by disqualified judge. Bedingfield v. First Nat'l Bank, 4 Ga. App. 197, 61 S.E. 30 (1908).

Deputy clerk may make appointment if clerk absent. Steam Laundry Co. v. Thompson, 91 Ga. 47, 16 S.E. 198 (1892).

State court judge may preside when properly designated. — State court judge is a member of the bar, and when properly designated, is competent to

preside in the seat of a senior superior court judge who is unable to preside due to illness. Fielding v. Fielding, 236 Ga. 114, 223 S.E.2d 85 (1976).

Selecting senior judge to hear case. — This section authorized parties' litigant to select any judge of superior courts emeritus (now senior judge) to preside in the cause. Chambers v. Wynn, 217 Ga. 381, 122 S.E.2d 571 (1961).

Senior judge without jurisdiction to certify bill of exceptions. — Because a superior court judge emeritus (now senior judge) has not been granted constitutional or statutory authority to serve as a superior court judge, except when the Governor is authorized to call upon the judge to do so or the judge is selected to serve as such in a civil case under former Code 1933, §§ 24-2625, 24-2626, §§ 24-2623, or 24-2624 (see now O.C.G.A. § 15-6-13 or O.C.G.A. § 15-6-14) it necessarily followed that a superior court judge emeritus (now senior judge) not within these exceptions is wholly without jurisdiction or power to certify a bill of exceptions (see now O.C.G.A. §§ 5-6-49 and 5-6-50) in a case tried by a superior court judge. Chambers v. Wynn, 217 Ga. 381, 122 S.E.2d 571 (1961).

Judge pro hac vice has all powers of regular judge over case wherein the judge presides, not only with respect to the jury trial of the case, but also with respect to matters of review and appeal, and other matters subsequent to the judgment. Norris v. Pollard, 75 Ga. 358 (1885); Gainesville Buggy & Wagon Co. v. Morrow, 23 Ga. App. 268, 98 S.E. 100 (1919).

Judge pro hac vice has all powers of regular judge when, by consent, verdict was not received by regular judge. Roberts v. Bank of LaGrange, 23 Ga. App. 660, 99 S.E. 145 (1919), later appeal, 25 Ga. App. 343, 103 S.E. 176 (1920).

Judge pro hac vice may hear motion for new trial in superior court. Clayton & Co. v. Wallace, 41 Ga. 268 (1870).

Decision subject to review. — Writ of error (see now O.C.G.A. §§ 5-6-49 and 5-6-50) will lie from the Supreme Court to correct such errors as may be committed by the pro hac vice judge holding the superior court in a case in which the judge of the circuit is an interested party. Henderson v. Pope, 39 Ga. 361 (1869).

Objection to person appointed by clerk to act as judge must be made to that judge. Kimbrough v. Pitts, 63 Ga. 496 (1879).

Necessity of appearance of appointment on records. — If appointment of judge pro hac vice does not appear on the record, the judge's refusal to dismiss the case will be reversed on appeal. Worsham v. Murchison, 66 Ga. 715 (1881).

Attorney acting as judge pro hac vice not required to be sworn as such. Reeves v. Graffling, 67 Ga. 512 (1881).

Cited in Paulk v. Smith, 56 Ga. App. 53, 192 S.E. 68 (1937); Dupriest v. Reese, 104 Ga. App. 805, 123 S.E.2d 161 (1961); Nims v. Otter, 188 Ga. App. 516, 373 S.E.2d 396 (1988).

RESEARCH REFERENCES

Am. Jur. 2d. — 46 Am. Jur. 2d, Judges, §§ 80 et seq., 168 et seq., 209 et seq.

C.J.S. — 48A C.J.S., Judges, § 163.

ALR. — Power of judge pro tempore or special judge, after expiration of period for which he was appointed, to entertain motion or assume further jurisdiction in case previously tried before him, 134 A.L.R. 1129.

Right of party, in course of litigation, to challenge title or authority of judge or of person acting as judge, 144 A.L.R. 1207.

15-6-15. Assignment by Governor of alternate for disabled judge; duty of judge assigned.

(a) Whenever it is satisfactorily made to appear to the Governor that any regular term of the superior court, as fixed by law, in any county, will not be held or continued in session because of the bodily or mental

sickness or other disability of the judge of the superior court of the circuit in which such county is located and when it is likewise made to appear that any special term of the superior court, in any county, for like causes, will not be held or continued in session, it shall be the duty of the Governor to name and assign another superior court judge to proceed to the county and to hold the regular or special term of the court. However, no judge shall be named or assigned to hold such court when the time fixed for holding the same conflicts with the time fixed by law for the holding of any regular or special term already called by him in his circuit.

(b) It shall be the duty of any judge of the superior courts, when named and assigned by the Governor as provided in subsection (a) of this Code section, to proceed to the county where the court in question is to be held and to open and hold the same in the manner prescribed by law or by the order of the presiding judge of that circuit in the calling of a special term.

History. — Ga. L. 1905, p. 87, §§ 1, 2; Civil Code 1910, §§ 4842, 4843; Code 1933, §§ 24-2610, 24-2611; Ga. L. 1990, p. 8, § 15.

JUDICIAL DECISIONS

Former Civil Code 1910, § 4842 (see now O.C.G.A. § 15-6-15) was cumulative and not intended to supplant former Civil Code 1910, § 4851 (see now O.C.G.A. § 15-6-12) when provisions were made for holding court by judge of another circuit under certain circumstances. Pendergrass v. Duke, 144 Ga. 839, 88 S.E. 198 (1916).

Cited in Bearden v. Donaldson, 141 Ga. 529, 81 S.E. 441 (1914); Stokes v. Fortson, 234 F. Supp. 575 (N.D. Ga. 1964); Ferry v. State, 245 Ga. 698, 267 S.E.2d 1 (1980).

RESEARCH REFERENCES

Am. Jur. 2d. — 46 Am. Jur. 2d, Judges, §§ 206, 226 et seq.

C.J.S. — 48A C.J.S., Judges, §§ 37, 40, 41.

ALR. — Powers of judge who has attained constitutional age limit, 25 A.L.R. 27.

Authority of judge in respect of unfinished business of another judge, 54 A.L.R. 952; 58 A.L.R. 848.

Illness or incapacity of judge, prosecuting officer, or prosecution witness as justifying delay in bringing accused speedily to trial — state cases, 78 A.L.R.3d 297.

Substitution of judge in state criminal trial, 45 A.L.R.5th 591.

Power of successor or substituted judge, in civil case, to render decision or enter judgment on testimony heard by predecessor, 84 A.L.R.5th 399.

15-6-16. No authority when absent from state.

No judge of the superior courts shall have authority to perform any judicial act required of him by law when he is beyond the jurisdiction of this state.

History. — Orig. Code 1863, § 248; Code 1868, § 242; Code 1873, § 253; Code 1882, § 253; Civil Code 1895, § 4330; Civil Code 1910, § 4859; Code 1933, § 24-2627.

JUDICIAL DECISIONS

Judge of a superior court of this state has no authority to do any official act required by the laws of this state when the judge is not within the jurisdiction of this state. Buchanan v. Jones, 12 Ga. 612 (1853).

RESEARCH REFERENCES

Am. Jur. 2d. — 20 Am. Jur. 2d, Courts, § 16 et seq.
C.J.S. — 48A C.J.S., Judges, §§ 63, 65.

15-6-17. Time and place of holding court generally; habeas corpus and other nonjury proceedings; satellite courthouses.

(a) One or more of the judges of the superior courts must hold the superior court of each circuit at the county site and courthouse, if any, of each county in the respective judicial circuit or at some other place at the county site designated by law not less than twice each year, at such times as are prescribed by the General Assembly; provided, however, that, in any county in which a state correctional institution, county correctional institution, or jail is located, one or more judges of the superior court of such county shall be authorized to conduct habeas corpus and other nonjury proceedings pursuant to Article 2 of Chapter 14 of Title 9 involving inmates of such state correctional institution, county correctional institution, or jail in a suitable room at the institution. Nothing in this subsection shall be construed or interpreted to require any judge to conduct habeas corpus and other nonjury proceedings pursuant to Article 2 of Chapter 14 of Title 9 involving inmates of such state correctional institution, county correctional institution, or jail nor to establish any right of any inmate of any such correctional institution to have any habeas corpus and other nonjury proceedings pursuant to Article 2 of Chapter 14 of Title 9 involving inmates of such correctional institutions.

(b) Notwithstanding any other provision of law to the contrary, in a county where the county site is located in an unincorporated area of the county, the county governing authority may construct one or more permanent satellite courthouses within the county and designate each such structure as a courthouse annex or otherwise establish each such structure as an additional courthouse to the courthouse located at the county site. The judges of the superior court in such county may hold sessions of superior court and conduct all other superior court business at the additional courthouse locations or at the courthouse at the county

site. One or more of the judges of the superior court must hold a session of superior court at the county site not less than twice each year. All actions taken by a superior court judge at any additional courthouse in accordance with this subsection shall be fully valid and binding as though taken and performed at the county site.

History. — Laws 1799, Cobb's 1851 Digest, p. 457; Code 1863, §§ 237, 3161; Code 1868, §§ 237, 3173; Code 1873, §§ 241, 3241; Code 1882, §§ 241, 3241, 5146; Civil Code 1895, §§ 4315, 4340; Penal Code 1895, § 793; Civil Code 1910, §§ 4839, 4871; Penal Code 1910, § 793; Code 1933, §§ 24-2609, 24-3001; Ga. L. 1985, p. 440, § 1; Ga. L. 1986, p. 318, § 1; Ga. L. 1998, p. 1159, § 1.

Cross references. — Frequency of holding court, Ga. Const. 1983, Art. VI, Sec. I, Para. VI. Length of terms of courts, § 15-6-19.

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Editor's notes. — In light of the similarity of the statutory provisions, annotations decided prior to the amendment to Code Section 15-6-19 passed by Ga. L. 1972, p. 713, which changed the terms of court, are included in the annotations for this Code section.

Judgment not void if rendered at courthouse but not in regular court room. Walton v. Wilkinson Bolton Co., 158 Ga. 13, 123 S.E. 103 (1924) (decided prior to passage of Ga. L. 1972, p. 713).

Local Acts may provide for varying number of sessions. Burge v. Mangum, 134 Ga. 307, 67 S.E. 857 (1910); Spooner v. Coachman, 18 Ga. App. 705, 90 S.E. 373 (1916); Geer v. Bush, 146 Ga. 701, 92 S.E. 47 (1917) (decided prior to passage of Ga. L. 1972, p. 713).

Notice must be taken of meetings and adjournments of superior court. Rawson v. Powell, 36 Ga. 255 (1867) (decided prior to passage of Ga. L. 1972, p. 713).

Notice requirement rule applies though there may be no judge for circuit which embraces that place. Rutledge v. Bullock, 44 Ga. 23 (1871) (decided prior to passage of Ga. L. 1972, p. 713).

Limitation on place of holding court. — Judges of the superior courts must hold the superior courts of each circuit at the county site and courthouse (if any) of each county, or other place therein designated by law; and orders passed in one county on matters over which the superior court of another county has jurisdiction are mere nullities. Goodman v. Little, 96 Ga. App. 110, 99 S.E.2d 517 (1957) (decided prior to passage of Ga. L. 1972, p. 713).

Superior court without power on appeal in another county. — When certain appeals from the court of ordinary (now probate court) of one county are entered to the superior court of that county, the trial court is without jurisdiction to pass orders, or to hold hearings concerning such appeals in another county, and when upon appeal to the Court of Appeals error is assigned on such procedure, the orders so entered will be reversed. Goodman v. Little, 96 Ga. App. 110, 99 S.E.2d 517 (1957) (decided prior to passage of Ga. L. 1972, p. 713).

Effect of sitting in wrong county. — Charter granted by a court sitting in a county other than the one prescribed by law is void. Rogers v. Toccoa Power Co., 161 Ga. 524, 131 S.E. 517, 44 A.L.R. 534 (1926) (decided prior to passage of Ga. L. 1972, p. 713).

Grand jury is but an arm of superior court which sits within the county. Gates v. State, 73 Ga. App. 824, 38 S.E.2d 311 (1946) (decided prior to passage of Ga. L. 1972, p. 713).

Two superior courts not open on same day when one adjourning. — If the Superior Court of Pike County is adjourned on the third Monday in October and the Superior Court of Henry County is open on the same day, both being in the same circuit, the two courts are not in session at the same time. Perdue v. State, 134 Ga. 300, 67 S.E. 810 (1910) (decided prior to passage of Ga. L. 1972, p. 713).

Cited in Zugar v. State, 194 Ga. 285, 21 S.E.2d 647 (1942); Cadle v. State, 101 Ga. App. 175, 113 S.E.2d 180 (1960); Pruitt v. State, 123 Ga. App. 659, 182 S.E.2d 142 (1971); Dozier v. Norris, 241 Ga. 230, 244 S.E.2d 853 (1978).

RESEARCH REFERENCES

Am. Jur. 2d. — 20 Am. Jur. 2d, Courts, § 16 et seq.

C.J.S. — 21 C.J.S., Courts, § 149 et seq.

ALR. — Place of holding sessions of trial court as affecting validity of its proceedings, 18 A.L.R.3d 572.

15-6-18. Alternative locations.

(a) If for any cause it shall or may be impracticable to hold any session or sitting of any superior or state court at the courthouse or other place provided by law therefor, it shall be lawful to hold court and any session or sitting thereof at such place as the proper authorities of the county in and for which the court is to be held may from time to time provide for such purpose, provided that except as provided in subsection (b) of this Code section no session or sitting of any superior court may be held under this subsection at any place other than the county site of the county of such court.

(b) The provisions of this subsection shall apply only in a county in which there exists a state court with one or more courtrooms regularly utilized by the state court outside the county site. In any such county any session of superior court may be held outside the county site in a courtroom of the state court, subject to the following conditions and limitations:

(1) The senior judge or chief judge of superior court (such terms meaning the active judge who is senior in time of service) must enter a written order for such session of superior court to be so held outside the county site, and such order must incorporate a written finding that it is impracticable for the session of court to be held at the county site;

(2) A judge of the state court must enter a written order consenting for such session of superior court to be held in the courtroom of the state court;

(3) The holding of superior court sessions shall not affect the place of filing of documents to be filed with the superior court, except for documents filed in open court which may be filed where the session of court is held; and

(4) Any state court making courtroom space available to the superior court under this subsection shall be authorized under the same rules to hold sessions of state court in facilities of the superior court.

(c) Notwithstanding the provisions of subsections (a) and (b) of this Code section:

(1) In each county of this state having a population of not more than 50,000 according to the United States decennial census of 1990 or any future such census, if for any cause it shall or may be impractical to hold any session or sitting of any superior or state court at the courthouse or other place provided by law therefor or if it should appear to the governing authority of the county that the best interest of the public would be served by the furnishing of alternate or additional facilities for the holding of any session or sitting of any superior or state court, it shall be lawful to hold court and any session or sitting thereof at such place or places as the governing authority of the county in and for which the court is to be held may from time to time, by appropriate resolution, provide for such purpose, provided that no session or sitting of any superior court or state court may be held under this subsection at any place that is not open to and accessible by the public; provided, further, that no criminal jury trial shall be conducted in such alternate or additional facility unless such location is a facility owned or leased by the governing authority of the county; and

(2) In each county of this state where the county site is located in an unincorporated area of the county and the governing authority of such county determines by appropriate resolution that the best interest of the citizens of such county would be served by the construction of a courthouse annex or satellite courthouse outside the county site, it shall be lawful to hold any session or sitting of superior or state court or grand jury and to conduct all other related business of the courts at such annex or satellite courthouse.

(d) All acts of a superior court or state court done at a place provided therefor by the county authorities, other than at the county courthouse or other place of holding such court as fixed by law, shall have the same force and effect as if the same had been done at the regular courthouse or other place fixed by law for the holding of such court, including the satisfaction of the requirements of Code Section 15-6-17.

History. — Ga. L. 1896, p. 50, §§ 1, 2; Civil Code 1910, §§ 4840, 4841; Code 1933, §§ 24-3003, 24-3004; Ga. L. 1988, p. 259, § 1; Ga. L. 1994, p. 1052, § 2; Ga. L. 1998, p. 1159, § 2; Ga. L. 2012, p. 993, § 1/SB 50.

Law reviews. — For annual survey on criminal law, see 64 Mercer L. Rev. 83 (2012).

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Consent required to conduct criminal jury trial in alternate or additional facility. — Because O.C.G.A. § 15-6-18(c)(1) expressly states that no

criminal jury trial shall be conducted in such alternate or additional facility without the consent of the accused, the plain language of § 15-6-18(c)(1) requires that the accused's consent be obtained in order to conduct a criminal jury trial in an alternate or additional facility; while nothing in § 15-6-18(c)(1) requires that the accused's consent be in writing, in order for the appellate courts to verify that the state has complied with this statutory mandate, an accused's consent to having his or her criminal jury trial conducted in an alternate or additional facility must be established by the record. Purvis v. State, 288 Ga. 865, 708 S.E.2d 283 (2011).

Failure to obtain defendant's consent not reversible error. — Although the supreme court found that the trial court violated O.C.G.A. § 15-6-18(c)(1) by holding the defendant's trial at a location other than the county courthouse without the defendant's consent, the error did not constitute reversible error because the defendant failed to allege harm or attempt to support a finding of such by evidence. Goodman v. State, 293 Ga. 80, 742 S.E.2d 719 (2013).

Validity of decisions at locations other than courthouse. — This section contemplated that cases tried at places other than at courthouse shall be valid. Davis v. State, 240 Ga. 763, 243 S.E.2d 12 (1978), cert. denied, 459 U.S. 1010, 103 S. Ct. 189, 74 L. Ed. 2d 153 (1982); Pittman v. State, 196 Ga. App. 864, 397 S.E.2d 302 (1990).

Waiver of error in holding trial at unauthorized location. — If trial held at unauthorized location, presence of counsel does not waive error. Bankers' Health & Life Ins. Co. v. James, 45 Ga. App. 346, 164 S.E. 684 (1932).

Defendant's failure to object at trial to the propriety of holding trial in city hall rather than in superior court building barred the defendant from raising the issue for the first time on appeal. Jefferson v. State, 196 Ga. App. 770, 397 S.E.2d 129 (1990).

Grand jury is but an arm of superior court which sits within the county. Gates v. State, 73 Ga. App. 824, 38 S.E.2d 311 (1946).

Criminal trial held in county jail. — It was improper to hold the defendant's trial at a county jail because no consent was obtained from the defendant for conducting the criminal jury trial in a courtroom located inside the county jail, i.e., an alternate or additional facility under O.C.G.A. § 15-6-18(c)(1); Drake v. State, 231 Ga. App. 776 (1998), is also overruled. Purvis v. State, 288 Ga. 865, 708 S.E.2d 283 (2011).

No harm shown. — Although there was no record that the County Board of Commissioners authorized moving defendant's trial to a courthouse in a different county, there was no evidence that the conduct of the trial was negatively impacted. Dubose v. State, 294 Ga. 579, 755 S.E.2d 174 (2014).

Cited in Cook v. State, 119 Ga. 108, 46 S.E. 64 (1903); Cadle v. State, 101 Ga. App. 175, 113 S.E.2d 180 (1960); Pruitt v. State, 123 Ga. App. 659, 182 S.E.2d 142 (1971).

RESEARCH REFERENCES

Am. Jur. 2d. — 20 Am. Jur. 2d, Courts, § 16 et seq.

C.J.S. — 21 C.J.S., Courts, § 151 et seq.

15-6-19. Length of terms of courts.

The regular terms of the superior and state courts shall continue until the commencement of the next regular term, at which time they shall stand adjourned.

History. — Ga. L. 1887, p. 58, § 1; Civil Code 1895, § 4346; Ga. L. 1896, p. 47, § 1; Ga. L. 1909, p. 97, § 1; Civil Code 1910, § 4877; Code 1933, § 24-3010; Ga. L. 1972, p. 713, § 1.

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This section was directory, and not mandatory. Horkan v. Beasley, 11 Ga. App. 273, 75 S.E. 341 (1912); Luke v. Luke, 32 Ga. App. 738, 124 S.E. 556 (1924).

Motion for new trial goes to next term. — Preceding term of the court stands adjourned by operation of law five days prior to the commencement of the succeeding term; and a motion for new trial made in one term automatically goes over to the next regular term, and the judge is without jurisdiction to dismiss the motion in vacation. Marshall v. State, 34 Ga. App. 434, 129 S.E. 665 (1925) (decided prior to Ga. Const. 1976, Art. VI, Sec. IV, Para. VIII; see now Ga. Const. 1983, Art. VI, Sec. I, Para. VI).

Power to modify final judgment during term. — Trial court has the power to modify a final judgment including a fee award in a divorce case during the term in which the judgment was entered. Haim v. Haim, 251 Ga. 618, 308 S.E.2d 179 (1983).

Attempt to retain jurisdiction of final order beyond term. — Attempt to retain jurisdiction of a final order to the extent of allowing any party to file objections and thereby have the matter reconsidered by the court beyond the term in which the final order is entered is contrary to law and is a nullity. Long v. Long, 247 Ga. 624, 278 S.E.2d 370 (1981).

No power to modify merits of decree after term. — After the expiration of the term at which a decree was entered, it is out of the power of the court to modify and revise the decree in any matter of substance or in any manner affecting the merits. Long v. Long, 247 Ga. 624, 278 S.E.2d 370 (1981).

Continuation of term until five days before next scheduled term. — Term of the superior court of a county at which an original divorce and alimony decree is entered continues until five days before commencement of the next regularly scheduled term, unless adjourned. Dover v. Dover, 205 Ga. 241, 53 S.E.2d 492 (1949) (decided prior to the 1972 amendment to this Code section).

Extra trial week scheduled during a term of court does not create a new term of court; terms of court are created by statute. Proveaux v. State, 198 Ga. App. 119, 401 S.E.2d 12 (1990), cert. denied, 198 Ga. App. 898, 401 S.E.2d 12 (1991).

Release of jurors not adjournment. — Mere fact that the court released the jurors in a criminal case did not amount to an express adjournment of the term, especially since the trial court indicated at the hearing on defendant's motion for acquittal that, by releasing the jurors, the court did not intend to adjourn the term prematurely. Bailey v. State, 209 Ga. App. 390, 433 S.E.2d 610 (1993), overruled on other grounds, Walker v. State, 290 Ga. 696, 723 S.E.2d 894 (2012).

Cited in Carder v. Arundel Mtg. Co., 177 Ga. 74, 169 S.E. 302 (1933); Carder v. Arundel Mtg. Co., 47 Ga. App. 309, 170 S.E. 312 (1933); Cahoon v. Wills, 179 Ga. 195, 175 S.E. 563 (1934); Hall v. Hall, 185 Ga. 502, 195 S.E. 731 (1938); Adams v. Seay, 62 Ga. App. 589, 9 S.E.2d 117 (1940); Shivers v. Shivers, 206 Ga. 552, 57 S.E.2d 660 (1950); Bryning v. State, 86 Ga. App. 35, 70 S.E.2d 779 (1952); Armour & Co. v. Youngblood, 107 Ga. App. 505, 130 S.E.2d 786 (1963); Thornton v. Orkin Exterminating Co., 113 Ga. App. 43, 147 S.E.2d 21 (1966); Grage v. Venable, 114 Ga. App. 570, 151 S.E.2d 926 (1966); Stores, Inc. v. Kalfin, 226 Ga. 145, 173 S.E.2d 219 (1970); Wade v. State, 258 Ga. 324, 368 S.E.2d 482 (1988); Kirk v. State, 194 Ga. App. 801, 392 S.E.2d 249 (1990); Campbell v. State, 199 Ga. App. 25, 403 S.E.2d 882 (1991); Aspinwall v. State, 201 Ga. App. 203, 410 S.E.2d 388 (1991); McKnight v. State, 215 Ga. App. 899, 453 S.E.2d 38 (1994); Smith v. State, 263 Ga. App. 414, 587 S.E.2d 787 (2003); Johnson v. State, 264 Ga. App. 195, 590 S.E.2d 145 (2003).

RESEARCH REFERENCES

Am. Jur. 2d. — 20 Am. Jur. 2d, Courts, §§ 20, 21.

C.J.S. — 21 C.J.S., Courts, § 133 et seq.

15-6-20. Special terms.

The judges of the superior courts may, in their discretion, hold special terms of court in any county within their respective circuits when the business requires it to close the dockets and may, in the exercise of a sound discretion, cause new juries to be drawn for the same or may order the juries drawn for the regular term to give their attendance upon such special terms. The judges are authorized to hold special terms of court for the trial of criminal cases or for the disposition of civil business, or both, in any county of their circuits, at their discretion, and either to compel the attendance of grand or trial jurors of a previous term or to draw new jurors, according to law.

History. — Ga. L. 1861, p. 56, §§ 1, 2; Code 1863, § 3167; Ga. L. 1865-66, p. 59, § 1; Code 1868, § 3178; Code 1873, § 3245; Code 1882, § 3245; Ga. L. 1890-91, p. 74, § 1; Civil Code 1895, § 4345; Penal Code 1895, § 796; Civil Code 1910, § 4876; Penal Code 1910, § 796; Code 1933, § 24-3009.

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Editor's notes. — In light of the similarity of the statutory provisions, annotations decided prior to the amendment to Code Section 15-6-19 passed by Ga. L. 1972, p. 713, which changed the terms of court, are included in the annotations for this Code section.

Distinction between adjourned and special terms. — Distinction between an adjourned term and a special term lies in the fact that the latter is called after the adjournment of one regular term and before the time for the next regular term. McGinnis v. Ragsdale, 116 Ga. 245, 42 S.E.2d 492 (1902).

Special term is one that is called after the adjournment of a regular term and before the time for the next regular term. Proveaux v. State, 198 Ga. App. 119, 401 S.E.2d 12 (1990).

Distinction between special and regular terms. — Former Code 1933, § 24-3009 (see now O.C.G.A. § 15-6-20) referred to special terms, and former Code 1933, § 59-710 (see now O.C.G.A. § 15-12-127) referred to the regular terms and to counties where, by law, a court sits for two weeks. Peacock v. State, 53 Ga. App. 599, 186 S.E. 882 (1936).

Terms prescribed by law could not be considered special terms. — If the law provided for four terms without restriction to their being jury or non-jury, criminal or civil, and each of the four terms was prescribed by law, none of the terms could be considered a special term. Campbell v. State, 199 Ga. App. 25, 403 S.E.2d 882 (1991).

City courts may hold special terms if Acts creating the terms so provide. Brinson v. Tennessee Chem. Co., 32 Ga. App. 456, 123 S.E. 731 (1924).

Code section authorizes recall of grand jury. — This section authorized a judge, in the judge's discretion, to call a special term and to compel attendance of the grand jury that served at the April term, notwithstanding the term was called during the July term and the April term did not "immediately precede" the special term. Haden v. State, 176 Ga. 304, 168 S.E. 272 (1933).

Presumption of legality with respect to jury attendance. — If defen-

dant shows no error in the trial court's denial of defendant's challenge to the array with respect to orders that the juries drawn for the regular term give the juries' attendance upon adjourned terms, it is presumed that the trial court proceeded legally, since it is incumbent on the defendant to show that the trial court was not meeting pursuant to adjournment. Dickerson v. State, 151 Ga. App. 429, 260 S.E.2d 535 (1979).

Holding jurors over to adjourned session. — The trial judge may adjourn court and hold jurors over to adjourned session. Gunter v. State, 243 Ga. 651, 256 S.E.2d 341 (1979).

Referring to previously adjourned term on jury list. — If term is called as a special term, it is not illegal if it refers to a previously adjourned term on the list of jurors. Hulsey v. State, 172 Ga. 797, 159 S.E. 270 (1931).

Process and pleading of adjourned term is same as in regular term. Hodnett v. Stone, 93 Ga. 645, 20 S.E. 43 (1894).

Order for special term may be passed on day illegally set for convening of adjourned term, providing for a special session on that day. Walker v. O'Connor, 23 Ga. App. 22, 97 S.E. 276 (1918).

Effect of Code section on speedy trial provisions. — If defendant filed a demand for trial during the July 1986 term of the superior court and defendant was tried during the January 1987 term of court, i.e., during the second regular term of court following the term in which defendant's demand was filed, notwithstanding that special juries had been empanelled in the interim, pursuant to O.C.G.A. § 15-6-20, the defendant was given a trial before more than two regular terms of court were convened and adjourned after the term at which the demand was filed, as required by O.C.G.A. § 17-7-171. Wade v. State, 258 Ga. 324, 368 S.E.2d 482 (1988), cert. denied, 502 U.S. 1060, 112 S. Ct. 941, 117 L. Ed. 2d 111 (1992).

If a superior court has four successive terms, and if, in January, after the jury panels used in the regular November term had been excused, a "Special Term Jury Trial Calendar" was issued and jurors were summoned for January 30 for a murder trial commencing that day and continuing to February 1, the January trial was conducted in a special session of the November term, not in a separately called special term. Kirk v. State, 194 Ga. App. 801, 392 S.E.2d 249 (1990).

Cited in Harris v. State, 191 Ga. 243, 12 S.E.2d 64 (1940); Oliver v. Crawford, 194 Ga. 168, 21 S.E.2d 62 (1942); Green v. State, 246 Ga. 598, 272 S.E.2d 475 (1980).

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Drawing of grand jurors for special term. — This section did not require that grand jurors drawn for special term must be drawn at close of the regular term; to do so would greatly inhibit the court's use of special terms for the court's business. 1967 Op. Att'y Gen. No. 67-304.

Per diem charge by sheriff and clerk for attending transferred court. — Superior court of one county may be held in another county of the district, and sheriff and clerk of former county may charge per diem for attending superior court of their county. 1948-49 Op. Att'y Gen. p. 66.

RESEARCH REFERENCES

Am. Jur. 2d. — 20 Am. Jur. 2d, Courts, § 20.

C.J.S. — 21 C.J.S., Courts, § 142 et seq.

ALR. — Jurisdiction or power of grand jury after expiration of term of court for which organized, 75 A.L.R.2d 544.

15-6-21. Time for deciding motions; filing and notification; noncompliance as ground for impeachment.

(a) In a county with less than 100,000 inhabitants, it shall be the duty of the judge of the superior, state, or city court, unless providentially hindered or unless counsel for the plaintiff and the defendant agree in writing to extend the time, to decide promptly, within 30 days after the same have been argued before him or submitted to him without argument, all motions for new trials, injunctions, demurrers, and all other motions of any nature.

(b) In all counties with more than 100,000 inhabitants, it shall be the duty of the judge of the superior, state, or city court, unless providentially hindered or unless counsel for the plaintiff and the defendant agree in writing to extend the time, to decide promptly, within 90 days after the same have been argued before him or submitted to him without argument, all motions for new trials, injunctions, demurrers, and all other motions of any nature.

(c) When he or she has so decided, it shall be the duty of the judge to file his or her decision with the clerk of the court in which the cases are pending and to notify the attorney or attorneys of the losing party of his or her decision. Said notice shall not be required if such notice has been waived pursuant to subsection (a) of Code Section 9-11-5.

(d) If any judge fails or refuses, unless providentially hindered or unless counsel for the plaintiff and the defendant agree in writing to extend the time, to obey the provisions of subsections (a) through (c) of this Code section, or if any judge repeatedly or persistently fails or refuses to decide the various motions, demurrers, and injunctions coming before him in the manner provided by such subsections, such conduct shall be grounds for impeachment and the penalty therefor shall be his removal from office.

History. — Ga. L. 1898, p. 89, §§ 1, 2; Civil Code 1910, §§ 4864, 4865; Ga. L. 1916, p. 50, § 1; Code 1933, §§ 24-2620, 24-2621; Ga. L. 1982, p. 3, § 15; Ga. L. 1990, p. 8, § 15; Ga. L. 2001, p. 854, § 2.

Cross references. — Impeachment, Ga. Const. 1983, Art. III, Sec. VII. Motions, demurrers, special pleas, and similar items in criminal matters, Uniform Superior Court Rules, Rule 31.

Editor's notes. — Ga. L. 2001, p. 854, § 3, not codified by the General Assembly, provides that the amendment to subsection (c) shall apply to judgments or decisions entered on and after July 1, 2001.

Law reviews. — For article, "Judicial Retirement, Discipline and Removal," see 3 Ga. St. B. J. 197 (1966). For article discussing the inefficiency of mandamus and impeachment as remedies for judicial inaction, see 5 Ga. St. B. J. 467 (1969). For survey article on workers' compensation law, see 59 Mercer L. Rev. 463 (2007).

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General Consideration

Superior court judge is named as respondent. — Although there may occasionally appear to be a need to file an original petition in the Supreme Court to issue process in the nature of mandamus, and perhaps quo warranto or prohibition, if a superior court judge is named as the respondent, such as if the petitioner seeks to require the judge to enter an order in a matter allegedly pending more than 30 days in violation of subsection (a) of O.C.G.A. § 15-6-21, such a petition may in fact be filed in the appropriate superior court. Being the respondent, the superior court judge will be disqualified, another superior court judge will be appointed to hear and determine the matter, and the final decision may be appealed to the Supreme Court for review. Brown v. Johnson, 251 Ga. 436, 306 S.E.2d 655 (1983).

Failure to enter written ruling not error on discovery motion. — Trial court did not err by not entering a written ruling upon a debtor's motion for additional discovery since the trial court ruled on the first motion for additional discovery verbally, without objection, granting the debtor the additional discovery, and no objection was made contemporaneously with regard to the renewed motion when no written ruling was made. Murphy v. Varner, 292 Ga. App. 747, 666 S.E.2d 53 (2008).

Out of state attorney lacked standing. — Florida attorney who had been admitted pro hac vice to represent a defendant in a tire case, but whose duties were limited by the trial court due to the attorney's misleading statements, and whose client was later dismissed from the case, did not have standing to seek mandamus compelling the trial court to rule on motions under O.C.G.A. § 15-6-21(b) so the attorney could appeal the ruling as to the attorney's conduct. Fein v. Bessen, 300 Ga. 25, 793 S.E.2d 76 (2016).

Failure to notify of denial of motion to withdraw. — Judgment denying the appellant's request for reprieve from the appellant's guilty plea was vacated because the record did not show that the trial court notified the appellant of the denial of the motion to withdraw the guilty plea and also erred by refusing to grant the appellant an out-of-time appeal. Williams v. State, 339 Ga. App. 158, 793 S.E.2d 485 (2016).

Duty to notify satisfied. — Court's order denying the motion to set aside and re-enter the court's order denying the defendant's motion for a new trial contained findings supported by evidence in the record sufficient to support denial of the motion on the basis that the court satisfied the court's duty to notify under O.C.G.A. § 15-6-21(c), thus, the defendant's right to file an out-of-time appeal from the defendant's conviction on the traffic offenses expired 30 days after entry of the court's order granting the out-of-time appeal. McCurley v. State, 345 Ga. App. 856, 815 S.E.2d 188 (2018).

Cited in Columbia Fire Ins. Co. v. Sams & Co., 141 Ga. 641, 81 S.E. 856 (1914); Wright v. Moon, 30 Ga. App. 87, 116 S.E. 545 (1923); Burnett v. McDaniel & Co., 35 Ga. App. 367, 133 S.E. 268 (1926); Galloway v. Mitchell County Elec. Membership Corp., 190 Ga. 428, 9 S.E.2d 903 (1940); Cromer v. Cromer, 222 Ga. 365, 149 S.E.2d 804 (1966); Haynes v. State, 159 Ga. App. 34, 283 S.E.2d 25 (1981); Robinson v. Kemp Motor Sales, Inc., 185 Ga. App. 492, 364 S.E.2d 623 (1988); Ciprotti v. State, 187 Ga. App. 61, 369 S.E.2d 337 (1988); Shouse v. State, 189 Ga. App. 531, 376 S.E.2d 911 (1988); Morris v. Clark, 189 Ga. App. 228, 375 S.E.2d 616 (1989); Tucker Station, Ltd. v. Chalet I, Inc., 203 Ga. App. 383, 417 S.E.2d 40 (1992); Lee v. City of Rome, 866 F. Supp. 545 (N.D. Ga. 1994); Conklin v. Zant, 216

Ga. App. 357, 454 S.E.2d 159 (1995); Bonner v. Smith, 226 Ga. App. 3, 485 S.E.2d 214 (1997); Veasley v. State, 272 Ga. 837, 537 S.E.2d 42 (2000); Sea Tow/Sea Spill of Savannah v. Phillips, 247 Ga. App. 613, 545 S.E.2d 34 (2001); Thorpe v. Russell, 274 Ga. 781, 559 S.E.2d 432 (2002); Todd v. Byrd, 283 Ga. App. 37, 640 S.E.2d 652 (2006); Register v. Elliott, 285 Ga. App. 741, 647 S.E.2d 406 (2007); Dupree v. Dupree, 287 Ga. 319, 695 S.E.2d 628 (2010).

Notice

Lack of notice of entry of a judgment does not extend the time for filing a notice of appeal. Atlantic-Canadian Corp. v. Hammer, Siler, George Assocs., 167 Ga. App. 257, 306 S.E.2d 22 (1983); Dashiell v. Standard Mgt. Co., 174 Ga. App. 442, 330 S.E.2d 179 (1985); Brown v. E.I. du Pont de Nemours & Co., 240 Ga. App. 893, 525 S.E.2d 731 (1999).

Trial court's denial of a surety's motion to set aside a judgment of forfeiture absolute was properly denied since: (1) defendant and the surety were ordered to appear before the trial court and show cause why the bond should not be forfeited; (2) neither defendant nor the surety appeared; (3) the surety did not receive notice of the judgment until five months after the hearing; (4) the trial court followed O.C.G.A. §§ 17-6-70 and 17-6-71 to the letter; and (5) even if O.C.G.A. § 15-6-21(c) obligated the trial court to serve notice of the judgment absolute, the surety failed to exercise any diligence whatsoever, and any harm the surety suffered was self-imposed. Reliable Bonding Co. v. State, 262 Ga. App. 280, 585 S.E.2d 192 (2003).

In an application to recover seized currency under O.C.G.A. § 16-13-49(q)(4), a trial court erred in denying the owner's motion to set aside the order denying the application without making the finding required by O.C.G.A. § 15-6-21(c) as to whether the owner or the owner's counsel had received notice of the order. Grant v. State, 302 Ga. App. 739, 691 S.E.2d 623 (2010).

Trial court failed to make the necessary inquiry and findings as to whether a pro se defendant received notice of the trial court's denial of the defendant's motion for new trial as required by O.C.G.A. § 15-6-21(c). If no notice was received, the trial court was required to grant the defendant's motion for an out-of- time appeal. Whitfield v. State, 313 Ga. App. 297, 721 S.E.2d 211 (2011).

Action to set aside under O.C.G.A. § 9-11-60(g). — If a personal injury case was dismissed without prejudice when neither party appeared for a peremptory calendar call, the trial court failed to notify the parties of the dismissal, and the parties did not learn the case had been dismissed until nine months later, it was proper to grant plaintiff's motion to set aside the judgment and reenter a new order dismissing the case, thereby enabling plaintiff to refile plaintiff's action within six months. Morgan v. Starks, 214 Ga. App. 265, 447 S.E.2d 651 (1994).

In considering whether the trial court's denial of a motion to set aside was erroneous because a party did not receive notice of the entry of judgment, the issue is not whether the losing party had knowledge that the judgment was entered, but rather whether the duty imposed on the court by O.C.G.A. § 15-6-21(c) was carried out; it is necessary that the trial court first make a finding regarding whether such duty was met and, if not, the earlier judgment must be set aside before judgment is reentered to commence a new 30-day period for appeal. Kendall v. Peach State Mach., Inc., 215 Ga. App. 633, 451 S.E.2d 810 (1994).

If no notice is sent by trial court or by clerk to losing party, an action may be brought under O.C.G.A. § 9-11-60(g) to set aside an earlier judgment; and upon a finding that notice was not provided as required by O.C.G.A. § 15-6-21, the motion to set aside may be granted, the judgment reentered, and the 30-day period within which the losing party must appeal will begin to run from the date of the reentry. Cambron v. Canal Ins. Co., 246 Ga. 147, 269 S.E.2d 426 (1980), overruled on other grounds, Wright v. Young, 297 Ga. 683, 777 S.E.2d 475 (2015); Fremichael v. Doe, 221 Ga. App. 698, 472 S.E.2d 440 (1996); Downs v. C.D.C. Fed. Credit Union, 224 Ga. App. 869, 481 S.E.2d 903 (1997).

Notice (Cont'd)

If a dismissal order was never served upon the plaintiff because the trial court's staff misaddressed the envelope, the court properly set aside and then reentered the dismissal order and the order was effective as of the date the order was actually reentered. Carnes Bros., Inc. v. Cox, 243 Ga. App. 863, 534 S.E.2d 547 (2000).

Judgment was entered by the trial court, based on a jury verdict in favor of defendant, and the trial court instructed defendant to mail notice of the judgment to plaintiff, which plaintiff admittedly timely received, thus, the mandate of O.C.G.A. § 15-6-21(c) was met and the trial court properly denied the plaintiff's motion to set aside the judgment pursuant to O.C.G.A. § 9-11-60(g); although the trial court did not make a specific finding as to whether the notice requirements of § 15-6-21(c) were met, the facts that supported denial of the motion to set aside were set out and those indicated compliance with the notice statute. Woods v. Savannah Rest. Corp., 267 Ga. App. 387, 599 S.E.2d 338 (2004).

Because an appeal by the parents from the juvenile court's order denying the parents motion to rescind and re-enter the dismissal order under O.C.G.A. § 9-11-60(g) on the grounds that the trial court failed to give proper notice of the court's decision, in accordance with O.C.G.A. § 15-6-21(c), failed to challenge the juvenile court's error in denying the motion, but rather, challenged specific rulings entered by the juvenile court in the deprivation proceedings, denial of the motion to rescind and re-enter was affirmed on appeal as the appellate court lacked jurisdiction to consider the errors asserted by the parents in the underlying deprivation case. In the Interest of S.C., 283 Ga. App. 387, 641 S.E.2d 618 (2007).

In a workers' compensation case, when the trial court failed to send the parties the court's judgment as required by O.C.G.A. § 15-6-21(c), the court erred in denying the employer's motion under O.C.G.A. § 9-11-60(g) to vacate and re-enter the judgment so that the employer could file a timely appeal. O.C.G.A. § 34-9-105(b) did not prevent granting of the motion because the trial court had complied with the provision's time limitations. It was improper for the trial court to decide the motion based upon the court's determination that the employer knew or should have known that a judgment had been entered. Wal-Mart Stores, Inc. v. Parker, 283 Ga. App. 708, 642 S.E.2d 387 (2007).

Trial court properly set aside the dismissal of a declaratory judgment action brought by putative heirs against two trustees of an estate as the trial court failed to provide notice of a peremptory calendar call the case was placed on, which led to the dismissal. The court's failure to comply with the requirements of O.C.G.A. § 15-6-21(c), that the court provide counsel with notice of the court's orders, provides justification for the court to later set aside such an order. Andrus v. Andrus, 290 Ga. App. 394, 659 S.E.2d 793 (2008).

Probate court violated O.C.G.A. § 15-6-21(c)'s notice requirements by setting aside a partial final consent order sua sponte without notice to the parties' counsel. If the intent of the final order the court later entered was to supplement and not supplant the partial final order, O.C.G.A. § 9-11-60(g) allowed the fact-finder to correct "at any time" the mistaken omission of the partial final order's provision concerning appointment of an executor from the final order. Harwell v. Harwell, 292 Ga. App. 339, 665 S.E.2d 33 (2008).

Court of appeals was unable to determine whether the trial court's denial of a plaintiff's motion under O.C.G.A. § 9-11-60(g) to set aside an order dismissing a lawsuit was proper because the trial court made no findings of fact about whether the court sent the notice of the order of dismissal to the plaintiff as required by O.C.G.A. § 15-6-21(c); the plaintiff submitted affidavits, in which members and employees of the plaintiff's law firm attested that the firm did not receive notice of the order of dismissal, which also was some evidence that notice was not sent. Tyliczka v. Chance, 313 Ga. App. 787, 723 S.E.2d 27 (2012).

Although a bicyclist failed to comply with the trial court's order to notify a

driver of a default judgment against the driver for $2.9 million, such failure did not permit the trial court to vacate the judgment under O.C.G.A. § 9-11-60(g) because the trial court had no duty to notify the driver of the judgment, pursuant to O.C.G.A. §§ 9-11-5(a) and 15-6-21(c). Winslett v. Guthrie, 326 Ga. App. 747, 755 S.E.2d 287 (2014).

Trial court did not abuse the court's discretion in denying the plaintiff's motion to set aside a judgment pursuant to O.C.G.A. § 9-11-60(g) because it was unrefuted that the trial court mailed the order to the address on record, although it was later returned stamped undeliverable and the court followed through with the duty imposed upon the court by O.C.G.A. § 15-6-21(c). Syed v. Merchant's Square Office Bldgs., LLC, 354 Ga. App. 365, 841 S.E.2d 8 (2020).

Proper notice of order given. — Husband was not prevented by the trial court clerk from filing a timely motion for new trial after the trial court issued a final divorce decree because there was no evidence of record that the husband was not given proper notice of the order. Tremble v. Tremble, 288 Ga. 666, 706 S.E.2d 453 (2011).

Trial court did not abuse the court's discretion by denying the appellant's motion to set aside based on not being given proper notice of the September 2017 order of the denial because the record showed that the court clerk testified that adequate postage was used to mail a copy of the order to the appellant at the appellant's record address and that the copy was never returned to the clerk's office. Moore v. State, 842 S.E.2d 65, No. S20A0344, 2020 Ga. LEXIS 291 (2020).

Notice of attorney's withdrawal. — Issuance of an order of withdrawal of an attorney by the trial court completed the involvement of the court with the withdrawal; if the order did not reach the client, it was through no fault of the court, and the client's redress, if any, was with the client's attorney. Dunn v. Duke, 216 Ga. App. 829, 456 S.E.2d 65 (1995).

Findings

Absence of findings as to receipt of notice. — Trial court erred by denying the borrowers' motion under O.C.G.A. § 9-11-60(g) to set aside the order granting a bank summary judgment because while the trial court established that notice was sent, the court failed to make any findings as to whether the attorneys for the borrowers had received notice of the order. C & R Fin. Lenders, LLC v. State Bank & Trust Co., 320 Ga. App. 660, 740 S.E.2d 371 (2013).

Trial court's order entered on remand had to be reversed because the court made no finding as to whether the court's statutory duty to notify all parties of the judgment was carried out. Wright v. Wright, 300 Ga. 114, 793 S.E.2d 96 (2016).

Because the trial court did not make any findings as to whether the defendant was given notice of the September 2017 order denying the defendant's motion for an out-of-time appeal, and the trial court denied the defendant's motion to set aside that order on the ground that the supreme court had affirmed an order denying a different motion, the trial court erred in denying the defendant's motion to set aside the court's September 2017 order denying the defendant's motion for an out-of-time appeal. Moore v. State, 305 Ga. 699, 827 S.E.2d 657 (2019).

Remand for willfulness issue when trial court failed to make explicit willfulness finding. — Because the trial court failed to explicitly make a finding of willfulness in the court's order dismissing the plaintiff's damages complaint for failure to comply with an order to compel, the matter was remanded directing the trial court to conduct a hearing on the issue of willfulness. Because the matter was remanded on the issue of willfulness, it was unnecessary for the appeals court to consider the plaintiff's claim that counsel did not receive notice of the trial court's order granting the defendant's motion to compel. Rouse v. Arrington, 283 Ga. App. 204, 641 S.E.2d 214 (2007).

Construction with O.C.G.A. § 9-11-60(d)(2). — Because the trial court failed to make an explicit finding of wilfulness in the court's order dismissing the plaintiff's case for failure to comply with an order compelling discovery, dismissal was reversed, and the case was remanded for a hearing on the issue; as a

Findings (Cont'd)

result, the appeals court declined to consider an argument that the plaintiff's counsel did not receive notice of the order compelling discovery, pursuant to O.C.G.A. § 15-6-21(c), as any remedy for an alleged lack of notice was to pursue a motion to set aside pursuant to O.C.G.A. § 9-11-60(d)(2). Rouse v. Arrington, 283 Ga. App. 204, 641 S.E.2d 214 (2007).

Inherent finding of lack of notice. — Although there was no specific finding that notice to a party's counsel was not made, such a finding was inherent in the trial court's action granting the party's motion to set aside the judgment because counsel did not learn that the judgment had been filed until after the time for filing a notice of appeal expired. Intertrust Corp. v. Fischer Imaging Corp., 198 Ga. App. 812, 403 S.E.2d 94 (1991).

Timeliness

Remedies upon judge's refusal to obey subsection (a). — Prior to the effective date of the 1983 Constitution, the only sanction provided by law for the failure or refusal of a judge to obey the provisions of O.C.G.A. § 15-6-21(a), requiring prompt judicial action, was found in § 15-6-21(d), impeachment and removal from office. The Constitution of 1983 (Ga. Const. 1983, Art. VI, Sec. I, Para. IV) now provides that the superior and appellate courts shall have the power to issue process in the nature of mandamus. Graham v. Cavender, 252 Ga. 123, 311 S.E.2d 832 (1984).

Attorney not relieved of responsibility to pursue appeal. — Failure of court to rule on judgment notwithstanding the verdict for almost 13 months did not excuse counsel from failing to check on the motion's status, the subject of a malpractice suit against the attorney. Hipple v. Brick, 202 Ga. App. 571, 415 S.E.2d 182 (1992).

Conclusion of time period does not close record. — There is no provision in O.C.G.A. § 15-6-21 for closing the record as a result of a trial court's failure to make a timely ruling; therefore, the tardiness of the trial court's ruling did not close the record and was not a valid basis for objecting to the admission of the trial counsel's affidavit. Brooks v. State, 265 Ga. 548, 458 S.E.2d 349 (1995).

Supreme court was unable to determine whether the trial court's denial of the defendant's motion to set aside an order denying an out-of-time appeal was proper because the order denying the motion made no findings of fact whatsoever; in the defendant's motion to set aside, the defendant stated that the defendant never received the trial court's 2008 order until 2010, that the defendant made numerous written inquiries and several telephone calls concerning the status of the motion for out-of-time appeal, and that in 2009, the defendant filed a motion for a ruling thereon. Pierce v. State, 289 Ga. 893, 717 S.E.2d 202 (2011).

Failure to timely decide motion. — Trial court erroneously dismissed the insured party's uninsured motorist action against the insurer. The insured party, by attempting service twice, showed due diligence under O.C.G.A. § 33-7-11(e) in determining that the defendant, who allegedly struck the insured party, had either departed from the state or could not, after due diligence, be found within the state. The insured party made all three requests for service by publication before the statute of limitations under O.C.G.A. § 9-3-33 expired, and the latter two requests were pending for decision by the trial court for more than three months in violation of O.C.G.A. § 15-6-21(b). Luca v. State Farm Mut. Auto. Ins. Co., 281 Ga. App. 658, 637 S.E.2d 86 (2006).

Trial court properly dismissed a landowners' petition for mandamus filed against a judge as premature and for failing to state a claim because the landowner opted to file the petition, but could have requested a hearing to allow the judge an opportunity to rule on the previously filed motions; the 90-day ruling period applicable to the motions pursuant to O.C.G.A. § 15-6-21(b) had not yet expired at the time the petition had been filed. Voyles v. McKinney, 283 Ga. 169, 657 S.E.2d 193 (2008).

Defendant was not entitled to relief based on the trial judge's 954-day delay in ruling on the defendant's motion to open a prejudgment default, which the defendant

contended increased three-fold the defendant's liability for prejudgment interest because: (1) there was no evidence that the defendant ever sought a ruling after the 90-day period set out in O.C.G.A. § 15-6-21(b) had expired; and (2) the only remedies for a violation of § 15-6-21 were mandamus and impeachment of the trial judge. Water Visions Int'l, Inc. v. Tippett Clepper Assocs., 293 Ga. App. 285, 666 S.E.2d 628 (2008).

Speedy trial demand is not motion to be decided in 90 days. — O.C.G.A. § 15-6-21(b), requiring that motions be decided within 90 days, did not require ruling on the defendant's speedy trial demand within 90 days, because the demand was simply the required notice of the assertion of the right, and the trial court ruled on the defendant's actual motion for discharge and acquittal based on that demand on the same day the motion was filed; further, if a judge fails to rule within the 90-day period, the remedy is not to require the motion to be granted. Johnson v. State, 300 Ga. 252, 794 S.E.2d 60 (2016).

Nine month delay in ruling on motion for mandamus. — Trial court's order denying the filing of a mandamus petition was error because a justiciable issue was patent from the face of the petition, namely, whether the judge failed to comply with the duty to timely rule on the pending motion since the record established that the petitioner had been waiting to rule on the motion for nine months, which was considerably outside the maximum period during which the judge was required to decide the pending motion. Bellamy v. Rumer, 305 Ga. 638, 827 S.E.2d 269 (2019).

RESEARCH REFERENCES

Am. Jur. 2d. — 20 Am. Jur. 2d, Courts, § 45 et seq. 46 Am. Jur. 2d, Judges, § 16 et seq.

C.J.S. — 21 C.J.S., Courts, § 156 et seq.

ALR. — Successive actions as within statutory provision fixing time within which new action may be commenced after nonsuit or judgment not on merits, 54 A.L.R.2d 1229.

Power of court to remove or suspend judge, 53 A.L.R.3d 882.

Misconduct in capacity as judge as basis for disciplinary action against attorney, 57 A.L.R.3d 1150.

15-6-22. Adjournments.

(a) The judge may, during a term of court, adjourn the court to such time as he may think fit.

(b) In case of unavoidable accidents, whereby the superior court in any county is not held at the time appointed for holding the same, the clerk of court shall adjourn the court from day to day, not exceeding two days. Unless the presiding judge orders to the contrary within the two days, the clerk shall then adjourn the court to the next term.

(c) When the clerk of the superior court is informed by the presiding judge that it is not possible for the judge to attend the regular term of the court, from sickness of himself or his family or other unavoidable cause which shall be expressed in the order of adjournment, and the judge for proper reasons in his discretion does not procure another judge to preside in his absence, the clerk shall adjourn the court to such time as the judge may direct and shall advertise the same at the courthouse of the county in which the court is to be held and one or more times in a public newspaper.

History. — Laws 1799, Cobb's 1851 Digest, p. 459; Laws 1823, Cobb's 1851 Digest, p. 461; Code 1863, §§ 3164, 3165, 3166; Code 1868, §§ 3175, 3176, 3177; Code 1873, §§ 3242, 3243, 3244; Code 1882, §§ 3242, 3243, 3244; Civil Code 1895, §§ 4342, 4343, 4344; Penal Code 1895, §§ 793, 794, 795; Civil Code 1910, §§ 4873, 4874, 4875; Penal Code 1910, §§ 793, 794, 795; Code 1933, §§ 24-3002, 24-3006, 24-3007.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, annotations decided prior to the amendment to Code Section 15-6-19 passed by Ga. L. 1972, p. 713, which changed the terms of court, are included in the annotations for this Code section.

Purpose of this section was to protect parties to causes. Hoye v. State, 39 Ga. 718 (1869).

Order adjourning court is nullity if the order does not state reason therefor. Martin v. Scott, 118 Ga. 149, 44 S.E. 974 (1903).

Application to criminal cases. Osgood v. State, 63 Ga. 791 (1879).

Parties are bound to take notice of adjournment. Rawson v. Powell, 36 Ga. 255 (1867).

Adjournment by clerk. — Clerk, or the clerk's deputy, cannot adjourn an adjourned term if the judge's absence has not been caused by an unavoidable accident. Cogswell v. Schley, 50 Ga. 481 (1873); Norrie & Johnson v. McCullough, 74 Ga. 602 (1885).

Failure to advertise adjournment. — Failure of the clerk to advertise adjournment will not prevent the court from meeting at the time fixed in the order. Wise v. State, 34 Ga. 348 (1866).

Suspension for judge's tiredness. — Court may be suspended until next morning if the judge is too tired to proceed with the night session. Hoye v. State, 39 Ga. 718 (1869).

Illness or unavailability of judges. — Defendant's motion to declare the defendant's indictment void on the ground that the grand jury which indicted the defendant was not convened in accordance with the law was properly denied since the defendant did not show either that the trial court abused the court's discretion in not convening a July term at the scheduled time because one judge was critically ill and two remaining judges had made plans to attend a seminar on that date, or that the defendant was harmed by the trial court's failure to do so. Peek v. State, 250 Ga. 50, 295 S.E.2d 834 (1982).

Sunday as day appointed for hearing applications. — If day appointed to hear application falls on Sunday, the case automatically stands for hearing on the next day. Cheeseborough, Stearns & Co. v. Van Ness, 12 Ga. 380 (1852).

Death of prominent bar member no excuse. — Death of a prominent member of the bar shortly before the time for convening a term of a court is not such cause as will legally adjourn the term of a court. Frank & Co. v. Horkan, 122 Ga. 38, 49 S.E. 800 (1905); Walker v. O'Connor, 23 Ga. App. 22, 97 S.E. 276 (1918).

Time for filing answer when court adjourned illegally. — If an illegal order of adjournment passed in vacation, the defendant may file an answer any time prior to the following term of court. Frank & Co. v. Horkan, 122 Ga. 38, 49 S.E. 800 (1905).

Cited in Medders v. Lewis, 158 Ga. 417, 123 S.E. 605 (1924); Van Landingham v. Wight Hdwe. Co., 77 Ga. App. 689, 49 S.E.2d 554 (1948).

RESEARCH REFERENCES

Am. Jur. 2d. — 20 Am. Jur. 2d, Courts, § 20.

C.J.S. — 21 C.J.S., Courts, § 142 et seq.

15-6-23. Signing documents in any county in circuit.

Any judge of the superior courts may sign any document connected with the official duties of his office in any county comprising a part of his circuit, including all writs, orders, judgments, and warrants required to be signed by the judge. The document may be signed by the judge in any county within his circuit in which he is present at the time the document is signed.

History. — Ga. L. 1971, p. 363, § 1.

JUDICIAL DECISIONS

Application to hold court of inquiry and issue search warrants. — Judicial officer who was authorized to hold a court of inquiry under former Code 1933, § 27-401 (see now O.C.G.A. § 17-7-20) and to issue a search warrant under Ga. L. 1966, p. 567, § 14 (see now O.C.G.A. § 17-5-20) would, under Ga. L. 1971, p. 363, § 1 (see now O.C.G.A. § 15-6-23), be authorized to do so in any county of the officer's circuit. Allison v. State, 129 Ga. App. 364, 199 S.E.2d 587 (1973), cert. denied, 414 U.S. 1145, 94 S. Ct. 899, 39 L. Ed. 2d 101 (1974).

Municipal judge's cross-county reach. — Authority of a municipal court judge to issue a search warrant does not stop at the county line where the municipality crosses that line into another county. Campbell v. State, 207 Ga. App. 366, 428 S.E.2d 111 (1993).

Cited in Granese v. State, 232 Ga. 193, 206 S.E.2d 26 (1974); Barksdale v. Ricketts, 233 Ga. 60, 209 S.E.2d 631 (1974); State v. Varner, 248 Ga. 347, 283 S.E.2d 268 (1981); Luangkhot v. State, 292 Ga. 423, 736 S.E.2d 397 (2013).

OPINIONS OF THE ATTORNEY GENERAL

In order for a search warrant or arrest warrant to be valid, the search warrant must be signed by a magistrate who is authorized to hold a court of inquiry under O.C.G.A. § 17-7-20 and who is physically present in the county in which he or she serves. 2000 Op. Atty. Gen. No. U2000-11.

15-6-24. Payment of court's contingent expenses.

(a) Any contingent expenses incurred in holding any session of the superior court, including lights, fuel, stationery, rent, publication of grand jury presentments when ordered published, and similar items, such as taking down testimony in felony cases, etc., shall be paid out of the county treasury of such county upon the certificate of the judge of the superior court and without further order.

(b) Any costs incurred in providing defense services pursuant to Chapter 12 of Title 17, the "Georgia Indigent Defense Act of 2003," for persons accused of crimes shall not be considered contingent expenses of the superior court for purposes of this Code section.

History. — Orig. Code 1863, § 3617; Code 1868, § 3642; Code 1873, § 3692; Code 1882, § 3692; Ga. L. 1889, p. 156, § 1; Civil Code 1895, § 4341; Civil Code

1910, § 4872; Code 1933, § 24-3005; Ga. L. 2007, p. 183, § 1/HB 586.

Editor's notes. — Ga. L. 2007, p. 183, § 3/HB 586, not codified by the General Assembly, provides that this Act shall apply to all costs and fees incurred or counsel appointed on or after July 1, 2007.

Law reviews. — For survey article on local government law, see 60 Mercer L. Rev. 263 (2008).

JUDICIAL DECISIONS

County's filing of a protest over an expenditure ordered by the superior court judge to whom the case was assigned did not divest the court of the court's jurisdiction over the case. DeKalb County v. Adams, 272 Ga. 401, 529 S.E.2d 610 (2000).

Payment of committee appointed under Penal Code 1895, §§ 837 and 838 to examine county officers was authorized by former Civil Code 1895, § 4341 (see now O.C.G.A. § 15-6-24). Chatham County v. Gaudry, 120 Ga. 121, 47 S.E. 634 (1904).

Former Penal Code 1895, §§ 841, 842 and 843 contemplated services by resident individuals composing committees appointed by grand juries, and compensation for such services, and, considered in connection with former Civil Code 1895, § 4872 (see now O.C.G.A. § 15-6-24), authorized payment by the county of compensation for such services of the committee by order of the court as a part of the expenses of the court. Watkins v. Tift, 177 Ga. 640, 170 S.E. 918 (1933).

Contingent expenses. — In an indigent criminal defendant's death penalty case, a county was improperly ordered to pay the costs, pursuant to O.C.G.A. § 15-6-24, of transcribing telephone conversations made by or to the criminal defendant at the jail or presenting demonstrative evidence in the courtroom in a digital format as those were not expenses typically incurred at trial. Fulton County v. State, 282 Ga. 570, 651 S.E.2d 679 (2007).

Necessity for the installation of fire sprinklers for a ten-story building is not within the judge's unique knowledge about the functioning of his or her court. In re DeKalb County Courthouse Fire Sprinkler Sys., 265 Ga. 96, 454 S.E.2d 126 (1995).

Payment of fees of appointed attorneys. — Legislature, by authorizing payment of certain fees and expenses of appointed attorneys in capital-felony cases, has created an expense of court, and the judges of the superior courts have the inherent power and authority to order the expenses paid out of the county treasury. Bibb County v. Hancock, 211 Ga. 429, 86 S.E.2d 511 (1955).

Payments of fees of accountants in criminal case. — Fees or charges of expert accountants, employed on behalf of the state in a criminal case by the solicitor general (now district attorney), with the approval of the trial judge, were not such contingent expenses in the holding of any and all sessions of the superior court as were within the meaning of former Code 1933, § 24-3005 (see now O.C.G.A. § 15-6-24). Freeney v. Geoghegan, 177 Ga. 142, 169 S.E. 882 (1933).

Statute did not confer power upon the grand jury or the court to employ expert accountants, whose compensation was to be paid out of the county treasury, to render services under direction of the committee in performing the duties imposed upon that body. Watkins v. Tift, 177 Ga. 640, 170 S.E. 918 (1933).

One claiming right to money must show authority. — Counties have only such powers as may be prescribed by law, and that one who claims the right to receive money from the treasury of the county must show the law which authorizes the expenditure. Freeney v. Geoghegan, 177 Ga. 142, 169 S.E. 882 (1933).

Certificate approving payment of court reporter. — Order of judge including in the judge's approval of compensation certain work done by the person assisting the court reporter becomes a judgment by a court of competent jurisdiction, and not being void on the judgment's face cannot be collaterally attacked. Walden v. Smith, 203 Ga. 207, 45 S.E.2d 660 (1947), overruled on other grounds,

McCorkle v. Judges of Superior Court, 260 Ga. 315, 392 S.E.2d 707 (1990).

Certificate of the judge of the superior court approving bills for compensation to the court reporter is a judgment of that court and cannot be collaterally attacked. Nichols v. Floyd County, 76 Ga. App. 792, 47 S.E.2d 163 (1948).

Transcript costs for indigents. — It was error to hold that under O.C.G.A. § 17-12-34 of the Georgia Indigent Defense Act of 2003, the Georgia Public Defender Standards Council was required to pay for indigent defendants' costs of transcripts in criminal cases; under laws existing before the act, counties were required to pay for such transcripts, and the act does not repeal these laws by implication. Ga. Public Defender Stds. Council v. State of Ga., 284 Ga. App. 660, 644 S.E.2d 510 (2007).

Review of certificates. — Certificates issued pursuant to O.C.G.A. § 15-6-24 are reviewable through an appeal from a mandamus action filed by the party to whom the money was due, and may also be reviewed through the filing by the county of a protest to the certificate. McCorkle v. Judges of Superior Court, 260 Ga. 315, 392 S.E.2d 707 (1990).

Cited in Houston County v. Kersh & Wynne, 82 Ga. 252, 10 S.E. 199 (1889); Cone v. Jones, 178 Ga. 189, 172 S.E. 465 (1934); Walden v. Nichols, 201 Ga. 568, 40 S.E.2d 644 (1946); Richter v. Thomas County Comm'n, 152 Ga. App. 332, 262 S.E.2d 604 (1979); Grimsley v. Twiggs County, 249 Ga. 632, 292 S.E.2d 675 (1982); Cramer v. Spalding County, 261 Ga. 570, 409 S.E.2d 30 (1991).

OPINIONS OF THE ATTORNEY GENERAL

Equal treatment amongst judges for support services. — Fulton County's obligation to accord equal treatment to all superior court judges of the Atlanta Judicial Circuit is applicable to all county funded support services, including staffing (e.g., law clerks, secretaries, court reporters, case managers and the like) and the operating budget required for a superior court judge to properly perform his or her constitutional and statutory duties. 2002 Op. Att'y Gen. No. U2002-6.

Establishment of special master for divorce settlement improper. — Establishing a special master, employed by the court to hear evidence in a divorce settlement and paid from court funds, is not permissible in view of the mechanisms capable of handling this type of problem already in place under O.C.G.A. § 9-7-2 and in view of the lack of a specific statutory basis for such an expense of court under O.C.G.A. § 15-6-24. 1984 Op. Att'y Gen. U84-19.

Expenditure for presentence psychological evaluations. — Superior court may order psychological evaluations of criminal defendants prior to sentencing and at county expense. 1985 Op. Att'y Gen. No. U85-29.

Expenditure for interpreter for indigent criminal defendant. — When the superior court exercises the court's discretion to appoint an interpreter for an indigent criminal defendant who neither speaks nor understands English, the court has the inherent power to assess the cost of the interpreter against the county. 1989 Op. Att'y Gen. No. U89-24.

15-6-25. Employment of secretary authorized.

(a) Each superior court judge is authorized to employ a secretary.

(b) All personnel actions involving secretaries appointed pursuant to this Code section shall be in accordance with the provisions of Code Section 15-6-27.

History. — Ga. L. 1972, p. 617, § 1; Ga. L. 1975, p. 1506, § 1; Ga. L. 1977, p. 668, § 1; Ga. L. 1982, p. 1486, §§ 1, 3; Ga. L. 1985, p. 434, § 1; Ga. L. 1986, p. 794, § 1; Ga. L. 1989, p. 54, § 1; Ga. L. 1990, p. 1226, § 1; Ga. L. 1996, p. 992, § 1; Ga. L. 1997, p. 1335, § 1.

OPINIONS OF THE ATTORNEY GENERAL

Intent. — Intent of the General Assembly in authorizing the employment of secretaries was to ensure that superior court judges and district attorneys were provided with adequate assistance so they could accomplish their official tasks in an efficient manner without being burdened by clerical problems. 1972 Op. Att'y Gen. No. 72-104.

Code section does not apply to senior judges. — Ga. L. 1972, p. 617, § 1 (see now O.C.G.A. § 15-6-25) applies only to full-time judges and not to judges emeritus (now senior judges) called upon to preside in a particular case under Ga. L. 1970, p. 204, §§ 1-4 (see now O.C.G.A. § 47-8-64). 1972 Op. Att'y Gen. No. U72-129.

Simultaneous service of judicial secretary. — A judicial secretary appointed pursuant to O.C.G.A. § 15-6-25 may not simultaneously serve the same court as an official court reporter because such an arrangement would prevent the secretary from complying with O.C.G.A. § 45-10-1 and providing the state with a full day's work for a full day's pay. 2016 Op. Att'y Gen. No. U16-2.

RESEARCH REFERENCES

Am. Jur. 2d. — 46 Am. Jur. 2d, Judges, § 26.

C.J.S. — 21 C.J.S., Courts, § 122 et seq. 48A C.J.S., Judges, § 65.

15-6-26. Supplementation of secretary's salary by county.

Reserved. Repealed by Ga. L. 1997, p. 1335, § 2, effective July 1, 1997.

Editor's notes. — This Code section was based on Ga. L. 1975, p. 1506, § 4.

15-6-27. Procedure for hiring personnel employed by superior court judges; local supplements.

(a) All state paid personnel employed by the superior court judges pursuant to this article shall be employees of the judicial branch of state government and shall be in the unclassified service as defined by Code Section 45-20-2.

(b) Personnel employed pursuant to this Code section shall have such authority, duties, powers, and responsibilities as are assigned by the appointing superior court judge or as authorized by law or by the uniform policies and procedures established by The Council of Superior Court Judges of Georgia and shall serve at the pleasure of the superior court judge.

(c) Subject to the provisions of this Code section, The Council of Superior Court Judges of Georgia shall adopt and amend uniform

policies, rules, and regulations which shall apply to all state paid personnel employed by the superior court judges. Such policies, rules, and regulations may include provisions for appointment, classification, transfers, leave, travel, records, reports, and training of personnel. To the maximum extent possible and consistent with the duties and responsibilities of the superior court judges and the rules of the trial and appellate courts, such policies, rules, and regulations shall be similar to policies, rules, and regulations governing other state employees; provided, however, that no policy shall be implemented which reduces the salary of any personnel employed on July 1, 1997. Not less than 30 days prior to taking final action on any proposed policy, rule, or regulation adopted pursuant to this Code section, or any amendment thereto, the council shall transmit a copy of the policy, rule, regulation, or amendment to all superior court judges and the chairpersons of the Judiciary Committee of the House of Representatives and the Judiciary Committee of the Senate.

(d) State paid personnel employed by a superior court judge shall be entitled to annual, sick, and other leave authorized by the policies, rules, or regulations adopted by the council.

(e) Subject to the provisions of Code Sections 15-6-25 and 15-6-28, the council shall annually promulgate salary schedules for each state paid position. Salaries shall be paid in equal installments from state funds appropriated or otherwise available for the operation of the superior courts.

(f) Personnel compensated by the state pursuant to this article shall be entitled to receive, in addition to such other compensation as may be provided by law, reimbursement for actual expenses incurred in the performance of their official duties in accordance with the rules and regulations established pursuant to Article 2 of Chapter 7 of Title 45. Such reimbursement shall be made from state funds appropriated or otherwise available for the operation of the superior courts.

(g) Personnel compensated by the state pursuant to this article are authorized to purchase such supplies and equipment as may be necessary to enable them to carry out their duties and responsibilities. The funds necessary to pay for such supplies and equipment shall come from funds appropriated or otherwise available for the operation of the superior courts.

(h) The governing authority of the county or counties comprising a judicial circuit may supplement the salary or fringe benefits of any state paid personnel appointed pursuant to this article.

(i) The governing authority of any municipality within the judicial circuit may, with the approval of the superior court judge, supplement the salary or fringe benefits of any state paid personnel appointed pursuant to this article.

(j) In lieu of hiring personnel under this article, superior court judges, with the written consent of the governing authority of any county or counties within a judicial circuit, may employ personnel who shall be employees of the county which pays the compensation of the personnel. The county shall be reimbursed, from funds appropriated or otherwise available for the operation of the superior courts, for the compensation paid to the personnel plus any employer contribution paid for the personnel under the act of Congress, approved August 14, 1935, 49 Stat. 620, known as the Social Security Act, as amended, but the payments shall not exceed the maximum amount payable directly to or for the personnel as promulgated by The Council of Superior Court Judges of Georgia for state paid personnel. In the event of any vacancy which occurs after July 1, 1997, in a position compensated by a county pursuant to this Code section, the vacancy may be filled as provided in Code Section 15-6-25.

History. — Ga. L. 1975, p. 1506, § 3; Ga. L. 1993, p. 1402, § 19; Ga. L. 1994, p. 97, § 15; Ga. L. 1997, p. 1335, § 3; Ga. L. 1998, p. 128, § 15; Ga. L. 1999, p. 81, § 15; Ga. L. 2009, p. 745, § 2/SB 97; Ga. L. 2012, p. 446, § 2-10/HB 642.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1997, "July 1, 1997" was substituted for "the effective date of this Act" at the end of the third sentence of subsection (c).

Editor's notes. — Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: "Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act." This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: "Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90."

OPINIONS OF THE ATTORNEY GENERAL

Full-time nature of judicial secretary job. — Both O.C.G.A. §§ 15-6-27 and 45-10-1 reinforce the understanding that the job of judicial secretary is a full time job to which the employee is expected to give his or her "earnest effort and best thought." 2016 Op. Att'y Gen. No. U16-2.

15-6-28. Law assistants and court administrators for judicial circuits; circuits having institutions for carrying out death sentences.

(a) The chief judge of each judicial circuit is authorized to employ either one law assistant or one court administrator for the circuit. Each judicial circuit is authorized to employ additional law assistants and administrators subject to availability of funds.

(b) The chief judge of a judicial circuit wherein there is located an institution of the state designated by the Department of Corrections for carrying out the death sentence is authorized to employ a law assistant

whose primary duty shall be to assist the court in handling appeals made by individuals awaiting execution.

(c) All personnel actions involving law assistants and court administrators employed pursuant to this Code section shall be in accordance with the provisions of Code Section 15-6-27.

(d) Funds for salaries, expenses, and other remuneration for law assistants and court administrators employed pursuant to this Code section shall be paid from state funds appropriated or otherwise available for the operation of the superior courts.

History. — Ga. L. 1980, p. 455, §§ 1, 2; Ga. L. 1985, p. 1279, § 1; Ga. L. 1986, p. 1488, § 1; Ga. L. 1993, p. 1402, § 19; Ga. L. 1994, p. 97, § 15; Ga. L. 1997, p. 1335, § 4; Ga. L. 1999, p. 736, § 1.

Cross references. — Reimbursement to counties for habeas corpus costs, § 9-14-53. Death penalty generally, § 17-10-30 et seq.

JUDICIAL DECISIONS

Delegation of power to excuse jurors. — If the clerk delegated the duty of handling excusals to the court administrator and the chief deputy clerk, the court administrator (who excused some veniremen) did not have such power if the court administrator was not authorized expressly by the chief judge to excuse jurors, but there was no such disregard of the essential and substantial provisions of the statute as would vitiate the arrays. Hendrick v. State, 257 Ga. 17, 354 S.E.2d 433 (1987).

RESEARCH REFERENCES

ALR. — Effect of Law Clerk's Conflict of Interest, 49 A.L.R.7th Art. 3

15-6-28.1. Employment of law clerks by chief judges of circuits having institutions for carrying out death sentences.

Repealed by Ga. L. 1997, p. 1335, § 5, effective July 1, 1997.

Editor's notes. — This Code section was based on Ga. L. 1981, p. 687, §§ 1-4; Ga. L. 1984, p. 702, § 1; Ga. L. 1985, p. 283, § 1; Ga. L. 1993, p. 1402, § 19; Ga. L. 1994, p. 97, § 15.

Ga. L. 2015, p. 5, § 15/HB 90, effective March 13, 2015, part of an Act to revise, modernize, and correct the Code, reenacted the repeal of this Code section.

15-6-29. Salary of judges.

(a) The annual salary of the judges of the superior courts shall be as provided in Code Section 45-7-4 and may be as provided in Code Section 15-6-29.1. The annual salary provided by Code Section 45-7-4 shall be paid by The Council of Superior Court Judges of Georgia in 12 equal monthly installments.

(b) The annual salary shall be the total compensation to be paid by the state to the superior court judges and shall be in lieu of any and all other amounts to be paid from The Council of Superior Court Judges of Georgia, except as provided in Code Sections 15-6-29.1, 15-6-30, and 15-6-32.

(c) When a new superior court judgeship is created by law for any judicial circuit, the new superior court judge shall upon taking office become entitled to and shall receive from the county or counties comprising the circuit the same county salary supplement, if any, then in effect for the other judge or judges of the judicial circuit. Such salary supplement for such new judge shall be authorized by this subsection and no other legislation or local legislation shall be required in order to authorize such salary supplement, but nothing in this Code section shall be construed to prohibit the enactment of local legislation relating to such salary supplements. A publication of notice of intention to introduce local legislation as provided for in Code Section 28-1-14 shall be required for any local legislation granting, changing the amount of, or removing a salary supplement; but no publication of notice of intention shall be required for a bill creating one or more new superior court judgeships.

History. — Ga. L. 1904, p. 72, § 1; Civil Code 1910, § 323; Code 1933, § 24-2606; Ga. L. 1957, p. 273, §§ 1, 2, 3; Ga. L. 1962, p. 64, § 1; Ga. L. 1965, p. 528, § 1; Ga. L. 1969, p. 113, § 1; Ga. L. 1972, p. 1015, § 408; Ga. L. 1993, p. 1402, § 9.1; Ga. L. 1996, p. 405, § 3; Ga. L. 2008, p. 577, § 3/SB 396; Ga. L. 2015, p. 919, § 1-3/HB 279.

Cross references. — Notice of intention to introduce local bills, § 28-1-14.

Law reviews. — For article discussing judicial compensation, see 14 Ga. St. B. J. 110 (1978). For article, "Annual Survey of Georgia Law: June 1, 2015 — May 31, 2016: Special Contribution: Open Chambers Revisited: Demystifying the Inner Workings and Culture of the Georgia Court of Appeals," see 68 Mercer L. Rev. 1 (2016).

JUDICIAL DECISIONS

Cited in Stokes v. Fortson, 234 F. Supp. 575 (N.D. Ga. 1964).

OPINIONS OF THE ATTORNEY GENERAL

Method of payment if operating account of superior court judges insufficient. — If there is a surplus in the operating account of the district attorneys, but if a warrant were paid in the full amount of the payroll for the superior court judges, a deficit would occur in the operating account of the superior court judges, the Department of Administrative Services may request and pay a warrant drawn on the account of the district attorney's operating account to cover the needed funds in the operating account of the superior court judges for the final payroll of the fiscal year. 1971 Op. Att'y Gen. No. 71-117.

Judge's travel expenses. — There is no violation of limitations on the judge's salary and allowances by receipt of travel expenses from state agency otherwise en-

titled to disburse such moneys. 1963-65 Op. Att'y Gen. p. 320.

RESEARCH REFERENCES

Am. Jur. 2d. — 46 Am. Jur. 2d, Judges, § 50 et seq.

C.J.S. — 48A C.J.S., Judges, § 84 et seq.

15-6-29.1. Accountability court supplement; limitation.

(a) Whenever a circuit has implemented a drug court division, mental health court division, or veterans court division, then on and after January 1, 2016, the state shall pay each superior court judge in such circuit an annual accountability court supplement of $6,000.00. Such supplement shall be paid from state funds by The Council of Superior Court Judges of Georgia in equal monthly installments as regular compensation.

(b) When a local law provides for a salary to be paid based on a percentage of, total compensation for, or similar mathematical relationship to a superior court judge's salary, the accountability court salary supplement paid pursuant to this Code section shall not be included in the calculation of compensation to be paid by a county, municipality, or consolidated government.

(c) Notwithstanding subsection (c) of Code Section 15-6-29, on and after January 1, 2016, no county or counties comprising the circuit shall increase an aggregate county salary supplement paid to a superior court judge, if such supplement is $50,000.00 or more.

History. — Code 1981, § 15-6-29.1, enacted by Ga. L. 2015, p. 919, § 1-4/HB 279.

15-6-30. Travel expenses.

(a) The judges of the superior courts of this state shall be entitled to receive, in addition to the compensation provided by law, reimbursement of travel expenses incurred when such a judge attends any court in his or her judicial circuit other than the court in the county of the residence of the judge or when the judge is required to be in any county in his or her circuit other than the county of his or her residence in the discharge of any judicial duty or function, required by law, pertaining to the superior court of such county. Judges and senior judges of the superior courts shall also be entitled to receive reimbursement under this Code section of travel expenses incurred when any such judge is designated to preside in the place of an absent Justice of the Supreme Court or attends a meeting of a judicial administrative district, The Council of Superior Court Judges of Georgia, the Judicial Council of

Georgia, the Council of Accountability Court Judges of Georgia, the Board of Community Supervision, the Judicial Qualifications Commission, or any committee or subcommittee of any such body, or when any such judge attends a meeting with the personnel of any state department or other state agency when such meeting is held to carry out a public purpose; provided, however, that any expenses for which reimbursement is received under this subsection shall not be eligible for reimbursement under Code Section 15-6-32.

(b) A judge of a superior court holding court in a county outside of the judicial circuit in which he was elected or appointed to hold court shall be entitled to receive, in addition to the compensation provided by law, reimbursement for expenses incurred while holding court outside of his judicial circuit in the same amount and in the same manner as a judge of the superior court holding court in a county other than that of his residence.

(c) The expenses provided for in this Code section shall be paid for the following purposes and in the following manner:

(1) For transportation to and from a county outside of the residence of the judge, if the same is by privately owned motor vehicle, the judge shall receive and be paid a travel expense allowance for each mile traveled in the same amount as is paid and received by the officers, officials, and employees of the various departments, institutions, boards, bureaus, and agencies of the state;

(2) Actual cost of transportation shall be allowed to and from a county outside of the residence of the judge, if same is by public conveyance; and

(3) Actual cost of meals and lodging for self shall be allowed if incurred in a county outside of the residence of the judge.

(d) The several judges of the superior courts shall, once a month, submit a detailed and certified statement of the items of expense, as authorized by this Code section, to the state auditor; and the state auditor is directed to audit each account and approve same for payment, if found correct, and to transmit the total amount to The Council of Superior Court Judges of Georgia for payment from the funds available for the operation of the superior courts of this state. Senior judges of the superior courts shall, once a month, submit a detailed and certified statement of the items of expense, as authorized by Code Sections 47-8-64 and 47-23-100, to the state auditor; and the state auditor is directed to audit each account and approve same for payment, if found correct, and to transmit the total amount to The Council of Superior Court Judges of Georgia for payment from the funds available for the operation of the superior courts of this state.

History. — Ga. L. 1905, p. 87, § 3; Civil Code 1910, § 4844; Code 1933, § 24-2612; Ga. L. 1945, p. 1199, § 1; Ga. L. 1963, p. 415, § 1; Ga. L. 1970, p. 203, § 1; Ga. L. 1972, p. 1015, § 408; Ga. L. 1987, p. 385, §§ 1, 2; Ga. L. 1993, p. 1402, § 19; Ga. L. 1994, p. 97, § 15; Ga. L. 1998, p. 513, § 5; Ga. L. 2008, p. 577, § 4/SB 396; Ga. L. 2012, p. 775, § 15/HB 942; Ga. L. 2015, p. 422, § 5-7/HB 310; Ga. L. 2015, p. 519, § 8-1/HB 328.

Cross references. — Legal mileage allowance, § 50-19-7.

Editor's notes. — Ga. L. 2015, p. 422, § 6-1/HB 310, not codified by the General Assembly, provides, in part, that the amendment by this Act shall apply to sentences entered on or after July 1, 2015.

Law reviews. — For article on the 2015 amendment of this Code section, see 32 Ga. St. U.L. Rev. 231 (2015).

JUDICIAL DECISIONS

Cited in Stokes v. Fortson, 234 F. Supp. 575 (N.D. Ga. 1964); Carter v. Burson, 230 Ga. 511, 198 S.E.2d 151 (1973).

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Application of word "actual." — Use of the word "actual" in this section shows that superior court judges may be reimbursed for their travel expenses when traveling within their respective circuits, but are not allowed reimbursement for meals based upon estimated cost as opposed to actual cost; however, current submissions for reimbursement for current expenditures need not reflect the full actual cost paid and such submissions meet the requirements of the statutes as long as the amount for which reimbursement is sought is not in excess of the actual expenditure. 1975 Op. Att'y Gen. No. 75-52.

Increase in salary supplement authorized. — County commission may increase the annual salary supplement for superior court judges beyond the minimum provided for by local legislation. 1996 Op. Att'y Gen. No. U96-2.

Payment for travel expenses from state agency authorized. — There is no violation of limitations on judge's salary and allowances by receipt of travel expenses from a state agency otherwise entitled to disburse such moneys. 1963-65 Op. Att'y Gen. p. 320.

RESEARCH REFERENCES

Am. Jur. 2d. — 46 Am. Jur. 2d, Judges, § 54.

C.J.S. — 48A C.J.S., Judges, § 89.

15-6-31. Transfer of administrative functions.

Effective July 1, 2008, the ministerial functions of the commissioner of administrative services or of the Department of Administrative Services relating to the payment of salaries, benefits, and expenses of superior court judges, and other state paid personnel authorized by this chapter shall be transferred to and performed by The Council of Superior Court Judges of Georgia.

History. — Code 1981, § 15-6-31, enacted by Ga. L. 2008, p. 577, § 5/SB 396.

Editor's notes. — Ga. L. 1993, p. 1402, § 9.2 repealed former Code Section 15-6-31, pertaining to contingent expense allowance, effective July 1, 1993. The former Code section was based on Ga. L. 1951, p. 78, § 1; Ga. L. 1953, Jan.-Feb. Sess., p. 370, § 1; Ga. L. 1969, p. 113, § 2; Ga. L. 1972, p. 1015, § 408; and Ga. L. 1981, Ex. Sess., p. 8.

15-6-32. Expenses for attendance at educational programs.

Any other law to the contrary notwithstanding, the judges and senior judges of the superior courts of this state are authorized to accept and receive from funds appropriated for the operation of the superior courts to the extent not eligible for reimbursement from funds appropriated for the operation of the Institute of Continuing Judicial Education or from funds appropriated for the operation of the Institute of Continuing Judicial Education reimbursement for the actual expenses of continuing judicial education within the state and out-of-state in the same manner as members of the General Assembly in attendance at conferences and meetings. Such reimbursement, whether for education within or outside the state, shall further include any tuition fees, registration fees, or other similar expenses necessary to receive such education. All requests for attendance at educational seminars shall be submitted to the Institute of Continuing Judicial Education for prior approval.

History. — Code 1933, § 24-2606.3, enacted by Ga. L. 1978, p. 1370, § 1; Ga. L. 1980, p. 596, § 1; Ga. L. 1986, p. 794, § 2; Ga. L. 1987, p. 385, § 3.

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Editor's notes. — In light of the similarity of the statutory provisions, opinions rendered prior to Ga. L. 1980, p. 596 are included in the annotations for this Code section. Current law makes no mention of any limitation on reimbursement to five days of judicial education per year.

Cumulative grant of authority. — This provision authorizes superior court judges to accept state funds for up to five days' continuing education and cannot be construed to prohibit superior court judges from accepting reimbursement, from all sources combined, for more than five days of continuing education per year. 1978 Op. Att'y Gen. No. 78-28 (decided prior to passage of Ga. L. 1980, p. 596).

Meaning of term "five days annually." — Expression "five days annually" should be construed to mean "five days in any one fiscal year," and the five-day limitation applies to any reimbursement attributable in whole or in part to state funds. In the case of reimbursements made from matched funds, the limitation would remain five days, and would not be extended to ten days; the remaining language of this section expands the authorization to cover nonstate governmental sources, and confirms the existing authorization as set forth in the Georgia Code of Judicial Conduct. 1978 Op. Att'y Gen. No. 78-28 (decided prior to passage of Ga. L. 1980, p. 596).

General Assembly intended that the reimbursement ceiling operate according to fixed periods. 1980 Op. Att'y Gen. No. 80-87 (decided prior to passage of Ga. L. 1980, p. 596).

RESEARCH REFERENCES

Am. Jur. 2d. — 46 Am. Jur. 2d, Judges, § 54.
C.J.S. — 48A C.J.S., Judges, § 89.

15-6-33. Convention for recommending rules.

The several judges of the superior courts may convene at the seat of government once each year, at such time as they or a majority of them may appoint, for the purpose of recommending to the General Assembly the establishment of uniform rules of practice throughout the several circuits. Such rules so recommended by the convention of judges shall not become operative and of force and effect until enacted into law by the General Assembly.

History. — Laws 1821, Cobb's 1851 Digest, p. 460; Code 1863, § 3170; Code 1868, § 3181; Code 1873, § 3246; Code 1882, § 3246; Civil Code 1895, § 4332; Civil Code 1910, § 4861; Code 1933, § 24-2628; Ga. L. 1937, p. 464, § 1.

Cross references. — Administration of the judicial system and adoption of uniform court rules, Ga. Const. 1983, Art. VI, Sec. IX, Para. I.

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Limitation on powers of judges to sit in convention. — Any and all rights, powers, and authority of judges of the superior courts to sit in convention and as a convention of judges to establish "uniform rules of practice throughout the several circuits" could be no greater than was conferred by the statute authorizing such a convention and defining its powers. Jones v. Boykin, 185 Ga. 606, 196 S.E. 900 (1938).

Each judge should conform to the rules, whether the rules meet with the judge's approval or not. Wilson v. State, 33 Ga. 207 (1862).

Any action by convention cannot be taken or construed as orders of court. Jones v. Boykin, 185 Ga. 606, 196 S.E. 900 (1938).

Judges may amend rules the judges have established. Snipes v. Parker, 98 Ga. 522, 25 S.E. 580 (1896).

Construction placed upon rules by superior court is conclusive, unless clearly erroneous and injustice will result. Roberts v. Kuhrt, 119 Ga. 704, 46 S.E. 856 (1904); Frost v. Pennington, 6 Ga. App. 298, 65 S.E. 41 (1909).

Bar admission rules. — Rules governing qualifications for admission to the bar cannot be accounted as rule of practice in superior court. Jones v. Boykin, 185 Ga. 606, 196 S.E. 900 (1938).

Cited in Barfield v. State, 89 Ga. App. 204, 79 S.E.2d 68 (1953).

RESEARCH REFERENCES

Am. Jur. 2d. — 20 Am. Jur. 2d, Courts, § 45 et seq.

C.J.S. — 21 C.J.S., Courts, § 160 et seq.

15-6-34. Creation of The Council of Superior Court Judges of Georgia; composition.

(a) There is created a superior court judges' council to be known as "The Council of Superior Court Judges of Georgia." The council shall be composed of the judges, senior judges, and judges emeriti of the superior courts of this state. The council is authorized to organize itself and to develop a constitution and bylaws. The officers of said council shall consist of a president, a president-elect, a secretary-treasurer, and an executive committee composed of the administrative judges of the ten judicial administrative districts.

(b) It shall be the purpose of The Council of Superior Court Judges of Georgia to effectuate the constitutional and statutory responsibilities conferred upon it by law and to further the improvement of the superior courts and the administration of justice.

(c) Expenses of the administration of the council shall be paid from state funds appropriated for that purpose, from federal funds available to the council for that purpose, or from other appropriate sources.

History. — Code 1981, § 15-6-34, enacted by Ga. L. 1985, p. 1130, § 1.

JUDICIAL DECISIONS

Cited in Escareno v. Carl Nolte Sohne GmbH & Co., 77 F.3d 407 (11th Cir. 1996).

15-6-35. Selection of bailiffs by sheriff; appointment of additional bailiffs.

The sheriff shall have the right to select such bailiffs, with the approval of the court, as may be necessary to transact properly the business thereof. Whenever the public interests require it, the judge shall have the power to appoint such additional bailiffs as the judge deems necessary.

History. — Code 1981, § 15-6-35, enacted by Ga. L. 1993, p. 1389, § 1.

Cross references. — Oath of bailiff attending grand jury, § 15-12-69. Oath of bailiffs on duty in the superior courts, § 15-12-140.

JUDICIAL DECISIONS

Cited in Sheffield v. State, 270 Ga. App. 576, 607 S.E.2d 205 (2004).

15-6-36. Notice of student's felony conviction to school superintendent.

(a) For the purposes of this Code section, "conviction" means any felony conviction of a person who is at least 17 years of age.

(b) Within 30 days of any proceeding ending in a conviction, the superior court shall provide written notice of the conviction to the school superintendent or the school superintendent's designee of the school in which the convicted defendant was enrolled, or, if the information is known, of the school in which the convicted defendant plans to be enrolled at a future date. Such notice shall include the specific criminal offense for which the defendant was convicted. A local school system to which such a convicted defendant is assigned may request further information from the court's file.

History. — Code 1981, § 15-6-36, enacted by Ga. L. 1997, p. 1436, § 2.

Editor's notes. — Ga. L. 1997, p. 1436, § 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'School Safety Act'."

Law reviews. — For article commenting on the enactment of this Code section, see 14 Ga. St. U.L. Rev. 155 (1997).

ARTICLE 2

CLERKS OF SUPERIOR COURTS

Cross references. — Reimbursement to counties for habeas corpus costs, § 9-14-53.

Law reviews. — For article, "Courts: Juvenile Justice Reform," see 30 Ga. St. U. L. Rev. 63 (2013).

For note on 1995 amendments and enactments of Code sections in this article, see 12 Ga. St. U.L. Rev. 89 (1995).

15-6-50. Clerk's term of office; qualifications; training requirements; appointment of clerk pro tempore during training.

(a) The clerks of superior courts shall be elected for a term of four years.

(b)(1) No person shall be eligible to offer for election to or hold the office of clerk of the superior court unless he:

(A) Is a citizen of the United States;

(B) Is a resident of the county in which he seeks the office of clerk of the superior court for at least two years prior to his qualifying for the election to the office;

(C) Is a registered voter;

(D) Has attained the age of 25 years prior to the date of qualifying for election to the office. This subparagraph shall not apply to any person serving as a clerk of the superior court on July 1, 1981;

(E) Has obtained a high school diploma or its recognized equivalent; and

(F) Has not been convicted of a felony offense or any offense involving moral turpitude contrary to the laws of this state, any other state, or the United States.

(2) Each person offering his candidacy for the office of clerk of the superior court shall file an affidavit with the officer before whom such person has qualified to seek the office of clerk of the superior court prior to or at the time for qualifying, which affidavit shall affirm that he meets all of the qualifications required pursuant to paragraph (1) of this subsection.

(c)(1) Any person who is elected or appointed as a clerk of the superior court after July 1, 1981, but before January 1, 2000, and who was not serving as a clerk of the superior court on July 1, 1981, shall satisfactorily complete 40 hours of training in the performance of his or her duties and shall file a certificate of training issued by the Institute of Continuing Judicial Education of Georgia with the judge of the probate court of the county in which he or she serves within one year from the date of his or her election or appointment in order to become a certified clerk of the superior court. On and after July 1, 1998, each person who is elected or appointed as a clerk of the superior court shall also enter upon the minutes of the superior court in which he or she holds office a copy of the certificate of training issued by the Institute of Continuing Judicial Education of Georgia. Any person subject to the provisions of this paragraph who does not satisfactorily complete the training required by this paragraph or who does not file a certificate of training issued by the Institute of Continuing Judicial Education of Georgia with the judge of the probate court and enter a certificate of training into the minutes of the superior court within the time period required shall become a certified clerk of the superior court upon completion of the requirements at any later time. For each year the training requirements required by this paragraph are not completed and the certificate is not placed on file, the clerk of the superior court will not receive credit for that year of service for determining eligibility for retirement under the Superior Court Clerks' Retirement Fund of Georgia.

(2) Any person elected or appointed clerk of the superior court of any county of this state on or after January 1, 2000, shall satisfactorily complete 40 hours of continuing judicial education prior to

taking office and assuming the duties and responsibilities of his or her office. The clerk of superior court shall file a certificate of training issued by the Institute of Continuing Judicial Education of Georgia with the probate court and shall enter the certificate on the minutes of the superior court in the county in which he or she holds office. Upon completing such 40 hour curriculum, the clerk shall become a certified clerk of the superior court. The training requirements of this paragraph shall not apply to persons subject to the provisions of paragraph (1) of this subsection. On and after July 1, 1998, the curriculum for all training programs required by this paragraph and paragraph (1) of this subsection shall be approved by the Superior Court Clerks Training Council.

(3) Effective July 1, 1983, after the initial year of training as required in paragraphs (1) and (2) of this subsection, each clerk of the superior court shall complete 15 hours of additional training per annum during each year in which he or she serves as a clerk of the superior court and shall file a certificate of additional training issued by the Institute of Continuing Judicial Education of Georgia with the judge of the probate court in his or her county. On and after July 1, 1998, the certificate of training shall be entered upon the minutes of the superior court in which the clerk of the superior court holds office. For each year the training requirements of this paragraph are not completed and the certificate is not filed as required by this paragraph, the clerk of the superior court will not receive credit for that year of service for determining eligibility for retirement under the Superior Court Clerks' Retirement Fund of Georgia; provided, however, that, if a clerk fails to take the required training in any given year, he or she may, upon written notice to the Superior Court Clerks Training Council, make up such deficiency in the next succeeding year. In such event, the clerk shall file the appropriate certificate of additional training in the manner provided in this paragraph.

(4) A clerk of the superior court may appoint an employee of his or her office as clerk pro tempore for a period not exceeding five days per year in order for the clerk to attend training authorized or required by this subsection or by any other Code section. If any clerk, because of a lack of personnel in his or her office, is unable to appoint an employee of such office as clerk pro tempore for this purpose, then the judge of the probate court shall serve as clerk pro tempore for such period. The appointment of clerk pro tempore shall be approved by the judge of the superior court and recorded in the minutes of the court.

(5) All reasonable expenses of training authorized or required by this subsection, including any tuition which may be fixed by the Institute of Continuing Judicial Education of Georgia, shall be paid

by the clerk taking the training but shall be reimbursed from county funds by the county governing authority.

(6) The failure to file the certificate required by this subsection or the failure to complete the judicial education required by this subsection shall not invalidate any act or actions taken by the clerk.

History. — Laws 1794, Cobb's 1851 Digest, p. 574; Code 1863, § 249; Code 1868, § 243; Code 1873, § 255; Code 1882, § 255; Civil Code 1895, § 4347; Civil Code 1910, § 4878; Code 1933, § 24-2701; Ga. L. 1981, p. 921, § 2; Ga. L. 1982, p. 3, § 15; Ga. L. 1983, p. 1306, § 1; Ga. L. 1986, p. 213, §§ 1, 2; Ga. L. 1989, p. 1091, § 1; Ga. L. 1998, p. 1159, § 6.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1998, "Institute" was substituted for "institute" near the end of the second sentence in paragraph (c)(1).

Law reviews. — For article surveying legislative and judicial developments in Georgia local government law for 1978-79, see 31 Mercer L. Rev. 155 (1979).

JUDICIAL DECISIONS

Breach of duty. — Trial court erred in granting summary judgment in favor of a former clerk and a deputy clerk in an inmate's action alleging that the clerks breached the clerks' duty to notify the department of corrections of the inmate's amended sentence as required by O.C.G.A. § 42-5-50(a) because the court of appeals previously ruled in the case that the clerks were not entitled to official immunity in the clerks' individual capacities for failing to perform the ministerial act of communicating the inmate's sentence to the DOC, and nothing in the record following remand changed that ruling; § 42-5-50(a) is imperative, and the statute's performance is neither discretionary nor dependent upon a direction from the parties at interest. McGee v. Hicks, 303 Ga. App. 130, 693 S.E.2d 130 (2010), aff'd, 289 Ga. 573, 713 S.E.2d 841 (2011).

OPINIONS OF THE ATTORNEY GENERAL

Annual training requirements as set by the 1983 amendment apply to all superior court clerks and not just those who took office after July 1, 1981. 1983 Op. Att'y Gen. No. U83-18.

RESEARCH REFERENCES

Am. Jur. 2d. — 15A Am. Jur. 2d, Clerks of Court, § 6.

C.J.S. — 21 C.J.S., Courts, § 328 et seq.

15-6-50.1. Superior Court Clerks Training Council.

(a) The Superior Court Clerks Training Council is established. The council shall consist of nine voting members and three nonvoting members and shall be composed as follows:

(1) Nine voting members shall be elected to terms of four years by the members of the Superior Court Clerks Association of Georgia or its successor organization; and

(2) Three nonvoting members shall be judges of the superior courts appointed to terms of four years by the Judicial Council of Georgia.

Membership on the training council does not constitute public office, and no member shall be disqualified from holding public office by reason of his or her membership.

(b) The business of the training council shall be conducted in the following manner:

(1) The training council shall hold an annual meeting promptly after the appointment of its members and shall elect from among its voting members a chairperson, a vice chairperson, and a secretary-treasurer who shall serve until the first meeting in the succeeding year. Thereafter, the chairperson, the vice chairperson, and the secretary-treasurer shall be elected at the first meeting of each calendar year;

(2) Five voting members of the training council shall constitute a quorum for the transaction of business; and

(3) The training council shall maintain minutes of its meetings and such other records as it deems necessary.

(c) The members of the training council shall receive no salary but shall be reimbursed for mileage incurred in the performance of their functions in accordance with state travel regulations if sufficient funds are appropriated by the state or accrue from contributions to the training council.

(d) The training council is vested with the following functions and authority:

(1) To meet at such times and places as it may deem necessary;

(2) To recommend to the Institute of Continuing Judicial Education of Georgia the curriculum, including the methods of instruction, composing the basic certification course for new clerks of superior courts and to approve such curriculum adopted by the institute;

(3) To recommend to the Institute of Continuing Judicial Education of Georgia the curriculum for the annual recertification training authorized for clerks of superior courts by Code Section 15-6-50 and to approve such curriculum adopted by the Institute of Continuing Judicial Education of Georgia; and

(4) To do any and all things necessary or convenient to enable it to perform wholly and adequately its duties and to exercise the power granted to it.

History. — Code 1933, § 24-2701.1, enacted by Ga. L. 1981, p. 921, § 3; Ga. L. 1982, p. 3, § 15; Ga. L. 1990, p. 8, § 15; Ga. L. 1997, p. 520, § 1.

15-6-50.2. Council of Superior Court Clerks of Georgia.

(a) There is created a superior court clerks' council to be known as "The Council of Superior Court Clerks of Georgia." The council shall be composed of the clerks of the superior courts of this state. The council is authorized to organize itself and to develop a constitution and bylaws.

(b) It shall be the purpose of the council to effectuate the constitutional and statutory responsibilities conferred upon it by law, to further the improvement of the superior courts and the administration of justice, to assist the superior court clerks throughout the state in the execution of their duties, and to promote and assist in the training of superior court clerks.

(c) Expenses of the administration of the council shall be paid from state funds appropriated for that purpose, from federal funds available to the council for that purpose, or from other appropriate sources.

(d) The Council of Superior Court Clerks of Georgia shall be a legal entity and an agency of the State of Georgia; shall have perpetual existence; may contract; may own property; may accept funds, grants, and gifts from any public or private source for use in defraying the expenses of the council; may adopt and use an official seal; may establish a principal office; may employ such administrative or clerical personnel as may be necessary and appropriate to fulfill its necessary duties; shall establish, maintain, and revise the state-wide master jury list as provided in Chapter 12 of this title; shall distribute the county master jury list as provided in Chapter 12 of this title; and shall have other powers, privileges, and duties as may be reasonable and necessary for the proper fulfillment of its purposes and duties.

(e) Notwithstanding any other law, a member of the council shall not be ineligible to hold the office of clerk of a superior court by virtue of his or her position as a member of the council or its executive committee.

History. — Code 1981, § 15-6-50.2, enacted by Ga. L. 1990, p. 162, § 1; Ga. L. 2011, p. 59, § 1-2/HB 415; Ga. L. 2014, p. 451, § 1/HB 776.

Editor's notes. — Ga. L. 2011, p. 59, § 1-1/HB 415, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Jury Composition Reform Act of 2011.'"

15-6-51. Eligibility to serve as other court clerk.

The clerk of superior court shall be eligible to hold the office of clerk of the municipal, state, or other court in the counties of their residence, on taking the oath and giving bond and security as prescribed by law.

History. — Ga. L. 1893, p. 106, § 1; Civil Code 1895, § 4349; Civil Code 1910, § 4880; Code 1933, § 24-2703; Ga. L. 1983, p. 884, § 3-11; Ga. L. 2012, p. 173, § 1-3/HB 665.

RESEARCH REFERENCES

Am. Jur. 2d. — 15A Am. Jur. 2d, Clerks of Court, § 8.

15-6-52. Practice of law restricted.

The clerks of the superior courts are prohibited from practicing law in their own or another's name, as a partner or otherwise, in any court except in their own case.

History. — Laws 1799, Cobb's 1851 Digest, p. 574; Code 1863, § 250; Code 1868, § 244; Ga. L. 1871-72, p. 23, § 1; Code 1873, § 256; Code 1882, § 256; Civil Code 1895, § 4348; Civil Code 1910, § 4879; Code 1933, § 24-2702.

Cross references. — Regulation of practice of law generally, § 15-19-50 et seq.

Law reviews. — For article surveying legislative and judicial developments in Georgia local government law for 1978-79, see 31 Mercer L. Rev. 155 (1979).

JUDICIAL DECISIONS

This section does not apply to county court clerks. Blount v. Wells, 55 Ga. 282 (1875).

RESEARCH REFERENCES

Am. Jur. 2d. — 15A Am. Jur. 2d, Clerks of Court, § 20 et seq.

15-6-53. Appointment of clerk; actions by interim clerk; special elections.

(a) In any county in which a chief deputy clerk has been appointed pursuant to Code Section 15-6-59, the chief deputy clerk shall become the clerk of superior court if the clerk of superior court dies, resigns, is removed from office pursuant to the provisions of Code Section 45-2-1, or otherwise vacates office. The chief deputy clerk shall hold office for the unexpired term of his or her predecessor, provided that more than two years of the clerk's term of office have expired at the time the clerk vacates office. If more than two years of the clerk's term of office have not expired at the time the clerk vacates office, a special election shall be held, as provided in subsection (c) of Code Section 21-2-540, at least 120 days but no later than 365 days after the date the vacancy occurred. The person elected on such date shall hold office for the unexpired term of his or her predecessor. The returns of the election shall be made to

the Governor, who shall immediately commission the person elected clerk.

(b)(1) In any county in which a chief deputy clerk has not been appointed pursuant to Code Section 15-6-59, the probate judge shall immediately appoint a qualified person to serve as the interim clerk of superior court when the clerk vacates office for any reason. Such interim clerk shall serve in such capacity until the vacancy is filled pursuant to the provisions of this subsection; provided, however, that the interim clerk shall not serve more than one year. Any act done by the interim clerk during such period that the clerk could have done shall be valid.

(2) When a vacancy is filled pursuant to paragraph (1) of this Code section and it is more than six months from the date when the clerk vacated office until the next general election is held, the election superintendent for the county shall call a special election to fill the vacancy, as provided in subsection (c) of Code Section 21-2-540, and such official shall give notice in one or more of the public newspapers of the county, if any, at the courthouse, and at three or more of the most public places of the county at least 30 days prior to the date of election. Such special election shall be held at least 120 days but no later than 365 days after the date the vacancy occurred. The person elected on such date shall hold office for the unexpired term of his or her predecessor. The returns of the election shall be made to the Governor, who shall immediately commission the person elected clerk.

History. — Laws 1842, Cobb's 1851 Digest, p. 216; Ga. L. 1853-54, p. 28, § 1; Code 1863, §§ 257, 258; Code 1868, §§ 251, 252; Code 1873, §§ 263, 264; Code 1882, §§ 263, 264; Civil Code 1895, §§ 4356, 4357; Civil Code 1910, §§ 4887, 4888; Code 1933, §§ 24-2710, 24-2711; Ga. L. 1982, p. 3, § 15; Ga. L. 2012, p. 173, § 1-4/HB 665.

Cross references. — Vacancies in public office generally, § 45-5-1 et seq.

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Editor's notes. — In light of the similarity of the statutory provisions, opinions under former O.C.G.A. §§ 15-6-54 and 15-6-56, as amended, which were subsequently repealed but were succeeded by provisions of this Code section, are included in the annotations for this Code section.

Commencement and termination of six months period. — Six months provision refers to period of time starting from when election can be held and ending with date existing term expires; when the election could be held would be determined by the provisions of the election laws (Title 21); if there is not more than six months time between the date when the election can be held and when the present time expires, then there is no need for a special election. 1970 Op. Att'y Gen. No. 70-71 (decided under former O.C.G.A. § 15-6-54).

When probate judge may act as clerk. — Judge of the probate court cannot legally hold the office of superior court clerk; however, if a vacancy occurs at a time other than during the term of the superior court and the vacancy results

from an emergency and the probate judge cannot otherwise fill the vacancy in the manner allowed by statute, the judge may act as clerk. 1974 Op. Att'y Gen. No. 74-42 (decided under former O.C.G.A. § 15-6-54).

Special election and special primary. — If vacancy occurs after qualification deadline but before 30 days (now 60 days) prior to general election, then a special election and, time permitting, a special primary must be held. 1982 Op. Att'y Gen. 82-59 (decided under former O.C.G.A. § 15-6-56).

Reasonable time to hold election. — Election to fill vacancy must be called within reasonable period of time after vacancy occurs. 1960-61 Op. Att'y Gen. p. 75 (decided under former O.C.G.A. § 15-6-56).

RESEARCH REFERENCES

Am. Jur. 2d. — 15A Am. Jur. 2d, Clerks of Court, § 7.

C.J.S. — 21 C.J.S., Courts, § 328 et seq.

15-6-54. Appointment by probate judge pending filling of vacancy; duration of appointment.

Reserved. Repealed by Ga. L. 2012, p. 173, § 1-5/HB 665, effective July 1, 2012.

Editor's notes. — This Code section was based on Laws 1826, Cobb's 1851 Digest, p. 213; Code 1863, §§ 254, 256; Code 1868, §§ 248, 250; Code 1873, §§ 260, 262; Code 1882, §§ 260, 262; Civil Code 1895, §§ 4353, 4355; Civil Code 1910, §§ 4884, 4886; Code 1933, §§ 24-2707, 24-2709.

15-6-55. Emergency service by probate court judge; appointment of interim deputy clerk.

(a) If as a result of any sudden emergency there is a vacancy in the office of clerk of superior court, and a person who meets the qualifications for a clerk of superior court as set forth in Code Section 15-6-50 cannot immediately fill the vacancy pursuant to Code Section 15-6-53, the judge of the probate court shall act as clerk of superior court for a period not to exceed 120 days. Any act done by the probate judge during such period that the clerk could have done shall be valid.

(b) If there is a temporary absence of the clerk of superior court for any reason not specified in Code Section 15-6-53 or if the clerk of superior court for any reason does not act as clerk at the time provided by law for holding a term of the superior courts and there is no chief deputy clerk to perform such duties, notwithstanding local law, the judges of the superior court of the judicial circuit by a majority vote shall appoint an interim deputy clerk who shall hold the office of clerk during the term of court and for ten days thereafter. If a majority of the judges do not agree to the selection of the interim deputy clerk, the chief judge of the superior court shall select the interim deputy clerk. Any act which the chief deputy clerk or the appointed clerk does during such time which the clerk could have done shall be valid.

History. — Laws 1826, Cobb's 1851 Digest, p. 213; Code 1863, § 255; Code 1868, p. 249; Code 1873, § 261; Code 1882, § 261; Civil Code 1895, § 4354; Civil Code 1910, § 4885; Code 1933, § 24-2708; Ga. L. 2012, p. 173, § 1-6/HB 665.

OPINIONS OF THE ATTORNEY GENERAL

When probate judge may act as clerk. — Judge of the probate court cannot legally hold the office of superior court clerk; however, if a vacancy occurs at a time other than during the term of the superior court and the vacancy results from an emergency and the probate judge cannot otherwise fill the vacancy in the manner allowed by statute, the judge may act as clerk. 1974 Op. Att'y Gen. No. 74-42.

15-6-56. Election to fill vacancy; term of office; filling of vacancies in counties with chief deputy clerk.

Reserved. Repealed by Ga. L. 2012, p. 173, § 1-7/HB 665, effective July 1, 2012.

Editor's notes. — This Code section was based on Laws 1826, Cobb's 1851 Digest, p. 212; Code 1863, §§ 251, 252; Code 1868, §§ 245, 246; Code 1873, §§ 257, 258; Code 1882, §§ 257, 258; Civil Code 1895, §§ 4350, 4351; Civil Code 1910, §§ 4881, 4882; Code 1933, §§ 24-2704, 24-2705; Ga. L. 1981, p. 733, § 1; Ga. L. 1982, p. 877, §§ 1, 2; Ga. L. 1991, p. 364, § 1.

15-6-57. Election to break tie.

Should any two or more candidates at an election to fill a vacancy in the office of superior court clerk, or at a regular election, have the highest and an equal number of votes, the judge of the probate court shall set a date and advertise another election in the manner prescribed in Code Section 15-6-53 and shall do so until a choice is made.

History. — Laws 1826, Cobb's 1851 Digest, p. 213; Code 1863, § 253; Code 1868, § 247; Code 1873, § 259; Code 1882, § 259; Civil Code 1895, § 4352; Civil Code 1910, § 4883; Code 1933, § 24-2706; Ga. L. 2012, p. 173, § 2-3/HB 665.

RESEARCH REFERENCES

Am. Jur. 2d. — 15A Am. Jur. 2d, Clerks of Court, § 7.
C.J.S. — 21 C.J.S., Courts, § 327.

15-6-58. Oath of office.

(a) The clerks of superior courts, before entering upon the discharge of their duties, whether appointed, elected, or acting by operation of law besides the oath required of all civil officers, must take and subscribe to the following oath:

"I do swear or affirm that I will truly and faithfully enter and record all the orders, decrees, judgments, and other proceedings of the Superior Court of the County of _____, and all other matters and things which I am required by law to record; and that I will faithfully and impartially discharge and perform all the duties required of me, to the best of my understanding. So help me God."

(b) When the oath is taken by the judges of the probate courts or their deputies acting in a certain contingency as clerks of the superior court, they may take it before any person authorized to administer an oath and may enter it on the minutes of the superior court.

History. — Laws 1799, Cobb's 1851 Digest, p. 573; Code 1863, § 259; Code 1868, § 253; Code 1873, § 265; Code 1882, § 265; Civil Code 1895, § 4358; Civil Code 1910, § 4889; Code 1933, § 24-2712; Ga. L. 2012, p. 173, § 1-8/HB 665.

RESEARCH REFERENCES

Am. Jur. 2d. — 15A Am. Jur. 2d, Clerks of Court, § 3.

C.J.S. — 21 C.J.S., Courts, § 324 et seq.

15-6-59. Bond; appointment of deputies.

(a) The clerk of each of the superior courts shall execute bond in the sum of $150,000.00, which amount may be increased in any county by local Act or by an ordinance or resolution of the governing authority.

(b) The clerks of superior courts shall have the power to appoint a deputy or deputies and, upon making such appointment, shall require from such deputies a bond with good security. The deputies shall take the same oaths as the clerks do before entering upon the discharge of their duties. The oath shall be administered by the clerk of superior court and recorded on the minutes of the superior court. Powers and duties of deputy clerks shall be the same as those of the clerks, as long as their principals continue in office and not longer, for faithful performance of which they and their securities shall be bound. The clerks of superior courts shall also have the authority to appoint one of their deputies as chief deputy clerk.

History. — Laws 1799, Cobb's 1851 Digest, p. 573; Laws 1817, Cobb's 1851 Digest, p. 206; Ga. L. 1851-52, p. 78, § 1; Code 1863, § 260; Code 1868, §§ 254, 255; Code 1873, § 266; Code 1882, § 266; Civil Code 1895, § 4359; Civil Code 1910, § 4890; Code 1933, § 24-2713; Ga. L. 1941, p. 374, § 1; Ga. L. 1965, p. 419, § 1; Ga. L. 1975, p. 923, § 1; Ga. L. 1981, p. 733, § 2; Ga. L. 2012, p. 173, § 1-9/HB 665.

Cross references. — Official bonds generally, § 45-4-1 et seq.

JUDICIAL DECISIONS

Analysis

General Consideration
Deputy Clerks

General Consideration

Authorizing recovery on official bond of superior court. — To authorize recovery on official bond of clerk of superior court there must be concurrence of breach of duty and of damage sustained because of breach. Dysart v. United States Fid. & Guar. Co., 63 Ga. App. 432, 11 S.E.2d 363 (1940).

When liability of clerk attaches. — Clerk's liability on bond attaches once clerk accepts illegal bond dissolving garnishment. Spain v. Clements, 63 Ga. 786 (1879).

Liability on bond attaches once clerk negligently damages another by breach of clerk's duties. Collins v. McDaniel & Strong, 66 Ga. 203 (1880).

Clerk's liability on bond attaches once clerk fails to enter attachment on docket. Stewart, Dunholter & Co. v. Sholl, 99 Ga. 534, 26 S.E. 757 (1896).

Clerk's liability on bond attaches once clerk fails to enter materialman's claim of lien. Neal-Blun Co. v. Rogers, 141 Ga. 808, 82 S.E. 280 (1914).

Nonliability of clerk. — Clerk's liability does not attach for breach of duty as administrator. McNeil v. Smith, 55 Ga. 313 (1875).

Clerk's liability does not attach for failure to record execution when not directed by plaintiff. Broyles v. Young, 19 Ga. App. 294, 91 S.E. 437 (1917).

Cited in Hendrick v. State, 257 Ga. 17, 354 S.E.2d 433 (1987).

Deputy Clerks

Deputy clerk who fails to make oath is de facto officer. Ledbetter v. State, 2 Ga. App. 631, 58 S.E. 1106 (1907).

Deputy clerks as alter ego of clerk. — O.C.G.A. § 15-6-59 effectively makes deputy clerks the alter ego of the clerk. Zellner v. Ham, 735 F. Supp. 1052 (M.D. Ga. 1990).

In a 42 U.S.C. § 1983 action, the county clerk and other defendants unsuccessfully argued that O.C.G.A. § 15-6-59 established that deputy clerks were "alter egos" of the county clerk and the position of deputy clerk is one for which patronage action is appropriate. A deputy clerk was not a policy maker nor a confidential employee, a deputy clerk's function was largely ministerial and involved mostly tasks of processing documents, a clerk exercised little discretion in job performance, and consequently, political affiliation was not an appropriate requirement for the effective performance of the duties of a deputy clerk. Calvert v. Hicks, 510 F. Supp. 2d 1164 (N.D. Ga. 2007).

Clerk cannot confer authority orally. — Clerk cannot by oral authority confer power on another, not clerk's deputy, to sign executions in clerk's name during clerk's absence. Biggers v. Winkles, 124 Ga. 990, 53 S.E. 397 (1906).

Deputy clerk may sign process. Goodwyn v. Goodwyn, 11 Ga. 178 (1852); Graves v. Warner, 26 Ga. 620 (1859).

Clerk as necessary party to traverse proceeding. — Deputy clerk, who made entry of filing attacked by traverse, is necessary party to traverse proceeding. Swift v. Swift, 191 Ga. 129, 11 S.E.2d 660 (1940).

Termination of deputy clerk by court clerk. — Court clerk's termination of a deputy clerk, who had advised the clerk that the deputy clerk planned to run against the clerk for the position of clerk in the upcoming election, did not violate the deputy's free speech rights as guaranteed by the First Amendment. Zellner v. Ham, 735 F. Supp. 1052 (M.D. Ga. 1990).

Deputy court clerk's First Amendment rights were not violated when the deputy was terminated for running against the court clerk in a primary election; under O.C.G.A. § 15-6-59(b), the deputy had the same powers and duties as the clerk and was therefore the type of confidential employee who could be fired for opposing the clerk in the election. Underwood v. Harkins, 698 F.3d 1335 (11th Cir. 2012).

Stigmatizing terminated deputy clerk. — Court clerk's placing of a terminated deputy's separation notice in the confidential files of the Department of Labor did not amount to "stigmatizing" the deputy so as to deprive the deputy clerk of a liberty interest without due process. Zellner v. Ham, 735 F. Supp. 1052 (M.D. Ga. 1990).

Breach of duty. — Trial court erred in granting summary judgment in favor of a former clerk and a deputy clerk in an inmate's action alleging that they breached their duty to notify the department of corrections of the inmate's amended sentence as required by O.C.G.A. § 42-5-50(a), because the court of appeals previously ruled in the case that the clerks were not entitled to official immunity in their individual capacities for failing to perform the ministerial act of communicating the inmate's sentence to the DOC, and nothing in the record following remand changed that ruling; § 42-5-50(a) is imperative, and the statute's performance is neither discretionary nor dependent upon a direction from the parties at interest. McGee v. Hicks, 303 Ga. App. 130, 693 S.E.2d 130 (2010), aff'd, 289 Ga. 573, 713 S.E.2d 841 (2011).

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Minimum age of deputy clerk. — Since the authorization in former Code 1933, § 24-2713 (see now O.C.G.A. § 15-6-59) for appointment of deputies makes a deputy clerk a public officer of this state under former Code 1933, § 89-101 (see now O.C.G.A. § 45-2-1), a deputy clerk of the superior court must be at least 21 years of age. 1958-59 Op. Att'y Gen. p. 43.

Power of deputy clerk to appoint notary public. — Because former Code 1933, § 24-2713 (see now O.C.G.A. § 15-6-59) provided that the powers and duties of a deputy clerk shall be the same as those of the clerk, a deputy clerk under former Code 1933, § 71-101 (see now O.C.G.A. § 45-17-1.1) may appoint a notary public in the same manner as the clerk; no other person has this authority. 1958-59 Op. Att'y Gen. p. 60.

RESEARCH REFERENCES

Am. Jur. 2d. — 15A Am. Jur. 2d, Clerks of Court, §§ 3, 41.

C.J.S. — 21 C.J.S., Courts, § 344 et seq.

15-6-60. Powers of clerks.

The clerks of the superior courts have authority:

(1) To administer oaths and take affidavits in all cases permitted by law or where such authority is not confined to some other officer;

(2) To receive the amounts of all costs due in the court of which they are clerks and to receive other sums whenever required to do so by law or by order of the judge, and not otherwise;

(3) To advertise under the same rules and restrictions as apply to sheriffs;

(4) To demand and collect in advance their fees for recording deeds, mortgages, and other instruments which are legally entitled to be recorded on the deed and mortgage records of their counties; and

(5) To exercise such other powers as are or may be conferred upon them by law.

History. — Laws 1799, Cobb's 1851 Digest, p. 574; Code 1863, § 263; Code 1868, § 257; Code 1873, § 268; Ga. L. 1875, p. 86, § 1; Code 1882, § 268; Civil Code 1895, § 4362; Civil Code 1910, § 4893; Code 1933, § 24-2720; Ga. L. 1963, p. 367, § 1.

Cross references. — Power of clerks of superior courts to appoint notaries public, § 45-17-1.1.

JUDICIAL DECISIONS

Duty of receiving all costs due in the court are charged to superior court clerks. Whitsett v. Hester-Bowman Enters., Inc., 94 Ga. App. 78, 93 S.E.2d 788 (1956).

Clerk cannot administer attachment affidavit. Heard v. National Bank, 114 Ga. 291, 40 S.E. 266 (1901).

Oaths may be administered by deputy clerk. Graves v. Warner, 26 Ga. 620 (1859); Ellis v. Ellis, 134 Ga. 287, 67 S.E. 819 (1910).

Act creating city court may confer power in clerk thereof to administer oaths, and attest on affidavits as basis of an accusation. Wright v. Davis, 120 Ga. 670, 48 S.E. 170 (1904); Griffin v. State, 3 Ga. App. 476, 60 S.E. 277 (1908).

Sole compensation of clerk is salary payable by county, and the clerk is inhibited to receive to the clerk's own use any fees or perquisites of office. Puckett v. Walker, 194 Ga. 401, 21 S.E.2d 713 (1942).

Nature of deposits. — Moneys incidentally coming into the hands of the clerk from parties to cases in court are deposits for safe-keeping to meet the requirements of the orders or judgments of the court. Puckett v. Walker, 194 Ga. 401, 21 S.E.2d 713 (1942).

Clerk's speculation with deposits forbidden. — Clerk does not acquire authority to substitute for the court a different depository, or to speculate by putting the money out at interest, thereby taking risk of a loss. If the clerk does so, and collects interest under color of the clerk's office, such interest should be regarded merely as enlargement of the original deposits, and not for the clerk's individual enrichment. Puckett v. Walker, 194 Ga. 401, 21 S.E.2d 713 (1942).

Failure to charge sufficient costs not to affect rights of parties. — In cases where the clerks are on a salary basis and the costs belong to the county, failure to charge sufficient costs would be a matter between the clerk and the county, and might subject the clerk to a contempt proceeding, but would not affect the rights of parties litigant. Whitsett v. Hester-Bowman Enters., Inc., 94 Ga. App. 78, 93 S.E.2d 788 (1956).

Dormancy not prevented by entry of clerk. — Mere entry by a clerk upon an execution acknowledging that the clerk received the cost due thereon will not suffice to relieve from dormancy the judgment upon which the execution was based. Lewis v. Smith, 99 Ga. 603, 27 S.E. 162 (1896).

Employment of counsel. — General Assembly has not expressly granted clerks of superior court the power to hire attorneys, and there is no legislative grant of power from which it is necessarily implied that clerks have the power to contract for the services of an attorney. Stephenson v. Board of Comm'rs, 261 Ga. 399, 405 S.E.2d 488 (1991).

County governing authority's employment of counsel to represent a superior court clerk did not violate Ga. Const. 1983, Art. IX, Sec. II, Para. I(c)(1) or (7), which preclude the authority from exercising any power in a manner affecting "any elective county office" or "any court or the personnel thereof." Stephenson v. Board of Comm'rs, 261 Ga. 399, 405 S.E.2d 488 (1991).

Cited in Myrick v. Dixon, 37 Ga. App. 536, 140 S.E. 920 (1927).

OPINIONS OF THE ATTORNEY GENERAL

Records of amounts due Peace Officers Annuity and Benefit Fund will normally be kept by clerk of court. 1970 Op. Att'y Gen. No. U70-85.

RESEARCH REFERENCES

Am. Jur. 2d. — 15A Am. Jur. 2d, Clerks of Court, §§ 18, 20 et seq.

C.J.S. — 21 C.J.S., Courts, § 324 et seq.

15-6-60.1. Location of retained records; request for access to records; contracting for retention; online access.

(a) As the county constitutional officer elected by citizens of his or her county to protect and preserve their court and land records, the clerk of superior court is the sole custodian of all original filed records that the clerk is required by law to retain in his or her office or permitted to store and archive in another location as provided by Code Section 15-6-86.

(b) Regardless of the methodology, system, or location used by the clerk of superior court for filing, recording, archiving, and storing records, any request for access to or copies of records, including requests made pursuant to Article 4 of Chapter 18 of Title 50 for access to or copies of any record filed, recorded, or retained by a clerk of superior court, shall be made to the clerk of superior court.

(c) The clerk of superior court may contract with any person or entity or any governmental department, agency, authority, or entity for the purpose of archiving or storing electronic records of the clerk's office. When the clerk executes a contract for such purpose, such service provider shall not provide access to or copies of any records without the express written approval of the clerk of superior court.

(d) Any person or entity or any governmental department, agency, authority, or entity that provides storage or archiving services for records for which the clerk of superior court is custodian shall relinquish possession of all such records and any copies thereof and return such records and copies to the clerk upon request of the clerk. This subsection shall not apply to records provided by the clerk of the superior court to the Georgia Superior Court Clerks' Cooperative Authority pursuant to laws requiring transmittal of records of the clerk's office to such authority.

(e) Records that the clerk of superior court is required by law or rules and regulations to provide to other governmental departments, agencies, authorities, and entities to enable such departments, agencies, authorities, and entities to perform their duties or to support the functions assigned to such departments, agencies, authorities, and entities shall not be used for any purpose other than the performance of such duties or functions.

(f) Records provided by the clerk of superior court to the Georgia Superior Court Clerks' Cooperative Authority shall be used by the authority only for the performance of its statutory duties, including providing online access to such records.

(g) Nothing in this Code section shall be construed to require or otherwise affect the appropriation of public funds by a local governing authority to a clerk of superior court.

History. — Code 1981, § 15-6-60.1, enacted by Ga. L. 2015, p. 1065, § 2-1/SB 135.

RESEARCH REFERENCES

Am. Jur. 2d. — 20 Am. Jur. 2d, Courts, § 22 et seq.

C.J.S. — 21 C.J.S., Courts, §§ 243 et seq., 334 et seq.

15-6-61. Duties of clerks generally; computerized record-keeping system.

(a) It is the duty of a clerk of superior court:

(1) To keep the clerk's office and all things belonging thereto at the county site and at the courthouse or at such other place or places as authorized by law;

(2) To attend to the needs of the court through the performance of the duties of the clerk required and enumerated by law, or as defined in court order, or rules;

(3) To issue and sign every summons, writ, execution, process, order, or other paper under authority of the court and attach seals thereto when necessary. The clerk shall be authorized to issue and sign under authority of the court any order to show cause in any pending litigation and any other order in the nature of a rule nisi, where no injunctive or extraordinary relief is granted;

(4) To keep in the clerk's office the following:

(A) An automated civil case management system which shall contain separate case number entries for all civil actions filed in the office of the clerk, including complaints, proceedings, Uniform Interstate Family Support Act actions, domestic relations, contempt actions, motions and modifications on closed civil actions, any postjudgment proceeding filed more than 30 days after judgment or dismissal in an action, and all other actions civil in nature except adoptions;

(B) An automated criminal case management system which shall contain a summary record of all criminal indictments in which true bills are rendered and all criminal accusations filed in the office of clerk of superior court in accordance with rules promulgated by the Criminal Case Data Exchange Board. The criminal case management system shall contain entries of other

matters of a criminal nature filed with the clerk, including quasi-civil proceedings and entries of cases which are ordered dead docketed. When a case is dead docketed, all witnesses who may have been subpoenaed therein shall be released from further attendance until resubpoenaed; and

(C) A docket, file, series of files, book or series of books, microfilm records, or electronic data base for recording all deeds, liens, executions, lis pendens, maps and plats, and all other documents concerning or evidencing title to real or personal property. When any other law of this state refers to a general execution docket, lis pendens docket, or attachment docket, such other law shall be deemed to refer to the docket or other record or records provided for in this subparagraph, regardless of the format used to store such docket;

(5) To keep all the books, papers, dockets, and records belonging to the office with care and security and to keep the papers filed, arranged, numbered, and labeled, so as to be of easy reference;

(6) To keep at the clerk's office all publications of the laws of the United States furnished by the state and all publications of the laws and journals of this state, all statute laws and digests, this Code, which shall be paid for from county or law library funds, the Supreme Court and Court of Appeals reports, and all other law books or other public documents distributed to the clerk, for the public's convenience; provided, however, that the clerk may consent that these publications be maintained in the public law library;

(7) To procure a substantial seal of office with the name of the court and the county inscribed thereon;

(8) To make out and deliver to any applicant, upon payment to the clerk of legal fees, a correct transcript, properly certified, of any minute, record, or file of the clerk's office except for such records or documents which are, by provision of law, not to be released;

(9) Upon payment of legal fees to the clerk, to make out a transcript of the record of each case to be considered by the Supreme Court or the Court of Appeals and a duplicate thereof numbered in exact accordance with the numbering of the pages of the original transcript of the record to be transmitted to the Supreme Court and the Court of Appeals;

(10) To make a notation on all conveyances of real or personal property, including liens, of the date and time they were filed for recordation, which shall be evidence of the facts stated. When the clerk accepts an instrument or document for filing, the clerk shall note the date and time of receipt of such instrument or document on

the instrument or document. All liens or conveyances presented to the clerk for filing shall be on 8 1/2 inch by 11 inch or 8 1/2 inch by 14 inch paper or the digital equivalent and shall have a three-inch margin at the top to allow space for the clerk's notation required by this paragraph. The clerk shall not record any instrument or document conveying real or personal property, including liens, that is not prepared as required by this paragraph and without receiving all required fees and taxes that are due in connection with such filing. The notation required by this paragraph may be made by the clerk or the clerk's deputy or employee by written signature, facsimile signature, mechanical printing, or electronic signature or stamp;

(11) To attest deeds and other written instruments for registration;

(12) To administer all oaths required by the court or that may otherwise be required by law and to record all oaths required by law;

(13) To transmit to the Georgia Superior Court Clerks' Cooperative Authority or its designated agent within 24 hours of filing of any financing statement, amendment to a financing statement, assignment of a financing statement, continuation statement, termination statement, or release of collateral, by facsimile or other electronic means, such information and in such form and manner as may be required by the Georgia Superior Court Clerks' Cooperative Authority, for the purpose of including such information in the central indexing system administered by such authority; provided, however, that weekends and holidays shall not be included in the calculation of the 24 hour period;

(14) To remit to the Georgia Superior Court Clerks' Cooperative Authority a portion of all fees collected with respect to the filings of financing statements, amendments to financing statements, assignments of financing statements, continuation statements, termination statements, releases of collateral, or any other documents related to personal property and included in the central index, in accordance with the rules and regulations of such authority regarding the amount and payment of such fees; provided, however, that such fees shall be remitted to the authority not later than the tenth day of the month following the collection of such fees, and the clerk shall not be required to remit such fees more often than once a week;

(15) To participate in the state-wide uniform automated information system for real and personal property records, as provided for by Code Sections 15-6-97 and 15-6-98, and any network established by the Georgia Superior Court Clerks' Cooperative Authority relating to the transmission and retrieval of electronic information concerning real estate and personal property data for any such information systems established by such authority so as to provide for public

access to real estate and personal property information, including liens filed pursuant to Code Section 44-2-2 and maps and plats. Each clerk of superior court shall provide to the authority or its designated agent in accordance with the rules and regulations of the authority such real estate information concerning or evidencing title to real property and such personal property information or access to such information which is of record in the office of clerk of superior court and which is necessary to establish and maintain the information system, including information filed pursuant to Code Section 44-2-2 and maps and plats. Each clerk of superior court shall provide and transmit real estate and personal property information filed in the office of clerk of superior court, including information required by Code Section 44-2-2 and maps and plats, to the authority for testing and operation of the information system at such times and in such form as prescribed by the authority;

(16) To participate in any network established by the Georgia Superior Court Clerks' Cooperative Authority relating to the transmission and retrieval of electronic information concerning carbon sequestration results and related transactions for any such information systems established by such authority for purposes of the carbon sequestration registry established pursuant to Article 5 of Chapter 6 of Title 12, so as to provide for public access to carbon sequestration registry information. Each clerk of superior court shall provide to the authority or its designated agent in accordance with the rules and regulations of the authority such information evidencing carbon sequestration results and related transactions and access to such information which is of record in the office of clerk of superior court and which is necessary for purposes of the carbon sequestration registry. Each clerk of superior court shall provide and transmit carbon sequestration results and related transaction information filed in the office of clerk of superior court to the authority for testing and operation of the electronic information system for the carbon sequestration registry at such times and in such form as prescribed by the authority. Each clerk shall charge and collect such fees as may be established by the Georgia Superior Courts Clerks' Cooperative Authority, which shall be paid into the county treasury less and except any sums as are otherwise directed to be paid to the authority, all in accordance with rules and regulations adopted by the authority pursuant to Code Section 15-6-97.2;

(17) To file all civil case filing and disposition forms and transmit the data contained on such forms to the Administrative Office of the Courts through electronic means provided by the Administrative Office of the Courts for such purpose which shall constitute the only transmission of such data required between the clerks of the superior courts and the Administrative Office of the Courts;

(18) To electronically collect all data elements required in subsection (g) of Code Section 35-3-36, and such clerk of superior court may transmit such data to the Georgia Superior Court Clerks' Cooperative Authority in a form and format required by such authority and The Council of Superior Court Clerks of Georgia. Any data transmitted to the authority pursuant to this paragraph shall be transmitted to the Georgia Crime Information Center in satisfaction of the clerk's duties under subsection (g) of Code Section 35-3-36 and to the Georgia Courts Automation Commission which shall provide the data to the Administrative Office of the Courts for use by the state judicial branch. Public access to said data shall remain the responsibility of the Georgia Crime Information Center. No release of collected data shall be made by or through the authority;

(19) To participate in agreements, contracts, and networks necessary or convenient for the performance of duties required by law;

(20) To perform such other duties required by law or as necessarily appertain to the office of clerk of superior court; and

(21) To keep an automated, computer based jury management system that facilitates the maintenance of the county master jury list pursuant to the provisions of Chapter 12 of this title unless such duty is delegated to a jury clerk as provided in subsection (a) of Code Section 15-12-11 or Code Section 15-12-12.

(b) Nothing in this Code section shall restrict or otherwise prohibit a clerk from electing to store for computer retrieval any or all records, dockets, indices, or files; nor shall a clerk be prohibited from combining or consolidating any books, dockets, files, or indices in connection with the filing for record of papers of the kind specified in this Code section or any other law, provided that any automated or computerized record-keeping method or system shall provide for the systematic and safe preservation and retrieval of all books, dockets, records, or indices. When the clerk of superior court elects to store for computer retrieval any or all records, the same data elements used in a manual system shall be used, and the same integrity and security maintained. Regardless of the automated or computerized system elected, each clerk shall maintain and make readily available to the public real estate grantor and grantee indices, which shall be updated regularly and prepared in compliance with paragraph (15) of subsection (a) of this Code section and Code Section 15-6-66. A clerk of superior court shall be deemed to satisfy the provisions of subsection (i) of Code Section 50-18-71 when on-site, electronic access to computerized indices of county records is provided to the public during regular business hours and in compliance with this Code section.

History. — Laws 1799, Cobb's 1851 Digest, p. 573; Laws 1807, Cobb's 1851 Digest, p. 199; Laws 1810, Cobb's 1851 Digest, p. 577; Laws 1850, Cobb's 1851 Digest, p. 455; Ga. L. 1851-52, p. 77, § 1; Code 1863, § 262; Code 1868, § 256; Code 1873, § 267; Code 1882, §§ 267, 4710a; Ga. L. 1882-83, p. 55, § 1; Ga. L. 1889, p. 99, § 1; Ga. L. 1889, p. 106, § 1; Ga. L. 1890-91, p. 208, § 1; Ga. L. 1892, p. 68, § 1; Civil Code 1895, §§ 4360, 4361; Penal Code 1895, § 797; Civil Code 1910, §§ 4891, 4892; Penal Code 1910, § 797; Code 1933, §§ 24-2714, 24-2715; Ga. L. 1939, p. 345, § 2; Ga. L. 1946, p. 726, § 1; Ga. L. 1950, p. 108, § 1; Ga. L. 1953, Nov.-Dec. Sess., p. 304, § 1; Ga. L. 1956, p. 785, § 1; Ga. L. 1960, p. 120, § 1; Ga. L. 1960, p. 196, §§ 1, 2; Ga. L. 1962, p. 639, § 1; Ga. L. 1962, p. 662, § 1; Ga. L. 1965, p. 625, § 1; Ga. L. 1967, p. 648, § 1; Ga. L. 1978, p. 1787, § 1; Ga. L. 1982, p. 3, § 15; Ga. L. 1982, p. 2107, § 5; Ga. L. 1983, p. 3, § 12; Ga. L. 1989, p. 395, § 1; Ga. L. 1993, p. 1550, § 8; Ga. L. 1994, p. 1693, § 14; Ga. L. 1997, p. 565, §§ 1, 2; Ga. L. 1999, p. 81, § 15; Ga. L. 2000, p. 850, § 6; Ga. L. 2000, p. 1205, § 1; Ga. L. 2001, p. 1001, § 1; Ga. L. 2002, p. 799, §§ 1, 2; Ga. L. 2004, p. 343, § 2; Ga. L. 2008, p. 324, § 15/SB 455; Ga. L. 2011, p. 59, § 1-3/HB 415; Ga. L. 2012, p. 173, § 1-10/HB 665; Ga. L. 2014, p. 126, § 1/HB 215; Ga. L. 2014, p. 451, § 2/HB 776; Ga. L. 2017, p. 632, § 2-5/SB 132; Ga. L. 2018, p. 550, § 1-2/SB 407; Ga. L. 2019, p. 845, § 6-2/HB 239.

The 2018 amendment, effective July 1, 2018, in subparagraph (a)(4)(B), added "in accordance with rules promulgated by the Criminal Case Data Exchange Board" at the end of the first sentence, deleted "at the discretion of the presiding judge and which shall be called only at the judge's pleasure" following "docketed" at the end of the second sentence, and deleted "thus" following "When a case is" near the beginning of the third sentence; and, in paragraph (a)(18), substituted the present provisions of the first sentence for the former provisions, which read: "To electronically collect and transmit to the Georgia Superior Court Clerks' Cooperative Authority all data elements required in subsection (g) of Code Section 35-3-36 in a form and format required by the Superior Court Clerks' Cooperative Authority and The Council of Superior Court Clerks of Georgia.", and substituted "Any" for "The" at the beginning of the second sentence.

The 2019 amendment, effective May 7, 2019, inserted "any postjudgment proceeding filed more than 30 days after judgment or dismissal in an action," near the end of subparagraph (a)(4)(A).

Cross references. — Requirement that execution on property be entered on execution docket before money judgment will create lien against third parties without notice, § 9-12-81 et seq. Use of photostatic and photographic equipment by clerks, § 15-6-87. Duty of clerk to prepare and file list of persons who appear to be disqualified from voting by reason of conviction of crime, § 21-2-232. Delivery of absentee ballots to clerk upon conclusion of primary or election, § 21-2-390. Delivery of ballots and list of voters to clerk upon completion of election returns, § 21-2-500. Powers and duties of clerks with regard to recording of deeds and other instruments generally, § 44-2-1 et seq. Requirement that clerk make written request to Secretary of State to obtain Georgia Laws, § 45-13-22(f). Standards governing use of microforms by agencies of state government or any of its political subdivisions, § 50-18-120 et seq.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1989, "record-keeping" was substituted for "record keeping" in subsection (b).

Pursuant to Code Section 28-9-5, in 2000, "this Code section" was substituted for "Code Section 15-6-61" near the end of subsection (b).

Pursuant to Code Section 28-9-5, in 2012, "subsection (i) of Code Section 50-18-71" was substituted for "subsection (c) of Code Section 50-18-70" in the last sentence of subsection (b).

Editor's notes. — Ga. L. 2004, p. 343, § 5, not codified by the General Assembly, provides that the 2004 amendment becomes effective only when funds are specifically appropriated for purposes of that Act in an appropriations Act making specific reference to that Act. Funds were appropriated at the 2006 session of the General Assembly.

Ga. L. 2011, p. 59, § 1-1/HB 415, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Jury Composition Reform Act of 2011.'"

Law reviews. — For article on the 2018 amendment of this Code section, see 35 Ga. St. U.L. Rev. 45 (2018). For article on the 2019 amendment of this Code section, see 36 Ga. St. U.L. Rev. 1 (2019).

For note on 1993 amendment of this Code section, see 10 Ga. St. U.L. Rev. 41 (1993). For note on the 1994 amendment of this Code section, see 11 Ga. St. U.L. Rev. 70 (1994).

JUDICIAL DECISIONS

Analysis

General Consideration
Role of Clerk
Dead Docket
Evidence and Admissibility
Other Personnel

General Consideration

Execution dockets are in their essence public records. — Clerk is under a duty to keep dockets and to record such entries therein. In making such entries with the dates shown, the clerk is presumed as a public officer to faithfully and accurately perform the duties devolving upon the clerk by law, and being public records, these dockets are to be taken as speaking the truth and as justifying an examiner to rely on their contents, as otherwise the examiner might be misled to the examiner's injury and damage. Pope v. United States Fid. & Guar. Co., 200 Ga. 69, 35 S.E.2d 899 (1945).

Appearance docket should not be dispensed with. Rock Island Paper Mills Co. v. Todd & Rafferty, 37 Ga. 667 (1868).

Dismissal for want of appearance improper when incorrect docket. — If a case belongs on the issue docket and is entered on the motion docket, the case should not, on the calling of the latter docket, be dismissed for want of appearance. Harris & Bussey v. Lowe & Bro., 81 Ga. 676, 8 S.E. 419 (1888).

Entry on the general execution docket operates as notice under former Civil Code 1910, § 3321 (see now O.C.G.A. § 9-12-81). Merrick v. Taylor, 14 Ga. App. 81, 80 S.E. 343 (1913).

Defect in fieri facias amount may be cured by amendment. — If a judgment for alimony is payable in installments, and more than one fieri facias has been issued, no fieri facias can lawfully include any amount which has been included in a previous fieri facias; but, if such is done, it is a defect which may be cured by amendment. Stephens v. Stephens, 171 Ga. 590, 156 S.E. 188 (1930).

City court clerk not authorized to issue distress warrant. — Act which establishes a city court and gives the clerk thereof the same powers as the clerk of the superior court does not authorize such clerk to issue a distress warrant. Woolsey v. Lawshe, 1 Ga. App. 817, 57 S.E. 1039 (1907).

Time of commencement of suit is date of filing as entered upon the petition when such filing is followed by appropriate service. Thompson v. Thompson, 214 Ga. 776, 107 S.E.2d 655 (1959).

No defense that process not signed by clerk when clerk is defendant. — In an action against an individual who is the clerk of the court in which the action is filed, the individual defendant is estopped to assert as a defense that the process attached to the petition was not signed by the clerk of the court. Jones v. Bland, 69 Ga. App. 883, 27 S.E.2d 102 (1943).

Contracts to publish public records. — Contract between the county and a company allowing that company to obtain copies of certain public indices and records and make those copies available for a fee is not invalid as an attempt to control or expand the clerk's duties. Price v. Fulton County Comm'n, 170 Ga. App. 736, 318 S.E.2d 153 (1984).

Foreclosure confirmation proceeding. — Filing of a confirmation petition with the clerk of court was insufficient to meet the mandates of O.C.G.A. § 44-14-161(a). Lanier Bank & Trust Co. v. Nix, 221 Ga. App. 323, 471 S.E.2d 229 (1996).

Attorney for defendant cannot sign clerk's name. Horton v. State, 112 Ga. 27, 37 S.E. 100 (1900).

Workers' compensation case is civil case. — Every civil case of whatever nature must be entered on either the issue docket or the motion docket, and a workmen's (now workers') compensation case which has been appealed to the superior court from the State Board of Workmen's (now Workers') Compensation is a civil case. Bryant v. Fidelity & Cas. Co., 114 Ga. App. 853, 152 S.E.2d 759 (1966).

Cited in Deveney, Hood & Co. v. Burton, 110 Ga. 56, 35 S.E. 268 (1900); Skinner v. Stewart Plumbing Co., 42 Ga. App. 42, 155 S.E. 97 (1930); Atlanta Title & Trust Co. v. Tidwell, 173 Ga. 499, 160 S.E. 620 (1931); Brinson v. Georgia R.R. Bank & Trust Co., 45 Ga. App. 459, 165 S.E. 321 (1932); Mize v. Harber, 189 Ga. 737, 8 S.E.2d 1 (1940); Chappell v. Kilgore, 196 Ga. 591, 27 S.E.2d 89 (1943); Georgia Sec. Co. v. Sanders, 74 Ga. App. 295, 39 S.E.2d 570 (1946); Godfrey v. City of Cochran, 208 Ga. 149, 65 S.E.2d 605 (1951); DeKalb County v. Deason, 221 Ga. 237, 144 S.E.2d 446 (1965); Birt v. State, 127 Ga. App. 532, 194 S.E.2d 335 (1972); Purvis v. Tatum, 131 Ga. App. 116, 205 S.E.2d 75 (1974); Jeffries v. State, 140 Ga. App. 477, 231 S.E.2d 369 (1976); Dozier v. Norris, 241 Ga. 230, 244 S.E.2d 853 (1978); Duckett v. State, 158 Ga. App. 285, 279 S.E.2d 734 (1981); Orr v. Culpepper, 161 Ga. App. 801, 288 S.E.2d 898 (1982); Grimsley v. Twiggs County, 249 Ga. 632, 292 S.E.2d 675 (1982); Vanderbreggen v. Hodge, 171 Ga. App. 868, 321 S.E.2d 218 (1984); Bowen v. Ball, 215 Ga. App. 640, 451 S.E.2d 502 (1994); City of Lawrenceville v. Davis, 233 Ga. App. 1, 502 S.E.2d 794 (1998).

Role of Clerk

Entry on minutes by clerk is required in rule nisi to set aside judgment. King & Hooper v. Carey, 5 Ga. 270 (1848).

Entry on minutes by clerk is required in order for defendant to answer bill in equity. Harwell v. Armstrong, 11 Ga. 328 (1852).

Entry on minutes by clerk is required in order granting rule nisi. Shaw v. Watson, 52 Ga. 201 (1874).

Entry on minutes by clerk is required in judgment of reversal. Sullivan, Cabot & Co. v. Rome R.R., 28 Ga. 29 (1859).

Entry on minutes by clerk is required in nolle prosequi. Statham v. State, 41 Ga. 507 (1871).

Entry on minutes by clerk is required in oral order adjourning court. Buchanan v. State, 118 Ga. 751, 45 S.E. 607 (1903).

Entry on minutes by clerk is required in return of indictment. Sampson v. State, 124 Ga. 776, 53 S.E. 332, 4 Ann. Cas. 525 (1906).

Entry on minutes by clerk is required in suggestion of death of party. Pearce v. E.M. Bruce & Co., 38 Ga. 444 (1868).

Entry on minutes by clerk is required in transcript of judgment of Supreme Court. Walker v. Dougherty, 14 Ga. 653 (1854).

Brief of evidence may be agreed upon and entered on minutes nunc pro tunc. Hardin v. Inferior Court, 10 Ga. 93 (1851); Bliss v. Stevens, 13 Ga. 403 (1853).

Brief of evidence in motions for new trial must be filed, and need not be entered on the minutes. Spears v. Smith, 7 Ga. 436 (1849); Tomlinson v. Cox, 8 Ga. 111 (1850); Powell v. Howell, 21 Ga. 214 (1857).

Order directing scire facias to issue need not be placed on minutes. McDougald v. Carey, 17 Ga. 185 (1855).

Entry on bench docket is not part of record. Johnson v. Bemis, 4 Ga. 157 (1848); Murphy v. Justices of Inferior Court, 11 Ga. 331 (1852); Skinner v. Stewart Plumbing Co., 42 Ga. App. 42, 155 S.E. 97 (1930).

No fee should be required in advance for entering a case on the motion docket. Ball v. Duncan, 30 Ga. 938 (1860).

Clerk may appoint deputy to perform the clerk's duties. Biggers v. Win-

Role of Clerk (Cont'd)

kles, 124 Ga. 990, 53 S.E. 397 (1906).

Deputy clerk may attest a mortgage. Ballard v. Orr, 105 Ga. 191, 31 S.E. 554 (1898).

Clerk to number separately distinct and separate actions. — Since an action in attachment is separate and distinct from a common law action, failure to number and document the entries separately is error on the part of a clerk. Dollar v. Fred W. Amend Co., 184 Ga. 432, 191 S.E. 696 (1937).

Subpoena must be signed by clerk. Horton v. State, 112 Ga. 27, 37 S.E. 100 (1900).

Duty of clerk to sign all processes on all suits filed is ministerial solely, and it is beyond the duties or powers of the clerk to pass on the legal sufficiency of pleadings. The clerk could not be protected in the exercise of a judicial function which the clerk did not possess by virtue of the clerk's office. Jones v. Bland, 69 Ga. App. 883, 27 S.E.2d 102 (1943).

Presumption that clerk fully and properly performed duties. — Attorneys have the right to presume that a clerk of the court has fully and properly performed the clerk's official duties as to docketing a case. Dollar v. Fred W. Amend Co., 184 Ga. 432, 191 S.E. 696 (1937).

Clerk required by law to issue fieri facias for payment of alimony award on request of plaintiff; and a judgment need not be obtained from the court for that purpose. Stephens v. Stephens, 171 Ga. 590, 156 S.E. 188 (1930).

Duty of clerk for validation certificate and validated county bonds. — It is the duty of the clerk of the superior court to sign a validation certificate and attach the seal of the clerk's office to all county bonds regularly validated; the law contemplates, however, that a certification by the clerk shall speak the truth, and the clerk may not be required by a mandamus, or otherwise, to certify an instrument that does not conform to the records in the clerk's office. Touchton v. Echols County, 211 Ga. 85, 84 S.E.2d 81 (1954).

Clerk of court authorized to sign rule nisi allowing former city attorney to seek writ of quo warranto. — Former city attorney followed correct procedure to obtain a writ of quo warranto by filing an application for leave of court to file an information in the nature of a quo warranto, and the trial court issued a rule nisi granting leave to file the petition; the order granting leave was not improper because it was signed by the clerk of court, because under O.C.G.A. § 15-6-61(a)(3), the clerk was authorized to sign orders at the direction of a superior court judge. Jones v. Boone, 297 Ga. 437, 774 S.E.2d 668 (2015).

Presence in courtroom not required. — Duties of a superior court clerk do not require his or her presence in the courtroom nor the provision of aid to criminal defendants during trial. Williams v. State, 233 Ga. App. 70, 503 S.E.2d 324 (1998).

Dead Docket

Placing case on dead docket does not terminate case. — There is no language whatsoever in this section which states that the case can be reinstated at the pleasure of the court, or any other language indicating that a case is terminated in favor of the defendant when the case is placed upon the dead docket. Courtenay v. Randolph, 125 Ga. App. 581, 188 S.E.2d 396 (1972).

Cases on dead docket still pending in court. — Since no reinstatement of the case is necessary before the case can be called for trial, the case must, as a necessity, still be pending in the court. Courtenay v. Randolph, 125 Ga. App. 581, 188 S.E.2d 396 (1972).

Placing a case upon the dead docket under this section constitutes neither a dismissal nor a termination of the prosecution in the accused's favor; such case is still pending and can be called for trial at the judge's pleasure, or the accused can make a demand for trial. Courtenay v. Randolph, 125 Ga. App. 581, 188 S.E.2d 396 (1972).

Order placing case on dead docket not appealable. — Trial court's order placing a case on the court's dead docket was not a dismissal of the accusation from which the state could bring an appeal.

State v. Creel, 216 Ga. App. 394, 454 S.E.2d 804 (1995).

Court's discretion to transfer cases to dead docket may not be used in unlawful manner, for instance, to keep an indictment hanging over the head of the defendant merely to toll the running of the statute of limitations. Underhill v. State, 129 Ga. App. 65, 198 S.E.2d 703 (1973).

Defendant's recourse when dead docket device delays trial. — When mere lapse of time, less than that set out in the statute of limitations, is involved, and the defendant has not objected to the case being dead docketed, and has made no demand for early trial, it will take a showing of prejudice to the defendant's interests or oppressive and harassing tactics by the government to justify a finding of encroachment on the constitutional right to a speedy trial. Three such interests have been identified: (1) to prevent oppressive pretrial incarceration; (2) to minimize anxiety and concern of the accused; and (3) to limit the possibility that the defense will be impaired. Underhill v. State, 129 Ga. App. 65, 198 S.E.2d 703 (1973).

Evidence and Admissibility

Presumption that facts do not exist. — If the facts do not appear on the minutes, the legal presumption is that those facts do not exist. Garner v. State, 42 Ga. 203 (1871).

Unsigned entry on deed is not evidence of time it was filed. First Nat'l Bank v. Cody, 93 Ga. 127, 19 S.E. 831 (1894).

Clerk's execution docket is admissible as evidence. Ross v. Davis, 30 Ga. 823 (1860).

Fieri facias as evidence. — Fieri facias issuing from justice of the peace court may be admitted in evidence in claim case. Turner v. Duncan, 152 Ga. 54, 108 S.E. 532 (1921).

Execution dockets not affected by parol evidence. — Execution dockets come within rule that what ought to be of record must be proved by record. The record cannot be contradicted or enlarged by parol evidence. The necessary presumption arising from a record cannot be contradicted by parol evidence any more than the express words of the record itself. Pope v. United States Fid. & Guar. Co., 200 Ga. 69, 35 S.E.2d 899 (1945).

Entries on execution dockets conclusive as to facts and dates. — Entries on the general execution dockets required by law to be kept by the clerk of the superior court, in the absence of a timely direct attack as to their verity, supported by proof, are conclusive as to the facts and dates recited in such public records. Pope v. United States Fid. & Guar. Co., 200 Ga. 69, 35 S.E.2d 899 (1945).

In equitable proceedings evidence can impeach record. — Certain limitations upon doctrine that parol evidence inadmissible to vary or contradict record. In direct attacks upon these records, in the nature of equitable proceedings, evidence has been held admissible to impeach the record. Pope v. United States Fid. & Guar. Co., 200 Ga. 69, 35 S.E.2d 899 (1945).

Incomplete record not to be certified. — This section does not contemplate that an incomplete record, or one that does not represent the whole truth, shall be certified by the clerk as being the record on file in the clerk's office. Touchton v. Echols County, 211 Ga. 85, 84 S.E.2d 81 (1954).

Other Personnel

Process signed by assistant of city court clerk not necessarily void. Rucker v. Tabor & Almand, 126 Ga. 132, 54 S.E. 959 (1906).

County commissioners are not authorized to employ nonofficers to copy worn and faded deed records. Henry v. Means, 137 Ga. 153, 72 S.E. 1021 (1911).

Employment of counsel. — General Assembly has not expressly granted clerks of superior court the power to hire attorneys, and there is no legislative grant of power from which it is necessarily implied that clerks have the power to contract for the services of an attorney. Stephenson v. Board of Comm'rs, 261 Ga. 399, 405 S.E.2d 488 (1991).

County governing authority's employment of counsel to represent a superior court clerk did not violate Ga. Const. 1983, Art. IX, Sec. II, Paras. I(c)(1) or (7),

Other Personnel (Cont'd)

which preclude the authority from exercising any power in a manner affecting "any elective county office" or "any court or the personnel thereof." Stephenson v. Board of Comm'rs, 261 Ga. 399, 405 S.E.2d 488 (1991).

Authority of officers over expenditures. — County commissioners approved a budget for the office of the superior court clerk that included a miscellaneous line item for a specified amount of money for certain years; thus, the item had already been budgeted to the clerk by the commission in the exercise of the commission's authority over the clerk's budget and the decision of how to spend this money fell solely to the clerk in the exercise of the clerk's duties, not to the commission. Griffies v. Coweta County, 272 Ga. 506, 530 S.E.2d 718 (2000).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — Some of the following annotations are taken from opinions rendered prior to the 1989 amendment, which rewrote this Code section.

Clerk responsible for own negligence if failure to publish notice. — If the clerk fails to publish the notice pursuant to Ga. L. 1958, p. 686, §§ 1 and 2 (see now O.C.G.A. § 15-12-81), the clerk would be responsible for the clerk's own negligence under former Code 1933, §§ 24-2721, 24-2714, and 24-2715 (see now O.C.G.A. §§ 15-6-61 and 15-6-81). 1963-65 Op. Att'y Gen. p. 107 (decided prior to 1989 amendment).

Requirements for final recording of civil proceedings by microfilm. — Former Code 1933, §§ 24-2714 and 24-2715 (see now O.C.G.A. § 15-6-61), when construed with Ga. L. 1962, p. 639, § 2 (see now O.C.G.A. § 15-6-87), can be interpreted to permit the final recording of civil proceedings by microfilm in lieu of in "well-bound" volumes provided proper indices and adequate equipment are maintained in addition to the necessary personnel for viewing these records. 1965-66 Op. Att'y Gen. No. 66-23 (decided prior to 1989 amendment).

Instruments evidencing title to real property not kept on microfilm. — Clerks of the superior court may microfilm and keep all instruments and records in the clerks' court "excepting only instruments evidencing the title to real property." 1970 Op. Att'y Gen. No. 70-125 (decided prior to 1989 amendment).

Clerk of the superior court must keep the dockets identified and described in paragraph (4) of O.C.G.A. § 15-6-61 either by microfilm, photographic or photostatic process, or in well-bound books, except that all instruments evidencing the title to real property, including the docket identified and described in O.C.G.A. § 44-2-2(a), and title instruments for personal property if recorded for ten years or less, must be kept and recorded in well-bound books only. For real property instruments which identify a grantor and a grantee, either a duplex index book or a cross-referenced card index system for indexing such instruments must be maintained. The clerk may use the computer services of the county in which the clerk's office is located as a supplemental means of providing access to the information contained in the dockets and indexes maintained by the clerk. 1988 Op. Att'y Gen. No. U88-26 (decided prior to 1989 amendment).

Once indictment filed, consent required to nolle prosequi. — Once an indictment or accusation has been filed, a district attorney's motion to nolle prosequi or dead docket requires consent of the court. If the trial court refuses to grant the district attorney's motion to nolle prosequi or dead docket the case, the district attorney is not thereby disqualified. 1988 Op. Att'y Gen. No. U88-25 (decided prior to 1989 amendment).

Trial judge is ultimately responsible for reducing sentence to writing, even though this duty may be delegated to another officer; in any event, the judge must sign the sentence. 1970 Op. Att'y Gen. No. U70-85 (decided prior to 1989 amendment).

Control over dead docket reposes in court as opposed to the prosecuting attorney of the court. 1974 Op. Att'y Gen.

No. U74-70 (decided prior to 1989 amendment).

Pauper's affidavit. — Clerk of superior court has no discretion as to acceptance and transmittal of pauper's affidavit. 1965-66 Op. Att'y Gen. No. 66-169 (decided prior to 1989 amendment).

Clerks through whom documents are transmitted under O.C.G.A. § 17-7-32 have no duty to file or record the documents. 1983 Op. Att'y Gen. No. U83-38 (decided prior to 1989 amendment).

RESEARCH REFERENCES

Am. Jur. 2d. — 15A Am. Jur. 2d, Clerks of Court, § 20 et seq.

C.J.S. — 21 C.J.S., Courts, § 334 et seq.

ALR. — Formality in authentication of judicial acts, 30 A.L.R. 700.

Record of instrument which comprises or includes an interest or right that is not a proper subject of record, 3 A.L.R.2d 577.

Omission of signature of issuing officer on civil process or summons as affecting jurisdiction of the person, 37 A.L.R.2d 928.

15-6-62. Additional clerk duties.

(a) The clerk of superior court is required to record all the proceedings relating to any civil action or criminal case within six months after the final determination of the case. Such recording may be in well-bound books, on microfilm, or in digital format. If a clerk elects to record proceedings on microfilm or in digital format, he or she shall make available to the public a machine for reading and reproducing such microfilmed or digitally formatted records. If a clerk elects to record proceedings in digital format, the provisions of Code Section 15-6-62.1 shall apply.

(b) Every clerk of superior court shall record, microfilm, or digitally image for the purpose of permanently preserving:

(1) Every part of the pleadings in every case;

(2) All garnishments, affidavits, bonds, and answers thereto;

(3) All attachment affidavits, bonds, and writs of attachment; and

(4) All claim affidavits and bonds and all bonds given in any judicial proceeding.

The clerk shall not allow any record to be taken from his or her office before recording them as required in this Code section.

(c) Where any paper becomes lost or destroyed, a certified copy thereof from the clerk of superior court may be substituted. No fee shall be charged or collected for any such copy if the loss of the same is caused by or results from any negligence or fault of the clerk.

(d) This Code section shall not apply to cases dismissed and settled before the record is made.

History. — Ga. L. 1880-81, p. 93, §§ 1-3; Civil Code 1895, § 4361; Civil Code 1910, § 4892; Code 1933, § 24-2715; Ga. L. 1968, p. 1117, § 1; Ga. L. 1978, p. 1787, § 1; Ga. L. 2001, p. 1001, § 2; Ga. L. 2012, p. 173, § 1-11/HB 665.

Cross references. — Use of photostatic and photographic equipment by clerks, § 15-6-87. Public records, § 24-10-1005. Standards governing use of microforms by agencies of state government or any of its political subdivisions, § 50-18-120 et seq.

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Authority of legislature regarding form of permanent records. — General Assembly has the authority to provide that such records as are required to be kept by courts of record may be kept in any reasonable form so long as the form adopted appears to be reasonably calculated to be one which lends itself to permanency. Crosby v. Dixie Metal Co., 227 Ga. 541, 181 S.E.2d 823 (1971).

There is a presumption that the clerk did the clerk's duty. Benton v. Maddox, 56 Ga. App. 132, 192 S.E. 316 (1937).

Actual date of filing is the date upon which the paper is handed to the clerk to be filed. Brinson v. Georgia R.R. Bank & Trust Co., 45 Ga. App. 459, 165 S.E. 321 (1932).

Items consisting a record. — Record in a case consists of the declaration, process, return of service by the sheriff, and other official entries, plea, verdict, judgment, and all interlocutory orders passed by the court during the pendency of the case, and in case of a motion for an order nisi, and an order granting or refusing a new trial, together with any order passed by the court, setting it down for a hearing in vacation, or adjourning the hearing from time to time, and in case a new trial is granted, all subsequent orders passed by the court, including the final judgment. White v. Newton Mfg. Co., 38 Ga. 587 (1869); Cloer v. Vulcan Elec. Co., 113 Ga. App. 766, 149 S.E.2d 722 (1966).

Scope of duty of clerk to record proceedings. — Duty of the clerk of the superior court to record all the proceedings relating to the suit does not embrace the evidence given in the trial. If so, it would be necessary for the clerk in all cases to take down the oral evidence on the trial, and record it as part of the proceedings. Cloer v. Vulcan Elec. Co., 113 Ga. App. 766, 149 S.E.2d 722 (1966).

Clerk's writ record not conclusive as to what the record lacks. — Clerk's writ record, although presumably correct, and possibly conclusive as against parol testimony as to what the record does contain, is not conclusive as to what the record does not contain. Benton v. Maddox, 56 Ga. App. 132, 192 S.E. 316 (1937).

Effect of defendant's evidence of lack of service. — If the defendant introduced the writ record which contained a copy of the petition, the process, and the judgment taken, and the record was silent as to service, defendant's testimony that defendant had not been served was not subject to objection, as being incompetent, for the reason that evidence had been introduced which tended to disprove that any entry of service had been made, to wit, the silence of the writ record. Benton v. Maddox, 56 Ga. App. 132, 192 S.E. 316 (1937).

Record not notice of liens. — Object of the records required by this section is not to give notice of liens by judgments. Plant v. Gunn, 7 F. 751 (S.D. Ga. 1881).

When clerk excused from recording pleadings in writ book. — Applying the maxim that when certain things are expressly required others are excluded, this section should be construed as providing that only when a case is dismissed or settled, and thereby finally terminated, and not otherwise, would the clerk be excused from recording the pleadings in the writ book. Reeve Bros. v. Allen, 67 Ga. App. 514, 21 S.E.2d 244 (1942).

Proceedings only stayed in city court when removal to federal court. — Under the law, and under an order removing cases to the federal court, the proceedings are only stayed in the city court. This certainly does not contemplate that the cases are dismissed or settled or

finally disposed of in the city court. The situation is the same as it would have been had the cases, instead of being removed to the federal court, been taken to the Court of Appeals or the Supreme Court of this state. In the later event, on the certification and the filing of the bill of exceptions, the court in which the cases were pending would temporarily lose jurisdiction until the cases were passed on by the appellate court and remanded to the trial court. Reeve Bros. v. Allen, 67 Ga. App. 514, 21 S.E.2d 244 (1942).

Case not necessarily finally settled or disposed of when removed to federal court. — When a case is removed from the state court to the federal court on an order of the state court, it is not necessarily finally settled or disposed of as respects the state court. The cases may possibly afterwards be remanded by the federal court to the state court, and the cases would then resume their positions in the state court as originally filed therein together with all the pleadings. Reeve Bros. v. Allen, 67 Ga. App. 514, 21 S.E.2d 244 (1942).

Costs of recording cases on removal to federal court. — Requisite costs of the recording of the cases on the writ book in the city court were legally collectible by the clerk on the removal of the cases to the federal court, notwithstanding at the time of the removal the clerk had not in fact recorded the pleadings on the writ book. This ruling applies only as respects pleadings actually filed in the city court before the court lost jurisdiction on removal to the federal court. No papers could have been legally filed in the city court after the removal of the cases and no costs of recording such papers could be exacted by the clerk. Reeve Bros. v. Allen, 67 Ga. App. 514, 21 S.E.2d 244 (1942).

Removing party liable for costs of filing existing pleadings. — On removal to a federal court as required by an act of Congress of a case pending in a state court, if the law requires the accrued costs in the state court to be paid, the party removing the case is liable for the costs of placing on the writ book or docket of the state court the existing pleadings on file in the office of the clerk of the state court, notwithstanding at the time the clerk has not in fact placed such pleadings on the writ book or docket. Reeve Bros. v. Allen, 67 Ga. App. 514, 21 S.E.2d 244 (1942).

Cited in Atlanta Title & Trust Co. v. Tidwell, 173 Ga. 499, 160 S.E. 620 (1931); Atlanta Coach Co. v. Simmons, 55 Ga. App. 532, 190 S.E. 610 (1937); Mize v. Harber, 189 Ga. 737, 8 S.E.2d 1 (1940); DeKalb County v. Deason, 221 Ga. 237, 144 S.E.2d 446 (1965); Hopkins v. Harris, 130 Ga. App. 489, 203 S.E.2d 762 (1973); Burger v. Burgess, 234 Ga. 388, 216 S.E.2d 294 (1975).

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Purpose of this section is to preserve precise history of each case, including conclusions of law drawn by the proper officer; the proceedings which are to be recorded are the complaint, process, return of service, and other official entries, the plea and answer, the verdict, judgment, all interlocutory orders, and any motions and orders relating to new trial. 1970 Op. Att'y Gen. No. U70-232.

Clerk not required to record transcript in administrative law appeals. — Since the transcript of testimony and other evidence taken in administrative law cases on appeal to the superior court would not be part of the proceedings in the superior court, the clerk of the superior court is not required to record the transcript of testimony and other evidence in administrative law cases that are on appeal to the court. 1979 Op. Att'y Gen. No. U79-3 but see Opinion No. U82-29, annotated below.

Recording of workers' compensation proceedings. — O.C.G.A. § 15-6-62 requires recordation of pleadings and proceedings filed during pendency of workers' compensation appeals in superior courts, and the clerk is authorized to collect fees for such recordation pursuant to O.C.G.A. § 15-6-77. 1982 Op. Att'y Gen. No. U82-29.

Transcripts and other evidence introduced in case do not have to be recorded in writ record; all subsequent papers such as notice of appeal, enumer-

ation of errors, etc., as well as the remittitur, should be recorded in the writ record. 1967 Op. Att'y Gen. No. 67-64.

Collection of appropriate fee for pleadings. — Clerk may collect the appropriate fee for all pleadings which have been filed and recorded prior to the dismissal of a case. 1970 Op. Att'y Gen. No. U70-200.

No county governing authority under duty to purchase microequipment. — Language of Ga. L. 1962, p. 639, § 2 (see now O.C.G.A. § 15-6-87) was employed only to make it clear that no county governing authority was under any duty to purchase microequipment. 1965-66 Op. Att'y Gen. No. 66-23.

Clerks through whom documents are transmitted under O.C.G.A. § 17-7-32 have no duty to file or record the documents. 1983 Op. Att'y Gen. No. U83-38.

RESEARCH REFERENCES

Am. Jur. 2d. — 15A Am. Jur. 2d, Clerks of Court, § 20 et seq.

C.J.S. — 21 C.J.S., Courts, § 334 et seq.

ALR. — Record of instrument which comprises or includes an interest or right that is not a proper subject of record, 3 A.L.R.2d 577.

15-6-62.1. Back-up records.

(a) As used in this Code section, the term:

(1) "Authority" means the Georgia Superior Court Clerks' Cooperative Authority.

(2) "Back-up record" means an electronic copy of any record that a clerk of superior court is required to create pursuant to Code Sections 15-6-61 and 15-6-62.

(b) A clerk of a superior court electing to record in digital format any record of which he or she is the custodian shall maintain a back-up record in at least two ways:

(1) By the clerk permanently retaining the back-up record on the clerk's secure file server, either controlled and operated by the clerk or personnel employed by the clerk or provided for the exclusive benefit of the clerk's office through a contractual relationship between the clerk and a public or private entity for such purpose; and

(2) By the clerk submitting all digitally formatted records that the clerk is statutorily authorized and required to archive with the authority for permanent archiving, as set forth in subsection (c) of this Code section.

(c) The clerk of superior court shall submit the clerk's records to the authority in a format acceptable to the authority at least monthly, but not later than the fifteenth day following the last day of each month. Upon receipt of such records, the authority shall permanently and securely maintain such records. Excluding records to which the authority is required by law to provide online access, the authority shall not

provide access to or copies of records maintained by it to any person requesting such records without the express written approval of the clerk of superior court who originally maintained such records. All requests for access to such records shall be made to such clerk.

History. — Code 1981, § 15-6-62.1, enacted by Ga. L. 2001, p. 1001, § 3; Ga. L. 2013, p. 594, § 2-6/HB 287; Ga. L. 2015, p. 1065, § 2-2/SB 135.

15-6-63. Obtaining of names of grantors and grantees prior to recordation of title transfer.

(a) The clerk of the superior court, prior to recordation of any deed which has the effect of transferring title, shall obtain the name and address of the grantor(s) and the grantee(s) either in the deed or on the real estate transfer tax declaration form.

(b) The failure of the clerk to obtain the name and address as required in subsection (a) of this Code section shall in no way affect the title to the real estate involved, the marketability of title, or the notice intent of the recorded deed.

History. — Ga. L. 1978, p. 1654, § 1.
Cross references. — Recording and registration of deeds and other instruments generally, § 44-2-1 et seq.

15-6-64. Duty to give notice to purchasers of real property in certain counties.

Reserved. Repealed by Ga. L. 1994, p. 237, § 2, effective July 1, 1994.

Editor's notes. — This Code section was based on Code 1933, § 24-2714.1, enacted by Ga. L. 1974, p. 516, § 1; Ga. L. 1981, p. 546, § 1; Ga. L. 1982, p. 2107, § 6.

15-6-65. Entry of civil cases on dockets; order for trial.

All civil cases pending in the superior court shall be entered by the clerk thereof on the civil docket as provided in Code Section 15-6-61 and shall stand for trial in the order in which they came into court except as otherwise provided by law.

History. — Laws 1799, Cobb's 1851 Digest, p. 573; Laws 1807, Cobb's 1851 Digest, p. 199; Laws 1810, Cobb's 1851 Digest, p. 577; Laws 1850, Cobb's 1851 Digest, p. 455; Code 1863, § 262; Code 1868, § 256; Code 1873, § 267; Code 1882, § 267; Ga. L. 1882-83, p. 55, § 1; Civil Code 1895, § 4360; Civil Code 1910, § 4891; Code 1933, § 24-2714; Ga. L. 1989, p. 395, § 2.

15-6-66. Grantor-grantee index.

(a) The clerk of superior court shall provide at the expense of each county a suitable duplex index book, or a series of books, or a card

index, or a microfilm record, an electronic data base, or an electronic, computer-based document management system, or any combination of one or more of such systems, in which shall be indexed the name of the grantor and grantee of every instrument recorded pursuant to subparagraph (a)(4)(C) of Code Section 15-6-61. Such index shall include the character of the instrument, the book or location of the record, and the date of filing.

(b) The name of the grantor listed in the index shall be the name of the owner of the title which such instrument purports to convey or affect, whether the instrument was executed by the owner or by some other person, firm, or corporation on behalf of such owner, and whether or not such owner is deceased.

(c) The clerk of the superior court shall employ the methods provided for in paragraph (15) of subsection (a) of Code Section 15-6-61 in the creation, management, transmission, printing, and revision of the indexes provided for in this Code section. Compliance with such methods and with the rules and regulations relating to indexing established by the Georgia Superior Court Clerks' Cooperative Authority shall not expose the clerk of the superior court to new or additional liability relating to such indexes.

(d) This Code section shall not apply to transactions covered by Article 9 of Title 11.

History. — Ga. L. 1887, p. 53, § 1; Civil Code 1895, § 4361; Civil Code 1910, § 4892; Code 1933, § 24-2715; Ga. L. 1961, p. 116, § 1; Ga. L. 1963, p. 188, § 39; Ga. L. 1964, p. 412, § 1; Ga. L. 1989, p. 395, § 3; Ga. L. 1997, p. 565, § 3; Ga. L. 2004, p. 631, § 15; Ga. L. 2012, p. 173, § 1-12/HB 665.

Cross references. — Recording and registration of deeds and other instruments generally, § 44-2-1 et seq.

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Cited in Leeds Bldg. Prods., Inc. v. Sears Mtg. Corp., 267 Ga. 300, 477 S.E.2d 565 (1996).

15-6-67. Recordation of plats and condominium plans; specifications.

(a) As used in this Code section, the term:

(1) "Condominium plan" means a drawing that is required to be recorded prior to the first conveyance of a condominium unit pursuant to subsection (b) of Code Section 44-3-83, including, but not limited to, a condominium floor plan, condominium plot plan, or condominium site plan.

(2) "Plat" means a drawing prepared by a land surveyor that describes and depicts real property boundaries, including, but not limited to, a map, condominium plat, subdivision plat, as-built survey, easement survey, or retracement survey.

(b) All plats and condominium plans submitted for filing with the clerk of superior court shall be submitted electronically. The clerk of superior court shall file and record plats and condominium plans relating to real estate in the county when submitted for filing as provided in this Code section and accompanied with any required filing fees or costs.

(c) Each plat and condominium plan to be filed and recorded in the office of the clerk of superior court shall be in conformance with the following requirements:

(1) **Format for plats and condominium plans.** All images of a plat or condominium plan submitted for filing shall be at full size of the drawing scale stated thereon and shall:

(A) Be an electronic image of a plat or condominium plan presented to the clerk electronically in conformance with all specifications set forth in any rules and regulations promulgated by the Georgia Superior Court Clerks' Cooperative Authority; and

(B) Provide a box of not less than three inches square, if at full size, in the upper left-hand corner which shall be reserved for the clerk to append filing information;

(2) **Required data for plats.** Each plat shall comply with the minimum standards and specifications adopted in the rules and regulations of the State Board of Registration for Professional Engineers and Land Surveyors and provide the following information:

(A) The county where the property lies;

(B) Any municipality wherein the property lies;

(C) The name of the property owner or owners of the subject property as stated on the most current or applicable title instrument;

(D) The type of plat;

(E) The name of any subdivision if the property lies within a named subdivision or if the plat is creating a new subdivision;

(F) The name of any condominium if the property is within a condominium development;

(G) The applicable units, pods, blocks, lots, or other subdesignations of any named subdivision or condominium;

(H) The name or names of the developer or developers of any new subdivision or condominium;

(I) All applicable land lots, land districts, sections, reserves, or militia districts wherein the platted property lies;

(J) The date of initial preparation and issuance, and any revision dates, including a brief explanation of each revision;

(K) The name, address, and telephone number of the land surveyor who prepared and sealed the plat and, if working for or through a firm, corporation, partnership, association, limited liability company, or other entity, then also the certificate of authorization number of that entity, in which case the address and telephone number of such entity are acceptable in lieu of the individual surveyor's address and telephone number;

(L) The registration number of the land surveyor or a statement that he or she is the county surveyor and is not required by law to be a registered surveyor;

(M) The seal of the land surveyor who has prepared the plat and is signing the surveyor certification, which shall be placed within or next to the surveyor certification box;

(N) If the plat has multiple pages, the page number for each applicable page and the total number of sheets in the set shall be placed on each sheet in the same or similar location. The information required by this paragraph may be placed on all sheets or on different sheets within the set submitted for filing; and

(O) The scale of the plat stated and shown graphically; and

(3) **Land surveyor certifications required for plats.**

(A) **Surveyor certification box for plats.** Each plat shall have depicted thereon a box which contains one of the following applicable certifications of the land surveyor:

(i) As required by subsection (d) of O.C.G.A. Section 15-6-67, this plat has been prepared by a land surveyor and approved by all applicable local jurisdictions for recording as evidenced by approval certificates, signatures, stamps, or statements hereon. Such approvals or affirmations should be confirmed with the appropriate governmental bodies by any purchaser or user of this plat as to intended use of any parcel. Furthermore, the undersigned land surveyor certifies that this plat complies with the minimum technical standards for property surveys in Georgia as set forth in the rules and regulations of the Georgia Board of Registration for Professional Engineers and Land Surveyors and as set forth in O.C.G.A. Section 15-6-67.

(ii) As required by subsection (d) of O.C.G.A. Section 15-6-67, this plat has been prepared by a land surveyor. This plat has been approved by all applicable local jurisdictions that require prior approval for recording this type of plat or one or more of the applicable local jurisdictions do not require approval of this type of plat. For any applicable local jurisdiction that requires approval of this type of plat, the names of the individuals signing or approving this plat, the agency or office of that individual, and the date of approval are listed in the approval table shown hereon. For any applicable local jurisdiction that does not require approval of this type of plat, the name of such local jurisdiction and the number of the applicable ordinance or resolution providing that no such approval is required are listed in the approval table shown hereon. Such approvals, affirmations, or ordinance or resolution numbers should be confirmed with the appropriate governmental bodies by any purchaser or user of this plat as to intended use of any parcel. Furthermore, the undersigned land surveyor certifies that this plat complies with the minimum technical standards for property surveys in Georgia as set forth in the rules and regulations of the Georgia Board of Registration for Professional Engineers and Land Surveyors and as set forth in O.C.G.A. Section 15-6-67.

(iii) This plat is a retracement of an existing parcel or parcels of land and does not subdivide or create a new parcel or make any changes to any real property boundaries. The recording information of the documents, maps, plats, or other instruments which created the parcel or parcels are stated hereon. RECORDATION OF THIS PLAT DOES NOT IMPLY APPROVAL OF ANY LOCAL JURISDICTION, AVAILABILITY OF PERMITS, COMPLIANCE WITH LOCAL REGULATIONS OR REQUIREMENTS, OR SUITABILITY FOR ANY USE OR PURPOSE OF THE LAND. Furthermore, the undersigned land surveyor certifies that this plat complies with the minimum technical standards for property surveys in Georgia as set forth in the rules and regulations of the Georgia Board of Registration for Professional Engineers and Land Surveyors and as set forth in O.C.G.A. Section 15-6-67.

(iv) The property hereon lies completely within a jurisdiction which does not review or approve any plats or this type of plat prior to recording. RECORDATION OF THIS PLAT DOES NOT IMPLY APPROVAL OF ANY LOCAL JURISDICTION, AVAILABILITY OF PERMITS, COMPLIANCE WITH LOCAL REGULATIONS OR REQUIREMENTS, OR SUITABILITY FOR ANY USE OR PURPOSE OF THE LAND. Furthermore, the undersigned land surveyor certifies that this plat complies with the minimum technical standards for property surveys in Georgia as set forth in the rules and regulations of the Georgia Board of Registration for Professional Engineers and Land Surveyors and as set forth in O.C.G.A. Section 15-6-67.

(B) **Other certification information required for plats.**

(i) The land surveyor shall sign on a line immediately beneath the certification on the plat. At the discretion of the land surveyor and in conformity with local regulations, the surveyor may electronically sign the certification using a facsimile signature. The facsimile signature may be a reproduction of an original signature or an electronically created signature. If the land surveyor elects to use a facsimile signature, the surveyor must maintain full control over the application and use of such signature.

(ii) Additional dates, certifications, and signatures, which may be electronically created signatures, may be placed on plats. Such certifications may include, but are not limited to, those that may be required by local jurisdictions or agencies, the United States Small Business Administration, the United States Department of Housing and Urban Development, and the American Land Title Association.

(iii) The approval table required by division (c)(3)(A)(ii) of this Code section shall be data in a tabular format which shall include the name of each governmental body or agency that has approved the plat, the name of each individual who issued such approval, and the date that each approval was granted.

(iv) Plats that meet the requirements of a municipal or county governing authority ordinance or resolution specifying that no approval of such plat is necessary prior to recording may be recorded using the certification set forth in division (c)(3)(A)(ii) or (c)(3)(A)(iv) of this Code section, as applicable.

(v) In the case of a plat that is a retracement survey, the land surveyor shall state clearly the recording information of any document, map, plat, or other instrument which created any of the parcels depicted. The depiction of gores, overlaps, or other

parcel delineation as may be necessary to remedy or address title issues or deficiencies shall be allowed as part of the retracement function. Plats that depict existing or proposed easements for utilities or for conservation purposes may be recorded using the certification set forth in division (c)(3)(A)(iii) of this Code section, provided that there are no changes to any real property boundaries.

(vi) Plats bearing the certification provided for in division (c)(3)(A)(iii) of this Code section shall be entitled to recordation without further review or local approval.

(d) Whenever the municipal planning commission, the county planning commission, the municipal-county planning commission, or, if no such planning commission exists, the appropriate municipal or county governing authority prepares and adopts subdivision regulations or land use regulations, or both, then no plat of a subdivision of land within the municipality or the county shall be presented for filing with the office of the clerk of superior court of a county without the approval of the municipal planning commission, county planning commission, municipal-county planning commission, or appropriate municipal or county governing authority.

(e) Any land surveyor who fraudulently makes any certification required under this Code section shall, upon conviction thereof, be guilty of a misdemeanor.

(f) The clerk of superior court shall make available a public computer terminal which provides a filer access to the Georgia Superior Court Clerks' Cooperative Authority's electronic filing portal.

(g) The Georgia Superior Court Clerks' Cooperative Authority shall have the power and authority to promulgate such rules and regulations deemed necessary or convenient for implementation of the provisions of this Code section.

(h) The clerk of superior court shall be held harmless for the filing of any plat or condominium plan that fails to meet any requirement of this Code section.

(i) Any plats or condominium plans prepared prior to May 8, 2017, in compliance with previous statutory requirements may be recorded pursuant to this Code section so long as such documents are submitted as electronic images and presented to the clerk of superior court electronically.

History. — Ga. L. 1933, p. 193, § 1; Code 1933, § 24-2716; Ga. L. 1961, p. 105, § 1; Ga. L. 1962, p. 632, § 1; Ga. L. 1978, p. 1616, § 1; Ga. L. 1980, p. 826, § 1; Ga. L. 1985, p. 149, § 15; Ga. L. 1990, p. 8, § 15; Ga. L. 1990, p. 1505, § 1; Ga. L. 1994, p. 1096, § 1; Ga. L. 1996, p. 1502, § 1; Ga. L. 2012, p. 173, § 1-13/HB 665;

Ga. L. 2016, p. 193, § 1/HB 1004; Ga. L. 2017, p. 484, § 2/HB 76.

Cross references. — Penalty for removal or destruction of survey monuments, § 44-1-15. Recording and registration of deeds and other instruments generally, § 44-2-1 et seq. Determination of land boundaries generally, § 44-4-1 et seq. Use of microforms by agencies of state government or any of its political subdivisions generally, § 50-18-120 et seq.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2017, "May 8, 2017," was substituted for "the effective date of this Code section" near the beginning of subsection (i).

Editor's notes. — Ga. L. 2017, p. 484, § 1/HB 76, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Georgia Plat and Condominium Plan Recording Act of 2017.'"

Law reviews. — For annual survey of real property law, see 57 Mercer L. Rev. 331 (2005); 58 Mercer L. Rev. 367 (2006). For annual survey of real property law, see 68 Mercer L. Rev. 231 (2016).

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Liability of surveyor for inaccuracies. — Consulting firm was not liable for damages based on a surveyor's use of an inaccurate plat map since the firm prepared the plat in accordance with requirements of the party who ordered the plat, not showing the width or rights-of-way and easements which were not pertinent, and since there was no evidence the firm knew how the plat was to be used, or that the firm intended to induce other surveyors to rely on the inaccurate plat. Gudger Surveying, Inc. v. Paul Lee Consulting Eng'g Assocs., 214 Ga. App. 770, 449 S.E.2d 331 (1994).

Admissibility of plat not meeting recordation requirement. — If a plat was admitted as evidence in a boundary dispute even though the plat did not meet the technical requirements for recordation, the admission of the plat was proper for the purpose of illustrating other competent evidence about the boundary. Purcell v. C. Goldstein & Sons, 264 Ga. App. 443, 448 S.E.2d 174 (1994).

Survey sufficient. — Trial court properly granted appellee property owners' motion to enforce a settlement agreement with respect to a boundary dispute between the parties as the settlement agreement authorized a surveyor to establish the boundary lines between the properties, and the survey was sufficient to satisfy former paragraph (b)(4) O.C.G.A. § 15-6-67; moreover, even if the plat failed to meet the technical requirements of O.C.G.A. § 15-5-67, the admissibility of the plat would not have been affected. Vickers v. Meeks, 273 Ga. App. 293, 615 S.E.2d 158 (2005).

Cited in Conyers v. Fulton County, 117 Ga. App. 649, 161 S.E.2d 347 (1968); Hanners v. Woodruff, 257 Ga. 73, 354 S.E.2d 826 (1987).

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Requirements for recording map or plat. — Clerk of the superior court has no duty to file and record a map or plat which does not meet the requirements of subsection (b) of O.C.G.A. § 15-6-67, nor does a land surveyor have a right to insist that a map or plat not meeting those requirements be filed by the clerk. 1994 Op. Att'y Gen. No. U94-13.

Clerks not authorized to record photocopies of plats. — Clerks of superior courts are not authorized under O.C.G.A. § 15-6-67, O.C.G.A. § 15-6-68 or O.C.G.A. § 15-6-69 to record photocopies of plats, although such a recording will not affect or invalidate any legal description or legal instrument based on such plat. 1989 Op. Att'y Gen. No. U89-4.

Reference in O.C.G.A. § 15-6-67(b)(1)(A) to "a good legible print" does not include a photocopy. 1989 Op. Att'y Gen. No. U89-4.

Maximum size of plat not limited by section. — Former Code 1933, §§ 24-2716 through 24-2719 (see now O.C.G.A. §§ 15-6-67 through 15-6-69) did

not prescribe a maximum uniform size of plat to be filed with the clerks of superior courts of this state which did not use microfilming procedures for the recording of plats, and the only maximum limitation on the size of plats was that the plats must be capable of being recorded in binders provided by the clerk of court without being folded in any way. 1978 Op. Att'y Gen. No. 78-80.

Plats reduced in size are acceptable. — Clerks of superior courts may accept for recording plats which have been reduced in size if the plats comply with the requirements of O.C.G.A. § 15-6-67. 1989 Op. Att'y Gen. No. U89-4.

Fingerprinting not required. — Offenses arising under O.C.G.A. § 15-6-67 are not designated as offenses for which those charged are to be fingerprinted. 2017 Op. Att'y Gen. No. 17-1.

RESEARCH REFERENCES

Am. Jur. 2d. — 15A Am. Jur. 2d, Clerks of Court, § 27.

C.J.S. — 21 C.J.S., Courts, § 334 et seq.

ALR. — Description of land in deed or mortgage by reference to map, plat, plan, sketch, or diagram as prevailing over description by words, 130 A.L.R. 643.

Negligence in preparing abstract of title as ground of liability to one other than person ordering abstract, 50 A.L.R.4th 314.

15-6-68. Public access to maps, plats, and plans.

(a) The clerk of each superior court shall provide books, binders, or any other alternative system, either manual or electronic, for providing public access to maps, plats, and plans.

(b) The clerk of superior court shall provide an electronic, computer-based indexing system in which shall be indexed all maps, subdivision plats, condominium plats, and other plats, condominium site plans, condominium plot plans, and condominium floor plans under the caption or name of the subdivision, if any, under the name of the owner or owners of the property mapped or platted, and also under the land lot number and district number if the land lies in that portion of the state which has been surveyed into land lots and districts.

(c) In counties of this state that are divided into land lots, the clerk of superior court shall provide an electronic, computer-based system for maintaining and searching a record for each land lot and land district by listing all surveys made for each lot and where they are recorded.

(d) The clerk shall electronically note the filing date, book, and page numbers on the image and shall electronically transmit a copy of the map, plat, or plan with such filing information to the e-mail address of the person filing the same for record.

History. — Ga. L. 1933, p. 193, § 2; Code 1933, § 24-2717; Ga. L. 1961, p. 105, § 1; Ga. L. 1962, p. 632, § 1; Ga. L. 1978, p. 1616, § 2; Ga. L. 1989, p. 395, § 4; Ga. L. 2012, p. 173, § 1-14/HB 665; Ga. L. 2016, p. 193, § 2/HB 1004; Ga. L. 2018, p. 1112, § 15/SB 365.

The 2018 amendment, effective May

8, 2018, part of an Act to revise, modernize, and correct the Code, revised punctuation in subsection (d).

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Editor's notes. — In light of the similarities of the statutory provisions, opinions under former Code Section 15-6-68 are included in the annotations of this Code section.

Maximum size of plat not limited by section. — Former Code 1933, §§ 24-2716 through 24-2719 (see now O.C.G.A. §§ 15-6-67 through 15-6-69) did not prescribe a maximum uniform size of plat to be filed with the clerks of superior courts of this state which did not use microfilming procedures for the recording of plats, and the only maximum limitation on the size of plats was that the plats must be capable of being recorded in binders provided by the clerk of court without being folded in any way. 1978 Op. Att'y Gen. No. 78-80.

15-6-69. Effect of map and plat recordation requirements.

(a) Failure to meet the requirements of Code Sections 15-6-67 and 15-6-68 or the recording of an improper plat by the clerk shall not, in and of itself, affect or invalidate any legal description or legal instrument based on such plat.

(b) Nothing in Code Sections 15-6-67 and 15-6-68 shall be deemed to invalidate any map or plat made prior to July 1, 1978, nor shall anything in those Code sections be deemed to require the clerk of the court to prepare or maintain a record of each individual land lot for any plat of survey recorded in the clerk's office prior to July 1, 1978.

History. — Ga. L. 1933, p. 193, §§ 3, 4; Code 1933, §§ 24-2718, 24-2719; Ga. L. 1961, p. 105, § 1; Ga. L. 1962, p. 632, § 1; Ga. L. 1978, p. 1616, §§ 4, 5.

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Admissibility of plat not meeting recordation requirement. — If a plat was admitted as evidence in a boundary dispute even though the plat did not meet the technical requirements for recordation, the admission of the plat was proper for the purpose of illustrating other competent evidence about the boundary. Purcell v. C. Goldstein & Sons, 264 Ga. App. 443, 448 S.E.2d 174 (1994).

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Clerks not authorized to record photocopies of plats. — Clerks of superior courts are not authorized under O.C.G.A. § 15-6-67, O.C.G.A. § 15-6-68, or O.C.G.A. § 15-6-69 to record photocopies of plats, although such a recording will not affect or invalidate any legal description or legal instrument based on such plat. 1989 Op. Att'y Gen. No. U89-4.

Maximum size of plat not limited by section. — Former Code 1933, §§ 24-2716 through 24-2719 (see now O.C.G.A. §§ 15-6-67 through 15-6-69) did not prescribe a maximum uniform size of plat to be filed with the clerks of superior courts of this state which did not use microfilming procedures for the recording of plats, and the only maximum limitation

on the size of plats was that the plats must be capable of being recorded in binders provided by the clerk of court without being folded in any way. 1978 Op. Att'y Gen. No. 78-80.

Plats reduced in size are acceptable. — Clerks of superior courts may accept for recording plats which have been reduced in size if the plats comply with the requirements of O.C.G.A. § 15-6-69. 1989 Op. Att'y Gen. No. U89-4.

15-6-70. Recordation of bankruptcy petition, decree, or order; fees.

A certified copy of a petition, with schedules omitted, commencing a proceeding under the bankruptcy law of the United States, of the decree of adjudication in the proceeding, or of the order approving the bond of the trustee appointed in the proceeding may be filed and recorded in the office of the clerk of the superior court of any county in the same manner as deeds. It shall be the duty of the clerks to docket and index such certified copies under the name of the bankrupt and to record the certified copies filed for record in the same manner as deeds. Clerks shall be entitled to the same fees for docketing, indexing, and recording the copies as for docketing, indexing, and recording deeds.

History. — Ga. L. 1939, p. 242, § 1.

15-6-71. Record of sex criminal convictions; furnishing record to Georgia Bureau of Investigation.

Reserved. Repealed by Ga. L. 1988, p. 893, § 1, effective April 5, 1988.

Editor's notes. — This Code section was based on Ga. L. 1956, p. 677, § 1.

15-6-72. Recordation and index of military service records; confidentiality.

(a) The county commissioners or other officers having charge of a county's business shall provide a book or books for the clerk of the superior court in the county, in which the clerk shall record and index the discharge certificates of all former members of the armed services of the United States residing in the county, showing their discharge from military service. The clerk shall from time to time be furnished such additional books for such purpose as may be necessary. Every entry shall be signed by the clerk and dated with the year, day, and hour accurately stated, and a certificate of registry shall be endorsed by the clerk on each discharge recorded. In addition, a veteran may submit the following information to the clerk of the superior court who shall record and index such information in the same books in which military discharges are recorded:

(1) Copy 4, DD Form 214 issued by the United States government;

(2) Any copy of DD Form 214 with a raised seal issued by the United States National Personnel Records Center; or

(3) United States National Archives Form 13038.

(b) Any records made before August 8, 1921, by the clerk of the superior court in substantial compliance with this Code section shall be considered as recorded under the terms of this Code section.

(c)(1) Any DD 214 record filed pursuant to this Code section shall for a period of 50 years following its filing be exempt from Chapter 18 of Title 50, relating to open records. During that 50 year period, it shall be unlawful for any person to permit inspection of any such record, to disclose information contained in any such record, or to issue a copy of all or any part of such record except as authorized by this subsection or by order of a court of competent jurisdiction.

(2) Upon presentation of proper identification, any of the following persons may examine a record filed pursuant to this Code section or obtain free of charge a copy or certified copy of all or part of such record:

(A) The person who is the subject of the record;

(B) The spouse or next of kin of the person who is the subject of the record;

(C) A person named in an appropriate power of attorney executed by the person who is the subject of the record;

(D) The administrator, executor, guardian, or legal representative of the person who is the subject of the record; or

(E) An attorney for any person specified in subparagraphs (A) through (D) of this paragraph.

(3) Records kept pursuant to this Code section shall not be reproduced or used in whole or in part for any commercial or speculative purposes.

(4) Any individual, agency, or court which obtains information pursuant to this subsection shall not disseminate or disclose such information or any part thereof except as authorized in this subsection or otherwise by law.

(5) Violation of this subsection shall constitute a misdemeanor and shall be punished by a fine not to exceed $5,000.00; provided, however, that the clerk of the superior court shall not be liable and shall be held harmless for any act of any person who copies, reproduces, or uses records in violation of this subsection.

History. — Ga. L. 1921, p. 184, § 1; Code 1933, § 24-2726; Ga. L. 1999, p. 636, § 1; Ga. L. 2002, p. 859, § 1.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2002, "subsection" was substituted for "subdivision" in paragraph (c)(4).

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This section includes both recording of certificates of service and discharges. 1945-47 Op. Att'y Gen. p. 100.

15-6-73. Destruction of obsolete records.

(a) Clerks of superior court shall be authorized, from time to time, to destroy books containing records of instruments conveying personal property only, including bills of sale, mortgages, conditional sales contracts, retention title contracts, and bills of sale to secure debt, whenever the records are older than five years of age.

(b) Every clerk of superior court shall be, from time to time, authorized to destroy original civil pleadings which have been recorded in the minutes or writ books of the court in every civil case which has been finally terminated for 20 years or more, except cases involving divorce, titles to land, legitimation of a child or children, and proceedings for adoption.

History. — Ga. L. 1962, p. 662, § 1; Ga. L. 2012, p. 173, § 1-15/HB 665.

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Georgia law does not provide for destruction of any records or papers except those expressly mentioned in Ga. L. 1962, p. 662, § 1 (see now O.C.G.A. § 15-6-73). 1967 Op. Att'y Gen. No. 67-202.

15-6-74. Preservation of newspapers containing advertisements.

(a) The clerk of superior court is required to procure and preserve for public inspection a complete file of all newspaper issues in which legal advertisements are published.

(b) The issues of the newspapers so preserved shall be bound, microfilmed, photographed, or digitally imaged in a format approved by the clerk and such newspapers, microfilm, photographs, or copies thereof shall be maintained and made available to the public for a period of not less than 50 years, after which time the newspapers, microfilm, photographs, or copies thereof shall be preserved for historical purposes in electronic or micrographic format.

(c) The clerk of superior court is authorized to enter into an agreement with either the judge of the probate court or the sheriff of the county, or both, relative to the binding, retention, microfilming, photographing, or digital imaging of the newspapers and their preservation and retention, in which event it shall be necessary that only one set of newspapers or copies thereof shall be retained in the county courthouse. Such set of newspapers or copies thereof shall include copies of the newspaper issues in which the clerk's advertisements appear and the newspaper issues in which the advertisements which the judge of the probate court or the sheriff, or both, are required to preserve and retain appear. The agreement shall specify the person who shall maintain and preserve the newspapers, microfilm, photographs, or digital copies.

(d) Upon the request of a clerk of superior court, any journal or newspaper declared, made, or maintained as the official organ of any county for the publication of sheriff's sales, citations of probate court judges, or any other advertising commonly known in terms of "official or legal advertising" shall provide to the clerk of superior court copies of such journal or newspaper containing legal advertisements, in digital format, as required by the clerk, when the clerk shall be required to comply with provisions of subsection (a) or (b) of this Code section. The copies shall be provided to the clerk, the judge of the probate court, and the sheriff by January 31 of the year following the year in which the newspaper served as the official legal organ of the county. The ability of a journal or newspaper to provide copies digitally or electronically may be a qualification by the clerk of superior court, the probate judge, and the sheriff in designating a journal or newspaper as the official legal organ of the county.

History. — Civil Code 1895, § 4361; Civil Code 1910, § 4892; Code 1933, § 24-2715; Ga. L. 1974, p. 383, § 2; Ga. L. 2012, p. 173, § 1-16/HB 665.

15-6-75. Investment of certain funds; disposition of income; repeal of Code section.

Reserved. Repealed by Ga. L. 1993, p. 982, § 1, effective July 1, 1994.

Editor's notes. — This Code section was based on Ga. L. 1970, p. 599, §§ 1, 2; Ga. L. 1976, p. 976, § 1; Ga. L. 1993, p. 982, § 1.

Ga. L. 2008, p. 324, § 15/SB 455, reserved the designation of this Code section, effective May 12, 2008.

15-6-76. Deposit of funds in interest-bearing account; repeal of Code section.

Reserved. Repealed by Ga. L. 1993, p. 982, § 2, effective July 1, 1994.

Editor's notes. — This Code section was based on Ga. L. 1978, p. 1704, § 1; Ga. L. 1993, p. 982, § 2.

Ga. L. 2008, p. 324, § 15/SB 455, reserved the designation of this Code section, effective May 12, 2008.

15-6-76.1. Investing or depositing funds; depositing funds paid into court registry.

(a) In counties where the clerk of the superior court exercised discretion to invest funds pursuant to Code Section 15-6-75 or to deposit funds in one or more interest-bearing accounts pursuant to Code Section 15-6-76, and such funds were invested or on deposit on January 1, 1993, the clerk may continue to invest such funds pursuant to Code Section 15-6-75 or deposit such funds pursuant to Code Section 15-6-76 until July 1, 1994. In such counties, clerks who do not elect to continue investing or depositing funds pursuant to such Code sections, or who cease depositing or investing such funds pursuant to such Code sections, shall be subject to the provisions of subsections (c) through (g) of this Code section.

(b) In counties where no funds were invested or on deposit pursuant to Code Section 15-6-75 or 15-6-76 on January 1, 1993, clerks shall be subject to the provisions of subsections (c) through (g) of this Code section, effective July 1, 1993.

(c) When funds are paid into the registry of the court, the clerk shall deposit such funds in one or more interest-bearing trust accounts in investments authorized by Code Section 36-80-3 or by Chapter 83 of Title 36.

(d) When funds have been paid into the registry of the court pursuant to a court order directing that such funds be deposited in an interest-bearing trust account for the benefit of one or more of the parties, the interest received from such funds after service charges or fees imposed by the bank or depository shall be paid to one or more of the parties as the order of the court directs.

(e) When funds have been paid into the registry of the court and the order of the court relating to such funds does not state that such funds shall be placed in an interest-bearing trust account for the benefit of one or more of the parties, the clerk shall deposit such funds in an interest-bearing trust account, and the financial institution in which such funds are deposited shall remit, after service charges or fees are deducted, the interest generated by said funds directly to the Georgia Superior Court Clerks' Cooperative Authority by the last day of the month following the month in which such funds were received for distribution to the Georgia Public Defender Council for allotment to the circuit public defender offices. With each remittance, the financial institution shall send a statement showing the name of the court, the

rate of interest applied, the average monthly balance in the account against which the interest rate is applied, the service charges or fees of the bank or other depository, and the net remittance. This subsection shall include, but not be limited to, cash supersedeas bonds for criminal appeal, other supersedeas bonds, and bonds or funds paid into the court registry in actions involving interpleader, condemnation, and requests for injunctive relief.

(f) The Georgia Superior Court Clerks' Cooperative Authority shall prescribe uniform procedures and forms for the reporting and remittance of all funds reported to or remitted by the Georgia Superior Court Clerks' Cooperative Authority.

(g) Any interest earned on funds subject to this Code section or Code Section 15-7-49, 15-9-18, or 15-10-240 while in the custody of the Georgia Superior Court Clerks' Cooperative Authority shall be remitted to the Georgia Public Defender Council.

(h) In its discretion, the court may at any time amend its order to require that the funds be deposited into an interest-bearing account for the benefit of one or more of the parties to the action, and the clerk shall comply with such amended order.

(i) In counties where the service charges or fees of the bank or depository would exceed the interest received from funds subject to this Code section, the clerk shall be exempt from subsections (a) through (h) of this Code section. In such counties, the clerk shall send a written notice to the Georgia Superior Court Clerks' Cooperative Authority.

History. — Code 1981, § 15-6-76.1, enacted by Ga. L. 1993, p. 982, § 3; Ga. L. 2003, p. 191, § 2; Ga. L. 2008, p. 846, § 4/HB 1245; Ga. L. 2015, p. 519, § 8-2/HB 328.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2008, "the" was deleted following "custody of the" in subsection (g).

Pursuant to Code Section 28-9-5, in 2015, "cash supersedeas bonds for criminal appeal, other supersedeas bonds" was substituted for "cash supersede bonds for criminal appeal, other supersede bonds" in subsection (e).

Editor's notes. — Code Sections 15-6-75 and 15-6-76, referred to in this Code section, were repealed by Ga. L. 1993, p. 982, §§ 1 and 2, effective July 1, 1994.

Law reviews. — For note on the 2003 amendment to this Code section, see 20 Ga. St. U.L. Rev. 105 (2003).

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Interest remitted to Georgia Indigent Defense Council. — When clerks of superior court, state court, and magistrate court hold funds paid in for security or judicial disposition, the funds must be placed in interest-bearing trust accounts, and the interest remitted to the Georgia Indigent Defense Council. 1997 Op. Att'y Gen. No. U97-21.

15-6-77. Fees; construction of other fee provisions.

(a) The clerks of the superior courts of this state shall be entitled to charge and collect the sums enumerated in this Code section.

(b) All sums as provided for in this Code section shall be inclusive of the sums that the clerks of the superior courts may be required to collect pursuant to Code Section 15-6-61, 15-6-77.4, 15-6-98, 45-17-4, or 47-14-51, or as otherwise provided by law as a deduction from the applicable fee. The sums provided in this Code section are exclusive of costs for service of process or other additional sums as may be provided by law.

(c) Any fees received as provided for in this Code section shall be paid into the county treasury less and except such sums as are otherwise directed to be paid by the clerk to another entity according to some other general law expressly providing for same, including, but not limited to, any sums pursuant to Code Section 15-6-61 and such sums as are collected pursuant to Code Section 15-6-77.4, 15-6-98, 36-15-9, 45-17-4, or 47-14-51, which sums shall be remitted to such authorities as provided by law. Fees, sums, or other remuneration for the performance of duties provided for under the laws of the United States or regulations promulgated pursuant to such laws shall be as provided in such laws or regulations as personal compensation to the clerk of the superior court for the performance of such duties.

(d) Except for the filing of civil cases in which the filing party is indigent as provided in subsection (e) of this Code section, all sums specified in this Code section shall be paid to the clerk at the time of filing or other service.

(e) Costs in civil cases:

(1) As used in this subsection, the term "civil cases" shall include all actions, cases, proceedings, motions, or filings civil in nature, including but not limited to actions for divorce, domestic relations actions, modifications on closed civil cases, adoptions, condemnation actions, and actions for the validation and confirmation of revenue bonds. Any postjudgment proceeding filed more than 30 days after judgment or dismissal in an action shall be considered as a new case for the purposes of this Code section and shall be given a new case number by the clerk of the superior court; provided, however, that such new case number shall not subject a party to any fee other than provided for in this Code section.

(2) Except as provided in paragraphs (3) and (4) of this subsection, the total sum for all services rendered by the clerk of the superior court through entry of judgment in civil cases shall be $58.00. Such sum shall not be required if the party desiring to file such case or

proceeding is unable, because of indigence, to pay such sum and such party files with the clerk an affidavit to such effect, as provided by law. Nothing contained in this subsection shall be deemed to require advance payment of such sum by the state, its agencies, or political subdivisions.

(3) In all cases involving condemnations or the validation and confirmation of revenue bonds, the following additional sums shall be charged at the conclusion of the action:

(A) Validation and confirmation of revenue bonds pursuant to Code Section 36-82-79, first 500 bonds, each	$ 1.00
All bonds over 500, each	.50
(B) Recording on final record, per page	1.50

(4) No fee or cost shall be assessed for any service rendered by the clerk of superior court through entry of judgment in family violence cases under Chapter 13 of Title 19 or in connection with the filing, issuance, registration, or service of a protection order or a petition for a prosecution order to protect a victim of domestic violence, stalking, or sexual assault. A petitioner seeking a temporary protective order or a respondent involved in a temporary protective order hearing under the provisions of Code Section 19-13-3 or 19-13-4 shall be provided with a foreign language or sign language interpreter when necessary for the hearing on the petition. The reasonable cost of the interpreter shall be paid by the local victim assistance funds as provided by Article 8 of Chapter 21 of this title. The provisions of this paragraph shall control over any other conflicting provisions of law.

(5) Nothing contained in this Code section shall be construed so as to prohibit the collection of any other costs authorized by law for postjudgment proceedings or for any other services which the clerk or the sheriff shall perform. Nothing contained in this Code section shall be construed to affect in any way the power and authority of the superior courts from taxing costs in accordance with law, but no costs shall be refunded by the clerk unless and until the same have been paid to the clerk by the losing party.

(f) Sums for filing documents, instruments, etc., pertaining to real estate or personal property, such sums to include recording and returning where applicable, shall be as follows and shall continue to be subject to the remittance requirements to be paid by the clerk pursuant to Code Section 15-6-61, 15-6-98, or 47-14-51:

(1)(A)(i) Filing each instrument pertaining to real estate including, but not limited to, each deed, deed of trust, affidavit, release, notice, certificate, can-

cellation, assignment, notice filing for Uniform Commercial Code related real estate, and assignment of a security deed or mortgage ..... $ 25.00

For any instrument that includes a request for cancellation, satisfaction, release, or assignment of more than one instrument, the filing fee specified in this division shall be submitted and paid for each such instrument which is to be canceled, satisfied, released, or assigned.

(ii) Filing an instrument pertaining to real estate and personal property including a lien on real estate and personal property, hospital lien, notice of lis pendens, written information on utilities, cancellation of a lien, and writ of fieri facias 25.00

For any instrument that includes a request for cancellation, satisfaction, release, or assignment of more than one instrument, the filing fee specified in this division shall be submitted and paid for each such instrument which is to be canceled, satisfied, released, or assigned.

(iii) Filing of a tax lien by a state or local government agency 5.00

Each page, after the first page 2.00

For each tax cancellation, satisfaction, release, notice, withdrawal, or other document referencing a previously filed tax lien, an additional sum for each previous tax lien referenced 2.00

(B) Filing a financing statement, amendment to a financing statement, continuation statement, termination statement, release of collateral, or other filing pursuant to Article 9 of Title 11 ..... 25.00

(2) Filing maps or plats, each page 10.00

(g) Miscellaneous fees:

(1) Recording any instrument or writing, fee not otherwise specified, first page ..... $ 5.00

Each page, after the first 2.00

(2) Uncertified copies of documents, if no assistance is required from the office of the clerk of superior court, per page ..... .50

Uncertified copies, if assistance is required 1.00

Uncertified copies, if transmitted telephonically or electronically, first page 2.50

Each page, after the first 1.00

(3) Uncertified copies of documents, drawings, or plats, copy larger than 8.5 x 14 inches 2.00

(4) Certification or exemplification of record, including certificates and seals, first page 2.50

Each page, after the first ..... .50

(5) Clerk's certificate 1.00

(6) Court's seal 1.00

(7) The clerk may provide computer data or computer generated printouts of public records subject to disclosure maintained on computer by, or available to, the clerk, for each page or partial page of printed data or copies of such or its equivalent 2.50

Nothing in this paragraph shall be construed to require any clerk to provide computer generated reports nor shall any clerk be required to prepare custom or individualized computer compilations or reports for any person or entity which would require preparation of a computer program which is not a standard existing computer program in use by the clerk. The clerk shall not be required to permit access to, or to provide copies of, copyrighted computer programs or any other computer programs in violation of any software license agreement or containing confidential records otherwise excluded or exempted by this Code section or any other applicable law.

(8) Issuing certificate of pending or unsatisfied judgment, as provided in Code Section 40-9-40 ..... 3.00

(9) Issuing certificate of appointment and reappointment to notaries public, as provided by Code Section 45-17-4 ..... 20.00

(10) Registering and filing trade names pursuant to Code Section 10-1-490 ..... 15.00

(11) Issuing subpoena, signed and sealed, notwithstanding subsection (e) of this Code section, each 5.00

(12) Preparation of record and transcript to the Supreme Court and Court of Appeals, per page 1.00

Where a transcript of the evidence and proceedings is filed with the clerk and does not require recopying, the clerk shall not receive the fee herein prescribed with respect to such transcript but shall receive, for filing and transmission of such transcript, a fee of ... 35.00

(13) Reserved.

(14) Reserved.

(15) For performing the duties required of them by Article 2 of Chapter 2 of Title 44, the clerks shall receive the same sums as in civil cases.

(16) For performing the duties required of them by Article 1 of Chapter 9A of Title 14, the "Uniform Limited Partnership Act," and for filing statements of partnership pursuant to Code Section 14-8-10.1, the clerks shall receive the sums as in civil cases.

(h) Fees in criminal cases:

(1) Entering and docketing bills of indictment, presentments, no-bills, accusations ..... $ 3.00

(2) Reserved.

(3) Reserved.

(4) Reserved.

(5) Reserved.

(6) Preparation and furnishing copy of the record of appeal in criminal cases where the accused was convicted of capital felony, except when provided in accordance with subsection (b) of Code Section 5-6-43, per page 1.00

Clerk's certificate 1.00

The clerk shall not receive compensation for the transcript of evidence and proceedings.

(7) When costs are assessed by the court the minimum amount assessed as court costs in the disposition of any criminal case in the superior court shall be $100.00. Any surcharge provided for by law shall be in addition to such sum.

(i) No fees shall be charged for the following:

(1) Recording discharge certificates of veterans, as provided in Code Section 15-6-78;

(2) Filing a petition as provided in Code Section 42-8-66;

(3) Recording and certifying documents in connection with admission to practice law; and

(4) Costs associated with the filing of criminal charges by an alleged victim of a violation of Code Section 16-5-90, 16-5-91, 16-6-1, 16-6-2, 16-6-3, 16-6-4, 16-6-5.1, 16-6-22.1, or 16-6-22.2 or an alleged victim of any domestic violence offense or for the issuance or service of a warrant, protective order, or witness subpoena arising from the violation of Code Section 16-5-90, 16-5-91, 16-6-1, 16-6-2, 16-6-3, 16-6-4, 16-6-5.1, 16-6-22.1, or 16-6-22.2 or the incident of domestic violence.

(j) All laws in force in this state which provide compensation for clerks of the superior courts for the discharge of duties not enumerated in this Code section nor in conflict with this Code section shall remain in full force and effect.

(k) No fees, assessments, or other charges may be assessed or collected except as authorized in this Code section or some other general law expressly providing for same.

(l) The clerk of superior court may provide such additional services for which there is no fee specified by statute in connection with the operation of the clerk's offices as may be requested by the public and agreed to by the clerk. Any charges for such additional services shall be as agreed to between the clerk and the party making the request. Nothing in this subsection shall be construed to require any clerk to provide any such service not otherwise required by law.

(m) The sheriffs of this state shall not be required to pay recording fees for criminal bonds and writs of fieri facias issued on criminal bond forfeitures.

(n) The clerk of superior court shall not be required to refund excess sums tendered to the clerk as payment of costs or fees enumerated in this Code section when such payment exceeds the amount required by this Code section by less than $15.00.

(o) In addition to the fees required by this Code section:

(1) With respect to any instrument that includes a request for cancellation, satisfaction, or release of any instrument described in division (f)(1)(A)(i) or (f)(l)(A)(ii) of this Code section, the clerk shall file, index, and record the cancellation of each such instrument identified and requested to be canceled, provided that the requesting party pays the applicable filing fee and that such instrument accu-

rately identifies the recording information for such instrument to be canceled, satisfied, or released; and

(2) For the purposes of this subsection and any other Code section requiring the clerk of superior court to cross-index, cross-reference, or make any other notation affecting any instrument filed in the clerk's office, including, but not limited to, real estate, personal property, liens, plats, and any other instruments, the clerk shall be authorized to make such entry or notation through electronic or automated means in lieu of entering such information manually in paper books or dockets.

(p) Notwithstanding any provision of this Code section to the contrary, the filing fee for an application to be appointed as a certified process server pursuant to paragraph (2) of subsection (h) of Code Section 9-11-4.1 shall be $58.00.

History. — Laws 1792, Cobb's 1851 Digest, pp. 353, 354; Ga. L. 1857, p. 49, § 2; Code 1863, § 3619; Code 1868, § 3644; Ga. L. 1870, p. 67, § 1; Code 1873, § 3695; Ga. L. 1880-81, p. 87, § 1; Code 1882, § 3695; Civil Code 1895, § 5397; Penal Code 1895, § 1106; Civil Code 1910, § 5995; Penal Code 1910, § 1133; Ga. L. 1921, p. 184, § 1; Code 1933, § 24-2727; Ga. L. 1939, p. 345, § 2; Ga. L. 1946, p. 225, § 1; Ga. L. 1946, p. 726, § 1; Ga. L. 1947, p. 1177, §§ 2, 3; Ga. L. 1953, Jan.-Feb. Sess., p. 32, § 2; Ga. L. 1955, p. 421, § 1; Ga. L. 1957, p. 321, § 1; Ga. L. 1965, p. 525, §§ 1, 2; Ga. L. 1970, p. 497, § 1; Ga. L. 1971, p. 214, § 1; Ga. L. 1971, p. 699, § 1; Ga. L. 1971, p. 774, § 1; Ga. L. 1972, p. 664, §§ 1, 4; Ga. L. 1977, p. 1098, § 4; Ga. L. 1978, p. 1787, § 2; Ga. L. 1980, p. 1045, § 1; Code 1933, §§ 24-2727.1, 24-2727.2, 24-2727.3, 24-2727.4, 24-2727.5, 24-2727.6, 24-2727.7, enacted by Ga. L. 1981, p. 1396, § 1; Ga. L. 1982, p. 3, § 15; Ga. L. 1982, p. 879, § 1; Ga. L. 1983, p. 3, § 12; Ga. L. 1983, p. 1210, § 1; Ga. L. 1986, p. 1002, §§ 1, 2; Ga. L. 1987, p. 320, § 3; Ga. L. 1988, p. 320, § 2; Ga. L. 1989, p. 14, § 15; Ga. L. 1989, p. 395, § 5; Ga. L. 1989, p. 498, § 3; Ga. L. 1989, p. 931, § 3; Ga. L. 1989, p. 946, § 109; Ga. L. 1990, p. 805, § 2; Ga. L. 1991, p. 1051, § 3; Ga. L. 1991, p. 1324, § 1; Ga. L. 1992, p. 1311, § 1; Ga. L. 1993, p. 1550, § 9; Ga. L. 1994, p. 1693, § 15; Ga. L. 1995, p. 260, § 1; Ga. L. 1995, p. 863, § 1; Ga. L. 1996, p. 883, §§ 1, 2; Ga. L. 1996, p. 1502, § 2; Ga. L. 2001, p. 362, § 27; Ga. L. 2001, p. 885, §§ 1, 2; Ga. L. 2002, p. 799, § 3; Ga. L. 2002, p. 832, § 2; Ga. L. 2003, p. 140, § 15; Ga. L. 2003, p. 258, § 1; Ga. L. 2004, p. 900, § 1; Ga. L. 2006, p. 532, § 1/HB 989; Ga. L. 2007, p. 595, § 4/HB 197; Ga. L. 2008, p. 164, § 1/HB 1018; Ga. L. 2009, p. 135, § 1/HB 453; Ga. L. 2010, p. 9, § 1-38/HB 1055; Ga. L. 2011, p. 24, § 2/HB 41; Ga. L. 2012, p. 216, § 1/HB 198; Ga. L. 2012, p. 819, § 2/HB 1048; Ga. L. 2015, p. 422, § 5-5/HB 310; Ga. L. 2016, p. 435, § 1/HB 851; Ga. L. 2019, p. 683, § 2/HB 288; Ga. L. 2019, p. 845, § 6-3/HB 239; Ga. L. 2020, p. 493, § 15/SB 429.

The 2019 amendments. — The first 2019 amendment, effective January 1, 2020, in subsection (b), in the first sentence, inserted "15-6-61," and added ", 15-6-98, 45-17-4, or 47-14-51, or as otherwise provided by law as a deduction from the applicable fee"; substituted the present provisions of the first sentence of subsection (c) for the former provisions, which read: "In all counties in this state where the clerk of the superior court is paid or compensated on a salary basis, the fees provided for in this Code section shall be paid into the county treasury less and except such sums as are otherwise directed to be paid pursuant to Code Section 15-6-61 and such sums as are collected pursuant to Code Section 36-15-9 and Code Section 15-6-77.4, which sums shall be remitted to such authorities as pro-

vided by law."; deleted "and shall specifically control over the provisions of Code Sections 15-6-77.1, 15-6-77.2, and 15-6-77.3" following "provisions of law" at the end of paragraph (e)(4); rewrote subsection (f), which read: "Sums for filing documents, instruments, etc., pertaining to real estate or personal property, such sums to include recording and returning where applicable, shall be as follows:

"(1)(A)(i) Filing all instruments pertaining to real estate including deeds, deeds of trust, affidavits, releases, notices and certificates, and cancellation of deeds, first page ..... $ 9.50

"Each page, after the first 2.00

"(ii) Filing all instruments pertaining to real estate and personal property including liens on real estate and personal property, notice filings for Uniform Commercial Code related real estate, tax liens, hospital liens, writs of fieri facias, notices of lis pendens, written information on utilities, cancellations of liens, and writs of fieri facias, first page 4.50

"Each page, after the first 2.00

"(B) Filing and indexing financing statements, amendments to financing statements, continuation statements, termination statements, release of collateral, or other filing pursuant to Article 9 of Title 11, first page 10.00

"Each page, after the first 2.00

"(2) Filing maps or plats, each page ... 7.50

"(3) For processing an assignment of a security deed, for each deed assigned .... 4.50"; deleted former paragraph (o)(1), which read: "When any instrument that is statutorily required to be cross indexed, canceled, satisfied, or released or when a party requests the clerk to cross index an instrument that is not otherwise required by law to be cross indexed to any other previously recorded or affected document, the clerk of superior court shall charge an additional fee of $2.00 for each additional cross indexed entry;"; deleted former paragraph (o)(2), which read: "For recording any instrument that includes a request for cancellation, satisfaction, or release of more than one instrument as described in division (f)(1)(A)(i) of this Code section, the filing fee specified in division (f)(1)(A)(i) of this Code section shall be charged for each such instrument which is to be canceled, satisfied, or released;"; deleted former paragraph (o)(3), which read: "For recording any instrument that includes a request for cancellation, satisfaction, or release of more than one instrument as described in division (f)(1)(A)(ii) of this Code section, the filing fee specified in division (f)(1)(A)(ii) of this Code section shall be charged for each such instrument which is to be canceled, satisfied, or released;"; deleted former paragraph (o)(4), which read: "For any instrument that includes a request for the clerk to cross index the instrument to a previously recorded or affected instrument but for which cross indexing is not otherwise required by law, the clerk shall file, index, record, and cross index each such instrument for which a request has been made upon receiving payment from the requesting party as specified by paragraph (1) of this subsection and written information specifying accurately the instrument to be cross indexed;", redesignated former paragraphs (o)(5) and (o)(6) as present paragraphs (o)(1) and (o)(2), respectively; and inserted a comma following "canceled" and substituted "applicable filing fee" for "filing fee specified by paragraph (2) or (3) of this subsection, as applicable," in the middle of paragraph (o)(1). The second 2019 amendment, effective May 7, 2019, added "and shall be given a new case number by the clerk of the superior court; provided, however, that such new case number shall not subject a party to any fee other than provided for in this Code section" at the end of the second sentence of paragraph (e)(1).

The 2020 amendment, effective July 29, 2020, part of an Act to revise, modernize, and correct the Code, revised punctuation in the undesignated language at the end of divisions (f)(1)(A)(i) and (f)(1)(A)(ii).

Cross references. — Court costs generally, § 9-15-1 et seq. Deposits of court costs, § 9-15-4. Giving of receipts for fees, and penalty for charging excessive fees, § 15-13-30 et seq. Charges for purpose of providing funds for purchasing books for county law libraries, § 36-15-9. Civil actions and remedies for the collections of fines, costs, restitution, and reparation

ordered as a condition of probation, § 42-8-34.2.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2008, "canceled" was substituted for "cancelled" throughout subsection (o).

Pursuant to Code Section 28-9-5, in 2019, a comma was inserted following "45-17-4" in subsection (c).

Editor's notes. — Ga. L. 1995, p. 260, § 6, not codified by the General Assembly, provided that Section 1 of that Act, which amended subsection (f) of this Code section, would be repealed on July 1, 1996; this repeal provision was amended by Ga. L. 1996, p. 1502, § 4, and by Ga. L. 1997, p. 565, § 5, neither of which sections was codified by the General Assembly, so as to delete the reference to the repeal of Section 1 of the 1995 Act. Ga. L. 1996, p. 1502, § 2, effective July 1, 1998, amended the version of subparagraph (f)(1)(A) of this Code section enacted by Ga. L. 1995, p. 260, § 1. The delayed effective date of the 1996 amendment to subparagraph (f)(1)(A) was changed to January 1, 2004, by Ga. L. 1997, p. 565, § 6.

Ga. L. 2002, p. 832, § 1, not codified by the General Assembly, provides: "It is the general intent of this Act to codify and to extend for a further period of two years the future 'sunset' of certain provisions relating to superior court clerks' fees and the Georgia Superior Court Clerks' Cooperative Authority."

Ga. L. 2002, p. 832, § 5, not codified by the General Assembly, provided: "The following provisions of law are repealed:

"(1) Section 6 of an Act amending Title 15 of the Official Code of Georgia Annotated, relating to courts, approved April 7, 1995 (Ga. L. 1995, p. 260), as amended, which now repealed section would have provided for a future repeal or sunset of certain provisions relating to fees of superior court clerks and the Georgia Superior Court Clerks' Cooperative Authority; and

"(2) Section 2 of an Act amending Article 2 of Chapter 6 of Title 15 of the Official Code of Georgia Annotated, relating to clerks of superior courts, approved April 16, 1996 (Ga. L. 1996, p. 1502), as amended, which now repealed section would have provided for a future change in the fees of superior court clerks."

Ga. L. 2007, p. 595, § 5/HB 197, not codified by the General Assembly, provides that this Act shall apply to all trials which occur on or after July 1, 2007.

Ga. L. 2011, p. 24, § 4/HB 41, not codified by the General Assembly, provides, in part, that: "This Act shall apply retroactively to all cases for which fees have not been assessed." The effective date of this Act was March 16, 2011.

Ga. L. 2015, p. 422, § 6-1/HB 310, not codified by the General Assembly, provides, in part, that the amendment by this Act shall apply to sentences entered on or after July 1, 2015.

Law reviews. — For survey article on real property law, see 59 Mercer L. Rev. 371 (2007). For article on the 2015 amendment of this Code section, see 32 Ga. St. U.L. Rev. 231 (2015). For article on the 2019 amendment of this Code section, see 36 Ga. St. U.L. Rev. 1 (2019). For annual survey on domestic relations, see 71 Mercer L. Rev. 83 (2019). For article, "2019 Legislative Review," see 24 Ga. St. B.J. 28 (June 2019).

For note on 1989 amendment to this Code section, see 6 Ga. St. U.L. Rev. 184 (1989). For note on 1993 amendment of this Code section, see 10 Ga. St. U.L. Rev. 41 (1993). For note on the 1994 amendment of this Code section, see 11 Ga. St. U.L. Rev. 70 (1994).

For comment, "'The Twain Shall Meet': A Real Property Approach to Article 9 Perfection," see 64 Emory L.J. 1103 (2015).

JUDICIAL DECISIONS

Superior court clerks are charged with duty of receiving amounts of all costs due in court. Whitsett v. Hester-Bowman Enters., Inc., 94 Ga. App. 78, 93 S.E.2d 788 (1956).

Construction with O.C.G.A. § 44-14-361.1(a)(3). — Because a notice under O.C.G.A. § 44-14-361.1(a)(3) was not filed within 14 days of a lien claimant's suit being initiated, the lien was unenforceable, and the trial court did not err in granting a developer's motion for

partial summary judgment against the lien claimant; while the appeals court sympathized with the lien claimant's argument that the claimant received a file-stamped copy and as a result believed no fee was due, ultimately it was the responsibility of plaintiff and plaintiff's counsel to see that the appropriate fees were paid in a timely manner. Kendall Supply, Inc. v. Pearson Cmtys., Inc., 285 Ga. App. 863, 648 S.E.2d 158 (2007).

Right to make examinations or abstracts when paying fees. — Private citizen has no right without consent of the clerk and payment of fees to make abstracts of books of record. Buck & Spencer v. Collins, 51 Ga. 391, 21 Am. R. 236 (1874).

This section does not deny the right of members of the public to make examinations and abstracts, but only imposed charges or fees for services which the clerk may render in making such examination and abstracts. Atlanta Title & Trust Co. v. Tidwell, 173 Ga. 499, 160 S.E. 620 (1931).

When cases are consolidated, clerk is entitled to fee in each case. Williams, Birnie & Co. v. Officers of Court, 61 Ga. 95 (1878).

Clerk not authorized to charge for copy retained by clerk. — Under paragraph (g)(12) of O.C.G.A. § 15-6-77, the clerk should only have charged for preparing the record to be sent to this court and was not authorized to charge the additional fee for preparing the copy of the record to be retained by the clerk. Rewis v. Shaw, 208 Ga. App. 876, 432 S.E.2d 617 (1993).

Clerk not entitled to costs for transmitting surplus parts of record not specified in bill of exceptions (see now O.C.G.A. §§ 5-6-49 and 5-6-50), unless the transmission was at instance of party or counsel. Waldrop v. Wolff & Happ, 114 Ga. 610, 40 S.E. 830 (1902); Riley v. Wrightsville & T.R.R., 133 Ga. 413, 65 S.E. 890, 24 L.R.A. (n.s.) 379, 18 Ann. Cas. 208 (1909).

Fee for entering case on docket cannot be claimed in advance. Ball v. Duncan, 30 Ga. 938 (1860).

Clerk required to file motion to compel discovery under original case number. — Trial court did not err in granting the petition for a writ of mandamus because the filing party had a clear legal right to compel the clerk to fulfill the clerk's ministerial duty of filing the motion to compel discovery under the original case number as the motion was directly related to that case; O.C.G.A. § 15-6-77 did not deal with the assignment of case numbers, but the calculation of costs for post-judgment motions filed more than 30 days after a judgment was entered; and the clerk was legally required to file the motion to compel upon collecting appropriate costs, without attempting to determine whether the document should legally be filed under the previously assigned case number of the original complaint. Alexander v. Gibson, 300 Ga. 394, 794 S.E.2d 597 (2016).

Under this section, word "summons" meant "subpoena" and did not refer to civil process or a summons issued by a justice of the peace, or to summons issued by municipal forums. Owens v. Maddox, 80 Ga. App. 867, 57 S.E.2d 826 (1950).

Failure to charge sufficient costs not to affect rights of parties. — In cases when the clerks are on a salary basis and the costs belong to the county, failure to charge sufficient costs would be a matter between the clerk and the county, and might subject the clerk to a contempt proceeding, but would not affect the rights of parties litigant. Whitsett v. Hester-Bowman Enters., Inc., 94 Ga. App. 78, 93 S.E.2d 788 (1956); Sirmans v. Sirmans, 222 Ga. 202, 149 S.E.2d 101 (1966).

Clerk's filing without fees is not a waiver of fees. — Clerk's filing of complaint without having received deposit or affidavit of indigence did not constitute a waiver of assessment of court costs against complainant. Whitehead v. Lavoie, 176 Ga. App. 666, 337 S.E.2d 357 (1985).

No further affidavit of indigence required for renewal action. — Provision in O.C.G.A. § 9-15-2(a) that an affidavit of indigence relieves a party of "any deposit, fee, or other cost" requires that, when a plaintiff files such an affidavit upon bringing an action, takes a voluntary dismissal, then seeks to renew the action, no pay-

ment of accrued costs and no further affidavit of indigence are required for the filing of the renewal action. McKenzie v. Seaboard Sys. R.R., 173 Ga. App. 402, 326 S.E.2d 502 (1985).

No application to chain of title. — In arguing that cross-indexing served to pull a corrective deed into a property's chain of title, a bank's reliance on O.C.G.A. § 15-6-77 was unsupported as that statute did not authorize cross-indexing or say anything about the effect of cross-indexing. Rather, the statute merely set out the fee charged for cross-indexing and when cross-indexing was legally required. Bank of Am., N.A. v. Adams (In re Adams), 583 B.R. 541 (Bankr. N.D. Ga. 2018).

No private cause of action. — In a suit challenging a court's electronic filing fee system, the trial court did not err when the court granted the motion to dismiss the plaintiff's claims because none of the statutes or rules cited by the plaintiff provided a private cause of action for damages arising from any violation of the respective statute or rule. Best Jewelry Mfg. Co. v. Reed Elsevier Inc., 334 Ga. App. 826, 780 S.E.2d 689 (2015), cert. denied, No. S16C0502, 2016 Ga. LEXIS 286 (Ga. 2016).

Contempt action not new civil action. — Provision of O.C.G.A. § 15-6-77 defining "civil cases" for determining when clerks may charge and collect fees was not authority for a court to designate a contempt notice as a new civil action requiring 30 days notice of a hearing. Brown v. King, 266 Ga. 890, 472 S.E.2d 65 (1996).

Contempt motion filed more than 30 days after judgment. — Plaintiff's motion for contempt for failure to comply with court-ordered postjudgment discovery that was submitted more than 30 days after judgment was considered a new proceeding within the meaning of O.C.G.A. § 15-6-77(e)(1) for purposes of calculating the costs the superior court clerk was entitled to charge and collect. McFarland & Assocs., P.C. v. Hewatt, 242 Ga. App. 454, 529 S.E.2d 902 (2000).

Cited in Neisler v. Loudon, 83 Ga. 196, 9 S.E. 682 (1889); McMichael v. Southern Ry., 117 Ga. 518, 43 S.E. 850 (1903); Godfrey v. City of Cochran, 208 Ga. 149, 65 S.E.2d 605 (1951); Richmond County v. Pierce, 234 Ga. 274, 215 S.E.2d 665 (1975); Rucker v. Fuller, 247 Ga. 423, 276 S.E.2d 600 (1981); McBride v. Wetherington, 199 Ga. App. 7, 403 S.E.2d 873 (1991).

OPINIONS OF THE ATTORNEY GENERAL

Clerk may collect appropriate fee for all pleadings which have been filed and recorded prior to dismissal of case. 1970 Op. Att'y Gen. No. U70-200.

Clerk of superior court must refund that portion of advance costs deposit that exceeds actual costs. 1976 Op. Att'y Gen. No. U76-61.

Superior court clerk cannot charge less than prescribed. — Superior court clerk does not have discretion to charge less than fees prescribed by this section for preparation of case records on appeal when the clerk is on salary as opposed to "fee system." Under such circumstances, the statutory fees are no longer the property of the clerk, but are public property for which the clerk is responsible. 1973 Op. Att'y Gen. No. U73-43.

Failure of superior court clerk to collect costs on appeal did not affect outcome of appeal despite former Code 1933, § 24-2729 (see now O.C.G.A. § 15-6-80). 1973 Op. Att'y Gen. No. U73-43.

Passport application fees to be paid into county treasury. — Passport application fees collected by superior court clerk who is compensated on a salary basis must be paid into county treasury. 1978 Op. Att'y Gen. No. U78-20.

Filing fee based on original number of pages. — This section permits the clerk to charge a filing fee for each lien, mortgage, and deed recorded; this fee is based upon original (typed) pages, and if the matter is printed so as to reduce the number of pages filed, the fee should still be based upon what space would have been occupied by the material if on original pages. 1971 Op. Att'y Gen. No. U71-88.

Burden of cost deposit on party filing notice of appeal. — Party who filed notice of appeal under former Code 1933, § 92-6912 (see now O.C.G.A. § 48-5-311(f)) was party bearing burden of cost of deposit. 1974 Op. Att'y Gen. No. U74-46.

Notice of arraignment to be treated as summons. — Notice of arraignment required by former Code 1933, § 27-1401 (see now O.C.G.A. § 17-7-91) to be sent to all defendants in criminal cases was to be treated as a summons rather than as a subpoena in determining the correct fee to be charged by the clerk of court pursuant to former Code 1933, § 24-2727 (see now O.C.G.A. § 15-6-77). 1967 Op. Att'y Gen. No. 67-42.

No filing or recording fee can be charged for depositions or interrogatories. 1970 Op. Att'y Gen. No. U70-232.

O.C.G.A. § 15-6-77 does not prescribe a fee for filing interrogatories or answers to interrogatories. It follows that no fee may be charged for this service. 1981 Op. Att'y Gen. No. U81-50.

No fee can be collected for the filing of interrogatories. 1971 Op. Att'y Gen. No. U71-93.

How fee for entering fieri facias to be charged. — Intent of the General Assembly in enacting the provision entitling clerks of superior courts to charge a fee for entering fieri facias on a general execution docket is that for each fieri facias entered against a given defendant the clerk is entitled to charge the authorized fee. 1976 Op. Att'y Gen. No. U76-51.

Clerk is entitled only to fee for each accusation, and not for each warrant. 1957 Op. Att'y Gen. p. 49.

In no case is fee collectible from Board of Offender Rehabilitation for per diem court attendance. 1963-65 Op. Att'y Gen. p. 450.

Fee in nolle prosequi case. — Fee for services in cases "where the defendant is tried, or pleads guilty, or there is a settlement" would certainly be applicable in a situation whereby the nolle prosequi was contingent upon payment of costs. 1963-65 Op. Att'y Gen. p. 609.

Bond forfeiture case is not "settlement". 1963-65 Op. Att'y Gen. p. 486.

Superior court clerk not entitled to fee for each juror summoned by sheriff. 1945-47 Op. Att'y Gen. p. 99.

Additional filing fee for corporate documents. — Additional sum authorized by Ga. L. 1977, p. 1098, §§ 1 and 2 and former Code 1933, § 24-2727 (see now O.C.G.A. §§ 15-6-77 and 47-14-51) to be paid to the clerks of the superior courts should be charged and collected upon the filing of articles of amendment, articles of merger, and articles of dissolution. 1978 Op. Att'y Gen. No. 78-63.

Fees for recording of workers' compensation proceedings. — O.C.G.A. § 15-6-62 requires recordation of pleadings and proceedings filed during pendency of workers' compensation appeals in superior courts, and the clerk is authorized to collect fees for such recordation pursuant to O.C.G.A. § 15-6-77. 1982 Op. Att'y Gen. No. U82-29.

When filing fees not required. — When child support petitions and other documents on behalf of the state are filed in the superior courts, filing fees may not be required. 1984 Op. Att'y Gen. No. U84-7.

Authorization to charge more supersedes court-ordered fee. — Authorization to charge maximum fee for processing alimony or child support payments supersedes previous court-ordered fees for the same purpose, insofar as they are inconsistent. 1970 Op. Att'y Gen. No. U70-216.

Sheriff's fees set forth in former Code 1933, § 24-2823 (see now O.C.G.A. § 15-16-21) should be paid at clerk's office at time of filing, if required in a particular case, and that payment of the sheriff's fees was required in addition to the deposit for the clerk's fees which was payable at the time of filing in appropriate cases. 1976 Op. Att'y Gen. No. U76-37.

Applicability to Department of Labor. — Department of Labor is liable for fees and costs in superior court except for recordation fees for records of the Board of Review in unemployment insurance cases and fees in civil cases as set forth in subsection (b) of O.C.G.A. § 15-6-77. 1986 Op. Att'y Gen. No. 86-43.

Advance court cost deposit. — Appellants contesting a decision rendered by a county board of equalization in superior court must pay the advance court cost deposit set forth in O.C.G.A. §§ 9-15-4

and 15-6-77. 1985 Op. Att'y Gen. No. U85-17.

Appellants contesting the award of a special master need not pay the advance court cost deposit set forth in O.C.G.A. §§ 9-15-4 and 15-6-77 if the appellants have properly paid the required costs for filing the initial condemnation petition. 1985 Op. Att'y Gen. No. U85-17.

Taxpayers appealing from decisions of the state revenue commissioner pursuant to O.C.G.A. § 48-2-59 need only comply with the specific requirements of that section with regard to court costs; taxpayers need not pay the advance court cost deposit set forth in O.C.G.A. §§ 9-15-4 and 15-6-77. 1985 Op. Att'y Gen. No. U85-17.

Filing fee for Family Violence Act petitions. — Former paragraphs (b)(1) and (2) of O.C.G.A. § 15-6-77, which provide that the total cost for all services rendered by the clerk of superior court in civil cases shall be either $40 or $55, should be construed together with, and do not repeal, O.C.G.A. § 19-13-3, which provides for a $16 filing fee for petitions filed under the Family Violence Act, O.C.G.A. § 19-13-1 et seq. 1988 Op. Att'y Gen. No. U88-11.

RESEARCH REFERENCES

Am. Jur. 2d. — 15A Am. Jur. 2d, Clerks of Court, § 14 et seq.

C.J.S. — 21 C.J.S., Courts, § 4 et seq.

ALR. — Statute regarding security for costs as mandatory or permitting exercise of discretion, 84 A.L.R. 252.

Exception as regards payments to officers of court to rule preventing recovery back of payments made under mistake of law, 111 A.L.R. 637.

15-6-77.1. Additional fees in counties with populations of 550,000 or more; disposition of such fees.

Repealed by Ga. L. 2019, p. 683, § 3/HB 288, effective January 1, 2020.

Editor's notes. — This Code section was based on Ga. L. 1975, p. 1150, § 1; Ga. L. 1979, p. 507, § 1; Code 1981, § 15-6-77.1, enacted by Ga. L. 1982, p. 2107, § 7; Ga. L. 2001, p. 4, § 15.

15-6-77.2. Costs for clerk's services in counties with populations of 640,000 or more; time for payment of costs; disposition of such costs.

Repealed by Ga. L. 2019, p. 683, § 4/HB 288, effective January 1, 2020.

Editor's notes. — This Code section was based on Ga. L. 1979, p. 507, § 2; Ga. L. 1981, p. 532, § 1; Code 1981, § 15-6-77.2, enacted by Ga. L. 1982, p. 2107, § 7; Ga. L. 1984, p. 500, § 1; Ga. L. 1992, p. 2046, § 1.

15-6-77.3. Additional fees in counties with populations in unincorporated areas of 350,000 or more.

Repealed by Ga. L. 2019, p. 683, § 5/HB 288, effective January 1, 2020.

Editor's notes. — This Code section was based on Ga. L. 1984, p. 617, § 1; Ga. L. 1988, p. 13, § 15; Ga. L. 2001, p. 362, § 28; Ga. L. 2010, p. 579, § 11/SB 131.

15-6-77.4. Additional divorce case filing fee for Children's Trust Fund.

(a) In addition to any fees required in Code Sections 15-6-77 and 47-14-51, for filing each divorce case, the clerk of superior court shall charge an additional fee of $5.00. Each clerk of the superior court shall collect the additional fees for divorce cases as provided in this Code section and shall pay such moneys over to the Georgia Superior Court Clerks' Cooperative Authority by the last day of the month there following, to be deposited by the authority into the general treasury. The authority shall, on a quarterly basis, make a report and accounting of all funds collected pursuant to this Code section and shall submit such report and accounting to the Office of Planning and Budget, the House Budget and Research Office, and the Senate Budget and Evaluation Office no later than 60 days after the last day of the preceding quarter.

(b) When any such person whose duty it is to collect and pay over such moneys fails to remit the sums within 60 days of the date they are required to be paid over, the same shall be delinquent and there may be imposed, in addition to the principal amount due, a specific penalty in the amount of 5 percent of said principal amount per month for each month during which the money is continued to be delinquent, not to exceed a total of 25 percent of the principal amount.

(c) The sums provided for in this Code section shall be collected in accordance with the provision of subsection (b) of Code Section 15-6-77.

History. — Code 1981, § 15-6-77.4, enacted by Ga. L. 1987, p. 1133, § 2; Ga. L. 1988, p. 13, § 15; Ga. L. 1991, p. 1324, § 2; Ga. L. 2004, Ex. Sess., p. ES3, § 1/HB 1EX; Ga. L. 2008, p. VO1, § 1-3/HB 529; Ga. L. 2014, p. 866, § 15/SB 340; Ga. L. 2019, p. 683, § 6/HB 288.

The 2019 amendment, effective January 1, 2020, deleted ", 15-6-77.2, 15-6-77.3," following "15-6-77" in the first sentence of subsection (a).

Cross references. — Designating amount of additional divorce case filing fees for Children's Trust Fund, § 19-14-21.

Editor's notes. — Ga. L. 1987, p. 1133, § 6, not codified by the General Assembly, repeals this Code section effective July 1, 1995.

Ga. L. 1994, p. 509, § 8, not codified by the General Assembly, amends Ga. L. 1987, p. 1133, § 6, to change the date of repeal from July 1, 1995, to July 1, 2000.

Ga. L. 1999, p. 520, § 1, not codified by the General Assembly, amends Ga. L. 1987, p. 1133, § 6, to change the date of repeal from July 1, 2000, to July 1, 2010.

Ga. L. 2008, p. 568, § 14/HB 1054, not codified by the General Assembly, repealed Ga. L. 1987, p. 1133, § 6, as amended, so as to eliminate the July 1, 2010 repeal of this Code section.

Law reviews. — For article, "2019 Legislative Review," see 24 Ga. St. B.J. 28 (June 2019).

15-6-78. Veterans not to be charged for recordation of discharge certificates.

(a) All clerks of the superior courts are prohibited from charging any veteran a fee for recording his discharge certificate pursuant to Code Section 15-6-72.

(b) In all counties where the clerk of a superior court is exclusively on a fee basis, the clerk shall be paid the sum of $1.50 for each discharge certificate recorded by him. This sum is to be paid out of the county treasury by the proper county fiscal authority on the first day of each month, based on the number of discharge certificates filed and recorded by the clerk during the preceding month.

History. — Ga. L. 1947, p. 1177, §§ 1, 3; Ga. L. 1953, Jan.-Feb. Sess., p. 32, § 1; Ga. L. 1968, p. 1201, § 1.

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Veteran liable for costs of certified copies. — County is authorized to pay only for the recording of the discharge; if the clerk issues any certified copies of the recorded discharge to the veteran, the clerk is authorized to charge the usual fee for such service, payable by the veteran. 1948-49 Op. Att'y Gen. p. 423.

15-6-79. Payment of unpaid costs in felony cases.

Reserved. Repealed by Ga. L. 2012, p. 173, § 1-17/HB 665, effective July 1, 2012.

Editor's notes. — This Code section was based on Ga. L. 1950, p. 175, § 1.

15-6-80. Payment of transcript costs to clerk before transmittal.

In all cases certified to the appellate courts, the costs for preparing the transcript of the record shall be paid by the appellant to the clerk before the same is transmitted unless the judge presiding over the case being appealed approves an affidavit submitted to the judge by the appellant certifying that the appellant is unable to pay such costs or upon the appellant providing adequate security for such costs.

History. — Ga. L. 1889, p. 104, § 2; Civil Code 1895, § 5400; Civil Code 1910, § 5996; Code 1933, § 24-2729; Ga. L. 1963, p. 368, § 1; Ga. L. 2012, p. 173, § 1-18/HB 665.

Cross references. — Preparation of transcripts for purposes of bringing appeal, § 5-6-41 et seq.

JUDICIAL DECISIONS

All costs shall be paid in court below or appellant shall make affidavit of inability to pay such costs before the clerk transmits record to the appellate court. Pickett v. Paine, 139 Ga. App. 508, 229 S.E.2d 90 (1976).

Appeal based on unauthorized transfer of transcript improper. — If an appeal is inadvertently transmitted to an appellate court by the clerk of the trial court at a time when the clerk was not authorized to transmit the appeal since the appellant had neither paid the costs of preparing the transcript nor made a pauper's affidavit, the appeal is improper and must be dismissed. Rogers v. International Mineral & Chem. Corp., 120 Ga. App. 54, 169 S.E.2d 659 (1969).

No dismissal when record sent without opportunity to pay costs. — Dismissal of appeal because clerk sent record to supreme court before appellant had opportunity to pay costs is improper. J.D. Jewell, Inc. v. Hancock, 226 Ga. 480, 175 S.E.2d 847 (1970).

Rights of parties not affected by breach of duty to collect costs. — If the clerk breaches the clerk's duty to collect the costs before sending the record to the supreme court, this would be a matter between the clerk and the county, and would not affect the rights of parties litigant. J.D. Jewell, Inc. v. Hancock, 226 Ga. 480, 175 S.E.2d 847 (1970).

Clerk's waiver of benefits. — In a county where the clerk is on a fee basis, the clerk's waiver of the benefits of this section, passed for the purpose of insuring the clerk's collection of the costs prior to sending the record to the supreme court, would not affect the rights of litigants. J.D. Jewell, Inc. v. Hancock, 226 Ga. 480, 175 S.E.2d 847 (1970).

If pauper's affidavit is held not to be good and appellant fails to make supersedeas bond in three days, appeal is dismissed. George v. American Credit Control, Inc., 222 Ga. 512, 150 S.E.2d 683 (1966).

Appellate court not to police procedures of trial courts. — This section does not require appellate court to police procedures of trial courts if issue is not directly before the court on appeal, as it would be, for example, in a contempt action against the clerk. City of Atlanta v. Akins, 116 Ga. App. 230, 156 S.E.2d 665 (1967).

Challenge to sentence dismissed as moot because sentence expired before transcript sent. Jayko v. State, 335 Ga. App. 684, 782 S.E.2d 788 (2016).

Cited in Aetna Cas. & Sur. Co. v. Sampley, 108 Ga. App. 617, 134 S.E.2d 71 (1963); Bryant v. Motors Ins. Corp., 109 Ga. App. 47, 135 S.E.2d 905 (1964); Leach v. Housing Auth., 111 Ga. App. 104, 140 S.E.2d 563 (1965); Vezzani v. Vezzani, 222 Ga. 853, 153 S.E.2d 161 (1967); Hornsby v. Rodriguez, 116 Ga. App. 234, 156 S.E.2d 830 (1967); American Cas. Co. v. Smith, 116 Ga. App. 332, 157 S.E.2d 312 (1967); Howard v. Mitcham, 224 Ga. 288, 161 S.E.2d 291 (1968); Consolidated Pecan Sales Co. v. Savannah Bank & Trust Co., 122 Ga. App. 536, 177 S.E.2d 808 (1970); Smith v. Mayor of Lake City, 125 Ga. App. 772, 189 S.E.2d 104 (1972); Azar v. Baird, 232 Ga. 81, 205 S.E.2d 273 (1974); Elliott v. Walton, 136 Ga. App. 211, 220 S.E.2d 696 (1975); Wadlington v. Wadlington, 235 Ga. 582, 221 S.E.2d 1 (1975); Little v. Thompson Co., 140 Ga. App. 238, 230 S.E.2d 316 (1976); Adderholt v. Adderholt, 240 Ga. 626, 242 S.E.2d 11 (1978); Corbin v. First Nat'l Bank, 151 Ga. App. 33, 258 S.E.2d 697 (1979); Marshall v. Fulton Nat'l Bank, 152 Ga. App. 121, 262 S.E.2d 448 (1979); Pistacchio v. Frasso, 314 Ga. App. 119, 723 S.E.2d 322 (2012).

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Failure of superior court clerk to collect costs on appeal does not affect outcome of appeal. 1973 Op. Att'y Gen. No. U73-43.

Payment of other costs not to be condition precedent. — Clerk may demand payment of costs for preparing the transcript of a pauper's affidavit as a condition precedent to preparation and transmittal of the transcript and record to

the appellate courts; the clerk may not, however, require payment of other costs as a condition precedent. 1972 Op. Att'y Gen. No. U72-16.

Code section does not always require payment by county. — O.C.G.A. § 17-8-5 makes it the duty of the court, or county officials, to require that testimony be taken down and that a written record be filed with the clerk, but does not require that all transcripts be paid for by the county. 1981 Op. Att'y Gen. No. U81-22.

In nonindigent cases, appellant pays if requesting transcript. — If the appellant requests that transcript be filed as part of the record on appeal in a nonindigent criminal case, appellant is responsible for payment of court reporter fees for preparation of the transcript. 1981 Op. Att'y Gen. No. U81-22.

County becomes requesting party if defendant does not appeal. — If no appeal is filed by the defendant, then the county would be the requesting party responsible for the preparation of the transcript and for the payment of court reporter fees under O.C.G.A. § 17-8-5. 1981 Op. Att'y Gen. No. U81-22.

RESEARCH REFERENCES

Am. Jur. 2d. — 15A Am. Jur. 2d, Clerks of Court, § 18.

C.J.S. — 21 C.J.S., Courts, § 330 et seq.

15-6-81. Failure to perform duty punishable as contempt.

Any clerk of the superior court who fails to perform any duty or to exercise any authority set forth in this article is subject to be fined for each offense by the presiding judge as for a contempt of court, on information of any party aggrieved, of which the clerk shall have notice in writing.

History. — Orig. Code 1863, § 264; Code 1868, § 258; Code 1873, § 269; Code 1882, § 269; Civil Code 1895, § 4363; Civil Code 1910, § 4894; Code 1933, § 24-2721.

Cross references. — Exercise of contempt power generally, § 15-1-4.

JUDICIAL DECISIONS

Failure of clerk to file drainage maps deposited with clerk constitutes contempt. Board of Drainage Comm'rs v. Brown, 155 Ga. 419, 117 S.E. 236 (1923).

Cited in McDonald v. Wimpy, 204 Ga. 617, 50 S.E.2d 347 (1948).

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If clerk failed to publish notice pursuant to Ga. L. 1959, p. 424, §§ 1 and 2 (see now O.C.G.A. § 15-12-81), the clerk is responsible for negligence under former Code 1933, § 24-2721 (see now O.C.G.A. § 15-6-81). 1963-65 Op. Att'y Gen. p. 107.

Clerk who is on salary basis must collect indexing fee prescribed by former Code 1933, § 39-705 (see now O.C.G.A. § 9-12-94); any failure to collect such fee and make proper disposition of the money could subject the clerk to a fine under former Code 1933, § 24-2721 (see now O.C.G.A. § 15-6-81). 1970 Op. Att'y Gen. No U70-171.

RESEARCH REFERENCES

Am. Jur. 2d. — 15A Am. Jur. 2d, Clerks of Court, §§ 30, 31.
C.J.S. — 21 C.J.S., Courts, § 343.
ALR. — Refusal or failure of clerk of court to comply with direction of court or judge upon ground of its invalidity or supposed invalidity as contempt, 119 A.L.R. 1380.

15-6-82. Governor ordering investigation of clerk of court; suspension of clerk.

(a) Whenever the Governor determines that an investigation of a clerk of superior court of this state should be made as a result of criminal charges, alleged misconduct in office, or alleged incapacity of the clerk of superior court to perform the functions of his or her office, the Governor shall appoint an investigative committee consisting of two clerks of superior court who are members of The Council of Superior Court Clerks of Georgia and the Attorney General to conduct an investigation. Such clerks of superior court may be from any two counties in the state other than the county of the clerk of superior court under investigation. The members of any such committee shall receive no compensation for their services but shall be reimbursed for any expenses incurred in connection with an investigation. The funds necessary to conduct an investigation shall come from the funds appropriated to the executive branch of the state government.

(b) Any member of the committee shall be authorized to administer oaths to any witness before the committee. The committee shall make a report of its investigation to the Governor within 30 days from the date of the appointment of both clerk members by the Governor.

(c) If the committee recommends the suspension of the clerk of superior court, the Governor shall be authorized to suspend the clerk of superior court for a period of up to 60 days. In any case where a clerk of superior court has been suspended for 60 days, the Governor may extend the period of suspension for an additional 30 days. Upon such recommendation, the Governor shall also be authorized to request the district attorney of the county of the clerk's residence to bring a removal petition against the clerk in superior court based upon the evidence reported by the committee. After the filing of such petition, a clerk of superior court is subject to being removed from office by the judge of the court for any sufficient cause, including incapacity or misbehavior in office. The charges must be exhibited to the court in writing, and the facts tried by a jury. The clerk shall be entitled to a copy of the charges three days before trial. In the event that the Governor determines that further investigation should be made, the Governor may then order additional investigation by the committee, the Georgia Bureau of Investigation, other law enforcement agencies of this state, or any special committee appointed by the Governor for such purpose. During

any period of suspension, the clerk shall continue to hold office; however, the chief deputy clerk shall perform the duties of the clerk of superior court or, in the absence of a chief deputy clerk, an interim clerk shall be appointed as provided in paragraph (1) of subsection (b) of Code Section 15-6-53 to perform the duties of the clerk during the period of suspension.

(d) If the clerk of superior court is indicted for a felony, the provisions of Code Section 45-5-6 shall apply.

History. — Orig. Code 1863, § 267; Code 1868, § 261; Code 1873, § 272; Code 1882, § 272; Civil Code 1895, § 4366; Civil Code 1910, § 4897; Code 1933, § 24-2724; Ga. L. 2012, p. 173, § 1-19/HB 665.

JUDICIAL DECISIONS

Proceedings under this section are quasi-criminal and acquittal was final. Cobb v. Smith, 102 Ga. 585, 27 S.E. 763 (1897).

Applicability to sheriff. — Former Code 1933, §§ 24-2813, 24-2814, 77-110, and 77-111 (see now O.C.G.A. §§ 15-16-10 and 42-4-4) and the provisions of former Code 1933, § 24-2724 (see now O.C.G.A. § 15-6-82) apply to the removal of sheriffs from office. Adamson v. Leathers, 60 Ga. App. 382, 3 S.E.2d 871 (1939).

What is sufficient cause for removal of clerk. — Sufficient cause for removal from office means legal cause, and that which specially relates to and affects the administration of the office, and must be restricted to something of a substantial nature, directly affecting the rights and interests of the public. Adamson v. Leathers, 60 Ga. App. 382, 3 S.E.2d 871 (1939).

What is sufficient cause for removal of sheriff. — Under former Code 1933, § 24-2724 (see now O.C.G.A. § 15-6-82), sheriffs were subject to be removed from office for "any sufficient cause," and sufficient cause means a cause relating to and affecting the administration of the office and material to the interests of the public. Adamson v. Leathers, 60 Ga. App. 382, 3 S.E.2d 871 (1939).

Mere rudeness will not suffice to remove clerk. Lancaster v. Hill, 136 Ga. 405, 71 S.E. 731, 1912C Ann. Cas. 272 (1911).

Allegations of conduct constituting crime of extortion are sufficient allegations of official misbehavior. Lancaster v. Hill, 136 Ga. 405, 71 S.E. 731, 1912C Ann. Cas. 272 (1911).

Applicability to misconduct in other office. — Clerk cannot be removed from office for any misconduct of duties as ex officio clerk of city court. Wallace v. State, 34 Ga. App. 281, 129 S.E. 299 (1925).

Particularity of charges. — If the petition alleges that the acts of misconduct which are grounds for removal are illustrated in detail by a certain auditor's report on file in the office of the clerk of the superior court (who is the defendant), and which is referred to in the petition as an exhibit, the charges are alleged with a degree of particularity sufficient to put the defendant on notice. Wallace v. State, 34 Ga. App. 281, 129 S.E. 299 (1925).

Jurisdiction of appeal. — Court of appeals has jurisdiction of writ of error (see now O.C.G.A. §§ 5-6-49 and 5-6-50) sued out by a clerk when a motion for a new trial was overruled by the trial judge. Wallace v. State, 155 Ga. 414, 117 S.E. 243 (1923).

Cited in Robitzsch v. State, 189 Ga. 637, 7 S.E.2d 387 (1940); Cole v. Holland, 219 Ga. 227, 132 S.E.2d 657 (1963); In re Irvin, 171 Ga. App. 794, 321 S.E.2d 119 (1984).

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Misconduct sufficient as grounds for removal under former Code 1933, §§ 24-2724, 24-2813, and 24-2814 (see now O.C.G.A. §§ 15-6-82 and 15-16-10) did not also constitute grounds for quo warranto, unless such misconduct resulted in conviction and consequent loss of civil rights. 1954-56 Op. Att'y Gen. p. 116.

RESEARCH REFERENCES

Am. Jur. 2d. — 15A Am. Jur. 2d, Clerks of Court, §§ 9, 10.
C.J.S. — 21 C.J.S., Courts, § 329.

15-6-83. Clerk's liability.

If any of the clerks of the superior courts receive any money on any action or judgment from their courts, or otherwise, and do not faithfully account for it, they are liable to rule as sheriffs are, and they and their sureties are likewise liable on their official bonds.

History. — Orig. Code 1863, § 265; Code 1868, § 259; Code 1873, § 270; Code 1882, § 270; Civil Code 1895, § 4364; Civil Code 1910, § 4895; Code 1933, § 24-2722.

JUDICIAL DECISIONS

Duties of clerk with respect to deposits are purely ministerial. — Clerk's actual possession of the money, arising from the money's receipt from the party paying the money in, is not in the clerk's own right, nor does the clerk acquire an individual interest; neither does the clerk acquire authority to substitute for the court a different depository, or to speculate by putting the money out at interest, thereby taking the risk of a loss. Puckett v. Walker, 194 Ga. 401, 21 S.E.2d 713 (1942).

Role of clerk as statutory receiver. — Under the law the clerk, as regards deposits of money by litigants in pending cases, is a statutory receiver and occupies a position similar to a receiver in equity, therefore, the clerk's duties are to hold the money for the court and pay the money out on the order of the court to those entitled thereto, and the possession is that of bailee for reward, the clerk's salary being the clerk's reward for all duties assumed in taking office. Puckett v. Chambers, 66 Ga. App. 513, 18 S.E.2d 20 (1941), aff'd sub nom. Puckett v. Walker, 194 Ga. 401, 21 S.E.2d 713 (1942).

Applicability to city court clerk. — If act creating city court makes the clerk thereof amenable to all the duties and liabilities attached to the office of clerk of the superior court, the clerk may be ruled under former Code 1933, § 24-2722 (see now O.C.G.A. § 15-6-83) upon the clerk's failure to faithfully account for money coming into the clerk's hands, and under the general provisions of former Code 1933, §§ 24-201, 24-206, and 24-207 (see now O.C.G.A. §§ 15-13-1 and 15-13-3). Ivester v. Mozeley, 89 Ga. App. 578, 80 S.E.2d 197 (1954).

If sole compensation of clerk is salary payable by county, the clerk is inhibited to receive to the clerk's own use any fees or perquisites of office. Puckett v. Walker, 194 Ga. 401, 21 S.E.2d 713 (1942).

Moneys incidentally coming into hands of clerk from parties to cases in court are deposits for safekeeping to meet requirements of the orders or judgments of court. Puckett v. Walker, 194 Ga. 401, 21 S.E.2d 713 (1942).

Interest on wrongful deposits become part of principal. — If the clerk of a municipal court receives deposits of

moneys from litigants in cases pending in the clerk's court and deposits money in a bank in the clerk's individual name and withdraws the interest earned on the principal sums and deposits those funds in the bank in the clerk's own name, the interest becomes a part of the principal amounts and does not become the property of the clerk. If the clerk dies, the clerk's successor is entitled to the possession of such interest deposit and the executrix is not. Puckett v. Chambers, 66 Ga. App. 513, 18 S.E.2d 20 (1941), aff'd sub nom. Puckett v. Walker, 194 Ga. 401, 21 S.E.2d 713 (1942).

Cited in Atlanta Coach Co. v. Simmons, 184 Ga. 1, 190 S.E. 610 (1937).

RESEARCH REFERENCES

Am. Jur. 2d. — 15A Am. Jur. 2d, Clerks of Court, § 33.
C.J.S. — 21 C.J.S., Courts, §§ 339, 342.

15-6-84. Clerk's liability after retirement.

The clerks of the superior courts are subject to the rule and order of their respective courts after their retirement from office, as sheriffs are.

History. — Laws 1813, Cobb's 1851 Digest, p. 202; Code 1863, § 266; Code 1868, § 260; Code 1873, § 271; Code 1882, § 271; Civil Code 1895, § 4365; Civil Code 1910, § 4896; Code 1933, § 24-2723.

RESEARCH REFERENCES

Am. Jur. 2d. — 15A Am. Jur. 2d, Clerks of Court, § 40.

15-6-85. Clerks' offices subject to grand jury examination; written report.

Reserved. Repealed by Ga. L. 1994, p. 607, § 1, effective July 1, 1994.

Editor's notes. — This Code section was based on Orig. Code 1863, § 268; Code 1868, § 262; Code 1873, § 273; Code 1882, § 273; Civil Code 1895, § 4367; Civil Code 1910, § 4898; Code 1933, § 24-2725.

15-6-86. Location of clerk's office in place other than courthouse; storage of archival or inactive records in different location; county documents exception.

(a) In the event that the space at the courthouse is inadequate for the clerk's office and the things belonging thereto, the clerk, in writing, may request the governing authority of the county to move his or her office to some other designated place in the county. In his or her request, the clerk shall state the inadequacy which exists. The governing authority shall be authorized to comply with the request but may only designate another place as the office of the clerk with the approval of the clerk. Such place must be owned by the county or a body politic and shall not

be more than 500 feet from the courthouse at their nearest points. Notwithstanding local law, the judges of the superior court of the judicial circuit by a majority vote must give written consent before the clerk shall be authorized to move his or her office to such place; provided, however, that failing a majority agreement the chief judge of the judicial circuit shall make such determination.

(b) In the event that space at the courthouse or other place where the office of the clerk is located is inadequate to ensure the safe storage of archival or inactive records, the clerk, after obtaining written approval from the governing authority of the county, may cause the records to be stored at a data storage and retrieval facility within the State of Georgia. The clerk shall give public notice of the place of storage by posting notice at the courthouse. If documents are stored in any place other than the location where the documents were created, filed, or recorded, the government entity shall:

(1) Bear all costs of transporting such documents back to the county of origin for purposes of responding to requests under Article 4 of Chapter 18 of Title 50, relating to inspections of public records; and

(2) Provide by contract for:

(A) Specific retrieval times in which documents requested shall be delivered; and

(B) Payment of additional fees by the person requesting the document from the clerk for expedited service.

(c) In a county where the county site is located in an unincorporated area of the county and the county governing authority has constructed one or more permanent satellite courthouses within the county and has further designated each such structure as a courthouse annex or has otherwise established each such structure as an additional courthouse to the courthouse located at the county site, the clerk of superior court shall be authorized to maintain his or her offices and all things belonging thereto including the permanent records at one of the additional courthouse locations or at the courthouse at the county site. The clerk of superior court may, but shall not be required to, maintain a satellite office at an additional courthouse which is not the location of the clerk of superior court's main office where the permanent records are kept. No one may for any purpose remove records of the clerk of superior court from the courthouse or the clerk's satellite office without the written consent of the clerk; provided, however, that a judge or the judge's designee may check out a record or file for a case assigned to such judge upon providing a written receipt for such record or file to the clerk.

(d) Notwithstanding any other provision of this Code section, county documents, as defined in subsection (c) of Code Section 36-9-5, shall be stored only in accordance with the provisions of Code Section 36-9-5.

History. — Laws 1799, Cobb's 1851 Digest, p. 573; Laws 1807, Cobb's 1851 Digest, p. 199; Laws 1810, Cobb's 1851 Digest, p. 577; Laws 1850, Cobb's 1851 Digest, p. 455; Code 1863, § 262; Code 1868, § 256; Code 1873, § 267; Code 1882, § 267; Civil Code 1895, § 4360; Civil Code 1910, § 4891; Code 1933, § 24-2714; Ga. L. 1960, p. 120, § 1; Ga. L. 1965, p. 625, § 1; Ga. L. 1967, p. 648, § 1; Ga. L. 1982, p. 2107, § 7.1; Ga. L. 1983, p. 3, § 12; Ga. L. 1983, p. 653, § 1; Ga. L. 1996, p. 1068, § 1; Ga. L. 1997, p. 925, § 2; Ga. L. 1998, p. 1159, § 3; Ga. L. 2012, p. 173, § 1-20/HB 665.

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Records which cannot be destroyed cannot be stored in an unlocked storage room for such would not insure the records' safe storage as required. 1967 Op. Att'y Gen. No. 67-202.

Limitations on storage of records in archives. — Clerks of superior courts may store the clerks' records in the archives only if the clerks' courthouse is within five miles of the archives building. 1971 Op. Att'y Gen. No. 71-92 (rendered prior to 1996 amendment).

15-6-87. Furnishing of fixtures, supplies, and equipment to clerk.

(a) The county governing authority shall supply all fixtures, supplies, and equipment necessary for the proper functioning of the office of clerk of superior court.

(b) All provisions of law relating to the filing, docketing, recording, keeping, copying, binding, indexing, certification, and furnishing of copies of records, including certified copies, and those provisions relating to the amount of fees of officers in connection therewith, as far as may be consistent with this Code section, shall apply to such digital, photographic, and electronic records and copies.

History. — Ga. L. 1957, p. 121, § 2; Ga. L. 1962, p. 639, § 2; Ga. L. 1989, p. 395, § 6; Ga. L. 2012, p. 173, § 1-21/HB 665.

Cross references. — Removal and storage of court records, § 15-1-10. Use of microforms by agencies of state government or any of its political subdivisions, § 50-18-120 et seq.

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Clerks of superior court may microfilm and keep all instruments and records in the clerk's court excepting only instruments evidencing title to real property. 1970 Op. Att'y Gen. No. 70-125.

Recording by microfilm rather than in volumes permitted. — Former Code 1933, §§ 24-2714 and 24-2715 (see now O.C.G.A. § 15-6-61), when construed with Ga. L. 1962, p. 639, § 2 (see now O.C.G.A. § 15-6-87), permitted the final recording of civil proceedings by microfilm in lieu of in "well-bound" volumes, provided proper indices and adequate equipment are maintained in addition to the necessary personnel for viewing these records. 1965-66 Op. Att'y Gen. No. 66-23.

No county governing authority is under any duty to purchase microequipment. 1965-66 Op. Att'y Gen. No. 66-23.

15-6-87.1. Participation in state-wide county computerized information network; authorized fees.

Repealed by Ga. L. 2012, p. 173, § 1-22/HB 665, effective July 1, 2012.

Editor's notes. — This Code section was based on Ga. L. 1988, p. 303, § 5.

15-6-88. (Effective until January 1, 2021. See note.) Minimum annual salary schedule.

(a) Any other provision of law to the contrary notwithstanding, the minimum annual salary of each clerk of the superior court in each county of this state shall be fixed according to the population of the county in which he or she serves, as determined by the United States decennial census of 2000 or any future such census; provided, however, that such annual salary shall be recalculated in any year following a census year in which the Department of Community Affairs publishes a census estimate for the county prior to July 1 in such year that is higher than the immediately preceding decennial census. Except as otherwise provided in subsection (b) of this Code section, each such clerk shall receive an annual salary, payable in equal monthly installments from the funds of the county, of not less than the amount fixed in the following schedule:

Population	Minimum Salary
0 — 5,999	$ 29,832.20
6,000 — 11,889	40,967.92
11,890 — 19,999	46,408.38
20,000 — 28,999	49,721.70
29,000 — 38,999	53,035.03
39,000 — 49,999	56,352.46
50,000 — 74,999	63,164.60
75,000 — 99,999	67,800.09
100,000 — 149,999	72,434.13
150,000 — 199,999	77,344.56
200,000 — 249,999	84,458.82
250,000 — 299,999	91,682.66

300,000 — 399,999 ..... 101,207.60

400,000 — 499,999 ..... 105,316.72

500,000 or more 109,425.84

(b) Whenever the state employees subject to compensation plans authorized and approved in accordance with Code Section 45-20-4 receive a cost-of-living increase or general performance based increase of a certain percentage or a certain amount, the amounts fixed in the minimum salary schedule in subsection (a) of this Code section, in Code Section 15-6-89, and in subsection (b) of Code Section 15-10-105, or the amounts derived by increasing each of said amounts through the application of longevity increases pursuant to subsection (a) of Code Section 15-6-90, where applicable shall be increased by the same percentage or same amount applicable to such state employees. If the cost-of-living increase or general performance based increase received by state employees is in different percentages or different amounts as to certain categories of employees, the amounts fixed in the minimum salary schedule in subsection (a) of this Code section, in Code Section 15-6-89, and in subsection (b) of Code Section 15-10-105, or the amounts derived through the application of longevity increases, shall be increased by a percentage or an amount not to exceed the average percentage or average amount of the general increase in salary granted to the state employees. The Office of Planning and Budget shall calculate the average percentage increase or average amount increase when necessary. The periodic changes in the amounts fixed in the minimum salary schedule in subsection (a) of this Code section, in Code Section 15-6-89, in subsection (b) of Code Section 15-10-105, or the amounts derived through the application of longevity increases, as authorized by this subsection shall become effective on the first day of January following the date that the cost-of-living increases or general performance based increases received by state employees become effective; provided, however, that if the cost-of-living increases received by state employees become effective on January 1, such periodic changes in the amounts fixed in the minimum salary schedule in subsection (a) of this Code section, in Code Section 15-6-89, and in subsection (b) of Code Section 15-10-105, or the amounts derived by increasing each of said amounts through the application of longevity increases pursuant to subsection (a) of Code Section 15-6-90, shall become effective on the same date that the cost-of-living increases or general performance based increases received by state employees become effective.

(c) This Code section shall not be construed to reduce the salary of any clerk of the superior court in office on July 1, 1991; provided, however, that successors to such clerks in office on July 1, 1991, shall be governed by the provisions of subsections (a) and (b) of this Code section.

(d) The county governing authority may supplement the minimum annual salary of the clerk of the superior court in such amount as it may fix from time to time; but no clerk's compensation supplement shall be decreased during any term of office. Any prior expenditure of county funds to supplement the clerk's salary in the manner authorized by this subsection is ratified and confirmed. Nothing contained in this subsection shall prohibit the General Assembly by local law from supplementing the annual salary of the clerk.

History. — Ga. L. 1973, p. 256, § 1; Ga. L. 1977, p. 547, § 1; Ga. L. 1980, p. 553, § 1; Ga. L. 1981, p. 1254, § 1; Ga. L. 1983, p. 578, § 1; Ga. L. 1984, p. 589, § 1; Ga. L. 1985, p. 149, § 15; Ga. L. 1985, p. 549, § 1; Ga. L. 1986, p. 833, § 1; Ga. L. 1987, p. 440, § 1; Ga. L. 1988, p. 931, § 1; Ga. L. 1992, p. 1478, § 1; Ga. L. 1994, p. 620, § 1; Ga. L. 1998, p. 1159, § 7; Ga. L. 2001, p. 902, § 1; Ga. L. 2006, p. 568, § 1/SB 450; Ga. L. 2009, p. 745, § 1/SB 97; Ga. L. 2012, p. 446, § 2-11/HB 642.

Cross references. — Further provisions regarding compensation of clerks of superior court, § 15-1-12.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1988, "become effective" was substituted for "becomes effective" at the end of subsection (b).

Editor's notes. — Code Section 15-6-88 is set out twice in this Code. The first version is effective until January 1, 2021. The second version becomes effective on January 1, 2021.

JUDICIAL DECISIONS

Entitlement to county cost of living adjustments. — Trial court did not err in entering an order finding the county superior court clerk was entitled to state-mandated longevity increases and state cost-of-living adjustments (COLAs) and to county COLAs provided by local legislation, without setting off those increases from the amount the county supplemented the clerk's salary over the statutory minimum, because the 2007 Local Act was not unconstitutional; and nothing in subsection (c) of the 2007 Local Act stated that the county COLAs required by that subsection applied only to salaries paid in accordance with the minimum set forth in subsection (a) of the 2007 Local Act. Chatham County v. Massey, 299 Ga. 595, 791 S.E.2d 85 (2016).

Constitutionality of local legislation. — 2007 Local Act was not unconstitutional based on the fact that subsection (a) of the 2007 Local Act authorized the superior court clerk to be paid less than what was required by O.C.G.A. § 15-6-88 because, according to the statute's plain language, the 2007 Local Act did not establish $56,000 as the salary for the clerk as the statute simply stated that the clerk's salary could not be less than $56,000; thus, it was not inconsistent on its face with the terms of the statute requiring a clerk to be paid no less than the amount set by the county population schedule set forth in § 15-6-88. Chatham County v. Massey, 299 Ga. 595, 791 S.E.2d 85 (2016).

According to the plain language of O.C.G.A. § 15-6-88, the 2007 Local Act does not establish $56,000 as the salary for the clerk. It simply states that the clerk's salary may not be less than $56,000; consequently, it is not inconsistent on its face with the terms of the general statute requiring a clerk to be paid no less than the amount set by the county population schedule set forth in the statute, and is not unconstitutional. Chatham County v. Massey, 299 Ga. 595, 791 S.E.2d 85 (2016).

Statutory interpretation as to cost-of-living adjustments. — Order finding that the county court clerk was entitled not only to state-mandated longevity increases and cost-of-living adjustments (COLAs) but also to county COLAs provided by local legislation was affirmed because O.C.G.A. § 15-6-88 was constitu-

tional and applied to the court clerk's compensation, entitling the court clerk to both. Chatham County v. Massey, 299 Ga. 595, 791 S.E.2d 85 (2016).

OPINIONS OF THE ATTORNEY GENERAL

Salary for person both superior and state court clerk. — Legislature intended that minimum salary of person serving as both superior court clerk and state court clerk be the sum of the amounts fixed by Ga. L. 1973, p. 256, §§ 1 and 2 (see now O.C.G.A. §§ 15-6-88 and 15-6-89). 1973 Op. Att'y Gen. No. U73-42.

Effect of new census on salary. — If the census puts a superior court clerk in a higher minimum annual salary bracket, that salary relates back to the effective date of the census. For a clerk who completes a four-year term on December 31, and commences a new term on January 1, the longevity increase under Ga. L. 1978, p. 937, § 1 (see now O.C.G.A. § 15-6-90) should be based on the increased minimum annual salary, inasmuch as the longevity increase serves merely to increase the applicable minimum annual salary. 1980 Op. Att'y Gen. No. U80-59.

Effect of cost-of-living increases adopted by State Personnel Board. — Cost-of-living increases for sheriffs, probate judges, clerks of superior court, tax collectors, and tax commissioners adopted by the State Personnel Board for fiscal year 1989-1990 should take the same form as the corresponding cost-of-living increases for classified employees of the Merit System so that those salaries less than $18,000 in the schedules for sheriff, clerk, probate judge, tax collector, and tax commissioner would be increased $450, the rest 2½%. 1989 Op. Att'y Gen. 89-33.

When clerk also serving as clerk of state court ineligible. — Superior court clerk also serving as clerk of state court who is receiving a salary under local legislation greater than the minimum provided by O.C.G.A. §§ 15-6-88 and 15-6-89 is not entitled to the additional $100.00 (now $200.00) per month provided by § 15-6-89. 1981 Op. Att'y Gen. No. U81-46 (decided prior to 1984 amendment to § 15-6-89).

RESEARCH REFERENCES

Am. Jur. 2d. — 15A Am. Jur. 2d, Clerks of Court, §§ 11, 12.
C.J.S. — 21 C.J.S., Courts, § 347.

15-6-88. (Effective January 1, 2021. See note.) Minimum annual salary schedule.

(a) Any other provision of law to the contrary notwithstanding, the minimum annual salary of each clerk of the superior court in each county of this state shall be fixed according to the population of the county in which he or she serves, as determined by the United States decennial census of 2010 or any future such census; provided, however, that such annual salary shall be recalculated in any year following a census year in which the Department of Community Affairs publishes a census estimate for the county prior to July 1 in such year that is higher than the immediately preceding decennial census. Except as otherwise provided in subsection (b) of this Code section, each such clerk shall receive an annual salary, payable in equal monthly installments from the funds of the county, of not less than the amount fixed in the following schedule:

Population	Minimum Salary
0 — 5,999	$ 35,576.65
6,000 — 11,889	48,856.63
11,890 — 19,999	55,344.71
20,000 — 28,999	59,296.04
29,000 — 38,999	63,247.38
39,000 — 49,999	67,203.60
50,000 — 74,999	75,327.48
75,000 — 99,999	80,855.58
100,000 — 149,999	86,381.94
150,000 — 199,999	92,237.91
200,000 — 249,999	100,722.08
250,000 — 299,999	109,336.93
300,000 — 399,999	120,695.99
400,000 — 499,999	125,596.32
500,000 or more	130,496.72

(b)(1) Whenever the state employees subject to compensation plans authorized and approved in accordance with Code Section 45-20-4 receive a cost-of-living increase or general performance based increase of a certain percentage or a certain amount, the amounts fixed in the minimum salary schedule in subsection (a) of this Code section, in Code Section 15-6-89, and in subsection (b) of Code Section 15-10-105, or the amounts derived by increasing each of said amounts through the application of longevity increases pursuant to subsection (a) of Code Section 15-6-90, where applicable, shall be increased by the same percentage or same amount applicable to such state employees. If the cost-of-living increase or general performance based increase received by state employees is in different percentages or different amounts as to certain categories of employees, the amounts fixed in the minimum salary schedule in subsection (a) of this Code section, in Code Section 15-6-89, and in subsection (b) of Code Section 15-10-105, or the amounts derived through the application of longevity increases, shall be increased by a percentage or an amount not to exceed the average percentage or average amount of the general increase in salary granted to the state employees. The Office of Planning and Budget shall calculate the average percentage increase or average amount increase when necessary. The periodic changes in

the minimum salary schedule in subsection (a) of this Code section, in Code Section 15-6-89, in subsection (b) of Code Section 15-10-105, or the amounts derived through the application of longevity increases, as authorized by this subsection, shall become effective on the first day of January following the date that the cost-of-living increases or general performance based increases received by state employees become effective; provided, however, that if the cost-of-living increases received by state employees become effective on January 1, such periodic changes in the amounts fixed in the minimum salary schedule in subsection (a) of this Code section, in Code Section 15-6-89, and in subsection (b) of Code Section 15-10-105, or the amounts derived by increasing each of said amounts through the application of longevity increases pursuant to subsection (a) of Code Section 15-6-90, shall become effective on the same date that the cost-of-living increases or general performance based increases received by state employees become effective.

(2) The amounts fixed in the minimum salary schedule in subsection (a) of this Code section shall not be increased by any state cost-of-living or general performance based increases that have been applied or are effective prior to January 1, 2020. Any state cost-of-living or general performance based increases effective on or after January 1, 2020, shall be calculated as provided in this Code section.

(c) This Code section shall not be construed to reduce the salary of any clerk of the superior court in office on July 1, 1991; provided, however, that successors to such clerks in office on July 1, 1991, shall be governed by the provisions of subsections (a) and (b) of this Code section.

(d) The county governing authority may supplement the minimum annual salary of the clerk of the superior court in such amount as it may fix from time to time; but no clerk's compensation supplement shall be decreased during any term of office. Any prior expenditure of county funds to supplement the clerk's salary in the manner authorized by this subsection is ratified and confirmed. Nothing contained in this subsection shall prohibit the General Assembly by local law from supplementing the annual salary of the clerk.

History. — Ga. L. 1973, p. 256, § 1; Ga. L. 1977, p. 547, § 1; Ga. L. 1980, p. 553, § 1; Ga. L. 1981, p. 1254, § 1; Ga. L. 1983, p. 578, § 1; Ga. L. 1984, p. 589, § 1; Ga. L. 1985, p. 149, § 15; Ga. L. 1985, p. 549, § 1; Ga. L. 1986, p. 833, § 1; Ga. L. 1987, p. 440, § 1; Ga. L. 1988, p. 931, § 1; Ga. L. 1992, p. 1478, § 1; Ga. L. 1994, p. 620, § 1; Ga. L. 1998, p. 1159, § 7; Ga. L. 2001, p. 902, § 1; Ga. L. 2006, p. 568, § 1/SB 450; Ga. L. 2009, p. 745, § 1/SB 97; Ga. L. 2012, p. 446, § 2-11/HB 642; Ga. L. 2019, p. 1015, § 1/SB 171; Ga. L. 2020, p. 493, § 15/SB 429; Ga. L. 2020, p. 526, § 1/SB 295.

The 2019 amendment, effective January 1, 2021, in subsection (a), substituted "census of 2010" for "census of 2000" in the

introductory language and modified the salary amounts in the minimum salary schedule; and, in subsection (b), designated the existing language as paragraph (b)(1), deleted "the amounts fixed in" following "The periodic changes in" at the beginning of the fourth sentence of paragraph (b)(1), and added paragraph (b)(2).

The 2020 amendments. — The first 2020 amendment, effective July 29, 2020, part of an Act to revise, modernize, and correct the Code, revised punctuation twice in paragraph (b)(1); and substituted "performance based" for "performance-based" twice in paragraph (b)(2). The second 2020 amendment, effective January 1, 2021, rewrote paragraph (b)(2) which read: "Any cost-of-living or general performance-based increases that have been applied prior to January 1, 2021, shall cease to be applied. Effective January 1, 2021, any new cost-of-living or general performance-based increases shall be calculated as provided in this Code section."

Cross references. — Further provisions regarding compensation of clerks of superior court, § 15-1-12.

Editor's notes. — Code Section 15-6-88 is set out twice in this Code. The first version is effective until January 1, 2021. The second version becomes effective on January 1, 2021.

Ga. L. 2020, p. 493, § 54(e)/SB 429, part of an Act to revise, modernize, and correct the Code, effective July 29, 2020, not codified by the General Assembly, provides: "In the event of an irreconcilable conflict between a provision in Sections 1 through 53 of this Act and a provision of another Act enacted at the 2020 regular session of the General Assembly, the provision of such other Act shall control over the conflicting provision in Sections 1 through 53 of this Act to the extent of the conflict." Accordingly, the amendments to paragraph (b)(2) of Code Section 15-6-88 by Ga. L. 2020, p. 493, § 15(6)/SB429, were not given effect.

JUDICIAL DECISIONS

Entitlement to county cost of living adjustments. — Trial court did not err in entering an order finding the county superior court clerk was entitled to state-mandated longevity increases and state cost-of-living adjustments (COLAs) and to county COLAs provided by local legislation, without setting off those increases from the amount the county supplemented the clerk's salary over the statutory minimum, because the 2007 Local Act was not unconstitutional; and nothing in subsection (c) of the 2007 Local Act stated that the county COLAs required by that subsection applied only to salaries paid in accordance with the minimum set forth in subsection (a) of the 2007 Local Act. Chatham County v. Massey, 299 Ga. 595, 791 S.E.2d 85 (2016).

Constitutionality of local legislation. — 2007 Local Act was not unconstitutional based on the fact that subsection (a) of the 2007 Local Act authorized the superior court clerk to be paid less than what was required by O.C.G.A. § 15-6-88 because, according to the statute's plain language, the 2007 Local Act did not establish $56,000 as the salary for the clerk as the statute simply stated that the clerk's salary could not be less than $56,000; thus, it was not inconsistent on its face with the terms of the statute requiring a clerk to be paid no less than the amount set by the county population schedule set forth in § 15-6-88. Chatham County v. Massey, 299 Ga. 595, 791 S.E.2d 85 (2016).

According to the plain language of O.C.G.A. § 15-6-88, the 2007 Local Act does not establish $56,000 as the salary for the clerk. It simply states that the clerk's salary may not be less than $56,000; consequently, it is not inconsistent on its face with the terms of the general statute requiring a clerk to be paid no less than the amount set by the county population schedule set forth in the statute, and is not unconstitutional. Chatham County v. Massey, 299 Ga. 595, 791 S.E.2d 85 (2016).

Statutory interpretation as to cost-of-living adjustments. — Order finding that the county court clerk was entitled not only to state-mandated lon-

gevity increases and cost-of-living adjustments (COLAs) but also to county COLAs provided by local legislation was affirmed because O.C.G.A. § 15-6-88 was constitutional and applied to the court clerk's compensation, entitling the court clerk to both. Chatham County v. Massey, 299 Ga. 595, 791 S.E.2d 85 (2016).

OPINIONS OF THE ATTORNEY GENERAL

Salary for person both superior and state court clerk. — Legislature intended that minimum salary of person serving as both superior court clerk and state court clerk be the sum of the amounts fixed by Ga. L. 1973, p. 256, §§ 1 and 2 (see now O.C.G.A. §§ 15-6-88 and 15-6-89). 1973 Op. Att'y Gen. No. U73-42.

Effect of new census on salary. — If the census puts a superior court clerk in a higher minimum annual salary bracket, that salary relates back to the effective date of the census. For a clerk who completes a four-year term on December 31, and commences a new term on January 1, the longevity increase under Ga. L. 1978, p. 937, § 1 (see now O.C.G.A. § 15-6-90) should be based on the increased minimum annual salary, inasmuch as the longevity increase serves merely to increase the applicable minimum annual salary. 1980 Op. Att'y Gen. No. U80-59.

Effect of cost-of-living increases adopted by State Personnel Board. — Cost-of-living increases for sheriffs, probate judges, clerks of superior court, tax collectors, and tax commissioners adopted by the State Personnel Board for fiscal year 1989-1990 should take the same form as the corresponding cost-of-living increases for classified employees of the Merit System so that those salaries less than $18,000 in the schedules for sheriff, clerk, probate judge, tax collector, and tax commissioner would be increased $450, the rest 2½%. 1989 Op. Att'y Gen. 89-33.

When clerk also serving as clerk of state court ineligible. — Superior court clerk also serving as clerk of state court who is receiving a salary under local legislation greater than the minimum provided by O.C.G.A. §§ 15-6-88 and 15-6-89 is not entitled to the additional $100.00 (now $200.00) per month provided by § 15-6-89. 1981 Op. Att'y Gen. No. U81-46 (decided prior to 1984 amendment to § 15-6-89).

RESEARCH REFERENCES

Am. Jur. 2d. — 15A Am. Jur. 2d, Clerks of Court, §§ 11, 12.
C.J.S. — 21 C.J.S., Courts, § 347.

15-6-88.1. Adjustment of schedule for certain counties containing federal land.

Reserved. Repealed by Ga. L. 2012, p. 173, § 1-23/HB 665, effective July 1, 2012.

Editor's notes. — This Code section was based on Ga. L. 1983, p. 581, § 1; Ga. L. 1984, p. 22, § 15.

15-6-88.2. Monthly contingent expense allowance schedule for the clerk's office.

In addition to any salary, fees, or expenses now or hereafter provided by law, the governing authority of each county is authorized to provide as contingent expenses for the operation of the office of clerk of the

superior court, and payable from county funds, a monthly expense allowance of not less than the amount fixed in the following schedule:

Population	Minimum Monthly Expenses
0 — 11,889	$ 100.00
11,890 — 74,999	200.00
75,000 — 249,999	300.00
250,000 — 499,999	400.00
500,000 or more	500.00

History. — Code 1981, § 15-6-88.2, enacted by Ga. L. 2001, p. 902, § 2; Ga. L. 2015, p. 5, § 15/HB 90.

15-6-89. (Effective until January 1, 2021. See note.) Additional remuneration for certain services.

In addition to the minimum salary provided in Code Section 15-6-88 or any other salary provided by any applicable general or local law, each clerk of superior court of any county who also serves as clerk of a state court, court classified as a municipal court but funded through appropriations of the county governing authority, juvenile court, civil court under any applicable general or local law of this state or who performs duties pursuant to paragraph (1) of subsection (a) of Code Section 15-12-1.1 shall receive for his or her services in such other court a salary of not less than $323.59 per month, to be paid from the funds of the county. In the event any such court for which a clerk of superior court is serving as clerk is abolished, the clerk of superior court shall not be entitled to any salary heretofore received for service in such court.

History. — Ga. L. 1973, p. 256, § 2; Ga. L. 1982, p. 1180, § 1; Ga. L. 1983, p. 884, § 3-12; Ga. L. 1984, p. 436, § 1; Ga. L. 1985, p. 149, § 15; Ga. L. 1998, p. 1159, § 8; Ga. L. 2001, p. 902, § 3; Ga. L. 2002, p. 468, § 2; Ga. L. 2006, p. 568, § 2/SB 450; Ga. L. 2011, p. 59, § 1-4/HB 415; Ga. L. 2012, p. 173, § 1-24/HB 665.

Editor's notes. — Code Section 15-6-89 is set out twice in this Code. The first version is effective until January 1, 2021. The second version becomes effective on January 1, 2021.

Ga. L. 2011, p. 59, § 1-1/HB 415, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Jury Composition Reform Act of 2011.'"

OPINIONS OF THE ATTORNEY GENERAL

Salary for person both superior and state court clerk. — Legislature intended that minimum salary of person serving as both superior court clerk and state court clerk be the sum of the amounts fixed by Ga. L. 1973, p. 256, §§ 1 and 2 (see now O.C.G.A. §§ 15-6-88 and 15-6-89). 1973 Op. Att'y Gen. No. U73-42.

Additional compensation for clerks whose salary is set by local act. —

Clerk of the superior court, whose salary is set by local act, is entitled to an additional compensation of at least $200.00 per month for each enumerated court under O.C.G.A. § 15-6-89 in which the clerk performs the duties of clerk. 1984 Op. Att'y Gen. No. U84-52 (holding that, owing to the 1984 changes to this section, 1981 Op. Att'y Gen. No. U81-46 is no longer valid).

Additional compensation for clerk totally on fee system. — Clerk of the superior court who is totally on a fee system of compensation is not entitled to additional remuneration for service as a juvenile court clerk. 1985 Op. Att'y Gen. No. U85-31.

Supplement to clerks serving as magistrate court clerks. — Superior court clerks also serving as magistrate court clerks are entitled to a minimum supplement of $200.00 pursuant to O.C.G.A. § 15-10-105(b) but are not entitled to an additional supplement under O.C.G.A. § 15-6-89, which grants to superior court clerks a minimum salary supplement for additional service as clerk of one of several enumerated courts including "county" and "civil" courts, but which does not enumerate magistrate courts. 1984 Op. Att'y Gen. No. U84-42.

Superior court clerk who serves as juvenile court clerk is not entitled to additional compensation for juvenile court duties. 1977 Op. Att'y Gen. No. U77-11, but see annotation below to Op. Att'y Gen. No. U84-35.)

Additional compensation for service of juvenile court clerk. — When the clerk of superior court serves as a juvenile court clerk, additional compensation for such service is not less than $200.00 per month. 1984 Op. Att'y Gen. No. U84-35.

15-6-89. (Effective January 1, 2021. See note.) Additional remuneration for certain services.

In addition to the minimum salary provided in Code Section 15-6-88 or any other salary provided by any applicable general or local law, each clerk of superior court of any county who also serves as clerk of a state court, court classified as a municipal court but funded through appropriations of the county governing authority, juvenile court, or civil court under any applicable general or local law of this state or who performs duties pursuant to paragraph (1) of subsection (a) of Code Section 15-12-1.1 shall receive for his or her services in such other court a salary of not less than $385.90 per month, to be paid from the funds of the county. In the event any such court for which a clerk of superior court is serving as clerk is abolished, the clerk of superior court shall not be entitled to any salary heretofore received for service in such court.

History. — Ga. L. 1973, p. 256, § 2; Ga. L. 1982, p. 1180, § 1; Ga. L. 1983, p. 884, § 3-12; Ga. L. 1984, p. 436, § 1; Ga. L. 1985, p. 149, § 15; Ga. L. 1998, p. 1159, § 8; Ga. L. 2001, p. 902, § 3; Ga. L. 2002, p. 468, § 2; Ga. L. 2006, p. 568, § 2/SB 450; Ga. L. 2011, p. 59, § 1-4/HB 415; Ga. L. 2012, p. 173, § 1-24/HB 665; Ga. L. 2019, p. 1015, § 2/SB 171.

The 2019 amendment, effective January 1, 2021, inserted "or" following "juvenile court," and substituted "$385.90 per month" for "$323.59 per month" in the first sentence.

Editor's notes. — Code Section 15-6-89 is set out twice in this Code. The first version is effective until January 1, 2021. The second version becomes effective on January 1, 2021.

Ga. L. 2011, p. 59, § 1-1/HB 415, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Jury Composition Reform Act of 2011.'"

OPINIONS OF THE ATTORNEY GENERAL

Salary for person both superior and state court clerk. — Legislature intended that minimum salary of person serving as both superior court clerk and state court clerk be the sum of the amounts fixed by Ga. L. 1973, p. 256, §§ 1 and 2 (see now O.C.G.A. §§ 15-6-88 and 15-6-89). 1973 Op. Att'y Gen. No. U73-42.

Additional compensation for clerks whose salary is set by local act. — Clerk of the superior court, whose salary is set by local act, is entitled to an additional compensation of at least $200.00 per month for each enumerated court under O.C.G.A. § 15-6-89 in which the clerk performs the duties of clerk. 1984 Op. Att'y Gen. No. U84-52 (holding that, owing to the 1984 changes to this section, 1981 Op. Att'y Gen. No. U81-46 is no longer valid).

Additional compensation for clerk totally on fee system. — Clerk of the superior court who is totally on a fee system of compensation is not entitled to additional remuneration for service as a juvenile court clerk. 1985 Op. Att'y Gen. No. U85-31.

Supplement to clerks serving as magistrate court clerks. — Superior court clerks also serving as magistrate court clerks are entitled to a minimum supplement of $200.00 pursuant to O.C.G.A. § 15-10-105(b) but are not entitled to an additional supplement under O.C.G.A. § 15-6-89, which grants to superior court clerks a minimum salary supplement for additional service as clerk of one of several enumerated courts including "county" and "civil" courts, but which does not enumerate magistrate courts. 1984 Op. Att'y Gen. No. U84-42.

Superior court clerk who serves as juvenile court clerk is not entitled to additional compensation for juvenile court duties. 1977 Op. Att'y Gen. No. U77-11, but see annotation below to Op. Att'y Gen. No. U84-35.)

Additional compensation for service of juvenile court clerk. — When the clerk of superior court serves as a juvenile court clerk, additional compensation for such service is not less than $200.00 per month. 1984 Op. Att'y Gen. No. U84-35.

15-6-90. Longevity increases; operational expenses; local laws.

(a) The amounts provided in subsection (a) of Code Section 15-6-88 and Code Sections 15-6-89 and 15-10-105, as increased by subsection (b) of Code Section 15-6-88, shall be increased by multiplying said amounts by the percentage which equals 5 percent times the number of completed four-year terms of office served by any clerk after December 31, 1976, effective the first day of January following the completion of each such period of service.

(b) The minimum salaries provided for in Code Sections 15-6-88 and 15-6-89, this Code section, and Code Section 15-6-91 shall be considered as salary only. Expenses for deputy clerks, equipment, supplies, copying equipment, and other necessary and reasonable expenses for the operation of a clerk's office shall come from funds other than the funds specified as salary in such Code sections.

(c) This Code section shall not be construed to affect any local legislation, except where such local legislation provides for a salary lower than the salary provided in Code Sections 15-6-88 and 15-6-89, this Code section, and Code Section 15-6-91, in which event such Code sections shall prevail.

(d) Code Sections 15-6-88 and 15-6-89, this Code section, and Code Section 15-6-91 shall not be construed to reduce the salary of any clerk of superior court presently in office.

History. — Ga. L. 1973, p. 256, § 3; Ga. L. 1977, p. 547, § 2; Ga. L. 1978, p. 937, § 1; Ga. L. 1989, p. 801, § 1; Ga. L. 1992, p. 1478, § 2; Ga. L. 1993, p. 91, § 15; Ga. L. 1994, p. 97, § 15; Ga. L. 1994, p. 620, § 2; Ga. L. 2012, p. 173, § 2-4/HB 665.

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"Figured at the end of each such period of service" construed. — Phrase "figured at the end of each such period of service" means only that the 5 percent increase becomes available at the end of the term. It does not mean that the increase is permanently fixed at a set dollar amount based upon the salary provided at the end of the term. 1981 Op. Att'y Gen. No. U81-19.

Increase effective at beginning of new term. — All clerks who have completed four-year terms of office are entitled to 5 percent longevity increases in the clerk's pay at the time the clerks commence the clerks' new terms. 1981 Op. Att'y Gen. No. U81-19.

Recipients of salaries under section not entitled to longevity salary increases. — Those superior court clerks who receive salaries in accordance with the minimum annual salaries specified by Ga. L. 1973, p. 256, §§ 1 through 5 (see now O.C.G.A. § 15-6-88 et seq.) are no longer entitled to longevity salary increases and the clerks' right to longevity salary increases formerly authorized has terminated. 1977 Op. Att'y Gen. No. U77-21 (decided prior to 1978 amendment to this section).

RESEARCH REFERENCES

Am. Jur. 2d. — 15A Am. Jur. 2d, Clerks of Court, § 12.

15-6-91. Effect of salary provisions on local legislation.

All local legislation in effect on April 1, 1973, or enacted subsequent to April 1, 1973, and affecting compensation for clerks of superior courts of the various counties shall be of full force and effect except where such local legislation provides for a salary lower than the salary provided in Code Sections 15-6-88 through 15-6-90 and this Code section, in which event such Code sections shall prevail.

History. — Ga. L. 1973, p. 256, § 4; Ga. L. 1994, p. 97, § 15; Ga. L. 2012, p. 173, § 2-5/HB 665.

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Repeal of local acts. — If a local act establishing salaries for certain officials was repealed by O.C.G.A. § 15-6-91, the 1975 and 1977 amendments to that local act providing for cost-of-living increases should be read in pari materia with the amended act and should also be considered repealed by O.C.G.A. § 15-6-91. Morgan v. Woodard, 253 Ga. 751, 325 S.E.2d 369 (1985).

15-6-92. Continuation of fee system.

Reserved. Repealed by Ga. L. 2012, p. 173, § 1-25/HB 665, effective July 1, 2012.

Editor's notes. — This Code section was based on Ga. L. 1973, p. 256, § 5; Ga. L. 1994, p. 97, § 15; Ga. L. 1999, p. 81, § 15.

15-6-93. Office hours.

(a) The office of each clerk of superior court shall be open to conduct business Monday through Friday from at least 9:00 A.M. until 5:00 P.M. and shall not close for any period of time during such hours, unless such office has less than two employees, in which case such office shall be permitted to be open from at least 8:00 A.M. until noon and from at least 1:00 P.M. until 5:00 P.M.

(b) Any office of clerk of superior court which is open for operation on Saturday may close on one day Monday through Friday for a period of time equal to that period of time during which the office is open on Saturday. Nothing in this Code section shall be construed as requiring any office of clerk of superior court to be open on any public holiday, legal holiday, day of rest, or other similar time that is recognized and designated as such by Georgia law or by the governing authority of the county.

(c) This Code section shall only apply to the office of clerk of superior court if there is employed in that office at least one employee other than the clerk.

(d) In any county of this state having a population of fewer than 10,000 persons according to the United States decennial census of 1980 or any future such census, the clerk of superior court may close such office for a designated lunch period if all other county offices in the county courthouse simultaneously close for a lunch period. The period of closing of the clerk's office shall coincide with the period for closing the other county offices.

(e) Nothing in this Code section shall be construed to require the office of clerk of superior court to be open if all other county offices are closed because of inclement weather or any other reason.

(f) When it is necessary for the clerk of superior court to conduct necessary training of employees, the clerk may close his or her office for up to eight hours during any six-month period, provided that he or she gives at least ten days' notice to the public, or sooner with the approval of the chief judge of the superior court, prior to such closing, and provided, further, that there are no proceedings scheduled in superior court during the time of the closing. Proceedings shall include all civil or criminal hearings or trials, whether or not a jury is required.

(g) When the clerk's office is closed for training purposes, the period of closure shall be deemed a legal holiday for such office and, therefore, all deadlines provided for by law for filing in the clerk's office any pleading, process, summons answer, or other document shall be extended to the next regular business day of the clerk's office. "Business day" means a day on which the clerk's office is open for business and shall not include any Saturday, Sunday, or legal holiday officially observed by the office as provided in this Code section.

History. — Code 1981, § 15-6-93, enacted by Ga. L. 1986, p. 1002, § 3; Ga. L. 1988, p. 489, § 1; Ga. L. 2012, p. 173, § 1-26/HB 665; Ga. L. 2014, p. 126, § 2/HB 215.

Cross references. — General provisions as to hours of operation for county courthouse and county offices maintained therein, § 36-1-12.

JUDICIAL DECISIONS

Order entered two hours before closure of clerk's office. — Trial court's entry of the order confirming the arbitration award in favor of the former employer was premature because the order was entered without providing the former employee the time to respond as proof of service was filed more than five days after service was accepted, and the trial court signed the order over two hours before the closure of the clerk's office on the date the employee had to file the employee's answer. Mughni v. Beyond Management Group, Inc., 349 Ga. App. 398, 825 S.E.2d 829 (2019).

15-6-94. Georgia Superior Court Clerks' Cooperative Authority.

(a)(1) There is established the Georgia Superior Court Clerks' Cooperative Authority as a body corporate and politic, an instrumentality of the state, and a public corporation; and by that name the authority may contract and be contracted with and bring and defend actions.

(2) As used in this Code section, the term "authority" means the Georgia Superior Court Clerks' Cooperative Authority.

(3) The purpose of the authority shall be to provide a cooperative for the development, acquisition, and distribution of record management systems, information, services, supplies, and materials for superior court clerks of the state, on such terms and conditions as may be determined to be in the best interest of the operation of the office of the clerk of superior court, local government, and the state, in light of the following factors:

(A) The public interest in providing cost-efficient access to record management systems, information, services, supplies, and materials, and a pool which will provide related resources and uniformity;

(B) Cost savings to local government and the state, through efficiency in the provision of record management systems, information, services, supplies, and materials;

(C) Fair and adequate compensation to local governments for costs incurred in the operation of the offices of clerks of superior court; and

(D) Such other factors as are in the public interest and welfare.

The authority shall be the sole owner of its compiled and developed information developed through any function performed or any program or system administered on behalf of the authority. For the purposes of this subsection, the authority shall not be considered the sole owner of information developed pursuant to Code Section 15-6-97.2 and Article 5 of Chapter 6 of Title 12.

(b)(1) The authority shall consist of ten members as follows:

(A) The two members who are not required to be superior clerks appointed by the executive board of The Council of Superior Court Clerks of Georgia appointed as provided by prior law shall continue to serve out the terms for which they were appointed. Upon the expiration of the terms of these members one such position shall cease to exist and the successors to the other such position shall be appointed by the executive board of The Council of Superior Court Clerks of Georgia;

(B) The two members appointed by the executive board of The Council of Superior Court Clerks of Georgia who are and shall be superior court clerks appointed as provided by prior law shall continue to serve and their successors shall likewise be superior court clerks appointed by the executive board of The Council of Superior Court Clerks of Georgia;

(C) The one member appointed by the Governor who is and shall be a county commissioner appointed as provided by prior law shall continue to serve and his or her successors shall likewise be county commissioners appointed by the Governor;

(D) The two members appointed by the Governor who are not required to be county commissioners appointed as provided by prior law shall serve out the terms for which they were appointed; and upon the expiration of such terms and thereafter a successor to one such member shall be a superior court clerk appointed by the Governor and a successor to the other such member shall be appointed by the Governor;

(E) One member who shall be a superior court clerk appointed by the Senate Committee on Assignments or such person or entity as established by Senate rule;

(F) One member who shall be a superior court clerk appointed by the Speaker of the House of Representatives;

(G) One member who shall be a superior court judge appointed by the Chief Justice of the Supreme Court of Georgia; and

(H) One member appointed by the Governor.

All members shall serve for terms of three years each and until their successors are appointed and qualified. All acts performed by the authority prior to April 1, 1994, shall have the same force and effect as if this paragraph had been in effect since the creation of the authority.

(2) Each member of the authority who is not otherwise a state officer or employee may be authorized by the authority to receive an expense allowance and reimbursement from funds of the authority in the same manner as provided for in Code Section 45-7-21. Each member of the authority who is otherwise a state officer or employee may be reimbursed by the agency of which he or she is an officer or employee for expenses actually incurred in the performance of his or her duties as a member of the authority. Except as specifically provided in this subsection, members of the authority shall receive no compensation for their services.

(3) Four members of the authority shall constitute a quorum; and the affirmative votes of four members of the authority shall be required for any action to be taken by the authority.

(4) The board may, in its discretion, appoint an executive director as the administrative head of the authority and shall set his or her salary. Unless the board appoints an executive director, the president of The Council of Superior Court Clerks of Georgia shall serve as the executive director and administrative head of the authority. If the president of The Council of Superior Court Clerks of Georgia serves as the administrative head of the authority, he or she may appoint a person as assistant director and delegate such of his or her powers and duties to such assistant as he or she desires. The executive director, with the concurrence and approval of the board, shall hire officers, agents, and employees; prescribe their duties, responsibilities, and qualifications and set their salaries; and perform such other duties as may be prescribed by the authority. Such officers, agents, and employees shall serve at the pleasure of the executive director.

(5) The authority may promulgate rules and regulations for its own government and for discharging its duties as may be permitted or required by law or applicable rules and regulations.

(6) The authority shall have perpetual existence.

(c) The Attorney General shall provide legal services for the authority in the same manner provided for in Code Sections 45-15-13 through 45-15-16.

(d) The authority shall have the following powers:

(1) To have a seal and alter the same at its pleasure;

(2) To make and execute contracts, lease agreements, and all other instruments necessary or convenient to exercise the powers of the authority or to further the public purpose for which the authority is created;

(3) To acquire by purchase, lease, or otherwise and to hold, lease, and dispose of real or personal property of every kind and character, or any interest therein, in furtherance of the public purpose of the authority;

(4) To apply for and to accept any gifts or grants or loan guarantees or loans of funds or property or financial or other aid in any form from the federal government or any agency or instrumentality thereof, or from the state or any agency or instrumentality thereof, or from any other source for any or all of the purposes specified in this Code section and to comply, subject to the provisions of this Code section, with the terms and conditions thereof;

(5) To contract with state agencies or any local government for the use by the authority of any property, facilities, or services of the state or any such state agency or local government or for the use by any state agency or local government of any facilities or services of the authority; and such state agencies and local governments are authorized to enter into such contracts;

(6) To fix and collect fees and charges for data, media, and incidental services furnished by it to any individual or private entity; provided, however, that a schedule of proposed fees and charges shall be filed with the Clerk of the House of Representatives and the Secretary of the Senate by January 2, 1994, and annually thereafter for such action as the General Assembly may desire to take thereon, if any;

(7) To deposit or otherwise invest funds held by it in any state depository or in any investment which is authorized for the investment of proceeds of state general obligation bonds and to use for its corporate purposes or redeposit or reinvest interest earned on such funds;

(8) To exercise any power granted by the laws of this state to public or private corporations which is not in conflict with the public purpose of the authority; and

(9) To do all things necessary or convenient to carry out the powers conferred by this Code section and to carry out such duties and activities as are specifically imposed upon the authority by law.

(e) The creation of the authority and the carrying out of its corporate purposes are in all respects for the benefit of the people of this state and are public purposes and in no event shall the authority assess a fee against a superior court clerk's office or local government of this state for access to the information compiled by the authority. The authority will perform an essential government function in the exercise of the powers conferred upon it by this Code section. The authority shall not be required to pay taxes or assessments upon any property acquired or under its jurisdiction, control, possession, or supervision.

(f) Any action against the authority shall be brought in the Superior Court of Gwinnett County, Georgia, and such court shall have exclusive, original jurisdiction of such actions; provided, however, actions seeking equitable relief may be brought in the county of residence of any member of the authority.

(g) All money received by the authority pursuant to this Code section shall be deemed to be trust funds to be held and applied solely as provided in this Code section.

(h) The provisions of this Code section shall be deemed to provide an additional and alternative method for doing things authorized by this Code section and shall be regarded as supplemental and additional to powers conferred by the Constitution and laws of the State of Georgia and shall not be regarded as in derogation of any powers now existing.

(i) This Code section, being for the welfare of the state and its inhabitants, shall be liberally construed to effect the purposes thereof.

History. — Code 1981, § 15-6-94, enacted by Ga. L. 1993, p. 1544, § 1; Ga. L. 1994, p. 665, § 1; Ga. L. 2000, p. 850, § 7; Ga. L. 2004, p. 343, § 3; Ga. L. 2004, Ex. Sess., p. ES3, § 2/HB 1EX; Ga. L. 2017, p. 632, § 2-6/SB 132; Ga. L. 2020, p. 493, § 15/SB 429.

The 2020 amendment, effective July 29, 2020, part of an Act to revise, modernize, and correct the Code, substituted "provided, however, that a schedule" for "provided, however, a schedule" in the proviso of paragraph (d)(6).

Code Commission notes. — This Code section and Ga. L. 1993, p. 374, § 1, were both enacted as Code Section 15-6-94. Ga. L. 1993, p. 374, § 1, was renumbered as Code Section 15-6-95.

Pursuant to Code Section 28-9-5, in 1993, a comma was deleted following "authority" in subsection (c).

Pursuant to Code Section 28-9-5, in 1994, "April 1, 1994," was substituted for "the effective date of this paragraph" near the end of the undesignated paragraph in paragraph (b)(1).

JUDICIAL DECISIONS

Central indexing system. — Effective date for the statewide filing and central indexing system for financing statements under the Uniform Commercial Code was January 1, 1995. Trust Co. Bank v. Georgia Superior Court Clerks' Coop. Auth., 265 Ga. 390, 456 S.E.2d 571 (1995).

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Limitation on powers. — Superior Court Clerks' Cooperative Authority may not contract to take over the duties of the Secretary of State to maintain records of notaries public. 1996 Op. Att'y Gen. No. 96-11.

Access to deeds, liens, and plats. — Georgia Superior Court Clerks' Cooperative Authority is required to produce images and index data in response to Open Records Act, O.C.G.A. § 50-18-70 et seq., requests for information contained on the online information system for deeds, liens, and plats, but may do so in accordance with a fee schedule adopted pursuant to O.C.G.A. § 15-6-94. 2012 Op. Att'y Gen. No. 12-5.

15-6-95. Priorities of distribution of fines, bond forfeitures, surcharges, additional fees, and costs in cases of partial payments into the court.

Notwithstanding any law to the contrary, a clerk of any superior court of this state who receives partial payments, as ordered by the court, of criminal fines, bond forfeitures, or costs shall distribute such sums in the order of priority set forth below:

(1) The amount provided for in Chapter 17 of Title 47 for the Peace Officers' Annuity and Benefit Fund;

(2) The amount provided for in Chapter 14 of Title 47 for the Superior Court Clerks' Retirement Fund of Georgia;

(3) The amount provided for in Chapter 16 of Title 47 for the Sheriffs' Retirement Fund of Georgia;

(4) The amount provided for in cases of driving under the influence for purposes of the Brain and Spinal Injury Trust Fund under Code Section 15-21-149 and the amount provided for in cases of reckless driving for purposes of the Brain and Spinal Injury Trust Fund under Code Section 15-21-151;

(5) The balance of the base fine owed to the county;

(6) The amounts provided for in Code Section 15-21-93 for jail construction and staffing;

(7) The amounts provided under subparagraphs (a)(1)(A) and (a)(2)(A) of Code Section 15-21-73;

(8) The amounts provided for under subparagraphs (a)(1)(B) and (a)(2)(B) of Code Section 15-21-73;

(9) The amount provided for in Code Section 15-21-131 for funding local victim assistance programs;

(10) The amount provided for in Code Section 36-15-9 for county law libraries;

(11) The amount provided for in cases of driving under the influence for purposes of the Georgia Crime Victims Emergency Fund under Code Section 15-21-112;

(12) The amount provided for in Code Section 15-21-100 for the Drug Abuse Treatment and Education Fund;

(13) The amount provided for in Code Section 15-21-208 for the Safe Harbor for Sexually Exploited Children Fund;

(14) The amounts provided for in subsection (d) of Code Section 42-8-34; and

(15) The application fee provided for in subsection (c) or (e) of Code Section 15-21A-6.

History. — Code 1981, § 15-6-95, enacted by Ga. L. 1993, p. 374, § 1; Ga. L. 1994, p. 97, § 15; Ga. L. 2004, Ex. Sess., p. ES3, § 3/HB 1EX; Ga. L. 2005, p. 1461, § 1/SB 226; Ga. L. 2006, p. 343, § 2/SB 637; Ga. L. 2008, p. 846, § 5/HB 1245; Ga. L. 2012, p. 993, § 2/SB 50; Ga. L. 2013, p. 141, § 15/HB 79; Ga. L. 2015, p. 675, § 3-2/SB 8; Ga. L. 2015, p. 693, § 3-13/HB 233; Ga. L. 2020, p. 586, § 1/HB 576.

The 2020 amendment, effective August 3, 2020, substituted the present provisions of paragraph (4) for the former provisions, which read: "The amounts provided under subparagraphs (a)(1)(A) and (a)(2)(A) of Code Section 15-21-73"; substituted the present provisions of paragraph (5) for the former provisions, which read: "The amounts provided for under subparagraphs (a)(1)(B) and (a)(2)(B) of Code Section 15-21-73"; substituted the present provisions of paragraph (7) for the former provisions, which read: "The amount provided for in Code Section 15-21-131 for funding local victim assistance programs"; substituted the present provisions of paragraph (8) for the former provisions, which read: "The amount provided for in Code Section 36-15-9 for county law libraries"; substituted the present provisions of paragraph (9) for the former provisions, which read: "The balance of the base fine owed to the county"; substituted the present provisions of paragraph (10) for the former provisions, which read: "The amount provided for in cases of driving under the influence for purposes of the Georgia Crime Victims Emergency Fund under Code Section 15-21-112"; substituted the present provisions of paragraph (11) for the former provisions, which read: "The application fee provided for in subsection (c) or (e) of Code Section 15-21A-6"; substituted the present provisions of paragraph (12) for the former provisions, which read: "The amount provided for in cases of driving under the influence for purposes of the Brain and Spinal Injury Trust Fund under Code Section 15-21-149"; substituted the present provisions of paragraph (13) for the former provisions, which read: "The amount provided for in Code Section 15-21-100 for the Drug Abuse Treatment and Education Fund"; and substituted the present provisions of paragraph (15) for the former provisions, which read: "The amount provided for in Code Section 15-21-208 for the Safe Harbor for Sexually Exploited Children Fund".

Code Commission notes. — This Code section was enacted as Code Section 15-6-94, but has been renumbered as Code Section 15-6-95, since Ga. L. 1993, p. 1544, § 1, also enacted a Code Section 15-6-94.

Editor's notes. — Ga. L. 2015, p. 675, § 1-1/SB 8, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Safe Harbor/Rachel's Law Act.'"

Ga. L. 2015, p. 675, § 1-2/SB 8, not codified by the General Assembly, provides that: "(a) The General Assembly finds that arresting, prosecuting, and incarcerating victimized children serves to

retraumatize children and increases their feelings of low self-esteem, making the process of recovery more difficult. The General Assembly acknowledges that both federal and state laws recognize that sexually exploited children are the victims of crime and should be treated as victims. The General Assembly finds that sexually exploited children deserve the protection of child welfare services, including family support, crisis intervention, counseling, and emergency housing services. The General Assembly finds that it is necessary and appropriate to adopt uniform and reasonable assessments and regulations to help address the deleterious secondary effects, including but not limited to, prostitution and sexual exploitation of children, associated with adult entertainment establishments that allow the sale, possession, or consumption of alcohol on premises and that provide to their patrons performances and interaction involving various forms of nudity. The General Assembly finds that a correlation exists between adult live entertainment establishments and the sexual exploitation of children. The General Assembly finds that adult live entertainment establishments present a point of access for children to come into contact with individuals seeking to sexually exploit children. The General Assembly further finds that individuals seeking to exploit children utilize adult live entertainment establishments as a means of locating children for the purpose of sexual exploitation. The General Assembly acknowledges that many local governments in this state and in other states found deleterious secondary effects of adult entertainment establishments are exacerbated by the sale, possession, or consumption of alcohol in such establishments.

"(b) The purpose of this Act is to protect a child from further victimization after he or she is discovered to be a sexually exploited child by ensuring that a child protective response is in place in this state. The purpose and intended effect of this Act in imposing assessments and regulations on adult entertainment establishments is not to impose a restriction on the content or reasonable access to any materials or performances protected by the First Amendment of the United States Constitution or Article I, Section I, Paragraph V of the Constitution of this state."

Ga. L. 2015, p. 675, § 6-1(b)/SB 8, provides that the 2015 amendment becomes effective on January 1, 2017, provided that a constitutional amendment is passed by the General Assembly and is ratified by the voters in the November, 2016, General Election amending the Constitution of Georgia to authorize the General Assembly to provide specific funding to the Safe Harbor for Sexually Exploited Children Fund. The constitutional amendment (Ga. L. 2015, p. 1497, § 1/SR 7) was ratified at the general election held on November 8, 2016.

Ga. L. 2015, p. 693, § 4-1/HB 233, not codified by the General Assembly, provides that: "This Act shall become effective on July 1, 2015, and shall apply to seizures of property for forfeiture that occur on or after that date. Any such seizure that occurs before July 1, 2015, shall be governed by the statute in effect at the time of such seizure."

Law reviews. — For article on the 2015 amendment of this Code section, see 32 Ga. St. U.L. Rev. 43 (2015). For article on the 2015 amendment of this Code section, see 32 Ga. St. U.L. Rev. 1 (2015).

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Payments to higher priority recipients. — Amount owing to a higher priority recipient must be paid in the entirety before distribution is made to a lower priority recipient. 2003 Op. Att'y Gen. No. 2003-4.

Amendment of original fine. — If the sentencing court amends the fine to the amount paid rather than merely suspending payment of the remaining balance, the clerk of court must amend the additional penalty and surcharge amounts so as to make the fines statutorily consistent with the amended original fine. 2003 Op. Att'y Gen. No. 2003-4.

In the event partial payments are distributed from each fund in a proportional amount to the sums collected as each

payment is received, and the sentencing court subsequently amends the original fine amount, the amount due each particular fund would need to be recalculated and any excess distributions redistributed by the court officer charged with the duty of collecting moneys arising from fines. 2003 Op. Att'y Gen. No. 2003-4.

Proportional distribution system. — Proportional or pro rata distribution system is appropriate for any court that is legally required to collect fines and moneys arising from fines. 2003 Op. Att'y Gen. No. 2003-4.

Local ordinances. — Local governing authorities are not authorized to enact local ordinances that differ from O.C.G.A. § 15-6-95. 2004 Op. Att'y Gen. No. 2004-10.

15-6-96. Clerk as custodian of records; contracts to market records or computer generated data for profit.

The clerk of the superior court is the custodian of the records of his or her office. Any contract to distribute, sell, or otherwise market records or computer generated data of the office of the clerk of the superior court for profit shall be made by the clerk of the superior court. If the clerk of the superior court also serves as the clerk of any other court, the provisions of this Code section shall be applicable to the records and data of such other court. A report summarizing contracts entered into pursuant to this Code section along with any revenues received therefrom shall be prepared by the clerk of the superior court and submitted to the governing authority of the county on a monthly basis.

History. — Code 1981, § 15-6-96, enacted by Ga. L. 1994, p. 671, § 1.

JUDICIAL DECISIONS

Code section prevails over Open Records Act. — O.C.G.A. § 15-6-96 prevails over O.C.G.A. § 50-18-71 and any other part of the Open Records Act, O.C.G.A. § 50-18-70 et seq., to the extent those laws conflict with the ability of superior court clerks to contract to market records of the clerk's offices for profit. Powell v. VonCanon, 219 Ga. App. 840, 467 S.E.2d 193 (1996).

15-6-97. State-wide uniform automated information system; additional powers and duties of Georgia Superior Court Clerks' Cooperative Authority.

(a) The Georgia Superior Court Clerks' Cooperative Authority or its designated agent shall develop and implement a state-wide uniform automated information system for real and personal property records, excluding filings made pursuant to Article 9 of Title 11. In furtherance of development and implementation of the system, the authority shall have the ability to contract with the clerks of superior courts and any other parties that the authority deems necessary. The Georgia Superior Court Clerks' Cooperative Authority shall have authority to implement rules and regulations necessary to develop and implement the system described in this Code section.

(b) The Georgia Superior Court Clerks' Cooperative Authority shall have the following powers and duties in addition to those otherwise provided by law:

(1) To provide for the collection of moneys;

(2) To manage, control, and direct such funds and the expenditures made therefrom;

(3) To distribute the moneys at the discretion of the authority in such manner and subject to such terms and limitations as the Georgia Superior Court Clerks' Cooperative Authority in its discretion shall determine will best further the public purpose of the authority; and

(4) To exercise all other powers necessary for the development and implementation of the system provided for in this Code section.

History. — Code 1981, § 15-6-97, enacted by Ga. L. 1995, p. 260, § 2; Ga. L. 1996, p. 1502, § 3; Ga. L. 2002, p. 832, § 3; Ga. L. 2004, p. 900, § 2; Ga. L. 2006, p. 532, § 2/HB 989; Ga. L. 2009, p. 135, § 2/HB 453; Ga. L. 2012, p. 216, § 2/HB 198.

Editor's notes. — Ga. L. 1995, p. 260, § 6, not codified by the General Assembly, provides that this Code section shall be repealed on July 1, 1996.

Ga. L. 1996, p. 1502, § 4, not codified by the General Assembly, amended Ga. L. 1995, p. 260, § 6, to change the date of repeal from July 1, 1996, to July 1, 1998.

Ga. L. 1997, p. 565, § 5, not codified by the General Assembly, amended Ga. L. 1996, p. 1502, § 4, to change the date of repeal from July 1, 1998, to January 1, 2004.

Ga. L. 2002, p. 832, § 1, not codified by the General Assembly, provides: "It is the general intent of this Act to codify and to extend for a further period of two years the future 'sunset' of certain provisions relating to superior court clerks' fees and the Georgia Superior Court Clerks' Cooperative Authority."

Ga. L. 2002, p. 832, § 5, not codified by the General Assembly, provided: "The following provisions of law are repealed:

"(1) Section 6 of an Act amending Title 15 of the Official Code of Georgia Annotated, relating to courts, approved April 7, 1995 (Ga. L. 1995, p. 260), as amended, which now repealed section would have provided for a future repeal or sunset of certain provisions relating to fees of superior court clerks and the Georgia Superior Court Clerks' Cooperative Authority; and

"(2) Section 2 of an Act amending Article 2 of Chapter 6 of Title 15 of the Official Code of Georgia Annotated, relating to clerks of superior courts, approved April 16, 1996 (Ga. L. 1996, p. 1502), as amended, which now repealed section would have provided for a future change in the fees of superior court clerks."

Law reviews. — For survey article on real property law, see 59 Mercer L. Rev. 371 (2007).

OPINIONS OF THE ATTORNEY GENERAL

Sale of real estate images not authorized. — Georgia Superior Court Clerks' Cooperative Authority is not empowered to contract to sell real estate images that are in the Authority's possession that are records of the clerks of superior court. 2006 Op. Att'y Gen. No. 2006-5.

15-6-97.1. Civil case information system; funding.

Repealed by Ga. L. 2017, p. SB 132, § 2-7/SB 132, effective January 1, 2018.

Editor's notes. — This Code section was based on Code 1981, § 15-6-97.1, enacted by Ga. L. 2000, p. 850, § 8.

15-6-97.2. Maintenance of uniform automated electronic information system for carbon sequestration registry.

(a) The Georgia Superior Court Clerks' Cooperative Authority or its designated agent shall maintain a state-wide uniform automated electronic information system for purposes of the carbon sequestration registry established under Article 5 of Chapter 6 of Title 12. In furtherance of such purpose, the authority shall have the ability to contract with the clerks of superior courts and any other parties that the authority deems necessary. Standardized forms used for registry reporting purposes shall be established by the State Forestry Commission in accordance with Code Section 12-6-229.

(b) For purposes of this Code section, the Georgia Superior Court Clerks' Cooperative Authority shall have the following powers and duties in addition to those otherwise provided by law:

(1) To establish such registration and transaction fees to be charged and collected by the clerks of superior courts and the portion thereof that shall be remitted to the authority, in such amounts as are reasonable and necessary to offset the costs of administering and maintaining the electronic information system for the registry, and to provide for the collection of moneys;

(2) To manage, control, and direct such funds as are remitted to the authority and the expenditures made therefrom;

(3) To distribute the moneys at the discretion of the authority in such manner and subject to such terms and limitations as the Georgia Superior Court Clerks' Cooperative Authority in its discretion shall determine will best further the public purpose of the registry;

(4) To adopt rules and regulations; and

(5) To exercise all other powers necessary for maintenance of the electronic information system for the registry.

History. — Code 1981, § 15-6-97.2, enacted by Ga. L. 2004, p. 343, § 4.

15-6-97.3. Revision of automated information system for state tax execution data; regulatory authority.

(a) The Georgia Superior Court Clerks' Cooperative Authority or its designated agent shall revise the state-wide uniform automated information system for real and personal property records as provided for in Code Section 15-6-97 to provide for the inclusion in such system functionality as provided in this Code section for state tax executions and renewed state tax executions electronically filed with clerks of superior court as provided for in Article 2 of Chapter 3 of Title 48.

(b) As used in this Code section, the term "state tax execution" shall be inclusive of the term "renewed state tax execution."

(c) Effective January 1, 2018, the state-wide uniform automated information system for real and personal property records shall be revised to provide the following function and utility related to state tax executions:

(1) An electronic link from an index data record of a state tax execution found in the system to the Department of Revenue information management system to provide users access to detailed information and status from the department system. The Department of Revenue shall provide to the authority such electronic linking data elements as may be required by the authority to link filed executions found in the state-wide uniform automated information system for real and personal property records to the matching data on the execution in the Department of Revenue information management system; and

(2) A searchable electronic filing submission docket or other means which allows a search by direct party name, as provided by the Department of Revenue, for state tax executions which have been submitted to the authority for filing with a clerk of superior court pending the inclusion of final index data for such execution into the Georgia consolidated lien indexes. Search features shall be available for an execution upon its receipt by the authority.

(d) The Georgia Superior Court Clerks' Cooperative Authority shall have authority to promulgate rules and regulations necessary to develop and implement the provisions of this Code section.

History. — Code 1981, § 15-6-97.3, enacted by Ga. L. 2017, p. 723, § 11/HB 337; Ga. L. 2018, p. 1, § 5/HB 661.

Effective date. — This Code section became effective January 1, 2018.

The 2018 amendment, effective February 20, 2018, deleted former paragraph (c)(1), which read: "Electronic query of the Georgia consolidated lien indexes for state tax execution instrument types by direct party name to include state-wide results of all state tax executions filed for such party regardless of any applied county limiting search filter;"; deleted former paragraph (c)(2), which read: "Electronic query of the Georgia consolidated lien

indexes for all lien types by direct party name to include state-wide results of all state tax executions filed for such party regardless of any applied county limiting search filter;"; deleted former paragraph (c)(3), which read: "A secondary electronic query of the results returned by a search performed pursuant to paragraphs (1) and (2) of this subsection by the last four digits of a social security number or federal employer identification number which will render results of state tax executions associated with such number;"; redesignated former paragraph (c)(4) as present paragraph (c)(1); substituted "information and status" for "information, status, and clearance certificates" in the middle of the first sentence of paragraph (c)(1); and redesignated former paragraph (c)(5) as present paragraph (c)(2).

Cross references. — State tax executions, § 48-3-40 et seq.

Editor's notes. — Ga. L. 2017, p. 723, § 1/HB 337, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'State Tax Execution Modernization Act.'"

15-6-98. Collection and remittal of fees.

(a) The clerk of the superior court of each county of this state shall collect for each court in which he or she serves as clerk the fees provided for in this chapter.

(b) From the fees enumerated in division (f)(1)(A)(i) of Code Section 15-6-77, the Georgia Superior Court Clerks' Cooperative Authority shall collect from each clerk of superior court $5.00 from each fee collected.

(c) The sums withheld pursuant to division (f)(1)(A)(i) of Code Section 15-6-77 shall be remitted to the Georgia Superior Court Clerks' Cooperative Authority by each clerk of a superior court for the purpose of effectuating the provisions of this Code section and any other provision of law. Such fees shall be remitted not later than the tenth day of the month following the collection of such fees by the clerk of a superior court.

History. — Code 1981, § 15-6-98, enacted by Ga. L. 1995, p. 260, § 2; Ga. L. 2002, p. 832, § 4; Ga. L. 2004, p. 900, § 3; Ga. L. 2006, p. 532, § 3/HB 989; Ga. L. 2009, p. 135, § 3/HB 453; Ga. L. 2012, p. 216, § 3/HB 198.

Editor's notes. — Ga. L. 1995, p. 260, § 6, not codified by the General Assembly, provides that this Code section shall be repealed on July 1, 1996.

Ga. L. 1996, p. 1502, § 4, not codified by the General Assembly, amended Ga. L. 1995, p. 260, § 6, to change the date of repeal from July 1, 1996 to July 1, 1998.

Ga. L. 1997, p. 565, § 5, not codified by the General Assembly, amended Ga. L. 1996, p. 1502, § 4, to change the date of repeal from July 1, 1998, to January 1, 2004.

Ga. L. 2002, p. 832, § 1, not codified by the General Assembly, provides: "It is the general intent of this Act to codify and to extend for a further period of two years the future 'sunset' of certain provisions relating to superior court clerks' fees and the Georgia Superior Court Clerks' Cooperative Authority."

Ga. L. 2002, p. 832, § 5, not codified by the General Assembly, provided: "The following provisions of law are repealed:

"(1) Section 6 of an Act amending Title 15 of the Official Code of Georgia Annotated, relating to courts, approved April 7, 1995 (Ga. L. 1995, p. 260), as amended, which now repealed section would have provided for a future repeal or sunset of certain provisions relating to fees of supe-

rior court clerks and the Georgia Superior Court Clerks' Cooperative Authority; and

"(2) Section 2 of an Act amending Article 2 of Chapter 6 of Title 15 of the Official Code of Georgia Annotated, relating to clerks of superior courts, approved April 16, 1996 (Ga. L. 1996, p. 1502), as amended, which now repealed section would have provided for a future change in the fees of superior court clerks."

Law reviews. — For survey article on real property law, see 59 Mercer L. Rev. 371 (2007).

15-6-99. Re-creation of grantor and grantee indexes.

(a) The Georgia Superior Court Clerks' Cooperative Authority is authorized to re-create grantor and grantee indexes that exist prior to January 1, 1999, in each county for the purpose of providing information and history concerning real property records for the state-wide uniform automated information system provided for in Code Section 15-6-97. The number of prior year indexes to be re-created shall be determined by the Georgia Superior Court Clerks' Cooperative Authority in cooperation with the clerks of the superior courts who shall provide copies of such county indexes or access to copies of such indexes for re-creating such indexes. A copy of the re-created index shall be furnished to each county but shall not replace or supersede the original county index.

(b) Re-creation of such grantor and grantee indexes shall be accomplished by using only the existing index in each county and the information shown in such indexes. No other sources of information shall be reviewed.

(c) The re-created indexes shall be in the format and file structure as designed and adopted by the Georgia Superior Court Clerks' Cooperative Authority for the state-wide uniform automated information system. The re-created indexes shall contain only the information from the existing county indexes which is applicable to and complies with such format and file structure for the state-wide uniform automated information system.

(d) Re-creation of such indexes shall include conforming the indexing of grantor and grantee names, as determined by the Georgia Superior Court Clerks' Cooperative Authority, to be in a consistent and standard manner for the state-wide uniform automated information system. A conversion summary of such names being conformed on a county by county basis shall be maintained by the authority, and a copy of such summary shall be furnished for information purposes only to each county with the re-created county index.

(e) The original county indexes shall not be altered or changed in any manner or by any process as a result of the re-creation of any grantor and grantee index, and such re-created index shall be clearly and distinctly labeled to identify it separately from the original county

index. Any re-created index shall not replace the original county index as such index was originally recorded by the clerk of the superior court for any point in time.

(f) A clerk of the superior court, the Georgia Superior Court Clerks' Cooperative Authority, or an authorized agent of the authority shall not suffer any liability as a result of the required cooperation authorized and provided for between the parties by this Code section.

History. — Code 1981, § 15-6-99, enacted by Ga. L. 1997, p. 565, § 4.

Cross references. — Recordation and registration of deeds and other instruments, T. 44, C. 2.

15-6-100. Clerk's expenditure of funds.

No agreement by a clerk to acquire services, supplies, or equipment authorized by this article that requires expenditure of county funds may be entered into unless the funds to be obligated are included in the budget of the county for the operation of the clerk's office at the time of the execution of such agreement.

History. — Code 1981, § 15-6-100, enacted by Ga. L. 2012, p. 173, § 1-27/HB 665.

CHAPTER 7

STATE COURTS OF COUNTIES

Article 1

General Provisions

Sec.
15-7-1. "State court" defined.
15-7-2. Creation of state courts.
15-7-3. Applicability of chapter; conflicts with local laws.
15-7-4. Jurisdiction.
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Article 2

Judges

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15-7-21. Qualifications; restrictions on practice of law; removal, discipline, and involuntary retirement.
15-7-22. Compensation.
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Article 3

Practice and Procedure

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15-7-41. Courts of record.
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15-7-43. Applicability of rules of practice.
15-7-44. Procedure in attachment and garnishment cases.
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Article 4

Construction with Other Laws

15-7-60. Local laws.
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Article 5

Municipal Court Services

15-7-80. Municipal court services authorized.
15-7-81. Contents of contract.
15-7-82. Authority to act as judges, officers, and personnel of municipal court.
15-7-83. Judges, officers, pleadings, process, and papers of municipal court; separate dockets and records.
15-7-84. Violation of municipal ordinances.
15-7-85. Limitations on authority granted to municipalities.

Cross references. — Transfer of cases, Uniform Transfer Rules.

Editor's notes. — Ga. L. 1983, p. 1419, § 2, effective July 1, 1983, repealed the Code sections formerly codified at this chapter and enacted the current chapter. The former chapter, also relating to state courts, consisted of Code Sections 15-7-1 through 15-7-15 and was based on Ga. L. 1970, p. 679, §§ 1-13; Ga. L. 1975, p. 925, § 1; Ga. L. 1980, p. 600, § 1; Ga. L. 1982, p. 3, § 15; Ga. L. 1982, p. 518, § 2; Ga. L. 1982, p. 1287, § 1; and Ga. L. 1983, p. 3, § 50.

Ga. L. 1983, p. 1419, § 1, not codified by the General Assembly, provides: "It is the intent of this Act to implement certain changes required by Article VI of the Constitution of the State of Georgia."

JUDICIAL DECISIONS

Cited in Westbrook v. Zant, 575 F. Supp. 186 (M.D. Ga. 1983).

ARTICLE 1

GENERAL PROVISIONS

Law reviews. — For article, "Courts: Juvenile Justice Reform," see 30 Ga. St. U. L. Rev. 63 (2013).

15-7-1. "State court" defined.

As used in this chapter, the term "state court" shall mean any court created pursuant to the provisions of this chapter or any court continued as a state court by Article VI, Section X of the Constitution of the State of Georgia.

History. — Code 1981, § 15-7-1, enacted by Ga. L. 1983, p. 1419, § 2; Ga. L. 1984, p. 22, § 15.

JUDICIAL DECISIONS

Jurisdiction of recorder's courts over misdemeanor traffic offenses. — Under the 1983 Georgia Constitution, the recorder's courts continue to possess limited jurisdiction over state misdemeanor traffic offenses until otherwise provided by law. Wojcik v. State, 260 Ga. 260, 392 S.E.2d 525 (1990).

15-7-2. Creation of state courts.

The General Assembly may by local law create a state court in any county or counties of this state in which there is no state court, and such court shall be the "State Court of (whatever county or counties in which the court is located)."

History. — Code 1981, § 15-7-2, enacted by Ga. L. 1983, p. 1419, § 2.

Editor's notes. — Ga. L. 1999, p. 830, § 1, effective April 28, 1999, amends Ga. L. 1996, p. 627, § 3, and re-creates a system of state courts of limited jurisdiction and venue for each city having a population of 300,000 or more so as to give such courts jurisdiction to try offenses against certain traffic laws and ordinances.

Ga. L. 2004, p. 885, § 1, not codified by the General Assembly, effective January 1, 2005, repeals Ga. L. 1996, p. 627 as amended by Ga. L. 1999, p. 830, effective April 28, 1999, which re-created a system of state courts of limited jurisdiction and venue for each city having a population of

300,000 or more so as to give such courts jurisdiction to try offenses against certain traffic laws and ordinances; thus, all courts created pursuant to such Act are abolished.

Ga. L. 2004, p. 885, § 2, not codified by the General Assembly, provides that: "On the effective date of this Act, all cases and matters pending in any court abolished by Section 1 of this Act shall be transferred to the municipal court of the city in which such abolished court was located. The chief judge of such municipal court shall then transfer those cases over which the municipal court does not have jurisdiction to the appropriate court. All records, books, minutes, files, and documents relating to such cases or prior cases of the city court shall be likewise transferred. This Act shall be applicable only with an executed intergovernmental agreement between all affected jurisdictions." This Act became effective January 1, 2005.

Ga. L. 2004, p. 885, § 3, not codified by the General Assembly, provides that: "On the effective date of this Act, each judge of a court abolished by Section 1 of this Act shall become a judge in the municipal court of the city in which such abolished court was located and shall be subject to retention until the expiration of the judge's current term of office. On the effective date of this Act, each judge pro hac vice or senior judge of a court abolished by Section 1 of this Act shall become a judge pro hac vice in the municipal court of the city in which such abolished court was located and shall retain such position until at least December 31, 2010." This Act became effective January 1, 2005.

JUDICIAL DECISIONS

Cited in American Tire Co. v. Creamer, 132 Ga. App. 781, 209 S.E.2d 240 (1974); Shannondoah, Inc. v. Smith, 137 Ga. App. 378, 224 S.E.2d 465 (1976); Salvador v. Wals, 139 Ga. App. 362, 228 S.E.2d 384 (1976); Critz Buick, Inc. v. Aliotta, 145 Ga. App. 805, 245 S.E.2d 56 (1978); McSears v. State, 247 Ga. 48, 273 S.E.2d 847 (1981).

15-7-3. Applicability of chapter; conflicts with local laws.

This chapter shall apply to and govern all state courts; and, unless otherwise provided in this chapter, in all cases in which there is a conflict between this chapter and the local law creating the state court, this chapter shall take priority and shall be controlling.

History. — Code 1981, § 15-7-3, enacted by Ga. L. 1983, p. 1419, § 2.

Cross references. — Local laws not in conflict with chapter to remain in effect, § 15-7-60.

JUDICIAL DECISIONS

Speedy trial provisions. — As O.C.G.A. § 15-7-43(b), enacted in 1983, incorporates the speedy trial provisions of O.C.G.A. § 17-7-170 by reference, those provisions supersede a 1981 local law provision entitling a defendant in a state court to discharge and acquittal if no trial is had at the term when the demand is made or within the next two succeeding regular terms thereafter. Majia v. State, 174 Ga. App. 432, 330 S.E.2d 171, aff'd, 254 Ga. 660, 333 S.E.2d 834 (1985); Parks v. State, 239 Ga. App. 333, 521 S.E.2d 370 (1999).

15-7-4. Jurisdiction.

(a) Each state court shall have jurisdiction, within the territorial limits of the county or counties for which it was created and concurrent with the superior courts, over the following matters:

(1) The trial of criminal cases below the grade of felony;

(2) The trial of civil actions without regard to the amount in controversy, except those actions in which exclusive jurisdiction is vested in the superior courts;

(3) The hearing of applications for and the issuance of arrest and search warrants;

(4) The holding of courts of inquiry;

(5) The punishment of contempt by fines not exceeding $1,000.00, by imprisonment not exceeding 20 days, or both; and

(6) Review of decisions of other courts as may be provided by law.

(b) Each state court shall have jurisdiction, within the territorial limits of the county or counties for which it was created and concurrent with other courts having such jurisdiction, over possession of one ounce or less of marijuana, in accordance with Code Sections 16-13-2 and 16-13-30.

History. — Code 1981, § 15-7-4, enacted by Ga. L. 1983, p. 1419, § 2; Ga. L. 1997, p. 1377, § 1; Ga. L. 2013, p. 561, § 2/SB 66.

Cross references. — Conflicts — state and federal courts, Uniform Superior Court Rules, Rule 17.

Law reviews. — For article, "The Civil Jurisdiction of State and Magistrate Courts," see 24 Ga. St. B. J. 29 (1987). For article, "How Not to Get Thrown in Jail," see 22 Ga. Bar. J. 17 (June 2017).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarities of the statutory provisions, decisions under former Code Section 15-7-7 are included in the annotations for this Code section.

State court has jurisdiction over all misdemeanor violations of the Uniform Rules of the Road dealing with traffic offenses. Diamond v. State, 151 Ga. App. 690, 261 S.E.2d 434 (1979).

State Court of Troup County had jurisdiction over city code misdemeanor violations. Poole v. State, 229 Ga. App. 406, 494 S.E.2d 251 (1997).

Superior courts retain exclusive jurisdiction as to declaratory judgment actions. EVI Equip., Inc. v. Northern Ins. Co., 178 Ga. App. 197, 342 S.E.2d 380 (1986), overruled on other grounds, Mitchell v. Southern Gen. Ins. Co., 185 Ga. App. 870, 366 S.E.2d 179 (1988).

Jurisdiction over issues involving Telephone Consumer Protection Act. — Radio station properly raised an "as applied" attack upon the constitutionality of the Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227, as a defense to a civil action, and the trial court erred in ruling that the court lacked subject matter jurisdiction to consider the issue; judicial review of federal statutes by state courts was especially appropriate when,

as here, Congress granted to state courts exclusive jurisdiction over private actions brought to enforce the challenged federal statute. Schneider v. Susquehanna Radio Corp., 260 Ga. App. 296, 581 S.E.2d 603 (2003).

Jurisdiction of recorder's court limited. — Because the recorder's court does not impanel juries, the court's jurisdiction over state misdemeanor traffic offenses is limited to cases in which the defendant waives the right to a jury trial; if the defendant demands a jury trial, the case is then forwarded to the solicitor's office (now district attorney's office) for docketing in the state court, which also has jurisdiction to hear cases involving misdemeanor state traffic offenses. State v. Serio, 257 Ga. App. 369, 571 S.E.2d 168 (2002).

Equitable remedies are beyond the jurisdiction of the state court. Forest Villas Condominium Ass'n v. Camerio, 205 Ga. App. 617, 422 S.E.2d 884 (1992).

Court lacked jurisdiction. — State court lacked jurisdiction to provide the lessee with the remedy of equitable rescission of a commercial lease and a return of the security deposit because the lessee did not sue on rescission based upon a tender already made as the lessor never delivered possession of the property, and the lessee never paid any rent, and there was nothing for the lessee to tender or offer to tender to effectuate a rescission at law; because the lessee instead sought the affirmative powers of a court of equity to rescind, or undo, the contractual transaction, and the state court did not have jurisdiction over equity matters, the state court's order was vacated and the case was remanded with direction that the case be transferred to the superior court. Thor Gallery at South DeKalb, LLC v. Monger, 338 Ga. App. 235, 789 S.E.2d 806 (2016).

Fines for past violations deemed to be for criminal contempt. — Fines imposed as punishment for violations of injunctive order occurring prior to entry of a contempt order were for criminal contempt and were limited to the maximum of $500. Grantham v. Universal Tax Sys., 217 Ga. App. 676, 458 S.E.2d 870 (1995).

No jurisdiction over § 16-8-18 offense. — While O.C.G.A. § 16-8-18 (entering automobile with intent to commit theft) grants the trial judge discretion to impose misdemeanor punishment, former O.C.G.A. § 15-7-7 did not reduce the offense to a misdemeanor so as to give a state court jurisdiction. Bass v. State, 169 Ga. App. 520, 313 S.E.2d 776 (1984) (decided under former § 15-7-7).

State court judges may hear affidavit for dispossessory warrant. — Affidavit required by former Code 1933, § 61-301 (see now O.C.G.A. § 44-7-50), for the initiation of dispossessory warrant proceedings against tenants holding over is to be made before the judge of the superior court or any justice of the peace, including judges of the state courts of each county. Howington v. W.H. Ferguson & Sons, 147 Ga. App. 636, 249 S.E.2d 687 (1978).

State court has jurisdiction over county ordinance violations. — State Court of Cobb County has jurisdiction over cases involving alleged violations of county ordinances that constitute misdemeanors. Floyd v. State, 168 Ga. App. 645, 310 S.E.2d 749 (1983).

State Court of DeKalb County has jurisdiction over misdemeanor crimes. — There was undisputed testimony that the misdemeanor crimes with which the defendant was charged and convicted occurred in DeKalb County, Georgia, and that the defendant was identified as the perpetrator of the offenses; thus, the record affirmatively established that the state court of DeKalb County exercised both personal and subject matter jurisdiction over the defendant. Freeman v. State, 194 Ga. App. 905, 392 S.E.2d 330 (1990).

Commission in portion of city airport within county. — State court had jurisdiction over misdemeanor offenses which took place at that part of a city airport within the county. Hope v. State, 226 Ga. App. 392, 486 S.E.2d 658 (1997).

O.C.G.A. § 19-5-13 does not divest state courts of jurisdiction over trover or conversion actions in which the alleged trover or conversion results from the defendant's retention of property awarded to the plaintiff in a final divorce decree. Dunlap v. Pope, 177 Ga. App. 539, 339 S.E.2d 662 (1986).

Fine for past violations of discovery order is criminal contempt. — Imposition of a $500 fine per day for past violations of a court's discovery order was an adjudication of criminal contempt and, therefore, the contempt order was affirmed on condition that the fines in excess of $500 be stricken. Carey Can., Inc. v. Hinely, 257 Ga. 150, 356 S.E.2d 202, cert. denied, 484 U.S. 898, 108 S. Ct. 233, 98 L. Ed. 2d 192 (1987).

Action on note given for federally funded student loan. — State court was competent to adjudicate an action brought by the Georgia Higher Education Assistance Corporation on a note given for a federally funded student loan. Garrett v. Georgia Higher Educ. Assistance Corp., 217 Ga. App. 415, 457 S.E.2d 677 (1995).

State court had jurisdiction over unjust enrichment claim. — State court had jurisdiction to give an award based on the equitable theory of unjust enrichment because the plaintiffs, the buyers of a sports bar, sought only damages against the sellers, not equitable relief. Lee v. Shim, 310 Ga. App. 725, 713 S.E.2d 906 (2011).

Application of Code section. — O.C.G.A. § 15-7-4 sets forth the subject matter jurisdiction of state courts and is not applicable to a guarantor's claim of lack of jurisdiction; if the principal borrower resided in the county in which the action on the note was brought, default judgment against the choice of the guarantor was also authorized. Browne v. Trust Co. Bank, 205 Ga. App. 499, 422 S.E.2d 669 (1992).

When an out-of-state seller sued an in-state buyer in Georgia, despite a provision in the parties' contract for the jurisdiction of the courts of Texas, the courts of Georgia had subject matter jurisdiction under O.C.G.A. § 15-7-4(a)(2); Ga. Const. 1983, Art. VI, Sec. I, Para. I; Ga. Const. 1983, Art. VI, Sec. III, Para. I; and Ga. Const. 1983, Art. VI, Sec. IV, Para. I; the parties waived the forum selection clause by either filing suit in Georgia or not responding. Euler-Siac S.P.A. (Creamar Spa) v. Drama Marble Co., 274 Ga. App. 252, 617 S.E.2d 203 (2005).

Inasmuch as it was established that a violation of O.C.G.A. § 40-6-395 was alleged to have occurred in Douglas County, the State Court of Douglas County had subject matter jurisdiction over the case; thus, the denial of defendant's motion in arrest of judgment was not error. Harbuck v. State, 280 Ga. 775, 631 S.E.2d 351 (2006).

Review of prior court's summary judgment ruling. — Losing party had the right to bring a direct appeal from the order granting summary judgment and the party was not required to follow the discretionary application process under O.C.G.A. § 5-6-35(a)(1) as, given the plenary authority to revise and modify prior rulings, the transferee court was allowed to revisit the prior denial of a motion for summary judgment. Cook Pecan Company, Inc. v. McDaniel, 337 Ga. App. 186, 786 S.E.2d 852 (2016).

Cited in Austin v. Aldredge, 227 Ga. 119, 179 S.E.2d 66 (1971); Bell v. Stocks, 128 Ga. App. 799, 198 S.E.2d 209 (1973); Nat'l Health Servs., Inc. v. Townsend, 130 Ga. App. 700, 204 S.E.2d 299 (1974); King v. State, 133 Ga. App. 426, 211 S.E.2d 363 (1974); Atlanta Cas. Co. v. Williams, 135 Ga. App. 562, 218 S.E.2d 282 (1975); Shannondoah, Inc. v. Smith, 137 Ga. App. 378, 224 S.E.2d 465 (1976); Salvador v. Wals, 139 Ga. App. 362, 228 S.E.2d 384 (1976); Moody v. State, 145 Ga. App. 734, 245 S.E.2d 40 (1978); McSears v. State, 247 Ga. 48, 273 S.E.2d 847 (1981); Pfeiffer v. State, 173 Ga. App. 374, 326 S.E.2d 562 (1985); Ward v. State, 175 Ga. App. 410, 333 S.E.2d 669 (1985); Burden v. State, 176 Ga. App. 17, 335 S.E.2d 304 (1985); Cobb County v. Campbell, 256 Ga. 519, 350 S.E.2d 466 (1986); Mitchell v. Southern Gen. Ins. Co., 185 Ga. App. 870, 366 S.E.2d 179 (1988); Webb v. Ethridge, 849 F.2d 546 (11th Cir. 1988); Attwell v. Sears, Roebuck & Co., 189 Ga. App. 363, 375 S.E.2d 631 (1988); Fausnaugh v. State, 244 Ga. App. 263, 534 S.E.2d 554 (2000); EHCA Cartersville, LLC v. Turner, 280 Ga. 333, 626 S.E.2d 482 (2006); Blackmon v. Tenet Healthsystem Spalding, Inc., 288 Ga. App. 137, 653 S.E.2d 333 (2007); Cmty. State Bank v. Strong, 651 F.3d 1241 (11th Cir. 2011).

OPINIONS OF THE ATTORNEY GENERAL

Choice of forum. — Courts of Georgia may not restrict the suitor's choice of forum when jurisdiction of a cause of action is vested in more than one court. 1983 Op. Att'y Gen. No. U83-50.

State courts have concurrent jurisdiction with superior courts over cases brought pursuant to the Child Support Recovery Act, O.C.G.A. § 19-11-1 et seq. 1983 Op. Att'y Gen. No. U83-33.

Failure to comply with child support order punishable by contempt. — State court judge may punish by contempt the willful failure to comply with a child support order previously issued by the judge's court. 1983 Op. Att'y Gen. No. U83-33.

RESEARCH REFERENCES

ALR. — Future potential disability benefits under insurance policy as affecting question of jurisdictional amount, 165 A.L.R. 1073.

Interest and attorneys' fees as factors in determining jurisdictional amount, 167 A.L.R. 1243.

Modern status of rule relating to jurisdiction of state court to try criminal defendant brought within jurisdiction illegally or as result of fraud or mistake, 25 A.L.R.4th 157.

Personal jurisdiction over nonresident manufacturer of component incorporated in another product, 69 A.L.R.4th 14.

Criminal jurisdiction of municipal or other local court, 102 A.L.R.5th 525.

Validity, construction and application of Telephone Consumer Protection Act (47 U.S.C.A. § 227) — state cases, 77 A.L.R.6th 1.

Am. Jur. Pleading and Practice Forms. — 7C Am. Jur. Pleading and Practice Forms, Courts, § 1 et seq.

15-7-5. Electronic filings of pleadings and documents; electronic payments and remittances; access; public disclosure.

(a) Pursuant to rules promulgated by the Criminal Case Data Exchange Board, on and after January 1, 2019, a state court shall provide for the filing of pleadings in criminal cases and any other document related thereto and for the acceptance of payments and remittances by electronic means.

(b)(1) On and after January 1, 2019, except as provided in paragraph (3) of this subsection, all pleadings and any other document related thereto filed by an attorney to initiate a civil action or in a civil case in a state court shall be filed by electronic means through the court's electronic filing service provider. Except as provided in paragraph (3) of this subsection, once a court has commenced mandatory electronic filings in civil cases, a clerk shall not accept, file, or docket any pleading or any other form of paper document related thereto from an attorney in a civil case.

(2)(A) Except as provided in subparagraph (B) of this paragraph, a court's electronic filing service provider may charge a fee which shall be a recoverable court cost and only include a:

(i) One-time fee for electronically filing pleadings or documents in a civil action and the electronic service of pleadings, regardless of how many parties shall be served, which shall not exceed $30.00 per filer, per party. Such fee shall be paid at the time of the first filing on behalf of a party; provided that when filings are submitted via a public access terminal, upon the first filing not using such terminal, such fee shall be paid;

(ii) Supplemental fee of $5.00 for each filing made in a civil action after a party has made ten electronic filings in such civil action; and

(iii) Convenience fee for credit card and bank drafting services, which shall not exceed 3.5 percent plus a 30¢ payment services fee per transaction.

(B) No electronic filing service provider shall charge a fee pursuant to this paragraph for the filing of:

(i) Pleadings or documents filed by the Department of Law, the Office of Legislative Counsel, the Office of the Secretary of State, a solicitor-general in his or her official capacity, or a public defender in his or her official capacity;

(ii) Pleadings or documents filed on behalf of municipal corporations or county governments; or

(iii) Leave of absence or conflict notices filed pursuant to the Uniform Rules for the State Courts.

(C) With respect to the fee charged pursuant to division (i) of subparagraph (A) of this paragraph, the clerk of state court shall retain $2.00 of the transaction fee and remit it to the governing authority of the county. No other portion of the transaction fee shall be remitted to any other office or entity of the state or governing authority of a county or municipality.

(D) An attorney, or party if he or she is pro se, shall be allowed unlimited access to view and download any pleading or document electronically filed in connection to the civil action in which he or she is counsel of record or pro se litigant, and an electronic service provider shall not be authorized to charge or collect a fee for such viewing or downloading.

(3) This subsection shall not apply to filings:

(A) In connection with:

(i) A pauper's affidavit;

(ii) Pleadings or documents filed under seal or presented to a court in camera or ex parte; or

(iii) Pleadings or documents to which access is otherwise restricted by law or court order;

(B) Made physically at the courthouse by an attorney or his or her designee or an individual who is not an attorney; provided, however, that the clerk shall require such pleadings or documents made physically at the courthouse by an attorney or his or her designee be submitted via a public access terminal in the clerk's office. The clerk shall not charge the fee as set forth in division (2)(A)(i) of this subsection for such filing but when payment is submitted by credit card or bank draft, the clerk may charge the convenience fee as set forth in division (2)(A)(iii) of this subsection;

(C) Made in a court located in an area that has been declared to be in a state of emergency pursuant to Article 3 of Chapter 3 of Title 38. The Judicial Council of Georgia shall provide rules for filings in such circumstances; or

(D) Made prior to the commencement of mandatory electronic filing for such court, wherein the filer shall continue to pay fees applicable to the case on the date of the first filing; provided, however, that a party may elect to make future filings through the court's electronic filing service provider and pay the applicable fees.

(4) The Judicial Council of Georgia shall make and publish in print or electronically such statewide minimum standards and rules as it deems necessary to carry out this Code section. Each clerk of state court shall develop and enact policies and procedures necessary to carry out the standards and rules created by the Judicial Council of Georgia.

(c) Nothing in this Code section shall be construed to prevent a clerk's acceptance of payments and remittances by electronic means under the clerk's own authority.

(d) A state court judge to whom the case is assigned and his or her staff shall, at all times, have access to all pleadings and documents electronically filed and such access shall be provided upon the physical acceptance of such pleadings and documents by the clerk.

(e) Any pleading or document filed electronically shall be deemed filed as of the time of its receipt by the electronic filing service provider. A pleading or document filed electronically shall not be subject to disclosure until it has been physically accepted by the clerk. Upon such acceptance as provided for in this subsection, such pleading or document shall be publicly accessible for viewing at no cost to the viewer on a public access terminal available at the courthouse during regular business hours.

History. — Code 1981, § 15-7-5, enacted by Ga. L. 2016, p. 242, § 3/SB 262; Ga. L. 2018, p. 550, § 1-3/SB 407; Ga. L. 2019, p. 845, § 6-4/HB 239.

The 2018 amendment, effective July 1, 2018, substituted the present provisions of this Code section for the former provisions, which read: "By court rule or standing order, any state court may provide for the filing of pleadings and any other documents and for the acceptance of payments and remittances by electronic means. Nothing in this Code section shall be construed to prevent a clerk's acceptance of payments and remittances by electronic means under the clerk's own authority."

The 2019 amendment, effective May 7, 2019, rewrote paragraphs (b)(2) and (b)(3).

Administrative rules and regulations. — Criminal justice e-filing rule, Official Compilation of the Rules and Regulations of the State of Georgia, Criminal Case Data Exchange Board, Criminal Justice e-Filing Rule, Rule 145-2-.01.

Law reviews. — For article on the 2018 amendment of this Code section, see 35 Ga. St. U.L. Rev. 45 (2018). For article on the 2019 amendment of this Code section, see 36 Ga. St. U.L. Rev. 1 (2019).

RESEARCH REFERENCES

C.J.S. — 20 C.J.S., Costs, § 128.

ARTICLE 2

JUDGES

Law reviews. — For article, "Courts: Juvenile Justice Reform," see 30 Ga. St. U. L. Rev. 63 (2013).

15-7-20. Number of and work status of judges determined by local law; elections.

(a) The General Assembly shall by local law establish the number of judges for each state court and shall establish whether the judge or judges shall be full-time judges or part-time judges.

(b) Judges of the state court shall be elected by the qualified electors of the county or counties in which the court is located, shall be elected on a nonpartisan basis as provided by law, and shall serve for a term of four years.

(c) Elections shall be held at the general election in the year in which the incumbent's term expires, and judges so elected shall take office on the first day of January following such election. The judges of the state courts shall be commissioned by the Governor and, before entering office, shall take the same oaths which judges of the superior courts must take.

History. — Code 1981, § 15-7-20, enacted by Ga. L. 1983, p. 1419, § 2.

JUDICIAL DECISIONS

Cited in Pfeiffer v. State, 173 Ga. App. 374, 326 S.E.2d 562 (1985); Cramer v. Spalding County, 261 Ga. 570, 409 S.E.2d 30 (1991).

15-7-21. Qualifications; restrictions on practice of law; removal, discipline, and involuntary retirement.

(a)(1) Except as provided in paragraph (2) of this subsection, each judge of the state court shall:

(A) Be a resident of the geographic area in which he or she is selected to serve;

(B) Have been a resident of the state for three years next preceding the beginning of his or her term of office;

(C) As of the date on which his or her term of office begins, be at least 25 years of age;

(D) Have been admitted to practice law for seven years; and

(E) Be a member in good standing with the State Bar of Georgia and have been duly reinstated to the practice of law in the event of his or her disbarment therefrom.

(2) If, at the expiration of the qualifying period for the general nonpartisan primary or any special election, no candidate meeting the requirements of paragraph (1) of this subsection has qualified, then the county election superintendent shall reopen qualifying for a period of 15 days, and any individual may qualify who: (A) will have been for three years next preceding the beginning of the term of office a resident of the superior court judicial circuit containing the geographic area in which the judge is to serve; and (B) meets all requirements, other than the residency requirement specified in subparagraph (A) of paragraph (1) of this subsection, for eligibility for nomination and election to the office of state court judge. If such individual is elected to the office of state court judge, he or she may thereafter qualify for reelection to such office as long as he or she continues to reside within the judicial circuit containing the geographic area in which the judge is to serve and otherwise meets the requirements of paragraph (1) of this subsection.

(b) A full-time judge of the state court shall not engage in the private practice of law. A part-time judge of the state court may engage in the private practice of law in other courts but may not practice in his or her own court or appear in any matter as to which that judge has exercised any jurisdiction.

(c) Judges of the state courts shall be subject to discipline, removal, and involuntary retirement pursuant to Article VI, Section VII, Paragraphs VI and VII of the Constitution of the State of Georgia.

(d) The office of any judge of the state court shall be vacated upon the disbarment or suspension from the practice of law of such judge by the Supreme Court whether voluntary or involuntary and upon order of the Supreme Court providing for such removal from office.

History. — Code 1981, § 15-7-21, enacted by Ga. L. 1983, p. 1419, § 2; Ga. L. 1984, p. 22, § 15; Ga. L. 1990, p. 349, § 1; Ga. L. 1991, p. 94, § 15; Ga. L. 1992, p. 1257, § 1; Ga. L. 2000, p. 836, § 1; Ga. L. 2001, p. 269, § 1; Ga. L. 2002, p. 1234, § 1; Ga. L. 2017, p. 152, § 2/HB 88.

Cross references. — Rules of the Judicial Qualifications Commission.

Editor's notes. — Ga. L. 2000, p. 836, § 2, not codified by the General Assembly, provides in part that: "This Act shall not apply to any judge elected or appointed prior to January 1, 2001."

Law reviews. — For note on the 2001 amendment to this Code section, see 18 Ga. St. U.L. Rev. 96 (2001).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarities of the statutory provisions, decisions under former Code 1933, § 24-2111a are included in the annotations for this Code section.

Constitutionality. — Former Code 1933, § 24-2111a did not deny equal protection of the law, but simply limits eligibility to hold office to a class of persons with a quantum of experience. Nathan v. Smith, 230 Ga. 612, 198 S.E.2d 509 (1973) (decided under former Code 1933, § 24-2111a).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarities of the statutory provisions, opinions under former Code 1933, § 24-2111a are included in the annotations for this Code section.

Repeal of inconsistent provisions of local acts. — Former Code 1933, § 24-2111a should be construed to repeal by implication inconsistent provisions of local Acts; it covered the whole subject matter of qualifications for the office of judge of state court. 1972 Op. Att'y Gen. No. 72-57 (decided under former Code 1933, § 24-2111a).

Residency requirement. — State court judge must continue to maintain residency in the county from which he or she is elected in order to retain his or her office and, if he or she fails to do so, then the office becomes vacant as a matter of law. 1995 Op. Att'y Gen. No. U95-6.

Assistance to state courts by replacement probate judge. — Replacement probate judge appointed in good faith pursuant to O.C.G.A. § 15-9-13(a) may provide assistance to state courts so long as that individual satisfies the qualifications of judges of the state courts under O.C.G.A. § 15-7-21(a)(1), and the request for assistance complies with the terms specified by O.C.G.A. § 15-9-9.1(f). 1994 Op. Att'y Gen. No. U94-12.

ADVISORY OPINIONS OF THE STATE BAR

Part-time judges may represent defendants in criminal cases. However, regular or exclusive representation of such defendants by a judge whose responsibilities include the issuance of criminal warrants or the trial of criminal cases might destroy the appearance of impartiality and integrity essential to the administration of justice and, therefore, be inappropriate. Adv. Op. No. 86-2 (Aug. 23, 1989).

Part-time judges cannot practice in own court. — Part-time judges are not allowed to practice before their own court thus creating an analogous situation to that in which a law clerk is also prohibited

from representing clients before a present employer-judge. Adv. Op. No. 05-3 (April 26, 2006).

RESEARCH REFERENCES

Am. Jur. 2d. — 46 Am. Jur. 2d, Judges, §§ 5, 6.

Am. Jur. Proof of Facts. — Disqualification of Trial Judge for Cause, 50 POF3d 449.

C.J.S. — 48A C.J.S., Judges, §§ 17, 18 et seq., 46.

ALR. — Validity and construction of constitutional or statutory provisions making legal knowledge or experience a condition of eligibility for judicial office, 71 A.L.R.3d 498.

Validity and application of state statute prohibiting judge from practicing law, 17 A.L.R.4th 829.

15-7-22. Compensation.

Judges of the state courts shall be compensated from county funds as provided by local law. The county governing authority is authorized to supplement the compensation thus fixed to be paid to the judges of the state court of that county.

History. — Code 1981, § 15-7-22, enacted by Ga. L. 1983, p. 1419, § 2.

JUDICIAL DECISIONS

County not entitled to reimbursement of salary supplement that was not paid in violation of law. — In a dispute between a county and a county state court judge over a supplement to the judge's salary, summary judgment for the judge was proper on the county's claim for reimbursement of the judge's salary supplement because the county failed to show that the supplement was paid with the total absence or want of power. Even if the supplement was paid in violation of the Open Meetings Act, O.C.G.A. § 50-14-1 et seq., the county's counterclaim was filed well outside the 90-day limitation period in § 50-14-1(b)(2). Heiskell v. Roberts, 342 Ga. App. 109, 802 S.E.2d 385 (2017).

State court judge not entitled to additional compensation under local law. — Trial court erred in finding that all of a a state court judge's claims to recover compensation under state law, O.C.G.A. § 15-7-22, a local law, 2006 Ga. Laws 206, and a county ordinance, were barred by laches; the judge's claims were subject to the two-year limitations period in O.C.G.A. § 9-3-22, meaning the judge could pursue claims on or after October 6, 2015; however, the judge was not entitled to mandamus because the judge had received all the compensation to which the judge was entitled. Cowen v. Clayton County, 306 Ga. 698, 832 S.E.2d 819 (2019).

Cited in Victoria's Secret Stores, Inc. v. West, 200 Ga. App. 402, 408 S.E.2d 180 (1991); Cramer v. Spalding County, 261 Ga. 570, 409 S.E.2d 30 (1991).

15-7-23. Filling vacancies.

In the event of a vacancy in the office of judge of the state court for any reason except the expiration of the term of office, the Governor shall

appoint a qualified person who shall serve as provided in Article VI, Section VII, Paragraphs III and IV of the Constitution.

History. — Code 1981, § 15-7-23, enacted by Ga. L. 1983, p. 1419, § 2; Ga. L. 1984, p. 22, § 15.

JUDICIAL DECISIONS

Cited in Perdue v. Palmour, 278 Ga. 217, 600 S.E.2d 370 (2004).

15-7-24. Ordered military duty.

(a) Any judge of state court who is performing ordered military duty, as defined in Code Section 38-2-279, shall be eligible for reelection in any primary or general election which may be held to elect a successor for the next term of office, and may qualify in absentia as a candidate for reelection to such office. The performance of ordered military duty shall not create a vacancy in such office during the term for which such judge was elected.

(b) Where the giving of written notice of candidacy is required, any judge of state court who is performing ordered military duty may deliver such notice by mail, agent, or messenger to the proper elections official. Any other act required by law of a candidate for public office may, during the time such official is on ordered military duty, be performed by an agent designated in writing by the absent public official.

History. — Code 1981, § 15-7-24, enacted by Ga. L. 2008, p. 540, § 3/SB 11.

Editor's notes. — Ga. L. 1996, p. 748, § 1 repealed former Code Section 15-7-24, pertaining to solicitors, effective July 1, 1996. The former Code section was based on Code 1981, § 15-7-24, enacted by Ga. L. 1983, p. 1419, § 2; Ga. L. 1984, p. 22, § 15; Ga. L. 1984, p. 388, § 1; Ga. L. 1986, p. 171, § 1; Ga. L. 1987, p. 359, § 1; Ga. L. 1991, p. 135, § 4. For present provisions as to solicitor-generals of state courts, see § 15-18-60 et seq.

15-7-25. Service by retired judge or judge emeritus.

(a) Except as otherwise provided in the Constitution of this state, a retired judge or judge emeritus of a state court shall be authorized to serve as judge of a state court upon the call of the judge of such court. When serving in such capacity, the retired judge or judge emeritus of the state court shall exercise the same jurisdiction, power, and authority as the regular judge of the court, as provided by general or local law. When serving in such capacity, the retired judge or judge emeritus shall receive the amount of compensation and payment of expenses as provided by subsection (d) of Code Section 15-1-9.2, with such expenses

being borne by the governing authority responsible for funding the operation of the requesting court.

(b) A retired judge or a judge emeritus of a state court shall be vested with the same authority as an active judge of this state for the purpose of performing marriage ceremonies.

(c) Except as otherwise provided in the Constitution of this state, a judge of a state court shall be authorized to serve as judge of any other state court, but only upon the call of the judge of such other state court. When serving in a state court other than his own, the judge shall exercise the same jurisdiction, power, and authority as the regular judge of the court, as provided by general or local law.

(d) Any retired judge or judge emeritus of a state court may issue arrest warrants and search warrants in the same manner as an active judge of state court if the retired judge or judge emeritus is authorized in writing to do so by an active judge of the state court of the county wherein the warrants are to be issued.

History. — Code 1981, § 15-7-25, enacted by Ga. L. 1983, p. 1419, § 2; Ga. L. 1985, p. 1105, § 3; Ga. L. 1990, p. 343, § 2.

Cross references. — Service by judges in counties outside county of appointment or election, § 15-1-9.1. Warrants for arrest generally, § 17-4-40. Issuance of search warrants generally, § 17-5-21. Issuance of marriage licenses generally, § 19-3-30 et seq.

JUDICIAL DECISIONS

Indefinite appointment of assistant judges and district attorneys. — State court judge does not have the authority to order the indefinite appointment of assistant judges or solicitors (now district attorneys) whose positions are not authorized by local law or to finance those positions through a court-created fund comprised of moneys withheld from the county treasury. Cramer v. Spalding County, 261 Ga. 570, 409 S.E.2d 30 (1991).

RESEARCH REFERENCES

ALR. — Construction and validity of state provisions governing designation of substitute, pro tempore, or special judge, 97 A.L.R.5th 537.

15-7-26. Council of State Court Judges of Georgia.

(a) There is created a state court judges' council to be known as "The Council of State Court Judges of Georgia." The council shall be composed of the judges, senior judges, and judges emeriti of the state courts of this state. The council is authorized to organize itself and to develop a constitution and bylaws.

(b) It shall be the purpose of The Council of State Court Judges of Georgia to effectuate the constitutional and statutory responsibilities

conferred upon it by law and to further the improvement of the state courts, the quality and expertise of the judges thereof, and the administration of justice.

(c) Expenses of the administration of the council shall be paid from state funds appropriated for that purpose, from federal funds available to the council for that purpose, or from other appropriate sources.

(d) The Administrative Office of the Courts shall provide technical services to the council and shall assist the council in complying with all its legal requirements.

History. — Code 1981, § 15-7-26, enacted by Ga. L. 1988, p. 461, § 1; Ga. L. 2002, p. 1018, § 1.

JUDICIAL DECISIONS

Judicial Qualifications Commission was not authorized to regulate council, and council could file amicus briefs. — Judicial Qualifications Commission's authority was limited to disciplining individual judges. Ga. Const 1983, Art. VI, Sec. VII, Paras. VI and VII, and did not extend to dictating whether the Georgia Council of State Court Judges could file an amicus brief in pending litigation; the Council was permitted to file such briefs pursuant to the Council's duties and authority under Ga. Const 1983, Art. VI, Sec. IX, Para. I, and O.C.G.A. § 15-7-26(b), although individual judges generally could not. In re Judicial Qualifications Comm'n Formal Advisory Opinion No. 241, 301 Ga. 54, 799 S.E.2d 781 (2017).

ARTICLE 3

PRACTICE AND PROCEDURE

Law reviews. — For article, "Courts: Juvenile Justice Reform," see 30 Ga. St. U. L. Rev. 63 (2013).

15-7-40. State courts always open; terms of court.

The courts governed by this chapter shall be deemed always open for the disposition of matters properly cognizable by them; however, all trials on the merits shall be conducted at trial terms regularly prescribed by local laws, as now or hereafter amended, creating the individual courts.

History. — Code 1981, § 15-7-40, enacted by Ga. L. 1983, p. 1419, § 2.

Cross references. — Trial calendar, Uniform State Court Rules, Rule 8.3.

JUDICIAL DECISIONS

Mandamus to compel a judge to conduct civil trials was authorized because the judge's refusal to schedule civil cases for trial for more than two years was

a gross abuse of discretion and no other specific legal remedy was available. Stubbs v. Carpenter, 271 Ga. 327, 519 S.E.2d 451 (1999).

Motion to set aside foreign judgment not filed in same term of court. — Because a default judgment was rendered by a Missouri court on January 27, 2015, and the January term of court for the State Court of Fulton County ended when a new term of court began on the first Monday in March (March 2, 2015), and the judgment debtor did not file its motion to set aside the judgment until July 3, 2015, the motion was not filed within the same term of court as the term in which the subject judgment was rendered and could be considered only under O.C.G.A. § 9-11-60(d). Lemcon USA Corp. v. Icon Tech. Consulting, Inc., 338 Ga. App. 459, 789 S.E.2d 832 (2016).

Cited in Dixon v. State, 196 Ga. App. 15, 395 S.E.2d 577 (1990); Cross v. State, 272 Ga. 282, 528 S.E.2d 241 (2000); Levin Co. v. Walker, 289 Ga. App. 299, 656 S.E.2d 588 (2008); Valley v. S. Atl. Conf. of Seventh-day Adventist, 347 Ga. App. 131, 817 S.E.2d 704 (2018).

15-7-41. Courts of record.

The state courts shall be courts of record and shall have a seal; and the minutes, records, and other books and files that are required by law to be kept for the superior courts shall, in the same manner, so far as the jurisdiction of state courts may render necessary, be kept in and for such courts.

History. — Code 1981, § 15-7-41, enacted by Ga. L. 1983, p. 1419, § 2.

Cross references. — Record of proceedings, Uniform State Court Rules, Rule 33.11. Minutes and final record, Uniform State Court Rules, Rule 36.6.

JUDICIAL DECISIONS

Cited in Nat'l Health Servs., Inc. v. Townsend, 130 Ga. App. 700, 204 S.E.2d 299 (1974).

RESEARCH REFERENCES

Am. Jur. 2d. — 20 Am. Jur. 2d, Courts, § 8 et seq.

C.J.S. — 21 C.J.S., Courts, § 8.

15-7-42. Prosecution for misdemeanors; trials on merits conducted in open court; proceedings allowed in chambers.

(a) The prosecution of misdemeanors may proceed by accusation as provided in Code Section 17-7-71, citation or citation and arrest as provided for by law, or summons.

(b) All trials on the merits shall be conducted in open court and, so far as convenient, in a regular courtroom.

(c) All other proceedings, hearings, and acts not included in subsection (b) of this Code section may be done or conducted by a judge in chambers and in the absence of the clerk or other court officials. The

judge of the court may hear motions and enter interlocutory orders, in all cases pending in the court over which he or she presides, in open court or in chambers.

History. — Code 1981, § 15-7-42, enacted by Ga. L. 1983, p. 1419, § 2; Ga. L. 1984, p. 22, § 15; Ga. L. 2018, p. 550, § 2-2/SB 407.

The 2018 amendment, effective July 1, 2018, added subsection (a); designated the existing provisions as subsections (b) and (c); and, in subsection (c), inserted "not included in subsection (b) of this Code section" in the middle of the first sentence and inserted "or she" near the end of the last sentence.

Law reviews. — For article on the 2018 amendment of this Code section, see 35 Ga. St. U.L. Rev. 45 (2018).

JUDICIAL DECISIONS

When defendant not entitled to be present. — Court was unaware of any authority to support a right of a defendant to be present when a judge commits the judge's decision to writing or instructs counsel to prepare an order; state court practice and procedure permits the judge to hear motions, enter interlocutory orders, and perform judicial acts and conduct proceedings, other than trials on the merits, in chambers. Pfeiffer v. State, 173 Ga. App. 374, 326 S.E.2d 562 (1985).

RESEARCH REFERENCES

C.J.S. — 21 C.J.S., Courts, § 151 et seq.

15-7-43. Applicability of rules of practice.

(a) The general laws and rules of appellate practice and procedure which are applicable to cases appealed from the superior courts of this state shall be applicable to and govern appeals from the state courts.

(b) The general laws and rules of practice, pleading, procedure, and evidence which are applicable to the superior courts of this state shall be applicable to and govern in the state courts.

(c) The general laws and rules applicable to the execution and enforcement of judgments in the superior courts of this state shall be applicable to and govern in the state courts.

History. — Code 1981, § 15-7-43, enacted by Ga. L. 1983, p. 1419, § 2.

Cross references. — Appeals to Supreme Court or Court of Appeals generally, § 5-6-1 et seq. Civil practice and procedure generally, §§ 9-10-1 et seq., 9-11-1 et seq. Criminal procedure generally, § 17-1-1 et seq. Uniform State Court Rules.

JUDICIAL DECISIONS

Speedy trial provisions. — As subsection (b) of O.C.G.A. § 15-7-43, enacted in 1983, incorporates the speedy trial provisions of O.C.G.A. § 17-7-170 by reference, those provisions supersede a 1981 local law provision entitling a defendant

in a state court to discharge and acquittal if no trial is had at the term when the demand is made or within the next two succeeding regular terms thereafter. Majia v. State, 174 Ga. App. 432, 330 S.E.2d 171, aff'd, 254 Ga. 660, 333 S.E.2d 834 (1985); Parks v. State, 239 Ga. App. 333, 521 S.E.2d 370 (1999).

Practice and procedure rules for the state courts as set forth in subsection (b) of O.C.G.A. § 15-7-43 incorporate by reference the speedy trial provisions of O.C.G.A. § 17-7-170. Proveaux v. State, 198 Ga. App. 119, 401 S.E.2d 12 (1990).

Appeal of filing fee. — Although a store patron in a slip and fall case failed to file the fee required by O.C.G.A. § 15-6-77.3(b), made applicable to the state court by O.C.G.A. § 15-7-43(a), the state court properly chose to file the notice of appeal and deal with the fee thereafter, in line with the Supreme Court's admonition that courts engage in more expeditious handling of cases involving minor procedural errors. Pirkle v. QuikTrip Corp., 325 Ga. App. 597, 754 S.E.2d 387 (2014).

Cited in Martin v. Prior Tire Co., 122 Ga. App. 637, 178 S.E.2d 306 (1970); Charles v. Segars, 127 Ga. App. 333, 193 S.E.2d 564 (1972); Bell v. Stocks, 128 Ga. App. 799, 198 S.E.2d 209 (1973); Nat'l Health Servs., Inc. v. Townsend, 130 Ga. App. 700, 204 S.E.2d 299 (1974); Beneficial Std. Life Ins. Co. v. Usalavage, 136 Ga. App. 328, 221 S.E.2d 457 (1975); Shannondoah, Inc. v. Smith, 137 Ga. App. 378, 224 S.E.2d 465 (1976); Salvador v. Wals, 139 Ga. App. 362, 228 S.E.2d 384 (1976); Gooden v. Blanton, 140 Ga. App. 612, 231 S.E.2d 541 (1976); Redding v. Commonwealth of Am., Inc., 143 Ga. App. 215, 237 S.E.2d 689 (1977); Sewell v. Leifer, 144 Ga. App. 36, 240 S.E.2d 584 (1977); State v. Ramsey, 147 Ga. App. 150, 248 S.E.2d 289 (1978); Servisco, Inc. v. R.B.M. of Atlanta, Inc., 147 Ga. App. 671, 250 S.E.2d 10 (1978); Holland v. State, 151 Ga. App. 189, 259 S.E.2d 187 (1979); Raybestos-Manhattan, Inc. v. Friedman, 156 Ga. App. 880, 275 S.E.2d 817 (1981); L & L Elec. Serv., Inc. v. L.K. Comstock & Co., 168 Ga. App. 780, 310 S.E.2d 557 (1983); Jordan v. Atlanta Neighborhood Hous. Servs., Inc., 169 Ga. App. 600, 313 S.E.2d 787 (1984).

15-7-44. Procedure in attachment and garnishment cases.

(a) Procedure in attachment cases shall be subject to Chapter 3 of Title 18.

(b) Procedure in garnishment cases shall be subject to Chapter 4 of Title 18.

History. — Code 1981, § 15-7-44, enacted by Ga. L. 1983, p. 1419, § 2.

15-7-45. Jurors.

Except as otherwise provided in Part 1 of Article 5 of Chapter 12 of this title, all laws with reference to the number, composition, qualifications, impaneling, challenging, and compensation of jurors in superior courts shall apply to and be observed by state courts.

History. — Code 1981, § 15-7-45, enacted by Ga. L. 1983, p. 1419, § 2; Ga. L. 1985, p. 1511, § 1.

Cross references. — Juries generally, § 15-12-1 et seq.

JUDICIAL DECISIONS

Cited in McSears v. State, 247 Ga. 48, 273 S.E.2d 847 (1981).

RESEARCH REFERENCES

Am. Jur. 2d. — 47 Am. Jur. 2d, Jury, §§ 138, 181.

C.J.S. — 50A C.J.S., Juries, §§ 284 et seq., 287 et seq., 513 et seq.

15-7-46. No right to grand jury indictment.

The accused in criminal proceedings in a state court shall not have the right to indictment by the grand jury of the county.

History. — Code 1981, § 15-7-46, enacted by Ga. L. 1983, p. 1419, § 2.

JUDICIAL DECISIONS

Cited in Sanderson v. State, 217 Ga. App. 51, 456 S.E.2d 667 (1995).

15-7-47. Court reporters; waiver; compensation.

(a) Court reporting personnel shall be made available for the reporting of civil and criminal trials in state courts, subject to the laws governing same in the superior courts of this state.

(b) Reporting of any trial may be waived by consent of the parties.

(c) Appointment of a court reporter or reporters, as defined in Article 2 of Chapter 14 of this title, for court proceedings in each court shall be made by the judge thereof; the compensation and allowances of reporters for the courts shall be paid by the county governing authority and shall be the same as that for reporters of the superior courts of this state.

History. — Code 1981, § 15-7-47, enacted by Ga. L. 1983, p. 1419, § 2; Ga. L. 1993, p. 1315, § 5.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 24-2105 are included in the annotations for this Code section.

No duty of misdemeanor defendant to arrange for court reporter. — Defendant in misdemeanor case is not required to make advance arrangements for court reporter if the defendant desires the trial to be recorded. Thompson v. State, 240 Ga. 296, 240 S.E.2d 87 (1977) (decided under former Code 1933, § 24-2105).

When the defendant in a misdemeanor case asks that the case be recorded at the defendant's expense, the court must make

sure that the court reporter is available. Thompson v. State, 240 Ga. 296, 240 S.E.2d 87 (1977) (decided under former Code 1933, § 24-2105).

Former Code 1933, §§ 6-805, 24-2105(a) and 24-3102 did not put a duty upon a defendant who was charged with a misdemeanor to ensure prior to trial that the court reporter was complying with the reporter's statutory duty to attend court sessions. Thompson v. State, 240 Ga. 296, 240 S.E.2d 87 (1977) (decided under former Code 1933, § 24-2105).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarities of the statutory provisions, opinions under former Code 1933, § 24-2105 are included in the annotations for this Code section.

Judge of state court may appoint more than one court reporter. 1974 Op. Att'y Gen. No. U74-33 (decided under former Code 1933, § 24-2105).

Court reporter may not hold simultaneous employment with the State Board of Workers' Compensation and a superior court or state court, but the reporter may provide court reporting services to those courts provided the reporter's role is that of an independent contractor. 1983 Op. Att'y Gen. No. 83-56 (decided under former Code 1933, § 24-2105).

Compensation for reporters of judicial circuits consisting of one county. — Because a state court serves a single county, state court reporters are to receive the amount prescribed by former paragraph (b)(1) of this section "for reporters of judicial circuits consisting of only one county." 1981 Op. Att'y Gen. No. U81-24 (decided under former Code 1933, § 24-2105).

Compensation is to be paid from county funds. 1981 Op. Att'y Gen. No. U81-24 (decided under former Code 1933, § 24-2105).

RESEARCH REFERENCES

Am. Jur. 2d. — 5 Am. Jur. 2d, Appellate Review, § 440. 20 Am. Jur. 2d, Courts, § 1 et seq. 58 Am. Jur. 2d, New Trial, §§ 70, 75. 75 Am. Jur. 2d, Trial, § 169 et seq.

C.J.S. — 21 C.J.S., Courts, §§ 121 et seq., 243.

15-7-48. Clerk's bond.

Any person who serves as a clerk of any state court, as a qualification of holding his office, shall execute bond in the sum of $25,000.00 for the faithful performance of his duties as clerk, which amount may be increased by local Act. However, any clerk of a superior court who is also serving as clerk of a state court shall not be required to post a bond under this Code section; the bond given by the clerk of the superior court for the faithful performance of his duties shall also be conditioned on his faithful performance of his duties as clerk of the state court.

History. — Code 1981, § 15-7-48, enacted by Ga. L. 1983, p. 1419, § 2.

15-7-49. Remittance of interest from interest-bearing trust accounts.

When funds are paid into the court registry, the clerk shall deposit such funds in interest-bearing trust accounts, and the interest from those funds shall be remitted to the Georgia Superior Court Clerks' Cooperative Authority in accordance with the provisions of subsections (c) through (i) of Code Section 15-6-76.1 for distribution to the Georgia Public Defender Council.

History. — Code 1981, § 15-7-49, enacted by Ga. L. 1993, p. 982, § 4; Ga. L. 2003, p. 191, § 3; Ga. L. 2008, p. 846, § 6/HB 1245; Ga. L. 2015, p. 519, § 8-3/HB 328.

Administrative rules and regulations. — Local Indigent Defense Assistance Grant Program, Official Compilation of the Rules and Regulations of the State of Georgia, Grants of Georgia Indigent Defense Council, Grant Programs, Rule 294-1-.01.

Law reviews. — For note on the 2003 amendment to this Code section, see 20 Ga. St. U.L. Rev. 105 (2003).

OPINIONS OF THE ATTORNEY GENERAL

Interest remitted to Georgia Indigent Defense Council. — When clerks of superior court, state court, and magistrate court hold funds paid in for security or judicial disposition, the funds must be placed in interest-bearing trust accounts, and the interest remitted to the Georgia Indigent Defense Council. 1997 Op. Att'y Gen. No. U97-21.

15-7-50. Authority of clerks.

Clerks of state courts are authorized and directed to:

(1) File and enter all civil case filing and disposition forms;

(2) Transmit the data contained on the civil case filing and disposition forms to the Administrative Office of the Courts through electronic means provided by the Administrative Office of the Courts for such purpose which shall constitute the only transmission of such data required between the clerks of the state courts and the Administrative Office of the Courts; and

(3) Participate in agreements, contracts, and networks necessary or convenient for the performance of the duties provided in paragraphs (1) and (2) of this Code section.

History. — Code 1981, § 15-7-50, enacted by Ga. L. 2000, p. 850, § 9; Ga. L. 2017, p. 632, § 2-8/SB 132.

ARTICLE 4

CONSTRUCTION WITH OTHER LAWS

Law reviews. — For article, "Courts: Juvenile Justice Reform," see 30 Ga. St. U. L. Rev. 63 (2013).

15-7-60. Local laws.

This chapter is not intended to repeal any local law creating a state court; and, to the extent any such local law does not conflict with the provisions of this chapter, such local law shall remain in full force and effect.

History. — Code 1981, § 15-7-60, enacted by Ga. L. 1983, p. 1419, § 2.

JUDICIAL DECISIONS

Speedy trial provisions. — As O.C.G.A. § 15-7-43(b), enacted in 1983, incorporates the speedy trial provisions of O.C.G.A. § 17-7-170 by reference, those provisions supersede a 1981 local law provision entitling a defendant in a state court to discharge and acquittal if no trial is had at the term when the demand is made or within the next two succeeding regular terms thereafter. Majia v. State, 174 Ga. App. 432, 330 S.E.2d 171, aff'd, 254 Ga. 660, 333 S.E.2d 834 (1985); Parks v. State, 239 Ga. App. 333, 521 S.E.2d 370 (1999).

Cited in Holland v. State, 151 Ga. App. 189, 259 S.E.2d 187 (1979); Raybestos-Manhattan, Inc. v. Friedman, 156 Ga. App. 880, 275 S.E.2d 817 (1981).

15-7-61. Exemption from Chapter 8.

Courts which come under this chapter shall not be subject to Chapter 8 of this title.

History. — Code 1981, § 15-7-61, enacted by Ga. L. 1983, p. 1419, § 2.

ARTICLE 5

MUNICIPAL COURT SERVICES

Law reviews. — For article, "Courts: Juvenile Justice Reform," see 30 Ga. St. U. L. Rev. 63 (2013).

15-7-80. Municipal court services authorized.

The governing authority of any county may contract with the governing authority of any municipality within the county for the county to furnish municipal court services to the municipality as authorized by

this article; and the governing authorities of municipalities are likewise authorized to enter into such contracts with county governing authorities.

History. — Code 1981, § 15-7-80, enacted by Ga. L. 1992, p. 1161, § 1.

JUDICIAL DECISIONS

Judge was not serving in municipal capacity. — Even though a state court judge had authority to sit as a municipal court judge pursuant to O.C.G.A. § 15-7-80, but was not, in fact, sitting as a municipal judge in the prosecution of a municipal ordinance violation, the judge could not exercise concurrent jurisdiction and authority as a municipal judge, and the prosecutor's failure to introduce the ordinance rendered the evidence insufficient as a matter of law to warrant a conviction. Reed v. State, 229 Ga. App. 817, 495 S.E.2d 313 (1998).

15-7-81. Contents of contract.

Any contract entered into pursuant to this article shall provide that the county shall furnish municipal court services to the municipality through the officers, employees, and facilities of the state court of the county. Any contract so entered into shall not become effective unless it is approved by the state court judge or judges then in office; and no such contract shall extend beyond the term of the judges then in office.

History. — Code 1981, § 15-7-81, enacted by Ga. L. 1992, p. 1161, § 1.

JUDICIAL DECISIONS

Cited in In the Interest of L.H., 242 Ga. App. 659, 530 S.E.2d 753 (2000).

15-7-82. Authority to act as judges, officers, and personnel of municipal court.

When a contract entered into pursuant to this article has become effective, the judges of the state court shall have full authority to act as judges of the municipal court of the municipality; and the other officers and personnel of the state court shall have full authority to act as officers and personnel of the municipal court.

History. — Code 1981, § 15-7-82, enacted by Ga. L. 1992, p. 1161, § 1.

15-7-83. Judges, officers, pleadings, process, and papers of municipal court; separate dockets and records.

When acting as officers of the municipal court all judges and other officers of the state court shall be styled as judges and officers of the municipal court; and all pleadings, process, and papers of the municipal court shall be styled as such and not as pleadings, process, and papers of the state court. The dockets and other records of the municipal court shall be kept separately from those of the state court.

History. — Code 1981, § 15-7-83, enacted by Ga. L. 1992, p. 1161, § 1.

JUDICIAL DECISIONS

Lack of evidence that a state court was in compliance with O.C.G.A. § 15-7-83 required a finding that the court was acting as a state court and not a municipal court in the handling of city code misdemeanor prosecution and, accordingly, the Court of Appeals had jurisdiction of a direct appeal from the court's decision. Poole v. State, 229 Ga. App. 406, 494 S.E.2d 251 (1997).

Failure to introduce municipal ordinance. — Even though a state court judge had authority to sit as a municipal court judge pursuant to O.C.G.A. § 15-7-80, but was not, in fact, sitting as a municipal judge in the prosecution of a municipal ordinance violation, the state court judge could not exercise concurrent jurisdiction and authority as a municipal judge, and the prosecutor's failure to introduce the ordinance rendered the evidence insufficient as a matter of law to warrant a conviction. Reed v. State, 229 Ga. App. 817, 495 S.E.2d 313 (1998).

15-7-84. Violation of municipal ordinances.

Any limitations upon the punishment which may be imposed for violations of municipal ordinances which are contained in the charter of the municipality shall continue to control in municipal courts operated under this article, and if no such limitation exists the maximum punishment imposed shall not exceed a fine of $1,000.00 or six months' imprisonment or both, unless some other general law authorizes greater punishment. Other charter provisions not in conflict with this article shall continue to apply in municipal courts operated under this article.

History. — Code 1981, § 15-7-84, enacted by Ga. L. 1992, p. 1161, § 1.

15-7-85. Limitations on authority granted to municipalities.

(a) Except as provided in subsection (b) of this Code section, the authority granted to municipalities by this article shall not apply to:

(1) A municipality whose charter does not authorize a municipal court;

(2) A municipality whose charter provides for the election, as judge or judges and not as members of the municipal governing authority, of the judge or judges of a court having jurisdiction over municipal ordinance violations; or

(3) A municipality whose charter expressly provides that the municipality shall not have the authority granted by this article.

(b) The authority granted to municipalities by this article shall, notwithstanding the provisions of subsection (a) of this Code section, apply to any municipality if as of June 30, 1983, jurisdiction over violation of its ordinances was by law vested in a state court in existence on that date.

History. — Code 1981, § 15-7-85, enacted by Ga. L. 1992, p. 1161, § 1.

CHAPTER 8

CITY COURTS

Sec.
15-8-1. City courts as courts of record.
15-8-2. Judge ineligible for municipal office or appointment.
15-8-3. When judges of city courts may preside in other city courts.
15-8-4. Transfer of criminal case to superior court upon city court judge's disqualification.
15-8-5. Deputy clerks; appointment; powers and duties.
15-8-6. Authorization of judge of city court or like court to preside in municipal court in cities with population of 350,000 or more.

Cross references. — Corporate, police, recorders', and mayors' courts, § 36-32-1 et seq.

Law reviews. — For article, "The City Court of Atlanta and the 1983 Georgia Constitution: Is the Judicial Engine Souped Up or Blown Up?," see 15 Ga. St. U.L. Rev. 941 (1999). For annual survey article, "'Garbage In, Garbage Out': The Litigation Implosion Over the Unconstitutional Organization and Jurisdiction of the City Court of Atlanta," see 52 Mercer L. Rev. 49 (2000).

15-8-1. City courts as courts of record.

City courts created by special Act of the General Assembly shall be courts of record.

History. — Ga. L. 1924, p. 83, § 1; Code 1933, § 24-2204.

Editor's notes. — Ga. L. 1996, p. 627, effective July 1, 1996, re-creates a system of state courts of limited jurisdiction for each city having a population of 300,000 or more so as to give such courts jurisdiction to try offenses against certain traffic laws and ordinances.

Ga. L. 1998, p. 559, § 1, not codified by the General Assembly, and effective April 2, 1998, provides for conditions for the appointment of judges pro hac vice for state courts of limited jurisdiction for cities of 300,000 population or more.

Ga. L. 1999, p. 830, § 1, not codified by the General Assembly, and effective April 28, 1999, amends Ga. L. 1996, p. 627, § 3, and re-creates a system of state courts of limited jurisdiction and venue for each city having a population of 300,000 or more so as to give such courts jurisdiction to try offenses against certain traffic laws and ordinances.

Ga. L. 2004, p. 885, § 2, not codified by the General Assembly, provides that: "On the effective date of this Act, all cases and matters pending in any court abolished by Section 1 of this Act shall be transferred to the municipal court of the city in which such abolished court was located. The chief judge of such municipal court shall then transfer those cases over which the municipal court does not have jurisdiction to the appropriate court. All records, books, minutes, files, and documents relating to such cases or prior cases of the city court shall be likewise transferred. This Act shall be applicable only with an executed intergovernmental agreement between all affected jurisdictions." This Act became effective January 1, 2005.

Ga. L. 2004, p. 885, § 3, not codified by the General Assembly, provides that: "On the effective date of this Act, each judge of a court abolished by Section 1 of this Act shall become a judge in the municipal court of the city in which such abolished

court was located and shall be subject to retention until the expiration of the judge's current term of office. On the effective date of this Act, each judge pro hac vice or senior judge of a court abolished by Section 1 of this Act shall become a judge pro hac vice in the municipal court of the city in which such abolished court was located and shall retain such position until at least December 31, 2010." This Act became effective January 1, 2005.

JUDICIAL DECISIONS

Cited in City of Lawrenceville v. Davis, 233 Ga. App. 1, 502 S.E.2d 794 (1998).

RESEARCH REFERENCES

Am. Jur. 2d. — 20 Am. Jur. 2d, Courts, § 8 et seq.
C.J.S. — 21 C.J.S., Courts, § 8.

15-8-2. Judge ineligible for municipal office or appointment.

It shall be illegal for the judge of any city court to also hold any municipal office or appointment in the city where the court is held.

History. — Ga. L. 1878-79, p. 137, § 1; Code 1933, § 24-2203.

JUDICIAL DECISIONS

Cited in Nave v. State, 171 Ga. App. 165, 318 S.E.2d 753 (1984).

OPINIONS OF THE ATTORNEY GENERAL

City attorney and judge of the recorder's or police court are both municipal offices or appointments and thus fall within the prohibition of O.C.G.A. § 15-8-2. 1982 Op. Att'y Gen. No. U82-25.

15-8-3. When judges of city courts may preside in other city courts.

(a) The judges of the various city courts may preside in any of the city courts established by the General Assembly in the same manner as the superior court judges preside in the courts of one another; and any city court judge may exercise all the powers, duties, and functions devolved upon the judge of the city court over which he is called to preside by the request of the judge of such city court where the judge is disqualified or is providentially prevented from trying a case.

(b) Any judge of any city court in this state may preside and act in any other city court in this state upon the request of the regular judge

thereof, and when so presiding and acting the judge shall have full power and authority over all matters pending in the court.

History. — Ga. L. 1899, p. 48, § 1; Civil Code 1910, § 4828; Ga. L. 1929, p. 443, § 1; Code 1933, § 24-2201.

JUDICIAL DECISIONS

Constitutionality. — Ga. L. 1989, p. 48, § 1 (see now O.C.G.A. § 15-8-3) did not violate Ga. Const. 1877, Art. VI, Sec. V, Para. I (see now Ga. Const. 1983, Art. VI, Sec. I, Para. III), providing that judges of the city courts and superior courts may alternate. Georgia F. & A. Ry. v. Sasser, 130 Ga. 394, 60 S.E. 997 (1908).

City judge presiding in another court if regular judge is disqualified may try other cases, by consent of the parties, which were not pending. Baldwin v. Ragan, 6 Ga. App. 529, 65 S.E. 335 (1909).

City judge may hear motion for new trial. Herschman v. Crapps, 17 Ga. App. 671, 88 S.E. 38 (1916).

Defendant estopped from questioning authority of judge. — Defendant cannot be heard to question authority of judge to serve when motion for new trial filed previously on other grounds. Gay v. Lewis, 101 Ga. App. 387, 114 S.E.2d 155 (1960).

Cited in Spry v. State, 156 Ga. App. 74, 274 S.E.2d 2 (1980).

RESEARCH REFERENCES

ALR. — Power of successor or substituted judge, in civil case, to render decision or enter judgment on testimony heard by predecessor, 84 A.L.R.5th 399.

15-8-4. Transfer of criminal case to superior court upon city court judge's disqualification.

The several judges of the city courts, on the call of any criminal case in the courts in which the presiding judge is disqualified, may pass an order transferring the case for trial to the superior court of the county in which the city court is located. When the case is so transferred, it shall be tried in the superior court as though it had originated therein.

History. — Ga. L. 1920, p. 277, § 1; Code 1933, § 24-2202.

15-8-5. Deputy clerks; appointment; powers and duties.

The clerks of the city courts shall each have the power to appoint a deputy clerk and may require from him a bond with good security. The deputy clerks shall take the same oath as the clerks do before entering upon the discharge of their duties; and their powers and duties shall be the same as those of the clerk, for as long as the principal continues in office and not longer. For the faithful performance of their duties the deputy clerks and their securities shall be bound. The appointment of

deputy clerks shall be in writing and shall be entered upon the minutes of the court.

History. — Ga. L. 1902, p. 106, §§ 1, 2; Civil Code 1910, § 4829; Code 1933, § 24-2301.

15-8-6. Authorization of judge of city court or like court to preside in municipal court in cities with population of 350,000 or more.

Any judge of any city court or like court may, when authorized to do so by the governing authorities of any city having a population of more than 350,000 according to the United States decennial census of 1950 or any future such census, preside in the municipal court, by whatever name called, of such city. When so presiding, such judge shall have full power and authority in all matters pending in the court, including the trial of all offenses against the ordinances of the city.

History. — Code 1933, § 24-2204, enacted by Ga. L. 1955, p. 192, § 1; Code 1981, § 15-8-6, enacted by Ga. L. 1982, p. 2107, § 8.

RESEARCH REFERENCES

ALR. — Construction and validity of state provisions governing designation of substitute, pro tempore, or special judge, 97 A.L.R.5th 537.

CHAPTER 9

PROBATE COURTS

Article 1

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Article 2

Jurisdiction, Power, and Duties

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Costs and Compensation

15-9-60. (For effective date, see note.) Fees.
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15-9-62. Issuance of writ of fieri facias for fees; defenses.
15-9-63. (Effective until January 1, 2021. See note.) Schedule of minimum salaries.
15-9-63. (Effective January 1, 2021. See notes.) Schedule of minimum salaries.
15-9-63.1. (Effective until January 1, 2021. See note.) Compensation for services as magistrate or chief magistrate; longevity increases.
15-9-63.1. (Effective January 1, 2021. See note.) Compensation for services as magistrate or chief magistrate; longevity increases.
15-9-64. (Effective until January 1, 2021. See note.) Supplement to minimum salaries.
15-9-64. (Effective January 1, 2021. See note.) Supplement to minimum salaries.
15-9-64.1. Monthly contingent expense allowance schedule for the operation of the probate judge's office.
15-9-65. Longevity increases.
15-9-66. Effect of minimum salary provisions on judges in office on July 1, 1991; expenses not covered by salary.
15-9-67. Fee systems continued until enactment of local legislation [Repealed].
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Article 4

Time, Place, and Procedure

15-9-80. Location of office.
15-9-81. Additional offices authorized in certain counties.
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15-9-83. Hours for conducting business; official closings for legal holidays and inclement weather.
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Article 5

Probate Judges Training Council

Sec.

15-9-100. Creation of Probate Judges Training Council; duties of council.
15-9-101. "Training council" defined; powers; bond of personnel; audits.
15-9-102. Composition; terms of office; vacancies.
15-9-103. "Training council" defined; meetings; officers; reimbursement of expenses.
15-9-104. Eligibility of councilmember to hold office of judge of probate court.
15-9-105. Redesignated.

Article 6

Jury Trials and Appeals

15-9-120. Definitions.
15-9-121. Jury trials in civil cases.
15-9-122. (For effective date, see note.) Applicability of laws and rules.
15-9-123. (For effective date, see note.) Appeal.
15-9-124. Enforcement of judgments.
15-9-125. Jurors.
15-9-126. (For effective date, see note.) Fees.
15-9-127. (For effective date, see note.) Concurrent jurisdiction with superior courts; probate court jurisdiction.

Article 7

Probate Court Judges

15-9-140. Jurisdiction of judges.
15-9-141. Retired judges; senior judge appointment; written request for assistance.

Article 8

Prosecuting Attorneys in Probate Courts in Counties in Which There is No State Court

15-9-150. Requesting district attorney to prosecute criminal cases; creation of prosecuting attorney position by ordinance or resolution; appointment of prosecuting attorney.
15-9-151. Qualifications of prosecuting attorney; appointment of assistant district attorneys.
15-9-152. Oath of office.
15-9-153. Determining if prosecuting attorney shall be full time or part time; limitations on private practice of law.
15-9-154. Disqualification of prosecuting attorney.
15-9-155. Prosecuting attorney's duties; authority.
15-9-156. Compensation; reimbursement of expenses.
15-9-157. Additional assistant prosecuting attorneys, employees, or independent contractors; duties; compensation.
15-9-158. Qualifications of assistant prosecuting attorneys; assistance by qualified law student or law school graduate.

Cross references. — Jurisdiction, Ga. Const. 1983, Art. VI, Sec. III, Para. I. Qualifications of judges, Ga. Const. 1983, Art. VI, Sec. VII, Para. II. Continuation of probate courts, Ga. Const. 1983, Art. VI, Sec. X, Para. I. Compensation, powers and duties of judges, Ga. Const. 1983, Art. IX, Sec. I, Para. III. Transfer of cases, Uniform Transfer Rules.

ARTICLE 1

GENERAL PROVISIONS

Law reviews. — For article, "Courts: Juvenile Justice Reform," see 30 Ga. St. U. L. Rev. 63 (2013).

15-9-1. Election; term.

The judges of the probate courts are elected by the people of their respective counties at the time and in the manner prescribed by law. They shall hold their offices for four years and until their successors are elected and qualified, unless sooner removed. Their terms shall begin on January 1 and expire on January 1 four years next thereafter.

History. — Orig. Code 1863, § 295; Code 1868, § 355; Ga. L. 1872, p. 81, § 7; Code 1873, § 319; Code 1882, § 319; Civil Code 1895, § 4219; Civil Code 1910, § 4777; Code 1933, § 24-1702.

Cross references. — Election and term of office, Ga. Const. 1983, Art. VI, Sec. VII, Para. I.

Law reviews. — For article, "The Selection and Tenure of Judges," see 2 Ga. St. B. J. 281 (1966). For article, "Timber! — Falling Tree Liability in Georgia," see 10 Ga. St. B. J. 10 (2004).

JUDICIAL DECISIONS

Unqualified voter not eligible for office of probate judge. — Under application of the provisions of the Constitution and laws of Georgia, a person who is not a qualified voter is not eligible for the office of ordinary (now probate judge) of a county. Lee v. Byrd, 169 Ga. 622, 151 S.E. 28 (1929).

Cited in Bell v. Southwell, 376 F.2d 659 (5th Cir. 1967); Montgomery v. Montgomery, 287 Ga. App. 77, 650 S.E.2d 754 (2007).

RESEARCH REFERENCES

C.J.S. — 48A C.J.S., Judges, § 13 et seq.

15-9-1.1. Required training courses; attendance record; expenses.

(a) Any individual who is elected, appointed, or becomes a judge of the probate court by operation of law after January 1, 1990, after taking office as judge of the probate court, shall satisfactorily complete a new judge orientation training course prescribed by the Probate Judges Training Council and the Institute of Continuing Judicial Education of Georgia at the first occasion such course is offered. Such judge shall complete an attendance record of such training issued by the Institute of Continuing Judicial Education of Georgia and file it with the Probate Judges Training Council.

(b) Each judge of the probate court shall be required to complete additional training prescribed by the Probate Judges Training Council and the Institute of Continuing Judicial Education of Georgia during each year he or she serves as a judge of the probate court and complete an attendance record of such training issued by the Institute of Continuing Judicial Education of Georgia and file it with the Probate Judges Training Council.

(c) Any judge who fails to complete the new judge orientation training course as required by subsection (a) of this Code section or to earn the required cumulative annual minimal credit hours of training during any one-year period after the new judge orientation training may be given a six-month administrative extension by the Probate Judges Training Council during which to fulfill this requirement. Individual requests for extensions beyond the initial six-month extension for reasons of disability, hardship, or extenuating circumstance may be approved on a case-by-case basis by the Probate Judges Training Council. Upon failure to earn the required hours within the six-month extension period or additional extension period or periods granted, the Probate Judges Training Council shall promptly notify the Judicial Qualifications Commission which shall recommend to the Supreme Court removal of the probate judge from office unless the Judicial Qualifications Commission finds that the failure was caused by circumstances beyond the control of the probate judge.

(d) All expenses of training authorized or required by this Code section, including any tuition which may be fixed by the Institute of Continuing Judicial Education, shall be paid by the probate judge or probate judge elect taking the training; but the probate judge or probate judge elect shall be reimbursed by the Institute of Continuing Judicial Education of Georgia to the extent that funds are available to the institute for such purpose; provided, however, that if such funds are not available, each probate judge or probate judge elect shall be reimbursed from county funds by action of the county governing authority.

History. — Code 1982, § 15-9-1.1, enacted by Ga. L. 1982, p. 682, § 1; Ga. L. 1988, p. 746, § 1; Ga. L. 1990, p. 312, § 1; Ga. L. 1995, p. 768, § 1; Ga. L. 1998, p. 1090, § 1; Ga. L. 1999, p. 81, § 15; Ga. L. 2009, p. 624, § 1/SB 199; Ga. L. 2018, p. 356, § 1-1/SB 436.

The 2018 amendment, effective July 1, 2018, deleted former subsection (a), which read: "Any person who is or was elected, appointed, or made a judge of the probate court by operation of law on or prior to January 1, 1990, shall satisfactorily complete the required initial training course in the performance of his or her duties conducted by the Institute of Continuing Judicial Education of Georgia and shall file a certificate of such training issued by such institute with the Probate Judges Training Council on or before December 31, 1990, in order to become a certified judge of the probate court. The time and place of such training course and number of hours shall be determined by the Probate Judges Training Council and the Institute of Continuing Judicial Education of Georgia."; redesignated former subsection (b) as present subsection (a); rewrote present subsection (a), which read: "Any person who is elected, ap-

pointed, or becomes a judge of the probate court by operation of law after January 1, 1990, and who does not satisfactorily complete the initial training course prescribed by the Probate Judges Training Council and the Institute of Continuing Judicial Education of Georgia or who does not file a certificate of such training issued by the Institute of Continuing Judicial Education of Georgia with the Probate Judges Training Council within one year after taking office as a judge of the probate court shall, subject to subsection (d) of this Code section, become a certified judge of the probate court upon completion of such requirements at any later time."; redesignated former paragraph (c)(1) as present subsection (b), and, in subsection (b), substituted "and complete an attendance record of such" for "after the initial year of training and shall file a certificate of such additional" in the middle, and inserted "and file it" near the end; deleted former paragraph (c)(2), which read: "For the calendar years 2009 and 2010 only, the Probate Judges Training Council may suspend, in whole or in part, the training requirements of this subsection. If the council suspends such requirements, and if any probate judge has completed all or a portion of the required training prior to suspension of the training requirements, credit for the training so completed shall be carried over and applied to calendar year 2010 or 2011."; redesignated former subsection (d) as present subsection (c), and, in subsection (c), in the first sentence, substituted "complete the new judge orientation training course as required by subsection (a) of this Code section" for "become a certified judge within one year after taking office as a judge of the probate court" and substituted "new judge orientation" for "initial year of", and substituted "circumstances" for "facts" near the end of the second sentence; redesignated former subsection (e) as present subsection (d), and, in subsection (d), inserted "that" near the beginning of the proviso.

15-9-2. Eligibility for judgeship; restrictions on fiduciary role.

(a)(1) Except as otherwise provided in subsection (c) of this Code section, no individual shall be eligible to offer for election to or hold the office of judge of the probate court unless the individual:

(A) Is a citizen of the United States;

(B) Is a resident of the county in which the individual seeks the office of judge of the probate court for at least two years prior to qualifying for election to the office and remains a resident of such county during the term of office;

(C) Is a registered voter;

(D) Has attained the age of 25 years prior to the date of qualifying for election to the office, but this subparagraph shall not apply to any individual who was holding the office of judge of the probate court on July 1, 1981;

(E) Has obtained a high school diploma or its recognized equivalent; and

(F) Has not been convicted of a felony offense or any offense involving moral turpitude contrary to the laws of this state, any other state, or the United States.

(2) Each individual offering as a candidate for the office of judge of the probate court shall file an affidavit with the officer before whom

such individual has qualified to seek the office of judge of the probate court prior to or at the time of qualifying as a candidate. The affidavit shall affirm that the individual meets all the qualifications required by subparagraphs (A), (C), (D), (E), and (F) of paragraph (1) of this subsection and either subparagraph (B) of paragraph (1) of this subsection or subsection (c) of this Code section.

(b) The judge of the probate court shall not, during his or her term of office, be executor, administrator, or guardian, or other agent of a fiduciary nature required to account to his or her court. When any individual holding such trust is elected judge of the probate court, his or her letters and powers immediately abate upon his or her qualification. However, a judge of the probate court may be an administrator, guardian, or executor in a case where the jurisdiction belongs to another county or in a special case when he or she is allowed by law and required to account to the judge of the probate court of another county.

(c) In all counties of this state which have a population of 550,000 or more according to the United States decennial census of 1980 or any future such census, a chief deputy clerk of the probate court having served as chief deputy clerk for more than two years shall be eligible to fill a vacancy in the office of probate judge for the remainder of the unexpired term without regard to whether such chief deputy clerk meets any residency requirements otherwise imposed by law if the chief deputy clerk becomes a resident of the county before taking office as probate judge. Any probate judge taking office as authorized by the preceding sentence shall thereafter be eligible to succeed himself or herself so long as he or she remains a resident of the county.

History. — Ga. L. 1851-52, p. 91, § 5; Code 1863, §§ 302, 303; Code 1868, §§ 362, 363; Code 1873, §§ 327, 328; Code 1882, §§ 327, 328; Civil Code 1895, §§ 4228, 4229; Civil Code 1910, §§ 4786, 4787; Code 1933, § 24-1711; Ga. L. 1983, p. 544, § 2; Ga. L. 1984, p. 22, § 15; Ga. L. 1985, p. 1247, § 1; Ga. L. 1989, p. 1091, § 2; Ga. L. 2018, p. 356, § 1-2/SB 436.

The 2018 amendment, effective July 1, 2018, substituted "individual" for "person" throughout this Code section; in subsection (b), inserted "or her" throughout, substituted "shall not" for "cannot" near the middle of the first sentence, and substituted "when he or she" for "where he" in the third sentence.

Law reviews. — For article, "The Selection and Tenure of Judges," see 2 Ga. St. B. J. 281 (1966).

JUDICIAL DECISIONS

Residence requirement. — Although party seeking the office of judge of the probate court, during a portion of the two-year period prior to qualifying for election, lived in another county while serving in the army and applied for and received a homestead exemption for the party's residence there, the party did not intend to change the party's domicile since the party did not cancel the homestead exemption for the party's residence in the county where the party sought election and canceled the homestead exemption claimed in the later county and paid the taxes that were owed on the nonexempt residence. Johnson v. Byrd, 263 Ga. 173, 429 S.E.2d 923 (1993).

Probate judge cannot act as execu-

tor in county serving. — This section denies an ordinary (now probate judge) the right to act as executor in the county where the person is an ordinary (now probate judge). Wilson v. Wilson, 139 Ga. 771, 78 S.E. 41 (1913).

Appointment of such officer as executor is null and void. Marshall v. Walker, 47 Ga. App. 195, 170 S.E. 267 (1933).

OPINIONS OF THE ATTORNEY GENERAL

Qualifications for probate judge. — For a person to be eligible to hold the office of judge of the probate court there must not only be a full compliance of the constitutional and statutory residency requirements but also the person must meet the requirements of a qualified voter. 1967 Op. Att'y Gen. No. 67-368.

RESEARCH REFERENCES

Am. Jur. 2d. — 46 Am. Jur. 2d, Judges, § 5.
C.J.S. — 48A C.J.S., Judges, § 110.
ALR. — Validity and construction of constitutional or statutory provisions making legal knowledge or experience a condition of eligibility for judicial office, 71 A.L.R.3d 498.

15-9-2.1. Appointment, compensation, authority, qualifications, training, and other limitations of associate probate court judges.

(a) Appointment, compensation, and term.

(1) The judge of the probate court may appoint one or more individuals to serve as associate judges of the probate court in probate matters on a full-time or part-time basis subject to the approval of the governing authority of the county. Such associate judges of the probate court shall serve at the pleasure of the judge of the probate court.

(2) Whenever an associate judge of the probate court is appointed to serve in a probate court, the clerk of the probate court shall forward a certified copy of the order of appointment to the Council of Probate Court Judges of Georgia.

(3) Associate judges of the probate court shall be included in the list of members of the Council of Probate Court Judges of Georgia as set forth in Code Section 15-9-15. An associate judge of the probate court shall not be a voting member and shall not serve as an officer of the Council of Probate Court Judges of Georgia.

(4) Compensation of the associate judges of the probate court shall be fixed by the judge of the probate court subject to the approval of the governing authority or governing authorities of the county or counties for which the associate judge of the probate court is appointed. The salary and any employment benefits of each associate judge of the probate court shall be paid from county funds. No

associate judge of the probate court shall be eligible to participate in the Judges of the Probate Courts Retirement Fund of Georgia.

(b) **Authority.** Both full-time and part-time associate judges of the probate court shall be vested with all of the authority of the judge of the probate court of the county or counties for which the associate judge of the probate court is appointed. In all proceedings before the court, the judgment of an associate judge of the probate court shall be the final judgment of the court for appeal purposes.

(c) **Qualifications and training requirements.**

(1) With the exception of the residency requirement set forth in subparagraph (a)(1)(B) of Code Section 15-9-2, all associate judges of the probate court shall have the same qualifications required of the elected judge of the probate court of the county or counties for which the associate judge of the probate court is appointed.

(2) All full-time associate judges of the probate court shall complete the training requirements set forth for judges of the probate court in Code Section 15-9-1.1. All part-time associate judges of the probate court shall be required to attend a minimum of nine hours of training in an area related to probate court, mental health, or traffic matters as determined by the elected judge of the probate court. All probate required training shall be paid for by the governing authority or governing authorities of the county or counties for which the associate judge of the probate court is appointed.

(d) **Oath and bond.**

(1) Before entering on the duties of their offices, all associate judges of the probate court shall take the oaths required of all civil officers and, in addition, the following oath:

"I do swear that I will well and faithfully discharge the duties of associate judge of the probate court for the County of _____ during my continuation in office, according to law, to the best of my knowledge and ability, without favor or affection to any party. So help me God."

(2) The clerk of the probate court shall make an entry of the oath of each associate judge of the probate court on the minutes of the probate court. In the case of an associate judge of the probate court serving as a magistrate, no oath, certificate, or commission shall be required except the oath and commission of the associate judge of the probate court as an associate judge of the probate court.

(e) **Restriction on the practice of law and the fiduciary role.**

(1) It shall be unlawful for any associate judge of the probate court to engage directly or indirectly in the practice of law in his or her own

name or in the name of another as a partner in any manner in any case, proceeding, or matter of any kind in his or her own court or in any other court in any case, proceeding, or any other matters of which his or her own court has pending jurisdiction or has jurisdiction. It shall be unlawful for any associate judge of the probate court to give advice or counsel to any individual on any matter of any kind whatsoever that has arisen directly or indirectly in his or her own court. Nothing in this chapter shall be construed to limit in any way the ability of an associate judge of the probate court to serve as or offer advice in his or her role as a judge advocate or in any other military role in an active duty or reserve component of the United States Army, United States Navy, United States Marine Corps, United States Coast Guard, United States Air Force, United States National Guard, Georgia National Guard, Georgia Air National Guard, Georgia Naval Militia, the Georgia State Defense Force, or in the National Guard or Air National Guard of any state or territory of the United States.

(2) Subsection (b) of Code Section 15-9-2 regarding a judge's limitations on the fiduciary role shall apply to all associate judges of the probate court.

(f) **Proceedings when an associate judge of the probate court is disqualified.** Whenever the judge of the probate court is unable to act in any case because of a conflict of interest, an unlawful act or the accusation of an unlawful act by such judge, or other disqualification of such judge, any associate judge of the probate court shall also be disqualified.

History. — Code 1981, § 15-9-2.1, enacted by Ga. L. 2009, p. 827, § 1/HB 495; Ga. L. 2017, p. 157, § 2-1/HB 126; Ga. L. 2018, p. 356, § 1-3/SB 436.

The 2018 amendment, effective July 1, 2018, substituted "individuals" for "persons" near the middle of the first sentence of paragraph (a)(1); substituted "an associate" for "a full-time associate" near the beginning of paragraph (a)(2); substituted "Associate" for "Full-time associate" at the beginning of paragraph (a)(3); deleted paragraph (a)(5), which read: "The term of employment of an associate judge of the probate court shall run concurrently with the term of the elected judge of the probate court pursuant to Code Section 15-9-1."; substituted "an associate judge" for "the associate judge" in the second sentence of subsection (b); inserted "of training" in the middle of the second sentence of paragraph (c)(2); deleted "full-time and part-time" preceding "associate judges" in the middle of introductory paragraph (d)(1); rewrote paragraph (e)(1), which read: "It shall be unlawful for any full-time associate judge of the probate court to engage in any practice of law outside his or her role as an associate judge of the probate court; provided, however, that such prohibition shall not apply when he or she is serving as a judge advocate general or in any other military role in a reserve component of the United States Army, United States Navy, United States Marine Corps, United States Coast Guard, United States Air Force, United States National Guard, Georgia National Guard, Georgia Air National Guard, Georgia Naval Militia, or the State Defense Force. It shall be unlawful for any part-time associate judge of the probate court to engage directly or indirectly in the practice of law in his or her own name

or in the name of another as a partner in any manner in any case, proceeding, or matter of any kind in his or her own court or in any other court in any case, proceeding, or any other matters of which his or her own court has pending jurisdiction or has jurisdiction. It shall be unlawful for any associate judge of the probate court, full-time or part-time, to give advice or counsel to any person on any matter of any kind whatsoever that has arisen directly or indirectly in his or her own court, except such advice or counsel as he or she is called upon to give while performing the duties of an associate judge of the probate court."; rewrote paragraph (e)(2), which read: "The provisions of subsection (b) of Code Section 15-9-2 regarding limitations on the fiduciary role apply to both full-time and part-time associate judges of the probate court."; deleted subsection (f), which read: "**Assumption of duties upon vacancy in the office of judge of probate court.** Notwithstanding the provisions of subsection (c) of Code Section 15-9-2 or Code Sections 15-9-10, 15-9-11, and 15-9-11.1, the senior full-time associate judge of the probate court shall be the first in line to serve as judge of the probate court in the event of a vacancy in the office of the judge of probate court and shall dispense with any and all unfinished proceedings pursuant to Code Section 15-9-12. The associate judge of the probate court shall be eligible to fill a vacancy in the office of probate judge for the remainder of the unexpired term without regard to whether such associate probate judge meets any residency requirements otherwise imposed by law; however, the associate probate judge shall become a resident of the county before qualifying for election to the office of probate judge. Any associate probate judge taking office as authorized by this subsection shall thereafter be eligible to succeed himself or herself as long as he or she remains a resident of the county."; redesignated former subsection (g) as present subsection (f), and, rewrote subsection (f), which read: "**Proceedings when an associate judge of the probate court is disqualified.** Whenever the judge of the probate court is disqualified to act in any case pursuant to Code Section 15-9-13, the associate judge of the probate court shall also be disqualified."

Editor's notes. — Ga. L. 2017, p. 157, § 1-1/HB 126, not codified by the General Assembly, provides: "Part I of this Act shall be known and may be cited as 'The Judicial Qualifications Commission Improvement Act of 2017.'"

Law reviews. — For annual survey on wills, trusts, guardianships, and fiduciary administration, see 61 Mercer L. Rev. 385 (2009).

15-9-3. Restrictions on practice of law.

No judge of a probate court shall engage, directly or indirectly, in the practice of law in his or her own name or in the name of another, as open or silent partner, or otherwise:

(1) In any case or proceeding in his or her own court;

(2) In another court in a case or matter of which his or her own court has, has had, or may have jurisdiction; or

(3) In any court or any matter whatever, on behalf of or against any executor, administrator, guardian, trustee, or other individual acting in a representative capacity whose duty it is to make returns to his or her court, except to give such advice or instructions as his or her duty may require as judge in his or her own court, for which he or she shall receive only such fees as are prescribed by law.

History. — Ga. L. 1851-52, p. 91, § 20; Ga. L. 1859, p. 18, § 1; Code 1863, § 312; Code 1868, § 372; Code 1873, § 339; Code 1882, § 339; Ga. L. 1889, p. 46, § 1; Civil Code 1895, § 4242; Civil Code 1910, § 4800; Code 1933, § 24-1715; Ga. L. 2018, p. 356, § 1-4/SB 436.

The 2018 amendment, effective July 1, 2018, inserted "or her" throughout this Code section; in paragraph (3), substituted "on behalf" for "in behalf" near the beginning, substituted "individual" for "person" near the middle, deleted "of him" following "duty may require" in the middle, and inserted "or she" near the end.

Cross references. — Regulation of practice of law generally, § 15-19-50 et seq.

JUDICIAL DECISIONS

Ordinary (now probate judge) cannot give an opinion as attorney of construction of will which might come under the ordinary's (now probate judge's) jurisdiction. Massey v. Calhoun, 26 Ga. 127 (1858).

Probate judge cannot bring suit on bond of administrator subject to the judge's jurisdiction. Smith v. Andrews, 70 Ga. 708 (1883).

Cited in Roberts v. State, 280 Ga. App. 672, 634 S.E.2d 790 (2006).

RESEARCH REFERENCES

Am. Jur. 2d. — 46 Am. Jur. 2d, Judges, § 46.

C.J.S. — 48A C.J.S., Judges, § 48.

ALR. — What amounts to practice of law within contemplation of constitutional or statutory provision which makes such practice a condition of eligibility to a judicial office or forbids it by one holding a judicial position, 106 A.L.R. 508.

Propriety and permissibility of judge engaging in practice of law, 89 A.L.R.2d 886.

Validity and application of state statute prohibiting judge from practicing law, 17 A.L.R.4th 829.

Failed applicant's right of access to bar examination questions and answers, 57 A.L.R.4th 1212.

15-9-4. (For effective date, see note.) Additional judicial eligibility requirements in certain counties.

(a) No individual elected judge of the probate court in any county provided for in this Code section shall engage in the private practice of law.

(b) (For effective date, see note.) Except as otherwise provided by subsection (c) of this Code section, in any county of this state having a population of more than 90,000 persons according to the United States decennial census of 2010 or any future such census and in which the probate court of such county meets the definition of a probate court as provided by Article 6 of this chapter, no individual shall be judge of the probate court unless at the time of election, in addition to the qualifications required by law, he or she has attained the age of 30 years, has been admitted to practice law for seven years preceding election, is a member in good standing with the State Bar of Georgia, and has been duly reinstated to the practice of law in the event of his or her disbarment therefrom.

(c) A judge of the probate court holding such office on or after June 30, 2000, shall continue to hold such office and shall be allowed to seek reelection for such office. Notwithstanding the requirement that in certain counties the judge of the probate court be admitted to practice law for seven years preceding election, no decision, judgment, ruling or other official action of any judge of the probate court shall be overturned, denied, or overruled based solely on this requirement for qualification, election, and holding the office of judge of the probate court.

History. — Code 1933, § 24-1711.1, enacted by Ga. L. 1953, Jan.-Feb. Sess., p. 2739, §§ 1, 2, 2A; Ga. L. 1959, p. 358, § 1; Ga. L. 1971, p. 3065, § 1; Ga. L. 1979, p. 954, § 1; Ga. L. 1986, p. 1581, § 1; Ga. L. 1987, p. 406, § 1; Ga. L. 1994, p. 1665, § 1; Ga. L. 2002, p. 811, § 1; Ga. L. 2009, p. 827, § 2/HB 495; Ga. L. 2012, p. 683, § 1/HB 534; Ga. L. 2018, p. 356, § 1-5/SB 436; Ga. L. 2020, p. 377, § 2-14/HB 865.

Delayed effective date. — Subsection (b), as set out above, becomes effective January 1, 2021. For version of subsection (b) in effect until January 1, 2021, see the 2020 amendment note.

The 2018 amendment, effective July 1, 2018, substituted "individual" for "person" near the beginning of subsection (a).

The 2020 amendment, effective January 1, 2021, in subsection (b), substituted "individual" for "person", substituted "years," for "years and", and added ", is a member in good standing with the State Bar of Georgia, and has been duly reinstated to the practice of law in the event of his or her disbarment therefrom" at the end.

Law reviews. — For article, "The Selection and Tenure of Judges," see 2 Ga. St. B. J. 281 (1966). For annual survey article on legal ethics, see 52 Mercer L. Rev. 323 (2000).

JUDICIAL DECISIONS

Cited in Rary v. Guess, 129 Ga. App. 102, 198 S.E.2d 879 (1973); Mathews v. Gibbs, 238 Ga. 680, 235 S.E.2d 3 (1977); Waters v. Stewart, 263 Ga. App. 195, 587 S.E.2d 307 (2003).

OPINIONS OF THE ATTORNEY GENERAL

Additional requirements apply to all, unless grandfathered in. — Additional eligibility requirements applicable to the office of judge of the probate court in counties having a population of 96,000 persons or more according to the most recent decennial census apply to all candidates for the office, including incumbents, as of the first election following the effective date of the applicable census, except for those incumbents who held office on July 1, 1994, and remained continually in office, as such incumbents are "grandfathered in" and may continue in office and to seek reelection as long as the incumbents are otherwise qualified. 2002 Op. Att'y Gen. No. U2002-3.

Bar admission and membership requirement. — Probate judge serving in a county subject to the requirements of O.C.G.A. § 15-9-4 must have been admitted to the practice of law and be a member of the Georgia Bar for seven years prior to his or her election. 2008 Op. Att'y Gen. No. U2008-1.

RESEARCH REFERENCES

Am. Jur. 2d. — 46 Am. Jur. 2d, Judges, § 5 et seq.

Am. Jur. Proof of Facts. — Proof of Waiver of Attorney-Client Privilege, 32 POF3d 189.

ALR. — Validity and construction of constitutional or statutory provisions making legal knowledge or experience a condition of eligibility for judicial office, 71 A.L.R.3d 498.

15-9-5. When judge ineligible for reelection.

If any judge of the probate court fails to account faithfully as executor, administrator, or guardian after becoming judge, for all trusts he or she held at the time of his or her election, such judge shall be ineligible for reelection.

History. — Ga. L. 1851-52, p. 91, § 4; Code 1863, § 311; Code 1868, § 371; Code 1873, § 336; Code 1882, § 336; Civil Code 1895, § 4237; Civil Code 1910, § 4795; Code 1933, § 24-1712; Ga. L. 2018, p. 356, § 1-6/SB 436.

The 2018 amendment, effective July 1, 2018, in this Code section, inserted "or she" and "or her" in the middle, and substituted "such judge shall be" for "he is" near the end.

JUDICIAL DECISIONS

Cited in Pembroke State Bank v. Warnell, 218 Ga. App. 98, 461 S.E.2d 231 (1995).

RESEARCH REFERENCES

Am. Jur. 2d. — 46 Am. Jur. 2d, Judges, § 43 et seq.

15-9-6. Oath of office.

Before entering on the duties of their offices, the judges of the probate courts must take and file the oaths required of all civil officers and, in addition, the following oath:

> "I do swear that I will well and faithfully discharge the duties of judge of the probate court for the County of _____, during my continuance in office, according to law, to the best of my knowledge and ability, without favor or affection to any party, and that I will only receive my legal fees. So help me God."

History. — Ga. L. 1851-52, p. 91, § 15; Code 1863, § 296; Code 1868, § 356; Code 1873, § 320; Code 1882, § 320; Civil Code 1895, § 4221; Code 1910, § 4779; Code 1933, § 24-1703.

Law reviews. — For survey of 1995 Eleventh Circuit cases on trial practice and procedure, see 47 Mercer L. Rev. 907 (1996).

OPINIONS OF THE ATTORNEY GENERAL

Probate judge to marry parties although not of the same race. — Probate judge may not decline to perform a marriage ceremony because the parties are not of the same race. 1983 Op. Att'y Gen. No. U83-31.

RESEARCH REFERENCES

Am. Jur. 2d. — 46 Am. Jur. 2d, Judges, § 10.

C.J.S. — 48A C.J.S., Judges, § 23.

ALR. — Civil liability of judicial officer for malicious prosecution or abuse of process, 64 A.L.R.3d 1251.

15-9-7. Bond.

The judges of the probate courts shall give bond or surety in the sum of $100,000.00, which amount may be increased in any county by local Act, for the faithful discharge of their duties as clerks of the judges of the probate courts. The county governing authority shall pay such bond.

History. — Ga. L. 1851-52, p. 91, § 14; Code 1863, § 297; Code 1868, § 357; Code 1873, § 321; Code 1882, § 321; Civil Code 1895, § 4222; Civil Code 1910, § 4780; Code 1933, § 24-1704; Ga. L. 1965, p. 453, § 1; Ga. L. 1975, p. 922, § 1; Ga. L. 1982, p. 3, § 15; Ga. L. 2018, p. 356, § 1-7/SB 436.

The 2018 amendment, effective July 1, 2018, in the first sentence, substituted "shall give" for "must give" near the middle, substituted "$100,000.00" for "$25,000.00", and added the second sentence.

Cross references. — Official bonds generally, § 45-4-1 et seq.

JUDICIAL DECISIONS

Failure to take security from tax collector not breach of bond. — Breach of the bond does not occur when the ordinary (now probate judge) failed to take security from a county tax collector. Smith v. Taylor, 56 Ga. 292 (1876).

Acts of de facto probate judge are valid. — Ordinary-elect (now probate judge) is a de facto officer, whose acts are valid when the public, or third persons are concerned, even though the ordinary elect's (now probate judge's) bond was not approved until a later time. Merchants & Planters Bank v. Citizens Bank, 147 Ga. 366, 94 S.E. 229, 1918B L.R.A. 1122 (1917).

Dual nature of duties of probate judge. — Duties of an ordinary (now probate judge), under the laws of this state, are of a dual nature — the person acts as judge of the court of ordinary (now probate court) and also as clerk of that court. Jones v. Reed, 58 Ga. App. 72, 197 S.E. 665 (1938).

Suit against probate judge for acts or omissions as clerk. — Ordinary (now probate judge), or the ordinary's (now probate judge's) sureties alone, may be sued by the state, on the ordinary's (now probate judge's) bond payable to the governor for any act or omission which pertains to duties as clerk but not for judicial acts. An act imposing additional duties may provide for liability on the bond. State v. Henderson, 120 Ga. 780, 48 S.E. 334 (1904).

Ordinary (now probate judge) is not liable on the ordinary's (now probate judge's) bond for any judicial act, but the ordinary (now probate judge) is liable for any neglect or omission which pertains to the ordinary's (now probate judge's) duty as clerk. Jones v. Reed, 58 Ga. App. 72, 197 S.E. 665 (1938).

Presumption that probate judge received money in capacity as clerk of court. — If there is a suit pending in the

court of ordinary (now probate court), and the ordinary (now probate judge) issues thereon an order or judgment authorizing the payment of certain money into the court of ordinary (now probate court), nothing else appearing, and the ordinary (now probate judge) receives the money, it will afterward be presumed that the ordinary (now probate judge) received the money in the capacity as clerk of that court. Jones v. Reed, 58 Ga. App. 72, 197 S.E. 665 (1938).

RESEARCH REFERENCES

Am. Jur. 2d. — 46 Am. Jur. 2d, Judges, § 10.
C.J.S. — 48A C.J.S., Judges, § 22.

15-9-8. Qualification; bond.

The several judges of the superior courts in their respective circuits shall have the power and it shall be their duty to qualify the judges of the probate courts of the several counties in their circuits, to approve the official bonds of the judges of the probate courts, and to cause the bonds to be returned to the Secretary of State with the dedimus, to be filed with the office of the Secretary of State. In all cases a certified copy of the bond shall be sufficient original evidence on which to bring an action and recover.

History. — Ga. L. 1871-72, p. 33, § 1; Code 1873, § 254; Code 1882, § 254; Civil Code 1895, § 4220; Civil Code 1910, § 4778; Code 1933, § 24-1705; Ga. L. 1978, p. 1038, § 1; Ga. L. 2018, p. 356, § 1-8/SB 436.

The 2018 amendment, effective July 1, 2018, deleted the former third sentence, which read: "This Code section shall extend to clerks of the superior courts when serving as judges of the probate court during vacancies in that office, and such officers must qualify at or before the spring term of the court after their election."

15-9-9. When other security ordered; failure to comply.

If, at any time during the term of the judge of the probate court, it is made satisfactorily to appear to the judge of the superior court that the bond of the judge of the probate court is insufficient or the security thereof insolvent, it shall be his or her duty to require other security. On failure of the judge of the probate court to comply with the order of the superior court judge, a vacancy shall be declared as if such judge had failed to give security in the first instance.

History. — Ga. L. 1871-72, p. 53, § 2; Code 1873, § 322; Code 1882, § 322; Civil Code 1895, § 4223; Civil Code 1910, § 4781; Code 1933, § 24-1706; Ga. L. 2018, p. 356, § 1-9/SB 436.

The 2018 amendment, effective July 1, 2018, inserted "or her" near the end of the first sentence, and substituted "such judge" for "he" near the end of the second sentence.

RESEARCH REFERENCES

C.J.S. — 48A C.J.S., Judges, § 22.
ALR. — Unauthorized practice of law as contempt, 40 A.L.R.6th 463.

15-9-10. Temporary filling of vacancy; order of priority; compensation.

(a) If at any time there is a vacancy in the office of judge of the probate court, such vacancy shall be filled as set forth in Code Section 15-9-11. Any individual serving during such vacancy shall be vested with all the powers of the judge of the probate court.

(b)(1) Except as provided in subsection (b) of Code Section 15-9-11, until such time as a special election can be held, a vacancy shall be filled in the following order of priority:

(A) By an associate judge of the probate court, in order of seniority. In any county in which an associate judge of the probate court has been appointed and such associate judge meets all of the qualifications for serving as probate judge, then he or she shall discharge the duties of the office of judge of the probate court. An associate judge shall be eligible to fill a vacancy in the office of probate judge until the special election without regard to whether such associate judge meets the residency requirement set forth in subparagraph (a)(1)(B) of Code Section 15-9-2; provided, however, that the associate judge shall meet the requirements of law before qualifying for election to the office of judge of the probate court; or

(B) By the chief clerk of the probate court. In any county in which a chief clerk of the probate court has been appointed and such clerk meets all of the qualifications for serving as probate judge, then he or she shall discharge the duties of the office of judge of the probate court.

(2) If any individual designated in paragraph (1) of this subsection does not wish to serve as judge of the probate court to fill a vacancy, he or she shall express that desire by delivering such declination in writing to the chief judge of the superior court for the circuit to which the county is assigned.

(3) If there is no associate judge for the probate court and the chief clerk is not eligible to serve or all such individuals decline to serve, the chief judge of the superior court in the circuit to which the county is assigned shall appoint an individual to serve as judge during a vacancy.

(c) The sole county commissioner or the board of county commissioners shall fix the compensation of the individual who serves as judge

until the vacancy is filled. The compensation shall be paid from the general funds of the county. The fees collected during such period of time shall be paid into the general funds of the county.

History. — Ga. L. 1851-52, p. 50, § 1; Ga. L. 1851-52, p. 91, § 13; Code 1863, § 298; Code 1868, § 358; Ga. L. 1871-72, p. 28, § 1; Code 1873, § 323; Code 1882, § 323; Civil Code 1895, § 4224; Civil Code 1910, § 4782; Code 1933, § 24-1707; Ga. L. 1951, p. 129, § 1; Ga. L. 1969, p. 290, § 1; Ga. L. 1982, p. 2107, § 9; Ga. L. 1983, p. 884, § 3-13; Ga. L. 1994, p. 237, § 2; Ga. L. 2018, p. 356, § 1-10/SB 436.

The 2018 amendment, effective July 1, 2018, substituted the present provisions of the first three sentences of subsection (a) for the former provisions, which read: "Until a vacancy in the office of judge of the probate court is filled, the chief judge of the city or state court, as the case may be, shall serve as the judge and shall be vested with all the powers of the judge. If there is no such chief judge or if for some reason the chief judge cannot serve as judge, the clerk of the superior court of the county shall serve as judge and shall be vested with all the powers of the judge. In the event that the clerk of the superior court, for some reason, cannot serve as judge, the chief judge of the superior court of the county shall appoint a person to serve as judge; such person shall be vested with all the powers of the judge."; designated the existing provisions of the fourth through sixth sentences of subsection (a) as subsection (c); added subsection (b); deleted former subsection (b), which read: "Reserved."; and, in subsection (c), in the first sentence, inserted "sole county commissioner or the" near the beginning, substituted "commissioners shall fix the compensation of the individual" for "commissioners or, in those counties which have no commissioners, the chief judge of the superior court shall fix the compensation of the person" in the middle.

Cross references. — Filling of vacancies in public office generally, § 45-5-1 et seq.

JUDICIAL DECISIONS

Cited in Bosworth v. Walters, 46 Ga. 635 (1872); Pearson v. Lee, 173 Ga. 496, 160 S.E. 369 (1931); Cloud v. Maxey, 195 Ga. 90, 23 S.E.2d 668 (1942).

15-9-11. Special election to fill vacancy; term of individual elected.

(a) When a vacancy occurs in the office of judge of the probate court in any county, it shall be the duty of the individual who assumes the duties of the judge, as provided in Code Section 15-9-10, within ten days after the vacancy occurs, to order a special election for the purpose of filling the vacancy. The election superintendent shall give notice of the special election by publication in the newspaper in which the citations of the judge of the probate court are published. The special election shall be held in accordance with Chapter 2 of Title 21.

(b) Notwithstanding subsection (a) of this Code section, if the vacancy occurs after January 1 in the last year of the term of office of the judge of probate court, the individual assuming the duties of the judge of the probate court shall be commissioned for and shall serve the remainder of the unexpired term of office.

(c) If a special election is held, the individual elected to fill the vacancy shall be commissioned for the unexpired term.

History. — Ga. L. 1851-52, p. 50, § 1; Ga. L. 1851-52, p. 91, § 13; Code 1863, §§ 298, 299; Code 1868, §§ 358, 359; Ga. L. 1871-72, p. 28, § 1; Code 1873, §§ 323, 324; Code 1882, §§ 323, 324; Civil Code 1895, §§ 4224, 4225; Civil Code 1910, §§ 4782, 4783; Code 1933, §§ 24-1707, 24-1708; Ga. L. 1951, p. 129, § 1; Ga. L. 1969, p. 290, § 1; Ga. L. 2009, p. 827, § 3/HB 495; Ga. L. 2018, p. 356, § 1-11/SB 436.

The 2018 amendment, effective July 1, 2018, substituted "individual" for "person" in the first sentence of subsection (a) and in the middle of subsection (b); substituted "The election superintendent" for "He or she" at the beginning of the second sentence of subsection (a); designated the fourth sentence of subsection (a) as subsection (b), and, in subsection (b), substituted "subsection (a) of this Code section" for "the provisions of this subsection" near the middle; redesignated former subsection (b) as present subsection (c), and, in subsection (c), substituted "If a special election is held, the individual" for "The person" at the beginning.

Cross references. — Filling of vacancies in public office generally, § 45-5-1 et seq.

OPINIONS OF THE ATTORNEY GENERAL

Plurality of votes decides election. — Providing for the calling of an election to fill a vacancy in the office of ordinary (now probate judge), a plurality of votes would decide such election. 1952-53 Op. Att'y Gen. p. 354.

RESEARCH REFERENCES

Am. Jur. 2d. — 46 Am. Jur. 2d, Judges, §§ 29 et seq., 232 et seq.

C.J.S. — 48A C.J.S., Judges, §§ 37, 40, 41.

15-9-11.1. Assumption of duties by chief clerk upon vacancy in office of probate judge; filling of vacancy; compensation.

Repealed by Ga. L. 2018, p. 356, § 1-12/SB 436, effective July 1, 2018.

Editor's notes. — This Code section was based on Code 1981, § 15-9-11.1, enacted by Ga. L. 1982, p. 544, § 1; Ga. L. 1986, p. 1581, § 2; Ga. L. 1988, p. 586, § 1; Ga. L. 1989, p. 361, § 1; Ga. L. 1990, p. 568, § 1; Ga. L. 1992, p. 2104, § 1.

15-9-12. Disposition of unfinished proceedings of predecessor.

All citations and other unfinished proceedings of the former judge of the probate court shall be disposed of by the successor as though there had been no vacancy.

History. — Orig. Code 1863, § 300; Code 1868, § 360; Code 1873, § 325; Code 1882, § 325; Civil Code 1895, § 4226; Civil Code 1910, § 4784; Code 1933, § 24-1709.

Cross references. — Filling of vacancies in public office generally, § 45-5-1 et seq.

RESEARCH REFERENCES

Am. Jur. 2d. — 46 Am. Jur. 2d, Judges, §§ 29 et seq., 232 et seq.

C.J.S. — 48A C.J.S., Judges, § 75 et seq.

ALR. — Power of successor or substituted judge in civil case to render decision or enter judgment on testimony heard by predecessor, 84 A.L.R.5th 399.

15-9-13. Procedure when judge unable to act; compensation.

(a) Whenever a judge of the probate court is unable to act in any case because of sickness, absence, or any other reason, an associate judge of the probate court, in order of seniority, shall exercise the jurisdiction of the probate court, unless he or she is disqualified under subsection (f) of Code Section 15-9-2.1. Whenever a judge of the probate court is unable to act in any case because of sickness, absence, or any other reason and an associate judge is unable to act, the judge of the probate court may appoint an attorney at law who is a member of the State Bar of Georgia to exercise the jurisdiction of the probate court. If, however, the inability of the probate judge to act arises from any unlawful act or the accusation of an unlawful act on the part of the probate judge, the probate judge shall not appoint an attorney and only another judge shall exercise the jurisdiction of the probate court.

(b) If for any reason the judge of the probate court fails to appoint an attorney to serve, the chief judge of the superior court shall appoint an individual to serve and exercise the jurisdiction of the judge of the probate court in the case.

(c) Except as otherwise provided in paragraph (4) of subsection (a) of Code Section 15-9-2.1, the compensation of the individual serving as provided in this Code section shall be fixed by the board of county commissioners or, in those counties which have no county commissioners, by the chief judge of the superior court. The compensation shall be paid from the general funds of the county. All fees collected during such service by an individual who is not an associate judge of the probate court shall be paid into the general funds of the county.

History. — Ga. L. 1889, p. 100, § 1; Civil Code 1895, § 4227; Ga. L. 1897, p. 52, § 1; Ga. L. 1907, p. 107, § 1; Civil Code 1910, § 4785; Code 1933, § 24-1710; Ga. L. 1951, p. 129, § 2; Ga. L. 1953, Nov.-Dec. Sess., p. 182, § 1; Ga. L. 1978, p. 891, § 1; Ga. L. 1983, p. 3, § 50; Ga. L. 1983, p. 544, § 1; Ga. L. 1983, p. 884, § 3-14; Ga. L. 1987, p. 1482, § 2; Ga. L. 2018, p. 356, § 1-13/SB 436.

The 2018 amendment, effective July 1, 2018, substituted the present provisions of subsection (a) for the former provisions, which read: "Whenever a judge of the probate court is disqualified to act in any case or because of sickness, absence, or any other reason is unable to act in any case, the judge of the probate court may appoint an attorney at law who is a member of the State Bar of Georgia to exercise the jurisdiction of the probate court. If the judge of the probate court does not so appoint, the judge of the city or state court, as the case may be, shall exercise all the jurisdiction of the judge of the probate court in the case. If, however, the

inability of the probate judge to act arises from any unlawful act or the accusation of an unlawful act on the part of the probate judge, the probate judge may not appoint an attorney and only another judge shall exercise the jurisdiction of the probate court."; deleted former subsection (b), which read: "If there is no such judge or if for some reason the judge cannot serve in the case, the clerk of the judge of the probate court shall exercise all the jurisdiction of the judge of the probate court in the case."; redesignated former subsections (c) and (d) as present subsection (b) and (c), respectively; in subsection (b), deleted "clerk of the" following "reason the" near the beginning, substituted "fails to appoint an attorney to serve, the chief judge" for "cannot serve in such case, the judge" near the middle, and substituted "an individual" for "a person" in the middle; in subsection (c), in the first sentence, substituted "Except as otherwise provided in paragraph (4) of subsection (a) of Code Section 15-9-2.1, the" for "The" at the beginning, substituted "individual" for "person" near the middle, and inserted "chief" near the end, and, in the third sentence, substituted "such service by an individual who is not an associate judge of the probate court" for "the service".

Cross references. — Filling of vacancies in public office generally, § 45-5-1 et seq. Appointment of attorney to act in probate court judge's absence, Uniform Rules for the Probate Courts, Rule 3.

JUDICIAL DECISIONS

Service by other officers when probate judge disqualified. — If an ordinary (now probate judge) of a given county is disqualified in any matter coming before the court, the county judge or the city court judge, and, if there be neither of such courts, then the clerk of the superior court of such ordinary's (now probate judge's) county may exercise all the jurisdiction of the ordinary (now probate judge) in such case. Maddox v. First Nat'l Bank, 191 Ga. 106, 11 S.E.2d 662 (1940) (decided prior to 1983 amendment).

Probate judge of adjoining county not to assume jurisdiction of disqualified judge. — Since the adoption of the Code of 1933 there is no authority in the ordinary (now probate judge) of an adjoining county to assume jurisdiction when an ordinary (now probate judge) of a given county is disqualified, the previous law as to the authority of the ordinary (now probate judge) of an adjoining county, as contained in the Civil Code of 1910, § 4785 having been repealed by the Code of 1933. Maddox v. First Nat'l Bank, 191 Ga. 106, 11 S.E.2d 662 (1940).

Parol evidence of disqualification on account of relationship to parties to the probate of a will is admissible. McAfee v. Flanders, 138 Ga. 403, 75 S.E. 319 (1912).

Failure to follow procedures results in nullity. — Appellants successfully argued that the record was utterly devoid of any indication that the procedure in O.C.G.A. § 15-9-13 was followed in order to authorize the superior court judge to sit over the probate of the decedent's will. No written order was entered pursuant to Uniform Probate Court Rule 3 for the appointment of the superior court judge to act in the probate judge's absence. Thus, the superior court judge was not sitting over the probate proceedings in replacement for the recused probate court judge. Because the superior court lacks subject matter jurisdiction to hear the probate of a will, it follows that the judgment rendered by the superior court here was a nullity and void. Carpenter v. Carpenter, 276 Ga. 746, 583 S.E.2d 852 (2003).

Cited in Holtzendorf v. Glynn, 79 Ga. App. 44, 52 S.E.2d 671 (1949); Taylor v. Young, 253 Ga. App. 585, 560 S.E.2d 40 (2002).

OPINIONS OF THE ATTORNEY GENERAL

Assistance to state courts by replacement probate judge. — Replacement probate judge appointed in good faith pursuant to subsection (a) of

O.C.G.A. § 15-9-13 may provide assistance to the state courts so long as that individual satisfies the qualifications of judges of the state courts under O.C.G.A. § 15-7-21(a)(1), and the request for assistance complies with the terms specified by O.C.G.A. § 15-1-9.1(f). 1994 Op. Att'y Gen. No. U94-12.

Neither attorneys nor clerks may perform marriage ceremonies. — Neither attorneys appointed pursuant to O.C.G.A. § 15-9-13(a), nor the clerks of the probate court, may perform marriage ceremonies, in that such power is inherently a personal one of the probate judge pursuant to O.C.G.A. § 19-3-30(c). 1988 Op. Att'y Gen. No. U88-22.

RESEARCH REFERENCES

Am. Jur. 2d. — 46 Am. Jur. 2d, Judges, § 218 et seq.

C.J.S. — 48A C.J.S., Judges, §§ 37, 40, 41.

ALR. — Power of judge pro tempore or special judge, after expiration of period for which he was appointed, to entertain motion or assume further jurisdiction in case previously tried before him, 134 A.L.R. 1129.

15-9-14. Sheriffs to act as administrators when probate judge is superior court clerk in absence of county administrator.

Reserved. Repealed by Ga. L. 2018, p. 356, § 1-14/SB 436, effective July 1, 2018.

Editor's notes. — The former Code section was based on Orig. Code 1863, § 304; Code 1868, § 364; Code 1873, § 329; Code 1882, § 329; Civil Code 1895, § 4230; Civil Code 1910, § 4788; Code 1933, § 24-1713.

15-9-15. Council of Probate Court Judges of Georgia.

(a) There is created a council to be known as "The Council of Probate Court Judges of Georgia." The council shall be composed of the judges of the probate courts of this state. The council is authorized to organize itself and to develop a constitution and bylaws. The officers of said council shall consist of a president, president-elect, vice president, secretary-treasurer, and such other officers and committees as the council shall deem necessary.

(b) It shall be the purpose of The Council of Probate Court Judges of Georgia to effectuate the constitutional and statutory responsibilities conferred on it by law and to further the improvement of the probate courts and the administration of justice.

(c) Expenses of the administration of the council shall be paid from state funds appropriated for that purpose or from other funds available to the council.

(d) The council through its officers may contract with a person or firm including any member of the council for the production of educational material and compensate said member for producing such

material, provided that funds are available to the council at the time of execution of the contract or will be available at the time of the completion of the contract and provided that the terms of the contract are disclosed to the full council and made available to the general public and news media. At the request of the council, the Administrative Office of the Courts shall be authorized to act as the agent of the council for the purpose of supervising and implementing the contract.

History. — Code 1981, § 15-9-15, enacted by Ga. L. 1988, p. 743, § 1; Ga. L. 1989, p. 1247, § 1; Ga. L. 2018, p. 356, § 1-15/SB 436.

The 2018 amendment, effective July 1, 2018, in subsection (a), deleted "and judges emeriti" following "the judges" in the middle of the second sentence, and substituted "president-elect," for "first vice president, second" in the middle of the fourth sentence.

15-9-16. Authority of retired judge to perform marriage ceremonies.

A retired judge of a probate court of any county of this state shall be vested with the same authority as an active judge of this state for the purpose of performing marriage ceremonies.

History. — Code 1981, § 15-9-16, enacted by Ga. L. 1989, p. 593, § 1; Ga. L. 1990, p. 8, § 15; Ga. L. 1992, p. 6, § 15; Ga. L. 2018, p. 356, § 1-16/SB 436.

The 2018 amendment, effective July 1, 2018, deleted the last sentence of this Code section, which read: "For purposes of this Code section, a retired judge of a probate court shall be one who has served as probate judge not less than 12 years."

Law reviews. — For comment, "By the Power Vested in Me? Licensing Religious Officials to Solemnize Marriage in the Age of Same-Sex Marriage," see 63 Emory L. J. 979 (2014).

15-9-17. (For effective date, see note.) Serving a minor or incapacitated adult.

(a) Notwithstanding the provisions of Code Section 15-9-122 or any other provision of law to the contrary, in any action before the probate court in which the service of notice on a minor or an incapacitated adult is required by law or ordered by the probate court, such service of notice may be made by:

(1) Mailing by the probate court of a copy of the document to be served to the minor or incapacitated adult by certified mail or statutory overnight delivery, return receipt requested; and

(2) Serving the guardian of such minor or incapacitated adult if such guardian:

(A) Acknowledges receipt of such service; and

(B) Certifies that he or she has delivered a copy of the document so served to the minor or incapacitated adult.

(b) The acknowledgment of service and certification of such guardian and the certificate of the service by mailing on such minor or incapacitated adult shall be filed with the probate court as proof of such service of notice.

(c) As used in this Code section, the term "guardian" shall have the same meaning provided in Code Section 53-1-2.

History. — Code 1981, § 15-9-17, enacted by Ga. L. 1994, p. 725, § 1; Ga. L. 2000, p. 1589, § 3; Ga. L. 2018, p. 356, § 1-17/SB 436; Ga. L. 2020, p. 377, § 2-15/HB 865.

Delayed effective date. — This Code section, as set out above, becomes effective January 1, 2021. For version of this Code section in effect until January 1, 2021, see the 2020 amendment note.

The 2018 amendment, effective July 1, 2018, designated the existing provisions of this Code section as subsections (a) and (b).

The 2020 amendment, effective January 1, 2021, in subsection (a), inserted "notice on", "by law or ordered by the probate court", and "of notice" in the introductory text; inserted ", return receipt requested" in paragraph (a)(1); and substituted "guardian" for "legal guardian or guardian ad litem" twice in paragraph (a)(2); in subsection (b), inserted "of service", substituted "such guardian" for "the legal guardian or guardian ad litem", inserted "service by", substituted "on such" for "to the", inserted "probate", and inserted "of notice" at the end; and added subsection (c).

Editor's notes. — Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provides that the amendment to paragraph (1) is applicable with respect to notices delivered on or after July 1, 2000.

Law reviews. — For note on the 1994 enactment of this Code section, see 11 Ga. St. U.L. Rev. 97 (1994).

15-9-18. Remittance of interest from cash bonds.

Whenever the sheriff transfers cash bonds to the clerk of the court, pursuant to Code Section 15-16-27, the clerk of the probate court shall deposit such funds into interest-bearing trust accounts, and the interest from those funds shall be remitted to the Georgia Superior Court Clerks' Cooperative Authority in accordance with subsections (c) through (i) of Code Section 15-6-76.1 for distribution to the Georgia Public Defender Council.

History. — Code 1981, § 15-9-18, enacted by Ga. L. 2000, p. 1306, § 1; Ga. L. 2003, p. 191, § 4; Ga. L. 2008, p. 846, § 7/HB 1245; Ga. L. 2015, p. 519, § 8-4/HB 328; Ga. L. 2018, p. 356, § 1-18/SB 436.

The 2018 amendment, effective July 1, 2018, inserted "of the probate court" near the middle, and deleted "the provisions of" following "in accordance with" in the middle.

Cross references. — Public Defender Standards Council, T. 17, C. 12.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2000, a period was added at the end of this Code section.

Administrative rules and regulations. — Grant programs, Official Compilation of the Rules and Regulations of the State of Georgia, Grants of Georgia Indigent Defense Council, Chapter 294-1.

Law reviews. — For note on 2000 enactment of this Code section, see 17 Ga. St. U.L. Rev. 73 (2000). For note on the 2003 amendment to this Code section, see 20 Ga. St. U.L. Rev. 105 (2003).

ARTICLE 2

JURISDICTION, POWER, AND DUTIES

Cross references. — Jurisdiction, Ga. Const. 1983, Art. VI, Sec. III, Para. I.

Law reviews. — For article, "Courts: Juvenile Justice Reform," see 30 Ga. St. U. L. Rev. 63 (2013).

15-9-30. Subject matter jurisdiction; powers and duties generally; copy of Official Code of Georgia Annotated furnished for each judge.

(a) Probate courts have authority, unless otherwise provided by law, to exercise original, exclusive, and general jurisdiction of the following subject matters:

(1) The probate of wills;

(2) The granting of letters testamentary and of administration and the repeal or revocation of the same;

(3) All controversies in relation to the right of executorship or administration;

(4) The sale and disposition of the property belonging to, and the distribution of, deceased persons' estates;

(5) The appointment and removal of guardians of minors, conservators of minors, guardians of incapacitated adults, and conservators of incapacitated adults and persons who are incompetent because of mental illness or intellectual disability;

(6) All controversies as to the right of guardianship and conservatorship, except that the probate court shall not be an appropriate court to take action under Code Section 19-7-4;

(7) The auditing and passing of returns of all executors, administrators, guardians of property, conservators, and guardians;

(8) The discharge of former sureties and the requiring of new sureties from administrators, guardians of property, conservators, and guardians;

(9) All matters as may be conferred on them by Chapter 3 of Title 37;

(10) All matters as may be conferred on them by Chapter 13 of Title 53;

(11) All other matters and things as appertain or relate to estates of deceased persons and to persons who are incompetent because of mental illness or intellectual disability; and

(12) All matters as may be conferred on them by the Constitution and laws.

(b) In addition to the jurisdiction granted in subsection (a) of this Code section and unless otherwise provided by law, the probate courts shall have the power to carry out the following duties as assigned by specific laws:

(1) Perform county governmental administration duties;

(2) Perform duties relating to elections;

(3) Fill vacancies in public offices by appointment;

(4) Administer oaths to public officers;

(5) Accept, file, approve, and record bonds of public officers;

(6) Register and permit certain enterprises;

(7) Issue marriage licenses;

(8) Hear traffic cases;

(9) Hear cases of violations of game and fish laws;

(10) Hold criminal commitment hearings; and

(11) Perform such other judicial and ministerial functions as may be provided by law.

(c) To assure proper administration of the court's duties, the judge of the probate court of each county shall be furnished a copy of the Official Code of Georgia Annotated and annual supplements to the Code to keep it current. The costs of such Code and maintenance thereof shall be paid by the governing authority of each such county from the county library fund, if sufficient, otherwise any additional amount required shall be paid from the general funds of the county.

History. — Laws 1799, Cobb's 1851 Digest, p. 281; Laws 1810, Cobb's 1851 Digest, p. 283; Ga. L. 1851-52, p. 91, § 1; Ga. L. 1855-56, p. 147, § 1; Code 1863, § 306; Code 1868, § 366; Code 1873, § 331; Code 1882, § 331; Civil Code 1895, § 4232; Civil Code 1910, § 4790; Code 1933, § 24-1901; Ga. L. 1969, p. 505, § 2; Ga. L. 1982, p. 1369, §§ 1, 3; Ga. L. 1982, p. 1502, § 1; Ga. L. 1988, p. 745, § 1; Ga. L. 2009, p. 827, § 4/HB 495; Ga. L. 2015, p. 385, § 4-15/HB 252; Ga. L. 2018, p. 356, § 1-19/SB 436; Ga. L. 2018, p. 1089, § 4/SB 301.

The 2018 amendments. — The first 2018 amendment, effective July 1, 2018, substituted "Hear" for "Receive pleas of guilty and impose sentences in" at the beginning of paragraph (b)(9). The second 2018 amendment, effective July 1, 2018, added paragraph (a)(10); and redesignated former paragraphs (a)(10) and (a)(11) as present paragraphs (a)(11) and (a)(12), respectively.

Cross references. — Issuance of marriage licenses generally, § 19-3-30 et seq. Service by judge of probate court as election superintendent in county not having county board of elections, § 21-2-2(35). Jurisdiction of probate courts with regard to violations of game and fish laws, § 27-1-35. Guardians of minors generally, § 29-2-1 et seq. Guardians of incapacitated adults generally, § 29-4-1 et seq.

Judges of probate courts as legal custodians and distributors of moneys due minors or insane persons not having legal guardian, § 29-8-1 et seq. Orders by court for examination of persons for mental illness, mental retardation or alcoholism, §§ 37-3-62, 37-4-40, and 37-7-62. Probate generally, § 53-3-1 et seq. Administrators and executors and administration of estates generally, §§ 53-6-1 et seq., 53-7-1 et seq. Repeal of local rules, Uniform Rules for the Probate Courts, Rule 1.1.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2018, a semicolon was substituted for a period at the end of paragraph (a)(10).

Editor's notes. — Ga. L. 2015, p. 385, § 1-1/HB 252, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'J. Calvin Hill, Jr., Act.'"

Law reviews. — For article surveying developments in Georgia juvenile court practice and procedure from mid-1980 through mid-1981, see 33 Mercer L. Rev. 167 (1981). For survey article on domestic relations, see 34 Mercer L. Rev. 113 (1982). For survey article on real property, see 34 Mercer L. Rev. 255 (1982). For annual survey on wills, trusts, guardianships, and fiduciary administration, see 67 Mercer L. Rev. 273 (2015). For article on the 2018 amendment of this Code section, see 35 Ga. St. U.L. Rev. 204 (2018).

JUDICIAL DECISIONS

Analysis

General Consideration
General Jurisdiction
Lack of Jurisdiction
Procedure

General Consideration

Judgment is nullity if probate court has no jurisdiction. — If, the fact which alone gives jurisdiction to a court of ordinary (now probate court) be recited, and from that fact it appears that the court has no jurisdiction on the face of the record, then the judgment is a nullity. Davis v. Melton, 51 Ga. App. 685, 181 S.E. 300 (1935).

Judgment nullity when illegal procedure followed. — Judgment and appointment of a guardian was a nullity since the record showed the applicants themselves in a proceeding involving the validity of a will attempted to waive the ten day notice and the court proceeded to declare the testatrix incompetent and appointed a guardian for the testatrix (two of the applicants) in two days without complying with the law. English v. Shivers, 220 Ga. 737, 141 S.E.2d 443 (1965).

Court-appointed guardian need not seek court approval of settlement. — Probate court clearly has jurisdiction to appoint a guardian for a minor. However, a guardian, once appointed, need not obtain the approval of the probate court to settle a contested or doubtful claim for or against the minor. Accordingly, any settlement of the tort claims of minors to which their duly appointed guardian agreed would not have to be approved by the probate court. King Cotton, Ltd. v. Powers, 200 Ga. App. 549, 409 S.E.2d 67 (1991).

Facts considered in exercise of jurisdiction. — Want of jurisdiction in the court of ordinary (now probate court) to grant letters of administration in a particular case is not shown by allegations that at the time of the grant of administration a will was on file in the office of the ordinary (now probate judge), which had been previously propounded, but, no caveat having been interposed, probate was refused on account of failure of the propounder to produce evidence that was accessible to establish the will, and that the will was subsequently probated; such facts may be considered in the exercise of jurisdiction, but those facts are not jurisdictional facts. Scarborough v. Long, 186 Ga. 412, 197 S.E. 796, cert. denied, 305 U.S. 637, 59 S. Ct. 107, 83 L. Ed. 410 (1938).

Court of equity may not impede exclusive jurisdiction of probate court. — Court of ordinary (now probate court) has original and exclusive jurisdiction, in the first instance, of the probate of wills; and a court of equity in the exercise of the court's equity powers has no jurisdiction to enjoin the custodian of an alleged will from offering the will for probate, or for any reason to decree cancellation of an alleged will on which no action has been taken by the court of ordinary (now probate court). The rule that equity seeks to do complete justice will not bring into equitable jurisdiction matters on which another court has exclusive jurisdiction. Furr v. Jordan, 196 Ga. 862, 27 S.E.2d 861 (1943).

While probate proceeding pending, probate court had jurisdiction. — Trial court properly granted the defendant's motion to dismiss the complaint because to the extent the plaintiff's fraud claim was based on the execution of the 2013 will, the trial court did not have jurisdiction to consider that claim since a probate proceeding was pending over which the trial court had no jurisdiction. Copeland v. Miller, 347 Ga. App. 123, 817 S.E.2d 692 (2018).

Probate court may vacate fraudulent judgment probating will. — Both prior to, and since, the Civil Practice Act (see now O.C.G.A. § 9-11-1 et seq.), the court of ordinary (now probate court) has had jurisdiction to vacate the court's judgment probating a will in solemn form which was obtained by fraud or other irregularity that renders the judgment voidable. Dennis v. McCrary, 237 Ga. 605, 229 S.E.2d 367 (1976).

Court of equity can grant relief from fraudulent scheme without usurping jurisdiction of ordinary's (now probate judge's) court by declaring the return of the appraisers in the court of ordinary (now probate court) null and void, and enjoining the defendants from using a year's support proceeding as a device to defraud the creditors of the defendant son. Dukes v. Cairo Banking Co., 220 Ga. 507, 140 S.E.2d 182 (1964).

Court of equity may set aside appointment of administrator obtained by fraud in falsely representing that necessary jurisdictional facts existed. Neal v. Boykin, 129 Ga. 676, 59 S.E. 912, 121 Am. St. R. 237 (1907).

Person not qualified voter cannot be probate judge. — Under application of the provisions of the Constitution and laws of this state, a person who is not a qualified voter is not eligible for the office of ordinary (now probate judge) of a county. Lee v. Byrd, 169 Ga. 622, 151 S.E. 28 (1929).

Superior court had concurrent jurisdiction with probate court. — Executor of the estate and partnership head faced uncertainty with respect to conflicting duties to the partnership and to the estate and beneficiaries; thus, a declaratory judgment was an appropriate vehicle to clarify the executor's obligations, and the Georgia superior court had concurrent jurisdiction with the probate court to address those issues as well as was authorized to exercise the court's concurrent and equitable jurisdiction to decide the requests for the temporary restraining orders. Rentz v. Rentz, 339 Ga. App. 66, 793 S.E.2d 112 (2016).

Concurrent jurisdiction over counterclaim for accounting of estate. — Because the plaintiffs asserted claims for conversion of property and sought a court order requiring the defendants to turn over certain items of personal property, such claims were properly heard by the superior court, as the court of equity and, accordingly, the superior court properly exercised concurrent jurisdiction over the counterclaim for accounting of an estate. Braswell v. Benton, 351 Ga. App. 372, 830 S.E.2d 758 (2019).

Superior court lacks jurisdiction of expected inheritance and gift. — To the extent that the sons' claim concerning their mother's will is one based upon expected inheritance or gift, the superior court has no jurisdiction over the claim while probate proceedings are pending. Morgan v. Morgan, 256 Ga. 250, 347 S.E.2d 595 (1986).

Issue that belongs in probate court. — Trial court in a condemnation action exceeded the court's authority in ruling that the state's tax lien did not have priority over an attorney fee claim against a landlord's estate when the issue be-

General Consideration (Cont'd)

longed first in a probate court proceeding. State Revenue Comm'r v. Fleming, 172 Ga. App. 887, 324 S.E.2d 821 (1984).

Trial court did not err in dismissing a purported beneficiary's complaint alleging that the executors breached the fiduciary duties owed to the beneficiary by wasting the assets of the beneficiary's parents' estates and failing to distribute assets because the claims would be more properly heard by the probate court which had original and exclusive jurisdiction over such matters; the probate court was equipped to handle such claims and had the authority to grant the relief requested, if necessary. Benefield v. Martin, 276 Ga. App. 130, 622 S.E.2d 469 (2005).

Superior court erred in granting an aunt and uncle custody of minor children because the court lacked subject matter jurisdiction to consider the petition for custody since a probate court had exclusive jurisdiction to issue and revoke letters of testamentary guardianship, and O.C.G.A. § 29-2-4(b) mandated the issuance of letters of testamentary guardianship to the brother of the children's father without notice and a hearing and without consideration of the children's best interests; equity afforded no valid basis for the superior court's exercise of jurisdiction because the aunt and uncle had an appropriate remedy in the probate court to challenge the testamentary guardianship: a petition for revocation or suspension of the brother's letters of testamentary guardianship. Zinkhan v. Bruce, 305 Ga. App. 510, 699 S.E.2d 833 (2010).

Improper advisory opinion on validity of will. — Guardian's declaratory judgment action seeking to have an elderly woman's 2013 last will and testament deemed invalid and void was properly dismissed by the trial court because the elderly woman was still alive and may still revoke the 2013 will; therefore, any ruling determining the will's validity constituted an improper advisory opinion. Kellar v. Davis, 350 Ga. App. 385, 829 S.E.2d 466 (2019), cert. denied, No. S19C1423, 2020 Ga. LEXIS 26 (Ga. 2020).

Jurisdiction to remove executrix. — Probate court had jurisdiction to remove the decedent's niece as executrix, due to an alleged conflict of interest; the order did not attempt to determine title to property. In re Estate of Coutermarsh, 325 Ga. App. 288, 752 S.E.2d 448 (2013).

Res judicata. — Court of appeals did not err in holding that res judicata barred a daughter's complaint for breach of contract against a widow because the relevant facts pled in the daughter's prior attempt to set aside the year's support granted to the widow on the basis of fraud were identical to those the daughter alleged in support of the breach of contract claim; the daughter's fraud claim was determined on the merits on appeal to the superior court, and the daughter had a full and fair opportunity to have litigated any related claims against the widow in the action the daughter initially filed in the probate court. Crowe v. Elder, 290 Ga. 686, 723 S.E.2d 428 (2012).

Cited in Burgamy v. Holton, 165 Ga. 384, 141 S.E. 42 (1927); Coleman v. Hodges, 166 Ga. 288, 142 S.E. 875 (1928); Elliott v. Johnson, 178 Ga. 384, 173 S.E. 399 (1934); Bruce v. Fogarty, 53 Ga. App. 443, 186 S.E. 463 (1936); Chapalas v. Papachristos, 185 Ga. 544, 195 S.E. 737 (1937); Jones v. Dean, 188 Ga. 319, 3 S.E.2d 894 (1939); Robinson v. Georgia Sav. Bank & Trust Co., 106 F.2d 944 (5th Cir. 1939); Robitzsch v. State, 189 Ga. 637, 7 S.E.2d 387 (1940); Bacon v. Federal Land Bank, 109 F.2d 285 (5th Cir. 1940); Great Am. Indem. Co. v. Jeffries, 65 Ga. App. 686, 16 S.E.2d 135 (1941); Georgia Baptist Orphans Home v. Weaver, 193 Ga. 669, 19 S.E.2d 272 (1942); Fitzgerald v. Morgan, 193 Ga. 802, 20 S.E.2d 73 (1942); Taylor v. Abbott, 201 Ga. 254, 39 S.E.2d 471 (1946); Hurt v. Cotton States Fertilizer Co., 159 F.2d 52 (5th Cir. 1947); Heath v. Jones, 168 F.2d 460 (5th Cir. 1948); Tucker v. American Sur. Co., 191 F.2d 959 (5th Cir. 1951); Strickland v. Peacock, 209 Ga. 773, 77 S.E.2d 14 (1953); Woo v. Markwalter, 210 Ga. 156, 78 S.E.2d 473 (1953); McLendon v. McLendon, 96 Ga. App. 197, 99 S.E.2d 489 (1957); Moseley v. Moseley, 214 Ga. 137, 103 S.E.2d 540 (1958); Dockery v. Findley, 216 Ga. 807, 120 S.E.2d 608 (1961); Cromer v. Chambers, 104 Ga. App. 196, 121 S.E.2d 397 (1961); Caldwell v. Miles, 228 Ga. 177, 184

S.E.2d 470 (1971); Maddox v. Wheeler, 230 Ga. 580, 198 S.E.2d 284 (1973); In re McCool, 267 Ga. App. 445, 600 S.E.2d 403 (2004); Babb v. Babb, 293 Ga. App. 140, 666 S.E.2d 396 (2008); In re Estate of Long, 307 Ga. App. 896, 706 S.E.2d 704 (2011).

General Jurisdiction

Jurisdiction and powers of probate court. — Court of ordinary (now probate court) has jurisdiction of matters pertaining to the estates of deceased persons, jurisdiction over administrators, jurisdiction to compel administrators to account for the assets of an estate in the administrator's possession or custody, and jurisdiction in such cases to attach and punish for contempt. Melton v. Jenkins, 50 Ga. App. 615, 178 S.E. 754 (1935).

Jurisdiction to render judgment presumed. — Court of ordinary (now probate court) is one of general jurisdiction. Hence, jurisdiction to render a judgment is presumed. Stuckey v. Watkins, 112 Ga. 268, 37 S.E. 401, 81 Am. St. R. 47 (1900); Jones v. Smith, 120 Ga. 642, 48 S.E. 134 (1904).

Facts for jurisdiction need not appear on face or record. — Court of ordinary (now probate court) is a court of general jurisdiction, and therefore the facts which give the court jurisdiction need not appear on the face of the judgment or record; for instance, the publication of a citation for appointment or removal of an administrator need not appear upon the face of the judgment; and if nothing to the contrary appears, it will be presumed that all of the essential prerequisites have been complied with before the ordinary (now probate judge) entered the judgment or order. Davis v. Melton, 51 Ga. App. 685, 181 S.E. 300 (1935).

Probate court has jurisdiction over legal and fact questions. — Court of ordinary (now probate court) has jurisdiction to hear and determine issues of facts and to apply legal principles in a citation for settlement brought against an administrator; no construction of a will being involved, the court does not lose jurisdiction because questions of law as well as of fact are involved. Porter v. Watson, 51 Ga. App. 848, 181 S.E. 680 (1935).

Jurisdiction over claim for breach of fiduciary duty. — Probate court had jurisdiction over a claim against executors of an estate in which the claimants sought payment of damages for breach of a fiduciary duty. Heath v. Sims, 242 Ga. App. 691, 531 S.E.2d 115 (2000).

Probate court properly revoked letters testamentary, ordered reimbursement to a decedent's estate of excessive expenses, and ordered a settling of the estate's accounts after the decedent's executor committed 17 breaches of fiduciary duty including failing to wind up the estate and failing to provide the decedent's other child with an accounting. Fowler v. Cox, 264 Ga. App. 880, 592 S.E.2d 510 (2003).

Extent of probate court jurisdiction over insane persons. — Court of ordinary (now probate court) is vested with original, exclusive, and general jurisdiction over insane persons and the appointment and removal of their guardians. Shea v. Gehan, 70 Ga. App. 229, 28 S.E.2d 181 (1943).

Jurisdiction of out-of-state persons of unsound mind. — Former Code 1933, § 24-1901 (see now O.C.G.A. § 15-9-30) was not confined solely to persons of unsound mind who reside in this state, but was comprehensive enough to embrace persons of unsound mind who live beyond the confines of Georgia. Shea v. Gehan, 70 Ga. App. 229, 28 S.E.2d 181 (1943).

Jurisdiction over guardianship for mentally disabled ward. — Probate court had the authority to establish a set visitation schedule between an adult mentally disabled ward and the ward's father in order to protect the ward's rights and best interests under the broad powers granted in O.C.G.A. §§ 15-9-30(a), 29-4-40, and 29-4-41, despite the mother's/guardian's objection to the visitation. In re Estate of Wertzer, 330 Ga. App. 294, 765 S.E.2d 425 (2014).

Judgment by judge or court. — If a proceeding has been instituted before the ordinary (now probate judge), it is the act of the ordinary (now probate judge), and not the title, which determines whether the judgment is that of a court of ordinary (now probate court) or of the ordinary (now probate judge). In a proceeding for the appointment or removal of a guardian,

General Jurisdiction (Cont'd)

the ordinary (now probate judge) was acting as a court under the jurisdiction conferred by former Code 1933, § 24-1901 (see now O.C.G.A. § 15-9-30). Morse v. Caldwell, 55 Ga. App. 804, 191 S.E. 479 (1937).

Limited jurisdiction to determine necessity of guardian. — For examination inquiring into a person's capacity to manage the person's own estate the jurisdiction of the ordinary (now probate judge) is extremely limited, the proceedings are summary and must be strictly construed, and must show on the proceedings face such facts especially as to the giving of notice, the issuance of the commission, and the return thereof, as will authorize the judgment appointing the guardian. Milam v. Terrell, 214 Ga. 199, 104 S.E.2d 219 (1958).

In a controversy as to the right of guardianship, the probate court is not an appropriate court to take action under O.C.G.A. § 19-7-4, which provides for the loss of parental custody. Brown v. King, 193 Ga. App. 495, 388 S.E.2d 400 (1989).

Probate judge has judicial, ministerial, and clerical duties. — Ordinary (now probate judge) is official charged with performance of judicial, ministerial, and clerical duties. On admitting a will to probate, the ordinary (now probate judge) acts as a judicial officer, the subject matter being one over which the ordinary (now probate judge) has jurisdiction. Castleberry v. Horne, 220 Ga. 691, 141 S.E.2d 394 (1965).

Probate court may fix interlocutory and administration costs. — Petition to fix interlocutory costs and expenses of administration is within the jurisdiction of the court of ordinary (now probate court) as a necessary matter to the administration of an estate of a deceased person. Murphy v. Hunt, 73 Ga. App. 707, 37 S.E.2d 823 (1946).

Court of ordinary (now probate court) has jurisdiction of a petition of former executors of an estate, which is being administered in that court, to cite the administrator de bonis non cum testamento annexo to show cause why certain disputed items, claimed by the former legal representatives to be proper items of interlocutory costs or expenses of administration incurred by them or owing to them in connection with their administration of the estate, should not be allowed and paid as items of costs and expenses of administration and to determine such. Murphy v. Hunt, 73 Ga. App. 707, 37 S.E.2d 823 (1946).

Plaintiffs have remedy in probate court if executor unfit. — If the executor is unfit to handle the estate or there is cause for the executor's removal, plaintiffs have a remedy for such in the court of ordinary (now probate court). Tinsley v. Maddox, 176 Ga. 471, 168 S.E. 297 (1933).

Probate judge determines whether audit was necessary. — Whether an audit delivered by the former representative of the estate to the administrator along with the other assets of the estate is a proper and necessary item and expense of administration and should be paid as such out of the assets of the estate is a matter to be determined by the ordinary (now probate court judge). Murphy v. Hunt, 73 Ga. App. 707, 37 S.E.2d 823 (1946).

Lack of Jurisdiction

Construction of will is not within jurisdiction of probate court. Lowell v. Bouchillon, 246 Ga. 357, 271 S.E.2d 498 (1980).

No jurisdiction to adjudicate claims of title to property. — Probate court does not have the jurisdiction to adjudicate conflicting claims of title to property; thus, if the decedent's widow asserted an ownership interest in property sought by the executor of the estate, an order of the probate court giving possession of such property to the executor was void, and the widow could not be found in contempt for noncompliance with the order. In re Estate of Adamson, 215 Ga. App. 613, 451 S.E.2d 501 (1994).

No jurisdiction to issue execution against distributee. — Court of ordinary (now probate court) is without jurisdiction to issue an execution in favor of an administrator against one of the distributees of the estate for a claimed overpayment as that is a personal issue between the administrator and the

distributee to be adjudicated in a court of law. Murphy v. Hunt, 73 Ga. App. 707, 37 S.E.2d 823 (1946).

No jurisdiction to award judgment against legatees. — Court of ordinary (now probate court) is without jurisdiction to award a judgment in favor of an administratrix of the executor of an estate against the children of the testator, who were legatees under the will, for money paid by the executor for the use and maintenance of such children. Murphy v. Hunt, 73 Ga. App. 707, 37 S.E.2d 823 (1946).

No jurisdiction in property set apart claim. — Court of ordinary (now probate court) has no jurisdiction of a claim to property set apart to a widow as a 12-month's support. Murphy v. Hunt, 73 Ga. App. 707, 37 S.E.2d 823 (1946).

Probate court has no jurisdiction to try conflicting claims of title to real property on an application for a year's support. Johnson v. Johnson, 199 Ga. App. 549, 405 S.E.2d 544 (1991).

No jurisdiction to try title claims on application for year's support. — Probate court erred by allowing the objections of a bank and a decedent's parents solely on the basis of adverse title and by denying a year's support to the widow when the widow failed to meet the resulting burden of proof because the probate court lacked the jurisdiction under Ga. Const. 1983, Art. VI, Sec. III, Para. I and O.C.G.A. § 15-9-30 to determine that the relevant money-market account and real property were not part of the estate; despite the jurisdictional limitation and the lack of an appropriate objection, the probate court proceeded to conduct a hearing as to the amount necessary for the widow's support, thereby inappropriately placing upon the widow a burden of proof that was contrary to O.C.G.A. § 53-3-7(a) and otherwise lacking in the absence of the jurisdictionally defective objections to the petition. In re Mahmoodzadeh, 314 Ga. App. 383, 724 S.E.2d 797 (2012).

No jurisdiction over fraud claims. — Trial court erred by granting summary judgment to an estate executor in a suit asserting fraud and other claims brought by two siblings as the trial court incorrectly determined that the privileges set forth in O.C.G.A. §§ 51-5-7(2) and 51-5-8 applied to the fraud claims. Moreover, neither collateral estoppel nor res judicata barred the action since a prior probate court proceeding did not involve the same issues. Further, the probate court had no jurisdiction over the fraud and intentional interference with a gift claims. Morrison v. Morrison, 284 Ga. 112, 663 S.E.2d 714 (2008).

Petition for order of sale of life estate. — To entertain a petition from a widow seeking a judgment of the court that she was in dire need and an order of sale of the property left to her for life by her husband's will does not fall within the provisions giving the court of ordinary (now probate court) jurisdiction of the sale and disposition of property belonging to deceased persons' estates. Castleberry v. Horne, 220 Ga. 691, 141 S.E.2d 394 (1965).

Procedure

Application for letters of administration must be made to the ordinary (now probate judge). The granting of letters is by the court of the ordinary (now probate court), not by the ordinary (now probate judge). Barclay v. Kimsey, 72 Ga. 725 (1884).

Probate court controls administration of estate pending litigation. — Court of ordinary (now probate court) has ample power to conserve the estate, and require bond and returns by the executor, and otherwise control the administration pending the litigation and a federal court cannot interfere. Heath v. Jones, 168 F.2d 460 (5th Cir. 1948).

Question validity of will in probate court. — Son of deceased should have applied to the ordinary (now probate judge) for a citation calling on the propounder to prove the will in solemn form and by a caveat in that proceeding could have questioned the validity of the deceased's will, but the son was not later entitled to a suit in equity to enjoin the administrator on the grounds that the will was probated in common and not solemn form. Crockett v. Oliver, 218 Ga. 620, 129 S.E.2d 806 (1963).

Equitable claims in superior court versus probate proceedings. — If a claimant is simply asking a superior court

Procedure (Cont'd)

to exercise equitable powers to set aside various inter vivos transfers that were allegedly induced through undue influence, the fact that the property that was the subject of such transfers might end up in an estate that is currently the subject of pending probate proceedings does not mean that the superior court's adjudication of the claims in equity would encroach upon the probate court's exclusive jurisdiction under O.C.G.A. § 15-9-30(1) over the probate of wills. Lewis v. Van Anda, 282 Ga. 763, 653 S.E.2d 708 (2007).

Examine person alleged incapable before appointing of guardian. — Appointment of guardians for persons of unsound mind who are incapable of managing their estates shall occur only after formal examination of such person. Milam v. Terrell, 214 Ga. 199, 104 S.E.2d 219 (1958).

Heirs may not disregard probate court partition judgment. — When parties holding as heirs an undivided interest in lands have abandoned, without formally dismissing, a proceeding instituted in the superior court for partition, and agreed among themselves to institute such a proceeding in the court of ordinary (now probate court) to bring about a partition of the same lands, and this is done by appropriate proceeding in that court, resulting in a judgment confirming the assignment of the various parcels by the appraisers, no objection being filed or appeal taken, the parties are bound by such judgment. The parties will not subsequently be permitted to disregard such judgment, and seek, by amendment to the original petition in superior court, another partitioning of such lands. Zeagler v. Zeagler, 192 Ga. 453, 15 S.E.2d 478 (1941).

Executor or administrator may be called to accounting. — Only an executor or administrator standing in the relationship of an officer of court, to the court of ordinary (now probate court), may be called to an accounting in that court with respect to the executor's acts in the management of the estate. Murphy v. Hunt, 73 Ga. App. 707, 37 S.E.2d 823 (1946).

Commissions of legal representatives of estate. — Amount of commissions of a legal representative of an estate, whether or not the commissions have been forfeited by the representative in one of the ways provided by law, or paid, in whole or in part, by a previous representative, or retained by such representative on a final return made by the representative in that court, are all matters peculiarly within the purview of the (probate) court wherein the estate is being administered and are matters which may be determined in that court. Murphy v. Hunt, 73 Ga. App. 707, 37 S.E.2d 823 (1946).

Court of ordinary (now probate court) may order sale of real estate and provide for disposition thereof. Davis v. Howard, 56 Ga. 430 (1876).

Distribution of estate by probate court. — Probate court was authorized to refrain from distributing the decedent's automobile and furniture to decedent's brother in spite of the brother's claim that that was decedent's stated desire since the decedent's will did not so provide. Sherard v. Aldridge, 251 Ga. App. 445, 554 S.E.2d 590 (2001).

Probate court may award reasonable attorney fees. — In an action by a plaintiff heir of an estate to recover from the assets of the estate reasonable attorney fees to pay counsel who prosecuted an action for the heir against an administrator holding property adversely to the estate, which action was successful and resulted in bringing into the estate a large fund which would not otherwise have been recovered for administration, the court of ordinary (now probate court) having jurisdiction of the administration of the estate may award reasonable attorney fees out of the fund recovered for the use of such counsel regardless of the terms of an express contract between the plaintiff heir and the attorneys as to their fees, since such heir, not being an administrator, had no power to bind the estate for services in the absence of an order of the ordinary (now probate judge) allowing the same. Estes v. Collum, 91 Ga. App. 186, 85 S.E.2d 561 (1954).

Probate court may determine question of court's own jurisdiction. — Court of ordinary (now probate court) to which application is made for a grant of administration is the proper tribunal to

determine the question of the court's own jurisdiction. Arnold v. Arnold, 62 Ga. 627 (1879).

Collateral attack of judgments of court of ordinary (now probate court) is forbidden. Medlin & Sundy v. Downing Lumber Co., 128 Ga. 115, 57 S.E. 232 (1907); Bowen v. Gaskins, 144 Ga. 1, 85 S.E. 1007 (1915).

Judgments rendered in exercise of court's jurisdiction in all controversies as to right of guardianship cannot be collaterally attacked. Beavers v. Williams, 194 Ga. 875, 23 S.E.2d 171 (1942).

Judgments rendered in the exercise of the probate court's jurisdiction over the appointment and removal of guardians cannot be collaterally attacked. Bennett v. Bennett, 194 Ga. App. 197, 390 S.E.2d 276 (1990).

Court of ordinary (now probate court) is court of general jurisdiction in matter of year's support to the extent that there is every presumption in favor of an ordinary's (now probate judge's) judgment in such matter, and to the extent that such a judgment cannot be collaterally attacked except if the record shows want of jurisdictional facts; but a court of ordinary (now probate court) does not have general jurisdiction as to all subject matters. Trusco Fin. Co. v. Crowley, 86 Ga. App. 268, 71 S.E.2d 294 (1952).

Appeal from probate to superior court. — Ordinary (now probate judge) in commitment proceedings is vested with the powers of and really acts as a court of ordinary (now probate court) from which an appeal might be made to the superior court. Shiflett v. Dobson, 180 Ga. 23, 177 S.E. 681 (1934).

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Probate court jurisdiction to set bail. — Because a probate court may hold a court of inquiry pursuant to O.C.G.A. § 17-7-20, that court may also set bail for any criminal offense not included in O.C.G.A. § 17-6-1(a). 1995 Op. Att'y Gen. No. U95-1.

Probate judges continue to exercise jurisdiction over traffic cases. 1983 Op. Att'y Gen. No. 83-53.

Jurisdiction over violations of county ordinances. — Probate court has jurisdiction over violations of county ordinances in counties of 550,000, or more, pursuant to O.C.G.A. § 36-1-17. 1995 Op. Att'y Gen. No. U95-1.

Probate court, having jurisdiction over traffic offenses pursuant to O.C.G.A. §§ 15-9-30 and 40-13-21, has jurisdiction over violations of county traffic ordinances. 1995 Op. Att'y Gen No. U95-1.

No jurisdiction over criminal cases. — Probate judge may not employ an attorney to prosecute criminal cases in probate court. 1999 Op. Att'y Gen. No. U99-6.

No jurisdiction over violations of waste management or air pollution statutes. — Probate court does not have jurisdiction to try cases arising under provisions concerning waste management or air pollution. 1995 Op. Att'y Gen. No. U95-1.

Jurisdiction to issue warrants and require bond. — Because a probate court may hold a court of inquiry pursuant to O.C.G.A. § 17-7-20, a probate court may also issue warrants and require bond pursuant to either O.C.G.A. § 17-6-90 or O.C.G.A. § 17-6-110. 1995 Op. Att'y Gen. No. U95-1.

RESEARCH REFERENCES

ALR. — Jurisdiction of probate court to determine title to property which personal representative claims in his own right, 90 A.L.R. 134.

Jurisdiction of proceedings for restoration to competency of one who has allegedly regained sanity after an adjudication of incompetency, 121 A.L.R. 1509.

Jurisdiction in proceedings for administration of estate of decedent or guardianship of infant or incompetent as exclusive of jurisdiction of other courts of proceed-

ings by surviving partner of decedent, infant, or incompetent or vice versa, 134 A.L.R. 1244.

Jurisdiction of court to permit sterilization of mentally defective person in absence of specific statutory authority, 74 A.L.R.3d 1210.

15-9-30.1. Jurisdiction in cases involving removal of obstructions from roads.

Notwithstanding any local law or other law conferring jurisdiction on any other tribunal, the judges of the probate courts shall have the jurisdiction, concurrent with any such tribunals, in all cases in their counties involving the removal of obstructions from roads, as provided in subsection (a) of Code Section 44-9-59.

History. — Code 1981, § 15-9-30.1, enacted by Ga. L. 1987, p. 1482, § 3.

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Action properly brought in county in which property was located. — Neither the probate court nor the superior court erred in refusing to transfer an action seeking removal of an obstruction from a private way to the county in which the defendant resided since such action was properly brought in the county in which the property at issue was located. Lee v. Collins, 249 Ga. App. 674, 547 S.E.2d 583 (2001).

15-9-30.2. Approval of bonds, qualification of officers, and delivery of commissions.

The judge of the probate court has authority to approve all official bonds which are required by law to be approved by that judge and which are sent to that judge by the Governor with the dedimus, to qualify such officers, and to deliver their commissions to them.

History. — Code 1981, § 15-9-30.2, enacted by Ga. L. 1987, p. 1482, § 3.

15-9-30.3. Jurisdiction over Game and Fish Code misdemeanor violations.

(a) Subject to the provisions of subsection (b) of this Code section, in addition to any other jurisdiction vested in the probate courts, such courts shall have the right and power to conduct trials, receive pleas of guilty, and impose sentence upon defendants for violating any law specified in Title 27 which is punishable for its violation as a misdemeanor. Such jurisdiction shall be concurrent with other courts having jurisdiction over such violations.

(b) A probate court shall not have the power to dispose of misdemeanor cases as provided in subsection (a) of this Code section unless

the defendant shall first waive in writing a trial by jury. If the defendant does not waive a trial by jury, the defendant shall notify the court and, if reasonable cause exists, the defendant shall be immediately bound over to a court in the county having jurisdiction to try the offense wherein a jury may be impaneled.

History. — Code 1981, § 15-9-30.3, enacted by Ga. L. 1988, p. 1418, § 1; Ga. L. 2015, p. 995, § 1/SB 62.

Editor's notes. — Ga. L. 1988, p. 1418, § 2, not codified by the General Assembly, provides: "This Act shall apply to violations of misdemeanors under the 'Game and Fish Code' which take place on or after July 1, 1988."

15-9-30.4. Jurisdiction over violations of Code Section 12-3-10 involving parks, historic sites, and recreational areas.

(a) Subject to the provisions of subsection (b) of this Code section, in addition to any other jurisdiction vested in the probate courts, such courts shall have the right and power to conduct trials, receive pleas of guilty, and impose sentence upon defendants for violating the provisions of Code Section 12-3-10. Such jurisdiction shall be concurrent with other courts having jurisdiction over such violations.

(b) A probate court shall not have the power to dispose of misdemeanor cases as provided in subsection (a) of this Code section unless the defendant shall first waive in writing a trial by jury. If the defendant does not waive a trial by jury, the defendant shall notify the court and, if reasonable cause exists, the defendant shall be immediately bound over to a court in the county having jurisdiction to try the offense wherein a jury may be impaneled.

History. — Code 1981, § 15-9-30.4, enacted by Ga. L. 1992, p. 1547, § 2.

Editor's notes. — Ga. L. 1992, p. 1547, § 3, not codified by the General Assembly, provides: "This Act shall become effective on July 1, 1992, and shall apply to violations of the provisions of Code Section 12-3-10 of the O.C.G.A. which take place on or after July 1, 1992."

15-9-30.5. Jurisdiction over certain violations of "Georgia Boat Safety Act."

(a) Subject to the provisions of subsection (b) of this Code section, in addition to any other jurisdiction vested in the probate courts, such courts shall have the right and power to conduct trials, receive pleas of guilty, and impose sentence upon defendants for violating any provision of Article 1 of Chapter 7 of Title 52, known as the "Georgia Boat Safety Act," which constitutes a misdemeanor. Such jurisdiction shall be concurrent with other courts having jurisdiction over such violations.

(b) A probate court shall not have the power to dispose of misdemeanor cases as provided in subsection (a) of this Code section unless

the defendant shall first waive in writing a trial by jury. If the defendant does not waive a trial by jury, the defendant shall notify the court and, if probable cause exists, the defendant shall be immediately bound over to a court in the county having jurisdiction to try the offense wherein a jury may be impaneled.

History. — Code 1981, § 15-9-30.5, enacted by Ga. L. 1994, p. 1163, § 1.

15-9-30.6. Jurisdiction over certain drug and alcohol offenses.

(a) Subject to the provisions of subsection (c) of this Code section, in addition to any other jurisdiction vested in the probate courts, probate courts which have jurisdiction over misdemeanor traffic offenses in accordance with Code Section 40-13-21 shall have the right and power to conduct trials, receive pleas of guilty, and impose sentence upon defendants for the following offenses:

(1) Possession of one ounce or less of marijuana, in accordance with Code Sections 16-13-2 and 16-13-30; and

(2) Any violation of paragraph (2) of subsection (a) of Code Section 3-3-23 which is punishable as a misdemeanor, but not violations punishable as high and aggravated misdemeanors.

(b) The jurisdiction conferred by subsection (a) of this Code section shall be concurrent with other courts having jurisdiction over such violations.

(c) A probate court shall not have the power to dispose of misdemeanor cases as provided in subsection (a) of this Code section unless the defendant shall first waive in writing a trial by jury. If the defendant does not waive a trial by jury, the defendant shall notify the court and, if probable cause exists, the defendant shall be immediately bound over to a court in the county having jurisdiction to try the offense wherein a jury may be impaneled.

History. — Code 1981, § 15-9-30.6, enacted by Ga. L. 1996, p. 1298, § 1.

Editor's notes. — Ga. L. 1996, p. 1298, § 1, not codified by the General Assembly, provides that the amendment to this Code section applies to offenses which occur or are alleged to have occurred on or after July 1, 1996.

15-9-30.7. Jurisdiction over certain cases involving litter.

(a) Subject to the provisions of subsection (b) of this Code section, in addition to any other jurisdiction vested in the probate courts, such courts shall have the right and power to conduct trials, receive pleas of guilty, and impose sentence upon defendants for violating any provision of Part 2, Part 3, or Part 3A of Article 2 of Chapter 7 of Title 16 or Code Section 32-6-51 or 40-6-248.1 that is punishable for its violation as a

misdemeanor. Such jurisdiction shall be concurrent with other courts having jurisdiction over such violations.

(b) A probate court shall not have the power to dispose of misdemeanor cases as provided in subsection (a) of this Code section unless the defendant shall first waive in writing a trial by jury. If the defendant does not waive a trial by jury, the defendant shall notify the court and, if reasonable cause exists, the defendant shall be immediately bound over to a court in the county having jurisdiction to try the offense wherein a jury may be impaneled.

History. — Code 1981, § 15-9-30.7, enacted by Ga. L. 2006, p. 275, § 3-5/HB 1320.

Editor's notes. — Ga. L. 2006, p. 275, § 1-1/HB 1320, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Comprehensive Litter Prevention and Abatement Act of 2006.'"

Ga. L. 2006, p. 275, § 5-1/HB 1320, not codified by the General Assembly, provides that the Act shall become effective April 21, 2006, for purposes of adopting local ordinances to become effective on or after July 1, 2006.

15-9-30.8. Jurisdiction over certain cases involving operation of off-road vehicle.

In addition to any other jurisdiction vested in the probate courts, such courts shall have the right and power to hear cases of violations of Chapter 7 of Title 40 and to impose civil penalties for such violations as provided by Code Section 40-7-6.

History. — Code 1981, § 15-9-30.8, enacted by Ga. L. 2010, p. 98, § 2-1/HB 207.

15-9-30.9. Jurisdiction over certain animal control cases.

(a) In addition to any other jurisdiction vested in the probate courts, such courts shall have the right and power to hear cases of violations of Article 2 of Chapter 8 of Title 4 and to impose:

(1) Civil penalties for such violations, other than euthanasia; and

(2) Criminal penalties for such violations as provided by Code Section 4-8-32.

(b) An appeal from a decision by an animal control board or local board of health pursuant to subsection (f) of Code Section 4-8-23 shall lie in probate court. No appeal shall be heard in probate court until costs which have accrued in the tribunal below have been paid, unless the appellant files with the probate court or with the tribunal appealed from an affidavit stating that because of indigence he or she is unable to pay the costs on appeal. In all cases, no appeal shall be dismissed in

the probate court because of nonpayment of the costs below until the appellant has been directed by the court to do so and has failed to comply with the court's direction.

(c) Filing of the notice of appeal and payment of costs or filing of an affidavit as provided in subsection (b) of this Code section shall act as supersedeas, and it shall not be necessary that a supersedeas bond be filed; provided, however, that the probate court upon motion may at any time require that supersedeas bond with good security be given in such amount as the court may deem necessary unless the appellant files with the court an affidavit stating that because of indigence he or she is unable to give bond.

History. — Code 1981, § 15-9-30.9, enacted by Ga. L. 2014, p. 371, § 5/SB 290.

Editor's notes. — Ga. L. 2014, p. 371, § 6/SB 290, not codified by the General Assembly, provides, in part, that this Code section shall apply to all violations and confiscations which occur on or after July 1, 2014.

15-9-31. Authority of judge of probate court to grant administration.

The judge of the probate court can grant administration only on the estate of a person who was:

(1) A resident at the time of his death of the county where the application is made; or

(2) A nonresident of the state, with property in the county where the application is made or with a bona fide cause of action against some person therein.

History. — Orig. Code 1863, § 308; Code 1868, § 368; Code 1873, § 333; Code 1882, § 333; Civil Code 1895, § 4234; Civil Code 1910, § 4792; Code 1933, § 24-1902.

Cross references. — Jurisdiction of probate court over probate of wills generally, § 53-3-1.

Law reviews. — For annual survey article discussing trial practice and procedure, see 51 Mercer L. Rev. 487 (1999).

JUDICIAL DECISIONS

Residence of testator at death confers exclusive jurisdiction on ordinary (now probate judge) of that county. City of Blakely v. Hilton, 150 Ga. 27, 102 S.E. 340 (1920).

Administration of estate of county property of nonresident decedent. — If a nonresident of the state dies, owning bonds and promissory notes, which are in the possession of one residing in a county of this state, such person may be said to have property in that county, and the probate judge of that county may grant administration on the deceased's estate. Robbins v. National Bank, 241 Ga. 538, 246 S.E.2d 660 (1978).

Cause of action is personalty, and because the situs of personalty follows the owner thereof and is controlled by the domicile of the owner, a cause of action belonging to a nonresident could not be probated, and an attorney's files that made up that cause were likewise not property subject to probate. Escareno v.

Noltina Crucible & Refractory Corp., 172 F.R.D. 522 (N.D. Ga. 1997).

Bonds and notes of nonresident held by person in county are property. McLaren v. Bradford, 52 Ga. 648 (1874).

Cause of action or injury sufficient basis. — Administration of a nonresident's estate does not require ownership of tangible property in the state, but rather, the presence of a cause of action or injury to the decedent is a sufficient basis. Escareno v. Carl Nolte Sohne GmbH, 270 Ga. 264, 507 S.E.2d 743 (1998).

Pending lawsuit of decedent. — Statute authorized the appointment of an administrator for an estate in the county where the decedent had a pending lawsuit. Escareno v. Noltina Crucible and Refractory Corp., 163 F.3d 1257 (11th Cir. 1998).

Jurisdiction is not lost because of prior appointment of administrator in the state where the nonresident owner was domiciled at the time of death. Ott v. Hutchinson, 91 Ga. 31, 16 S.E. 106 (1892); Jones v. Cooner, 142 Ga. 127, 82 S.E. 445 (1914).

Administrator should be appointed when estate may be created. — If there is no tangible estate, but when there is something to be done by an administrator which in contemplation of law may create an estate, such as suing for the death of a decedent, an administrator should be appointed. Robbins v. National Bank, 241 Ga. 538, 246 S.E.2d 660 (1978).

Cited in McPhail v. Barnhill, 42 Ga. App. 505, 156 S.E. 466 (1931); Smith v. Scarborough, 182 Ga. 157, 185 S.E. 105 (1936); Scarborough v. Long, 186 Ga. 412, 197 S.E. 796 (1938); Bell v. Southwell, 376 F.2d 659 (5th Cir. 1967); Guyett v. Guyett, 160 Ga. App. 622, 287 S.E.2d 632 (1981); Escareno v. Carl Nolte Sohne GmbH & Co., 77 F.3d 407 (11th Cir. 1996); Wright v. Goss, 229 Ga. App. 393, 494 S.E.2d 23 (1997); Escareno v. Noltina Crucible & Refractory Corp., 139 F.3d 1456 (11th Cir. 1998); Escareno v. Noltina Crucible & Refractory Corp., 172 F.R.D. 517 (N.D. Ga. 1994).

RESEARCH REFERENCES

ALR. — Power to impound assets of nonresident decedent in state, 44 A.L.R. 801.

15-9-32. Jurisdiction over estate of nonresident with property or cause in several counties.

When a nonresident decedent has property or a cause of action in more than one county, letters of administration may be granted in any county in which such property or cause of action is located. The judge of the probate court who first grants such letters acquires exclusive jurisdiction.

History. — Orig. Code 1863, § 309; Code 1868, § 369; Code 1873, § 334; Code 1882, § 334; Civil Code 1895, § 4235; Civil Code 1910, § 4793; Code 1933, § 24-1903.

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Exclusive jurisdiction when granting temporary letters of administration. — Granting of temporary letters of administration upon the estate of a deceased nonresident of the state in a county vests exclusive jurisdiction in the ordinary (now probate judge) of that county so as to preclude the subsequent granting of temporary or permanent letters of administration upon such estate in another

county of this state in which such nonresident may also have property, and this is true even though the application for permanent letters of administration may have been filed in the second county prior to the grant of the temporary letters in the first county. McPhail v. Barnhill, 42 Ga. App. 505, 156 S.E. 466 (1931).

Cited in Escareno v. Carl Nolte Sohne GmbH & Co., 77 F.3d 407 (11th Cir. 1996); Escareno v. Carl Nolte Sohne GmbH, 270 Ga. 264, 507 S.E.2d 743 (1998).

RESEARCH REFERENCES

ALR. — Power to impound assets of nonresident decedent in state, 44 A.L.R. 801.

15-9-33. Authority to administer oaths.

(a) The several judges of the probate courts are authorized to administer oaths in all cases where the authority is not specially delegated to some other officer and to receive the same fees therefor as are allowed magistrates.

(b) The judge of the probate court in any county of this state having a population of 550,000 or more according to the United States decennial census of 1970 or any future such census shall have the power and authority to administer the oath of office to any officer or official of such county or any municipality located within such county and to each judicial officer of the state whose jurisdiction extends to such county.

History. — Ga. L. 1865-66, p. 41, § 1; Code 1868, § 373; Code 1873, § 340; Code 1882, § 340; Civil Code 1895, § 4241; Civil Code 1910, § 4799; Code 1933, § 24-1904; Ga. L. 1972, p. 3332, § 1; Ga. L. 1981, p. 3286, § 1; Ga. L. 1982, p. 2107, § 10; Ga. L. 1983, p. 884, § 4-1.

RESEARCH REFERENCES

C.J.S. — 48A C.J.S., Judges, § 64.

15-9-34. Contempt powers.

(a) The judge of the probate court shall have power to enforce obedience to all lawful orders of his or her court, including a guardianship order or conservatorship order from another state that has been registered with and recorded by the probate court under Article 4 of Chapter 11 of Title 29, by attachment for contempt under the same rules as are provided for other courts.

(b) Probate courts may issue rules and attachments for contempts offered the court or its process by any executor, administrator, guardian, or other person and may punish the same by a fine as high as $500.00 or imprisonment not exceeding 20 days, or both.

History. — Orig. Code 1863, §§ 307, 4021, 4033; Code 1868, §§ 367, 4050, 4063; Code 1873, §§ 332, 4121, 4128; Code 1882, §§ 332, 4121, 4128; Civil Code 1895, §§ 4233, 4261, 4267; Civil Code 1910, §§ 4791, 4819, 4825; Code 1933, §§ 24-2113, 24-2114; Ga. L. 1990, p. 1421, § 1; Ga. L. 2019, p. 693, § 38/HB 70.

The 2019 amendment, effective January 1, 2020, in subsection (a), inserted "or her", and inserted ", including a guardianship order or conservatorship order from another state that has been registered with and recorded by the probate court under Article 4 of Chapter 11 of Title 29,".

Cross references. — Exercise of contempt power generally, § 15-1-4.

Law reviews. — For article, "Contempt of Court in Georgia," see 23 Ga. St. B. J. 66 (1987). For article, "How Not to Get Thrown in Jail," see 22 Ga. Bar. J. 17 (June 2017).

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Jurisdiction of probate court to attach and punish for contempt. — Court of ordinary (now probate court) has jurisdiction of matters pertaining to the estates of deceased persons, jurisdiction over administrators, jurisdiction to compel administrators to account for the assets of an estate in their possession or custody, and jurisdiction in such cases to attach and punish for contempt. Melton v. Jenkins, 50 Ga. App. 615, 178 S.E. 754 (1935).

Cited in Lewis v. Grovas, 62 Ga. App. 625, 9 S.E.2d 282 (1940); Bragg v. Bragg, 225 Ga. 494, 170 S.E.2d 29 (1969); Oakley v. Anderson, 235 Ga. 607, 221 S.E.2d 31 (1975); In re McCool, 267 Ga. App. 445, 600 S.E.2d 403 (2004).

RESEARCH REFERENCES

Am. Jur. 2d. — 17 Am. Jur. 2d, Contempt, § 1 et seq.

15-9-35. Power to cite absconding fiduciaries; publication of order; communication with appointing court in another state.

(a) Where any guardian, conservator, personal representative, surety on their bonds, or other person removes himself or herself beyond the limits of this state or absconds or conceals himself or herself, the judge of the probate court shall have the power to cite such guardian, conservator, personal representative, surety, or other person to appear before the judge relative to the performance of his or her duties or any other matter related to the probate court pertaining to such person. Service may be had upon the guardian, conservator, personal representative, surety, or other person by publication in the manner prescribed in subsection (b) of this Code section.

(b) The judge of the probate court shall cause to be published the judge's order calling upon a person described in subsection (a) of this Code section to appear, in the newspaper of the county in which sheriff's advertisements are published, once a week for four weeks immediately preceding the court day on which the person is cited to appear. The published order shall be directed to the guardian, conservator, personal representative, surety, or other person, shall set the date and time on

which the matter in question will be heard, shall indicate all matters to be passed upon at such time, and shall be signed by the judge of the probate court in the judge's official capacity. Where the address of the guardian, conservator, personal representative, surety, or other person is known, a copy of the order, as published, shall be mailed to the party named in the order. The judge of the probate court shall make an entry of his or her actions upon the minutes of the court.

(c) With respect to a guardianship order or conservatorship order from another state that has been registered with and recorded by the probate court under Article 4 of Chapter 11 of Title 29, in addition to any action such court may take under subsection (a) of this Code section or under subsection (b) of Code Section 29-11-32, the judge of the probate court may communicate with the appointing court in such other state under subsection (a) of Code Section 29-11-4 to inform such appointing court of the citation to appear issued by such judge under subsection (a) of this Code section, stating the reasons therefor.

History. — Code 1933, § 24-2115, enacted by Ga. L. 1955, p. 353, § 1; Ga. L. 2008, p. 715, § 2/SB 508; Ga. L. 2019, p. 693, § 39/HB 70.

The 2019 amendment, effective January 1, 2020, added subsection (c).

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Cited in Walker v. Smith, 130 Ga. App. 16, 202 S.E.2d 469 (1973).

15-9-36. Judges of probate courts as clerks thereof; chief clerk; powers of clerks; uncontested matters.

(a) The judges of the probate courts are, by virtue of their offices, clerks of their own courts; but they may appoint one or more clerks, for whose conduct they are responsible, who hold their offices at the pleasure of the judge. The judges of the probate courts shall also have the authority to appoint one of their clerks as chief clerk of the probate judge unless otherwise provided by local law.

(b) The appointed clerks, including the chief clerk of the probate judge, may do all acts the judges of the probate courts could do which are not judicial in their nature. The chief clerk of the probate judge shall also have the authority prescribed in Code Section 15-9-10.

(c)(1) In addition to other powers granted to appointed clerks, the chief clerk of the probate judge or, if there is no chief clerk, a clerk designated by the judge may exercise all the jurisdiction of the judge of the probate court concerning uncontested matters in the probate court. Such clerk may exercise such power regardless of whether the judge of the probate court is present.

(2) The powers granted by paragraph (1) of this subsection shall be exercised only by a chief clerk or designated clerk who has been a member of the State Bar of Georgia for at least three years or has been a clerk in the probate court for at least five years.

History. — Ga. L. 1851-52, p. 50, § 1; Code 1863, §§ 313, 314; Code 1868, §§ 374, 375; Code 1873, §§ 341, 342; Code 1882, §§ 341, 342; Civil Code 1895, §§ 4247, 4248; Civil Code 1910, §§ 4805, 4806; Code 1933, §§ 24-1801, 24-1802; Ga. L. 1978, p. 891, § 2; Ga. L. 1986, p. 1581, § 3; Ga. L. 1987, p. 524, § 1; Ga. L. 1988, p. 586, § 2; Ga. L. 1991, p. 394, § 5; Ga. L. 1994, p. 1665, § 3; Ga. L. 2012, p. 683, § 2/HB 534; Ga. L. 2014, p. 395, § 1/SB 341; Ga. L. 2018, p. 356, § 1-20/SB 436.

The 2018 amendment, effective July 1, 2018, in subsection (b), deleted "and may act for judges of the probate courts in those cases in which they are authorized to act for the judge by Code Section 15-9-13" following "nature" at the end of the first sentence, and substituted "15-9-10" for "15-9-11.1" at the end of the second sentence.

Cross references. — Appointment of judge of probate court as clerk of superior court, § 15-6-55.

Editor's notes. — Ga. L. 1988, p. 586, § 7, not codified by the General Assembly, provided that the amendment to this Code section applied to any vacancy occurring on or after March 30, 1988.

Law reviews. — For note on 1991 amendment of this Code section, see 8 Ga. St. U.L. Rev. 212 (1992).

JUDICIAL DECISIONS

Cited in Smith v. Stapler, 53 Ga. 300 (1874); Lay v. Sheppard, 112 Ga. 111, 37 S.E. 132 (1900); Weeks v. Hosch Lumber Co., 133 Ga. 472, 66 S.E. 168, 134 Am. St. R. 213 (1909); Head v. Waldrup, 193 Ga. 165, 17 S.E.2d 585 (1941); Cooper v. Lunsford, 203 Ga. 166, 45 S.E.2d 395 (1947); Tucker v. American Sur. Co., 191 F.2d 959 (5th Cir. 1951); Castleberry v. Horne, 220 Ga. 691, 141 S.E.2d 394 (1965); Taylor v. Young, 253 Ga. App. 585, 560 S.E.2d 40 (2002).

OPINIONS OF THE ATTORNEY GENERAL

Clerk of probate court judge is not employee of county, but is solely the employee of the judge of the probate court, who personally is on a fee system as an independent officer, and any compensation paid the clerk is paid from any fees that the judge may derive from performing the judge's duties. 1958-59 Op. Att'y Gen. p. 232.

Probate judge not entitled to fees for services as clerk. — No fees are provided for clerks of the court of the ordinary (now probate judge), but the clerk's appointment is at the judge's expense and, therefore, the judge of probate court, as ex-officio clerk, is not entitled to fees for any services rendered as clerk. 1945-47 Op. Att'y Gen. p. 83.

Special authorization for employment of clerks at county expense. — Some "population acts" authorize judges of the probate court in counties within a specified population range to employ clerks at county expense with the approval of the grand jury and county governing authorities. 1969 Op. Att'y Gen. No. 69-10.

RESEARCH REFERENCES

Am. Jur. 2d. — 46 Am. Jur. 2d, Judges, § 26.

C.J.S. — 48A C.J.S., Judges, § 65.

15-9-37. Duties of clerks or probate judges acting as clerks; storage of records for retrieval from automated or computerized record-keeping method or system; installation and use of photostatic equipment or other photographic equipment for recording documents.

(a) It is the duty of clerks of the probate courts, or the judges of the probate courts acting as such:

(1) To issue all citations required by law and to administer all oaths incident to the business of the court;

(2) To grant temporary letters of administration;

(3) To grant marriage licenses;

(4) To issue all writs of fieri facias for costs on all judgments of the judge or other process necessary to enforce them;

(5) To issue subpoenas for witnesses and all similar process in connection with a trial;

(6) To issue any paper or process by order of the judge and bearing teste in his name;

(7) To keep fair and regular minutes of each session of the court entered in a suitable book and perform such other services as the judge may require; but any minutes, dockets, or other records required to be kept as records of the probate court under this paragraph or paragraph (8) of this subsection or under any other law may be combined into one or more suitable books, as the ends of justice require, but in any case shall be indexed, permanent, economical, and accessible to the public;

(8) To keep in their offices a suitable book for each of the following purposes:

(A) Record of wills;

(B) Record of all letters of administration, letters of conservatorship, letters of guardianship, letters testamentary, and other letters of office of fiduciaries issued by or registered with the court;

(C) Record of all bonds given by administrators, conservators, executors, guardians, and other fiduciaries appointed by the court or for whom a guardianship order or conservatorship order has been registered with and recorded by the court under Article 4 of Chapter 11 of Title 29;

(D) Record of all appraisements, inventories, and schedules;

(E) Record of all accounts of sales;

(F) Record of all current accounts authorized to be made to the judge, together with the vouchers accompanying the same;

(G) Record of all marriage licenses and the returns thereon;

(H) Record of all official bonds required to be recorded in the office of the judge; and

(I) Docket in which to enter all applications and other proceedings, in the order they are made, which shall be called in like order at each session;

(9) To procure and preserve for public inspection a complete file of all newspaper issues in which their advertisements actually appear;

(10) To keep their books and papers arranged, filed, labeled, and indexed, as clerks are required to do;

(11) To give transcripts likewise as clerks are required to do, and when the judge of the probate court and the clerk are the same person, so to state in the certificates;

(12) To keep and maintain facilities for the filing of wills of persons who are still alive; and

(13) To perform any other duty required of them by law or which is indispensable to those required.

(b) Nothing in this Code section shall restrict or otherwise prohibit a clerk or a probate judge acting as such from electing to store for computer retrieval any or all records, dockets, indices, or files; nor shall a clerk or a probate judge acting as such be prohibited from combining or consolidating any books, dockets, files, or indices in connection with the filing for record of papers of the kind specified in this Code section or any other law, provided that any automated or computerized record-keeping method or system shall provide for the systematic and safe preservation and retrieval of all books, dockets, records, or indices. When the clerk or a probate judge acting as such elects to store for computer retrieval any or all records, the same data elements used in a manual system shall be used, and the same integrity and security maintained.

(c) The judge of the probate court or any other authority performing the functions required to be performed by such judge or by the probate court in any county of this state shall be authorized to install and to use photostatic equipment or other photographic equipment for recording any documents authorized or required to be recorded in the office of the judge or of the probate court or for recording and preserving the minutes of the court. Such equipment may be installed and used by the

judge or by the probate court for the same purposes and in lieu of the commonly used method of printing, typing, and handwriting the documents, records, and minutes. Such equipment may be provided or its use permitted by the proper county authorities. The authority given by this subsection for the installation and use of photostatic and photographic equipment is permissive only.

History. — Orig. Code 1863, § 316; Code 1868, § 377; Code 1873, § 344; Ga. L. 1882-83, p. 70, § 1; Code 1882, § 344; Civil Code 1895, § 4250; Civil Code 1910, § 4808; Code 1933, § 24-1804; Ga. L. 1958, p. 354, § 1; Ga. L. 1974, p. 383, § 1; Ga. L. 1982, p. 1617, §§ 1, 2; Ga. L. 1983, p. 3, § 12; Ga. L. 1991, p. 1753, § 1; Ga. L. 1992, p. 6, § 15; Ga. L. 2018, p. 356, § 1-21/SB 436; Ga. L. 2019, p. 693, § 40/HB 70.

The 2018 amendment, effective July 1, 2018, added subsection (c).

The 2019 amendment, effective January 1, 2020, substituted the present provisions of subparagraph (a)(8)(B) for the former provisions, which read: "Record of all letters of administration and guardianship;"; and substituted the present provisions of subparagraph (a)(8)(C) for the former provisions, which read: "Record of all bonds given by administrators and guardians;".

Law reviews. — For article, "Pitfalls in Probate Practice and Procedure," see 21 Ga. B. J. 169 (1958).

JUDICIAL DECISIONS

Probate judge acts as clerk when performing ministerial duties. — This section specifically provided that issuing all citations required by law is a ministerial duty which the clerk was authorized to perform, and that when there was no clerk and the ordinary (now probate judge) performs this duty, the ordinary (now probate judge) acts in the capacity of clerk. Head v. Waldrup, 193 Ga. 165, 17 S.E.2d 585 (1941).

Sufficiency of certificate by probate judge. — Paragraph (a)(11) of this section was complied with since the ordinary (now probate judge) stated in the certificate that the person was the ordinary (now probate judge) and ex officio clerk, and signed in that manner. Sellers v. Page, 127 Ga. 633, 56 S.E. 1011 (1907); Weeks v. Hosch Lumber Co., 133 Ga. 472, 66 S.E. 168, 134 Am. St. R. 213 (1909).

Ordinary's (now probate judge's) certificate sufficiently authenticates the record when it appears affirmatively in the certificate that the ordinary (now probate judge) had no clerk, and was acting personally as the clerk of the ordinary's (now probate judge's) own court. Powell v. Hansard, 206 Ga. 505, 57 S.E.2d 677 (1950).

Sufficiency of certificate affects admissibility into evidence. — Certificate by an ordinary (now probate judge) does not render the copy admissible in evidence, unless it is made affirmatively to appear that there is no clerk other than the ordinary (now probate judge). A certificate by the ordinary (now probate judge) that the ordinary (now probate judge) has no clerk would be in substantial compliance with the requirements of the rule. Powell v. Hansard, 206 Ga. 505, 57 S.E.2d 677 (1950).

Certificate of probate judge must disclose identity of clerk. — Certificate signed by an ordinary (now probate judge) for the purpose of authenticating a transcript from a record of file in court does not conform to law unless the certificate affirmatively discloses whether or not such ordinary (now probate judge) was also the clerk of that court. Lay v. Sheppard, 112 Ga. 111, 37 S.E. 132 (1900).

Certificate by the ordinary (now probate judge) does not conform to law, unless it affirmatively discloses whether or not such ordinary was also the clerk of that court, but a certificate by the ordinary (now probate judge) in which the ordinary (now probate judge) states that by virtue of the ordinary's (now probate judge's) office the ordinary (now probate judge) is

clerk of the ordinary's (now probate judge's) own court would comply with the requirements of this section. Powell v. Hansard, 206 Ga. 505, 57 S.E.2d 677 (1950).

Performance of duty showing order entered. — Order was entered when independent evidence of record in the form of testimony of the clerk of the probate court that the clerk entered the order by entering the notation "granted" in the docket book and an extract of a "granted" entry appearing in the probate court docket. Jabaley v. Jabaley, 208 Ga. App. 179, 430 S.E.2d 119 (1993).

Copy of will lacking certificate not evidence of title. — If a copy of a will is not certified by the clerk of the court of ordinary (now probate court) nor does such certified copy show probate of the will, such copy cannot be legal evidence of title. This is true even though this evidence was introduced without objection since the evidence does not have any probative value, and, as such, is no good for the purpose offered. Goolsby v. Nails, 217 Ga. 348, 122 S.E.2d 248 (1961).

Certified copy of will needed to be used as muniment of title. — In order to use a will as a muniment of title, a copy certified by the clerk of the court of ordinary (now probate court) must be introduced showing the probate of the will. However, a copy of a will duly certified that it came from the court of ordinary's (now probate court's) office raises the presumption that such will has been probated. But such copy must be certified by the clerk of the court of ordinary (now probate court), who has jurisdiction over such records. Goolsby v. Nails, 217 Ga. 348, 122 S.E.2d 248 (1961).

Petition for mandamus failed to state cause of action. — When petition for mandamus to compel ordinary (now probate judge) as clerk of own court to certify certain papers, nowhere alleges that the ordinary (now probate judge) did not certify that the ordinary (now probate judge) had no clerk, or that the ordinary (now probate judge) was acting personally as the clerk of the ordinary's (now probate judge's) own court, or that the ordinary (now probate judge) was also the clerk of that court, the petition failed to state a cause of action for mandamus. Powell v. Hansard, 206 Ga. 505, 57 S.E.2d 677 (1950).

Appointment of temporary administrator is clerical. — Action of ordinary (now probate judge) in appointing temporary administrator is merely clerical. Irvine v. Wiley, 145 Ga. 867, 90 S.E. 69 (1916); Collins v. Henry, 155 Ga. 886, 118 S.E. 729 (1923).

OPINIONS OF THE ATTORNEY GENERAL

Duty to enter documents and proceedings. — Clerks of probate courts must enter documents and proceedings in set of books established by O.C.G.A. §§ 15-9-37(8) and 53-5-21 and must also enter the documents and proceedings in minutes of court, O.C.G.A. § 15-9-37(7), if such matters are applications to court, orders of court, or otherwise show what was done in probate court. 1981 Op. Att'y Gen. No. U81-41.

15-9-38. Filing of wills; confidentiality of files; public docket.

(a) Any person who has made a will may file it in the office of the judge of the probate court of the county of his residence. The judge shall maintain a docket in which he shall register the will, the date on which it was deposited in his office, and the date of withdrawal of the will by the person making the same or some other person, as the case may be, if the same is withdrawn. The files shall be confidential, and no person other than the person depositing the same, his legal representative, or his attorney in fact shall have access to the file prior to the death of the

person making and depositing the will. The docket maintained by the judge shall be public as are other dockets in his office.

(b) Nothing in this Code section shall be construed so as to prohibit any person from revoking such will by the execution of a subsequent will or so as to change the ambulatory nature of the will of any person.

History. — Ga. L. 1958, p. 354, § 1.
Cross references. — Limitation of access to probate court files, Uniform Rules for the Probate Courts, Rule 17.

15-9-39. Docket of applications and cases.

The judge of the probate court shall keep a docket of all applications and cases pending in his court which are regularly continued from term to term until the final disposition thereof.

History. — Orig. Code 1863, § 4019; Code 1868, § 4048; Code 1873, § 4119; Code 1882, § 4119; Civil Code 1895, § 4259; Civil Code 1910, § 4817; Code 1933, § 24-2111.

Cross references. — Limitation of access to probate court files, Uniform Rules for the Probate Courts, Rule 17.

JUDICIAL DECISIONS

Cited in Bragg v. Bragg, 225 Ga. 494, 170 S.E.2d 29 (1969).

15-9-40. Filing and recording of proceedings.

The proceedings shall always be kept on file; and, whenever the final order is granted, the proceedings shall be recorded in a book to be kept for such purpose.

History. — Orig. Code 1863, § 4017; Code 1868, § 4046; Code 1873, § 4117; Code 1882, § 4117; Civil Code 1895, § 4257; Civil Code 1910, § 4815; Code 1933, § 24-2109; Ga. L. 2018, p. 356, § 1-22/SB 436.

The 2018 amendment, effective July 1, 2018, substituted "such purpose" for "that purpose, for which the judge of the probate court shall receive the same fees as are allowed clerks of the superior courts for similar services" at the end.

Cross references. — Limitation of access to probate court files, Uniform Rules for the Probate Courts, Rule 17.

JUDICIAL DECISIONS

Cited in Tucker v. American Sur. Co., 191 F.2d 959 (5th Cir. 1951); Bragg v. Bragg, 225 Ga. 494, 170 S.E.2d 29 (1969).

OPINIONS OF THE ATTORNEY GENERAL

Recording of proceedings in probate court. — Proceedings in incompetency matters in the probate court should be handled in observance with the provisions of former Code 1933, §§ 24-2105 and 24-2109 (see now O.C.G.A. §§ 15-9-86 and 15-9-40), including that the proceedings be recorded in a book to be kept for that purpose. 1960-61 Op. Att'y Gen. p. 93.

15-9-41. Minutes of proceedings.

The judge of the probate court shall keep a regular book of minutes of the proceedings of his court, on which he shall enter all the applications refused as well as those granted.

History. — Orig. Code 1863, § 4018; Code 1868, § 4047; Code 1873, § 4118; Code 1882, § 4118; Civil Code 1895, § 4258; Civil Code 1910, § 4816; Code 1933, § 24-2110.

Cross references. — Limitation of access to probate court files, Uniform Rules for the Probate Courts, Rule 17.

JUDICIAL DECISIONS

Cited in Tucker v. American Sur. Co., 191 F.2d 959 (5th Cir. 1951); Bragg v. Bragg, 225 Ga. 494, 170 S.E.2d 29 (1969).

15-9-42. Docket of fiduciaries; storage of records for retrieval from automated or computerized record-keeping method or system.

(a) The judge of the probate court shall keep a docket of all the executors, administrators, guardians, and trustees who are liable to make returns in his or her court, with regular entries of their returns, and of such fiduciaries as have failed to make returns as required by law and by the order of the court.

(b) Nothing in this Code section shall restrict or otherwise prohibit a clerk or a probate judge acting as such from electing to store for computer retrieval any or all books, records, dockets, files, or indices; nor shall a clerk or a probate judge acting as such be prohibited from combining or consolidating any books, records, dockets, files, or indices in connection with the filing for record of papers of the kind specified in this Code section or in any other law; provided, however, that any automated or computerized record-keeping method or system shall provide for the systematic and safe preservation and retrieval of all books, records, dockets, files, or indices. When the clerk or a probate judge acting as such elects to store for computer retrieval any or all books, records, dockets, files, or indices, the same data elements used in a manual system shall be used, and the same integrity and security shall be maintained.

History. — Orig. Code 1863, § 4020; Code 1868, § 4049; Code 1873, § 4120; Code 1882, § 4120; Civil Code 1895, § 4260; Civil Code 1910, § 4818; Code 1933, § 24-2112; Ga. L. 2018, p. 356, § 1-23/SB 436.

The 2018 amendment, effective July 1, 2018, designated the existing provisions of this Code section as subsection (a), and, in subsection (a), inserted "or her" in the middle; and added subsection (b).

Cross references. — Limitation of access to probate court files, Uniform Rules for the Probate Courts, Rule 17.

JUDICIAL DECISIONS

Cited in Bragg v. Bragg, 225 Ga. 494, 170 S.E.2d 29 (1969).

15-9-43. Preservation of newspapers.

(a) The issues of the newspapers preserved as required in paragraph (9) of Code Section 15-9-37 shall be bound, microfilmed, photostated, or photographed; and such newspapers, microfilm, photographs, or photostatic copies shall be maintained within the county courthouse for a period of not less than 50 years, after which time the newspapers, microfilm, photographs, or other photostatic copies may be donated to a library or historical society, with the concurrence of the director of the Division of Archives and History, in the discretion of the judge of the probate court.

(b) The judge of the probate court is authorized to enter into an agreement with either the clerk of the superior court or the sheriff of the county, or both, relative to the binding, retention, microfilming, photographing, or photostating of the newspapers and their preservation and retention, in which event it shall be necessary that only one set of newspapers or copies thereof shall be retained in the county courthouse. The set of newspapers or copies thereof shall include copies of the newspaper issues in which the advertisements of the judge of the probate court appear as well as copies of the newspaper issues in which the advertisements which the clerk of the superior court or the sheriff, or both, are required to preserve and retain appear. The agreement shall specify the person who shall maintain and preserve the newspapers, microfilm, photographs, or photostatic copies.

History. — Ga. L. 1974, p. 383, § 1; Ga. L. 2002, p. 532, § 3.

Cross references. — Use of microforms by agencies of state government or any of its political subdivisions generally, § 50-18-120 et seq. Limitation of access to probate court files, Uniform Rules for the Probate Courts, Rule 17.

15-9-44. Use of photostatic and photographic equipment.

Reserved. Repealed by Ga. L. 2018, p. 356, § 1-24/SB 436, effective July 1, 2018.

Editor's notes. — The former Code section was based on Ga. L. 1950, p. 414, §§ 1, 3; Ga. L. 1982, p. 3, § 15.

15-9-45. Filing of photostatic records.

Reserved. Repealed by Ga. L. 2018, p. 356, § 1-25/SB 436, effective July 1, 2018.

Editor's notes. — The former Code section was based on Ga. L. 1950, p. 414, § 2.

15-9-46. Validity of photostatic records.

(a) Records of any kind kept by the judge of the probate court or by the probate court of the several counties made by either a photostatic or photographic process shall be valid and effective for all purposes; and the records or copies thereof may be used in the same manner and to the same extent as records kept by any former method of printing, typing, or handwriting the same.

(b) Notwithstanding subsection (a) of this Code section, in all cases carried to the Supreme Court or the Court of Appeals, the rules of such courts for the preparation of transcripts of records shall be complied with.

History. — Ga. L. 1950, p. 414, § 4; Ga. L. 1982, p. 3, § 15.

15-9-47. (For effective date, see note.) Default judgments; governing provisions.

(a) If in any case pending before the probate court an answer, caveat, or other responsive pleading has not been filed within the time required by law or by lawful order of the court, the case shall automatically become in default unless the time for filing the answer, caveat, or other responsive pleading has been extended as provided by law. The petitioner at any time thereafter shall be entitled to verdict and judgment by default, in open court or in chambers, as if every item and paragraph of the petition or other pleadings filed in the matter were supported by proper evidence. At any time before final judgment, the court, in its discretion, upon payment of costs, may allow the default to open for providential cause preventing the filing of required pleadings or for excusable neglect or where the judge, from all the facts, shall determine that a proper case has been made for the default to open, on terms to be fixed by the court. In order for the default to be thus opened, the showing shall be made under oath, shall set up a meritorious defense,

shall offer to plead instanter, and shall announce ready to proceed with the hearing in the matter.

(b) The provisions of this Code section shall govern in proceedings pertaining to defaults in the probate court, and the provisions of Code Section 9-11-55 shall not be applicable to such proceedings.

History. — Code 1981, § 15-9-47, enacted by Ga. L. 1992, p. 2479, § 1; Ga. L. 2020, p. 377, § 2-16/HB 865.

Delayed effective date. — This Code section, as set out above, becomes effective January 1, 2021. For version of this Code section in effect until January 1, 2021, see the 2020 amendment note.

The 2020 amendment, effective January 1, 2021, designated the existing provisions as subsection (a), substituted "If" for "Notwithstanding any provisions of Chapter 11 of Title 9, if" at the beginning of subsection (a), and added subsection (b).

Law reviews. — For survey article on wills, trusts, guardianships, and fiduciary administration, see 60 Mercer L. Rev. 417 (2008).

JUDICIAL DECISIONS

Timely objection to amendment of year's support order. — In a probate matter, a trial court erred by dismissing an executor's objection to the setting aside of certain real property as year's support in favor of an estate as the executor had filed an objection within 15 days of the default order amending the year's support order, pursuant to O.C.G.A. § 9-11-55(a), and by paying costs. The provisions of § 9-11-55(a) relating to the opening of default judgments as a matter of right within 15 days of default applied to a year's support proceedings in probate court. In re Estate of Ehlers, 289 Ga. App. 14, 656 S.E.2d 169 (2007).

Waiver of right to default. — Because the executrix took the decedent's son's deposition and opposed the son's requests for a continuance, and did not seek to dismiss the son's caveat until 15 months after the caveat was untimely filed, the conduct of the executrix was inconsistent with an intent to raise or rely upon a default judgment and it resulted in a waiver of the right to default. In re Estate of Hill, 340 Ga. App. 39, 795 S.E.2d 748 (2016).

ARTICLE 3

COSTS AND COMPENSATION

Law reviews. — For article, "Courts: Juvenile Justice Reform," see 30 Ga. St. U. L. Rev. 63 (2013).

15-9-60. (For effective date, see note.) Fees.

(a) The judges or clerks of the probate courts of this state shall be entitled to charge and collect the sums enumerated in this Code section.

(b) All sums that the probate courts may be required to collect pursuant to Code Sections 15-23-7, 15-9-60.1, and 36-15-9 and all other sums as may be required by law shall be in addition to the sums provided in this Code section. The sums provided for in this Code

section are exclusive of costs for service of process, fees for publication of citation or notice, or any additional sums as may be provided by law.

(c) The fees provided for in this Code section shall be paid into the county treasury less and except only such sums as are otherwise directed to be paid by law, which sums shall be remitted as provided by law by either the probate court or the county.

(d) Subject to the provisions of Code Section 15-9-61, and except for the filing of a proceeding in which the filing party also files with the court a sworn affidavit that the party is unable because of indigence to pay the cost of court, all sums specified in this Code section shall be paid to the court at the time of filing or as thereafter incurred for services rendered. In accordance with Code Section 15-9-61, the judges of the probate courts are entitled to an advance cost of $30.00 for deposit to be made before filing any proceeding.

(e) Cost in decedent's estates:

(1) Except as otherwise provided, the cost in an initial proceeding regarding the estate of a decedent or of a missing individual believed to be dead shall be $130.00 for all services rendered by the judge or clerk of the probate court through the entry of the final order on such initial proceedings, exclusive of recording charges;

(2) As used in this subsection, the term "initial proceeding" shall mean the first proceeding filed in the probate court in connection with or regarding the estate of a decedent or of a missing individual believed to be dead, including, but not necessarily limited to, the following proceedings: petition for temporary letters of administration; petition for letters of administration; petition to probate will in common form; petition to probate will in solemn form; petition to probate will in solemn form and for letters of administration with will annexed; petition for order declaring no administration necessary; petition for year's support; petition for presumption of death of missing individual believed to be dead; any proceeding for ancillary administration by a foreign personal representative; or any other proceeding by which the jurisdiction of the probate court is first invoked with regard to the estate of a decedent or of a missing individual believed to be dead;

(3) As used in this subsection, the term "initial proceeding" shall not include a petition to establish custodial account for missing heir, a petition to enter a safe-deposit box, or any other petition or proceeding for which a specific cost is otherwise set forth in this Code section;

(4) Except as otherwise provided, the cost shall be $75.00 for all services rendered by the judge or clerk of the probate court through

the entry of the final order, exclusive of recording charges, in any of the proceedings listed in paragraph (2) of this subsection filed subsequent to the filing of an initial proceeding regarding the estate of the same decedent or missing individual believed to be dead;

(5) Except as otherwise provided, the cost shall be $50.00 for all services rendered by the judge or clerk of the probate court through the entry of the final order, exclusive of recording charges, for the filing of the following proceedings or pleadings regarding the estate of a decedent or of a missing individual believed to be dead: petition for letters of administration with will annexed (will previously probated); petition of personal representative for leave to sell property; petition for leave to sell perishable property; petition for leave to sell or encumber property previously set aside as year's support; petition by administrator for waiver of bond, grant of certain powers, or both; petition for discharge; petition by personal representative for approval of a division in kind; petition to determine heirs; petition by personal representative for direction under will; petition by personal representative to compromise a disputed claim or debt; petition by or against personal representative for an accounting or final settlement; petition to resign as personal representative and for the appointment of a successor; petition to remove a personal representative and for the appointment of a successor; citation against a personal representative for failure to make returns or for alleged mismanagement of estate; a caveat, objection, or other responsive pleading by which the proceeding becomes contested filed by any person to whom notice or citation has been issued; petition or motion to intervene as an interested party; and any other petition application, motion, or other pleading for which no specific cost is set forth in this Code section filed regarding the estate of a decedent or of a missing individual believed to be dead;

(6) Except as otherwise provided, the cost shall be $25.00 for all services rendered by the judge or clerk of the probate court through the entry of the final order, exclusive of recording charges, for the filing of the following proceedings, pleadings, or documents regarding the estate of a decedent or of a missing individual believed to be dead: petition to change accounting period; petition to enter a safe-deposit box; petition or motion for attorneys' fees; petition or motion of personal representative for extra compensation; or inventory, appraisement, or annual, intermediate, or final returns of personal representatives; and

(7) Except as otherwise provided, the cost shall be $10.00 for all services rendered by the judge or clerk of the probate court, exclusive of recording charges, for the filing of the following proceedings, pleadings, or documents regarding the estate of a decedent or of a

missing person believed to be dead: notice of claim or claim of a creditor, if such notice or claim is filed with and accepted by the court; declination to serve of nominated personal representative; or renunciation of right of succession.

(f) (For effective date, see note.) Costs in minor guardianship and conservatorship matters:

(1) Except as otherwise provided, the cost in a proceeding regarding the person, property, or person and property of a minor shall be $75.00 for all services rendered by the judge or clerk of the probate court through the entry of the final order on such proceeding, exclusive of recording charges, including, but not necessarily limited to, the following proceedings: petition for temporary letters of guardianship of a minor; petition for letters of guardianship, conservatorship, or guardianship and conservatorship of a minor by person other than natural guardian; petition for letters of conservatorship of a minor, by natural guardian, with bond — personal property over $5,000.00; petition for order that natural guardian not be required to become legally qualified conservator; application of guardian, conservator, or guardian and conservator for letters of dismission; or any other proceeding by which the jurisdiction of the probate court is first invoked with regard to the person, property, or person and property of a minor; and

(2) Except as otherwise provided, the costs for all services rendered by the judge or clerk of the probate court shall be as set forth below for the following proceedings, pleadings, or documents regarding the person, property, or person and property of a minor, exclusive of recording charges:

(A) Petition of conservator for leave to sell ..... $ 70.00

(B) Petition to compromise doubtful claim of minor ..... $ 70.00

(C) Petition for leave to encroach on corpus ..... $ 30.00

(D) Petition to change accounting period ..... $ 25.00

(E) Inventory or annual, intermediate, or final return (each) ..... $ 30.00

(F) Petition or motion for attorneys' fees ..... $ 70.00

(G) Petition to terminate temporary guardianship of minor ..... $ 30.00

(H) Any other petition, application, motion, or other pleading for which no specific cost is set forth in this Code section filed regarding an existing guardianship or conservatorship of a minor ..... $ 30.00

(g) (For effective date, see note.) Costs in adult guardianship and conservatorship matters:

(1) Except as otherwise provided, the cost in a proceeding regarding the person, property, or person and property of an adult alleged to be incapacitated shall be $150.00 for all services rendered by the judge or clerk of the probate court through the entry of the final order on such proceeding, exclusive of recording charges, including, but not necessarily limited to, the following proceedings: petition for the appointment of an emergency guardian, conservator, or guardian and conservator for an alleged gravely incapacitated adult; petition for the appointment of an emergency and permanent guardian, conservator, or guardian and conservator for an alleged gravely incapacitated adult; petition for the appointment of a guardian, conservator, or guardian and conservator for an alleged incapacitated adult; or any other proceeding by which the jurisdiction of the probate court is first invoked with regard to an adult alleged to be incapacitated; and

(2) Except as otherwise provided, the cost for all services rendered by the judge or clerk of the probate court shall be as set forth below for the following proceedings, pleadings, or documents regarding the person, property, or person and property of an incapacitated adult, exclusive of recording charges:

(A) Petition of conservator for leave to sell	$ 70.00
(B) Petition to compromise doubtful claim	70.00
(C) Petition for leave to encroach on corpus	30.00
(D) Petition to change accounting period	25.00
(E) Inventory or annual, intermediate, or final return (each)	30.00
(F) Petition or motion for attorneys' fees	70.00
(G) Petition to terminate or modify guardianship or conservatorship of incapacitated adult	70.00
(H) Application of guardian or conservator for letters of dismission	75.00
(I) Any other petition, application, motion, or other pleading for which no specific cost is set forth in this Code section filed regarding an existing guardianship or conservatorship of an adult	70.00

(h) Costs in matters involving sterilization, involuntary treatment, habilitation, or temporary placement:

(1) Except as otherwise provided, the cost in a proceeding filed under Chapter 20 of Title 31, Chapter 36A of Title 31, or Chapter 3, 4, or 7 of Title 37 shall be $130.00 for all services rendered by the judge or clerk of the probate court through the entry of the final order on such proceeding, exclusive of recording charges;

(2) There shall be no cost assessed for the receipt and consideration of affidavits in support of an order to apprehend under Part 1 of Article 3 of Chapter 3 of Title 37 or Part 1 of Article 3 of Chapter 7 of Title 37 or for the issuance of the order to apprehend; and

(3) There shall be no cost assessed for the receipt and consideration of a petition in support of an order to apprehend under Part 3 of Article 3 of Chapter 3 of Title 37 or Part 3 of Article 3 of Chapter 7 of Title 37 or for the issuance of the order to apprehend a patient alleged to be in noncompliance with an involuntary outpatient treatment order.

(i) Costs for hearings in contested matters:

(1) For conducting trials of contested matters or for formal hearing on the denial of an application for a weapons carry license before the probate court, the cost shall be $30.00 per one-half day or portion thereof;

(2) (For effective date, see note.) There shall be no additional cost for the initial hearing in adult guardianship or conservatorship matters or in matters involving sterilization, involuntary treatment, habilitation, or involuntary placement; and

(3) There shall be no cost for any hearing in an uncontested matter.

(j) **Custodial accounts.** For each account accepted by the judge of the probate court as custodian for a minor, incapacitated adult, or missing or unknown heir or beneficiary, there shall be a one-time fee of 8 percent of the fund deducted from the fund when first accepted.

(k) **(For effective date, see note.) Miscellaneous costs.** Except as otherwise provided, the judge or clerk of the probate court shall be entitled to the following costs for the proceedings, pleading, documents, or services itemized:

(1) Application for writ of habeas corpus	$ 75.00
(2) Petition to establish lost papers, exclusive of recording charges	50.00
(3) Petition for or declaration of exemptions	25.00
(4) Petition to change birth certificate	75.00

(5) For all services rendered by the judge or clerk of the probate court through the entry of the final order, exclusive of recording charges, for any application or petition by which the jurisdiction of the probate court is first invoked for which no cost is set forth in this Code section or other applicable law 70.00

(6) Issuance of any order, including a rule nisi, in any matter for which the costs set forth in this Code section do not include all services to be rendered by the judge or clerk of the probate court, exclusive of recording charges 30.00

(7) Motions, amendments, or other pleadings filed in any matter for which the cost set forth in this Code section does not include all services to be rendered by the judge or clerk of the probate court, exclusive of recording charges, and no other cost is set forth in this Code section 15.00

(8) For processing appeals to superior court, exclusive of recording charges 30.00

(9) For issuance of writ of fieri facias (fi.fa.) 10.00

(10) For all services rendered by the judge or clerk of the probate court in the exercise of concurrent jurisdiction pursuant to Code Section 15-9-127 for which no cost is set forth in this Code section. The sums charged shall be the same as those charged for such services in the superior court pursuant to Code Section 15-6-77 or other applicable law.

(11) For issuance of permit to discharge fireworks 30

(12) Application for weapons carry license (exclusive of fees charged by other agencies for the examination of criminal records and mental health records) 30

(13) For issuance of a replacement weapons carry license 6

(13.1) For issuance of personal identification cards to judges or Justices. The fee shall be determined by The Council of Probate Court Judges of Georgia pursuant to Code Section 15-25-3.

(14) Application for marriage license if the applicants have completed premarital education pursuant to Code Section 19-3-30.1 ..... No fee

(14.1) Application for a marriage license if the applicants have not completed premarital education pursuant to Code Section 19-3-30.1	40
(15) For the safekeeping of a will	15
(16) For issuance of a veteran's license	No fee
(17) Reserved.	
(18) For issuance of a certificate of residency	10
(19) Registration of junk dealer	10
(20) Certification of publication of application for insurance company charter	10
(21) Recording of marks and brands, each	15
(22) Exemplification	15
(23) Certification under seal of copies (plus copy cost)	10
(24) Certified copies of letters of personal representative, temporary administrator, conservator, or guardian, each, including copy cost	10
(25) For issuance of a subpoena, each	10
(26) For filing and recording of oath or bond of any official, officer, or employee of any municipality or authority within the county, each	10
(27) For filing and recording of oath or bond of county official or officer	No fee
(28) For examination of records or files by employee of the probate court to provide abstract of information contained therein or to provide copies therefrom, per estate or name	10
(29) Recording, per page	2
(30) Copies, per page	1.00

History. — Laws 1792, Cobb's 1851 Digest, p. 352; Laws 1824, Cobb's 1851 Digest, p. 358; Ga. L. 1851-52, p. 91, § 18; Ga. L. 1855-56, p. 147, § 1; Ga. L. 1857, p. 49, § 1; Code 1863, § 3618; Ga. L. 1865-66, p. 40, § 1; Code 1868, § 3643; Ga. L. 1870, p. 67, § 1; Code 1873, § 3694; Ga. L. 1882-83, p. 61, § 1; Code 1882, § 3694; Ga. L. 1889, p. 76, § 1; Ga. L. 1889, p. 79, § 1; Civil Code 1895, § 4269; Civil Code 1910, § 4827; Code 1933, § 24-1716; Ga. L. 1939, p. 210, § 1; Ga. L. 1950, p. 140, § 1; Ga. L. 1958, p. 354, § 2; Ga. L. 1971, p. 591, § 1; Ga. L. 1976, p. 1062, § 2; Ga. L. 1978, p. 1939, § 1; Ga. L. 1980, p. 1661, § 4; Ga. L. 1982, p. 3, § 15; Code 1933, § 24-1716.2, enacted by Ga. L. 1982, p. 552, § 1; Ga. L. 1982, p. 552, § 2; Ga. L. 1983, p. 3, § 12; Ga. L. 1983, p. 404, § 1; Ga. L. 1983, p. 867, § 1; Ga. L. 1991, p. 1753, § 2; Ga. L. 1992, p. 6, § 15; Ga. L. 1992, p. 1192, § 1; Ga. L. 1992, p. 2521,

§§ 1-3; Ga. L. 1993, p. 91, § 15; Ga. L. 1994, p. 97, § 15; Ga. L. 1994, p. 1173, § 1; Ga. L. 1995, p. 139, §§ 5, 6; Ga. L. 2000, p. 1589, § 4; Ga. L. 2001, p. 960, § 1; Ga. L. 2002, p. 415, § 15; Ga. L. 2002, p. 1011, § 1; Ga. L. 2005, p. 1485, § 1/HB 378; Ga. L. 2010, p. 9, § 1-39/HB 1055; Ga. L. 2010, p. 963, § 2-3/SB 308; Ga. L. 2016, p. 263, § 2/SB 332; Ga. L. 2020, p. 377, § 2-17/HB 865.

Delayed effective date. — This Code section, as set out above, becomes effective January 1, 2021. For version of this Code section in effect until January 1, 2021, see the 2020 amendment note.

The 2020 amendment, effective January 1, 2021, in the introductory language of subsection (f), inserted "and conservatorship"; in paragraph (f)(1), deleted "the person of" preceding the second instance of "a minor", substituted ", conservatorship, or guardianship and conservatorship" for "of person, property, or person and property", substituted "conservatorship" for "guardianship of property" following the second instance of "petition for letters of", substituted "conservator" for "guardian of the property" following "legally qualified", and inserted ", conservator, or guardian and conservator"; substituted "conservator" for "guardian" in subparagraph (f)(2)(A); inserted "or conservatorship" in subparagraph (f)(2)(H); inserted "and conservatorship" in the introductory language of subsection (g); inserted ", conservator, or guardian and conservator" three times in paragraph (g)(1); substituted "conservator" for "guardian" in subparagraph (g)(2)(A); inserted "or conservatorship" in subparagraph (g)(2)(G) and (g)(2)(I); and inserted "or conservator" in subparagraph (g)(2)(H); inserted "or conservatorship" in paragraph (i)(2); substituted the present provisions of paragraph (k)(10) for "Reserved"; substituted "Reserved." for "For issuance of a peddler's license . . . 15" in paragraph (k)(17); and inserted "conservator," in paragraph (k)(24).

Cross references. — Fees payable to judge of probate court for granting or refusing permit to conduct fireworks display, § 25-10-4. Fee for taking of affidavit of attesting witness for use in probate proceedings, § 53-3-15.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2001, the designations for subparagraphs (f)(2)(i) through (f)(2)(viii) were changed to (f)(2)(A) through (f)(2)(H), respectively; the designations for subparagraphs (g)(2)(i) through (g)(2)(ix) were changed to (g)(2)(A) through (g)(2)(I), respectively; "does not" was substituted for "do not" in paragraph (k)(7); and "No fee" was substituted for "No Fee" in paragraphs (k)(16) and (k)(27).

The amendment of paragraph (k)(12) of this Code section by Ga. L. 2010, p. 9, § 1-39, irreconcilably conflicted with and was treated as superseded by Ga. L. 2010, p. 963, § 2-3. See County of Butts v. Strahan, 151 Ga. 417 (1921); Keener v. McDougall, 232 Ga. 273 (1974).

Pursuant to Code Section 28-9-5, in 2016, a period was added following "Justices" in paragraph (k)(13.1).

Editor's notes. — Ga. L. 1995, p. 139, § 7, not codified by the General Assembly, provided that the 1995 amendment which added paragraph (a)(33) and subparagraph (e)(1)(CC) would apply to the sale or transfer of handguns on or after January 1, 1996.

Ga. L. 1995, p. 139, § 7, not codified by the General Assembly, provides that no local ordinance which was in effect on July 1, 1995, shall be affected by Code Section 16-11-184 until January 1, 1996, at which time, unless enacted subsequent to July 1, 1995, as provided by that Code section, any such ordinance shall be of no further force or effect, and further provides that no ordinance or regulation attempting to regulate firearms in any manner shall be enacted by any county, city, or municipality after July 1, 1995.

Ga. L. 1995, p. 139, § 8, not codified by the General Assembly, provides that paragraph (a)(33) and subparagraph (e)(1)(CC) of this Code section shall be repealed automatically upon a final judicial determination that the Act is invalid for any reason.

Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provides that the amendments to paragraph (c)(28) and subparagraph (e)(3)(BB) are applicable with respect to notices delivered on or after July 1, 2000.

Ga. L. 2010, p. 963, § 3-1/SB 308, not codified by the General Assembly, provides, in part, that the amendment of this Code section shall apply to all offenses committed on and after June 4, 2010 and shall not affect any prosecutions for acts occurring before June 4, 2010 and shall not act as an abatement of any such prosecution.

Law reviews. — For article, "Pitfalls in Probate Practice and Procedure," see 21 Ga. B. J. 169 (1958). For article, "Crimes and Offenses," see 27 Ga. St. U.L. Rev. 131 (2011).

For note on the 1995 amendment of this Code section, see 12 Ga. St. U.L. Rev. 118 (1995).

JUDICIAL DECISIONS

Cited in Gunby v. Yates, 214 Ga. 17, 102 S.E.2d 548 (1958); International Minerals & Chem. Corp. v. Bledsoe, 126 Ga. App. 243, 190 S.E.2d 572 (1972); Richmond County v. Pierce, 234 Ga. 274, 215 S.E.2d 665 (1975).

OPINIONS OF THE ATTORNEY GENERAL

This section requires filing of cost deposit prior to institution of proceeding in probate court; a proceeding should be defined to include the filing of any petition or application in probate court which seeks action independent of the matters then pending before the court and which cannot be obtained without the filing of such petition or application. 1978 Op. Att'y Gen. No. U78-23.

Relief from filing deposits for indigents not permanent if indigents later able to pay. — Purpose of statutory provisions allowing indigent persons relief from the filing of deposits such as Ga. L. 1952, p. 584, §§ 1 and 2 and former Code 1933, §§ 24-2716.1 and 24-2716.2 (see now O.C.G.A. §§ 9-15-2, 15-9-60, and 15-9-61) was to provide an indigent access to the courts, and it did not appear that the General Assembly intended to permanently relieve a litigant from responsibility to pay any probate court costs regardless of the litigant's ultimate ability to pay those costs; accordingly, a party allowed to proceed in forma pauperis without the filing of such an advance cost deposit can be required to pay court costs if the party later becomes able to pay the costs by virtue of receipt of estate funds through probate proceedings. 1978 Op. Att'y Gen. No. U78-48.

Probate judge compensated on fee basis is entitled to fees prescribed in this section in connection with the services rendered in a recall effort. 1979 Op. Att'y Gen. No. 79-37.

Upon filing of application for recall petition, judge entitled to deposit. — Probate judge compensated on a fee basis is entitled to a deposit upon the filing of an application for a recall petition except in those instances when the applicant is unable by reason of poverty to pay the deposit and files an affidavit to that effect. 1979 Op. Att'y Gen. No. 79-37.

Fee for probate judge when recall election is called. — If a recall petition is successful and a recall election is called, the probate judge would be entitled to a fee for each ballot box for the preparation of all papers, appointing managers, and consolidating returns associated with such recall election. 1979 Op. Att'y Gen. No. 79-37.

Compensation of probate judge computed under schedule. — Ordinary (now probate judge), compensated under the fee system, may properly include in the ordinary's (now probate judge's) budget of election expenses, the ordinary's (now probate judge's) compensation computed from the schedule found in the statute. 1968 Op. Att'y Gen. No. 68-274.

Fee for probate judge for conveying year's support. — Fee set forth in the statute is proper fee for ordinary (now probate judge) for conveying or incumbering a year's support and supersedes Ga. L. 1937, p. 861. 1958-59 Op. Att'y Gen. p. 61.

Probate judge entitled to certain fees if none specifically prescribed. — The probate judge was entitled to receive $8.00 for any application, petition, or case

if no costs were prescribed and was entitled to receive $8.00 for filing and docketing any application, petition, or case if no costs were otherwise prescribed. The probate judge was entitled to both of these fees upon the filing of an application for a recall petition. 1979 Op. Att'y Gen. No. 79-37.

Traffic cases. — Costs applicable to traffic cases brought in probate courts pursuant to O.C.G.A. § 40-13-21, or when a judge of a probate court issues a warrant in a traffic case pursuant to O.C.G.A. § 17-4-23, are those enumerated in paragraph (a)(27) of O.C.G.A. § 15-9-60, plus costs allowed for other services actually performed. 1981 Op. Att'y Gen. No. U81-36.

Filing campaign financing disclosure reports. — Former Code 1933, § 24-1716.2 (see now O.C.G.A. § 15-9-60), in authorizing the probate judge to charge a fee for the filing of any application, petition, or case when no costs were prescribed, did not authorize charging this fee for the filing of campaign financing disclosure reports by candidates for county office pursuant to the provisions concerning ethics in government. 1980 Op. Att'y Gen. No. U80-29.

RESEARCH REFERENCES

Am. Jur. 2d. — 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 566 et seq. 64 Am. Jur. 2d, Public Securities and Obligations, § 58 et seq.

C.J.S. — 34 C.J.S., Executors and Administrators, §§ 1071, 1074.

ALR. — Disqualification of judge, justice of the peace, or similar judicial officer for pecuniary interest in fines, forfeitures, or fees payable by litigants, 72 A.L.R.3d 375.

Validity of statutes imposing a graduated probate fee based upon value of estate, 76 A.L.R.3d 1117.

15-9-60.1. Additional marriage license fee for Children's Trust Fund.

In addition to any fees required in Code Section 15-9-60 for receiving marriage applications, issuing marriage licenses, and recording relative thereto, the judge of the probate court shall charge an additional fee of $15.00 for issuing a marriage license. No amount of this additional fee shall be paid into the Judges of the Probate Courts Retirement Fund of Georgia provided for in Chapter 11 of Title 47 or be used for the purpose of calculating retirement benefits for judges of the probate courts. Each judge of the probate court shall collect the additional fees for issuing marriage licenses as provided in this Code section and shall pay such moneys over to the Georgia Superior Court Clerks' Cooperative Authority by the last day of the month there following, to be deposited by the authority into the general treasury. The authority shall, on a quarterly basis, make a report and accounting of all funds collected pursuant to this Code section and shall submit such report and accounting to the Office of Planning and Budget, the House Budget and Research Office, and the Senate Budget and Evaluation Office no later than 60 days after the last day of the preceding quarter.

History. — Code 1981, § 15-9-60.1, enacted by Ga. L. 1987, p. 1133, § 3; Ga. L. 1988, p. 13, § 15; Ga. L. 2004, Ex. Sess., p. ES3, § 4/HB 1EX; Ga. L. 2008, p. VO1, § 1-4/HB 529; Ga. L. 2014, p. 866, § 15/SB 340.

Cross references. — Designating amount of additional marriage license fees for Children's Trust Fund, § 19-14-21.

Editor's notes. — Ga. L. 1987, p. 1133, § 6, not codified by the General Assembly, repeals this Code section effective July 1, 1995.

Ga. L. 1994, p. 509, § 8, not codified by the General Assembly, amends Ga. L. 1987, p. 1133, § 6, to change the date of repeal from July 1, 1995, to July 1, 2000.

Ga. L. 1999, p. 520, § 1, not codified by the General Assembly, amends Ga. L. 1987, p. 1133, § 6 to change the date of repeal from July 1, 2000, to July 1, 2010.

Ga. L. 2008, p. 568, § 14/HB 1054, not codified by the General Assembly, repealed Ga. L. 1987, p. 1133, § 6, as amended, so as to eliminate the July 1, 2010, repeal of this Code section.

15-9-61. Payment of fees prerequisite to filing; affidavit of indigence.

The judges of probate courts shall not be required to file any proceedings until the deposit specified in Code Section 15-9-60, relating to court costs of probate courts, has been deposited with the probate judge on account of cost, provided that the deposit shall not be required if the party desiring to file the proceeding is unable because of his indigence to pay the deposit and the party files with the probate court an affidavit to that effect. If the proceeding is dismissed or withdrawn or if the total cost incurred in the proceeding is less than the deposit required by Code Section 15-9-60, any of the sum remaining in the hands of the judge of the probate court shall be repaid. The deposit required to be filed by this Code section shall not affect any Code section or Act of the General Assembly which requires a deposit in excess or in addition to the deposit of cost required by this Code section. Nothing contained in this Code section shall be deemed to require the deposit of cost by the state, its agencies, or its political subdivisions.

History. — Code 1933, § 24-1716.1, enacted by Ga. L. 1978, p. 1939, § 2.

JUDICIAL DECISIONS

Affidavit of trustee must contain statement of poverty of trust. — Trustee, by the trustee's affidavit, must state that the trustee's inability to give security arises from the poverty of the trust estate. Scott v. Turpin & Volker, 30 Ga. 964 (1860).

OPINIONS OF THE ATTORNEY GENERAL

Relief for indigents not permanent if indigents later able to pay. — Purpose of statutory provisions allowing indigent persons relief from the filing of deposits such as Ga. L. 1952, p. 584, §§ 1 and 2 and former Code 1933, §§ 24-2716.1 and 24-2716.2 (see now O.C.G.A. §§ 9-15-2, 15-9-60, and 15-9-61) was to provide an indigent access to the courts, and it did not appear that the General

Assembly intended to permanently relieve a litigant from responsibility to pay any probate court costs regardless of the litigant's ultimate ability to pay those costs; accordingly, a party allowed to proceed in forma pauperis without the filing of such an advance cost deposit can be required to pay court costs if the party later becomes able to pay those costs by virtue of receipt of estate funds through probate proceedings. 1978 Op. Att'y Gen. No. U78-48.

RESEARCH REFERENCES

C.J.S. — 34 C.J.S., Executors and Administrators, §§ 1071, 1074.

15-9-62. Issuance of writ of fieri facias for fees; defenses.

(a) Whenever any costs are due the judge of the probate court by executors, administrators, or guardians, upon failure to pay the same on demand made, he is empowered to issue a writ of fieri facias at any regular term of court against the executors, administrators, or guardians for the amount due for costs at the time of the demand.

(b) In all cases tried before the judge of the probate court, where judgment has been entered, the judge is empowered to issue writs of fieri facias for his costs therein against the party or parties liable for costs.

(c) The writs of fieri facias provided for in subsections (a) and (b) of this Code section shall be directed "To all and singular the sheriffs of this state" and shall be made returnable to the probate court.

(d) Whenever any illegality or other defense is filed by the defendant or a claim is filed to the property levied on, the sheriff shall return the writ of fieri facias and the defense or claim to the next superior court of the county, where the issues made by the defense or claim shall be tried as are other cases in the superior court.

History. — Ga. L. 1887, p. 54, §§ 1-4; Civil Code 1895, §§ 4243, 4244, 4245, 4246; Civil Code 1910, §§ 4801, 4802, 4803, 4804; Code 1933, §§ 24-2001, 24-2002, 24-2003, 24-2004.

JUDICIAL DECISIONS

Judge may issue and sign execution for costs due probate court. — Ordinary (now probate judge) who has costs due the ordinary (now probate judge) by executors, administrators, or guardians was empowered, upon failure of such executors, administrators, or guardians to pay the costs, to issue a fieri facias at a regular term of court against such executors, administrators, or guardians, for the amount due for costs at the time of demand. In such case, the fieri facias is not invalid because the fieri facias is signed by the ordinary (now probate judge) instead of by the clerk of such ordinary (now probate judge). Johnson v. Goins, 157 Ga. 430, 121 S.E. 830 (1924).

Cited in Jones v. Head, 185 Ga. 857, 196 S.E. 725 (1938); Smith v. Deering, 880 F. Supp. 816 (S.D. Ga. 1994).

RESEARCH REFERENCES

Am. Jur. 2d. — 30 Am. Jur. 2d, Executions and Enforcement of Judgments, §§ 14, 15.

C.J.S. — 34 C.J.S., Executors and Administrators, §§ 1071, 1074.

15-9-63. (Effective until January 1, 2021. See note.) Schedule of minimum salaries.

(a)(1) Any other laws to the contrary notwithstanding, the minimum annual salary of each judge of the probate court in this state shall be fixed according to the population of the county in which he or she serves, as determined by the United States decennial census of 2000 or any future such census; provided, however, that such annual salary shall be recalculated in any year following a census year in which the Department of Community Affairs publishes a census estimate for the county prior to July 1 in such year that is higher than the immediately preceding decennial census. Each such judge of the probate court shall receive an annual salary, payable in equal monthly installments from the funds of his or her county, of not less than the amount fixed in the following schedule:

Population	Minimum Salary
0 — 5,999	$ 29,832.20
6,000 — 11,889	40,967.92
11,890 — 19,999	46,408.38
20,000 — 28,999	49,721.70
29,000 — 38,999	53,035.03
39,000 — 49,999	56,352.46
50,000 — 74,999	63,164.60
75,000 — 99,999	67,800.09
100,000 — 149,999	72,434.13
150,000 — 199,999	77,344.56
200,000 — 249,999	84,458.82
250,000 — 299,999	91,682.66
300,000 — 399,999	101,207.60
400,000 — 499,999	105,316.72
500,000 or more	109,425.84

(2) Whenever the state employees subject to compensation plans authorized and approved in accordance with Code Section 45-20-4 receive a cost-of-living increase or general performance based increase of a certain percentage or a certain amount, the amounts fixed in the minimum salary schedule in paragraph (1) of this subsection and in Code Section 15-9-64, or the amounts derived by increasing each of said amounts through the application of longevity increases pursuant to Code Section 15-9-65, where applicable, shall be increased by the same percentage or same amount applicable to such state employees. If the cost-of-living increase or general performance based increase received by state employees is in different percentages or different amounts as to certain categories of employees, the amounts fixed in the minimum salary schedule in paragraph (1) of this subsection, and in Code Section 15-9-64, or the amounts derived through the application of longevity increases, shall be increased by a percentage or an amount not to exceed the average percentage or average amount of the general increase in salary granted to the state employees. The Office of Planning and Budget shall calculate the average percentage increase or average amount increase when necessary. The periodic changes in the amounts fixed in the minimum salary schedule in paragraph (1) of this subsection, and in Code Section 15-9-64, or the amounts derived through the application of longevity increases, as authorized by this paragraph shall become effective on the first day of January following the date that the cost-of-living increases or general performance based increases received by state employees become effective; provided, however, that if the cost-of-living increases received by state employees become effective on January 1, such periodic changes in the amounts fixed in the minimum salary schedule in paragraph (1) of this subsection and in Code Section 15-9-64, or the amounts derived by increasing each of said amounts through the application of longevity increases pursuant to Code Section 15-9-65, where applicable, as authorized by this paragraph shall become effective on the same date that the cost-of-living increases or general performance based increases received by state employees become effective.

(3) The county governing authority may supplement the minimum annual salary of the judge of the probate court in such amount as it may fix from time to time; but no probate judge's compensation supplement shall be decreased during any term of office. A county governing authority shall not be required to pay a local supplement to a judge beyond the term of office for which such supplement was approved. Any prior expenditure of county funds to supplement the probate judge's salary in the manner authorized by this paragraph is ratified and confirmed. Nothing contained in this paragraph shall prohibit the General Assembly by local law from supplementing the annual salary of the probate judge.

(b) In any county in which more than 70 percent of the population of the county according to the United States decennial census of 1990 or any future such census resides on property of the United States government which is exempt from taxation by this state, the population of the county for purposes of subsection (a) of this Code section shall be deemed to be the total population of the county minus the population of the county which resides on property of the United States government.

History. — Ga. L. 1974, p. 455, § 1; Ga. L. 1978, p. 1953, § 1; Ga. L. 1980, p. 551, § 1; Ga. L. 1981, p. 518, § 1; Ga. L. 1983, p. 482, § 1; Ga. L. 1985, p. 932, § 1; Ga. L. 1987, p. 440, § 2.1; Ga. L. 1988, p. 931, § 2; Ga. L. 1992, p. 1478, § 3; Ga. L. 1994, p. 620, § 3; Ga. L. 1996, p. 1231, § 2; Ga. L. 1998, p. 1159, § 9; Ga. L. 1999, p. 765, § 1; Ga. L. 2001, p. 902, § 4; Ga. L. 2006, p. 568, § 3/SB 450; Ga. L. 2009, p. 745, § 1/SB 97; Ga. L. 2012, p. 446, § 2-12/HB 642; Ga. L. 2014, p. 395, § 2/SB 341.

Cross references. — Further provisions regarding compensation of judges of probate court, § 15-1-12.

Editor's notes. — Code Section 15-9-63 is set out twice in this Code. The first version is effective until January 1, 2021, and the second version becomes effective on January 1, 2021.

JUDICIAL DECISIONS

Probate judge of Calhoun County is an elected official whose salary is controlled by Ga. L. 1971, p. 2914, O.C.G.A. §§ 15-9-63 and 15-9-64. Porter v. Calhoun County, 250 Ga. 566, 300 S.E.2d 143 (1983).

Effect on person serving as probate judge and magistrate. — Section 7-2 of Ga. L. 1983, p. 884 does not mean that a person who served in the dual capacity of probate judge and small claims court judge prior to the effective date of the Magistrate Courts Act, and who now serves in the dual capacity of probate judge and magistrate by virtue of that Act, cannot be required to take a reduction in pay. The section has no applicability to the compensation of the office of magistrate, regardless of whether a person holding that office also serves as a probate judge. Porter v. Calhoun County Bd. of Comm'rs, 252 Ga. 446, 314 S.E.2d 649 (1984).

OPINIONS OF THE ATTORNEY GENERAL

Intent of this section is to establish minimum, uniform salaries for probate judges based upon the population of the county in which the judges serve. 1975 Op. Att'y Gen. No. U75-99.

Salaried probate judges may not retain fees for maintaining and certifying vital records absent express legislative authorization. 1976 Op. Att'y Gen. No. U76-53.

Current term counted in determining salary, but not for 5 percent increase. — Current term of office of judges of probate court should be counted for determining salaries under this article, but probate judges are not entitled to a 5 percent increase provided for in O.C.G.A. § 15-9-65 above minimum salaries set forth in O.C.G.A. § 15-9-63 by virtue of service in the judges' current term of office. 1981 Op. Att'y Gen. No. 81-43.

Effect of cost-of-living increases. — Cost-of-living increases for sheriffs, probate judges, clerks of superior court, tax collectors, and tax commissioners adopted by the State Personnel Board for fiscal year 1989-1990 should take the same form as the corresponding cost-of-living increases for classified employees of the Merit System so that those salaries less than $18,000 in the schedules for sheriff, clerk, probate judge, tax collector, and tax commissioner would be increased $450, the rest 2½ percent. 1989 Op. Att'y Gen. 89-33.

Alternative salary provisions. — Probate judges who were placed on sala-

ries by former T. 15, C. 22 (repealed) were entitled to receive an applicable salary set pursuant to that chapter or by O.C.G.A. §§ 15-9-63 through 15-9-67 (minimum salary statute), whichever was greater. 1982 Op. Att'y Gen. No. 82-45.

15-9-63. (Effective January 1, 2021. See notes.) Schedule of minimum salaries.

(a)(1) Any other provision of law to the contrary notwithstanding, the minimum annual salary of each judge of the probate court in this state shall be fixed according to the population of the county in which he or she serves, as determined by the United States decennial census of 2010 or any future such census; provided, however, that such annual salary shall be recalculated in any year following a census year in which the Department of Community Affairs publishes a census estimate for the county prior to July 1 in such year that is higher than the immediately preceding decennial census. Each such judge of the probate court shall receive an annual salary, payable in equal monthly installments from the funds of the county, of not less than the amount fixed in the following schedule:

Population	Minimum Salary
0 — 5,999	$ 35,576.65
6,000 — 11,889	48,856.63
11,890 — 19,999	55,344.71
20,000 — 28,999	59,296.04
29,000 — 38,999	63,247.38
39,000 — 49,999	67,203.60
50,000 — 74,999	75,327.48
75,000 — 99,999	80,855.58
100,000 — 149,999	86,381.94
150,000 — 199,999	92,237.91
200,000 — 249,999	100,722.08
250,000 — 299,999	109,336.93
300,000 — 399,999	120,695.99
400,000 — 499,999	125,596.32
500,000 or more	130,496.72

(2)(A) Whenever the state employees subject to compensation plans authorized and approved in accordance with Code Section 45-20-4 receive a cost-of-living increase or general performance based increase of a certain percentage or a certain amount, the amounts fixed in the minimum salary schedule in paragraph (1) of this subsection and in Code Section 15-9-64, or the amounts derived by increasing each of said amounts through the application of longevity increases pursuant to Code Section 15-9-65, where applicable, shall be increased by the same percentage or same amount applicable to such state employees. If the cost-of-living increase or general performance based increase received by state employees is in different percentages or different amounts as to certain categories of employees, the amounts fixed in the minimum salary schedule in paragraph (1) of this subsection, and in Code Section 15-9-64, or the amounts derived through the application of longevity increases, shall be increased by a percentage or an amount not to exceed the average percentage or average amount of the general increase in salary granted to the state employees. The Office of Planning and Budget shall calculate the average percentage increase or average amount increase when necessary. The periodic changes in the minimum salary schedule in paragraph (1) of this subsection, and in Code Section 15-9-64, or the amounts derived through the application of longevity increases, as authorized by this paragraph, shall become effective on the first day of January following the date that the cost-of-living increases or general performance based increases received by state employees become effective; provided, however, that if the cost-of-living increases received by state employees become effective on January 1, such periodic changes in the amounts fixed in the minimum salary schedule in paragraph (1) of this subsection and in Code Section 15-9-64, or the amounts derived by increasing each of said amounts through the application of longevity increases pursuant to Code Section 15-9-65, where applicable, as authorized by this paragraph, shall become effective on the same date that the cost-of-living increases or general performance based increases received by state employees become effective.

(B) The amounts fixed in the minimum salary schedule in this subsection shall not be increased by any state cost-of-living or general performance based increases that have been applied or are effective prior to January 1, 2020. Any state cost-of-living or general performance based increases effective on or after January 1, 2020, shall be calculated as provided in this Code section.

(3) The county governing authority may supplement the minimum annual salary of the judge of the probate court in such amount as it may fix from time to time; but no probate judge's compensation

supplement shall be decreased during any term of office. A county governing authority shall not be required to pay a local supplement to a judge beyond the term of office for which such supplement was approved. Any prior expenditure of county funds to supplement the probate judge's salary in the manner authorized by this paragraph is ratified and confirmed. Nothing contained in this paragraph shall prohibit the General Assembly by local law from supplementing the annual salary of the probate judge.

(b) In any county in which more than 70 percent of the population of the county according to the United States decennial census of 1990 or any future such census resides on property of the United States government which is exempt from taxation by this state, the population of the county for purposes of subsection (a) of this Code section shall be deemed to be the total population of the county minus the population of the county which resides on property of the United States government.

History. — Ga. L. 1974, p. 455, § 1; Ga. L. 1978, p. 1953, § 1; Ga. L. 1980, p. 551, § 1; Ga. L. 1981, p. 518, § 1; Ga. L. 1983, p. 482, § 1; Ga. L. 1985, p. 932, § 1; Ga. L. 1987, p. 440, § 2.1; Ga. L. 1988, p. 931, § 2; Ga. L. 1992, p. 1478, § 3; Ga. L. 1994, p. 620, § 3; Ga. L. 1996, p. 1231, § 2; Ga. L. 1998, p. 1159, § 9; Ga. L. 1999, p. 765, § 1; Ga. L. 2001, p. 902, § 4; Ga. L. 2006, p. 568, § 3/SB 450; Ga. L. 2009, p. 745, § 1/SB 97; Ga. L. 2012, p. 446, § 2-12/HB 642; Ga. L. 2014, p. 395, § 2/SB 341; Ga. L. 2019, p. 1015, § 3/SB 171; Ga. L. 2020, p. 493, § 15/SB 429; Ga. L. 2020, p. 526, § 2/SB 295.

The 2019 amendment, effective January 1, 2021, in paragraph (a)(1), in the first sentence, substituted "provision of law" for "laws" near the beginning, and substituted "2010" for "2000" in the middle, substituted "the county" for "his or her county" in the second sentence, and modified the salary amounts in the minimum salary schedule; designated the existing provisions of paragraph (a)(2) as subparagraph (a)(2)(A); deleted "the amounts fixed in" following "The periodic changes in" at the beginning of the fourth sentence of subparagraph (a)(2)(A); and added subparagraph (a)(2)(B).

The 2020 amendments. — The first 2020 amendment, effective July 29, 2020, part of an Act to revise, modernize, and correct the Code, revised punctuation twice in subparagraph (a)(2)(A) and substituted "performance based" for "performance-based" twice in paragraph (a)(2)(B). The second 2020 amendment, effective January 1, 2021, rewrote subparagraph (a)(2)(B), which read: "Any cost-of-living or general performance-based increases that have been applied prior to January 1, 2021, shall cease to be applied. Effective January 1, 2021, any new cost-of-living or general performance-based increases shall be calculated as provided in this Code section."

Cross references. — Further provisions regarding compensation of judges of probate court, § 15-1-12.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2020, the designation of paragraph (a)(2) was changed to subparagraph (a)(2)(B).

Editor's notes. — Code Section 15-9-63 is set out twice in this Code. The first version is effective until January 1, 2021, and the second version becomes effective on January 1, 2021.

Ga. L. 2020, p. 493, § 54(e)/SB 429, part of an Act to revise, modernize, and correct the Code, effective July 29, 2020, not codified by the General Assembly, provides: "In the event of an irreconcilable conflict between a provision in Sections 1 through 53 of this Act and a provision of another Act enacted at the 2020 regular session of the General Assembly, the provision of such other Act shall control over the conflicting provision in Sections 1 through 53 of this Act to the extent of the conflict." Accordingly, the amendments to subpara-

graph (a)(2)(B) of Code Section 15-9-63 by Ga. L. 2020, p. 493, § 15(8)/SB 429, were not given effect.

JUDICIAL DECISIONS

Probate judge of Calhoun County is an elected official whose salary is controlled by Ga. L. 1971, p. 2914, O.C.G.A. §§ 15-9-63 and 15-9-64. Porter v. Calhoun County, 250 Ga. 566, 300 S.E.2d 143 (1983).

Effect on person serving as probate judge and magistrate. — Section 7-2 of Ga. L. 1983, p. 884 does not mean that a person who served in the dual capacity of probate judge and small claims court judge prior to the effective date of the Magistrate Courts Act, and who now serves in the dual capacity of probate judge and magistrate by virtue of that Act, cannot be required to take a reduction in pay. The section has no applicability to the compensation of the office of magistrate, regardless of whether a person holding that office also serves as a probate judge. Porter v. Calhoun County Bd. of Comm'rs, 252 Ga. 446, 314 S.E.2d 649 (1984).

OPINIONS OF THE ATTORNEY GENERAL

Intent of this section is to establish minimum, uniform salaries for probate judges based upon the population of the county in which the judges serve. 1975 Op. Att'y Gen. No. U75-99.

Salaried probate judges may not retain fees for maintaining and certifying vital records absent express legislative authorization. 1976 Op. Att'y Gen. No. U76-53.

Current term counted in determining salary, but not for 5 percent increase. — Current term of office of judges of probate court should be counted for determining salaries under this article, but probate judges are not entitled to a 5 percent increase provided for in O.C.G.A. § 15-9-65 above minimum salaries set forth in O.C.G.A. § 15-9-63 by virtue of service in the judges' current term of office. 1981 Op. Att'y Gen. No. 81-43.

Effect of cost-of-living increases. — Cost-of-living increases for sheriffs, probate judges, clerks of superior court, tax collectors, and tax commissioners adopted by the State Personnel Board for fiscal year 1989-1990 should take the same form as the corresponding cost-of-living increases for classified employees of the Merit System so that those salaries less than $18,000 in the schedules for sheriff, clerk, probate judge, tax collector, and tax commissioner would be increased $450, the rest 2½ percent. 1989 Op. Att'y Gen. 89-33.

Alternative salary provisions. — Probate judges who were placed on salaries by former T. 15, C. 22 (repealed) were entitled to receive an applicable salary set pursuant to that chapter or by O.C.G.A. §§ 15-9-63 through 15-9-67 (minimum salary statute), whichever was greater. 1982 Op. Att'y Gen. No. 82-45.

15-9-63.1. (Effective until January 1, 2021. See note.) Compensation for services as magistrate or chief magistrate; longevity increases.

(a) Beginning January 1, 2002, in any county in which the probate judge serves as chief magistrate or magistrate, he or she shall be compensated for such services based on a minimum annual amount of $11,642.54; provided, however, that compensation for a probate judge shall not be reduced during his or her term of office. A county governing authority shall not be required to pay the compensation provided by

this subsection beyond the term for which such probate judge serves as a chief magistrate or magistrate.

(b) Whenever the state employees subject to compensation plans authorized and approved in accordance with Code Section 45-20-4 receive a cost-of-living increase or general performance based increase of a certain percentage or a certain amount, the amount provided in subsection (a) of this Code section shall be increased by the same percentage or same amount applicable to such state employees. If the cost-of-living increase or general performance based increase received by state employees is in different percentages or different amounts as to certain categories of employees, the amount provided in subsection (a) of this Code section shall be increased by a percentage or an amount not to exceed the average percentage or average amount of the general increase in salary granted to the state employees. The Office of Planning and Budget shall calculate the average percentage increase or average amount increase when necessary. The periodic changes in the amount provided in subsection (a) of this Code section, as authorized by this subsection, shall become effective on the first day of January following the date that the cost-of-living increases or general performance based increases received by state employees become effective; provided, however, that if such increases received by state employees become effective on January 1, such periodic changes in the amount provided in subsection (a) of this Code section, as authorized by this subsection, shall become effective on the same date that the cost-of-living increases or general performance based increases received by state employees become effective.

(c) On and after January 1, 2002, the amounts provided in subsections (a) and (b) of this Code section shall be increased by multiplying said amounts by the percentage which equals 5 percent times the number of completed four-year terms of office served by any probate judge serving as a chief magistrate or magistrate where such terms have been completed after December 31, 1999, effective the first day of January following the completion of each such period of service.

History. — Code 1981, § 15-9-63.1, enacted by Ga. L. 1999, p. 765, § 2; Ga. L. 2001, p. 902, § 5; Ga. L. 2006, p. 568, § 4/SB 450; Ga. L. 2009, p. 745, § 1/SB 97; Ga. L. 2012, p. 446, § 2-13/HB 642; Ga. L. 2014, p. 395, § 3/SB 341.

Editor's notes. — Code Section 15-9-63.1 is set out twice in this Code. The first version is effective until January 1, 2021, and the second version becomes effective on January 1, 2021.

Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: "Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act." This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: "Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90."

15-9-63.1. (Effective January 1, 2021. See note.) Compensation for services as magistrate or chief magistrate; longevity increases.

(a) Beginning January 1, 2021, in any county in which the probate judge serves as chief magistrate or magistrate, he or she shall be compensated for such services based on a minimum annual amount of $13,223.25; provided, however, that compensation for a probate judge shall not be reduced during his or her term of office. A county governing authority shall not be required to pay the compensation provided by this subsection beyond the term for which such probate judge serves as a chief magistrate or magistrate.

(b) Whenever the state employees subject to compensation plans authorized and approved in accordance with Code Section 45-20-4 receive a cost-of-living increase or general performance based increase of a certain percentage or a certain amount, the amount provided in subsection (a) of this Code section shall be increased by the same percentage or same amount applicable to such state employees. If the cost-of-living increase or general performance based increase received by state employees is in different percentages or different amounts as to certain categories of employees, the amount provided in subsection (a) of this Code section shall be increased by a percentage or an amount not to exceed the average percentage or average amount of the general increase in salary granted to the state employees. The Office of Planning and Budget shall calculate the average percentage increase or average amount increase when necessary. The periodic changes in the amount provided in subsection (a) of this Code section, as authorized by this subsection, shall become effective on the first day of January following the date that the cost-of-living increases or general performance based increases received by state employees become effective; provided, however, that if such increases received by state employees become effective on January 1, such periodic changes in the amount provided in subsection (a) of this Code section, as authorized by this subsection, shall become effective on the same date that the cost-of-living increases or general performance based increases received by state employees become effective.

(c) On and after January 1, 2002, the amounts provided in subsections (a) and (b) of this Code section shall be increased by multiplying said amounts by the percentage which equals 5 percent times the number of completed four-year terms of office served by any probate judge serving as a chief magistrate or magistrate where such terms have been completed after December 31, 1999, effective the first day of January following the completion of each such period of service.

History. — Code 1981, § 15-9-63.1, enacted by Ga. L. 1999, p. 765, § 2; Ga. L. 2001, p. 902, § 5; Ga. L. 2006, p. 568, § 4/SB 450; Ga. L. 2009, p. 745, § 1/SB 97; Ga. L. 2012, p. 446, § 2-13/HB 642; Ga. L. 2014, p. 395, § 3/SB 341; Ga. L. 2019, p. 1015, § 4/SB 171.

The 2019 amendment, effective January 1, 2021, in subsection (a), in the first sentence, substituted "2021" for "2002", and substituted "$13,223.25" for "$11,642.54".

Editor's notes. — Code Section 15-9-63.1 is set out twice in this Code. The first version is effective until January 1, 2021, and the second version becomes effective on January 1, 2021.

15-9-64. (Effective until January 1, 2021. See note.) Supplement to minimum salaries.

The amount of minimum salary provided in Code Section 15-9-63 for the judges of the probate courts of any county presently on a salary who also hold and conduct elections or are responsible for conducting elections for members of the General Assembly under any applicable general or local law of this state shall be increased by $323.59 per month. The amount of the minimum salary provided in Code Section 15-9-63 for the judges of the probate courts on a salary who are responsible for traffic cases under any general or local law of this state shall also be increased by $404.41 per month. A county governing authority shall not be required to pay the compensation provided by this Code section beyond the term for which such judge performs such services.

History. — Ga. L. 1974, p. 455, § 2; Ga. L. 1978, p. 1953, § 2; Ga. L. 1981, p. 518, §§ 1, 2; Ga. L. 1983, p. 482, § 2; Ga. L. 1985, p. 932, § 2; Ga. L. 1998, p. 1159, § 10; Ga. L. 2001, p. 902, § 6; Ga. L. 2006, p. 568, § 5/SB 450; Ga. L. 2014, p. 395, § 4/SB 341.

Editor's notes. — Code Section 15-9-64 is set out twice in this Code. The first version is effective until January 1, 2021, and the second version becomes effective on January 1, 2021.

JUDICIAL DECISIONS

Probate judge of Calhoun County is an elected official whose salary is controlled by Ga. L. 1971, p. 2914, O.C.G.A. §§ 15-9-63 and 15-9-64. Porter v. Calhoun County, 250 Ga. 566, 300 S.E.2d 143 (1983).

OPINIONS OF THE ATTORNEY GENERAL

Salary increase not restricted to months during which elections conducted. — This section does not limit the salary increase for probate judges who hold elections to the months during which elections are actually conducted. 1975 Op. Att'y Gen. No. U75-49.

Salaried probate judges may not retain fees for maintaining and certifying vital records absent express legislative authorization. 1976 Op. Att'y Gen. No. U76-53.

15-9-64. (Effective January 1, 2021. See note.) Supplement to minimum salaries.

The amount of minimum salary provided in Code Section 15-9-63 for the judges of the probate courts of any county presently on a salary who also hold and conduct elections or are responsible for conducting elections for members of the General Assembly under any applicable general or local law of this state shall be increased by $385.90 per month. The amount of the minimum salary provided in Code Section 15-9-63 for the judges of the probate courts on a salary who are responsible for traffic cases under any general or local law of this state shall also be increased by $482.28 per month. A county governing authority shall not be required to pay the compensation provided by this Code section beyond the term for which such judge performs such services.

History. — Ga. L. 1974, p. 455, § 2; Ga. L. 1978, p. 1953, § 2; Ga. L. 1981, p. 518, §§ 1, 2; Ga. L. 1983, p. 482, § 2; Ga. L. 1985, p. 932, § 2; Ga. L. 1998, p. 1159, § 10; Ga. L. 2001, p. 902, § 6; Ga. L. 2006, p. 568, § 5/SB 450; Ga. L. 2014, p. 395, § 4/SB 341; Ga. L. 2019, p. 1015, § 5/SB 171.

The 2019 amendment, effective January 1, 2021, in this Code section, substituted "$385.90" for "$323.59" in the first sentence, and substituted "$482.28" for "$404.41" in the second sentence.

Editor's notes. — Code Section 15-9-64 is set out twice in this Code. The first version is effective until January 1, 2021, and the second version becomes effective on January 1, 2021.

JUDICIAL DECISIONS

Probate judge of Calhoun County is an elected official whose salary is controlled by Ga. L. 1971, p. 2914, O.C.G.A. §§ 15-9-63 and 15-9-64. Porter v. Calhoun County, 250 Ga. 566, 300 S.E.2d 143 (1983).

OPINIONS OF THE ATTORNEY GENERAL

Salary increase not restricted to months during which elections conducted. — This section does not limit the salary increase for probate judges who hold elections to the months during which elections are actually conducted. 1975 Op. Att'y Gen. No. U75-49.

Salaried probate judges may not retain fees for maintaining and certifying vital records absent express legislative authorization. 1976 Op. Att'y Gen. No. U76-53.

15-9-64.1. Monthly contingent expense allowance schedule for the operation of the probate judge's office.

In addition to any salary, fees, or expenses now or hereafter provided by law, the governing authority of each county is authorized to provide as contingent expenses for the operation of the office of judge of the probate court, and payable from county funds, a monthly expense allowance of not less than the amount fixed in the following schedule:

Population	Minimum Monthly Expenses
0 — 11,889	$ 100.00
11,890 — 74,999	200.00
75,000 — 249,999	300.00
250,000 — 499,999	400.00
500,000 or more	500.00

History. — Code 1981, § 15-9-64.1, enacted by Ga. L. 2001, p. 902, § 7; Ga. L. 2015, p. 5, § 15/HB 90.

15-9-65. Longevity increases.

The amounts provided in paragraph (1) of subsection (a) of Code Section 15-9-63 and Code Section 15-9-64, as increased by paragraph (2) of subsection (a) of Code Section 15-9-63, shall be increased by multiplying said amounts by the percentage which equals 5 percent times the number of completed four-year terms of office served by any judge of a probate court after December 31, 1976, effective the first day of January following the completion of each such period of service. This Code section shall not be construed to affect any local legislation except when the local legislation provides for a salary lower than the salary provided in Code Sections 15-9-63, 15-9-64, 15-9-66, and this Code section, in which event Code Sections 15-9-63, 15-9-64, 15-9-66, and this Code section shall prevail.

History. — Ga. L. 1974, p. 455, § 3; Ga. L. 1978, p. 1953, § 3; Ga. L. 1981, p. 518, § 3; Ga. L. 1989, p. 801, § 2; Ga. L. 1990, p. 8, § 15; Ga. L. 1992, p. 1478, § 4; Ga. L. 1994, p. 620, § 4; Ga. L. 2018, p. 356, § 1-26/SB 436.

The 2018 amendment, effective July 1, 2018, substituted "when the local legislation provides for a salary lower than the salary provided in Code Sections 15-9-63, 15-9-64, 15-9-66, and this Code section, in which event Code Sections 15-9-63, 15-9-64, 15-9-66, and this Code section shall prevail" for "where the local legislation provides for a salary lower than the salary provided in Code Sections 15-9-63, 15-9-64, this Code section, and Code Sections 15-9-66 and 15-9-67, in which event Code Sections 15-9-63, 15-9-64, this Code section, and Code Sections 15-9-66 and 15-9-67 shall prevail" in the second sentence of this Code section.

OPINIONS OF THE ATTORNEY GENERAL

Salary increase is based on full terms, not partial terms. — O.C.G.A. § 15-9-65 provides for longevity salary increases for judges of probate courts based upon completed four-year terms of office and not upon partial terms of office served. 1981 Op. Att'y Gen. No. U81-3.

15-9-66. Effect of minimum salary provisions on judges in office on July 1, 1991; expenses not covered by salary.

Code Sections 15-9-63 through 15-9-65 and this Code section shall not be construed to reduce the salary of any judge of a probate court in office on July 1, 1991; provided, however, that successors to such judges of the probate courts in office on July 1, 1991, shall be governed by the provisions of said Code sections. The minimum salaries provided for in Code Sections 15-9-63 through 15-9-65 and this Code section shall be considered as salary only. Expenses for deputy clerks, equipment, supplies, copying equipment, and other necessary and reasonable expenses for the operation of a probate court shall come from funds other than the funds specified as salary in Code Sections 15-9-63 through 15-9-65 and this Code section.

History. — Ga. L. 1974, p. 455, § 3; Ga. L. 1978, p. 1953, § 3; Ga. L. 1981, p. 518, § 3; Ga. L. 1990, p. 8, § 15; Ga. L. 1992, p. 1478, § 5; Ga. L. 2018, p. 356, § 1-27/SB 436.

The 2018 amendment, effective July 1, 2018, substituted "15-9-65 and this Code section" for "15-9-65, this Code section, and Code Section 15-9-67" three times in this Code section.

15-9-67. Fee systems continued until enactment of local legislation.

Reserved. Repealed by Ga. L. 2018, p. 356, § 1-28/SB 436, effective July 1, 2018.

Editor's notes. — The former Code section was based on Ga. L. 1974, p. 455, § 5; Ga. L. 1978, p. 1953, § 4; Ga. L. 1981, p. 518, § 4; Ga. L. 1990, p. 8, § 15.

15-9-68. Limitation of probate judge's fees.

Notwithstanding the provisions of subsection (e) of Code Section 31-10-8 and subsection (c) of Code Section 31-10-27, unless local law or an agreement between a judge of the probate court and the county governing authority provides for the retention of a greater amount, a county governing authority may, by ordinance or resolution, limit the total amount of fees authorized to be retained as personal compensation by a probate judge who serves as local custodian, local registrar, or special abstracting agent pursuant to Code Section 31-10-8 or 31-10-27 to an aggregate amount not less than an amount equal to the fees collected or $7,500.00, whichever is less, in any calendar year beginning on or after January 1, 1997. Any probate judge whose fees are limited pursuant to this Code section shall prepare and submit a report at least quarterly to the county governing authority specifying the amount received during the quarter for which the report is submitted.

History. — Code 1981, § 15-9-68, enacted by Ga. L. 1995, p. 768, § 1A.

ARTICLE 4

TIME, PLACE, AND PROCEDURE

Law reviews. — For article, "Courts: Juvenile Justice Reform," see 30 Ga. St. U. L. Rev. 63 (2013).

15-9-80. Location of office.

The judge of the probate court shall keep his office and all things belonging thereto at the county site and at the courthouse unless impracticable from any cause, in which case the office may be kept at some other designated place not more than two miles therefrom, of which public notice must be given.

History. — Ga. L. 1851-52, p. 91, § 7; Code 1863, §§ 305, 4012; Code 1868, §§ 365, 4041; Code 1873, §§ 330, 4112; Code 1882, §§ 330, 4112; Civil Code 1895, §§ 4231, 4252; Civil Code 1910, §§ 4789, 4810; Code 1933, § 24-1714; Ga. L. 1987, p. 400, § 1.

15-9-81. Additional offices authorized in certain counties.

(a) Notwithstanding any other law, in all counties having a population in excess of 400,000 according to the United States decennial census of 1990 or any future such census, where the governing authority of the county has established and constructed one or more permanent satellite courthouses within the county and has designated each structure as a courthouse annex or by similar designation has established each structure as an additional courthouse to the courthouse located at the county site, the judge of the probate court shall be authorized and empowered to keep and maintain his or her office or offices and all things belonging thereto at the additional courthouse locations and at the courthouse at the county site. Any and all actions taken by the judge of the probate court at any additional courthouse location, however same may be designated, which is established by the county governing authority and designated as an additional courthouse location shall be as fully valid and binding as though taken and performed at the courthouse at the county site. Nothing in this subsection shall authorize the maintenance of any permanent records at any location other than the courthouse located at the county site.

(b) Notwithstanding any other law, in a county where the county site is located in an unincorporated area of the county and the county governing authority has constructed one or more permanent satellite courthouses within the county and has further designated each such

structure as a courthouse annex or has otherwise established each such structure as an additional courthouse to the courthouse located at the county site, the judge of the probate court shall be authorized and empowered to keep and maintain his or her office or offices and all things belonging thereto at the additional courthouse locations and at the courthouse at the county site. Any and all actions taken by the judge of the probate court at any additional courthouse location, however same may be designated, which is established by such county governing authority and designated as an additional courthouse location shall be as fully valid and binding as though taken and performed at the courthouse at the county site.

History. — Code 1933, § 24-1714(a), enacted by Ga. L. 1976, p. 682, § 1; Ga. L. 1981, p. 530, § 1; Ga. L. 1982, p. 3, § 15; Ga. L. 1995, p. 568, § 1; Ga. L. 1998, p. 1159, § 4.

15-9-82. Terms of court; place for court.

The probate court shall be held at the place prescribed for the superior court or in the office of the judge of the probate court in each county, by the judge thereof, on the first Monday in January, April, July, and October and shall continue in session from day to day as the business of the court may require. If the first Monday in a given term should happen to fall on a legal holiday, the probate courts throughout this state shall convene on the following day.

History. — Ga. L. 1851-52, p. 91, § 8; Code 1863, §§ 305, 4011; Code 1868, §§ 365, 4040; Code 1873, §§ 330, 4111; Code 1882, §§ 330, 4111; Civil Code 1895, §§ 4231, 4251; Civil Code 1910, §§ 4789, 4809; Ga. L. 1921, p. 117, § 1; Code 1933, § 24-2101; Ga. L. 1953, Jan.-Feb. Sess., p. 520, § 1; Ga. L. 1961, p. 461, § 1; Ga. L. 2008, p. 715, § 3/SB 508.

JUDICIAL DECISIONS

Cannot reinstate caveat at subsequent term of court. — If one who has filed a caveat to an application for a year's support and at the first term of the court voluntarily dismisses the claim, and moves at the second or third term thereafter to have the caveat reinstated on the sole ground that the claim had been dismissed "inadvertently and through mistake," it is error to grant such motion over timely objection by the applicant. Bowman v. Bowman, 79 Ga. App. 240, 53 S.E.2d 244 (1949).

Cited in Campbell v. Atlanta Coach Co., 58 Ga. App. 824, 200 S.E. 203 (1938); Henderson v. Hale, 209 Ga. 307, 71 S.E.2d 622 (1952); Saturday v. Saturday, 113 Ga. App. 251, 147 S.E.2d 798 (1966); Johnson v. Barnes, 237 Ga. 502, 229 S.E.2d 70 (1976).

RESEARCH REFERENCES

Am. Jur. 2d. — 20 Am. Jur. 2d, Courts, § 16 et seq.

ALR. — Validity of court's judgment rendered on Sunday or holiday, 85

A.L.R.2d 595.

15-9-83. Hours for conducting business; official closings for legal holidays and inclement weather.

(a) The office of the judge of the probate court shall be open to conduct business a minimum of 40 hours each week as determined by the judge of the probate court.

(b) Nothing in this Code section shall be construed to require any office of the judge of the probate court to be open:

(1) On any public holiday, legal holiday, day of rest, or similar time that is recognized and designated as such by the laws of this state or by the governing authority of the county; or

(2) If other county offices are closed because of inclement weather or any other reason.

History. — Ga. L. 1851-52, p. 91, § 7; Code 1863, § 4012; Code 1868, § 4041; Code 1873, § 4112; Code 1882, § 4112; Civil Code 1895, § 4252; Code 1910, § 4810; Code 1933, § 24-2104; Ga. L. 1952, p. 213, § 1; Ga. L. 1958, p. 631, § 1; Ga. L. 1959, p. 312, § 1; Ga. L. 1962, p. 519, § 1; Ga. L. 1967, p. 731, § 1; Ga. L. 2018, p. 356, § 1-29/SB 436.

The 2018 amendment, effective July 1, 2018, substituted the present provisions of this Code section for the former provisions, which read: "The judge of the probate court may transact business at any time except Sundays and may close his office not more than one other day in each week. Where authorized or not prohibited by law, any hearing or other proceeding may be had and any order or judgment may be rendered at any time. However, nothing in this Code section shall be construed as prohibiting the judge of the probate court from providing by calendar for the orderly and uniform transaction of business on designated days."

JUDICIAL DECISIONS

Certain activities need not occur before end of term. — Statutes relating to filing applications for a year's support, appointment of appraisers, and return of the appraisers, considered together or separately, do not require the application to be filed, or the return of the appraisers to be made, or a judgment to be rendered by the ordinary (now probate judge) before the end of a term of the court of ordinary (now probate court). Smith v. Smith, 187 Ga. 743, 2 S.E.2d 417 (1939).

Former Code 1933, §§ 113-1002 and 113-1005 (see now O.C.G.A. §§ 53-5-2 and 53-5-8), relating to filing applications for a year's support, appointment of appraisers, and return of the appraisers, and former Code 1933, § 24-2104 (see now O.C.G.A. § 15-9-83), relating to powers of the court of ordinary (now probate court), considered together or separately, do not require the return of the appraisers to be made, or a judgment to be rendered by the ordinary (now probate judge), before the end of a term of the court of ordinary (now probate court). Jones v. Federal Land Bank, 189 Ga. 419, 6 S.E.2d 52 (1939).

Cited in Campbell v. Atlanta Coach Co., 58 Ga. App. 824, 200 S.E. 203 (1938); Chappell v. Kilgore, 196 Ga. 591, 27 S.E.2d 89 (1943); Henderson v. Hale, 209 Ga. 307, 71 S.E.2d 622 (1952); Miller v. Miller, 104 Ga. App. 224, 121 S.E.2d 340 (1961).

OPINIONS OF THE ATTORNEY GENERAL

Probate court judges may transact business on legal holidays unless otherwise prohibited by law. 1980 Op. Att'y Gen. No. U80-39.

Issuance of marriage licenses and other legal documents by judges of probate courts on legal holidays does not render those documents invalid unless such holidays fall on a Sunday. 1980 Op. Att'y Gen. No. U80-39.

RESEARCH REFERENCES

Am. Jur. 2d. — 20 Am. Jur. 2d, Courts, § 20 et seq.

ALR. — Validity of court's judgment rendered on Sunday or holiday, 85 A.L.R.2d 595.

Validity, construction, and effect of "Sunday closing" or "blue" laws — modern status, 10 A.L.R.4th 246.

15-9-84. Adjournments.

If, for any reason, the judge of the probate court fails to hold court at the regular term or at any special term or if the business of the court requires it, the judge or his clerk may adjourn the court to such time as he may think proper. The adjournment shall be entered on the minutes of the court.

History. — Ga. L. 1853-54, p. 36; Code 1863, § 4013; Code 1868, § 4042; Code 1873, § 4113; Code 1882, § 4113; Civil Code 1895, § 4253; Civil Code 1910, § 4811; Code 1933, § 24-2102; Ga. L. 1982, p. 3, § 15.

JUDICIAL DECISIONS

Orders presumed valid. — Orders of court of ordinary (now probate court) are prima facie presumed to be valid. Wright v. Clark, 139 Ga. 34, 76 S.E. 565 (1912).

Failure to order adjournment does not void another order. — Failure of the ordinary (now probate judge) or the ordinary's clerk to make an entry of an order of adjournment of the court of ordinary (now probate court), granted at a regular term to some subsequent day, where the business of the court requires it, does not render void an order passed for the sale of land, upon the petition of an administrator, provided such adjournment was duly ordered during the regular term of the court. Sutton v. Ford, 155 Ga. 863, 118 S.E. 747 (1923).

Cited in Atlanta Cas. Co. v. Williams, 135 Ga. App. 562, 218 S.E.2d 282 (1975); Johnson v. Barnes, 237 Ga. 502, 229 S.E.2d 70 (1976).

15-9-85. Adjournment by appointed person.

The judge of the probate court may appoint some fit and proper person to open and adjourn his court in the absence of an officer to do so.

History. — Ga. L. 1861, p. 56, § 1; Code 1868, § 4051; Code 1873, § 4122; Code 1882, § 4122; Civil Code 1895, § 4262; Civil Code 1910, § 4820; Code 1933, § 24-2103.

RESEARCH REFERENCES

C.J.S. — 21 C.J.S., Courts, §§ 133, 134.

15-9-86. (For effective date, see note.) Verified petitions; notice and service thereof.

Every application made to the judge of the probate court for the granting of any order shall be by verified petition in writing, stating the ground of such application and the order sought. Unless otherwise provided by law, if service of notice of such petition, other than by citation published in the official newspaper of the county in which the petition is made, is necessary under the law or in the judgment of the judge of the probate court on the motion of any party in interest or on the court's own motion, the judge shall cause a copy of the petition, together with a citation to show cause, if any, why the petition should not be granted and notice of the date, time, and place for filing any objections or for holding a final hearing, to be served by the sheriff or some lawful officer upon each party who resides in this state and to be served by the probate court mailing by registered or certified mail or statutory overnight delivery, return receipt requested, to each party who resides outside this state at a known address, at least 30 days before any objection is required to be filed by such party or before a final hearing is held. An entry of such service of notice shall be made on the original. In extraordinary cases, where it is necessary to act before such service of notice can be given, the judge of the probate court shall so direct the proceedings as to make no final order until service of notice has been given.

History. — Ga. L. 1859, p. 33, §§ 1, 2; Code 1863, § 4014; Code 1868, § 4043; Code 1873, § 4114; Code 1882, § 4114; Civil Code 1895, § 4254; Civil Code 1910, § 4812; Code 1933, § 24-2105; Ga. L. 1998, p. 1586, § 1; Ga. L. 2000, p. 1589, § 3; Ga. L. 2018, p. 356, § 1-30/SB 436; Ga. L. 2020, p. 377, § 2-18/HB 865.

Delayed effective date. — This Code section, as set out above, becomes effective January 1, 2021. For version of this Code section in effect until January 1, 2021, see the 2020 amendment note.

The 2018 amendment, effective July 1, 2018, inserted "verified" in the middle of the first sentence of this Code section.

The 2020 amendment, effective January 1, 2021, rewrote this Code section, which read: "Every application made to the judge of the probate court for the granting of any order shall be by verified petition in writing, stating the ground of such application and the order sought. Unless otherwise provided by law, if notice of the application, other than by published citation, is necessary under the law or in the judgment of the judge of the probate court, the judge shall cause a copy of the application, together with a notice of the time of hearing, to be served by the sheriff or some lawful officer upon each party who resides in this state and to be mailed by registered or certified mail or statutory overnight delivery to each party who resides outside this state at a known address, at least ten days, plus three days if mailed, before the hearing. An entry of such service shall be made on the original. In extraordinary cases, where it is necessary to act before such notice can be given, the judge of the probate court shall so

direct the proceedings as to make no final order until notice has been given."

Cross references. — Pleadings and motions under Georgia Civil Practice Act, § 9-11-7 et seq.

Editor's notes. — Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provides that the amendment to this Code section is applicable with respect to notices delivered on or after July 1, 2000.

For application of this statute in 2020, see Executive Order 04.09.20.01.

JUDICIAL DECISIONS

Court of ordinary (now probate court) is court of record, and pleadings therein must be in writing. Robertson v. Robertson, 90 Ga. App. 576, 83 S.E.2d 619 (1954).

Requirements for application for administration. — Application for administration must be made to the ordinary (now probate judge) where the deceased person was domiciled. The application must be in writing, and show reasons which would entitle the applicant to administration. Burkhalter v. Waters, 28 Ga. App. 296, 111 S.E. 73 (1922).

Application for nunc pro tunc entry of order should show petition and service on which the application was granted. Farmer v. Rogers, 85 Ga. 290, 11 S.E. 615 (1890).

Cited in Campbell v. Atlanta Coach Co., 58 Ga. App. 824, 200 S.E. 203 (1938); Tucker v. American Sur. Co., 191 F.2d 959 (5th Cir. 1951); Walker v. Smith, 130 Ga. App. 16, 202 S.E.2d 469 (1973).

OPINIONS OF THE ATTORNEY GENERAL

Conduct and recordation of incompetency matters in probate court. — Proceedings in incompetency matters (see now O.C.G.A. § 29-5-1 et seq.) in the probate court should be handled in observance with the provisions of former Code 1933, §§ 24-2105 and 24-2109 (see now O.C.G.A. §§ 15-9-40 and 15-9-86) including that the proceedings be recorded in a book to be kept for that purpose. 1960-61 Op. Att'y Gen. p. 93.

15-9-86.1. Citations and responsive pleadings in certain types of proceedings.

(a) In any of the proceedings specified in this Code section with respect to which no citation is required to be published, notice of an application to the judge of the probate court for the granting of an order may, instead of stating the time of the hearing as provided in Code Section 15-9-86 and other specific laws, state that the party served must file with the court his or her response to the petition within ten days after personal service of the notice upon him or her, or 13 days after mailing if served by mail, and that if no responses are filed the petition will be granted without a hearing.

(b) If the specific laws governing a particular proceeding subject to this Code section require that a citation be published, such citation may, instead of stating the time of hearing, state that any party who is not ordered to be served personally or by mail must file with the court his or her response to the petition on or prior to a date certain, which shall be a date for which a hearing could be set according to the laws governing the particular proceeding.

(c) The citation or the caption of the citation shall identify all parties upon whom service has been ordered whose names are known. Failure of a party served as provided in subsection (a) or (b) of this Code section to file with the court his or her response to a petition within the time required for his or her response shall constitute a waiver of the right of such party to object to the petition and a waiver of any right of such party to receive notice of any further proceedings with respect to such petition.

(d) If no party serves a response to the petition, the judge of the probate court may grant the petition without a hearing. If a response is filed, the judge of the probate court shall set the matter for hearing and shall by regular first-class mail send a notice of the time of hearing to the petitioner and all parties who have served responses at the addresses given by them in their pleadings.

(e) The proceedings to which this Code section shall apply are:

(1) Proceedings for sale, lease, exchange, or encumbrance of a ward's property, as provided in Code Section 29-3-35 or 29-5-35;

(2) Proceedings for citation of a conservator for failure to make returns, as provided in Code Section 29-3-60 or 29-5-60;

(3) Proceedings involving the revocation or suspension of letters or the imposition of sanctions on a guardian or conservator, as provided in Code Section 29-2-42, 29-3-82, 29-4-52, or 29-5-92;

(4) Proceedings for discharge of a surety on a conservator's bond, as provided in Code Section 29-3-49 or 29-5-49;

(5) Proceedings for resignation of trust by a guardian or conservator, as provided in Code Section 29-2-40, 29-3-80, 29-4-50, or 29-5-90;

(6) Proceedings for settlement of accounts of a conservator, as provided in Code Section 29-3-71 or 29-5-81;

(7) Proceedings for appointment of a guardian or conservator of a minor, as provided in Code Sections 29-2-14 through 29-2-18 or Code Sections 29-3-6 through 29-3-10;

(8) Proceedings for requiring a conservator to give additional bond, as provided in Code Section 29-3-43 or 29-5-42;

(9) Proceedings for appointment of a guardian for a beneficiary of the United States Department of Veterans Affairs, as provided in Code Section 29-7-7 or 29-7-8;

(10) Proceedings for determination of heirs at law, as provided in former Code Sections 53-4-30, et seq. as such existed on December 31, 1997; and

(11) Proceedings for setting aside year's support, as provided in former Code Section 53-5-8 as such existed on December 31, 1997.

History. — Code 1981, § 15-9-86.1, enacted by Ga. L. 1984, p. 970, § 1; Ga. L. 1990, p. 8, § 15; Ga. L. 1990, p. 45, § 1; Ga. L. 1998, p. 128, § 15; Ga. L. 1998, p. 1586, § 2; Ga. L. 2004, p. 161, § 2; Ga. L. 2011, p. 752, § 15/HB 142.

Editor's notes. — Ga. L. 2004, p. 161, § 16, not codified by the General Assembly, provides that "all appointments of guardians of the person or property made pursuant to former Title 29 shall continue in effect and shall thereafter be governed by the provisions of this Act."

JUDICIAL DECISIONS

Applicability. — O.C.G.A. § 15-9-86.1 was not applicable if a notice of petition for accounting and distribution served with a notice of the time of the hearing did not state that the party served must respond or the petition would be granted. Simon v. Bunch, 260 Ga. 201, 391 S.E.2d 648 (1990).

O.C.G.A. § 15-9-86.1 is not applicable to a petition for accounting and distribution by an executor who has not been removed. Simon v. Bunch, 260 Ga. 201, 391 S.E.2d 648 (1990).

Citation in a proceeding for probate in solemn form that tracked the language of former O.C.G.A. § 53-3-14(c) and stated specifically that the recipient needed to appear before the court on a date certain was sufficient notice that the named date was the deadline for appearing in probate court or filing a written objection. Higginbotham v. Rice, 271 Ga. 262, 517 S.E.2d 784 (1999), reversing Rice v. Higginbotham, 235 Ga. App. 378, 508 S.E.2d 736 (1998).

15-9-87. Contents of order.

The order of the judge of the probate court or other documents in the record shall recite the names of the persons so notified and shall reflect compliance with the provisions required.

History. — Orig. Code 1863, § 4015; Code 1868, § 4044; Code 1873, § 4115; Code 1882, § 4115; Civil Code 1895, § 4255; Civil Code 1910, § 4813; Code 1933, § 24-2106; Ga. L. 1998, p. 1586, § 3.

JUDICIAL DECISIONS

Cited in Davie v. McDaniel, 47 Ga. 195 (1872); Tucker v. American Sur. Co., 191 F.2d 959 (5th Cir. 1951).

15-9-88. Objections or caveats to order.

All objections or caveats to an order sought shall be in writing and verified, setting forth the grounds of such caveat.

History. — Orig. Code 1863, § 4016; Code 1868, § 4045; Code 1873, § 4116; Code 1882, § 4116; Civil Code 1895, § 4256; Civil Code 1910, § 4814; Code 1933, § 24-2107; Ga. L. 2018, p. 356, § 1-31/SB 436.

The 2018 amendment, effective July 1, 2018, inserted "and verified" in the middle of this Code section.

JUDICIAL DECISIONS

When burden of proof shifts to caveators. — Once the propounder of a will establishes a prima facie case, the burden of proof shifts to the caveators to prove the grounds of their caveat. Bryan v. Norton, 245 Ga. 347, 265 S.E.2d 282 (1980).

Law is silent as to any necessity vel non that caveat be sworn; the sole statutory requirement is that it be written. Glad v. Scott, 187 Ga. App. 748, 371 S.E.2d 271 (1988).

Cited in Financial Bldg. Consultants, Inc. v. American Druggists Ins. Co., 91 F.R.D. 62 (N.D. Ga. 1981); Deering v. Keever, 282 Ga. 161, 646 S.E.2d 262 (2007).

15-9-89. Amendment of petition and caveat.

The petition and caveat shall be amendable at all times and in every particular.

History. — Orig. Code 1863, § 4016; Code 1868, § 4045; Code 1873, § 4116; Code 1882, § 4116; Civil Code 1895, § 4256; Civil Code 1910, § 4814; Code 1933, § 24-2108.

JUDICIAL DECISIONS

Amendment to homestead application allowed. — Amendment to a homestead application could be allowed so as to state the residence of the applicant, and that the applicant was the head of the family. Hardin v. McCord, 72 Ga. 239 (1884).

Amendment to raise issue of revocation by subsequent will. — If caveator attempted to amend the caveat in the superior court to raise the issue of revocation by a subsequent will, the trial court erred in granting the proponent's motion in limine to exclude the later will or any reference to that will from evidence on the ground that the will was not part of the record below on appeal and that the caveator was estopped to amend the caveat by adding a ground outside the record, although it is undisputed that the caveator was aware of the existence of the later will at the time the caveator filed the caveat to the earlier will but did not raise this issue in the probate court. Lee v. Wainwright, 256 Ga. 478, 350 S.E.2d 238 (1986).

Amendment to raise issue not raised in probate court. — If the validity of the will itself was the only issue raised and addressed in the probate court, the caveators could not add the issue of removal of the executor on appeal to the superior court. Yancey v. Hall, 265 Ga. 466, 458 S.E.2d 121 (1995).

Amendment proper. — It was error to dismiss an amended objection to the probate of a will on the ground that the original objection was legally insufficient, as an amendment to a caveat was permitted even when it was the amendment that sustained the validity of the caveat; the original objection put the proponent on notice of the objection, and its amendment the next day to include the grounds of undue influence and mental incapacity was proper under O.C.G.A. §§ 9-11-15 and 15-9-89. Deering v. Keever, 282 Ga. 161, 646 S.E.2d 262 (2007).

Cited in Payne v. Payne, 229 Ga. 822, 194 S.E.2d 458 (1972); Bloodworth v. Bloodworth, 240 Ga. 614, 241 S.E.2d 827 (1978).

15-9-90. Forms for probate court; local alteration.

(a) The Supreme Court of Georgia is authorized to adopt rules governing the use of forms in the probate courts and standard forms to be used in proceedings before the probate courts. Any such rules and forms shall be in such a manner as to facilitate the use of word processing and computer technology.

(b) The rules adopted pursuant to subsection (a) of this Code section shall provide that the forms so adopted may be altered locally in a particular petition or proceeding in such items as grammar, gender usage, the use of singular and plural nouns and pronouns, the omission of optional or alternate language, the inclusion of variable information such as names and addresses, and other nonmaterial ways.

(c) The rules adopted pursuant to subsection (a) of this Code section shall provide that the forms so adopted may be altered locally in a particular petition or proceeding by making material additions or deletions, provided that:

(1) Any material additions or deletions are clearly identified;

(2) The altered form is accompanied by the certificate of an attorney licensed to practice law in this state stating that the form, as altered, complies with the standard form in every material respect except for the identified additions or deletions; and

(3) The altered form is accompanied by the certificate of an attorney licensed to practice law in this state stating that the form, as altered, complies with the statutory requirements relating to the matter which is submitted to probate,

and if such conditions are satisfied, then such forms shall be filed for probate notwithstanding the material alterations.

(d) No state or local rules governing the use of forms in the probate courts shall be adopted which do not comply with the provisions of this Code section.

History. — Code 1981, § 15-9-90, enacted by Ga. L. 2000, p. 1437, § 1.

Cross references. — Standard forms, Uniform Rules for the Probate Courts, Rule 21.

ARTICLE 5

PROBATE JUDGES TRAINING COUNCIL

Cross references. — Standard forms, Uniform Rules for the Probate Courts, Rule 21.

Law reviews. — For article, "Courts: Juvenile Justice Reform," see 30 Ga. St. U. L. Rev. 63 (2013).

15-9-100. Creation of Probate Judges Training Council; duties of council.

There is established the Probate Judges Training Council. It shall be the duty of the training council to advise and coordinate with the Institute of Continuing Judicial Education of Georgia concerning educational programs for probate judges and probate judges elect, to assist probate judges in improving the operations of the probate courts, and to perform such other duties as may be required by law or requested by judges of the probate courts.

History. — Ga. L. 1982, p. 1612, § 1; 1982, p. 1612, § 6; Ga. L. 1995, p. 768, Code 1981, § 15-9-100, enacted by Ga. L. § 2.

15-9-101. "Training council" defined; powers; bond of personnel; audits.

(a) As used in this Code section, the term "training council" means the Probate Judges Training Council.

(b) The training council shall be a legal entity and an agency of the State of Georgia; shall have perpetual existence; may contract; may own property; may accept funds, grants, and gifts from any public or private source for use in defraying the expenses of the training council in carrying out its duties; may adopt and use an official seal; may establish a principal office; may employ such administrative or clerical personnel as may be necessary and appropriate to fulfill its necessary duties; and shall have such other powers, privileges, and duties as may be reasonable and necessary for the proper fulfillment of its purposes and duties.

(c) The training council shall require a sufficient bond signed by some surety or guaranty company authorized to do business in this state of any administrative or clerical personnel employed by the training council and empowered to handle funds of the training council. The premiums on such bonds shall be paid by the training council from funds appropriated or otherwise available to the training council.

(d) The training council shall establish such auditing procedures as may be required in connection with the handling of public funds. The state auditor is authorized and directed to make an annual audit of the acts and doings of the training council and to make a complete report of the same to the General Assembly. The state auditor shall not be required to distribute copies of the audit to the members of the General Assembly but shall notify the members of the availability of the audit in the manner which he or she deems to be most effective and efficient. The report shall disclose all moneys received by the training council and all expenditures made by the training council, including administrative

expense. He or she shall also make an audit of the affairs of the training council at any time required by a majority of the training council or the Governor of the state.

History. — Ga. L. 1982, p. 1612, § 2; Code 1981, § 15-9-101, enacted by Ga. L. 1982, p. 1612, § 6; Ga. L. 1995, p. 768, § 2; Ga. L. 2005, p. 1036, § 12/SB 49; Ga. L. 2018, p. 356, § 1-32/SB 436.

The 2018 amendment, effective July 1, 2018, added subsection (a); redesignated former subsections (a) through (c) as present subsections (b) through (d), respectively; and substituted "training council" for "Probate Judges Training Council" near the beginning of subsection (b).

15-9-102. Composition; terms of office; vacancies.

(a) As used in this Code section, the term:

(1) "District" means an area of this state containing one or more counties which is designated and numbered as a district by The Council of Probate Court Judges of Georgia.

(2) "Training council" means the Probate Judges Training Council.

(b)(1) The training council shall consist of one member from each district as elected by the judges of the probate courts within such district. Such elections shall occur prior to the annual spring business meeting of The Council of Probate Court Judges of Georgia. Training councilmembers shall serve four-year terms; provided, however, that members from odd-numbered districts shall serve an initial term of two years and members from even-numbered districts shall serve an initial term of four years. All members may succeed themselves, and successors shall be elected in the same manner as the original members immediately prior to the expiration of each member's term of office. The president of The Council of Probate Court Judges of Georgia shall be a voting member of the training council ex officio.

(2) The Council of Probate Judges of Georgia may add up to four additional members to the training council. Such members shall be selected from the members of The Council of Probate Judges of Georgia at large and serve for two-year terms. Such members may succeed themselves if they are reappointed by the council. If a vacancy occurs for the additional members added, the council shall determine how to fill the vacancy.

(c) In the event a vacancy occurs in the membership of the training council as a result of a death, resignation, removal, or failure of reelection as a probate judge, the members of the district in which such vacancy has occurred shall elect a qualified person from the district to serve for the remainder of the unexpired term of the member whose seat is vacant. The person elected to fill such vacancy shall take office immediately upon election.

History. — Ga. L. 1982, p. 1612, § 3; Code 1981, § 15-9-102, enacted by Ga. L. 1982, p. 1612, § 6; Ga. L. 1983, p. 3, § 12; Ga. L. 1989, p. 245, § 1; Ga. L. 1995, p. 768, § 2; Ga. L. 2008, p. 715, § 4/SB 508; Ga. L. 2018, p. 356, § 1-33/SB 436.

The 2018 amendment, effective July 1, 2018, designated the existing provisions of subsection (b) as paragraph (b)(1); substituted "councilmembers" for "council members" near the beginning of the third sentence of paragraph (b)(1); and added paragraph (b)(2).

15-9-103. "Training council" defined; meetings; officers; reimbursement of expenses.

(a) As used in this Code section, the term "training council" means the Probate Judges Training Council.

(b) The training council shall meet not later than the annual spring business meeting of The Council of Probate Court Judges of Georgia and at such other times and places as it shall determine necessary or convenient to perform its duties. The training council shall annually elect a chairperson and such other officers as it shall deem necessary and shall adopt such rules for the transaction of its business as it shall desire. The members of the training council shall receive no compensation for their services but shall be reimbursed for their actual expenses incurred in the performance of their duties as members of the training council.

History. — Ga. L. 1982, p. 1612, § 4; Code 1981, § 15-9-104, enacted by Ga. L. 1982, p. 1612, § 6; Ga. L. 1989, p. 245, § 2; Code 1981, § 15-9-103, as redesignated by Ga. L. 1995, p. 768, § 2; Ga. L. 2018, p. 356, § 1-34/SB 436.

The 2018 amendment, effective July 1, 2018, added subsection (a); redesignated the existing provisions of this Code section as subsection (b); and substituted "not later than" for "immediately following" near the middle of the first sentence of subsection (b).

15-9-104. Eligibility of councilmember to hold office of judge of probate court.

Notwithstanding any other law, a councilmember shall not be ineligible to hold the office of judge of the probate court by virtue of his or her position as a member of the Probate Judges Training Council.

History. — Ga. L. 1982, p. 1612, § 5; Code 1981, § 15-9-105, enacted by Ga. L. 1982, p. 1612, § 6; Ga. L. 1994, p. 97, § 15; Code 1981, § 15-9-104, as redesignated by Ga. L. 1995, p. 768, § 2; Ga. L. 2018, p. 356, § 1-35/SB 436.

The 2018 amendment, effective July 1, 2018, substituted "Probate Judges Training Council" for "training council" at the end of this Code section.

Editor's notes. — Ga. L. 1995, p. 768, § 2, redesignated former Code Section 15-9-104 as present Code Section 15-9-103.

15-9-105. Redesignated.

Editor's notes. — Ga. L. 1995, p. 768, § 2, redesignated former Code Section 15-9-105 as present Code Section 15-9-104.

ARTICLE 6

JURY TRIALS AND APPEALS

Editor's notes. — Ga. L. 1986, p. 982, § 25, not codified by the General Assembly, provided that that Act would apply to all cases filed on or after July 1, 1986.

Cross references. — Discrimination against employee for attending a judicial proceeding in response to a court order or process, § 34-1-3.

Law reviews. — For annual survey of trial practice and procedure, see 38 Mercer L. Rev. 383 (1986). For article, "Courts: Juvenile Justice Reform," see 30 Ga. St. U. L. Rev. 63 (2013).

For note, "Jury Trials Come to Probate Courts of Georgia," see 23 Ga. St. B. J. 96 (1987).

RESEARCH REFERENCES

Am. Jur. Trials. — Jury or Nonjury Trial — A Defense Viewpoint, 5 Am. Jur. Trials 128.

Selecting the Jury — Plaintiff's View, 5 Am. Jur. Trials 143.

Selecting the Jury — Defense View, 5 Am. Jur. Trials 247.

Use of Jury Consultant in Civil Cases, 49 Am. Jur. Trials 407.

15-9-120. Definitions.

As used in this article, the term:

(1) "Civil case" means those civil matters:

(A) Over which the judge of the probate court exercises judicial powers;

(B) Within the original, exclusive, or general subject matter jurisdiction of the probate court; and

(C) Which, if not for this article and Code Section 5-6-33, could be appealed to superior court for a de novo investigation with the right to a jury trial under Code Sections 5-3-2 and 5-3-29.

(2) "Probate court" means a probate court of a county having a population of more than 90,000 persons according to the United States decennial census of 2010 or any future such census in which the judge thereof has been admitted to the practice of law for at least seven years.

History. — Code 1981, § 15-9-120, enacted by Ga. L. 1986, p. 982, § 6; Ga. L. 1988, p. 743, § 2; Ga. L. 1988, p. 745, § 2; Ga. L. 1988, p. 746, § 2; Ga. L. 1994, p. 1665, § 2; Ga. L. 2012, p. 683, § 3/HB 534.

Law reviews. — For annual survey on wills, trusts, guardianships, and fiduciary

administration, see 64 Mercer L. Rev. 325 (2012).

JUDICIAL DECISIONS

Statute was not an unconstitutional special law. — O.C.G.A. § 15-9-120(2), granting the right to a jury trial in the probate courts of counties with a certain population according to the 1990 decennial census "or any future such census" was not an unconstitutional special law, under Ga. Const. 1983, Art. III, Sec. VI, Para. IV(a), because the statute's use of the disjunctive "or" gave the statute the elasticity required to make the statute a general law as this allowed counties to move into or out of this class of counties according to the latest census. Ellis v. Johnson, 291 Ga. 127, 728 S.E.2d 200 (2012).

County that did not have a population of more than 100,000 persons according to either the 1980 or 1990 decennial census lacked authority to entertain a motion for new trial, and any such motion therefore being without legal force and effect before the county probate court would not serve to extend the time for filing a notice of appeal under either O.C.G.A. § 5-3-20 or O.C.G.A. § 5-6-38(a). Jabaley v. Jabaley, 208 Ga. App. 179, 430 S.E.2d 119 (1993).

Construction with O.C.G.A. § 5-3-30. — Because appeals from the probate court to the superior court continue without special limitations on the right to a jury trial and de novo appeals to the superior court from the probate court are tried by a jury unless the right to a jury trial is waived, the trial court erred in denying the widow's request for a jury trial. Montgomery v. Montgomery, 287 Ga. App. 77, 650 S.E.2d 754 (2007).

Dougherty County probate court allowed to hold jury trials. — Dougherty County, Ga., Probate Court (Probate Court) had jurisdiction to hold jury trials because: (1) the 2010 census, which dropped the county's population below that required by O.C.G.A. § 15-9-120(2) to allow jury trials in probate court was not effective until July 1, 2012, under O.C.G.A. § 1-3-1(d)(2)(D); and (2) a statutory amendment, effective on that date, decreased the population requirement. Ellis v. Johnson, 291 Ga. 127, 728 S.E.2d 200 (2012).

Cited in Lawhorne v. Horace, 188 Ga. App. 427, 373 S.E.2d 263 (1988); In re E.P.M., 189 Ga. App. 770, 377 S.E.2d 535 (1989); In re Estate of Dasher, 259 Ga. App. 201, 575 S.E.2d 921 (2002); In re Estate of Taylor, 270 Ga. App. 807, 608 S.E.2d 299 (2004); Honeycutt v. Honeycutt, 284 Ga. 42, 663 S.E.2d 232 (2008); Mays v. Rancine-Kinchen, 291 Ga. 283, 729 S.E.2d 321 (2012).

OPINIONS OF THE ATTORNEY GENERAL

O.C.G.A. § 15-9-120 et seq. does not affect mental health cases heard by probate courts under O.C.G.A. §§ 37-3-150, 37-4-110, and 37-7-150. 1986 Op. Att'y Gen. No. U86-18.

Right to jury trial in proceedings to appoint emergency guardian. — If the appointment of an emergency guardian under former O.C.G.A. § 29-5-8 is only for that period of time pending the outcome either of the emergency guardianship hearing or the permanent guardianship hearing, the order would not be final or appealable to a jury in superior court under current law, and hence would not be subject to Ga. L. 1986, p. 982, affecting procedures before the probate court in certain counties; on the other hand, if the petition before the probate court seeks only an emergency guardian for a period not to exceed 45 days, as in a situation where immediate surgical or other medical consent is required for a seriously ill proposed ward, an order granting such a petition, which would leave nothing further to be decided by the probate court, would be final, appealable to a superior court jury under current law, and hence

would be a "civil case" under the 1986 Act, giving a party a right to demand a jury trial. 1986 Op. Att'y Gen. No. U86-18.

15-9-121. Jury trials in civil cases.

(a) A party to a civil case in the probate court shall have the right to a jury trial if such right is asserted by a written demand for jury trial within 30 days after the filing of the first pleading of the party or within 15 days after the filing of the first pleading of an opposing party, whichever is later, except that with respect to a petition pursuant to Code Sections 29-4-10 and 29-5-10, relating to guardianship of an incapacitated adult, if any interested party desires a trial by jury, such party must make such request for a jury within ten days after the date of mailing of the notice provided for by subsection (c) of Code Section 29-4-12 and subsection (c) of Code Section 29-5-12. If a party fails to assert the right to a jury trial, the right shall be deemed waived and may not thereafter be asserted.

(b) Notwithstanding other laws, for any civil case in which a jury trial is demanded, the determination of issues of fact shall not be made by the probate judge but shall be for the jury as in cases in the superior courts.

(c) If the civil case could not be appealed to a jury in superior court from a probate court not meeting the definition provided in paragraph (2) of Code Section 15-9-120, the right to a jury trial shall not be available in a probate court which meets such definition.

History. — Code 1981, § 15-9-121, enacted by Ga. L. 1986, p. 982, § 6; Ga. L. 1990, p. 1421, § 2; Ga. L. 2004, p. 161, § 2.1.

Editor's notes. — Ga. L. 2004, p. 161, § 16, not codified by the General Assembly, provides that "all appointments of guardians of the person or property made pursuant to former Title 29 shall continue in effect and shall thereafter be governed by the provisions of this Act."

JUDICIAL DECISIONS

Construction with O.C.G.A. § 5-3-30. — Because appeals from the probate court to the superior court continue without special limitations on the right to a jury trial and de novo appeals to the superior court from the probate court are tried by a jury unless the right to a jury trial is waived, the trial court erred in denying the widow's request for a jury trial. Montgomery v. Montgomery, 287 Ga. App. 77, 650 S.E.2d 754 (2007).

Based on the absence of a transcript of a hearing on the dismissal of a sibling's caveat to the petition to probate the decedent's will in solemn form, in which the probate court also held that the sibling lacked standing to proceed on that caveat, the Supreme Court of Georgia refused to hold that the probate court's orders were erroneous. Moreover, based on the probate court's finding that the sibling lacked standing, no jury trial was warranted. Smith v. Wyatt, 282 Ga. 902, 655 S.E.2d 581 (2008).

Timing of jury trial demand. — In a probate proceeding wherein the ex-spouse

of the decedent contested the appointment of the decedent's parent as the permanent administrator of the estate, the trial court did not err by denying the ex-spouse's demand for a jury trial because the ex-spouse failed to file a jury trial demand within the statutorily appointed time frame. In re Estate of Sands-Kadel, 292 Ga. App. 343, 665 S.E.2d 46 (2008).

Probate court erred when the court stated written demands for a jury trial filed more than 30 days after the filing of the petition for probate were untimely because O.C.G.A. § 15-9-121 provided for the filing of a timely demand for jury trial more than 30 days after the filing of the petition for probate. Simmons v. Harms, 287 Ga. 176, 695 S.E.2d 38 (2010).

Probate court did not err in denying as untimely a child's demand for a jury trial because the child was required to file the child's jury demand by June 29, which was 30 days after the child filed the child's first pleading on May 30, the child's caveat to probate in solemn form, making the child's written jury demand due by June 29, but the child did not file the demand for jury trial until July 16. Simmons v. Harms, 287 Ga. 176, 695 S.E.2d 38 (2010).

Beneficiary could not claim an intervening niece untimely demanded a jury in a probate case, under O.C.G.A. § 15-9-121(a), because: (1) the beneficiary did not object in the trial court on the grounds raised on appeal, waiving the grounds; (2) the niece was not a party until the niece was allowed to intervene, after which the niece timely demanded a jury; and (3) the niece's motion to intervene was not a "pleading" triggering the jury trial demand deadline. Ellis v. Johnson, 291 Ga. 127, 728 S.E.2d 200 (2012).

Waiver of right to jury trial in probate proceeding. — Trial court had subject matter jurisdiction to review the probate court's decision under Ga. Const. 1983, Art. VI, Sec. IV, Para. I and O.C.G.A. § 15-6-8(4)(E) to deny probate of the decedent's 1988 will and the parties' waiver of the statutory right to a jury trial did not deprive the trial court of subject matter jurisdiction to deny probate of the will. Mosley v. Lancaster, 296 Ga. 862, 770 S.E.2d 873 (2015).

Cited in In re Woodall, 241 Ga. App. 196, 526 S.E.2d 69 (1999); Harvey v. Sullivan, 272 Ga. 392, 529 S.E.2d 889 (2000); Johnson v. Burrell, 294 Ga. 301, 751 S.E.2d 301 (2013).

15-9-122. (For effective date, see note.) Applicability of laws and rules.

Unless provided to the contrary by Code Section 9-11-81 or by Titles 29 and 53, the general laws and rules of practice, pleading, procedure, and evidence that are applicable to the superior courts of this state shall be applicable to and govern in civil cases in the probate courts.

History. — Code 1981, § 15-9-122, enacted by Ga. L. 1986, p. 982, § 6; Ga. L. 2020, p. 377, § 2-19/HB 865.

Delayed effective date. — This Code section, as set out above, becomes effective January 1, 2021. For version of this Code section in effect until January 1, 2021, see the 2020 amendment note.

The 2020 amendment, effective January 1, 2021, inserted "or by Titles 29 and 53" near the beginning and substituted "that" for "which" in the middle.

JUDICIAL DECISIONS

Opening of default judgments. — O.C.G.A. § 9-11-55(a), a provision of the Civil Practice Act regarding the opening of default judgments, governs an application for year's support and caveat filed in probate court. Greene v. Woodard, 198 Ga. App. 427, 401 S.E.2d 617 (1991).

Cited in In re Estate of Ehlers, 289 Ga. App. 14, 656 S.E.2d 169 (2007).

15-9-123. (For effective date, see note.) Appeal.

(a) Either party to a civil case in the probate court shall have the right of appeal to the Supreme Court or the Court of Appeals from any decision made by the probate court, except an order appointing a temporary administrator or an order appointing an emergency guardian or emergency conservator, as provided by Chapter 6 of Title 5.

(b) The general laws and rules of appellate practice and procedure that are applicable to cases appealed from the superior courts of this state shall be applicable to and govern appeals of civil cases from the probate courts.

History. — Code 1981, § 15-9-123, enacted by Ga. L. 1986, p. 982, § 6; Ga. L. 2020, p. 377, § 2-20/HB 865.

Delayed effective date. — This Code section, as set out above, becomes effective January 1, 2021. For version of this Code section in effect until January 1, 2021, see the 2020 amendment note.

The 2020 amendment, effective January 1, 2021, inserted "from any decision made by the probate court, except an order appointing a temporary administrator or an order appointing an emergency guardian or emergency conservator" in the middle of subsection (a) and substituted "that" for "which" near the beginning of subsection (b).

JUDICIAL DECISIONS

Claims filed after effective date. — Although O.C.G.A § 15-9-120 et seq. is effective for all cases filed on or after July 1, 1986, a petition filed prior to July 1, 1986, predated that date even though some of the claims were filed after that date; hence, jurisdiction of the appeal lay with the superior court, not the supreme court. Porter v. Frazier, 257 Ga. 614, 361 S.E.2d 825 (1987); Walker v. Yarus, 258 Ga. 346, 369 S.E.2d 32 (1988).

Cited in Lawhorne v. Horace, 188 Ga. App. 427, 373 S.E.2d 263 (1988); Bosma v. Gunter, 258 Ga. 664, 373 S.E.2d 368 (1988); Beals v. Beals, 203 Ga. App. 81, 416 S.E.2d 301 (1992); In re Estate of Dasher, 259 Ga. App. 201, 575 S.E.2d 921 (2002); In re Estate of Taylor, 270 Ga. App. 807, 608 S.E.2d 299 (2004); In the Interest of J.R.R., 281 Ga. 662, 641 S.E.2d 526 (2007); Montgomery v. Montgomery, 287 Ga. App. 77, 650 S.E.2d 754 (2007); Mays v. Rancine-Kinchen, 291 Ga. 283, 729 S.E.2d 321 (2012).

OPINIONS OF THE ATTORNEY GENERAL

Appointment of emergency guardian pending appeal. — Under O.C.G.A. § 29-5-11(d), the probate courts, which are authorized to hold jury trials under Ga. L. 1986, p. 982, will not be authorized to appoint an emergency guardian pending appeal. 1986 Op. Att'y Gen. No. U86-18.

Appeal of an order of emergency guardianship under O.C.G.A. § 29-5-11, which can be considered a "final order," will act as a supersedeas upon payment of the costs by the appellant. 1986 Op. Att'y Gen. No. U86-18.

15-9-124. Enforcement of judgments.

The general laws and rules applicable to the execution and enforcement of judgments in the superior courts of this state shall be applicable to and govern civil cases in the probate courts.

History. — Code 1981, § 15-9-124, enacted by Ga. L. 1986, p. 982, § 6.

15-9-125. Jurors.

All laws with reference to the number, composition, qualifications, impaneling, challenging, and compensation of jurors in superior courts shall apply to and be observed by the probate courts in civil cases.

History. — Code 1981, § 15-9-125, enacted by Ga. L. 1986, p. 982, § 6.

15-9-126. (For effective date, see note.) Fees.

For services rendered in jury trials, in the probate court's exercise of concurrent jurisdiction pursuant to Code Section 15-9-127, and in appeals to the Supreme Court or Court of Appeals, if a fee is not prescribed by Code Section 15-9-60, the judge or clerk of the probate court shall be entitled to charge and collect the same sums as those of the clerk of the superior court provided in Code Section 15-6-77 or other applicable law for similar services in superior court.

History. — Code 1981, § 15-9-126, enacted by Ga. L. 1986, p. 982, § 6; Ga. L. 2020, p. 377, § 2-21/HB 865.

Delayed effective date. — This Code section, as set out above, becomes effective January 1, 2021. For version of this Code section in effect until January 1, 2021, see the 2020 amendment note.

The 2020 amendment, effective January 1, 2021, inserted ", in the probate court's exercise of concurrent jurisdiction pursuant to Code Section 15-9-127,", inserted "or clerk", inserted "charge and collect", substituted "sums as those" for "fee as that", and inserted "or other applicable law".

15-9-127. (For effective date, see note.) Concurrent jurisdiction with superior courts; probate court jurisdiction.

(a) Probate courts subject to this article shall have concurrent jurisdiction with superior courts with regard to the proceedings for:

(1) Declaratory judgments involving fiduciaries pursuant to Code Sections 9-4-4, 9-4-5, 9-4-6, 9-4-8, 9-4-9, and 9-4-11;

(2) Tax motivated estate planning dispositions of wards' property pursuant to Code Sections 29-3-36 and 29-5-36;

(3) Approval of settlement agreements pursuant to former Code Section 53-3-22 as such existed on December 31, 1997, if applicable;

Code Section 53-5-25 or 53-5-27 for which the settlement agreement would affect an interest in real or personal property to be taken by a trust designated in the will; or Code Section 53-12-9;

(4) Adjudication of actions concerning trusts, trustees, and trust directors authorized by the provisions of Chapter 12 of Title 53;

(5) Adjudication of petitions under Code Section 10-6B-16 to construe a power of attorney, review an agent's conduct, and grant appropriate relief;

(6) Adjudication of petitions under subsection (i) of Code Section 10-6B-40 to grant an agent authority under a power of attorney; and

(7) Adjudication of petitions for direction or construction of a will or trust instrument pursuant to Code Section 23-2-92, 53-4-55, 53-4-56, 53-7-75, or 53-12-27, or other applicable law.

(b) In civil cases, probate courts subject to this article may:

(1) Apply equitable principles;

(2) Hear evidence on and decide any contested question; and

(3) Issue such orders as are appropriate under the circumstances.

(c) Probate courts subject to this article shall have and may exercise the jurisdiction and authority conferred by subsections (a) and (b) of this Code section to the greatest extent that does not infringe the exclusive jurisdiction of the superior courts pursuant to Article VI, Section IV, Paragraph I of the Constitution of this state.

History. — Code 1981, § 15-9-127, enacted by Ga. L. 1987, p. 912, § 1; Ga. L. 1989, p. 917, § 1; Ga. L. 1991, p. 810, § 7; Ga. L. 1998, p. 128, § 15; Ga. L. 2002, p. 1316, § 9; Ga. L. 2004, p. 161, § 3; Ga. L. 2005, p. 583, § 1/HB 406; Ga. L. 2008, p. 715, § 5/SB 508; Ga. L. 2010, p. 579, § 12/SB 131; Ga. L. 2011, p. 752, § 15/HB 142; Ga. L. 2020, p. 377, § 2-22/HB 865.

Delayed effective date. — This Code section, as set out above, becomes effective January 1, 2021. For version of this Code section in effect until January 1, 2021, see the 2020 amendment note.

The 2020 amendment, effective January 1, 2021, rewrote this Code section, which read: "Probate courts subject to this article shall have concurrent jurisdiction with superior courts with regard to the proceedings for:

"(1) Declaratory judgments involving fiduciaries pursuant to Code Sections 9-4-4, 9-4-5, and 9-4-6;

"(2) Tax motivated estate planning dispositions of wards' property pursuant to Code Sections 29-3-36 and 29-5-36;

"(3) Approval of settlement agreements pursuant to former Code Section 53-3-22 as such existed on December 31, 1997, if applicable, or Code Section 53-5-25;

"(4) Appointment of new trustee to replace trustee pursuant to Code Section 53-12-201;

"(5) Acceptance of the resignation of a trustee upon written request of the beneficiaries pursuant to Code Section 53-12-220;

"(6) Acceptance of resignation of a trustee upon petition of the trustee pursuant to Code Section 53-12-220;

"(7) Motions seeking an order for disinterment and deoxyribonucleic acid (DNA) testing as provided in Code Section 53-2-27;

"(8) Conversion to a unitrust and re-

lated matters pursuant to Code Section 53-12-362; and

"(9) Adjudication of petitions for direction or construction of a will pursuant to Code Section 23-2-92."

Editor's notes. — Ga. L. 2004, p. 161, § 16, not codified by the General Assembly, provides that: "all appointments of guardians of the person or property made pursuant to former Title 29 shall continue in effect and shall thereafter be governed by the provisions of this Act."

Law reviews. — For survey article on wills, trusts, guardianships, and fiduciary administration for the period from June 1, 2002 to May 31, 2003, see 55 Mercer L. Rev. 459 (2003). For survey article on wills, trusts, guardianships, and fiduciary administration, see 60 Mercer L. Rev. 417 (2008).

For note on 1989 amendment of this Code section, see 6 Ga. St. U.L. Rev. 342 (1989).

JUDICIAL DECISIONS

Declaratory judgment involving fiduciaries. — Fulton County Probate Court had jurisdiction to issue a declaratory judgment in a case involving whether a guardian appointed at the request of the Department of Veteran Affairs could receive a bequest under the ward's will because the probate court had concurrent jurisdiction with the superior courts with regard to proceedings for declaratory judgments involving fiduciaries, pursuant to O.C.G.A. § 9-4-4. Cross v. Stokes, 275 Ga. 872, 572 S.E.2d 538 (2002).

Removal of trustee. — Probate court did not have jurisdiction to remove a trustee. Moring v. Moring, 228 Ga. App. 662, 492 S.E.2d 558 (1997).

Successor trustee properly appointed. — Probate court did not err by appointing a successor trustee pursuant to O.C.G.A. §§ 15-9-127 and 53-12-170 as even if a corporation had not rejected the trust property, the corporation did not have the power to act as a trustee in Georgia since the corporation had not received approval from the Georgia Department of Banking and Finance to act as a trust company; a county board of commissioners was properly appointed as the successor trustee in spite of the corporation's speculation over a possible future event that might result in a conflict of interest. Chattowah Open Land Trust, Inc. v. Jones, 281 Ga. 97, 636 S.E.2d 523 (2006).

Province of probate court versus proper trial court. — In a child's appeal of a trial court's declaratory judgment that the will of a parent was republished by a codicil and that a portion of a prior order of a probate court that the ex-spouse of the testator was to be treated as if having predeceased the testator was null and void was upheld on appeal as the issue regarding the construction of the will regarding the ex-spouse was a question of law for the trial court and was not within the jurisdiction of the probate court. Honeycutt v. Honeycutt, 284 Ga. 42, 663 S.E.2d 232 (2008).

Cited in Simon v. Bunch, 260 Ga. 201, 391 S.E.2d 648 (1990).

ARTICLE 7

PROBATE COURT JUDGES

Law reviews. — For article, "Courts: Juvenile Justice Reform," see 30 Ga. St. U. L. Rev. 63 (2013).

For note on 2000 enactment of O.C.G.A. §§ 15-9-140 and 15-9-141, see 17 Ga. St. U.L. Rev. 76 (2000).

15-9-140. Jurisdiction of judges.

Except as otherwise provided by law, any judge of a probate court is authorized to serve as a judge of any other probate court in which such

judge would otherwise be qualified to serve, but only upon the written request of the judge of such other probate court. When serving in a probate court other than his or her own court, the judge shall exercise the same jurisdiction, power, and authority as the regular judge of the court. Judges rendering assistance in accordance with this Code section shall be entitled to receive actual expenses or, at such judge's option, the same per diem expense authorized by law for members of the General Assembly and shall receive mileage at the same rate as state employees for such services but shall not be entitled to any further compensation for such services. The governing authority responsible for funding the operation of the requesting court shall bear the expenses of the assisting judge.

History. — Code 1981, § 15-9-140, enacted by Ga. L. 2000, p. 838, § 3.

15-9-141. Retired judges; senior judge appointment; written request for assistance.

(a)(1) Any judge of a probate court who retires pursuant to the provisions of Chapter 11 of Title 47 may be appointed a senior judge of the probate courts.

(2) Any judge of a probate court, whether or not said judge is a member of the retirement fund created by Chapter 11 of Title 47, who ceases holding office as a judge and who has at least eight years of service as a judge of a probate court at the time of ceasing to hold such office and who is not eligible for appointment to the office of senior judge under any other law of this state may be appointed as a senior judge of the probate courts.

(b) Upon becoming eligible for appointment pursuant to the provisions of this Code section, a judge who ceases to hold office may become a senior judge of the probate courts and in that capacity may be called upon to serve as a judge in any probate court in which the judge is otherwise qualified to serve.

(c) Any qualified former judge of a probate court may petition the Governor for appointment as senior judge. The Governor shall appoint each qualified applicant as a senior judge of the probate courts.

(d) The judge of any probate court of this state may make a written request for assistance to a senior judge of the probate courts. The request by the judge may be made if one of the following circumstances arise:

(1) The judge of the requesting court is disqualified for any cause from presiding in any matter pending before the court; or

(2) The judge of the requesting court is unable to preside because of disability, illness, absence, or any reason.

(e) The compensation of a senior judge of the probate courts serving as a judge of a probate court under this Code section shall be that which is normally paid to a substitute judge of the court in which the senior judge is serving, and such compensation shall be paid from any funds available for the operation of such court. In addition to such compensation, a senior judge of the probate courts shall receive actual expenses or, at such judge's option, in the event of service outside the county of such judge's residence, the same per diem expense authorized by law for members of the General Assembly and shall receive mileage at the same rate as state employees for such services. Such expenses and mileage shall be paid from the same source of funds which pays the compensation of a senior judge of the probate courts as provided in this subsection upon a certificate by the senior judge as to the number of days served or the expenses and mileage. Such compensation and expenses shall not affect, diminish, or otherwise impair the payment or receipt of any retirement or pension benefits, when applicable, of such judge.

History. — Code 1981, § 15-9-141, enacted by Ga. L. 2000, p. 838, § 3; Ga. L. 2001, p. 4, § 15.

RESEARCH REFERENCES

ALR. — Construction and validity of state provisions governing designation of substitute, pro tempore, or special judge, 97 A.L.R.5th 537.

ARTICLE 8

PROSECUTING ATTORNEYS IN PROBATE COURTS IN COUNTIES IN WHICH THERE IS NO STATE COURT

Editor's notes. — Ga. L. 2013, p. 565, § 2/SB 120, not codified by the General Assembly, provides that: "The provisions of this Act shall not be construed as altering any agreement in existence on the effective date of this Act between a county governing authority or a probate court of a county with the district attorney for the judicial circuit in which such probate court for the district attorney to prosecute case in the probate court of such county nor shall this Act apply in any county in which the General Assembly has by local act provided for a prosecutor in the probate court."

Law reviews. — For article, "Courts: Juvenile Justice Reform," see 30 Ga. St. U. L. Rev. 63 (2013).

15-9-150. Requesting district attorney to prosecute criminal cases; creation of prosecuting attorney position by ordinance or resolution; appointment of prosecuting attorney.

(a) In any county in which there is no state court, the judge of the probate court may request the district attorney of the circuit in which the court is located to prosecute criminal cases subject to the jurisdiction of such probate court as set forth in Article 2 of this chapter and Article 2 of Chapter 13 of Title 40. The district attorney may designate one or more members of his or her staff to handle such cases in the probate court. The district attorney and any members of his or her staff who prosecute criminal cases in the probate court may be compensated in an amount to be fixed by the governing authority of the county.

(b) If for any reason the district attorney is unable to assist the probate court, he or she shall notify the probate court in writing, and the governing authority of the county, in its discretion, shall be authorized to create by ordinance or resolution the office of prosecuting attorney of the probate court, and the governing authority shall have the authority to hire the prosecuting attorney, who shall have the authority to prosecute criminal cases subject to the jurisdiction of such probate court as set forth in Article 2 of this chapter and Article 2 of Chapter 13 of Title 40. A copy of the resolution or ordinance creating the office of prosecuting attorney of the probate court shall be provided to the Prosecuting Attorneys' Council of the State of Georgia.

(c) It shall be the duty of the probate court clerk to notify the Prosecuting Attorneys' Council of the State of Georgia of the name of any person appointed to be the prosecuting attorney of a probate court within 30 days of such appointment.

(d) Unless otherwise provided by local law, the prosecuting attorney of the probate court shall serve at the pleasure of the governing authority of such county.

History. — Code 1981, § 15-9-150, enacted by Ga. L. 2013, p. 565, § 1/SB 120.

RESEARCH REFERENCES

Am. Jur. 2d. — 20 Am. Jur. 2d, Courts, § 14.

15-9-151. Qualifications of prosecuting attorney; appointment of assistant district attorneys.

(a) Any person appointed as the prosecuting attorney of a probate court pursuant to subsection (b) of Code Section 15-9-150 shall be a

member in good standing of the State Bar of Georgia and admitted to practice before the appellate courts of this state.

(b) Notwithstanding the provisions of subsection (a) of Code Section 15-18-21, an assistant district attorney may be appointed as the prosecuting attorney of a probate court when:

(1) The district attorney who employs such assistant district attorney consents to such appointment; and

(2) If such assistant district attorney is not employed in the judicial circuit in which the probate court is located, the district attorney for the judicial circuit in which the probate court is located consents to such appointment.

(c) A district attorney may withdraw consent for an assistant district attorney's appointment pursuant to subsection (b) of this Code section at any time, provided that the probate court and the governing authority of the county in which such probate court is located is given notice not less than 30 days prior to the day that such assistant district attorney shall cease to serve as the prosecuting attorney of the probate court.

History. — Code 1981, § 15-9-151, enacted by Ga. L. 2013, p. 565, § 1/SB 120.

15-9-152. Oath of office.

(a) In addition to the oaths prescribed by Chapter 3 of Title 45, relating to official oaths, the prosecuting attorney of a probate court shall take and subscribe to the following oath: "I swear (or affirm) that I will well, faithfully, and impartially and without fear, favor, or affection discharge my duties as prosecuting attorney for the Probate Court of (here state the county) County."

(b) The oath shall be administered and attested by the judge of the probate court of such county as provided in Code Section 45-3-3 and filed as provided in Code Section 45-3-5.

History. — Code 1981, § 15-9-152, enacted by Ga. L. 2013, p. 565, § 1/SB 120.

15-9-153. Determining if prosecuting attorney shall be full time or part time; limitations on private practice of law.

(a) Unless otherwise provided by local law, the governing authority of the county shall determine whether the prosecuting attorney of a probate court shall be a full-time or part-time prosecuting attorney.

(b) Any full-time prosecuting attorney of a probate court and any full-time employees of the prosecuting attorney of a probate court shall not engage in the private practice of law.

(c) Any part-time prosecuting attorney of a probate court and any part-time assistant prosecuting attorney of a probate court may engage in the private practice of law, but shall not practice in the probate court or appear in any matter in which that prosecuting attorney has exercised jurisdiction. A prosecuting attorney of a probate court and any assistant prosecuting attorney of a probate court shall be subject to all laws and rules governing the conduct of prosecuting attorneys in this state.

History. — Code 1981, § 15-9-153, enacted by Ga. L. 2013, p. 565, § 1/SB 120.

15-9-154. Disqualification of prosecuting attorney.

If the prosecuting attorney of a probate court is disqualified by interest or relationship from engaging in the prosecution of a particular case or is unable to perform the duties of said office due to illness or incapacity, the district attorney of such judicial circuit may prosecute such case. If the district attorney is to prosecute such case, the provisions of Code Section 15-18-5 shall apply.

History. — Code 1981, § 15-9-154, enacted by Ga. L. 2013, p. 565, § 1/SB 120.

15-9-155. Prosecuting attorney's duties; authority.

(a) The prosecuting attorney of a probate court shall have the duty and authority to represent the state:

(1) In the probate court:

(A) In the prosecution of any violation of the laws or ordinances of such county which is within the jurisdiction of such probate court and punishable by confinement or a fine or both or by a civil penalty authorized by Code Section 40-6-163;

(B) In the prosecution of any violation of state laws which by general law probate courts have been granted jurisdiction to try and dispose of such offenses, specifically including those offenses described in Article 2 of this chapter and Code Section 40-13-21; and

(C) In the prosecution of any weapons carry license revocation or denial pursuant to Code Section 16-11-129;

(2) In the appeal of any case prosecuted in the probate court to the superior court or the appellate courts of this state;

(3) In any case in which the defendant was convicted in the probate court and is challenging such conviction through habeas corpus;

(4) To administer the oaths required by law to the bailiffs or other officers of the court and otherwise to aid the presiding judge in organizing the court as may be necessary; and

(5) To perform such other duties as are or may be required by law or ordinance or which necessarily appertain to such prosecuting attorney's office.

(b) The prosecuting attorney of a probate court shall have the authority to:

(1) File, amend, and prosecute any citation, accusation, summons, or other form of charging instrument authorized by law for use in the probate court;

(2) Dismiss, amend, or enter a nolle prosequi on any accusation, citation, or summons filed in the probate court as provided by law, except that the prosecuting attorney of a probate court shall not have the authority to dismiss or enter a nolle prosequi in any case in which the accused is charged with a violation of state law other than one which the probate court has jurisdiction to try and dispose of such offense without the consent of the proper prosecuting officer having jurisdiction to try and dispose of such offense. As used in this paragraph, the term "proper prosecuting officer" means the district attorney for the judicial circuit;

(3) Reduce to judgment any fine, forfeiture, or restitution imposed by the probate court as part of a sentence in an ordinance case or forfeiture of a recognizance which is not paid in accordance with the order of the court. A prosecuting attorney of a probate court may institute such civil action in the courts of this state or of the United States or any of the several states to enforce such judgment against the property of the defendant; and

(4) Request and utilize the assistance of any other prosecuting attorney or other attorney employed by an agency of this state or its political subdivisions or authorities in the prosecution of any criminal action.

(c) The provisions of this Code section shall not be deemed to restrict, limit, or diminish any authority or power of the district attorney or any solicitor-general to represent this state in any criminal case in which the accused is charged with a felony or misdemeanor, when the probate court is acting as a court of inquiry pursuant to Article 2 of Chapter 7 of Title 17 or setting bail for any such offense, other than one which the probate court has, by law, jurisdiction to try and dispose of.

History. — Code 1981, § 15-9-155, enacted by Ga. L. 2013, p. 565, § 1/SB 120.

15-9-156. Compensation; reimbursement of expenses.

The prosecuting attorney of a probate court shall be compensated by the county as provided by local law or, in the absence of such local law, as provided by the governing authority of such county. The prosecuting attorney of a probate court shall be entitled to be reimbursed for actual expenses incurred in the performance of his or her official duties in the same manner and rate as other county employees.

History. — Code 1981, § 15-9-156, enacted by Ga. L. 2013, p. 565, § 1/SB 120.

15-9-157. Additional assistant prosecuting attorneys, employees, or independent contractors; duties; compensation.

The prosecuting attorney of a probate court may employ such additional assistant prosecuting attorneys and other employees or independent contractors as may be provided for by local law or as may be authorized by the governing authority of the county. The prosecuting attorney of a probate court shall define the duties and fix the title of any attorney or other employee of the prosecuting attorney's office. Personnel employed pursuant to this Code section shall be compensated by the county.

History. — Code 1981, § 15-9-157, enacted by Ga. L. 2013, p. 565, § 1/SB 120.

15-9-158. Qualifications of assistant prosecuting attorneys; assistance by qualified law student or law school graduate.

(a) Any assistant prosecuting attorney or other attorney at law employed by the county for the purposes of prosecuting in the probate court shall be a member in good standing of the State Bar of Georgia.

(b) A qualified law student or law school graduate who is allowed to practice pursuant to Code Section 15-18-22 or the Supreme Court of Georgia's rules governing such practice may assist in the prosecution of cases in the probate court.

History. — Code 1981, § 15-9-158, enacted by Ga. L. 2013, p. 565, § 1/SB 120.

CHAPTER 10

MAGISTRATE COURTS

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Cross references. — Transfer of cases, Uniform Transfer Rules.

Editor's notes. — Ga. L. 1983, p. 884, § 2-1, effective July 1, 1983, repealed the Code sections formerly codified at this chapter and enacted the current chapter. The former chapter contained provisions concerning justice of the peace courts and consisted of five articles as follows: Article 1, §§ 15-10-1 through 15-10-16; Article 2, §§ 15-10-30, 15-10-31 [repealed by Ga. L. 1982, p. 2107, § 54], 15-10-33, 15-10-33.1, 15-10-34 through 15-10-36; Article 3, §§ 15-10-50 through 15-10-62; Article 4, §§ 15-10-80 through 15-10-111; Article 5, §§ 15-10-130 through 15-10-138.

The former chapter was based on Laws 1799, Cobb's 1851 Digest, p. 638; Laws 1811, Cobb's 1851 Digest, pp. 638-640, 642-647; Laws 1814, Cobb's 1851 Digest, p. 647; Laws 1816, Cobb's 1851 Digest, pp. 644, 648; Laws 1819, Cobb's 1851 Digest, pp. 207, 648, 649; Laws 1827, Cobb's 1827 Digest, p. 649; Laws 1829, Cobb's 1851 Digest, p. 650; Laws 1830, Cobb's 1851 Digest, p. 359; Laws 1835, Cobb's 1851 Digest, p. 361; Laws 1840, Cobb's 1851 Digest, p. 651; Laws 1841, Cobb's 1851 Digest, p. 651; Laws 1842, Cobb's 1851 Digest, pp. 652, 653; Ga. L. 1853-54, p. 36, § 1; Ga. L. 1853-54, p. 44, § 2; Ga. L. 1855-56, p. 254, §§ 1, 2; Ga. L. 1855-56, p. 255, § 2; Laws 1857, Cobb's 1851 Digest, p. 54; Ga. L. 1857, p. 117, § 2; Ga. L. 1857, p. 118, § 1; Ga. L. 1857, p. 119, § 2; Ga. L. 1858, p. 92, § 1; Ga. L. 1860, p. 47, §§ 1, 2; Code 1863, §§ 408 — 411, 413 — 432, 434, 3623, 3995, 4036, 4038, 4040 — 4045, 4048 — 4051, 4053 — 4058, 4060, 4064, 4065, 4068, 4071 — 4078, 4081, 4083, 4084; Ga. L. 1866, p. 64, § 71; Code 1868, §§ 470 — 473, 475 — 494, 496, 3648, 3915, 4065 — 4068, 4070 — 4079, 4081, 4084 — 4089, 4093 — 4097, 4100 — 4107, 4110, 4112, 4113; Ga. L. 1868, p. 131, §§ 1, 3; Ga. L. 1868, p. 132, §§ 1, 3; Ga. L. 1869, p. 143, § 1; Ga. L. 1871-72, p. 45, §§ 1 — 3; Code 1873, §§ 435, 437 — 439, 441 — 460, 462, 3699, 3991, 4130, 4131, 4133 — 4135, 4136 — 4156, 4158, 4159, 4160, 4163 — 4168, 4171 — 4172a, 4505; Ga. L. 1873, p. 32, § 1; Ga. L. 1873, p. 34, § 1; Ga. L. 1873, p. 39, § 1; Ga. L. 1873, p. 47, § 4; Ga. L. 1874, p. 86, § 15; Ga. L. 1876, p. 38, § 1; Ga. L. 1877, p. 83, §§ 1, 3; Ga. L. 1877, p. 88, § 1; Ga. L. 1878-79, p. 31, § 1; Ga. L. 1878-79, p. 67, § 1; Ga. L. 1878-79, p. 78, § 1; Ga. L. 1878-79, p. 191, § 1; Ga. L. 1880-81, p. 66, § 1; Ga. L. 1880-81, p. 76, § 1; Ga. L. 1880-81, p. 82, § 1; Ga. L. 1880-81, p. 84, §§ 1, 2; Ga. L. 1880-81, p. 111, § 1; Code 1882, §§ 340a, 340b, 435, 437 — 439, 441 — 460, 462, 3699, 3700a, 3700b, 3991, 4130, 4131, 4133 — 4156, 4158 — 4160, 4163 — 4168, 4171, 4172, 4172a, 4172b, 4505; Ga. L. 1882-83, p. 58, § 1; Ga. L. 1882-83, p. 103, §§ 1, 2; Ga. L. 1882-83, p. 110, § 1; Ga. L. 1884-85, p. 95, §§ 1, 2; Ga. L. 1884-85, p. 103, § 1; Ga. L. 1887, p. 55, § 1; Ga. L. 1893, p. 23, § 1; Civil Code 1895, §§ 4051, 4053 — 4059, 4061, 4062, 4064 — 4073,

4075 — 4082, 4101, 4103 — 4106, 4108, 4110 — 4137, 4150 — 4152, 4156 — 4161, 4164 — 4167, 4755, 5403; Penal Code 1895, §§ 293 — 296, 302, 731 — 733, 1110; Ga. L. 1895, p. 49, § 1; Ga. L. 1896, p. 51, § 2; Ga. L. 1897, p. 33, § 1; Ga. L. 1899, p. 35, § 1; Ga. L. 1901, p. 40, § 1; Ga. L. 1903, p. 40, § 1; Ga. L. 1909, p. 175, § 1; Civil Code 1910, §§ 4648, 4650 — 4656, 4658, 4659, 4661 — 4670, 4672 — 4679, 4698, 4700 — 4703, 4705, 4709 — 4737, 4750 — 4752, 4756 — 4761, 4764 — 4767, 5324, 5985, 6002, 6003; Penal Code 1910, §§ 297 — 300, 306, 788 — 790, 1139; Ga. L. 1919, p. 99, § 1; Ga. L. 1922, p. 132, § 1; Code 1933, §§ 24-401 — 24-406, 24-408, 24-502, 24-503, 24-601 — 24-606, 24-701 — 24-704, 24-901, 24-903 — 24-908, 24-1001 — 24-1016, 24-1101 — 24-1112, 24-1201 — 24-1203, 24-1301 — 24-1305, 24-1401 — 24-1419, 24-1501, 24-1502, 24-1601, 24-9901, 24-9902, 63-304; Ga. L. 1943, p. 324, § 1; Ga. L. 1943, p. 325, § 1; Ga. L. 1946, p. 231, § 1; Ga. L. 1949, p. 956; Ga. L. 1958, p. 201, § 1; Ga. L. 1961, p. 479, § 1; Ga. L. 1962, p. 522, § 1; Ga. L. 1967, p. 469, § 1; Ga. L. 1977, p. 196, § 1; Ga. L. 1978, p. 894, §§ 1 — 9; Ga. L. 1980, p. 441, § 1; Ga. L. 1980, p. 638, § 1; Ga. L. 1981, p. 623, § 1; Ga. L. 1982, p. 3, § 15; Ga. L. 1982, p. 2107, § 11; and Ga. L. 1983, p. 3, § 50. Ga. L. 1983, p. 884 also revised Code sections throughout the Code to conform to the provisions of the revised Chapter 10 of Title 15.

The intent of Ga. L. 1983, p. 884 was stated in § 1-1 of the Act as follows: "It is the intent of this Act to implement certain changes required by Article VI of the Constitution of the State of Georgia." See also Ga. Const. 1983, Art. VI, Sec. X, Para. I and Code Section 15-10-120 for transfer of functions of justice of the peace courts, small claims courts, and other specified courts to magistrate courts.

Law reviews. — For annual survey of law on trial practice and procedure, see 35 Mercer L. Rev. 315 (1983). For article, "Digital Searches, the Fourth Amendment, and Magistrates' Revolt," see 68 Emory L.J. 51 (2018).

OPINIONS OF THE ATTORNEY GENERAL

Magistrates should be classified as county officials for purposes of social security reporting and contributions. 1986 Op. Att'y Gen. No. 86-9.

Prosecution of claims in magistrate's court. — Only a member of the Georgia State Bar may represent another in a proceeding in magistrate's court, but a corporation may appear pro se in such a proceeding by and through the corporation's nonattorney officer or employee. 1983 Op. Att'y Gen. No. U83-73.

RESEARCH REFERENCES

ALR. — Propriety and effect of corporation's appearance pro se through agent who is not attorney, 8 A.L.R.5th 653.

ARTICLE 1

GENERAL PROVISIONS

Law reviews. — For article, "Courts: Juvenile Justice Reform," see 30 Ga. St. U. L. Rev. 63 (2013).

15-10-1. Creation of magistrate courts.

There shall be one magistrate court in each county of the state which shall be known as the Magistrate Court of _____ County.

History. — Code 1981, § 15-10-1, enacted by Ga. L. 1983, p. 884, § 2-1.

JUDICIAL DECISIONS

Cited in Montgomery v. Montgomery, 287 Ga. App. 77, 650 S.E.2d 754 (2007).

OPINIONS OF THE ATTORNEY GENERAL

Magistrate could not hold office while seeking election to city council. — 1983 Op. Att'y Gen. No. U83-55, which stated that there was no statutory, constitutional, nor common-law prohibition against a person simultaneously holding the offices of magistrate and city councilman, was issued prior to the ratification of Ga. Const. 1983, Art. II, Sec. II, Para. V, which provides that the test for simultaneously holding two offices is specific authorization, rather than prohibition; since there is no law specifically authorizing a person to simultaneously hold the offices of magistrate and city councilman, a chief magistrate could not hold office as chief magistrate while seeking election to the city council. 1985 Op. Att'y Gen. No. U85-41.

15-10-2. General jurisdiction.

Each magistrate court and each magistrate thereof shall have jurisdiction and power over the following matters:

(1) The hearing of applications for and the issuance of arrest and search warrants;

(2) Issuance of warrants and related proceedings as provided in Article 4 of Chapter 6 of Title 17, relating to bonds for good behavior and bonds to keep the peace;

(3) The holding of courts of inquiry;

(4) The trial of charges of violations of county ordinances and penal ordinances of state authorities;

(5) The trial of civil claims including garnishment and attachment in which exclusive jurisdiction is not vested in the superior court and the amount demanded or the value of the property claimed does not exceed $15,000.00, provided that no prejudgment attachment may be granted;

(6) The issuance of summons, trial of issues, and issuance of writs and judgments in dispossessory proceedings and distress warrant proceedings as provided in Articles 3 and 4 of Chapter 7 of Title 44;

(7) The punishment of contempts by fine not exceeding $200.00 or by imprisonment not exceeding ten days or both;

(8) The administration of any oath which is not required by law to be administered by some other officer;

(9) The granting of bail in all cases where the granting of bail is not exclusively committed to some other court or officer;

(10) The issuing of subpoenas to compel attendance of witnesses in the magistrate court and subpoenas for the production of documentary evidence before the magistrate court;

(11) Such other matters as are committed to their jurisdiction by other general laws;

(12) The trial and sentencing of misdemeanor violations of Code Section 16-9-20, relating to criminal issuance of bad checks, as provided by Article 10 of this chapter;

(13) The execution or subscribing and the acceptance of written waivers of extradition in the same manner provided for in Code Section 17-13-46;

(14) The trial and sentencing of misdemeanor violations of other Code sections as provided by Article 13 of this chapter;

(15) The foreclosure of liens on animals as established in Title 4;

(16) The foreclosure of liens on abandoned mobile homes as established in Article 6 of Chapter 7 of Title 44; and

(17) The foreclosure of liens on abandoned motor vehicles as established in Article 1A of Chapter 11 of Title 40, "The Abandoned Motor Vehicle Act."

History. — Code 1981, § 15-10-2, enacted by Ga. L. 1983, p. 884, § 2-1; Ga. L. 1985, p. 1003, § 1; Ga. L. 1986, p. 701, § 1; Ga. L. 1987, p. 399, § 1; Ga. L. 1987, p. 448, § 1; Ga. L. 1987, p. 1032, § 1; Ga. L. 1989, p. 320, § 1; Ga. L. 1989, p. 338, § 1; Ga. L. 1999, p. 834, § 1; Ga. L. 2000, p. 1155, § 1; Ga. L. 2008, p. 324, § 15/SB 455; Ga. L. 2016, p. 178, § 8/SB 356; Ga. L. 2018, p. 666, § 2/HB 381; Ga. L. 2019, p. 872, § 1/HB 307.

The 2018 amendment, effective May 1, 2019, deleted "and" at the end of paragraph (14), substituted "; and" for a period at the end of paragraph (15), and added paragraph (16).

The 2019 amendment, effective September 1, 2019, deleted "and" at the end of paragraph (15), added "; and" at the end of paragraph (16), and added paragraph (17). See Editor's note for effective date.

Cross references. — Statewide applicability of magistrate court rules, Uniform Rules for the Magistrate Courts, Rule 1.3.

Editor's notes. — Ga. L. 2019, p. 872, § 8/HB 307, not codified by the General Assembly, provides: "This Act shall become effective upon approval by the Governor or upon its becoming law without such approval for purposes of developing the required forms and shall become effective on September 1, 2019, for all other purposes." This Act was signed by the Governor on May 7, 2019.

Law reviews. — For annual survey of trial practice and procedure, see 38 Mercer L. Rev. 383 (1986). For article, "The Civil Jurisdiction of State and Magistrate Courts," see 24 Ga. St. B. J. 29 (1987). For article, "Contempt of Court in Georgia," see 23 Ga. St. B. J. 66 (1987). For annual survey on real property law, see 70 Mercer L. Rev. 209 (2018).

For note on 1999 amendment to this Code section, see 16 Ga. St. U.L. Rev. 53 (1999).

JUDICIAL DECISIONS

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General Consideration

Editor's notes. — In light of the similarity of the statutory provisions, decisions rendered under pre-1983 provisions of this chapter pertaining to justices of the peace are included in the annotations for this Code section. See the Editor's notes at the beginning of this chapter regarding transfer of justices' functions to magistrates.

Dispossessory proceedings. — Magistrate court had jurisdiction over dispossessory proceedings involving a property owner who, by remaining in possession of the premises after a lawful foreclosure of the property owner's deed to secure debt, became a tenant at sufferance and subject to summary dispossession by the purchaser at the foreclosure sale. California Fed. Sav. & Loan Ass'n v. Day, 193 Ga. App. 690, 388 S.E.2d 727 (1989).

Cited in Dodd & Co. v. Glover, 102 Ga. 82, 29 S.E. 158 (1897); Brooks v. Sturdivant, 177 Ga. 514, 170 S.E. 369 (1933); Crow v. State, 55 Ga. App. 288, 190 S.E. 65 (1937); McDonald v. Marshall, 185 Ga. 438, 195 S.E. 571 (1938); Thigpen v. McMichael, 76 Ga. App. 470, 46 S.E.2d 533 (1948); Goebel v. Hodges, 83 Ga. App. 574, 64 S.E.2d 207 (1951); Savannah News-Press, Inc. v. Harley, 100 Ga. App. 387, 111 S.E.2d 259 (1959); Thompson v. State, 142 Ga. App. 888, 237 S.E.2d 419 (1977); F.A. Reece Enters., Inc. v. Winnings, 191 Ga. App. 30, 380 S.E.2d 747 (1989); Penaranda v. Cato, 740 F. Supp. 1578 (S.D. Ga. 1990); Brinson v. First Am. Bank, 200 Ga. App. 552, 409 S.E.2d 50 (1991); Jr. Mills Constr. v. Trichinotis, 223 Ga. App. 19, 477 S.E.2d 141 (1996); Giles v. Vastakis, 262 Ga. App. 483, 585 S.E.2d 905 (2003); Sanders v. Trinity Universal Ins. Co., 285 Ga. App. 705, 647 S.E.2d 388 (2007); Setlock v. Setlock, 286 Ga. 384, 688 S.E.2d 346 (2010).

Powers and Duties Generally

1. In General

Judgments at illegal places. — Judgments not rendered at place where court can lawfully be held are void. Bozeman v. Singer Mfg. Co., 70 Ga. 685 (1883) (decided under former law).

Judgment of the justice of the peace, void because rendered at some place other than the regular place of holding the court, may be attacked by affidavit of illegality in a proper case, but a writ of certiorari will not lie to such a judgment. Courson v. Land, 54 Ga. App. 534, 188 S.E. 360 (1936) (decided under former law).

Right to declare mistrial. — It is an inherent right of all courts where jury trials obtain, including justice of the peace courts, to declare a mistrial when justice demands a mistrial. Decatur Chevrolet Co. v. White, 51 Ga. App. 362, 180 S.E. 377 (1935) (decided under former law).

Superior court may refuse to en-

force fraudulent judgment. — Although a justice of the peace has no authority to grant a new trial or to set aside a judgment, if the judgment was procured by fraud practiced by the plaintiff upon such officer and the opposite party, the superior court would be justified for this reason in refusing to grant mandamus on the petition of the plaintiff in such judgment to compel the justice of the peace to issue an execution thereon. Ward v. Montgomery Ward & Co., 181 Ga. 228, 181 S.E. 664 (1935) (decided under former law).

Dispossessory proceedings. — Landlord's contention that the magistrate did not have the power to order the landlord to perform repairs to tenant's apartment in the landlord's dispossessory action was rejected as statutory law expressly gave the magistrate jurisdiction over dispossessory proceedings. H. J. Russell & Co. v. Manuel, 264 Ga. App. 273, 590 S.E.2d 250 (2003).

2. Contempt of Court

Refusal to surrender to arresting officer of one named in warrant issued by justice cannot be dealt with as contempt of court by a justice of the peace who has done nothing more than issue the warrant. Ormond v. Ball, 120 Ga. 916, 48 S.E. 383 (1904) (decided under former law).

3. Administration of Oaths and Taking of Affidavits

Proof that oath was not administered is admissible to rebut contrary statement in jurat attached to affidavit. Green v. Rhodes, 8 Ga. App. 301, 68 S.E. 1090 (1910) (decided under former law).

Affidavit attached to jurat furnishes no basis for issuing distress warrant. Britt v. Davis, 130 Ga. 74, 60 S.E. 180 (1908); Bryan v. Madison Supply Co., 135 Ga. 171, 68 S.E. 1106 (1910) (decided under former law).

When reading of oath by another person is in presence of the court, competency of person reading oath is immaterial. Richards v. State, 131 Ga. App. 362, 206 S.E.2d 93 (1974) (decided under former law).

If caption of affidavit sets forth name of another county court, affidavit presumed to be illegal. Hutchins v. State, 8 Ga. App. 301, 69 S.E. 309 (1910) (decided under former law).

4. Keeping Docket

Contents of docket entries. — Entries on docket should contain every fact transpiring in case essential to validity of judgment. Scott v. Bedell, 108 Ga. 205, 33 S.E. 903 (1899) (decided under former law).

Unsigned docket entry not void. — To determine whether there is a valid judgment in the justice's court, resort must be had to the docket entry and to that alone. When so entered it is not void because unsigned, nor is an unsigned verdict on which a judgment has been entered void. Sullivan v. Douglas Gibbons, Inc., 187 Ga. 764, 2 S.E.2d 89 (1939) (decided under former law).

Judgment may be entered on docket after adjournment. — Rendering of a judgment by a justice of the peace, when the issue is tried before the justice without a jury, is a judicial act; when such judgment is rendered at the time and place required by law, the written judgment may be entered by the justice on the docket of the justice court at any time thereafter even though the justice's court has adjourned. Chandler v. Hammett, 73 Ga. App. 325, 36 S.E.2d 184 (1945) (decided under former law).

Docket determines validity of judgment. — Only docket can be resorted to in order to determine if judgment valid. Gittens v. Whelchel, 12 Ga. App. 141, 76 S.E. 1051 (1913); Barnes v. Mechanics' Sav. Bank, 22 Ga. App. 214, 95 S.E. 757 (1918) (decided under former law).

Plea of res judicata can not be predicated upon a verdict upon which no judgment has been entered. Brown v. Bonds, 125 Ga. 833, 54 S.E. 933 (1906) (decided under former law).

Entry on docket necessary before execution can be issued. Nashville, C. & St. L. Ry. v. Brown, 3 Ga. App. 561, 60 S.E. 319 (1908) (decided under former law).

Entry on papers if case reopened after judgment entered on docket is nullity. Greene v. Oliphant & Hannah, 64 Ga. 565 (1880) (decided under former law).

Powers and Duties Generally (Cont'd)
4. Keeping Docket (Cont'd)

When docket must show appearance. — If a judgment has been rendered in a justice's court against a person who was not named in the summons, and the judgment is sought to bind that person on the ground that the person appeared and pleaded in the cause and thus made the person a party thereto, the fact of appearance and pleading must appear from a docket entry, and cannot be shown by parol evidence. Shearouse v. Wolf, 117 Ga. 426, 43 S.E. 718 (1903) (decided under former law).

Entry in judgment on promissory note must specify amount. — If entry is made upon docket of justice of the peace court with design of setting forth terms of judgment in favor of plaintiff in action upon promissory note, and such entry in no manner specifies any amount, either as principal or interest, the judgment is void for uncertainty, and there is no valid judgment. McCandless v. Inland Acid Co., 112 Ga. 291, 37 S.E. 419 (1900) (decided under former law).

How entry of service construed. — If a case was docketed by a justice of the peace and specifically named the defendant and a garnishee, a signed and dated statement that the summons had been served on the named garnishee was construed as an entry of service of summons of garnishment upon the garnishee. Southern Fertilizer & Chem. Co. v. Kirby, 52 Ga. App. 688, 184 S.E. 363 (1936) (decided under former law).

Jurisdiction Generally

1. In General

Civil claim jurisdiction. — The 1987 amendment to O.C.G.A. § 15-10-2(5) is remedial in the amendment's operation and effect and applied to a judgment entered after its effective date in an action filed before such date. Russell v. Flynn, 191 Ga. App. 196, 381 S.E.2d 142 (1989).

Distinction between the criminal court and civil court of the justice of the peace. Ormond v. Ball, 120 Ga. 916, 48 S.E. 383 (1904) (decided under former law).

Dispossessory proceedings and distress warrant proceedings. — Magistrate court's jurisdiction in dispossessory proceedings and distress warrant proceedings under O.C.G.A. § 15-10-2(6) is not circumscribed by the $5,000 limitation set forth in § 15-10-2(5). Atlanta J's, Inc. v. Houston Foods, Inc., 237 Ga. App. 415, 514 S.E.2d 216 (1999).

Justice of the peace may issue distress warrant for greater sum than the justice can entertain action for. Smith v. Turnley, 44 Ga. 243 (1871) (decided under former law).

Cannot try case beyond jurisdiction. — Consent of parties for justice of the peace to try case beyond the justice's jurisdiction cannot confer on the justice jurisdiction to do so. Yon v. Baldwin, 76 Ga. 769 (1886) (decided under former law).

If debt has been reduced credit may be set up by amendment. Smith v. Puett, 124 Ga. 921, 53 S.E. 457 (1906) (decided under former law).

Jurisdiction in first action makes second action res judicata. — Owners chose the forum for the owner's initial litigation and the magistrate court had jurisdiction to hear the questions presented, notwithstanding its limitation as to remedies; therefore, the owners' subsequent counterclaim involving the same party and issues was properly dismissed based on res judicata. Mahan v. Watkins, 256 Ga. App. 260, 568 S.E.2d 130 (2002).

2. Amount in Controversy

Amount is principal sum claimed. — Amount in controversy which fixes the jurisdiction of justice of the peace court is principal sum claimed. Bowers v. Williams, 17 Ga. App. 779, 88 S.E. 703 (1916) (decided under former law).

Pleadings will generally control as to amount claimed. Browne v. Edwards, 122 Ga. 277, 50 S.E. 110 (1905) (decided under former law).

Favorable construction of all petitions will be adopted. Fine & Bro. v. Southern Express Co., 10 Ga. App. 161, 73 S.E. 35 (1911) (decided under former law).

If evidence warrants finding of damages below jurisdiction, that construction will be adopted. Georgia Ry. &

Elec. Co. v. Knight, 122 Ga. 290, 50 S.E. 124 (1905) (decided under former law).

Amount that plaintiff finally recovers is immaterial. Ashworth v. Harper, 95 Ga. 660, 22 S.E. 670 (1895); Forbes Piano Co. v. Owens, 120 Ga. 449, 47 S.E. 938 (1904) (decided under former law).

Combination of small claims may oust court of jurisdiction. Yon v. Baldwin, 76 Ga. 769 (1886) (decided under former law).

Subsequent suit not barred when damages sought exceed jurisdictional limit. — Although the magistrate court had jurisdiction over the lessor's dispossessory action, it did not have jurisdiction to render a binding judgment on the lessee's counterclaims, which sought money damages that exceeded the $15,000 jurisdictional limit of the magistrate court; because the magistrate court was not a court of competent jurisdiction to resolve those claims on the merits, the trial court correctly ruled that the doctrine of res judicata did not bar the lessee from reasserting the same claims in the current suit, and correctly denied the lessor's motion for summary judgment on that ground. WPD Ctr., LLC v. Watershed, Inc., 330 Ga. App. 289, 765 S.E.2d 531 (2014).

Effect of addition of interest. — If sum sued for does not exceed jurisdictional amount, the court has jurisdiction even if addition of interest increases amount in controversy over jurisdictional amount. Southern Express Co. v. Hilton, 94 Ga. 450, 20 S.E. 126 (1894); Dumas v. Barnesville Bank, 38 Ga. App. 293, 143 S.E. 794 (1928) (decided under former law).

Total amount may oust court of jurisdiction. — If, in action on note, principal, interest, and attorney's fees exceed jurisdictional amount, justice of the peace court has no jurisdiction. Searcy v. Tillman, 75 Ga. 504 (1885); Beach v. Atkinson, 87 Ga. 288, 13 S.E. 591 (1891); Almand v. Almand & George, 95 Ga. 204, 22 S.E. 213 (1894); Peeples v. Strickland, 101 Ga. 829, 29 S.E. 22 (1897) (decided under former law).

Attorney's fees are ascertained by adding principal and interest and calculating 10 percent. Morgan v. Kiser & Co., 105 Ga. 104, 31 S.E. 45 (1898); Hamilton v. Rogers, 126 Ga. 27, 54 S.E. 926 (1906) (decided under former law).

Attorney's fees are waived unless defendant is notified as required by Ga. L. 1900, p. 53, § 1 (see now O.C.G.A. § 13-1-11). Godfree & Dellinger v. Brooks, 126 Ga. 627, 55 S.E. 938 (1906) (decided under former law).

If claim is liquidated, creditor cannot relinquish part of damages without consent of debtor. Stewart v. Thompson & Co., 85 Ga. 829, 11 S.E. 1030 (1890) (decided under former law).

Relinquishment principle is applicable to notes. Cox, Hill & Thompson v. Stanton, 58 Ga. 406 (1877) (decided under former law).

Relinquishment principle is applicable to open accounts. Ex parte Gale, 1 Ga. Rpt. Ann. (RMC 214) 193 (1822) (decided under former law).

Relinquishment principle has no application if damages not fixed by agreement or implied by law. Jennings v. Stripling, 127 Ga. 778, 56 S.E. 1026 (1907) (decided under former law).

Suit for damages to personalty. Velvin v. Hall, 78 Ga. 136 (1886) (decided under former law).

Breach of forthcoming bond. Bowden v. Taylor, 81 Ga. 199, 6 S.E. 277 (1887) (decided under former law).

Breach of contract to carry goods. Southern Express Co. v. Hilton, 94 Ga. 450, 20 S.E. 126 (1894) (decided under former law).

Account composed of unliquidated demands. Jennings v. Stripling, 127 Ga. 778, 56 S.E. 1026 (1907) (decided under former law).

Defense that account has been split into separate parts in order to bring amount of each part within jurisdiction of court must be pled. Smith v. Pope, 100 Ga. App. 369, 111 S.E.2d 155 (1959) (decided under former law).

Default judgment for one part waives defense for other part. — If the debtor, knowing that an account has been divided to bring each part within the jurisdiction of the justice of the peace court, withdraws the debtor's pleadings and suffers a default judgment, the debtor waives any defense to another part of the account

Jurisdiction Generally (Cont'd)
2. Amount in Controversy (Cont'd)

so divided. Smith v. Pope, 100 Ga. App. 369, 111 S.E.2d 155 (1959) (decided under former law).

Claim for damages greater than $15,000. — In an action between a same-sex couple regarding equity in a home, the girlfriend's claims against the homeowner were not barred by res judicata because the claims could not have been litigated in magistrate court in the homeowner's action for dispossession as the magistrate court lacked jurisdiction over the girlfriend's claims because the damages sought were more than $15,000. Smith v. Bell, 346 Ga. App. 152, 816 S.E.2d 698 (2018).

3. Specific Causes of Action

Justice of the peace court can hear action on express or implied bailment. Bates v. Bigby, 123 Ga. 727, 51 S.E. 717 (1905) (decided under former law).

Action on claim interposed to levy on personalty, under execution issued therefrom. Everett v. Brown, 117 Ga. 342, 43 S.E. 735 (1903) (decided under former law).

Action by guest against innkeeper for value of lost overcoat. Rockwell v. Proctor, 39 Ga. 105 (1869) (decided under former law).

Action on laborer's lien. Griffith v. Elder, 110 Ga. 453, 35 S.E. 641 (1900) (decided under former law).

Action on contract of carrier to deliver goods. Southern Express Co. v. Briggs, 1 Ga. App. 294, 57 S.E. 1066 (1907) (decided under former law).

Action for breach of warranty of personal property. Perdue v. Harwell, 80 Ga. 150, 4 S.E. 877 (1887) (decided under former law).

No jurisdiction in action for breach of public duty. Smith & Simpson Lumber Co. v. Louisville & N.R.R., 4 Ga. App. 714, 62 S.E. 472 (1908) (decided under former law).

No jurisdiction in action for failure to promptly furnish cars to move freight as against common carrier. Savannah F. & W. Ry. v. Snider, 1 Ga. App. 14, 57 S.E. 898 (1907) (decided under former law).

No jurisdiction in action based on malicious prosecution. Williams v. Sulter, 76 Ga. 355 (1886) (decided under former law).

No jurisdiction in action based on deceit. Cornett v. Ault, 124 Ga. 944, 53 S.E. 460 (1906) (decided under former law).

No jurisdiction in action for fraudulent removal of property subject to lien. Dorsey v. Miller, 105 Ga. 88, 31 S.E. 736 (1898) (decided under former law).

No jurisdiction in action for breaking of window. Chapman v. Silver & Bro., 18 Ga. App. 476, 89 S.E. 590 (1916) (decided under former law).

No jurisdiction in action for claim by steamboat company for detention of steamer at river bridge. White Star Line Steamboat Co. v. County of Gordon, 81 Ga. 47, 7 S.E. 231 (1888) (decided under former law).

Criminal Jurisdiction

Criminal jurisdiction limited to administration of justice. — While justice courts have jurisdiction with respect to certain matters in the administration of criminal law, such courts did not have jurisdiction in criminal actions as the word was defined in former Code 1933, § 3-101 (see now O.C.G.A. § 9-2-1). Pate v. Taylor Chem. Co., 88 Ga. App. 127, 76 S.E.2d 131 (1953) (decided under former law).

Extent of municipal court criminal jurisdiction. — If local Act creating municipal court provides that the criminal jurisdiction of the court would not exceed the jurisdiction of the justice courts of this state, but would extend over the entire county, such municipal court is not thereby given jurisdiction of criminal actions, though it might have jurisdiction with respect to certain matters in connection with the administration of criminal law. Pate v. Taylor Chem. Co., 88 Ga. App. 127, 76 S.E.2d 131 (1953) (decided under former law).

Personal Jurisdiction

Prolonged visit will not confer jurisdiction on justice of the peace court.

Fain v. Crawford, 91 Ga. 30, 16 S.E. 106 (1892) (decided under former law).

Service outside city limits proper. — Service on a partner by a deputy marshal of a municipal court is valid though made outside the city limits, but within the county. Heyman v. Decatur St. Bank, 16 Ga. App. 14, 84 S.E. 483 (1915) (decided under former law).

Principal on bond may be sued in court that has jurisdiction of surety even though surety waived jurisdiction in consideration of release. Mumford v. Solomon, 8 Ga. App. 286, 68 S.E. 1075 (1910) (decided under former law).

Judgments Rendered Outside Jurisdiction

Application. — This section applies when judgment is not rendered at place selected by justice in performance of the justice's statutory duty. Carter v. Atkinson, 12 Ga. App. 390, 77 S.E. 370 (1913) (decided under former law).

Judgment rendered outside jurisdiction may be attacked by affidavit of illegality. Mills v. Anderson, 20 Ga. App. 806, 93 S.E. 535 (1917) (decided under former law).

Writ of certiorari will not lie. Gravitt v. Mullins, 28 Ga. App. 806, 113 S.E. 61 (1922) (decided under former law).

Failure to notify as required voids judgment. — Judgment void if rendered at a place where the statutorily required notice of change of location is not given. Hilson v. Kitchens, 107 Ga. 230, 33 S.E. 71, 73 Am. St. R. 119 (1899) (decided under former law).

An order rendered by the trial judge of the civil court of a county in a bail trover action at a place outside of that county, and without notice to a party against whose interest the judgment was rendered, was a mere nullity, void and of no effect, and could be ignored as such by any party purportedly adversely affected thereby. Zachos v. Rowland, 80 Ga. App. 31, 55 S.E.2d 166 (1949) (decided under former law).

Judgment rendered out of term. White v. Mandeville, 72 Ga. 705 (1884) (decided under former law).

Court cannot be held in nearby house where regular place not heated. McDonald v. Farmers Supply Co., 143 Ga. 552, 85 S.E. 861 (1915) (decided under former law).

Judgment should be signed in courthouse. Bowden v. Taylor, 81 Ga. 199, 6 S.E. 277 (1888) (decided under former law).

Division of Debts

Term "liquidated" is equivalent to settled, acknowledged, or agreed. Parris v. Hightower, 76 Ga. 631 (1886) (decided under former law).

No division of running open account. — Running open account, the items of which have all matured at the time of the suit, cannot be divided into separate parts for the purpose of bringing each part within the jurisdiction of a justice's court without the consent of the defendant. Floyd v. Cox, 72 Ga. 147 (1883); Teat v. Westmoreland, 19 Ga. App. 60, 90 S.E. 1025 (1916) (decided under former law).

This rule has no application to legality or illegality of contracts so as to render prima facie illegal an entire running open account, composed of several contractual transactions during a period of years, merely for the reason that the evidence showed that certain older items of the account were illegal because the trade name of the plaintiff was not registered before the items were contracted, when the evidence also showed that the remaining items were legally contracted after due registration by the plaintiff. Gower v. Ozmer, 55 Ga. App. 81, 189 S.E. 540 (1936) (decided under former law).

Recovery on part of account will bar subsequent action for remainder. Johnson v. Klassett, 9 Ga. App. 733, 72 S.E. 174 (1911) (decided under former law).

Burden is on plaintiff to prove that accounts are different transactions. Parks v. Oskamp, Nolting & Co., 97 Ga. 802, 25 S.E. 369 (1895) (decided under former law).

Liens of other creditors cannot be prejudiced. Bell & Bro. v. Rich, 73 Ga. 240 (1884) (decided under former law).

Shares of stock represented by one certificate may be exchanged. — If one holds a certificate representing five $50.00

Division of Debts (Cont'd)

shares of preferred stock one may exchange it for five certificates so that a justice of the peace court will have jurisdiction. Savannah Real Estate, Loan & Bldg. Co. v. Silverberg, 108 Ga. 281, 33 S.E. 908 (1899) (decided under former law).

Not necessary to unite claims for rent. — If a landlord has two demands for rent, due for consecutive years, the amounts being liquidated, the landlord is not compelled to unite the demands in one distress warrant, although the landlord has the option to do so. McCray v. Samuel, 65 Ga. 739 (1880) (decided under former law).

Actions on Several Notes

Justice of the peace courts have jurisdiction of actions on distinct evidences of debt although they are given for one and the same debt or consideration. Parker v. Timberlake Grocery Co., 71 Ga. App. 280, 30 S.E.2d 650 (1944) (decided under former law).

If one is indebted to another on an open account in excess of $200.00 and gives two checks for a part thereof, which are credited on the account, an action against that person by the creditor for less than $200.00 to recover the full amount of the balance of the open account will lie, and is within the jurisdiction of the justice of the peace court, even though another action has been filed to recover on the checks which have been dishonored. Parker v. Timberlake Grocery Co., 71 Ga. App. 280, 30 S.E.2d 650 (1944) (decided under former law).

OPINIONS OF THE ATTORNEY GENERAL

Analysis

General Consideration
Powers and Duties Generally
Criminal Jurisdiction

General Consideration

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former § 15-10-52, former Code 1933, §§ 24-602, 24-1001, and 24-1004 are included in the annotations for this Code section.

Choice of forum. — Courts of Georgia may not restrict the suitor's choice of forum when jurisdiction of a cause of action is vested in more than one court. 1983 Op. Att'y Gen. No. U83-50.

Arrest warrants for persons under 17 years. — Magistrate may issue arrest warrants for persons under the age of 17. 1984 Op. Att'y Gen. No. U84-30.

Ordering prejudgment attachment or garnishment. — Because magistrate courts are not "courts of record" magistrate courts may not order prejudgment attachment or garnishment. 1984 Op. Att'y Gen. No. U84-28.

Foreclosure of motor vehicle mechanic's lien. — Justice of the peace court does not have subject matter jurisdiction to foreclose a motor vehicle mechanic's lien under O.C.G.A. § 40-3-54 since such lien is statutory rather than one arising ex contractu. 1981 Op. Att'y Gen. No. U81-27 (decided under former § 15-10-52).

Definitions of classes referred to. — This section, in referring to persons "resident of their respective districts," covers those persons who are actually residing in the militia district. The provision relating to "itinerant persons" would cover persons falling in the category similar to traveling lightning rod salespeople, jewelry salespeople, and others who are only traveling through the district; the statute would not apply to a person who was actually a resident of an adjoining district because the jurisdiction of that person would be in the justice court of the adjoining district; the last part of this section, which applies to persons of other districts and particular cases, refers generally to suits against makers and endorsers, coendorsers, and

others. 1952-53 Op. Att'y Gen. p. 311 (decided under former Code 1933, § 24-1004).

Justices of the peace court have jurisdiction in bail trover cases up to the amount of $200.00. 1945-47 Op. Att'y Gen. p. 77 (decided under former Code 1933, § 24-1001).

Counties required to furnish dockets and forms. — Counties are not required to furnish justices of the peace everything the justices may need in the performance of the justices duties; however, counties are required to furnish justices and constables dockets and necessary forms used for process and service by them. 1957 Op. Att'y Gen. p. 33 (decided under former Code 1933, § 24-602).

No modification of judicial order specifying cash bond. — Sheriff does not have the authority to modify a judicial order and accept a property or surety bond after a magistrate has specified a cash bond. 1987 Op. Att'y Gen. No. U87-22.

Dispossessory and distress warrant proceedings. — Magistrate court has jurisdiction to try cases and issue writs and judgments in dispossessory and distress warrant proceedings when the amount in controversy exceeds $3,000.00. 1988 Op. Att'y Gen. No. U88-18.

Release of arrestees. — Magistrate court may, sua sponte, order the release of arrestees who have been arrested without a warrant and if no warrant has been procured as required by O.C.G.A. § 17-4-62, and also if an individual has been arrested with a warrant, but has not been afforded a first appearance hearing within 72 hours of the individual's arrest as required by O.C.G.A. § 17-4-26. 1988 Op. Att'y Gen. No. U88-14.

Powers and Duties Generally

Commissioned notary public ex officio justice of the peace may only serve in that district in which the person resides. 1965-66 Op. Att'y Gen. No. 66-205 (decided under former law).

Jurisdiction over possession of open container of alcohol in vehicle. — In counties in which there is a state court, both the state court and the magistrate court of the county possess concurrent jurisdiction over the prosecution of individuals charged with violating a county ordinance prohibiting the possession of open containers of alcohol while operating a motor vehicle. 1992 Op. Att'y Gen. No. U92-3.

No jurisdiction outside district. — Justice of the peace is required to hold court and to maintain an office within the district; the justice does not have jurisdiction of the person or of subject matter in any trial held outside such district. 1970 Op. Att'y Gen. No. U70-44 (decided under former law).

Justice of the peace may prevent interference with a constable in making a levy through contempt processes. 1965-66 Op. Att'y Gen. No. 65-63 (decided under former law).

Justice of the peace plays no part in actual collection of back taxes of either county or state. 1969 Op. Att'y Gen. No. 69-263 (decided under former law).

Justice of the peace has authority to administer oaths and take acknowledgments unless power is expressly restricted to some other officer. 1948-49 Op. Att'y Gen. p. 47 (decided under former law).

Justice of the peace may only administer such oaths in county in which the person is so authorized as justice of the peace. 1948-49 Op. Att'y Gen. p. 47 (decided under former law).

Authority of justice of the peace to serve as sheriff. 1963-65 Op. Att'y Gen. p. 6 (decided under former law).

No special requirement as to form of jurat. — If the officer is a commissioned justice of the peace of the county and state wherein the oath is administered, the form under which the officer shows the officer's authority to execute the jurat, or whether or not the jurat is attached, is of little consequence and without special requirement as to form. 1948-49 Op. Att'y Gen. p. 47 (decided under former law).

Criminal Jurisdiction

Conservator of the peace is officer authorized to preserve and maintain public peace and comes within definition of peace officer. 1948-49 Op. Att'y Gen. p. 473 (decided under former law).

Criminal Jurisdiction (Cont'd)

Duty of arrest should be delegated. — Although a justice of the peace in the exercise of the justice's duties as conservator of the peace may carry the necessary implements for self protection in the discharge of the justice's duties, the duties of arresting persons for violation of laws should be delegated to the constable of the district and the justice should confine activities to the issuing of warrants and such processes as the justice deems necessary to preserve the peace since the offender when arrested may be brought before the justice for a committal hearing; the justice should not be the arresting officer and the magistrate, passing judgment upon the offender arrested by the justice. 1948-49 Op. Att'y Gen. p. 473 (decided under former law).

Justice of the peace may issue warrant for traffic offenses if warrant has not otherwise been issued by judge of the probate court. 1965-66 Op. Att'y Gen. No. 65-57 (decided under former law).

RESEARCH REFERENCES

ALR. — Small claims: jurisdictional limits as binding on appellate court, 67 A.L.R.4th 1117.

Am. Jur. Pleading and Practice Forms. — 7C Am. Jur. Pleading and Practice Forms, Courts, § 1 et seq.

15-10-2.1. Jurisdiction over certain cases involving litter.

(a) Subject to the provisions of subsection (b) of this Code section, in addition to any other jurisdiction vested in the magistrate courts, such courts shall have the right and power to conduct trials, receive pleas of guilty, and impose sentence upon defendants for violating any provision of Part 2, Part 3, or Part 3A of Article 2 of Chapter 7 of Title 16 or Code Section 32-6-51 or 40-6-248.1 that is punishable for its violation as a misdemeanor. Such jurisdiction shall be concurrent with other courts having jurisdiction over such violations.

(b) A magistrate court shall not have the power to dispose of misdemeanor cases as provided in subsection (a) of this Code section unless the defendant shall first waive in writing a trial by jury. If the defendant does not waive a trial by jury, the defendant shall notify the court and, if reasonable cause exists, the defendant shall be immediately bound over to a court in the county having jurisdiction to try the offense wherein a jury may be impaneled.

History. — Code 1981, § 15-10-2.1, enacted by Ga. L. 2006, p. 275, § 3-6/HB 1320.

Editor's notes. — This Code section was based on Code 1981, § 15-10-2.1, enacted by Ga. L. 1983, p. 884, § 2-1. The Code section continued, until July 1, 1985, the jurisdiction of those magistrate courts which as of June 30, 1983, had jurisdiction over misdemeanor cases and over enforcement of municipal ordinances. Subsection (b) of the Code section provided for its repeal effective July 1, 1985, but provided that any case in which a court assumed jurisdiction under the Code section prior to July 1, 1985, may be retained for disposition by that court after that date.

Ga. L. 1985, p. 352, § 1, repealed former Code Section 15-10-2.1, pertaining to continuation of certain existing magistrate courts. The former Code section was based on Code 1981, § 15-10-2.1, enacted by Ga. L. 1983, p. 884, § 2-1.

Ga. L. 2006, p. 275, § 5-1/HB 1320, not codified by the General Assembly, provides that the Act shall become effective

April 21, 2006, for purposes of adopting local ordinances to become effective on or after July 1, 2006.

Ga. L. 2006, p. 275, § 1-1/HB 1320, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Comprehensive Litter Prevention and Abatement Act of 2006.'"

15-10-3. Oath and commission of magistrate, constable, and clerk.

(a) All magistrates, constables, and clerks of magistrate court shall before entering on the duties of their offices subscribe before the judge of the probate court the oaths prescribed by Code Sections 45-3-1 and 45-3-13 and the following oath:

> "I swear or affirm that I will duly and faithfully perform all the duties required of me as (magistrate, constable, or clerk of magistrate court) of _____ County."

(b)(1) The clerk of superior court shall make an entry of the oath of each officer on the minutes of the superior court.

(2) In the case of constables and clerks, the chief judge of the superior court shall issue to the officer taking the oath a certificate which shall serve as the officer's commission.

(3) All magistrates shall be issued a commission under the seal of the office of the Governor as provided in Code Section 45-3-31. In the case of magistrates or an appointed chief magistrate, the appointing authority shall issue to the magistrate or chief magistrate taking the oath a certificate of appointment. A copy of such certificate shall be forwarded to the office of the Secretary of State.

(c) In the case of a probate judge serving as a magistrate, a clerk of superior court serving as clerk of magistrate court, or a sheriff or sheriff's deputy serving as constable, no oath, certificate, or commission shall be required except the oath and commission of the probate judge as probate judge, clerk of superior court as clerk of superior court, or sheriff or deputy as such.

History. — Code 1981, § 15-10-3, enacted by Ga. L. 1983, p. 884, § 2-1; Ga. L. 1984, p. 1096, § 1; Ga. L. 1987, p. 398, § 1.

15-10-4. Sessions of court.

The magistrate court shall not have fixed terms. The chief magistrate shall provide for sessions of court to be held at such times and in such places, within or without the county seat, as are necessary or convenient.

History. — Code 1981, § 15-10-4, enacted by Ga. L. 1983, p. 884, § 2-1.

Cross references. — Hours of magistrate court operation, Uniform Rules for the Magistrate Courts, Rule 3.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarities of the statutory provisions, decisions under former Code 1933, § 24-601 are included in the annotations for this Code section.

Availability of certiorari if judgment rendered at illegal place. — Judgment of the justice of the peace, void because rendered at some place other than the regular place of holding the court, may be attacked by affidavit of illegality in a proper case, but a writ of certiorari will not lie to such judgment. Courson v. Land, 54 Ga. App. 534, 188 S.E. 360 (1936) (decided under former Code 1933, § 24-601).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarities of the statutory provisions, opinions under former Code 1933, §§ 24-601, 24-901, and 24-903 are included in the annotations for this Code section.

Office must be open for sufficient periods to perform duties required by law. 1983 Op. Att'y Gen. No. 83-59.

Justice of the peace has no authority to change time for holding court without legislative sanction and any judgments rendered at times or places other than those fixed by law are void. 1965-66 Op. Att'y Gen. No. 65-34 (decided under former Code 1933, § 24-901).

Justice of the peace may not change time of holding court without posting public notice. 1948-49 Op. Att'y Gen. p. 53 (decided under former Code 1933, § 24-901).

No jurisdiction outside own district. — Justice of the peace is required to hold court and to maintain the justice's office within the justice's district; the justice does not have jurisdiction of the person or of the subject matter in any trial held outside such district. 1970 Op. Att'y Gen. No. U70-44 (decided under former Code 1933, §§ 24-601 and 24-903).

15-10-5. Offices, courtrooms, and equipment.

The county governing authority shall provide suitable offices and courtrooms for the use of the magistrate court and shall supply all fixtures, supplies, and equipment necessary for the proper functioning of the magistrate court.

History. — Code 1981, § 15-10-5, enacted by Ga. L. 1983, p. 884, § 2-1.

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarities of the statutory provisions, opinions under former Code 1933, §§ 24-602 and 24-904 are included in the annotations for this Code section.

Splitting compensation into salary and expenses of court improper. — Method of simply "splitting" the compensation of a small claims court judge/magistrate into separate payments for "salary" and "expenses" would not comport with O.C.G.A. §§ 15-10-5 and 15-10-23. 1983 Op. Att'y Gen. No. U83-39.

Counties required to furnish dockets and forms. — Counties are not required to furnish justices of the peace

everything justices may need in the performance of their duties; however, counties are required to furnish justices of the peace and constables with dockets and necessary forms used for process and service by the justices. 1957 Op. Att'y Gen. p. 33 (decided under former Code 1933, § 24-602).

Words "necessary furniture and other materials" construed broadly. — Phrase "necessary furniture and other materials necessary for the conduct of such courts" is a very broad and comprehensive coverage of furniture and materials which would necessarily cover writing instruments such as pens, ink, pencils, and, if the volume of business required it, may include a typewriter which is merely a mechanical improvement upon the other writing devices. 1952-53 Op. Att'y Gen. p. 313 (decided under former Code 1933, § 24-904).

County governing authority is responsible for all expenses necessary for a small claims/magistrate court's operation, distinct from the compensation paid to the individual magistrates. 1983 Op. Att'y Gen. No. U83-39.

Magistrate's offices must be open for sufficient periods to perform duties required by law. 1983 Op. Att'y Gen. No. 83-59.

15-10-6. Local court rules.

The chief magistrate may with the approval of the chief judge of superior court adopt local rules for the court not inconsistent with law and the rules adopted by the Supreme Court.

History. — Code 1981, § 15-10-6, enacted by Ga. L. 1983, p. 884, § 2-1.

Cross references. — Authority of magistrate courts to enact local rules, Uniform Rules for the Magistrate Courts, Rule 1.2.

15-10-7. Council of Magistrate Court Judges.

(a) There is created a council of magistrate court judges to be known as the "Council of Magistrate Court Judges." The council shall be composed of the chief magistrates, magistrates, and senior magistrates of the magistrate courts of this state. The council is authorized to organize itself and to develop a constitution and bylaws.

(b) It shall be the purpose of the council to effectuate the constitutional and statutory responsibilities conferred upon it by law, to further the improvement of the magistrate courts and the administration of justice, to assist the chief magistrates, magistrates, and senior magistrates throughout the state in the execution of their duties, and to promote and assist in the training of chief magistrates, magistrates, and senior magistrates.

(c) Expenses of the administration of the council shall be paid from state funds appropriated for that purpose, from federal funds available to the council for that purpose, or from other appropriate sources.

History. — Code 1981, § 15-10-7, enacted by Ga. L. 1988, p. 461, § 2; Ga. L. 1993, p. 910, § 3; Ga. L. 2019, p. 658, § 1/HB 257.

The 2019 amendment, effective July 1, 2019, deleted "The officers of said council shall consist of a president, a first vice president, a second vice president, a sec-

retary, a treasurer, and such other officers as the council shall deem necessary. The council shall have an executive committee composed of two representatives from each judicial administrative district. No senior magistrate shall serve as an officer of the council or as a regular representative of a judicial administrative district to the executive committee of the council." following "and bylaws." at the end of subsection (a).

Cross references. — Proposed rule amendments by The Council of Magistrate Court Judges, Uniform Rules for the Magistrate Courts, Rule 1.4.

15-10-8. Authority of retired magistrate to perform marriage ceremonies.

A retired magistrate of a magistrate court of any county of this state shall be vested with the same authority as an active judge of this state for the purpose of performing marriage ceremonies. For purposes of this Code section, a retired magistrate of a magistrate court shall be one who has served not less than eight years.

History. — Code 1981, § 15-10-8, enacted by Ga. L. 1990, p. 297, § 1.

ARTICLE 2

MAGISTRATES

Law reviews. — For article, "Courts: Juvenile Justice Reform," see 30 Ga. St. U. L. Rev. 63 (2013).

15-10-20. Number; selection; term; filling vacancies; chief magistrate; bonds.

(a) Each magistrate court shall have a chief magistrate and may have one or more other magistrates. Such magistrates shall be the judges of the magistrate court and shall be known as magistrates of the county. Unless otherwise provided by local law, the number of magistrates in each county shall be fixed from time to time by majority vote of the judges of the superior court of the county, but no magistrate shall be removed from office during a term of office except for cause as provided by Code Sections 15-10-24 and 15-10-25. The number of magistrates authorized for the county shall be one magistrate until increased by the judges of superior court or by local law; but this subsection shall not operate to remove a magistrate from office during his or her term of office.

(b) The term of office of any magistrate taking office on or after January 1, 1985, shall be for four years beginning on the first day of an odd-numbered year, except that in selecting magistrates to fill newly created positions or if otherwise necessary, a magistrate may be

selected for a term of less than four years to expire on the last day of an even-numbered year.

(c) Unless otherwise provided by local law, all magistrates taking office on or after January 1, 1985, shall be selected as provided in this subsection. The chief magistrate shall be elected by the voters of the county at the general election next preceding the expiration of the term of the incumbent chief magistrate, in a partisan election in the same manner as county officers are elected, for a term beginning on the first day of January following his or her election. His or her successors shall likewise be elected quadrennially thereafter for terms beginning on the first day of January following their election. Magistrates other than the chief magistrate shall be appointed by the chief magistrate with the consent of the judges of superior court. The term of a magistrate so appointed shall run concurrently with the term of the chief magistrate by whom he or she was appointed.

(d) Unless otherwise provided by local law, a vacancy in the office of chief magistrate shall be filled by an appointment by majority vote of the judges of superior court for the remainder of the unexpired term; and a vacancy in the office of any other magistrate shall be filled by an appointment by the chief magistrate with the consent of the judges of superior court for the remainder of the unexpired term. If, however, a vacancy occurs which does not reduce the number of magistrates for the county below the number of magistrates authorized for the county, then such vacancy shall not be filled.

(e) The General Assembly may by local law provide for the number of magistrates of a county, provide for a different method of selecting magistrates than that specified in subsection (d) of this Code section, and provide for a different method of filling vacancies than that specified in subsection (d) of this Code section.

(f) The General Assembly may at any time provide by local law that the probate judge shall serve as chief magistrate or magistrate and provide for compensation of the probate judge in his or her capacity as chief magistrate or magistrate; and in such a case the chief magistrate or magistrate shall not be separately elected but shall be the probate judge.

(g) Each magistrate taking office after July 1, 1985, shall before entering on the performance of his or her duties execute bond in the amount of $100,000.00 for the faithful performance of his or her duties. Each magistrate in office on July 1, 1985, shall execute such a bond not later than September 1, 1985. The amount of bond required of the magistrate or magistrates of any county may be increased by local law. Such bonds shall be subject to all provisions of Chapter 4 of Title 45 in the same manner as bonds of other county officials. The premiums due

on such bonds shall be paid by the fiscal authority of the county out of county funds.

History. — Code 1981, § 15-10-20, enacted by Ga. L. 1983, p. 884, § 2-1; Ga. L. 1984, p. 22, § 15; Ga. L. 1984, p. 442, § 1; Ga. L. 1984, p. 1096, § 2; Ga. L. 1985, p. 149, § 15; Ga. L. 1985, p. 636, § 1; Ga. L. 1994, p. 607, § 2; Ga. L. 1996, p. 1231, § 3; Ga. L. 2019, p. 658, § 2/HB 257.

The 2019 amendment, effective July 1, 2019, inserted "or her" near the end of the last sentence of subsection (a); deleted the former first sentence of subsection (b), which read: "The term of office of any magistrate taking office prior to January 1, 1985, shall expire on December 31, 1984, except that this subsection shall not operate to shorten any term of office in violation of Article VI, Section X, Paragraph II of the Constitution."; deleted former subsection (c); redesignated former subsections (d) through (h) as present subsections (c) through (g), respectively; inserted "or she" throughout present subsection (c); in present subsection (e), substituted "subsection (d)" for "subsections (c) and" in the middle and substituted "subsection (d)" for "subsection (e)" near the end; in present subsection (g), in the first sentence, twice inserted "or her" and substituted "$100,000.00" for "$25,000.00"; and deleted former subsection (i), relating to removal of judge of the superior courts of this state and powers and duties of special judge of the magistrate court.

Cross references. — Certain officials to become magistrates by operation of law, § 15-10-120. Disqualification of judge or chief magistrate, Uniform Rules for the Magistrate Courts, Rules 4.2 and 4.3.

Editor's notes. — Ga. L. 1983, p. 884, § 7-4, not codified by the General Assembly, provides: "With respect to each officer other than a probate judge who becomes a magistrate on July 1, 1983, pursuant to Article VI, Section X, Paragraph II of the Constitution, the position or office in which such officer was formerly serving shall be abolished for all purposes immediately upon the expiration of the term of the incumbent; and no person shall be selected to fill such office thereafter. This section shall not operate to shorten the term which any such officer will serve as magistrate pursuant to said paragraph of the Constitution and shall not operate to prevent any such officer from thereafter being selected as a magistrate."

JUDICIAL DECISIONS

Editor's notes. — In light of the similarities of the statutory provisions, decisions under former Civil Code 1895, § 4072 and Civil Code 1910, §§ 4658 and 6524 are included in the annotations for this Code section. Many of the following decisions were rendered under former Code Section 15-10-57 or predecessors thereof, relating to procedure when justices of the peace are disqualified.

Constitutionality. — As the constitution permits selection and terms of offices of magistrate judges to be varied by local law, the provisions of O.C.G.A. §§ 15-10-20, 15-10-23, 15-10-100, and 15-10-105 are not unconstitutional. In re Magistrate Court, 262 Ga. 334, 418 S.E.2d 42 (1992).

Constitutional jurisdictional requirements. — Requirement of Ga. Const. 1983, Art. VI, Sec. III, Para. I, that "magistrate … courts shall have uniform jurisdiction as provided by law" relates to jurisdiction rather than to the method of selection and terms of office of magistrates. State v. Boatright, 256 Ga. 23, 342 S.E.2d 674 (1986).

If justice of the peace is disqualified, another justice of the peace may preside in that justice's district. Simpkins & Co. v. Hester, 3 Ga. App. 160, 59 S.E. 322 (1907) (decided under former Civil Code 1895, § 4072).

Hearing must be at regular place of holding court. McClatchey v. Bryan, 144 Ga. 292, 86 S.E. 1085 (1915) (decided under former Civil Code 1910, § 6524).

Effect of judgment of unauthorized justice of the peace. — Judgment rendered by a justice of the peace unauthor-

ized to preside in the district where it was rendered is a nullity and of no effect. Simpkins & Co. v. Hester, 3 Ga. App. 160, 59 S.E. 322 (1907) (decided under former Civil Code 1895, § 4072).

Disqualification after appeal. — Justice of the peace of the same district may preside where the justice of the peace who tried the case is disqualified, after an appeal from the justice's judgment has been entered. Harrison v. Perry, 90 Ga. 206, 15 S.E. 742 (1892) (decided under former law).

If justice of the peace presides in another's court, the justice's authority will be presumed in the absence of proof to the contrary. Carter & Ford v. Griffin, 113 Ga. 633, 38 S.E. 946 (1901) (decided under former Civil Code 1895, § 4072).

Justice of the peace related to a party may issue execution to foreclose landlord's lien. Savage v. Oliver, 110 Ga. 636, 36 S.E. 54 (1900) (decided under former Civil Code 1895, § 4072).

Mandamus to compel calling of election. — Mandamus will lie to compel justice of the peace to call election on application of citizens. Killorin v. Mitchell, 141 Ga. 524, 81 S.E. 443 (1914) (decided under former Code 1910, § 4658).

Office of assistant magistrate not created. — In a defendant's prosecution on charges of possession of marijuana with intent to distribute and possession of cocaine with intent to distribute, a search warrant issued by an assistant magistrate at the magistrate's direction was invalid because the assistant magistrate could not be considered a de facto officer as no such office had been created by the county commissioners or by the superior court judges under O.C.G.A. § 15-10-20(a). Beck v. State, 283 Ga. 352, 658 S.E.2d 577 (2008).

Cited in Taylor v. Public Convalescent Serv., 245 Ga. 805, 267 S.E.2d 242 (1980); Dudley v. Rowland, 271 Ga. 176, 517 S.E.2d 326 (1999).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, §§ 24-408 and 24-1008 and former Code Section 15-10-6 or predecessors thereof, relating to filling of vacancies in office of justice of the peace, are included in the annotations for this Code section.

Effect of certification under former Georgia Justice Courts Training Council Act. — Justice of the peace who was certified under the former Georgia Justice Courts Training Council Act as of July 1, 1983, became a magistrate on that date. 1983 Op. Att'y Gen. No. 83-53.

Justice of the peace in office on June 30, 1983, who was not certified under the former Georgia Justice Courts Training Council Act as of that date, did not become a magistrate of the successor court on July 1, 1983. 1983 Op. Att'y Gen. No. 83-53.

If a justice of the peace position is vacant on June 30, 1983, it may not be filled. 1983 Op. Att'y Gen. No. 83-53.

Term of office. — Magistrate assuming office on July 1, 1983, by virtue of the magistrate's previous position serves a term as magistrate identical to the original term of the magistrate's former judicial office. 1983 Op. Att'y Gen. No. 83-59.

Resignation procedures. — Chief magistrates should submit their resignations to the judges of the superior court and magistrates should submit their resignations to the chief magistrate. 1983 Op. Att'y Gen. No. 83-53.

If no one is elected in special election, the offices of justice of the peace and constable must be filled by election rather than appointment. 1969 Op. Att'y Gen. No. 69-59 (decided under former Code 1933, § 24-408).

Call another election if vacancy not filled. — If an election has been legally ordered to fill a vacancy in the office of justice of the peace, and none is bona fide held at the time and place designated, such vacancy would have to be filled by another special election called by the ordinary (now probate judge) rather than by appointment by the ordinary. 1968 Op. Att'y Gen. No. 68-508 (decided under former Code 1933, § 24-408).

It is the duty of the probate judge to fill vacancies in office of justice of the peace when an election does not fill the

vacancy. 1945-47 Op. Att'y Gen. p. 78; 1957 Op. Att'y Gen. p. 54 (decided under former Code 1933, § 24-408).

Acts of justice of the peace holding over valid. — Generally, the acts of a de facto officer are valid and if the term of a justice of the peace has expired and no one has been duly elected and commissioned to fill the office, the official acts of the justice whose term has expired would be those of a de facto officer. 1948-49 Op. Att'y Gen. p. 479 (decided under former Code 1933, § 24-408).

Duty to ascertain if justice of the peace refuses to act. — Justice of the peace, when presented with an action stating that the other justice of the peace refuses to serve, should satisfy oneself by taking the matter up with the justice of the peace in the adjoining district and actually ascertain if the justice refuses to act in the matter. 1950-51 Op. Att'y Gen. p. 20 (decided under former Code 1933, §§ 24-408 and 24-1008).

State court judge may not simultaneously hold the office of chief magistrate. 1983 Op. Att'y Gen. No. U83-36.

Sitting magistrate may be a candidate for chief magistrate but would be required to resign the former magistrate position before assuming the new office. 1983 Op. Att'y Gen. No. 83-59.

Probate judge as chief magistrate. — If the General Assembly has so provided by local law, the probate judge is to serve as the chief magistrate. If there is no such local law, with the consent of the probate judge, the superior court may appoint the probate judge as chief magistrate until January 1, 1985. 1983 Op. Att'y Gen. No. 83-59.

Probate judge may be chief magistrate. — General law does not prohibit the probate judge from being separately elected and simultaneously holding the office of chief magistrate even if there is no specific authorization by local Act under subsection (g) (now subsection (f)) of O.C.G.A. § 15-10-20. 1984 Op. Att'y Gen. No. 84-26.

Justice of the peace as chief magistrate. — Certified justice of the peace is eligible to be appointed chief magistrate pursuant to O.C.G.A. § 15-10-120 but a noncertified justice of the peace is eligible for appointment only if the requirements of O.C.G.A. § 15-10-22 have been met. 1983 Op. Att'y Gen. No. 83-59.

Chief magistrate seeking election to city council. — Since the office of member of the City Council of Lincolnton began more than 30 days prior to the expiration of the candidate's office as Chief Magistrate for Lincoln County and since there was no specific authorization by law permitting a person to hold the offices of magistrate and city councilmember simultaneously, the candidate's office as Chief Magistrate for Lincoln County would be declared vacant by operation of law pursuant to Ga. Const. 1983, Art. II, Sec. II, Par. V, upon the candidate qualifying to seek the office of member of the City Council of Lincolnton. 1985 Op. Att'y Gen. No. U85-41.

Resignation of probate judge as chief magistrate. — When the probate judge also serves as chief magistrate by operation of law, the office holder may not resign as chief magistrate while continuing to hold the office of probate judge. 1985 Op. Att'y Gen. No. U85-46.

15-10-20.1. Qualifying in absentia for magistrates serving on active military duty.

(a) Any elected chief magistrate or elected magistrate who is performing ordered military duty, as defined in Code Section 38-2-279, shall be eligible for reelection in any primary or general election which may be held to elect a successor for the next term of office, and may qualify in absentia as a candidate for reelection to such office. The performance of ordered military duty shall not create a vacancy in such office during the term for which such judge was elected.

(b) Where the giving of written notice of candidacy is required, any elected chief magistrate or elected magistrate who is performing ordered military duty may deliver such notice by mail, agent, or messenger to the proper elections official. Any other act required by law of a candidate for the office of chief magistrate or magistrate judge may, during the time such official is on ordered military duty, be performed by an agent designated in writing by the absent chief magistrate or magistrate judge.

History. — Code 1981, § 15-10-20.1, enacted by Ga. L. 2009, p. 311, § 1/HB 156.

15-10-21. Powers and duties of chief magistrate.

The chief magistrate shall assign cases among the several magistrates of the county and shall decide any disputes between the magistrates of the county.

History. — Code 1981, § 15-10-21, enacted by Ga. L. 1983, p. 884, § 2-1.

15-10-22. Qualifications; restrictions on practice of law.

(a) Each magistrate taking office on or after July 1, 2019, shall:

(1) Have been a resident of the county for two years next preceding the beginning of his or her term of office;

(2) Be at least 25 years of age;

(3) Remain a resident of such county during his or her term of office;

(4) Be a citizen of the United States;

(5) Be a registered voter; and

(6) Have obtained a state accredited high school diploma or general educational development (GED) diploma.

(b) Additional qualifications for the office of chief magistrate or magistrate or both may be imposed by local law.

(c) A magistrate who is an attorney may practice in other courts but may not practice in the magistrate's own court or appear in any matter as to which that magistrate has exercised any jurisdiction.

History. — Code 1981, § 15-10-22, enacted by Ga. L. 1983, p. 884, § 2-1; Ga. L. 1984, p. 1096, § 3; Ga. L. 1987, p. 430, § 1; Ga. L. 2019, p. 658, § 3/HB 257.

The 2019 amendment, effective July 1, 2019, substituted the present provisions of this Code section for the former provisions, which read: "Each magistrate

shall have been a resident of the county for one year next preceding the beginning of his term of office and shall as of such date be at least 25 years of age and shall possess a high school diploma or its equivalent. However, an officer becoming a magistrate pursuant to Code Section 15-10-120 shall be eligible to the office of magistrate without the necessity of meeting these qualifications. Additional qualifications for the office of chief magistrate or magistrate or both may be imposed by local law.

"(b) A magistrate who is an attorney may practice in other courts but may not practice in the magistrate's own court or appear in any matter as to which that magistrate has exercised any jurisdiction."

Cross references. — Proscription against inappropriate political activity by judges, Georgia Code of Judicial Conduct, Canon 7.

JUDICIAL DECISIONS

Cited in State v. Slaughter, 252 Ga. 435, 315 S.E.2d 865 (1984); Beck v. State, 283 Ga. 352, 658 S.E.2d 577 (2008).

OPINIONS OF THE ATTORNEY GENERAL

There is no requirement that a magistrate be an attorney. 1983 Op. Att'y Gen. No. 83-53.

Eligibility of justice of the peace for appointment. — Certified justice of the peace is eligible to be appointed chief magistrate pursuant to O.C.G.A. § 15-10-120 but a noncertified justice of the peace is eligible for appointment only if the requirements of O.C.G.A. § 15-10-22 have been met. 1983 Op. Att'y Gen. No. 83-59.

ADVISORY OPINIONS OF THE STATE BAR

Part-time judges may represent defendants in criminal cases; however, regular or exclusive representation of such defendants by a judge whose responsibilities include the issuance of criminal warrants or the trial of criminal cases might destroy the appearance of impartiality and integrity essential to the administration of justice and, therefore, be inappropriate. Adv. Op. No. 86-2 (Aug. 23, 1989).

15-10-23. Minimum compensation; annual salary; increases; supplements.

(a)(1) As used in this Code section, the term "full-time capacity" means, in the case of a chief magistrate, a chief magistrate who regularly exercises the powers of a magistrate as set forth in Code Section 15-10-2 at least 40 hours per workweek. In the case of all other magistrates, such term means a magistrate who was appointed to a full-time magistrate position and who regularly exercises the powers of a magistrate as set forth in Code Section 15-10-2 at least 40 hours per workweek.

(2) Unless otherwise provided by local law, effective January 1, 2006, the chief magistrate of each county who serves in a full-time

capacity other than those counties where the probate judge serves as chief magistrate shall receive a minimum annual salary of the amount fixed in the following schedule:

Population	Minimum Salary
0 — 5,999	$ 29,832.20
6,000 — 11,889	40,967.92
11,890 — 19,999	46,408.38
20,000 — 28,999	49,721.70
29,000 — 38,999	53,035.03
39,000 — 49,999	56,352.46
50,000 — 74,999	63,164.60
75,000 — 99,999	67,800.09
100,000 — 149,999	72,434.13
150,000 — 199,999	77,344.56
200,000 — 249,999	84,458.82
250,000 — 299,999	91,682.66
300,000 — 399,999	101,207.60
400,000 — 499,999	105,316.72
500,000 or more	109,425.84

The minimum salary for each affected chief magistrate shall be fixed from the table in this subsection according to the population of the county in which the chief magistrate serves as determined by the United States decennial census of 2000 or any future such census; provided, however, that such annual salary shall be recalculated in any year following a census year in which the Department of Community Affairs publishes a census estimate for the county prior to July 1 that is higher than the immediately preceding decennial census. Notwithstanding the provisions of this subsection, unless otherwise provided by local law, effective January 1, 1996, in any county in which more than 70 percent of the population according to the United States decennial census of 1990 or any future such census resides on property of the United States government which is exempt from taxation by this state, the population of the county for purposes of this subsection shall be deemed to be the total population of the county minus the population of the county which resides on property of the United States government.

(3) All other chief magistrates shall receive a minimum monthly salary equal to the hourly rate that a full-time chief magistrate of the county would receive according to paragraph (2) of this subsection multiplied by the number of actual hours worked by the chief magistrate as certified by the chief magistrate to the county governing authority.

(4) Unless otherwise provided by local law, each magistrate who serves in a full-time capacity other than the chief magistrate shall receive a minimum monthly salary of $3,851.46 per month or 90 percent of the monthly salary that a full-time chief magistrate would receive according to paragraph (2) of this subsection, whichever is less.

(5) All magistrates other than chief magistrates who serve in less than a full-time capacity or on call shall receive a minimum monthly salary of the lesser of $22.22 per hour for each hour worked as certified by the chief magistrate to the county governing authority or 90 percent of the monthly salary that a full-time chief magistrate would receive according to paragraph (2) of this subsection; provided, however, that notwithstanding any other provisions of this subsection, no magistrate who serves in less than a full-time capacity shall receive a minimum monthly salary of less than $592.58 unless a magistrate waives such minimum monthly salary in writing.

(6) Magistrates shall be compensated solely on a salary basis and not in whole or in part from fees. The salaries and supplements of all magistrates shall be paid in equal monthly installments from county funds.

(b) The amounts provided in subsection (a) of this Code section, as increased by the supplement, if any, provided by subsection (d) of Code Section 15-10-105, shall be increased by multiplying said amounts by the percentage which equals 5 percent times the number of completed four-year terms of office served by any chief magistrate or magistrate where such terms have been completed after December 31, 1995, effective the first day of January following the completion of each such period of service.

(c) Whenever the state employees subject to compensation plans authorized and approved in accordance with Code Section 45-20-4 receive a cost-of-living increase or general performance based increase of a certain percentage or a certain amount, the amounts provided in subsection (a) of this Code section, as increased by the supplement, if any, provided by subsection (d) of Code Section 15-10-105 and as increased by the application of longevity increases pursuant to subsection (b) of this Code section, shall be increased by the same percentage or same amount applicable to such state employees. If the cost-of-living

increase or general performance based increase received by state employees is in different percentages or different amounts as to certain categories of employees, the amounts provided in subsection (a) of this Code section, as increased by the supplement, if any, provided by subsection (d) of Code Section 15-10-105 and as increased by the application of longevity increases pursuant to subsection (b) of this Code section, shall be increased by a percentage or an amount not to exceed the average percentage or average amount of the general increase in salary granted to the state employees. The Office of Planning and Budget shall calculate the average percentage increase or average amount increase when necessary. The periodic changes in the amounts provided in subsection (a) of this Code section, as increased by the supplement, if any, provided by subsection (d) of Code Section 15-10-105 and as increased by the application of longevity increases pursuant to subsection (b) of this Code section, as authorized by this subsection, shall become effective on the first day of January following the date that the cost-of-living increases or general performance based increases received by state employees become effective; provided, however, that if the cost-of-living increases received by state employees become effective on January 1, such periodic changes in the amounts provided in subsection (a) of this Code section, as increased by the supplement, if any, provided by subsection (d) of Code Section 15-10-105 and as increased by the application of longevity increases pursuant to subsection (b) of this Code section, as authorized by this subsection, shall become effective on the same date that the cost-of-living increases or general performance based increases received by state employees become effective.

(d) The county governing authority may supplement the minimum annual salary of the chief or other magistrate in such amount as it may fix from time to time, but no such magistrate's compensation or supplement shall be decreased during any term of office. Nothing contained in this subsection shall prohibit the General Assembly by local law from supplementing the annual salary of any magistrates.

(e) The General Assembly may by local law fix the compensation of any or all of a county's magistrates. The chief magistrate or magistrate shall be entitled to the greater of the compensation established by local law, including any supplement by the county governing authority, or the minimum annual salary stated in subsection (a) of this Code section but in no event to both.

(f) This Code section shall apply to any chief magistrate who is also serving as a judge of a civil court which is provided for in Article VI, Section I, Paragraph I of the Constitution of the State of Georgia of 1983. In such case, the salary of such chief magistrate shall be as provided by the local governing authority of the county.

(g) The salaries and supplements of senior magistrates shall be paid from county funds at a per diem rate equal to the daily rate that a full-time chief magistrate of the county would receive under paragraph (2) of subsection (a) of this Code section; provided, however, that the minimum annual and monthly salaries provided for in this Code section shall not apply to senior magistrates.

History. — Code 1981, § 15-10-23, enacted by Ga. L. 1983, p. 884, § 2-1; Ga. L. 1988, p. 424, § 1; Ga. L. 1989, p. 426, § 1; Ga. L. 1993, p. 910, § 4; Ga. L. 1995, p. 562, § 1; Ga. L. 1998, p. 1159, §§ 11, 12; Ga. L. 2001, p. 902, § 8; Ga. L. 2002, p. 1088, § 1; Ga. L. 2006, p. 568, § 6/SB 450; Ga. L. 2006, p. 875, § 1/HB 1399; Ga. L. 2009, p. 745, § 1/SB 97; Ga. L. 2012, p. 446, § 2-14/HB 642.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2001, "means, in the case of a chief magistrate, a" was substituted for "means in the case of a chief magistrate means a" in the first sentence of paragraph (a)(1).

Editor's notes. — Ga. L. 1983, p. 884, § 7-2, not codified by the General Assembly, provides for both the establishment and minimum compensation of officials, including justices of the peace, who become magistrates by operation of law pursuant to other provisions of the Act (see Code Section 15-10-120).

Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: "Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act." This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: "Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90."

Law reviews. — For annual survey of local government law, see 57 Mercer L. Rev. 289 (2005); 58 Mercer L. Rev. 267 (2006).

JUDICIAL DECISIONS

Constitutionality. — As the constitution permits selection and terms of offices of magistrate judges to be varied by local law, the provisions of O.C.G.A. §§ 15-10-20, 15-10-23, 15-10-100, 15-10-105 and Ga. L. 1983, p. 4027, are not unconstitutional. In re Magistrate Court, 262 Ga. 334, 418 S.E.2d 42 (1992).

Chief magistrate was entitled to the salary provided by law for the chief magistrate's position, and not to a higher judicial salary based upon an erroneously computed qualifying fee which the chief magistrate paid prior to running for office. Rowland v. Tattnall County, 260 Ga. 109, 390 S.E.2d 217 (1990).

Appointment as assistant magistrate. — Judge was not entitled to be compensated as a full-time magistrate under O.C.G.A. § 15-10-23 when the written contract pursuant to which the judge was engaged expressly provided that the judge was hired as an assistant magistrate. Brown v. Blackmon, 272 Ga. 435, 530 S.E.2d 712 (2000); DeLoach v. Evans County, 272 Ga. 479, 532 S.E.2d 376 (2000).

Petition for increased compensation denied. — Chief Magistrate has a statutory duty to certify hours worked by a magistrate. Thus, when the Chief Magistrate attempted to certify hours for the magistrate which the magistrate did not work, the Chief Magistrate was acting outside the sphere of legally delegated authority, and the required certification was not made. Furthermore, there was no obligation to pay the magistrate for hours for which the certification was suspect. Jennings v. McIntosh County Bd. of Comm'rs, 276 Ga. 842, 583 S.E.2d 839 (2003).

Attorney fees. — When a magistrate sued to require the county to provide com-

pensation in accordance with the statutory guidelines of O.C.G.A. § 15-10-23, and prevailed on the principal claim in the petition for a writ of mandamus, even though the magistrate did not obtain all the relief requested, the magistrate was still entitled to attorney's fees. Jennings v. McIntosh County Bd. of Comm'rs, 276 Ga. 842, 583 S.E.2d 839 (2003).

Appointment to fill unexpired term. — County board of commissioners violated O.C.G.A. § 15-10-23 and Ga. Const. 1983, Art. VI, Sec. VII, Par. V in reducing the salary of a chief magistrate following the magistrate's appointment to fill the unexpired term of the magistrate's predecessor. Lee v. Peach County Bd. of Comm'rs, 269 Ga. 380, 497 S.E.2d 562 (1998).

Reduction of erroneously calculated salary proper. — County was not barred from reducing a judge's salary when the salary had been inflated erroneously; the fact that the inflated salary was calculated by the same method as used previously did not estop the county from paying the reduced salary that the judge was actually due. Maddox v. Hayes, 278 Ga. 141, 598 S.E.2d 505 (2004).

Reduction of magistrate's compensation not authorized. — County commissioners violated the mandates of Ga. Const. 1983, Art. VI, Sec. VII, Par. V and O.C.G.A. § 15-10-23 by reducing a magistrate's compensation during the term for which the magistrate was elected. Dudley v. Rowland, 271 Ga. 176, 517 S.E.2d 326 (1999).

Chief magistrate was entitled to recover salary because the magistrate was an incumbent, having performed the duties of chief magistrate before the salary reduction, and defendants reduced the magistrate's salary in violation of Ga. Const. 1983, Art. VI, Sec. VII, Para. V, and O.C.G.A. § 15-10-23(d). Pike County v. Callaway-Ingram, 292 Ga. 828, 742 S.E.2d 471 (2013).

OPINIONS OF THE ATTORNEY GENERAL

Splitting compensation into salary and expenses of court improper. — Method of simply "splitting" the compensation of a small claims court judge/magistrate into separate payments for "salary" and "expenses" would not comport with O.C.G.A. §§ 15-10-5 and 15-10-23. 1983 Op. Att'y Gen. No. U83-39.

Eligibility for 5 percent longevity increase. — First-term magistrate, who previously completed a 4-year term as a magistrate after December 31, 1995, was entitled to a 5-percent longevity increase under former subsection (j) of O.C.G.A. § 15-10-23. 1997 Op. Att'y Gen. No. U97-26.

15-10-23.1. Monthly contingent expense allowance for the operation of the magistrate court.

In addition to any salary, fees, or expenses now or hereafter provided by law, unless a magistrate waives such expenses in writing, the governing authority of each county is authorized to provide as contingent expenses for the operation of the office of magistrate court, and payable from county funds, a monthly expense allowance to each magistrate of not less than the amount fixed in the following schedule:

Population	Minimum Monthly Expenses
0 — 11,889	$ 100.00
11,890 — 74,999	200.00
75,000 — 249,999	300.00
250,000 — 499,999	400.00

500,000 or more 500.00

History. — Code 1981, § 15-10-23.1, enacted by Ga. L. 2001, p. 902, § 9; Ga. L. 2006, p. 875, § 2/HB 1399; Ga. L. 2015, p. 5, § 15/HB 90.

15-10-24. Discipline, removal, and involuntary retirement.

Magistrates shall be subject to discipline, removal, and involuntary retirement by the Judicial Qualifications Commission in accordance with Article VI, Section VII, Paragraph VII of the Constitution.

History. — Code 1981, § 15-10-24, enacted by Ga. L. 1983, p. 884, § 2-1; Ga. L. 1990, p. 336, § 1.

Cross references. — Rules of the Judicial Qualifications Commission.

JUDICIAL DECISIONS

Failure to complete training. — Pursuant to subsection (c) of O.C.G.A. § 15-10-25, the Judicial Qualifications Commission's recommendation that a magistrate be removed from office for failure to complete satisfactorily the required training for the year was approved. In re Harper, 262 Ga. 335, 419 S.E.2d 21 (1992).

15-10-25. Training requirements; payment of training costs.

(a) All magistrates shall periodically satisfactorily complete a training course as provided in Article 8 of this chapter. All senior magistrates shall periodically satisfactorily complete a training course as provided in Code Section 15-10-223.

(b) The Georgia Magistrate Courts Training Council shall keep records of training completed by magistrates and senior magistrates.

(c) Subject to the provision of Code Section 15-10-24, if any magistrate or senior magistrate does not satisfactorily complete the required training in any year, the Georgia Magistrate Courts Training Council shall promptly notify the Judicial Qualifications Commission which shall recommend removal of the magistrate from office unless the Judicial Qualifications Commission finds that the failure was caused by facts beyond the control of the magistrate or senior magistrate.

(d) The reasonable costs and expenses of such training shall be paid by the county governing authority from county funds.

History. — Code 1981, § 15-10-25, enacted by Ga. L. 1983, p. 884, § 2-1; Ga. L. 1984, p. 1096, § 4; Ga. L. 1990, p. 336, § 2; Ga. L. 1993, p. 910, § 5.

JUDICIAL DECISIONS

Failure to complete training. — Pursuant to subsection (c) of O.C.G.A. § 15-10-25, the Judicial Qualifications Commission's recommendation that a

magistrate be removed from office for failure to complete satisfactorily the required training for the year was approved. In re Harper, 262 Ga. 335, 419 S.E.2d 21 (1992).

15-10-26. Conflicts between local ordinances and local Acts.

In any case in which action is authorized under this chapter to be taken by local Act or local ordinance, no local ordinance shall be enacted which is inconsistent with a local Act.

History. — Code 1981, § 15-10-26, enacted by Ga. L. 1983, p. 884, § 2-1.

15-10-27. Continuation of certain county civil court officials as magistrate court officials.

(a) With respect to any county in which there exists a civil court of the county continued in existence by Article VI, Section X, Paragraph I, subparagraph (5) of the Constitution and in which there are as of June 30, 1983, no officers who will become magistrates pursuant to Code Section 15-10-120, the provisions of this Code section shall control over any other conflicting provisions of this chapter.

(b) In any county subject to this Code section the judge of such civil court shall serve as chief magistrate for a term of office concurrent with his term as judge of civil court. The chief judge of superior court of any such county shall fix the compensation to be received by the chief magistrate for his services as chief magistrate, and such compensation may be less than the minimum salary otherwise specified by this chapter.

(c) In any county subject to this Code section the clerk of civil court shall serve as clerk of magistrate court and the sheriff and deputies of civil court shall serve as constables of magistrate court.

(d) A civil court judge who appoints an attorney or another trial judge to act as judge pro tempore of the civil court may provide that the attorney or judge so appointed shall also serve as magistrate pro tempore for the magistrate court.

History. — Code 1981, § 15-10-27, enacted by Ga. L. 1983, p. 884, § 2-1; Ga. L. 1987, p. 484, § 1.

OPINIONS OF THE ATTORNEY GENERAL

Civil court independent from sheriff. — If the sheriff of a civil court is a constable of the magistrate court and functions independently of the sheriff of the superior court under O.C.G.A. § 15-10-27, the civil court is exempt from collecting and remitting fees to the Sheriff's Retirement Fund under subsection (b) of O.C.G.A. § 47-16-61. 1992 Op. Att'y Gen. No. U92-15.

ARTICLE 3

CIVIL PROCEEDINGS

Law reviews. — For article, "Courts: Juvenile Justice Reform," see 30 Ga. St. U. L. Rev. 63 (2013).

15-10-40. Applicability of article.

This article shall govern civil proceedings in the magistrate court.

History. — Code 1981, § 15-10-40, enacted by Ga. L. 1983, p. 884, § 2-1.

Law reviews. — For annual survey of trial practice and procedure, see 38 Mercer L. Rev. 383 (1986).

JUDICIAL DECISIONS

Voluntary dismissal rule did not apply in magistrate court. — Trial court erred in relying on O.C.G.A. § 9-11-41 in finding that a tenant failed to object to the landlord's voluntary dismissal of its magistrate court dispossessory action, resulting in the dismissal of the tenant's counterclaim to that action; the Civil Practice Act, O.C.G.A. § 9-11-1 et seq., did not apply to magistrate court suits, O.C.G.A. §§ 15-10-40 and 15-10-42, and there was nothing to indicate that the magistrate court opted to follow the Civil Practice Act as permitted by O.C.G.A. § 15-10-44. Howell v. Beauly, LLC, 337 Ga. App. 898, 789 S.E.2d 214 (2016).

15-10-41. No jury trials; appeal.

(a) There shall be no jury trials in the magistrate court.

(b)(1) Except as otherwise provided in this subsection, appeals may be had from judgments returned in the magistrate court to the state court of the county or to the superior court of the county and the same provisions now provided for by general law for appeals contained in Article 2 of Chapter 3 of Title 5 shall be applicable to appeals from the magistrate court, the same to be a de novo appeal. The provisions of said Article 2 of Chapter 3 of Title 5 shall also apply to appeals to state court.

(2) No appeal shall lie from a default judgment or from a dismissal for want of prosecution after a nonappearance of a plaintiff for trial. Any voluntary dismissal by the plaintiff or by order of the court for want of prosecution shall be without prejudice except that the filing of a second such dismissal shall operate as an adjudication upon the merits. Review, including review of a denial of a postjudgment motion to vacate a judgment, shall be by certiorari to the state court of that county or to the superior court of that county.

History. — Code 1981, § 15-10-41, enacted by Ga. L. 1983, p. 884, § 2-1; Ga. L. 1984, p. 1096, § 5; Ga. L. 1986, p. 701, § 2; Ga. L. 1987, p. 1009, § 1; Ga. L. 1993,

p. 974, § 1; Ga. L. 2008, p. 824, § 1/HB 958.

Law reviews. — For article, "The Endangered Right of Jury Trials in Dispossessories," see 24 Ga. St. B. J. 126 (1988).

JUDICIAL DECISIONS

Constitutional right to jury trial in dispossessory actions. — After the appellants had sought a jury trial in a local magistrate court on the issue of possession in a landlord-tenant dispute, the appellee denied the appellants' request, the appellants filed a writ of prohibition against the appellee in the superior court, and the superior court denied the appellants' writ and issued a certificate of immediate review to the Supreme Court of Georgia, the magistrate court did not err in denying the appellants a jury trial since the right to jury trial on appeal is expressly given in O.C.G.A. § 5-3-30, and the appellants are not being denied a jury trial, but instead, only endure a procedural delay in the magistrate court before receiving a jury trial on appeal to the state or superior court. Hill v. Levenson, 259 Ga. 395, 383 S.E.2d 110 (1989).

New trials. — Magistrate courts are not courts of record with the power to grant new trials; thus, a motion for a new trial in the magistrate court did not toll the time for filing an appeal to state or superior court. Bowen v. Ball, 215 Ga. App. 640, 451 S.E.2d 502 (1994).

No statutory provision to remand case. — Once a de novo appeal from a magistrate court in proper form is taken to a state or superior court, there is no statutory provision for the remand of the case or for reinstatement of the judgment of the magistrate court nor may the appeal be dismissed simply because of the absence of one of the parties. Scott v. Aaron, 221 Ga. App. 254, 471 S.E.2d 55 (1996).

Availability of direct appeal. — Although it was not denominated a "final judgment," a magistrate's involuntary dismissal of a case constituted a final judgment subject to direct appeal. Brown v. Adams, 233 Ga. App. 813, 506 S.E.2d 135 (1998).

Appellant could not appeal, under O.C.G.A. § 15-10-43(g), from the entry by a magistrate court of a default judgment against the appellant in favor of the appellee, in a new suit, as under O.C.G.A. § 15-10-41(b)(2), the appellant could not appeal from the entry of the default judgment in the original suit. Shelley v. Shannon, 267 Ga. App. 582, 601 S.E.2d 131 (2004).

In a customer's suit against a company, as the latter filed the company's answer late, the case was initially placed on the "default judgment" trial calendar. However, as the magistrate later held a hearing at which both parties appeared, and entered a "judgment," rather than a "default judgment," in favor of the customer, the customer properly filed a direct appeal to the state trial court under O.C.G.A. § 15-10-41(b)(1). Infinite Energy, Inc. v. Cottrell, 295 Ga. App. 306, 671 S.E.2d 294 (2008).

In a bankruptcy trustee's eviction action on behalf of the debtor in magistrate court, the magistrate court judgment against the tenant was a judgment on the merits and was therefore subject to the provisions of O.C.G.A. § 15-10-41(b)(1), allowing a direct appeal. The trial court erred in dismissing the appeal based on the last sentence of paragraph (b)(2), which applied only to dismissals for failure to prosecute and default judgments. McKeever v. Scarver, 348 Ga. App. 12, 821 S.E.2d 98 (2018).

De novo appeal is exclusive avenue. — Only avenue of appeal available from a magistrate court judgment is provided by O.C.G.A. § 15-10-41(b)(1), which allows for a de novo appeal to the state or superior court. Handler v. Hulsey, 199 Ga. App. 751, 406 S.E.2d 225, cert. denied, 199 Ga. App. 906, 406 S.E.2d 225 (1991).

Application for appeal. — Regardless of whether the litigation was subsequently erroneously expanded in state court to include matters beyond the parameters of a de novo investigation, after the litigation reached the state court by means of a de novo appeal from the magistrate court, in order to obtain appellate

review of the state court judgment in the Court of Appeals, an application for appeal must be sought as required by O.C.G.A. § 5-6-35(a)(11). Handler v. Hulsey, 199 Ga. App. 751, 406 S.E.2d 225, cert. denied, 199 Ga. App. 906, 406 S.E.2d 225 (1991); Southtowne Hyundai-Isuzu-Suzuki v. Hooper, 216 Ga. App. 214, 453 S.E.2d 756 (1995).

Scope of appeal. — In a de novo appeal of an action from magistrate to state court, the issues to be litigated are framed by the claims raised below. Handler v. Hulsey, 199 Ga. App. 751, 406 S.E.2d 225, cert. denied, 199 Ga. App. 906, 406 S.E.2d 225 (1991).

Dismissal and renewal statutes applicable in appeal. — O.C.G.A. § 9-11-41(a), the voluntary dismissal statute, could be exercised by either party in a de novo appeal filed in superior court following the entry of a judgment in magistrate court, regardless of which party appealed. Once a landlord filed the landlord's voluntary dismissal, the landlord was also entitled to file a renewal action pursuant to O.C.G.A. § 9-2-61(a). Jessup v. Ray, 311 Ga. App. 523, 716 S.E.2d 583 (2011).

Default judgment. — Because no appeal lay from entry of a default judgment in magistrate court, a tenant's filing of a notice of appeal in a dispossessory action did not divest the magistrate court of the court's authority over the action. Abushmais v. Erby, 282 Ga. 619, 652 S.E.2d 549 (2007).

Voluntary dismissal of magistrate court action was not res judicata. — Trial court erred by granting the debtors' motion to dismiss by applying res judicata to the voluntary dismissal of the prior magistrate court actions because the Civil Practice Act, O.C.G.A. § 15-10-42, was inapplicable to magistrate courts, thus, the voluntary dismissal under O.C.G.A. § 9-11-41(a)(1) did not operate as an adjudication upon the merits of the case. Target Nat'l Bank v. Luffman, 324 Ga. App. 442, 750 S.E.2d 750 (2013).

Review of denial of motion to vacate judgment. — Superior court erred in concluding that the court could not review an appeal from a default judgment in magistrate court because O.C.G.A. § 15-10-41(b)(2) specifically allowed review of a denial of a postjudgment motion to vacate a judgment by certiorari. Jorree v. PMB Rentals, LLC, 349 Ga. App. 332, 825 S.E.2d 817 (2019).

Cited in Littlefield v. Smith, 182 Ga. App. 712, 356 S.E.2d 746 (1987); Baker v. G.T., Ltd., 194 Ga. App. 450, 391 S.E.2d 1 (1990); Giles v. Vastakis, 262 Ga. App. 483, 585 S.E.2d 905 (2003); Abushmais v. Erby, 282 Ga. App. 86, 637 S.E.2d 725 (2006); Long v. Greenwood Homes, Inc., 285 Ga. 560, 679 S.E.2d 712 (2009); We Care Transp., Inc. v. Branch Banking & Trust Co., 335 Ga. App. 292, 780 S.E.2d 782 (2015).

OPINIONS OF THE ATTORNEY GENERAL

Jurisdiction over appeals. — Superior courts have exclusive jurisdiction to hear appeals from justice of the peace/magistrate courts; such jurisdiction having a constitutional basis until July 1, 1983, and a statutory one thereafter. 1983 Op. Att'y Gen. No. U83-27 (decided prior to 1984 amendment).

RESEARCH REFERENCES

ALR. — Small claims: jury trial rights in, and on appeal from, small claims court proceeding, 70 A.L.R.4th 1119.

15-10-42. Applicability of the Civil Practice Act.

Except as provided in subsection (g) of Code Sections 15-10-43 and 15-10-50, proceedings in the magistrate court shall not be subject to Chapter 11 of Title 9, the "Georgia Civil Practice Act."

History. — Code 1981, § 15-10-42, enacted by Ga. L. 1983, p. 884, § 2-1; Ga. L. 2014, p. 482, § 4/SB 386.

Editor's notes. — Ga. L. 2014, p. 482, § 10/SB 386, not codified by the General Assembly, provides, in part, that this Act shall apply to any filings made on or after July 1, 2014.

JUDICIAL DECISIONS

Magistrate courts may follow Civil Practice Act. — Language of O.C.G.A. § 15-10-42, that magistrate courts are not subject to the Civil Practice Act, O.C.G.A. § 9-11-1 et seq., must be read to permit, rather than require, magistrate courts to follow the provisions of the Civil Practice Act, or any other appropriate rules and regulations relating to pleading, practice, and procedure when to do so would "administer justice" under O.C.G.A. § 15-10-44. Howe v. Roberts, 259 Ga. 617, 385 S.E.2d 276 (1989).

Voluntary dismissal rule did not apply in magistrate court. — Trial court erred in relying on O.C.G.A. § 9-11-41 in finding that a tenant failed to object to the landlord's voluntary dismissal of its magistrate court dispossessory action, resulting in the dismissal of the tenant's counterclaim to that action; the Civil Practice Act, O.C.G.A. § 9-11-1 et seq., did not apply to magistrate court suits, O.C.G.A. §§ 15-10-40 and 15-10-42, and there was nothing to indicate that the magistrate court opted to follow the Civil Practice Act as permitted by O.C.G.A. § 15-10-44. Howell v. Beauly, LLC, 337 Ga. App. 898, 789 S.E.2d 214 (2016).

Buyer's denial of liability or indebtedness to seller satisfied O.C.G.A. § 15-10-43(c). — In magistrate court proceedings, the buyers were not required to specifically answer each allegation in a seller's complaint, and the buyers were permitted to controvert liability through a general denial pursuant to O.C.G.A. § 9-11-8(b); thus, pretermitting whether the buyers' answer met the requirements for a general denial under the Civil Practice Act, O.C.G.A. § 9-11-1 et seq., the answer amounted to a sufficient response in the magistrate court, denying any liability or indebtedness to the seller. Jones v. Equip. King Int'l, 287 Ga. App. 867, 652 S.E.2d 811 (2007).

Relation back of amendment. — Magistrate court was authorized to allow an amendment adding a corporate defendant to relate back to the initial filing. Howe v. Roberts, 259 Ga. 617, 385 S.E.2d 276 (1989).

Constitutional right to jury trial in dispossessory actions. — After the appellants sought a jury trial in a local magistrate court on the issue of possession in a landlord-tenant dispute, the appellee denied the appellants' request, the appellants filed a writ of prohibition against the appellee in the superior court, and the superior court denied the appellants' writ and issued a certificate of immediate review to the Supreme Court of Georgia, the magistrate court did not err in denying the appellants a jury trial since the right to jury trial on appeal is expressly given in O.C.G.A. § 5-3-30, and the appellants are not being denied a jury trial, but instead, only endure a procedural delay in the magistrate court before receiving a jury trial on appeal to the state or superior court. Hill v. Levenson, 259 Ga. 395, 383 S.E.2d 110 (1989).

Voluntary dismissal of magistrate court action was not res judicata. — Trial court erred by granting the debtors' motion to dismiss by applying res judicata to the voluntary dismissal of the prior magistrate court actions because the Civil Practice Act, O.C.G.A. § 15-10-42, was inapplicable to magistrate courts, thus, the voluntary dismissal under O.C.G.A.

§ 9-11-41(a)(1) did not operate as an adjudication upon the merits of the case. Target Nat'l Bank v. Luffman, 324 Ga. App. 442, 750 S.E.2d 750 (2013).

Cited in Jorree v. PMB Rentals, LLC, 349 Ga. App. 332, 825 S.E.2d 817 (2019).

OPINIONS OF THE ATTORNEY GENERAL

Discovery is not available in post-judgment matters before the magistrate court. 1984 Op. Att'y Gen. No. U84-24.

15-10-43. Statement of claim; service of process; answer to claim; default judgments; opening of default; relief in magistrate court.

(a) Actions shall be commenced by the filing of a statement of claim, including the last known address of the defendant, in concise form and free from technicalities. The plaintiff or his or her agent shall sign and verify the statement of claim by oath or affirmation. At the request of any individual, the judge or clerk may prepare the statement of claim and other papers required to be filed in an action. The statement of claim shall include a brief statement of the claim giving the defendant reasonable notice of the basis for each claim contained in the statement of claim and the address at which the plaintiff desires to receive the notice of hearing.

(b) A copy of the verified statement of claim shall be served on the defendant personally, or by leaving a copy thereof at the defendant's dwelling or usual place of abode with some person of suitable age and discretion then residing therein, or by delivering a copy of the claim to an agent authorized by appointment or by law to receive service of process, and such service shall be sufficient. Service of said process shall be made within the county as provided in this Code section. Service outside the county shall be by second original as provided in Code Section 9-10-72. Said service shall be made by any official or person authorized by law to serve process in the superior court, by a constable, or by any person sui juris who is not a party to, or otherwise interested in, the action, who is specially appointed by the judge of said court for that purpose. When the claim and notice are served by a private individual, such individual shall make proof of service by affidavit, showing the time and place of such service on the defendant.

(c) An answer to the claim shall be filed with the court or orally presented to the judge or clerk of the court within 30 days after service of the statement of claim on the defendant to avoid a default. The answer shall be in concise form and free from technical requirements, but shall admit or deny the claim of the plaintiff. The answer shall contain the address at which the defendant desires to receive the notice of hearing. If the answer is presented to the judge or clerk orally, the

judge or clerk shall reduce the answer to writing. Verification of an answer shall not be required. A copy of the answer shall be forwarded to the plaintiff and defendant with the notice of hearing. If an answer is timely filed or presented, the court shall within ten days of filing or presentation of the answer notify the defendant and the plaintiff of the calling of a hearing on the claim. The notice shall include the date, hour, and location of the hearing, which date shall be not less than 15 nor more than 30 days after the date the notice is given. The notice shall be served on the plaintiff and the defendant by mail or personal service to the address given by the plaintiff at the time he or she files his or her claim and the address given by the defendant at the time he or she files or presents his or her answer. The date of mailing shall be the date the notice is given. The clerk shall enter a certificate of service.

(d) Upon failure of the defendant to answer the claim within 30 days after service of the statement of claim, the defendant shall be in default. The defaulting party may open the default upon filing an answer and upon payment of costs within 15 days of default. If the defendant is still in default after the expiration of 15 days after the answer is due, the plaintiff shall be entitled to a default judgment without further proof if the claim is for liquidated damages. When the claim is for unliquidated damages, the plaintiff must offer proof of the damage amount. Separate notice of the date and time of the unliquidated damages hearing shall be sent to the defendant at his or her service address. The defendant shall be allowed to submit evidence at that hearing on the issue of the amount of damage only.

(e)(1) When a hearing is scheduled pursuant to subsection (c) of this Code section, upon failure of the defendant to appear for the hearing, the plaintiff shall be entitled to have the defendant's answer stricken and a default judgment entered; provided, however, that no default judgment shall be granted if the defendant appears at trial through counsel. If the claim is for liquidated damages, the plaintiff shall be entitled to take a judgment in the amount set forth in the complaint without further proof. If the claim is for unliquidated damages, the plaintiff shall proceed to prove his or her damages and take judgment in an amount determined by the judge.

(2) When a hearing is scheduled pursuant to subsection (d) of this Code section, upon failure of the defendant to appear, the plaintiff shall be entitled to submit proof of the damages and take judgment in an amount determined by the judge.

(3) If the plaintiff fails to appear for a hearing scheduled pursuant to either subsection (c) or (d) of this Code section, the court on motion of the defendant, or on its own motion, may dismiss the plaintiff's complaint, with or without prejudice, in the discretion of the court.

(f) At any time before final judgment, the court, in its discretion, upon payment of costs, may allow the default to be opened for

providential cause preventing the filing of required pleadings or for excusable neglect or where the judge, from all the facts, shall determine that a proper case has been made for the default to be opened, on terms to be fixed by the court. In order to allow the default to be thus opened, the showing shall be made under oath, shall set up a meritorious defense, shall offer to plead instanter, and shall announce ready to proceed with the trial.

(g) Notwithstanding the provisions of Code Section 15-10-42, the magistrate court may grant relief from a judgment under the same circumstances as the state court may grant such relief. Requests for relief from judgments pursuant to this Code section in the magistrate court shall be by filing a written motion which sets forth the issues with reasonable specificity. The procedure shall then be the same as in other cases except the court may assess costs as seem just.

(h) A complaint in equity to set aside a judgment of the magistrate court may be brought under the same circumstances as a complaint to set aside a judgment in a court of record.

(i) Nothing in this chapter shall be construed to prohibit an employee of any corporation or other legal entity from representing the corporation or legal entity before the magistrate court.

History. — Code 1981, § 15-10-43, enacted by Ga. L. 1983, p. 884, § 2-1; Ga. L. 1984, p. 22, § 15; Ga. L. 1985, p. 627, § 1; Ga. L. 1986, p. 701, § 3; Ga. L. 1993, p. 974, § 2; Ga. L. 1997, p. 922, § 1; Ga. L. 2008, p. 824, § 2/HB 958; Ga. L. 2013, p. 561, § 3/SB 66.

Cross references. — Use of complaint in equity to set aside judgment prohibited, § 9-11-60(e). Form of statement of claim, verification, and notice, § 15-10-48. Designated agent for civil actions in magistrate courts, Uniform Rules for the Magistrate Courts, Rule 31. Filing of civil actions by mail, Uniform Rules for the Magistrate Courts, Rule 32. Computing answer dates in magistrate court civil actions, Uniform Rules for the Magistrate Courts, Rule 33. Oral answer to magistrate court civil actions, Uniform Rules for the Magistrate Courts, Rule 34. Third-party practice, Uniform Rules for the Magistrate Courts, Rule 39. Consent judgments in civil actions, Uniform Rules for the Magistrate Courts, Rule 43.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1987, "seem" was substituted for "seems" in the last sentence of subsection (f) (now subsection (g)).

JUDICIAL DECISIONS

Analysis

General Consideration
Commencement of Action
Service of Summons
Defenses
Actions on Open Accounts

General Consideration

Editor's notes. — In light of the similarity of the statutory provisions, decisions decided under pre-1983 provisions of this chapter pertaining to justices of the peace are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Appeal of default judgment could not be brought in separate action. — Appellant could not appeal, under O.C.G.A. § 15-10-43(g), from the entry by a magistrate court of a default judgment against the appellant in favor of the appellee, in a new suit as, under O.C.G.A, § 15-10-41(b)(2), the appellant could not appeal from the entry of the default judgment in the original suit. Shelley v. Shannon, 267 Ga. App. 582, 601 S.E.2d 131 (2004).

Buyer's denial of liability or indebtedness to seller satisfied O.C.G.A. § 15-10-43(c). — In magistrate court proceedings, the buyers were not required to specifically answer each allegation in a seller's complaint, and the buyers were permitted to controvert liability through a general denial pursuant to O.C.G.A. § 9-11-8(b); thus, pretermitting whether the buyers' answer met the requirements for a general denial under the Civil Practice Act, the answer amounted to a sufficient response in the magistrate court, denying any liability or indebtedness to the seller. Jones v. Equip. King Int'l, 287 Ga. App. 867, 652 S.E.2d 811 (2007).

Magistrate judge could grant relief from default. — Magistrate court erred in denying as untimely a motion to set aside a default judgment for lack of personal jurisdiction asserting that the defendant was improperly served by publication; under O.C.G.A. §§ 9-11-60(f) and 15-10-43(g), a motion to attack a void judgment could be filed at any time. Jorree v. PMB Rentals, LLC, 349 Ga. App. 332, 825 S.E.2d 817 (2019).

Cited in Pearce & Renfroe v. Renfroe Bros., 68 Ga. 194 (1881); Lewis v. Wall, 70 Ga. 646 (1883); Western & Atl. R.R. v. Pitts, 79 Ga. 532, 4 S.E. 921 (1887); Thomas & Blake v. Forsyth Chair Co., 119 Ga. 693, 46 S.E. 869 (1904); Fincher & Womble v. Hanson, 12 Ga. App. 608, 77 S.E. 1068 (1913); Heyman v. Decatur St. Bank, 16 Ga. App. 14, 84 S.E. 483 (1915); Mayer v. Southern Express Co., 17 Ga. App. 744, 88 S.E. 403 (1916); Sims v. Thomas, 18 Ga. App. 212, 89 S.E. 163 (1916); Woodard v. Smith-Kassell Co., 23 Ga. App. 797, 99 S.E. 537 (1919); Owen v. Moseley, 161 Ga. 62, 129 S.E. 787 (1925); Ray v. Rogers, 58 Ga. App. 804, 200 S.E. 193 (1938); Ketchem v. Ketchem, 191 Ga. 140, 11 S.E.2d 788 (1940); Bowden v. Davison-Paxon Co., 71 Ga. App. 379, 31 S.E.2d 83 (1944); Dowling v. Pound, 214 Ga. 298, 104 S.E.2d 465 (1958); Furman v. Smith, 106 Ga. App. 742, 128 S.E.2d 641 (1962); Loukes v. McCoy, 129 Ga. App. 167, 199 S.E.2d 125 (1973); Stanley v. Local 926, Int'l Union of Operating Eng'rs, 354 F. Supp. 1267 (N.D. Ga. 1973); Fain v. Hutto, 236 Ga. 915, 225 S.E.2d 893 (1976); Abushmais v. Erby, 282 Ga. App. 86, 637 S.E.2d 725 (2006).

Commencement of Action

Only pleading required is summons to which is attached cause of action on which plaintiff sues. Shuford v. Alexander, 74 Ga. 293 (1884) (decided under former law).

Judgment rendered without summons void. — Summons, duly signed by the justice of the peace, calling the defendant into court to answer the plaintiff's demand, is indispensable to give jurisdiction to the justice of the peace court, and a judgment rendered without any summons having been so issued is void. Wilbanks v. Bowman, 212 Ga. 809, 96 S.E.2d 255 (1957) (decided under former law).

Judgment may be attacked by anyone. Jeffers v. Ware, 72 Ga. 135 (1883); Martin v. Mundy & Mundy, 17 Ga. App. 699, 87 S.E. 1092 (1916) (decided under former law).

Technical pleading not required. — While the plaintiff, in a suit in a justice's court, must set forth with some degree of certainty the plaintiff's cause of action, technical pleading is not required. Rich v. Belcher, 43 Ga. App. 377, 158 S.E. 643 (1931) (decided under former law).

Scanty documents acceptable. — Summons in a justice of the peace court need not state the cause of action with the particularity required in regular pleading in courts of record, and the summons may

Commencement of Action (Cont'd)

be a very scanty document. Fountain v. Louisville & N.R.R., 61 Ga. App. 180, 6 S.E.2d 105 (1939) (decided under former law).

Rule as to strictness of pleading required in superior and city courts has no application to justice of the peace courts. Pidcock v. Stripling, 66 Ga. App. 692, 19 S.E.2d 178 (1942) (decided under former law).

Requirement of this section was met if the defendant was informed of the nature of the plaintiff's demand. Hendrix v. Elliott, 2 Ga. App. 301, 58 S.E. 495 (1907); Kinney v. Kinney, 20 Ga. App. 816, 93 S.E. 496 (1917); Ladd Lime & Stone Co. v. Case & Cothran, 34 Ga. App. 190, 129 S.E. 6 (1925); Rich v. Belcher, 43 Ga. App. 377, 158 S.E. 643 (1931); Southern Ry. v. Grizzle, 45 Ga. App. 428, 165 S.E. 149 (1932); Fountain v. Louisville & N.R.R., 61 Ga. App. 180, 6 S.E.2d 105 (1939) (decided under former law).

Summons is sufficient if it puts defendant on notice of what the defendant is being sued for so that the defendant may intelligently defend. Pidcock v. Stripling, 66 Ga. App. 692, 19 S.E.2d 178 (1942) (decided under former law).

Specific allegations of negligence need not be pled. — Terms of the former statute did not necessitate specific allegations of negligence, or a detailed relation of the acts from which negligence could be inferred, or by which the negligence was to be proved, or that the plaintiff set out a statement of facts which constituted negligence. Southern Ry. v. Grizzle, 45 Ga. App. 428, 165 S.E. 149 (1932) (decided under former law).

Word "account" used in the word's ordinary sense. Macon & B. Ry. v. Walton, 121 Ga. 275, 48 S.E. 940 (1904) (decided under former law).

Open account sued on is sufficiently itemized if the account shows the month and year of each purchase, specifies each article, and price of each article making up the account. Rich v. Belcher, 43 Ga. App. 377, 158 S.E. 643 (1931) (decided under former law).

Averment of word "rent" sufficiently identifies the nature of the proceedings to withstand general demurrer (now motion to dismiss). Chitwood v. Ament, 114 Ga. App. 352, 151 S.E.2d 515 (1966) (decided under former law).

Pleading of statute of frauds. — Defense of the statute of frauds cannot be raised by demurrer (now motion to dismiss) unless the petition affirmatively shows that the contract is oral. Marks & Powell v. Talmadge's Sons & Co., 8 Ga. App. 557, 69 S.E. 1131 (1911); Kinney v. Kinney, 20 Ga. App. 816, 93 S.E. 496 (1917) (decided under former law).

If words "intentionally, willfully, wantonly, and maliciously" are included in summons those words may be rejected as surplusage and need not be proved for only so much of the allegation need be proved as constitutes the cause of action set forth. Fountain v. Louisville & N.R.R., 61 Ga. App. 180, 6 S.E.2d 105 (1939) (decided under former law).

Copy of cause of action may be contained in body of summons. Southern Ry. v. Oliver & Morrow, 1 Ga. App. 734, 58 S.E. 244 (1907) (decided under former law).

Summons specifies appearance and answer date. Hines v. Wingo, 120 Ga. App. 614, 171 S.E.2d 905 (1969) (decided under former law).

No specific form of direction of execution is required. Oliver v. Warren, 124 Ga. 549, 53 S.E. 100, 110 Am. St. R. 188, 4 L.R.A. (n.s.) 1020 (1905) (decided under former law).

Direction of summons to defendant is amendable defect, cured by judgment. Telford v. Coggins, 76 Ga. 683 (1886) (decided under former law).

Failure of justice of the peace to sign summons may be waived. Peoples v. Strickland, 101 Ga. 829, 29 S.E. 22 (1897) (decided under former law).

Failure to sign copy of summons served not fatal. — If in a justice of the peace court the process was regularly and duly signed by the justice of the peace as required by law, the fact that the purported copy served on the defendant did not indicate such signature does not render the service void. Gilbert v. F.M. Brotherton, Inc., 48 Ga. App. 368, 172 S.E. 800 (1934) (decided under former law).

Actions in municipal court are commenced in same manner as in justice of

the peace court. Hines v. Malone, 25 Ga. App. 781, 105 S.E. 37 (1920) (decided under former law).

Relief from judgment. — Since the record showed that a pro se party requested a continuance, albeit improperly, because of a conflict with another court appearance, the failure of the pro se party to appear for trial was not a sufficient basis to warrant granting a default judgment. Davalos v. Perdue, 215 Ga. App. 27, 449 S.E.2d 861 (1994).

Trial court abused the court's discretion in not granting the vehicle owner's motion for a directed verdict and setting aside the default judgment entered against the vehicle owner as the evidence showed that the wrecker service which found the vehicle owner's vehicle abandoned did not send notice of the foreclosure action against the vehicle owner to the vehicle owner's correct address; rather, the wrecker company sent notice of that action to an incorrect address located in a state other than where the vehicle owner was located through no fault of the vehicle owner. Mitsubishi Motors Credit of Am., Inc. v. Robinson & Stephens, Inc., 263 Ga. App. 168, 587 S.E.2d 146 (2003).

Service of Summons

Law relating generally to service is exclusively statutory and must be substantially followed and complied with. Cawthon v. McCord, 83 Ga. App. 158, 63 S.E.2d 287 (1951) (decided under former law).

Statutory method of service is exclusive, and a defendant cannot be served by leaving a copy at the defendant's office unless the defendant's office is also the defendant's most notorious place of abode, or residence. Bennett v. Taylor, 36 Ga. App. 752, 138 S.E. 273 (1927) (decided under former law).

Entry of service made at most notorious place of abode is identical with usual place of abode. Wood v. Callaway, 119 Ga. 801, 47 S.E. 178 (1904); Hays v. Fourth Nat'l Bank, 17 Ga. App. 409, 87 S.E. 147 (1915) (decided under former law).

Effective service obtained if copy left at residence though defendant was away visiting the defendant's sick wife. Moye v. Walker, 96 Ga. 769, 22 S.E. 276 (1895) (decided under former law).

Effective service obtained if copy read to defendant in presence of officer. Woodley v. Jordan, 112 Ga. 151, 37 S.E. 178 (1900) (decided under former law).

Effective service obtained if copy left with clerk of hotel. McLeay v. Davison-Paxon-Stokes Co., 18 Ga. App. 134, 88 S.E. 992 (1916) (decided under former law).

Service is waived by personal appearance of defendant, which must be recorded on the docket. Shearouse v. Wolf, 117 Ga. 426, 43 S.E. 718 (1903) (decided under former law).

Service is waived by entry of appeal from judgment. Talbott & Sons v. Collier, 102 Ga. 550, 28 S.E. 225 (1897) (decided under former law).

Only personal service on defendant will suffice when the defendant has filed a sworn plea in an action on open account. Sims v. Thomas, 18 Ga. App. 212, 89 S.E. 163 (1916) (decided under former law).

No form for entry of return. — Civil Code 1910, § 4717 designates the manner in which service of a suit shall be made, but does not prescribe a form for the entry of the return thereof. Hays v. Fourth Nat'l Bank, 17 Ga. App. 409, 87 S.E. 147 (1915) (decided under former law).

Constable may serve sheriff. Hayden & Nealy v. Atlanta Sav. Bank, 66 Ga. 150 (1880) (decided under former law).

Power to levy in other militia district. — Constable of a militia district other than that in which the justice of the peace court sits which issued execution may levy an execution upon property of the defendant in any militia district of the same county, although at the time there was a lawful constable in the latter district. Lapsley v. Georgia Loan, Sav. & Banking Co., 99 Ga. 459, 27 S.E. 717 (1896) (decided under former law).

Entry of service on docket is not required. Gray v. McNeal, 12 Ga. 424 (1853); Telford v. Coggins, 76 Ga. 683 (1886) (decided under former law).

Entry of service may be made by constable. Fitzgerald v. Adams, 9 Ga. 471 (1851) (decided under former law).

Entry of service may be made by justice of the peace acting as scribe. Ellis v. Francis, 9 Ga. 325 (1851) (decided under former law).

Service of Summons (Cont'd)

Waiver of service by proper officer is permitted, and the defendant may accept service from the justice of the peace. Bell v. Bowdoin, 109 Ga. 209, 34 S.E. 339 (1899); Williams v. Cumberland Fertilizer Co., 18 Ga. App. 558, 89 S.E. 1091 (1916) (decided under former law).

Service same for resident and nonresident. — Original summons served on resident defendant should state same term as summons served on nonresident obligor. Bailey v. Almand & George, 98 Ga. 133, 26 S.E. 495 (1896) (decided under former law).

Entry of service may be set aside on traverse but cannot be collaterally attacked. Patterson v. Drake, 126 Ga. 478, 55 S.E. 175 (1906) (decided under former law).

Informal entry is amendable. Telford v. Coggins, 76 Ga. 683 (1886) (decided under former law).

Defenses

Plea of non est factum. — For decision holding that plea of non est factum must be filed at first term, see Searcy v. Tillman, 75 Ga. 504 (1885) (decided under former law).

Plea of non est factum may be filed for first time on appeal as amendment to prior pleadings but different rule applies to dilatory pleas as those pleas cannot be filed for the first time on appeal under the guise of an amendment to other pleadings previously filed. Garrison v. McGuire, 114 Ga. App. 665, 152 S.E.2d 624 (1966) (decided under former law).

Plea to jurisdiction is of dilatory nature. Bass v. Stevens, 17 Ga. 573 (1855) (decided under former law).

Plea alleging failure of justice of the peace to notify mortgagor, as required by former Civil Code 1910, § 3296 (see now O.C.G.A. § 44-14-301), is of dilatory nature. Spooner v. Coachman, 18 Ga. App. 705, 90 S.E. 373 (1916) (decided under former law).

Plea in abatement is of dilatory nature. Adams & Johnson v. Branan, 120 Ga. 530, 48 S.E. 128 (1904) (decided under former law).

Plea cannot be filed unless the plea is reduced to writing. Garrison v. McGuire, 114 Ga. App. 665, 152 S.E.2d 624 (1966) (decided under former law).

Motion to suppress must be timely made or else the motion is waived. Burnley v. State, 159 Ga. App. 651, 285 S.E.2d 49 (1981) (decided under former law).

Acceptance is admissible without proof of its execution if plea of non est factum is not filed. Lowe Bros. Cracker Co. v. Ginn, 94 Ga. 408, 20 S.E. 106 (1894) (decided under former law).

Plea filed after the first term may be stricken on appeal. McCall v. Tufts, 85 Ga. 619, 11 S.E. 886 (1890); Shope v. Fite & Boston, 91 Ga. 174, 16 S.E. 990 (1893) (decided under former law).

Only agent may act for nonresident codefendant. — Defendant cannot file or verify plea for codefendant residing in another county, but agent of the latter may do so. Tennessee Chem. Co. v. Harper, 30 Ga. App. 789, 119 S.E. 448 (1923) (decided under former law).

Contradictory pleas may be filed. Glessner v. Longley, 125 Ga. 676, 54 S.E. 753 (1906) (decided under former law).

Amendment to plea may be treated as new plea if it constitutes complete answer. Glessner v. Longley, 125 Ga. 676, 54 S.E. 753 (1906) (decided under former law).

In order for judgment to bind person not named in summons the person's appearance and pleading must be shown by docket entry. Shearouse v. Wolf, 117 Ga. 426, 43 S.E. 718 (1903) (decided under former law).

Plea of breach of warranty or recoupment to attach for purchase money need not be in writing. Casey v. Crane & Co., 122 Ga. 318, 50 S.E. 92 (1905) (decided under former law).

Pendency of foreclosure of laborer's lien is not bar to action on account for same debt since, even when the lien is contested and the property replevied, no general judgment can be rendered in foreclosure proceedings. In such a case, the lien foreclosure is not converted into a proceeding in personam by the filing of a

replevy bond; the actions are entirely different and each involves a different kind of judgment. McKellar v. Childs, 95 Ga. App. 237, 97 S.E.2d 616 (1957) (decided under former law).

Actions on Open Accounts

Plea may be verified by amendment. Standard Fashion Co. v. Newton-Hart Co., 12 Ga. App. 62, 76 S.E. 760 (1912); Moore v. American Nat'l Bank, 156 Ga. 724, 120 S.E. 2 (1923) (decided under former law).

If defendant refuses to amend unverified plea of payment the plea should be stricken and judgment entered for plaintiff. Columbia Drug Co. v. Goodman, 119 Ga. 474, 46 S.E. 647 (1904); Peeples v. Sethness, 119 Ga. 777, 47 S.E. 170 (1904); Nix v. Bruton, 10 Ga. App. 278, 73 S.E. 350 (1912); Lee v. Perry, 19 Ga. App. 48, 90 S.E. 988 (1916) (decided under former law).

Sufficiency of answer. — Answer denying that defendant is indebted to plaintiff, but admitting that the defendant had not paid balance alleged to be due, is sufficient as against motion to strike. Cason v. Armour Fertilizer Works, 14 Ga. App. 208, 80 S.E. 679 (1914) (decided under former law).

Defendant's plea of no indebtedness must allege that defendant is not indebted "in any sum" or specify amount of indebtedness admitted. Walker v. Seawell, 42 Ga. App. 511, 156 S.E. 475 (1931) (decided under former law).

Account verified by copy affidavit does not require verification of plea. General Specialty Co. v. Tifton Ice & Power Co., 3 Ga. App. 502, 60 S.E. 121 (1908) (decided under former law).

Provisions allowing continuance intended for benefit of plaintiff. — Provisions of former Code 1933, § 24-1302 relative to a continuance of the case upon the filing of the counter-affidavit or verified defense are intended for the benefit of the plaintiff, not the defendant. Greene v. Gulf Oil Corp., 119 Ga. App. 87, 166 S.E.2d 626 (1969) (decided under former law).

Sworn statement of account may be taken as true unless its fairness is denied under oath. Sanderson v. Bibb Collection Serv., Inc., 132 Ga. App. 865, 210 S.E.2d 29 (1974) (decided under former law).

Account verified by attorney at law is evidence of plaintiff's demand. Coffee v. McCaskey Register Co., 7 Ga. App. 425, 66 S.E. 1032 (1910) (decided under former law).

Account barred on account's face must be dismissed if is not verified by plaintiff. Wimbush v. Curry, 8 Ga. App. 223, 68 S.E. 951 (1910) (decided under former law).

If plea was not sworn to it did not amount to counter-affidavit provided by former Civil Code 1910, § 4730. Dixon v. Holliman, 37 Ga. App. 352, 140 S.E. 384 (1927) (decided under former law).

Affidavit insufficient if no personal service. — In an undefended suit on a verified account in a justice of the peace court, the affidavit is sufficient proof if the defendant is served personally, but if service has been made by leaving a copy of the writ at the defendant's residence, other evidence is necessary; however, the lack of other proof in case of service by leaving a copy at the defendant's residence does not render a judgment for the plaintiff void, but merely erroneous, and subject to correction by a timely and proper proceeding at law. Phaup v. Jervey, 180 Ga. 677, 180 S.E. 490 (1935) (decided under former law).

Service at abode of defendant cannot be substituted for personal service. Sapp Bros. v. Mathis, 12 Ga. App. 273, 77 S.E. 102 (1913) (decided under former law).

Loss or damage to personalty by a carrier was not covered by former Civil Code 1895, § 4130. Caudell v. Southern Ry., 119 Ga. 21, 45 S.E. 712 (1903); Lowe Co. v. Central of Ga. Ry., 123 Ga. 712, 51 S.E. 653 (1905); Georgia F. & A. Ry. v. Sheppard, 3 Ga. App. 241, 59 S.E. 717 (1907) (decided under former law).

Claim for overcharges in freight paid to common carrier may be sued on as open account. Seaboard Air-Line Ry. v. Coursey, 1 Ga. App. 662, 57 S.E. 968 (1907) (decided under former law).

Defendant can introduce no evidence if plea is not sworn. Stafford v. Wilson, 122 Ga. 32, 49 S.E. 800 (1905);

Actions on Open Accounts (Cont'd)

Coffee v. McCaskey Register Co., 7 Ga. App. 425, 66 S.E. 1032 (1910); Central of Ga. Ry. v. Duncan, 8 Ga. App. 177, 68 S.E. 871 (1910) (decided under former law).

Entry of judgment for plaintiff is proper if defense is not sworn. Low v. Foster, 12 Ga. App. 575, 77 S.E. 878 (1913) (decided under former law).

Action on verified accounts need not be written. — Construing former Code 1933, §§ 6-303 and 24-1302 (see now O.C.G.A. §§ 5-3-26 and 15-10-92) in pari materia, the conclusion is inescapable that former Code 1933, § 6-303 did not require an action on verified accounts to be written if there had been personal service on the defendant in superior court on appeal from the justice of the peace court, former Code 1933, § 6-303 required defenses to be written on appeal. Athens Truck & Tractor Co. v. Kennedy, 91 Ga. App. 49, 84 S.E.2d 608 (1954) (decided under former law).

Defenses by demurrer (now motion to dismiss), under former Civil Code 1910, § 4730, could be raised by defendant. Pope v. Wilson, 9 Ga. App. 197, 70 S.E. 977 (1911) (decided under former law).

Defense need not be filed at first term. Barnes v. Coker, 112 Ga. 137, 37 S.E. 104 (1900) (decided under former law).

Defense may be filed by amendment. Brierton v. Smith, 7 Ga. App. 69, 66 S.E. 375 (1909); Couch v. White, 18 Ga. App. 198, 89 S.E. 183 (1916) (decided under former law).

Defense may be filed when case is ready for trial. O'Dell v. Meacham, 114 Ga. 910, 41 S.E. 41 (1902) (decided under former law).

Defense may not be filed after judgment. Draper & Co. v. Burr Mfg. Co., 10 Ga. App. 321, 73 S.E. 534 (1912) (decided under former law).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarities of the statutory provisions, opinions under former Code 1933, §§ 24-1106 and 24-1107 are included in the annotations for this Code section.

Method of service. — In justice of the peace court, the defendant must be served with summons by constable, sheriff, or sheriff's deputy by either giving the defendant a copy in person or by leaving a copy at the defendant's usual and most notorious abode. 1973 Op. Att'y Gen. No. U73-69 (decided under former Code 1933, §§ 24-1106 and 24-1107).

This section does not apply to summary dispossession proceeding since a dispossessory proceeding is not a civil suit. 1979 Op. Att'y Gen. No. U79-7 (decided under former Code 1933, §§ 24-1106 and 24-1107).

RESEARCH REFERENCES

ALR. — What constitutes "appearance" under Rule 55(b)(2) of Federal Rules of Civil Procedure, providing that if party against whom default judgment is sought has "appeared" in action, that party must be served with notice of application for judgment, 139 A.L.R. Fed 603.

15-10-44. Trial procedure.

(a) The trial shall be conducted on the day set for the hearing, or at such later time as the judge may set. Immediately prior to the trial of any case, the judge shall counsel the parties to make an earnest effort to settle the controversy by conciliation. If the parties fail to settle their differences without a trial, the judge shall proceed with the hearing on its merits.

(b) The judge shall conduct the trial in such manner as to do substantial justice between the parties according to the rules of substantive law. All rules and regulations relating to pleading, practice, and procedure shall be liberally construed so as to administer justice.

(c) If the plaintiff fails to appear, the action may be dismissed for want of prosecution, the defendant may proceed to a trial on the merits, or the case may be continued as the judge may direct. If both parties fail to appear, the judge may continue the case, order the same dismissed for want of prosecution, or make any other just and proper disposition thereof, as justice may require.

History. — Code 1981, § 15-10-44, enacted by Ga. L. 1983, p. 884, § 2-1.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code Sections 15-10-94 through 15-10-97 and 15-10-111 or predecessors thereof, pertaining to subpoenas, time of trial, continuances, and other procedural matters relating to justice courts are included in the annotations for this Code section. See Editor's notes at beginning of chapter.

Magistrate courts may follow Civil Practice Act. — Language of O.C.G.A. § 15-10-42, that magistrate courts are not subject to the Civil Practice Act, O.C.G.A. § 9-11-1 et seq., must be read to permit, rather than require, magistrate courts to follow the provisions of the Civil Practice Act, or any other appropriate rules and regulations relating to pleading, practice, and procedure, when to do so would "administer justice" under O.C.G.A. § 15-10-44. Howe v. Roberts, 259 Ga. 617, 385 S.E.2d 276 (1989).

Trial court erred in relying on O.C.G.A. § 9-11-41 in finding that a tenant failed to object to the landlord's voluntary dismissal of its magistrate court dispossessory action, resulting in the dismissal of the tenant's counterclaim to that action; the Civil Practice Act, O.C.G.A. § 9-11-1 et seq., did not apply to magistrate court suits, O.C.G.A. §§ 15-10-40 and 15-10-42, and there was nothing to indicate that the magistrate court opted to follow the Civil Practice Act as permitted by O.C.G.A. § 15-10-44. Howell v. Beauly, LLC, 337 Ga. App. 898, 789 S.E.2d 214 (2016).

When notice to parties not required. — Notice to parties not required when pending case, suspended to permit settlement by parties, is to be tried. Bostain v. Morris & Bro., 93 Ga. 224, 18 S.E. 649 (1893) (decided under former law).

When parole evidence admissible. — Parol evidence is admissible to show that court was in session when judgment was rendered in absence of docket entries to contrary. Baker v. Thompson & Scott, 89 Ga. 486, 15 S.E. 644 (1892) (decided under former law).

Summons specifies appearance and answer date in justice of the peace courts. Hines v. Wingo, 120 Ga. App. 614, 171 S.E.2d 905 (1969) (decided under former law).

Defendant not entitled to continuance as matter of right. Williams v. Fain & Stamps, 2 Ga. App. 136, 58 S.E. 307 (1907) (decided under former law).

Promise of magistrate out of court to continue case is no defense to judgment subsequently rendered. Ballard Transf. Co. v. Clark, 91 Ga. 234, 18 S.E. 138 (1892); Atlantic Coast Line R.R. v. Cohn & Co., 4 Ga. App. 854, 62 S.E. 572 (1908) (decided under former law).

Erroneous answer as to continuance is not a defense to judgment. Watkins v. Ellis, 105 Ga. 796, 32 S.E. 131 (1898) (decided under former law).

No injunction for reliance on person purporting to be clerk. — If person purporting to act as clerk of court informed party that case would not be tried at certain term, and judgment was issued, equity will not enjoin levy of execution issued thereon. Park v. Callaway, 128 Ga. 119, 57 S.E. 229 (1907) (decided under former law).

Continuance granted for more than ten days does not put case out of court. Wolff & Bro. v. Marietta Paper Mfg. Co., 61 Ga. 463 (1878) (decided under former law).

Continuance refused if needed to perfect service. Western & Atl. R.R. v. Pitts, 79 Ga. 532, 4 S.E. 921 (1887) (decided under former law).

Continuance refused if attorney has not prepared case. Futch v. Quinn-Marshall Co., 14 Ga. App. 692, 82 S.E. 55 (1914) (decided under former law).

Defense need not be in writing or verified. Booz v. Batty, 94 Ga. 669, 21 S.E. 848 (1894); Morgan v. Prior, 110 Ga. 791, 36 S.E. 75 (1900); Montgomery v. Fouche, 125 Ga. 43, 53 S.E. 767 (1906); Smith v. Chivers, 6 Ga. App. 154, 64 S.E. 493 (1909) (decided under former law).

Failure to mark pleas filed does not result in loss of defendant's rights to be heard. Sanders v. Mathewson, 121 Ga. 302, 48 S.E. 946 (1904) (decided under former law).

Failure to file plea at first term is not waived by plaintiff who contests merits of case. Hodges & Daniel v. Rogers, 115 Ga. 951, 42 S.E. 251 (1902) (decided under former law).

Former Civil Code 1895, § 4134 did not apply to open accounts. Barnes v. Coker, 112 Ga. 137, 37 S.E. 104 (1900) (decided under former law).

Former Civil Code 1895, § 4134 did not apply to conditional contracts. Lewis v. Nevils & Rushing, 97 Ga. 744, 25 S.E. 409 (1896); O'Connor v. United States, 11 Ga. App. 246, 75 S.E. 110 (1912) (decided under former law).

Former Civil Code 1895, § 4134 did apply to action on order drawn by municipality upon its own treasurer. Morgan v. Mayor of Cohutta, 120 Ga. 423, 47 S.E. 971 (1904) (decided under former law).

Motion to establish lost papers. — Copies of lost papers belonging to or pertaining to a suit pending in court may be established on motion; and it is not indispensably essential to the validity of an order of court establishing lost papers that a formal rule nisi should issue or that the opposite party should be served with notice of the proceeding. Southern Fertilizer & Chem. Co. v. Kirby, 52 Ga. App. 688, 184 S.E. 363 (1936) (decided under former law).

Presumption that sufficient evidence produced for a lost paper. — If it does not appear what evidence was introduced in the justice of the peace court in establishing a lost paper, the presumption arises, from the proceedings and the judgment thereon, that sufficient evidence was produced. Humphrey v. Johnson, 143 Ga. 703, 85 S.E. 830 (1915) (decided under former law).

Copies of lost papers for pending suit may be established instanter on motion; and it is not indispensably essential to the validity of an order of court establishing lost papers that a formal rule nisi should issue, or that the opposite party should be served with notice of the proceeding. Southern Fertilizer & Chem. Co. v. Kirby, 52 Ga. App. 688, 184 S.E. 363 (1936) (decided under former law).

Copy of affidavit and warrant may be established before justice of the peace. Davis v. State, 58 Ga. 170 (1877) (decided under former law).

Verdict and judgment may be established. Humphrey v. Johnson, 143 Ga. 703, 85 S.E. 830 (1915) (decided under former law).

Cited in Smith v. Ferrario, 105 Ga. 51, 31 S.E. 38 (1898); Williams v. Fain & Stamps, 2 Ga. App. 136, 58 S.E. 307 (1907); Smith v. Chivers, 6 Ga. App. 154, 64 S.E. 493 (1909); Bowers v. Williams, 17 Ga. App. 779, 88 S.E. 703 (1916); Bettie v. Daniel Bros. Co., 175 Ga. 349, 165 S.E. 265 (1932); Knighton v. Alexander, 81 Ga. App. 565, 59 S.E.2d 409 (1950); City of Chamblee v. Bridges, 229 Ga. 304, 190 S.E.2d 914 (1972); Target Nat'l Bank v. Luffman, 324 Ga. App. 442, 750 S.E.2d 750 (2013).

15-10-45. Compulsory and permissive counterclaims.

(a) If any defendant has a counterclaim against the plaintiff arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim, which counterclaim does not require for its adjudication the presence of third parties over whom the court cannot obtain jurisdiction, such counterclaim shall be asserted by the defendant at or before the hearing on the plaintiff's claim or thereafter be barred.

(b) If any defendant has a counterclaim against the plaintiff other than a compulsory counterclaim described in subsection (a) of this Code section, such counterclaim may be asserted by the defendant at or before the hearing on the plaintiff's claim.

(c) If any defendant asserts a counterclaim against the plaintiff, the defendant shall file with the court a statement of the counterclaim in concise form and free from technicalities. The defendant's counterclaim shall give the plaintiff reasonable notice of the basis for each claim contained in the counterclaim. The defendant shall sign the counterclaim. At the request of a defendant, the judge or clerk may prepare the counterclaim. Verification of a counterclaim shall not be required.

(d) If the amount of a counterclaim exceeds the jurisdictional limits of the magistrate court, the case shall be transferred to any court of the county which has jurisdictional limits which exceed the amount of the counterclaim. If there is more than one court to which the action may be transferred, the parties may agree on the court to which the action shall be transferred, and, in the absence of any agreement, the judge of the magistrate court shall determine the court to which the action shall be transferred. If there is no other court to which the action may be transferred, it shall be transferred to the superior court of the county.

(e) A counterclaim may in the discretion of the magistrate be tried either separately or jointly with the plaintiff's claim.

History. — Code 1981, § 15-10-45, enacted by Ga. L. 1983, p. 884, § 2-1; Ga. L. 1984, p. 22, § 15; Ga. L. 1984, p. 1096, § 6; Ga. L. 2008, p. 824, § 3/HB 958; Ga. L. 2013, p. 561, § 4/SB 66.

Law reviews. — For article, "The Civil Jurisdiction of State and Magistrate Courts," see 24 Ga. St. B. J. 29 (1987).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions decided under former Code 1873, § 4166 and former Code Section 15-10-99, relating to setoff in actions in justice courts are included in the annotations for this Code section. See Editor's notes at beginning of chapter.

If claim of setoff exceeds jurisdiction of court, defendant cannot write off part of judgment, but may sue in superior court for balance due. Ware v. Fambro, 67 Ga. 515 (1881) (decided under former Code 1873, § 4166).

Damages in tort cannot be set off to contract demand. Hecht v. Snook &

Austin Furn. Co., 114 Ga. 921, 41 S.E. 74 (1902) (decided under former law).

Plea of recoupment will be construed as one based on breach of warranty rather than deceit. Bowers v. Williams, 17 Ga. App. 779, 88 S.E. 703 (1916) (decided under former law).

No notice to plaintiff of filing of plea of recoupment is necessary to authorize trial if plaintiff is absent. Bowers v. Williams, 17 Ga. App. 799, 88 S.E. 703 (1916) (decided under former law).

No error in failing to transfer dispossessory action to superior court while transferring the counterclaim to superior court. — Civil court properly refused to transfer a dispossessory action from the county civil court to the superior court under O.C.G.A. § 15-10-45(d) based on the tenant filing a counterclaim as that statute only applied to magistrate courts, not the county civil court. Further, whether the trial court erred by failing to inquire as to whether the parties were willing to consent to consolidation of the claims could not be determined because the appealing tenant failed to provide a transcript of the bifurcated or dispossessory hearings. Roberts v. Strong, 293 Ga. App. 466, 667 S.E.2d 632 (2008).

Cited in Oh v. Bell, 221 Ga. App. 276, 470 S.E.2d 807 (1996); Setlock v. Setlock, 286 Ga. 384, 688 S.E.2d 346 (2010).

15-10-46. Ordering deferred partial payment of judgment.

(a) When the judgment is to be rendered and the party against whom it is to be entered requests it, the judge shall inquire fully into the earnings and financial status of such party and shall have full discretionary power to stay the entry of judgment, to stay execution, and to order partial payments in such amounts, over such periods, and upon such terms as seem just under the circumstances and as will assure a definite and steady reduction of the judgment until it is fully and completely satisfied.

(b) The judge of the magistrate court shall not be obligated to collect such deferred partial payments on judgments so rendered but, if the plaintiff so requests, he may do so at the expense of the plaintiff for clerical and accounting costs incurred thereby, not to exceed 10 percent of each payment.

History. — Code 1981, § 15-10-46, enacted by Ga. L. 1983, p. 884, § 2-1.

Cross references. — Deferred partial payments, Uniform Rules for the Magistrate Courts, Rule 44.

15-10-47. Effect, recordation, execution, and enforcement of money judgments; fee for recordation.

(a) Except where otherwise provided by law, the general laws and rules applicable to the effect, recordation, execution, and enforcement of money judgments in civil cases in the superior courts of this state shall be applicable to and govern the magistrate courts.

(b) Upon the issuance of any execution by the magistrate court, the clerk of the magistrate court shall immediately transmit a copy of the execution to the clerk of superior court of the county. The fee of the clerk of superior court for recording the execution on the general execution

docket shall be charged and collected by the magistrate court contemporaneously with or prior to the issuance of the execution but not before the entry of judgment in the action; and such fee shall be transmitted by the clerk of magistrate court to the clerk of superior court together with the copy of the execution. The clerk of the superior court shall immediately enter the execution upon the general execution docket in the same manner as executions issued by the superior court, without the necessity of any action by the plaintiff in fi. fa.

History. — Code 1981, § 15-10-47, enacted by Ga. L. 1983, p. 884, § 2-1; Ga. L. 1984, p. 1096, § 7; Ga. L. 1986, p. 701, § 4; Ga. L. 1987, p. 320, § 1.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former law and former Code Section 15-10-100 are included in the annotations for this Code section.

Judgment cannot be enforced by execution until entered on docket. Nashville, C. & St. L. Ry. v. Brown, 3 Ga. App. 561, 60 S.E. 319 (1908) (decided under former law).

Oral announcement in open court is a nullity. Duke v. State, 13 Ga. App. 708, 79 S.E. 861 (1913) (decided under former law).

Judgment need not show all jurisdictional facts on the judgment's face. Hamilton v. Moreland, 15 Ga. 343 (1854); Johnson v. Ware, 14 Ga. App. 380, 80 S.E. 909 (1914) (decided under former law).

Execution is presumed to follow judgment. Freeman v. Binswanger, 57 Ga. 159 (1876) (decided under former law).

Priority of judgments. — Judgment in justice of the peace court signed before judgment in superior court is entitled to priority. Johnson v. Mitchell, 17 Ga. 593 (1855) (decided under former law).

Justice of the peace cannot set aside a judgment. Fontaine v. Bergen, 55 Ga. 410 (1875); Mills v. Bell, 136 Ga. 687, 71 S.E. 1120 (1911) (decided under former law).

Justice of the peace cannot dismiss case because plaintiff does not appear if the justice of the peace has in hand note for suit and collection. Hitch v. Lambright, 66 Ga. 228 (1880) (decided under former law).

Sale and backing are done where defendant resides. Denton Bros. v. Hannah, 12 Ga. App. 494, 77 S.E. 672 (1913) (decided under former law).

When backing not required. — No backing is required when levy is made outside of the districts if judgment was rendered and the defendant resides on property in the officer's bailiwick. Lewis v. Wall, 70 Ga. 646 (1883) (decided under former law).

Endorsement by justice of the peace of the justice's signature on execution is sufficient. Dickson v. Burwell, 113 Ga. 93, 38 S.E. 319 (1901); Wilcher v. Pool & Gunn, 121 Ga. 305, 48 S.E. 956 (1904) (decided under former law).

Backing of fieri facias is not necessary before summons of garnishment can issue. Atlanta & W.P.R.R. v. Farmers' Exch., 6 Ga. App. 405, 65 S.E. 165 (1909) (decided under former law).

Presumption of entry. — An entry of "no property found" made on an execution before it is backed will be presumed to have been made where the judgment was rendered. Hollingsworth v. Dickey, 24 Ga. 434 (1858) (decided under former law).

Involuntary payment, as well as voluntary, gives security right to control the judgment and execution. Ezzard v. Bell, 100 Ga. 150, 28 S.E. 28 (1897) (decided under former law).

Cited in Formby v. Shackleford, 94 Ga. 670, 21 S.E. 711 (1894); Virdin v. Garland, 147 Ga. 14, 92 S.E. 647 (1917); Cook v. Flanders, 164 Ga. 279, 138 S.E. 212 (1927); Gray v. Riley, 47 Ga. App. 348, 170 S.E. 537 (1933); Beacham v. Cullens, 194 Ga. 739, 22 S.E.2d 508 (1942).

OPINIONS OF THE ATTORNEY GENERAL

Writs of fieri facias may be directed to constables. — Writs of fieri facias issued by the magistrate court may be directed to the constables of that court and, in executing these writs, constables may conduct judicial sales of personal property. 1984 Op. Att'y Gen. No. U84-36.

15-10-48. Form of statement of claim, verification, and notice.

The statement of claim, verification, and notice shall be in substantially the following form:

Magistrate Court of _____ County

State of Georgia

_____
Plaintiff

_____
Address

v.

_____
Defendant

Statement of Claim

(Here the plaintiff or, at his or her request, the court will insert a brief statement of the plaintiff's claim or claims giving the defendant reasonable notice of the basis for each claim and, if the action is on a contract, either express or implied, the original statement of the plaintiff's claim which is to be filed with the court may be verified by the plaintiff or his or her agent as follows:)

STATE OF GEORGIA
COUNTY OF _____

_____, being first duly sworn on oath, says the foregoing is a just and true statement of the amount owing by defendant to plaintiff, exclusive of all setoffs and just grounds of defense.

_____
Plaintiff or agent

Sworn and subscribed
before me this _____ day
of _____, _____.

_____
Notary public
or attesting
official

Notice

TO: _____
Defendant

_____
Home Address
or

_____
Business Address

You are hereby notified that _____ has made a claim and is requesting judgment against you in the sum of _____ dollars ($ _____), as shown by the foregoing statement. The court will hold a hearing upon this claim at (address of court) at a time to be set after your answer is filed.

YOU ARE REQUIRED TO FILE OR PRESENT AN ANSWER TO THIS CLAIM WITHIN 30 DAYS AFTER SERVICE OF THIS CLAIM UPON YOU. IF YOU DO NOT ANSWER, JUDGMENT BY DEFAULT WILL BE ENTERED AGAINST YOU. YOUR ANSWER MAY BE FILED IN WRITING OR MAY BE GIVEN ORALLY TO THE JUDGE.

If you have witnesses, books, receipts, or other writings bearing on this claim, you should bring them with you at the time of hearing.

If you wish to have witnesses summoned, see the court at once for assistance.

If you have any claim against the plaintiff, you should notify the court at once.

If you admit the claim, but desire additional time to pay, you must come to the hearing in person and state the circumstances to the court.

You may come with or without an attorney.

_____
Magistrate of
_____ County

History. — Code 1981, § 15-10-48, enacted by Ga. L. 1983, p. 884, § 2-1; Ga. L. 1999, p. 81, § 15; Ga. L. 2008, p. 824, § 4/HB 958.

15-10-49. Procedure in attachment, garnishment, dispossessory, and distress warrant proceedings.

(a) Procedure in attachment cases shall be subject to Chapter 3 of Title 18, except that there shall be no prejudgment attachment granted in the magistrate court.

(b) Procedure in garnishment cases shall be subject to Chapter 4 of Title 18.

(c) Procedure in dispossessory proceedings and in distress warrant proceedings shall be subject to Articles 3 and 4 of Chapter 7 of Title 44.

History. — Code 1981, § 15-10-49, enacted by Ga. L. 1983, p. 884, § 2-1; Ga. L. 1986, p. 701, § 5.

15-10-50. Interrogatories to judgment debtor; form; contempt; authorized discovery procedures.

(a) In aid of any judgment or execution issued by any court in this state upon which the unpaid balance does not exceed the jurisdictional amount for civil claims in magistrate court as provided in paragraph (5) of Code Section 15-10-2, the judgment creditor or his successor in interest when that interest appears of record, may, in addition to any other process or remedy provided by law, examine the judgment debtor by propounding the interrogatories specified in this Code section in the manner provided in this Code section.

(b) If the judgment or execution concerning which interrogatories are being propounded was issued by the magistrate court, the judgment creditor may, after the entry of judgment, file the form interrogatories specified in this Code section with the clerk of the same magistrate court, along with costs of $10.00. Interrogatories filed under this subsection shall be served upon the judgment debtor by certified mail or statutory overnight delivery.

(c) Interrogatories propounded pursuant to a judgment entered in any other court shall be filed as a new civil action and shall be accompanied by the filing and service fees required for civil actions in that magistrate court. Interrogatories propounded under this subsection shall be served upon the judgment debtor in the manner provided for service of process in civil actions in magistrate court.

(d) The interrogatories, verification, and notice shall be in substantially the following form:

Magistrate Court of _____ County
State of Georgia

_____	
Plaintiff	Current Civil Action
_____	File No. _____
Address	
_____	

v. Original Civil Action
File No. _____

_____
Defendant Court where original
judgment entered:

_____ _____
Address

_____

INTERROGATORIES

TO: _____, Defendant in the above-styled action:

The Plaintiff in the above-styled action requests that you answer the following interrogatories separately, fully, and under oath and serve such answers on said plaintiff at plaintiff's address shown above by mail or hand delivery within 30 days after the service of these interrogatories.

1. List your full name, home phone number, and address, including apartment number and ZIP Code.

2. List the name, address, and phone number of your employer(s).

3. Describe and state the location of each piece of real estate in which you own any interest.

4. Give the name, address, phone number, and a description of the nature of any business venture in which you own any interest.

5. List the names, addresses, and phone numbers of all persons who owe money to you and specify the amounts owed.

6. List the names and addresses of all banks or savings institutions where you have any sums of money deposited and identify the accounts by number.

7. List and give the present location of all items of personal property owned by you that have a value of more than $100.00.

VERIFICATION

STATE OF GEORGIA, COUNTY OF _____

_____, being first duly sworn on oath, says the foregoing are true and complete answers to the interrogatories propounded by plaintiff to defendant.
Sworn and subscribed
before me, this _____
day of _____, _____.

Notary public or attesting official	Defendant

NOTICE

YOU ARE REQUIRED TO PROVIDE COMPLETE ANSWERS TO THE ABOVE-STATED QUESTIONS TO THE PLAINTIFF WITHIN 30 DAYS AFTER SERVICE OF THESE INTERROGATORIES UPON YOU. IF YOU DO NOT ANSWER, OR DO NOT ANSWER COMPLETELY, YOU MAY BECOME SUBJECT TO THE SANCTIONS PROVIDED BY LAW FOR CONTEMPT OF COURT. IF YOU NEED FURTHER INSTRUCTION OR IF YOU NEED ASSISTANCE IN ANSWERING THE QUESTIONS CONTACT THE COURT AT ONCE.

(e) The court in its discretion may limit the number of times interrogatories may be propounded upon a judgment debtor, may relieve a judgment debtor of the obligation to answer one or more propounded interrogatories, and may for good cause shown enlarge the time for answering any interrogatory. The court may if necessary compel the answering of interrogatories, but the sanction of contempt shall be applied only after notice and an opportunity for hearing and a showing of willful failure to answer or willful failure to answer fully and truthfully.

(f) An evasive or incomplete answer to an interrogatory shall be treated as a failure to answer.

(g) Notwithstanding the provisions of Code Section 15-10-42, the judgment creditor or a successor in interest when that interest appears of record may, in addition to any other process or remedy provided by law, utilize the discovery provisions set forth in Code Section 9-11-69.

History. — Code 1981, § 15-10-50, enacted by Ga. L. 1985, p. 1003, § 2; Ga. L. 1988, p. 267, § 1; Ga. L. 1990, p. 886, §§ 1, 2; Ga. L. 1996, p. 365, § 1; Ga. L. 1999, p. 81, § 15; Ga. L. 2000, p. 1589, § 3; Ga. L. 2008, p. 824, § 5/HB 958.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1985, Code Section 15-10-50, as enacted by Ga. L. 1985, p. 636, § 2, was redesignated as Code Section 15-10-51.

Pursuant to Code Section 28-9-5, in 1988, a comma was inserted following "COMPLETELY" in the "NOTICE" of subsection (d).

Pursuant to Code Section 28-9-5, in 1990, "ZIP Code" was substituted for "ZIP code" in the first instruction listed on the form in subsection (d).

Pursuant to Code Section 28-9-5, in 2008, a comma was inserted following "by the magistrate court" near the beginning of subsection (b).

Editor's notes. — Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provides that the amendment to subsection (b) is applicable with respect to notices delivered on or after July 1, 2000.

Law reviews. — For article, "The Civil Jurisdiction of State and Magistrate Courts," see 24 Ga. St. B. J. 29 (1987).

15-10-51. Authorizing clerks to sign notices and summonses.

The chief magistrate of each county may, by local rule of court, authorize the clerk of the magistrate court or one or more deputy clerks of the court to sign any notice or summons in any civil action pending in the court.

History. — Code 1981, § 15-10-51, enacted by Ga. L. 1985, p. 636, § 2.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1985, Code Section 15-10-50, as enacted by Ga. L. 1985, p. 636, § 2, was redesignated as Code Section 15-10-51.

15-10-52. Party name in action.

The style of any action, other than a proceeding brought pursuant to Chapter 7 of Title 44, relating to landlord and tenant, brought in the magistrate court by the assignee of the obligee of any obligation shall show the action in the name of the original obligee by the assignee.

History. — Code 1981, § 15-10-52, enacted by Ga. L. 2000, p. 880, § 1.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2000, Code Section 15-10-52, as enacted by Ga. L. 2000, p. 1580, § 1, was redesignated as Code Section 15-10-53.

Law reviews. — For note on 2000 enactment of this Code section, see 17 Ga. St. U.L. Rev. 64 (2000).

15-10-53. Filing documents by electronic means.

(a) Any magistrate court may provide for the filing of civil, garnishment, distress warrant, dispossessory, foreclosure, abandoned motor vehicle, and all other noncriminal actions, claims, answers, counterclaims, pleadings, postjudgment interrogatories, and other documents by electronic means.

(b) Any pleading or document filed electronically shall be in a format prescribed by the court and shall comply with Code Section 15-10-54.

(c) Any pleading or document filed electronically shall include the electronic signature of the person filing the pleading or document as defined in Code Section 10-12-2.

(d) Any pleading or document filed electronically which is required to be verified, verified under oath, or be accompanied by an affidavit may include such verification, oath, or affidavit by one of the following methods:

(1) As provided in Code Section 10-12-11;

(2) By oath or affirmation of the party filing the pleading at the time of the trial of the case;

(3) By supplemental verified pleading; or

(4) By electronic verification, oath, or affidavit in substantially the following form:

"By affixing this electronic verification, oath, or affidavit to the pleading(s) submitted to the court and attaching my electronic signature hereon, I do hereby swear or affirm that the statements set forth in the above pleading(s) are true and correct.

Date: _____ Electronic Signature: _____"

(e) Service of any claim or complaint filed electronically shall be made as provided by law. Service of all subsequent pleadings and notices may be made electronically only on a party who has filed pleadings electronically; service on all other parties shall be made by such other means as are provided by law. Each pleading or document which is required to be served on other parties shall include a certificate of service indicating the method by which service on the other party has been made. An electronic certificate of service shall be made in substantially the following form:

"By affixing this electronic certificate of service to the pleading(s) or document(s) submitted to the court and attaching my electronic signature hereon, I do hereby swear or affirm that I have this date served the opposing party with a copy of this pleading by e-mail or placing a copy in regular mail with sufficient postage thereon to the following address: (set forth address of opposing party).

Date: _____ Electronic Signature: _____ "

(f) Nothing in this Code section shall prevent a party from contesting an electronic pleading, document, or signature on the basis of forgery or fraud. Any pleading or document found by the court to have been fraudulently filed shall be stricken from the record.

(g) Where the authenticity or the integrity of an electronic pleading, document, or signature is challenged, the proponent of the electronic pleading, document, or signature shall have the burden of proving that the electronic pleading, document, or signature is authentic.

(h) Upon the receipt of any pleading or other document filed electronically, the clerk of magistrate court shall notify the filer of receipt of the pleading or document. Such notice shall include the date and time the court accepted the pleading or document as filed.

(i) Any pleading or document filed electronically shall be deemed filed as of the time of its receipt by the electronic filing service provider.

(j) When the filing of the pleading or document requires the payment of a fee, the clerk of magistrate court may establish procedures for the payment of such fees connected with such filing. The filing of any such

pleading or document shall create an obligation by the party to pay such fee to the clerk of court instanter.

(k) The clerk of court may assess an additional transaction fee or fees for each electronic filing and electronic payment.

(l) When a filing involves the transfer of funds, the court may establish a procedure for making such transactions by electronic means.

History. — Code 1981, § 15-10-53, enacted by Ga. L. 2000, p. 1580, § 1; Ga. L. 2009, p. 698, § 3/HB 126; Ga. L. 2014, p. 482, § 5/SB 386; Ga. L. 2016, p. 242, § 4/SB 262.

Cross references. — Electronic records, signatures, and filings, § 44-2-35 et seq.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2000, Code Section 15-10-52, as enacted by Ga. L. 2000, p. 1580, § 1, was redesignated as Code Section 15-10-53.

Editor's notes. — Ga. L. 2014, p. 482, § 10/SB 386, not codified by the General Assembly, provides, in part, that this Act shall apply to any filings made on or after July 1, 2014.

15-10-54. Use of personally identifiable data in court documentation; redaction.

(a) Except as provided in subsections (b) and (c) of this Code section or unless the court orders otherwise, a filing with the court that contains a social security number, taxpayer identification number, financial account number, or birth date shall include only:

(1) The last four digits of a social security number;

(2) The last four digits of a taxpayer identification number;

(3) The last four digits of a financial account number; and

(4) The year of an individual's birth.

(b) A summons of garnishment that is filed with the court shall only include the last four digits of the defendant's social security number, taxpayer identification number, or financial account number; provided, however, that the plaintiff shall provide the defendant's full social security number, taxpayer identification number, or financial account number, if reasonably available to the plaintiff, on the copies of the summons of garnishment served on the garnishee and defendant.

(c) Subsection (a) of this Code section shall not apply to the following:

(1) The official record of an administrative or agency proceeding;

(2) The official record of a court or tribunal in another case or proceeding; and

(3) A filing made under seal as provided in subsection (d) of this Code section.

(d) The court may order that a filing be made under seal without redaction. The court may later unseal the filing or order the filer to file a redacted version for the public record. A filer may petition the court to file an unredacted filing under seal. The court shall retain all filings made under seal as part of the record.

(e) An inadvertent failure to redact information which is required to be redacted shall be a curable defect and shall not preclude a document from being filed with the court. The court may order an unredacted filing be sealed and may also order that a redacted version of the same filing be filed for the public record.

(f) For good cause, the court may:

(1) Order a filing which contains additional personal or confidential information, other than the information required to be redacted pursuant to this Code section, be sealed and may also order that a redacted version of the same filing be filed for the public record; and

(2) Limit or prohibit a nonparty's remote electronic access to a document filed with the court.

(g) A filing that contains redacted information may be filed together with a reference list that identifies each item of redacted information and specifies an appropriate identifier that uniquely corresponds to each item listed. Such reference list shall be filed under seal and may be amended as of right. Any reference in a civil action to a listed identifier shall be construed to refer to the corresponding item of information.

(h) A filer waives the protections provided by subsection (a) of this Code section to the extent that he or she makes his or her own filing without redaction and not under seal.

History. — Code 1981, § 15-10-54, enacted by Ga. L. 2014, p. 482, § 6/SB 386; Ga. L. 2015, p. 5, § 15/HB 90.

Cross references. — Identity fraud, § 16-9-120 et seq. Identity theft, T. 10, C. 1, A. 34.

Editor's notes. — Ga. L. 2014, p. 482, § 10/SB 386, not codified by the General Assembly, provides, in part, that this Code section shall apply to any filings made on or after July 1, 2014.

RESEARCH REFERENCES

Am. Jur. 2d. — 37A Am. Jur. 2d, Freedom of Information Acts, § 384.

ARTICLE 4

VIOLATION OF ORDINANCES OF COUNTIES AND STATE AUTHORITIES

Law reviews. — For article, "Courts: Juvenile Justice Reform," see 30 Ga. St. U. L. Rev. 63 (2013).

15-10-60. Applicability of article; suspended sentences.

(a) This article governs trials of violations of county ordinances and ordinances of state authorities, which violations may be punished by incarceration or monetary penalty. Nothing in this chapter shall grant to any county or state authority more authority to enact or enforce such ordinances than the county or state authority has independently of this chapter. The punishment imposed for any ordinance violation shall not exceed a fine of $1,000.00 or six months' imprisonment or both, provided the judge shall probate not less than 120 days of any sentence imposed, except as otherwise provided by general law, and shall not exceed the maximum punishment specified by the ordinance. In the event a sentence is revoked, a defendant shall not serve more than 60 days in a county jail.

(b) The trial court may suspend the service of the sentence imposed in the case upon such terms and conditions as it may prescribe for the payment of the fine, for performance of community service in lieu of a fine or incarceration, for the payment of restitution to a victim, or other condition relating to the underlying offense. Service of the sentence, when so suspended, shall not begin unless and until ordered by the court having jurisdiction thereof, after a hearing as in cases of revocation of probated sentences, because of the failure or refusal of the defendant to comply with the terms and conditions upon which service of a sentence was suspended. Service of all or any part of any sentence suspended upon such conditions may be ordered to commence by the trial court any time before the expiration of one year from the date of the sentence after a hearing and a finding by the court that the defendant has failed or refused to comply with the terms and conditions upon which service of the sentence was suspended.

History. — Code 1981, § 15-10-60, enacted by Ga. L. 1983, p. 884, § 2-1; Ga. L. 1984, p. 22, § 15; Ga. L. 1987, p. 448, § 2; Ga. L. 1993, p. 910, § 1; Ga. L. 2000, p. 1155, § 2; Ga. L. 2003, p. 408, § 1.

JUDICIAL DECISIONS

Sentence not excessive. — Trial court's sentence imposed on the defendant after the jury found the defendant guilty of five ordinance violations, and which consisted of the same fine and same prison sentence for each count, was not excessive

as the sentence was within the bounds authorized under the law. Carter v. State, 259 Ga. App. 798, 578 S.E.2d 508 (2003).

15-10-61. No right to trial by jury; right of removal to state or superior court.

There shall be no jury trials in the magistrate court. Any defendant who is charged with one or more ordinance violations may, at any time before trial, demand that the case be removed for a jury trial to the state court of the county or to the superior court of the county if there is no state court. Such a demand shall be written. Upon such a demand the court shall grant the demand. Failure to so demand removal of the case shall constitute a waiver of any right to trial by jury which the defendant may otherwise have.

History. — Code 1981, § 15-10-61, enacted by Ga. L. 1983, p. 884, § 2-1; Ga. L. 1987, p. 448, § 2.

Cross references. — Transfers and changes of venue in magistrate court proceedings, Uniform Rules for the Magistrate Courts, Rule 36.

JUDICIAL DECISIONS

O.C.G.A. § 15-10-61 was not a general law which provided for removal to state court for jury trial, and the local law governing the county recorder's court did not violate the constitutional prohibition against local laws on the same subject as general laws. Smith v. Greene, 274 Ga. 815, 559 S.E.2d 726 (2002).

Transfer to another court. — Because defendant's case for violation of various municipal ordinances for operating a sexually oriented business without a license arose in municipal court, not magistrate court, the defendant was not entitled to have the charges against the defendant bound over to state court and the defendant's constitutional issues were not preserved for appeal. Focus Entm't Int'l, Inc. v. Bailey, 256 Ga. App. 283, 568 S.E.2d 183 (2002).

Cited in Avant v. Douglas County, 253 Ga. 225, 319 S.E.2d 442 (1984); Haygood v. State, 221 Ga. App. 477, 471 S.E.2d 552 (1996).

15-10-62. Prosecution upon citation or accusation; service; arrest.

(a) Prosecutions for violations of county ordinances shall be upon citation as provided in Code Section 15-10-63 or upon accusation by the county attorney or such other attorney as the county governing authority may designate. Prosecutions for violations of ordinances of state authorities shall be upon citation as provided in Code Section 15-10-63 or upon accusation by such attorney as the state authority may designate. Such attorney shall be the prosecuting attorney in cases tried upon accusation.

(b) Except as provided in subsection (c) of this Code section, citations for or accusations of violations of ordinances shall be personally served

upon the person accused. Each accusation or citation shall state the time and place at which the accused is to appear for trial. The accused shall not be arrested prior to the time of trial, except for the offenses of public drunkenness or disorderly conduct and except that ordinances of state authorities may provide for immediate arrest; provided, however, that the accused may be arrested prior to the time of trial for the violation of a county ordinance relating to loitering; and provided, further, that except as provided in subsection (c) of this Code section, any accused who fails to appear for trial shall thereafter be arrested on the warrant of the magistrate and required to post a bond for his or her future appearance.

(c)(1) When provided by local law, a citation for or accusation of a violation of an ordinance concerning the condition of real property may be served by:

(A) Posting a copy of it on the door of the premises where the alleged violation occurred;

(B) Mailing a copy of it by registered or certified mail or statutory overnight delivery to the owner of such premises at the address of record maintained by the applicable tax commissioner. The certificate of mailing to the accused shall constitute prima-facie evidence of compliance with this subparagraph; and

(C) Filing a copy of it with the clerk of magistrate court.

(2) Service under paragraph (1) of this subsection shall not be authorized until there has been at least one attempt at personal service on the accused at the address of record of the accused as maintained by the applicable tax commissioner or of the accused's registered agent as maintained by the Secretary of State, provided that such attempt at personal service shall only be required if the accused resides or has a registered agent in this state.

(3) When service is perfected as provided in paragraph (1) of this subsection and the accused fails to appear for trial, an in rem judgment and lien against the real property shall be the exclusive penalty.

History. — Code 1981, § 15-10-62, enacted by Ga. L. 1983, p. 884, § 2-1; Ga. L. 1984, p. 1096, § 8; Ga. L. 1985, p. 149, § 15; Ga. L. 1987, p. 448, § 2; Ga. L. 1994, p. 292, § 1; Ga. L. 2016, p. 755, § 1/HB 1025.

Law reviews. — For note on the 1994 amendment of this Code section, see 11 Ga. St. U.L. Rev. 95 (1994).

JUDICIAL DECISIONS

Cited in Westbrook v. Zant, 575 F. Supp. 186 (M.D. Ga. 1983).

15-10-63. Use of citations; arrests.

(a) The governing authority of any county or any state authority may provide that ordinance violations may be tried upon citations with or without a prosecuting attorney as well as upon accusations.

(b) Each citation shall state the time and place at which the accused is to appear for trial, shall identify the offense with which the accused is charged, shall have an identifying number by which it shall be filed with the court, shall indicate the identity of the accused and the date of service, and shall be signed by the county or authority agent who completes and serves it.

(c) Prosecutions for violations of ordinances upon citations shall be commenced by the completion, signing, and service of a citation by any agent of the county who is authorized by the county governing authority to issue citations or by an agent of the state authority who is authorized by the authority to issue citations. Except as provided in subsection (c) of Code Section 15-10-62, a copy of the citation shall be personally served upon the accused; and the original shall promptly be filed with the court.

(d) No person shall be arrested prior to the time of trial, except for the offenses of public drunkenness or disorderly conduct or as authorized by ordinance of a state authority; provided, however, that the accused may be arrested prior to the time of trial for the violation of a county ordinance relating to loitering; and provided, further, that any defendant who fails to appear for trial shall be arrested thereafter on the warrant of the magistrate and required to post a bond for his or her future appearance.

History. — Code 1981, § 15-10-63, enacted by Ga. L. 1983, p. 884, § 2-1; Ga. L. 1984, p. 1096, § 9; Ga. L. 1985, p. 149, § 15; Ga. L. 1987, p. 448, § 2; Ga. L. 1994, p. 292, § 2; Ga. L. 2000, p. 880, § 2; Ga. L. 2016, p. 755, § 2/HB 1025.

15-10-63.1. Cash bonds.

(a) The chief magistrate of each county may by written order establish a schedule of cash bonds for the personal appearance in court of any person charged with a violation of an ordinance. The chief magistrate shall designate the officer or officers authorized to accept cash bonds pursuant to the schedule of bonds published by the court. In no event shall any officer or agent who is authorized to issue citations be authorized to accept a cash bond at the time of or in conjunction with the issuance of any citation. The officer accepting a cash bond shall issue a receipt for the bond to the person charged with the violation.

(b) Any person who is accused by citation but has not been arrested may, but shall not be required to, give a cash bond for his personal

appearance in court for trial. If a person who has given a cash bond fails to appear for trial, the failure to appear shall be deemed to constitute a guilty plea and such cash bond shall be forfeited upon the call of the case for trial. It shall not be necessary for the county to take any further action to forfeit the cash bond. Forfeiture of a cash bond shall be deemed to constitute imposition and payment of a fine and shall be a bar to a subsequent prosecution of the accused for the violation. The court may, however, in any case enter an order pursuant to which bond forfeiture shall not be deemed to constitute imposition of a sentence and subsequent prosecution shall not be barred; and in any such case the amount of the bond forfeited shall be credited against any fine subsequently imposed.

(c) It shall be the duty of the clerk of magistrate court to furnish the officer or officers authorized under the order with a book of blank receipts consecutively numbered in triplicate and readily distinguishable and identifiable. The receipts shall be completed by the officers when accepting a cash bond so as to show the name of the person cited or arrested, the date of citation or arrest, nature of the offense, amount of cash bond given, and the name of the receiving officer. The receiving officer shall deliver a copy of the receipt to the person cited or arrested at the time the cash bond is given and shall file the original together with the cash bond with the clerk of the magistrate court not later than the next succeeding business day following the date of issuance of the receipt.

History. — Code 1981, § 15-10-63.1, enacted by Ga. L. 1985, p. 417, § 1; Ga. L. 1987, p. 448, § 2.

JUDICIAL DECISIONS

Cited in Honiker v. State, 230 Ga. App. 597, 497 S.E.2d 70 (1998).

15-10-64. Execution upon unpaid fines; sheriff to receive sentenced persons.

(a) Execution may issue immediately upon any fine imposed by the court and not immediately paid.

(b) The sheriff of the county shall receive and house all persons sentenced to confinement for contempt or arrested or sentenced to confinement for violation of ordinances.

History. — Code 1981, § 15-10-64, enacted by Ga. L. 1983, p. 884, § 2-1; Ga. L. 1984, p. 1096, § 10; Ga. L. 1987, p. 448, § 2.

15-10-65. Certiorari to superior court.

Review of convictions shall be by certiorari to the superior court.

History. — Code 1981, § 15-10-65, enacted by Ga. L. 1983, p. 884, § 2-1; Ga. L. 1987, p. 448, § 2.

15-10-66. Prosecuting attorney.

The county attorney or another attorney designated by the county governing authority may act as prosecuting attorney for violations of county ordinances; and any attorney designated by the affected state authority may act as prosecuting attorney for violation of state authority ordinances.

History. — Code 1981, § 15-10-66, enacted by Ga. L. 1983, p. 884, § 2-1; Ga. L. 1987, p. 448, § 2.

JUDICIAL DECISIONS

Cited in Westbrook v. Zant, 575 F. Supp. 186 (M.D. Ga. 1983).

ARTICLE 5

FEES AND COSTS

Law reviews. — For article, "Courts: Juvenile Justice Reform," see 30 Ga. St. U. L. Rev. 63 (2013).

15-10-80. Filing fee; service of process costs; writ of fieri facias fee; costs taxed to losing party.

(a) Upon filing any civil action the plaintiff shall pay a filing deposit as established by local court rule not to exceed $22.00 which shall cover all costs of the action except service of process.

(b) Upon filing any civil action the plaintiff shall pay the actual cost of serving each party required to be served but not more than the amount of the fee charged by sheriffs for serving process for each party to be served.

(c) For issuing a writ of fieri facias the fee charged shall be $4.00 which shall be paid by the person requesting the same. Such fee shall be charged and collected contemporaneously with or prior to the issuance of the writ of fieri facias but not before the entry of judgment in the action.

(d) As between the parties, costs shall be taxed against the losing party.

History. — Code 1981, § 15-10-80, enacted by Ga. L. 1983, p. 884, § 2-1; Ga. L. 1987, p. 320, § 2; Ga. L. 2010, p. 9, § 1-40/HB 1055.

Cross references. — Satisfaction of fieri facias, Uniform Rules for the Magistrate Courts, Rule 45.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions decided under former Civil Code 1895, § 5403, former Civil Code 1910, §§ 6002 and 6003, former Code 1933, § 24-1601 and former Code Section 15-10-14, relating to fees for services performed by justices of the peace, are included in the annotations for this Code section.

Magistrate's personal practice of billing only for warrants issued did not violate due process principles. Gordon v. State, 150 Ga. App. 862, 258 S.E.2d 664 (1979) (decided under former Code 1933, § 24-1601).

Provision in this section for each affidavit when no cause pending excludes charge when made in cause which is pending, and which is not considered until entry of final order. McAlpin v. Chatham County, 26 Ga. App. 695, 107 S.E. 74 (1921) (decided under former Civil Code 1910, §§ 6002, 6003).

Additional fee allowed for entering judgment. — In addition to the fee allowed a justice for trying a case without a jury or presiding at the trial of an appeal, the justice is allowed by law a fee for "entering judgment in each case." Brown v. Bonds, 125 Ga. 833, 54 S.E. 933 (1906) (decided under former Civil Code 1895, § 5403).

Fee for answering writ of certiorari. — Justice is allowed a fee for answering writ of certiorari. McMichael v. Southern Ry., 117 Ga. 518, 43 S.E. 850 (1903) (decided under former Civil Code 1895, § 5403).

No fee for examination of witness without trial or demand for trial. — If the defendant is arrested and carried to jail where the sheriff fixes the defendant's bond, but the defendant is not carried before the justice of the peace, and there is no committal trial, no demand for a committal trial, nor any waiver of a committal trial, the justice of the peace is not entitled to a fee for examination of a witness in a criminal case as there was no trial and no witness examined upon a trial, nor is the defendant entitled to a fee for waiving a committal trial as there was no such waiver before the official, but is entitled only to a fee for issuing the warrant. Owens v. Maddox, 80 Ga. App. 867, 57 S.E.2d 826 (1950) (decided under former Code 1933, § 24-1601).

Cited in Connally v. State, 237 Ga. 203, 227 S.E.2d 352 (1976); State v. Robinson, 142 Ga. App. 705, 237 S.E.2d 1 (1977); Thompson v. State, 142 Ga. App. 888, 237 S.E.2d 419 (1977); Seabolt v. Hopper, 240 Ga. 171, 240 S.E.2d 57 (1977); United States v. Clark, 559 F.2d 420 (5th Cir. 1977); Allen v. State, 240 Ga. 567, 242 S.E.2d 61 (1978); Lewis v. State, 144 Ga. App. 847, 242 S.E.2d 725 (1978); Futch v. State, 145 Ga. App. 485, 243 S.E.2d 621 (1978); Toole v. State, 146 Ga. App. 305, 246 S.E.2d 338 (1978); Contreras v. State, 242 Ga. 369, 249 S.E.2d 56 (1978); Reed v. State, 148 Ga. App. 264, 251 S.E.2d 148 (1978); Flanders v. State, 152 Ga. App. 277, 262 S.E.2d 564 (1979); Lackey v. State, 246 Ga. 331, 271 S.E.2d 478 (1980).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions rendered under former Code 1933, § 24-1601 and former Code Section 15-10-14 or predecessors thereof, relating to fees for services performed by justices of

the peace, are included in the annotations for this Code section. See also current Code Section 15-10-23, providing that magistrates shall not be compensated from fees.

Writs of fieri facias may be issued to constables. — Writs of fieri facias issued by the magistrate court may be directed to the constables of that court and, in executing these writs, constables may conduct judicial sales of personal property. 1984 Op. Att'y Gen. No. U84-36.

Former justice of the peace may be entitled to certain fees if the fees were charged and due at a time that an official was compensated by fees rather than salary, provided there was legal entitlement to these fees and the delay in collection was not attributable to the former justice of the peace. 1984 Op. Att'y Gen. No. U84-5 (decided under O.C.G.A. § 15-10-23).

Justice of the peace may not lawfully charge fee for collecting bill. 1960-61 Op. Att'y Gen. p. 83 (decided under former law).

Costs to be collected from county if collection from defendant unsuccessful. — One should first look to the payment of all costs by the defendants in cases wherein a conviction is had; if collection from the defendant proves unsuccessful then reliance upon former Code 1933, § 27-2929 for collection of those costs from the county would be appropriate. 1967 Op. Att'y Gen. No. 67-266 (decided under former Code 1933, § 24-1601).

15-10-81. Costs upon conviction of violation of ordinance.

In cases of conviction of violation of county ordinances, costs of not more than $70.00 may be taxed against the defendant.

History. — Code 1981, § 15-10-81, enacted by Ga. L. 1983, p. 884, § 2-1; Ga. L. 1984, p. 1096, § 11; Ga. L. 2010, p. 9, § 1-41/HB 1055.

15-10-82. Hearing fee on application for search or arrest warrant or deposit account fraud citation; no fee assessed against certain alleged victims.

For hearing an application for an arrest or search warrant or deposit account fraud citation, the fee charged shall not exceed $20.00, but this fee may be waived by the issuing magistrate if he or she finds that because of the financial circumstances of the party applying for the warrant or citation or for other reasons this fee should not be charged in justice, provided that no fee shall be assessed against the alleged victim of a violation of Code Section 16-5-90, 16-5-91, 16-6-1, 16-6-2, 16-6-3, 16-6-4, 16-6-5.1, 16-6-22.1, or 16-6-22.2 or against the alleged victim of any domestic violence offense for costs associated with the filing of criminal charges against the stalking offender, sexual offender, or domestic violence offender or for the issuance or service of a warrant, protective order, or witness subpoena arising from the incident of stalking, sexual assault, or domestic violence.

History. — Code 1981, § 15-10-82, enacted by Ga. L. 1983, p. 884, § 2-1; Ga. L. 1988, p. 267, § 2; Ga. L. 1991, p. 1753, § 3; Ga. L. 1994, p. 1787, § 1; Ga. L. 1996, p. 883, § 3; Ga. L. 2001, p. 885, § 4; Ga. L. 2010, p. 9, § 1-42/HB 1055.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1996, a comma

was substituted for a semicolon following "charged in justice" in the first sentence.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions rendered under former Code 1933, § 24-1601 and former Code Section 15-10-14, relating to fees for services performed by justices of the peace, are included in the annotations for this Code section.

Unconstitutionality of issuance of search warrant by interested judge. — Issuance of a search warrant by a justice of the peace who has a pecuniary interest in issuing the warrant effects a violation of the protections afforded by the Fourth and Fourteenth Amendments of the United States Constitution. Connally v. Georgia, 429 U.S. 245, 97 S. Ct. 546, 50 L. Ed. 2d 444 (1977) (decided under former Code 1933, § 24-1601).

Warrant charge embraces all services connected with issuance of warrant including the docketing of the case, filing of papers, and seal. Gill v. Decatur County, 129 Ga. App. 697, 201 S.E.2d 21 (1973) (decided under former Code 1933, § 24-1601).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, § 24-1601 and former Code Section 15-10-14, relating to fees for services performed by justices of the peace, are included in the annotations for this Code section. See also current Code Section 15-10-23, providing that magistrates shall not be compensated from fees.

Justices of the peace without pecuniary interest in issuing search warrant. — Former Code 1933, §§ 27-2928 and 2932, by making the obligation of counties to pay justices of the peace for search and arrest warrants contingent upon application therefor, and not upon issuance thereof, has eliminated the potential for the financial welfare of a justice of the peace to be enhanced by issuing a warrant. 1977 Op. Att'y Gen. No. U77-51 (decided under former Code 1933, § 24-1601).

State officers exempt. — State and the state's officers are not liable for the warrant hearing fees established by O.C.G.A. § 15-10-82. 1983 Op. Att'y Gen. No. U83-70.

Fee waiver. — If the issuing magistrate determines that for financial or other reasons that justice requires, the fee for an arrest or search warrant may be waived. 1983 Op. Att'y Gen. No. 83-59.

If the applicant is a county or municipal police officer, the magistrate has the discretion to waive the warrant hearing fee. 1983 Op. Att'y Gen. No. U83-70.

Advance payment of warrant application fee is allowed, but not required, by O.C.G.A. § 15-10-82. 1988 Op. Att'y Gen. No. U88-24.

Justice not entitled to further fees if person did not return. — Justice of the peace is entitled to a fee for each criminal warrant issued; if the person against whom the warrant was issued is not returned before such justice for committal hearing, such justice of the peace is not entitled to any more fees. 1952-53 Op. Att'y Gen. p. 314 (decided under former Code 1933, § 24-1601).

15-10-83. Constables' fees for levies and judicial sales.

For levying on executions and conducting judicial sales constables shall collect the same fees as are charged by sheriffs.

History. — Code 1981, § 15-10-83, enacted by Ga. L. 1983, p. 884, § 2-1.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarities of the statutory provisions, decisions under the Tax Act of 1812 are included in the annotations for this Code section.

Entitled to fee on return of nulla bona. — Constable is entitled to fee for a return of nulla bona, on an insolvent tax execution, but the constable is not entitled to retain the constable's fees for this service out of moneys collected on other executions. Chapman v. Smith, 20 Ga. 572 (1856) (decided under the Tax Act of 1812).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarities of the statutory provisions, opinions under former Code 1933, § 24-820 are included in the annotations for this Code section.

Fee for advertisements required before sale of personal property. — Under former Code 1933, § 24-820, the constable was entitled to receive a fee for each of the three advertisements required under former Code 1933, §§ 24-1411 and 24-1412 for the sale of personal property. 1958-59 Op. Att'y Gen. p. 44 (decided under former Code 1933, § 24-820).

15-10-84. Fee for administering oath.

For administering any oath other than in connection with a matter before the court, a magistrate shall collect a fee of $1.00.

History. — Code 1981, § 15-10-84, enacted by Ga. L. 1983, p. 884, § 2-1.

15-10-85. Fees and costs to be deposited into county treasury.

All fees, costs, and other funds collected by officers of the magistrate court shall be accounted for and paid into the county treasury not less often than once a month.

History. — Code 1981, § 15-10-85, enacted by Ga. L. 1983, p. 884, § 2-1.

15-10-86. Law library fees.

Law library fees shall not be charged unless otherwise provided by local law.

History. — Code 1981, § 15-10-86, enacted by Ga. L. 1983, p. 884, § 2-1.

Cross references. — Collection of additional costs in court cases, O.C.G.A. § 36-15-9.

OPINIONS OF THE ATTORNEY GENERAL

"Local law" defined. — Term "local law" as the term is used in O.C.G.A. § 15-10-86 means a local act of the General Assembly, and thus that statute does not authorize collection of law library fees in magistrate's court pursuant to an ordinance or resolution of the county governing authority. 1984 Op. Att'y Gen. No. U84-12.

15-10-87. Transfer of filing fee upon transfer of case to state or superior court; failure to transmit fee.

(a) When any case is transferred from the magistrate court to the state court or superior court, the magistrate court shall transmit to the state court clerk or superior court clerk the filing fee paid to the magistrate court. The state court clerk or superior court clerk shall file the case without further deposit against costs or filing fee, but as between the parties the costs shall be as in other cases in the state court or superior court. This subsection shall only apply to actions filed on or before June 30, 2012.

(b) When any case is transferred from the magistrate court to the state court or superior court, the magistrate court shall transmit to the state court clerk or superior court clerk the filing fee paid to the magistrate court. The state court clerk or superior court clerk shall file the case without further deposit against costs or filing fee; provided, however, that all costs and filing fees shall be paid by the parties within 30 days. Failure to pay such costs and filing fees shall result in a dismissal of the transferred case unless there is good cause shown. The magistrate court clerk shall transmit to the clerk of the state court or superior court a certified copy of the contents of the entire file for the case being transferred. This subsection shall only apply to actions filed on or after July 1, 2012.

History. — Code 1981, § 15-10-87, enacted by Ga. L. 1983, p. 884, § 2-1; Ga. L. 2012, p. 173, § 1-28/HB 665.

Cross references. — Filing and processing documents, Uniform State Court Rules, Rule 36.

ARTICLE 6

CONSTABLES, CLERK, AND OTHER COURT PERSONNEL

Cross references. — Notice of selection of magistrates, constables, and clerks of magistrate court, Uniform Rules for the Magistrate Courts, Rule 13.

Law reviews. — For article, "Courts: Juvenile Justice Reform," see 30 Ga. St. U. L. Rev. 63 (2013).

15-10-100. Appointment of constables; compensation; chief constable.

(a) Unless otherwise provided by local law, the county governing authority may provide for the appointment of constables by the chief magistrate. Constables so appointed shall serve at the pleasure of the chief magistrate. The compensation of constables so appointed shall be fixed by the county governing authority.

(b) If no provision is made for the appointment of constables the sheriff and his deputies shall perform the duties of constables.

(c) The General Assembly may by local law provide for the appointment of constables and their salaries.

(c.1)(1) In addition to the alternatives provided in subsections (a), (b), and (c) of this Code section, the governing authority of a county may employ marshals to perform the duties of constables.

(2) No person employed or appointed as a marshal pursuant to paragraph (1) of this subsection shall exercise any of the powers or authority which are by law vested in the office of sheriff or any other peace officer, including the power of arrest, except as may be authorized by law.

(3) Any person employed or appointed as a marshal pursuant to paragraph (1) of this subsection shall meet the requirements of Chapter 8 of Title 35.

(d) All constables shall be compensated solely on a salary basis and not in whole or in part from fees; and their salaries shall be paid in equal monthly installments from county funds.

(e) If there is more than one constable, one shall be appointed as chief constable and shall supervise the other constables.

History. — Code 1981, § 15-10-100, enacted by Ga. L. 1983, p. 884, § 2-1; Ga. L. 1991, p. 1155, § 1.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarities of the statutory provisions, decisions under former Code 1933, §§ 24-801, 24-806 and 24-811 are included in the annotations for this Code section.

Constitutionality. — As the constitution permits selection and terms of offices of magistrate judges to be varied by local law, the provisions of O.C.G.A. §§ 15-10-20, 15-10-23, 15-10-100, 15-10-105 and Ga. L. 1983, p. 4027, are not unconstitutional. In re Magistrate Court, 262 Ga. 334, 418 S.E.2d 42 (1992).

Inaccurate certificate did not have effect of changing term. — If a constable was elected (this section now provides an appointment procedure) at a regular election and qualified by giving bond and taking oath as provided by law, the constable's term of office was fixed by law at

four years, and a recital in the certificate of the ordinary (now probate judge) that it was for two years did not have the effect of changing the constable's term from four years. Motes v. Davis, 188 Ga. 682, 4 S.E.2d 597 (1939) (decided under former Code 1933, § 24-801).

Discretion to appoint cannot be questioned by writ. — Discretion of a justice of the peace (now magistrate) in making an appointment cannot be questioned by a writ of quo warranto. Locklear v. Harris, 108 Ga. 809, 34 S.E. 183 (1899) (decided under former Code 1933, § 24-806).

Oath prescribed by former Code 1933, § 89-302 must be taken by constable. Hopkins v. Watts, 141 Ga. 345, 80 S.E. 1001 (1914) (decided under former Code 1933, § 24-811).

Cited in Southern Bell Tel. & Tel. Co. v. Mitchell, 145 Ga. 539, 89 S.E. 514 (1916); Peek v. Irwin, 164 Ga. 450, 139 S.E. 27 (1927); McBrien v. Starkweather, 43 Ga. App. 818, 160 S.E. 548 (1931); Motes v. Davis, 188 Ga. 682, 4 S.E.2d 597 (1939); Griffin v. Trapp, 205 Ga. 176, 53 S.E.2d 92 (1949).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, § 24-817 are included in the annotations for this Code section.

Constable's commission can be prepared for issuance by Governor for a person who is also serving as a full-time city police officer. 1967 Op. Att'y Gen. No. 67-455 (decided under former Code 1933, § 24-817).

Execution and return of court processes and orders. — Sheriff and the sheriff's deputies are not authorized to execute and return the processes and orders of a magistrate court when that court has an appointed constable. 1987 Op. Att'y Gen. No. U87-16.

Eligibility to use detection devices. — Absent independent legal authorization, a county marshal or deputy marshal does not have authority to apply for or use speed detection devices. 2005 Op. Att'y Gen. No. 2005-1.

15-10-101. Eligibility of constables.

(a) Except as provided in subsection (b) of this Code section, the eligibility for constable is the same as for magistrate.

(b) Each constable shall have attained the age of at least 21 years prior to the date of his assuming the duties of constable.

History. — Code 1981, § 15-10-101, enacted by Ga. L. 1983, p. 884, § 2-1; Ga. L. 1986, p. 198, § 1.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarities of the statutory provisions, decisions under former Civil Code 1882, §§ 469 and 470, Civil Code 1895, § 4084 and Civil Code 1910, §§ 4682 and 4683 are included in the annotations for this Code section.

Attachments directed to constables and levied by the constables. — Attachments returnable to a justice court (now magistrate court) should be directed to the constables and levied by one of the constables. Pearce & Renfroe v. Renfroe Bros., 68 Ga. 194 (1881) (decided under former Civil Code 1882, §§ 469 and 470).

Constables are removable for the same causes as clerks of courts. — Lancaster v. Hill, 136 Ga. 405, 71 S.E. 731,

1912C Ann. Cas. 272 (1911) (decided under former Civil Code 1895, § 4084).

Judicial determination that constable vacated office. — If a constable moves to another district, the constable does not vacate the constable's office until the fact has been judicially determined. Johnson v. State, 27 Ga. App. 679, 109 S.E. 526 (1921) (decided under former Civil Code 1910, §§ 4682 and 4683).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes — In light of the similarities of the statutory provisions, opinions under former Code 1933, §§ 24-803 and 24-805 are included in the annotations for this Code section.

Constable may not continue to serve if the constable does not meet the eligibility requirements under the Magistrate Act. 1983 Op. Att'y Gen. No. 83-59.

Constable is not prohibited from being specially deputized by sheriff for the specific purpose of serving a particular writ; in such a situation a constable is a de facto deputy sheriff and service by the constable is legal. 1971 Op. Att'y Gen. No. 71-7 (decided under former Code 1933, §§ 24-803 and 24-805).

Constable's commission can be prepared for issuance by governor for a person who is also serving as a full-time city police officer. 1967 Op. Att'y Gen. No. 67-455 (decided under former Code 1933, §§ 24-803 and 24-805).

15-10-102. Powers and duties of constables.

The powers and duties of constables include the following:

(1) To attend regularly all sessions of magistrate court;

(2) To pay promptly over money collected by them to the magistrate court;

(3) To execute and return all warrants, summonses, executions, and other processes directed to them by the magistrate court; and

(4) To perform such other duties as are required of them by law or as necessarily appertain to their offices.

History. — Code 1981, § 15-10-102, enacted by Ga. L. 1983, p. 884, § 2-1; Ga. L. 1984, p. 22, § 15.

JUDICIAL DECISIONS

Analysis

General Consideration
Levy on Land and Entry on Execution

General Consideration

Editor's notes. — In light of the similarities of the statutory provisions, decisions under former Code 1873, § 465, former Ga. Code 1882, § 3577, former Code 1895, §§ 4165, 4167 and 4891, former Code 1910, § 4765, and former Code 1933, §§ 24-815, 24-1413 and 24-1419 are included in the annotations for this Code section.

Constable who seizes property not subject to execution because of lack of jurisdiction of court is trespasser. Holton v. Taylor, 80 Ga. 508, 6 S.E. 15 (1888) (decided under former Ga. Code 1882,

§ 3577); Blocker v. Boswell, 109 Ga. 230, 34 S.E. 289 (1899) (decided under former law); Hamer v. White, 110 Ga. 300, 34 S.E. 1001 (1900) (decided under former law).

Determination of public places is fact question. — Whether or not places where notices were published were public places is question of fact to be determined by the jury. O'Neill Mfg. Co. v. Harris, 127 Ga. 640, 56 S.E. 739 (1907) (decided under former Code 1895, § 4165).

Secondary evidence of the advertisement is admissible, without directly accounting for the loss of the original advertisement. Hogan v. Morris, 7 Ga. App. 232, 66 S.E. 550 (1909) (decided under former law).

Constable permitted to testify as to contents of advertisement after proof of advertisement's loss. Bowman v. Kidd, 13 Ga. App. 351, 79 S.E. 167 (1913) (decided under former Code 1910, § 4765).

Agent of plaintiff should not be appointed to serve process. Flury v. Grimes, 52 Ga. 341 (1874) (decided under former law).

If constable fails to account for proceeds of notes, the constable is liable to rule. Meeks v. Carter, 5 Ga. App. 421, 63 S.E. 517 (1909) (decided under former law).

City court does not have jurisdiction of rule against constable of a justice's court (now magistrate court) to require the constable to pay over money alleged to have been collected under an execution issued from a justice's court (now magistrate court). Richardson v. Waits, 58 Ga. App. 143, 198 S.E. 116 (1938) (decided under former Code 1933, § 24-815).

Cited in Bennett v. McConnell, 88 Ga. 177, 14 S.E. 208 (1891); Hatton v. Brown, 1 Ga. App. 747, 57 S.E. 1044 (1907); Rhodes & Sons Furn. Co. v. Jenkins, 2 Ga. App. 475, 58 S.E. 897 (1907); Peterson v. General Shoe Corp., 115 Ga. App. 12, 153 S.E.2d 637 (1967).

Levy on Land and Entry on Execution

Levy on bond must be based on execution upon judgment. Rogers v. McDill & Campbell, 9 Ga. 506 (1851) (decided under former law).

Entry that officer knows of no personalty in possession of defendant is insufficient. Eaves v. Garner, 111 Ga. 273, 36 S.E. 688 (1900) (decided under former Code 1895, § 4167).

Fieri facias not inadmissible if clerk fails to comply with former Code 1895, § 4891, requiring the clerk to enter constable's entry upon execution docket. Turner v. Duncan, 152 Ga. 54, 108 S.E. 532 (1921) (decided under former law).

Only one entry on a fieri facias is required. Carmichael v. Strawn, 27 Ga. 341 (1859) (decided under former law).

Constable to make entry of no personalty. — Sheriff's deed void if constable making levy fails to make entry of no personalty. Robinson v. Burge, 71 Ga. 526 (1883) (decided under former law).

Must allege that defendant had no property. — It is no traverse of entry to simply allege that no search was made, in order to make an issue it must be averred in the traverse that the defendant did have personal property on which to levy the fieri facias. Runyan v. Hobgood, 140 Ga. 375, 78 S.E. 1075 (1913) (decided under former law).

Correct entry presumed to have been made if execution lost and return to sheriff proved. Doe v. Biggers, 6 Ga. 188 (1849) (decided under former law).

Officer liable for damages when the officer violates the officer's duty by refusing to levy on property pointed out by the defendant, but this will not invalidate the levy. Thompson v. Mitchell, 73 Ga. 127 (1884); Barfield v. Barfield, 77 Ga. 83 (1886); Hollinshed v. Woodard, 124 Ga. 721, 52 S.E. 815 (1906) (decided under former law).

Presumption that officer acted properly. — Return of an officer should receive every reasonable intendment and construction, and if there is a question whether the officer has acted officially, the construction given the officer's acts should be that most favorable to the officer's having discharged the officer's duty. Burden v. Gates, 188 Ga. 284, 3 S.E.2d 679 (1939) (decided under former Code 1933, § 24-1413).

Sufficiency of affidavit of illegality. — Affidavit of illegality based on falsity of

Levy on Land and Entry on Execution (Cont'd)

entry should distinctly aver that defendant had personal property at time of levy, and that it was subject. McKoy v. Edwards, 65 Ga. 328 (1880) (decided under former law).

Transfer affidavits larger than jurisdictional amounts. — Affidavits of illegality filed to levy ordinary executions for amounts larger than the jurisdictional amount are returnable to other courts having jurisdiction. Scott v. Mayor of Mount Airy, 186 Ga. 652, 198 S.E. 693 (1938) (decided under former Code 1933, § 24-1419).

Levying officer must return papers to magistrate court. — If an execution issues from a justice of the peace court (now magistrate court) and is levied upon land, and an affidavit of illegality is filed, it is the duty of the levying officer to return the papers to the justice of the peace court (now magistrate court) for trial, rather than to the superior court, which is without jurisdiction in such a case. Scott v. Mayor of Mount Airy, 186 Ga. 652, 198 S.E. 693 (1938) (decided under former Code 1933, § 24-1419).

Levy not void for failure to file bond. — Failure of a person appointed to fill a vacancy to file a bond will not render a levy made by that person void. Gunn v. Tackett, 67 Ga. 725 (1881) (decided under former Code 1873, § 465).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, §§ 24-814, 24-815, and 24-817 are included in the annotations for this Code section.

"Law enforcement officer" includes constables. — Since, although constables do not have general police powers, constables do have the power to arrest with a warrant and to execute and return all warrants, summons, executions, and other processes directed to the constables by the magistrate court, and constables are to perform all other duties required of the constables by law or which relate to the constable's offices, under O.C.G.A. §§ 15-10-102 and 15-10-103, one can logically conclude that the term "law enforcement officer" as used in O.C.G.A. § 15-10-202(c) includes constables of the magistrate court. 1987 Op. Att'y Gen. No. U87-21.

Writs of fieri facias may be directed to constables. — Writs of fieri facias issued by the magistrate court may be directed to the constables of that court and, in executing these writs, constables may conduct judicial sales of personal property. 1984 Op. Att'y Gen. No. U84-36.

Constable's territorial jurisdiction to levy under an execution is limited to the county in which the constable's militia district is located. 1980 Op. Att'y Gen. No. 80-112 (decided under former Code 1933, § 24-817).

State court judge not to interfere with constable. — State court judge cannot legally interfere with performance of duty by constable. 1971 Op. Att'y Gen. No. U71-44 (decided under former Code 1933, § 24-817).

Constable has no general duty to enforce criminal laws. — Constable or a small claims court (now magistrate court) bailiff is not charged with the general duty of enforcing the criminal laws of this state. 1975 Op. Att'y Gen. No. U75-17 (decided under former Code 1933, § 24-817).

Constable may use marked automobile that is equipped with colored light mounted on cab and a siren if the constable can do so without holding oneself out to the public as a county police officer. 1969 Op. Att'y Gen. No. 69-214 (decided under former Code 1933, § 24-817).

Constable failing to pay over any money coming into the constable's possession may be ruled for contempt either in superior court or in the justice of peace court. 1952-53 Op. Att'y Gen. p. 33 (decided under former Code 1933, §§ 24-814 and 24-815).

15-10-103. Constables' power to arrest.

Constables shall exercise the power of arrest only with a warrant or at the direction of and in the presence of a magistrate or the judge of another court.

History. — Code 1981, § 15-10-103, enacted by Ga. L. 1983, p. 884, § 2-1.

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarities of the statutory provisions, opinions under former Code 1933, §§ 24-817, 24-820 and 24-822 are included in the annotations for this Code section.

"Law enforcement officer" includes constables. — Since, although constables do not have general police powers, constables do have the power to arrest with a warrant and to execute and return all warrants, summons, executions, and other processes directed to the constables by the magistrate court, and constables are to perform all other duties required of the constables by law or which relate to the constable's offices, under O.C.G.A. §§ 15-10-102 and 15-10-103, one can logically conclude that the term "law enforcement officer" as used in O.C.G.A. § 15-10-202(c) includes constables of the magistrate court. 1987 Op. Att'y Gen. No. U87-21.

Extent of arrest powers accorded to constables. — Constable is grouped with other "officers" as to arrest powers under former Code 1933, § 27-207 and is required to execute all warrants directed to the constable by lawful authority under former Code 1933, § 24-817; logically, the constable would be authorized to use such force as is necessary to carry out the constable's duties to the same extent as are other officers when serving arrest warrants or lawfully making an arrest without a warrant, but the constable does not possess general police powers, and may carry a pistol only if licensed to do so. 1978 Op. Att'y Gen. No. U78-30 (decided under former Code 1933, § 24-817).

Constable is authorized to charge and collect fee for serving criminal warrant by arresting the person named in the warrant as a defendant. 1958-59 Op. Att'y Gen. p. 44 (decided under former Code 1933, § 24-820).

No authority to enforce motor vehicle laws without warrant. — In the absence of a warrant, a constable does not have authority to enforce the motor vehicle laws of this state. 1975 Op. Att'y Gen. No. U75-56 (decided under former Code 1933, § 24-822).

15-10-104. Exemption of constables from peace officer training and employment laws.

Constables shall not be subject to Chapter 8 of Title 35 relating to employment and training of peace officers.

History. — Code 1981, § 15-10-104, enacted by Ga. L. 1983, p. 884, § 2-1.

15-10-105. Selection of clerk; compensation; eligibility.

(a) The General Assembly may provide by local law for the superior court clerk or state court clerk to serve as clerk of magistrate court or for the selection of some other person as the clerk of magistrate court

and for the compensation of the clerk of magistrate court. In the absence of local law, the selection and compensation of the clerk of magistrate court shall be as provided by subsections (b), (c), and (d) of this Code section.

(b) With the consent of the clerk of superior court, the county governing authority may provide that the clerk of superior court shall serve as clerk of magistrate court and shall be compensated for his or her service as clerk of magistrate court in an amount not less than $323.59 per month. With the consent of the clerk of the superior court and clerk of the state court, the county governing authority may provide that the state court clerk shall serve as clerk of magistrate court and shall be compensated for his or her service as clerk of magistrate court in an amount not less than $323.59 per month. Such compensation shall be retained by the clerk of superior court as his or her personal funds without regard to whether he or she is otherwise compensated on a fee basis or salary basis or both.

(c) If the clerk of superior court or the clerk of state court does not serve as clerk of magistrate court, then the county governing authority may provide for the appointment by the chief magistrate of a clerk to serve at the pleasure of the chief magistrate. A clerk of magistrate court so appointed shall be compensated in an amount fixed by the county governing authority at not less than $323.59 per month.

(d) If there is no clerk of magistrate court, the chief magistrate or some other magistrate appointed by the chief magistrate shall perform the duties of clerk. A chief magistrate performing the duties of clerk, or another magistrate appointed by the chief magistrate to perform the duties of clerk, shall receive, in addition to any other compensation to which he or she is entitled, compensation for performing the duties of clerk, the amount of which compensation shall be fixed by the county governing authority at not less than $323.59 per month.

(e) The compensation of the clerk or magistrate performing the duties of clerk shall be paid in equal monthly installments from county funds.

(f) The clerk shall be required to be at least 18 years of age and shall possess a high school diploma or its equivalent. The clerk shall not be subject to a residency requirement.

(g) In any case any magistrate may perform any duty to be performed by the clerk.

History. — Code 1981, § 15-10-105, enacted by Ga. L. 1983, p. 884, § 2-1; Ga. L. 1986, p. 701, § 6; Ga. L. 1987, p. 364, § 1; Ga. L. 1993, p. 1061, § 1; Ga. L. 1998, p. 1159, § 13; Ga. L. 2001, p. 902, § 10; Ga. L. 2006, p. 568, § 7/SB 450; Ga. L. 2020, p. 493, § 15/SB 429.

The 2020 amendment, effective July 29, 2020, part of an Act to revise, modernize, and correct the Code, in subsection

(b), in the first sentence, revised punctuation and substituted "his or her service" for "his or her services".

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1993, "superior court and clerk" was substituted for "Superior Court and Clerk" near the beginning of the second sentence in subsection (b).

Law reviews. — For annual survey article discussing local government law, see 51 Mercer L. Rev. 397 (1999).

JUDICIAL DECISIONS

Constitutionality. — As the constitution permits selection and terms of offices of magistrate judges to be varied by local law, the provisions of O.C.G.A. §§ 15-10-20, 15-10-23, 15-10-100, 15-10-105 and Ga. L. 1983, p. 4027, are not unconstitutional. In re Magistrate Court, 262 Ga. 334, 418 S.E.2d 42 (1992).

Chief magistrate was entitled to the salary provided by law for the chief magistrate position, and not to a higher judicial salary based upon an erroneously computed qualifying fee which the chief magistrate had paid prior to running for office. Rowland v. Tattnall County, 260 Ga. 109, 390 S.E.2d 217 (1990).

Authority to appoint clerk. — Magistrate was not entitled to mandamus relief requiring the magistrate's restoration to the position of clerk of the magistrate court since the trial court lacked the authority to supercede the lawful acts of the board of county commissioners. Jennings v. McIntosh County Bd. of Comm'rs, 276 Ga. 842, 583 S.E.2d 839 (2003).

OPINIONS OF THE ATTORNEY GENERAL

Supplement to clerks serving as magistrate court clerks. — Superior court clerks also serving as magistrate court clerks are entitled to a minimum supplement of $200.00 pursuant to subsection (b) of O.C.G.A. § 15-10-105 but are not entitled to an additional supplement under O.C.G.A. § 15-6-89, which grants to superior court clerks a minimum salary supplement for additional service as clerk of one of several enumerated courts including "county" and "civil" courts, but which does not enumerate magistrate courts. 1984 Op. Att'y Gen. No. U84-42.

15-10-105.1. Powers and duties of clerk.

(a) The duties of the clerk shall be as assigned by the chief magistrate.

(b) The authority of the clerk of magistrate court shall include the power:

(1) To administer oaths and take affidavits in all cases permitted by law or where such authority is not confined to some other officer;

(2) To receive the amounts of all costs due in the court of which he is clerk and to receive other sums whenever required to do so by law or by order of the judge, and not otherwise; and

(3) To advertise under the same rules and restrictions as apply to sheriffs.

History. — Code 1981, § 15-10-105.1, enacted by Ga. L. 1986, p. 701, § 7.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1986, "he is

clerk" was substituted for "they are clerks" in paragraph (b)(2).

JUDICIAL DECISIONS

Cited in Bowen v. Ball, 215 Ga. App. 640, 451 S.E.2d 502 (1994).

15-10-105.2. Monthly contingent expense allowance for the operation of the magistrate court.

In addition to any salary, fees, or expenses now or hereafter provided by law, the governing authority of each county is authorized to provide as contingent expenses for the operation of the office of clerk of the magistrate court, and payable from county funds, a monthly expense allowance of not less than the amount fixed in the following schedule:

Population	Minimum Monthly Expenses
0 — 11,889	$ 100.00
11,890 — 74,999	200.00
75,000 — 249,999	300.00
250,000 — 499,999	400.00
500,000 or more	500.00

History. — Code 1981, § 15-10-105.2, enacted by Ga. L. 2001, p. 902, § 11; Ga. L. 2015, p. 5, § 15/HB 90.

15-10-106. Appointment of other court personnel; compensation.

If necessary, the county governing authority may provide for the appointment by the chief magistrate of secretaries and other personnel to assist the magistrates or clerk or both. Personnel so appointed shall serve at the pleasure of the chief magistrate. The compensation of such personnel shall be fixed by the county governing authority and paid from county funds.

History. — Code 1981, § 15-10-106, enacted by Ga. L. 1983, p. 884, § 2-1.

ARTICLE 7

TRANSITIONAL PROVISIONS

Law reviews. — For article, "Courts: Juvenile Justice Reform," see 30 Ga. St. U.L. Rev. 63 (2013).

15-10-120. Certain officials to become magistrates; term of office.

Reserved. Repealed by Ga. L. 2019, p. 658, § 4/HB 257, effective July 1, 2019.

Editor's notes. — This Code section was based on Code 1981, § 15-10-120, enacted by Ga. L. 1983, p. 884, § 2-1.

15-10-121. Transfer of pending cases to magistrate courts.

On July 1, 1983, any matter pending in the court of an officer referred to in Code Section 15-10-120 shall by operation of law be transferred to the magistrate court of the same county. Such pending matters shall be decided by the magistrate court of the county even if the magistrate court would not otherwise have jurisdiction over the case.

History. — Code 1981, § 15-10-121, enacted by Ga. L. 1983, p. 884, § 2-1.

15-10-122. Courts exempt from chapter.

This chapter, the Act enacting this chapter, and future Acts amending this chapter shall not be construed as laws affecting municipal courts, county recorder's courts, or the civil courts of Richmond and Bibb counties.

History. — Code 1981, § 15-10-122, enacted by Ga. L. 1983, p. 884, § 2-1.

15-10-123. Local law references to justices of the peace deemed references to magistrates.

Unless otherwise apparent from the context, references in local laws to justices of the peace and their courts shall be deemed on and after July 1, 1983, to refer to magistrates and magistrate courts.

History. — Code 1981, § 15-10-123, enacted by Ga. L. 1983, p. 884, § 2-1.

ARTICLE 8

MAGISTRATE TRAINING

Law reviews. — For article, "Courts: Juvenile Justice Reform," see 30 Ga. St. U.L. Rev. 63 (2013).

15-10-130. Short title.

This article shall be known and may be cited as "The Georgia Magistrate Courts Training Council Act."

History. — Code 1981, § 15-10-130, enacted by Ga. L. 1983, p. 884, § 2-1.

15-10-131. Definitions.

As used in this article, the term:

(1) "Certified magistrate" means a magistrate judge who has the appropriate required certificate of training issued by the council and on file with the council or a magistrate judge who is exempt from such training by subsection (d) of Code Section 15-10-137.

(2) "Council" means the Georgia Magistrate Courts Training Council.

(3) "School" means any school, college, university, academy, or training program approved by the council and the Judicial Council of Georgia which offers basic, in-service, advanced, specialized, or continuing judicial training or a combination thereof and includes within its meaning a combination of course curriculum, instructors, and facilities which meet the standards required by the council.

History. — Code 1981, § 15-10-131, enacted by Ga. L. 1983, p. 884, § 2-1; Ga. L. 1985, p. 1416, § 1; Ga. L. 1990, p. 8, § 15.

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Editor's notes. — In light of the similarities of the statutory provisions, opinions under former Code 1933, T. 24, C. 16A and § 24-1602a are included in the annotations for this Code section.

No certificate to be issued if course not completed. — Georgia Justice (now Magistrate) Courts Training Council is not to issue certificates to judicial officers who have not completed its course of training, whether or not completion of training is a prerequisite to the collection of fees, charges, and costs by such officers. 1981 Op. Att'y Gen. No. 81-91 (decided under former Code 1933, T. 24, C. 16A).

Probate judges who hold courts of inquiry pursuant to former Code 1933, § 27-401 (see now O.C.G.A. § 17-7-20) need not obtain training and certification from the Georgia Justice (now Magistrate) Courts Training Council. 1982 Op. Att'y Gen. No. 82-69 (decided under former Code 1933, § 24-1602a).

15-10-132. Creation of Georgia Magistrate Courts Training Council.

(a) There shall be established a council which shall be known and designated as the "Georgia Magistrate Courts Training Council" and which shall be composed of the director of the Administrative Office of

the Courts or such director's designee, which member shall not be a voting member, and five elected or appointed magistrate judges or senior magistrates who shall be appointed by the president of the Council of Magistrate Court Judges, with approval of the council's executive committee, for terms of two years.

(b) Membership on the council does not constitute public office and no member shall be disqualified from holding office by reason of his membership.

(c) Members of the Georgia Justice Courts Training Council serving as of June 30, 1983, shall continue on and automatically become members of the Georgia Magistrate Courts Training Council with the same term and office as held on June 30, 1983.

History. — Code 1981, § 15-10-132, enacted by Ga. L. 1983, p. 884, § 2-1; Ga. L. 1997, p. 922, § 2; Ga. L. 1999, p. 81, § 15; Ga. L. 2011, p. 537, § 1/SB 47.

15-10-133. Oath; certificate of appointment.

Immediately and before entering upon the duties of office, the members of the Georgia Magistrate Courts Training Council shall take the oath of office and shall file the same in the office of the Judicial Council, which, upon receiving the oath of office, shall issue to each member a certificate of appointment.

History. — Code 1981, § 15-10-133, enacted by Ga. L. 1983, p. 884, § 2-1.

15-10-134. Officers; quorum; minutes; annual report.

(a) A chairman and vice chairman shall be elected at the first meeting of each calendar year.

(b) The director of the Administrative Office of the Courts or his designee shall serve as secretary to the council.

(c) A simple majority of the members of the council shall constitute a quorum for the transaction of business.

(d) The council shall maintain minutes of its meetings and such other records as it deems necessary.

(e) The council shall report at least annually to the Governor and to the General Assembly as to its activities.

History. — Code 1981, § 15-10-134, enacted by Ga. L. 1983, p. 884, § 2-1; Ga. L. 1990, p. 8, § 15.

15-10-135. Compensation and reimbursement of members.

The members of the council shall receive no salary but shall be reimbursed for their reasonable and necessary expenses actually incurred in the performance of their functions; provided, however, that such expenses shall not exceed those allowed to members of the General Assembly.

History. — Code 1981, § 15-10-135, enacted by Ga. L. 1983, p. 884, § 2-1.

15-10-136. Powers and duties.

The council shall be vested with the following functions, powers, and responsibilities:

(1) To make all the necessary rules and regulations to carry out this article;

(2) To prescribe the minimum of training hours to be completed by each magistrate or senior magistrate on an annual basis. Not less than 12 hours nor more than 20 hours shall be required in a calendar year;

(3) To cooperate with and secure the cooperation of every department, agency, or instrumentality of the state government or its political subdivisions in furtherance of the purposes of this article;

(4) To approve schools and to prescribe minimum qualifications for instructors at approved schools;

(5) To issue a certification to any magistrate judge satisfactorily complying with an approved training program established;

(6) To do any and all things necessary or convenient to enable it wholly and adequately to perform its duties and to exercise the power granted to it; and

(7) To prescribe, by rules and regulations, the minimum requirements for curricula and standards composing the initial in-service, advanced, specialized, and continuing training courses for certification.

History. — Code 1981, § 15-10-136, enacted by Ga. L. 1983, p. 884, § 2-1; Ga. L. 2011, p. 537, § 2/SB 47.

15-10-137. Training requirements of certified magistrates.

(a) In order to become certified under this article, any person who becomes a magistrate on or after July 1, 1998, shall satisfactorily

complete 80 hours of training specified by the council concerning the performance of his or her duties during the first two years after becoming a magistrate.

(b) Any person who becomes a magistrate on or after July 1, 1998, shall complete during the initial year of service as a magistrate a program of orientation activities established by the council and conducted under the guidance and supervision of an experienced adviser or mentor magistrate or judge.

(c)(1) In order to maintain the status of a certified magistrate judge, each person certified as such shall complete the minimum number of training hours required by the council per annum during each calendar year after the year of his or her initial certification in which he or she serves as a magistrate judge.

(2) If a magistrate or senior magistrate completes training hours in excess of the number of hours required by the council, credit for the training so completed, not to exceed six hours, shall be carried over and applied to the next calendar year.

(d) Notwithstanding any other provision of this article, any magistrate who is also an active member of the State Bar of Georgia shall be certified as a certified magistrate by the council without being required to complete any training otherwise required by subsection (a) of this Code section but shall be required to complete the mentor program of subsection (b) of this Code section within 12 months of taking office as magistrate and the annual training required by subsection (c) of this Code section, commencing with the first full calendar year following the year in which such a magistrate takes office.

History. — Code 1981, § 15-10-137, enacted by Ga. L. 1983, p. 884, § 2-1; Ga. L. 1984, p. 22, § 15; Ga. L. 1984, p. 1096, § 12; Ga. L. 1985, p. 1416, § 2; Ga. L. 1990, p. 8, § 15; Ga. L. 1998, p. 185, § 1; Ga. L. 2002, p. 1073, § 1; Ga. L. 2009, p. 624, § 2/SB 199; Ga. L. 2011, p. 537, § 3/SB 47.

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Credit may not be given for certification training completed prior to July 1, 1983. 1983 Op. Att'y Gen. No. 83-59.

ARTICLE 9

MAGISTRATE COURT SERVING AS MUNICIPAL COURT

Law reviews. — For annual survey of local government law, see 38 Mercer L. Rev. 289 (1986). For article, "Courts: Juvenile Justice Reform," see 30 Ga. St. U.L. Rev. 63 (2013).

15-10-150. Contract with municipality.

The governing authority of any county may contract with the governing authority of any municipality within the county for the county to furnish municipal court services to the municipality as authorized by this article; and the governing authorities of municipalities are likewise authorized to enter into such contracts with county governing authorities.

History. — Code 1981, § 15-10-150, enacted by Ga. L. 1986, p. 787, § 1.

15-10-151. Services provided through office of magistrate.

Any contract entered into pursuant to this article shall provide that the county shall furnish municipal court services to the municipality through the officers, employees, and facilities of the magistrate court of the county. Any contract so entered into shall not become effective unless it is approved by the chief magistrate then in office; and no such contract shall extend beyond the term of the chief magistrate then in office.

History. — Code 1981, § 15-10-151, enacted by Ga. L. 1986, p. 787, § 1.

15-10-152. Municipal jurisdiction.

When a contract entered into pursuant to this article has become effective, the judges of the magistrate court shall have full authority to act as judges of the municipal court of the municipality; and the other officers and personnel of the magistrate court shall have full authority to act as officers and personnel of the municipal court.

History. — Code 1981, § 15-10-152, enacted by Ga. L. 1986, p. 787, § 1.

15-10-153. Styling of municipal court judges, officers, pleadings, and records.

When acting as officers of the municipal court all judges and other officers of the magistrate court shall be styled as judges and officers of the municipal court; and all pleadings, process, and papers of the municipal court shall be styled as such and not as pleadings, process, and papers of the magistrate court. The dockets and other records of the municipal court shall be kept separately from those of the magistrate court.

History. — Code 1981, § 15-10-153, enacted by Ga. L. 1986, p. 787, § 1.

15-10-154. Applicability of municipal charter and ordinances.

Any limitations upon the punishment which may be imposed for violations of municipal ordinances which are contained in the charter of the municipality shall continue to control in municipal courts operated under this article, and if no such limitation exists the maximum punishment imposed shall not exceed a fine of $1,000.00 or six months' imprisonment or both, unless some other general law authorizes greater punishment. Other charter provisions not in conflict with this article shall continue to apply in municipal courts operated under this article.

History. — Code 1981, § 15-10-154, enacted by Ga. L. 1986, p. 787, § 1.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1986, "six" was substituted for "6" in the first sentence.

15-10-155. Exceptions.

(a) Except as provided in subsection (b) of this Code section, the authority granted to municipalities by this article shall not apply to:

(1) A municipality whose charter does not authorize a municipal court;

(2) A municipality whose charter provides for the election, as judge or judges and not as members of the municipal governing authority, of the judge or judges of a court having jurisdiction over municipal ordinance violations; or

(3) A municipality whose charter expressly provides that the municipality shall not have the authority granted by this article.

(b) The authority granted to municipalities by this article shall, notwithstanding the provisions of subsection (a) of this Code section, apply to any municipality if as of June 30, 1983, jurisdiction over violation of its ordinances was by law vested in a magistrate court in existence on that date.

History. — Code 1981, § 15-10-155, enacted by Ga. L. 1986, p. 787, § 1; Ga. L. 1987, p. 3, § 15.

ARTICLE 10

DEPOSIT ACCOUNT FRAUD PROSECUTIONS

Editor's notes. — Ga. L. 1987, p. 1032, § 3, not codified by the General Assembly, provided that this article applies to prosecutions commenced on or after July 1, 1987.

Law reviews. — For article, "Courts: Juvenile Justice Reform," see 30 Ga. St. U.L. Rev. 63 (2013).

15-10-200. Applicability; penalty.

This article governs trials of misdemeanor violations of Code Section 16-9-20, relating to deposit account fraud, which violations shall be punishable as provided in subsection (b) of Code Section 16-9-20.

History. — Code 1981, § 15-10-200, enacted by Ga. L. 1987, p. 1032, § 2; Ga. L. 1994, p. 1787, § 2.

15-10-201. Jury trials.

There shall be no jury trials in the magistrate court. Any person charged with one or more misdemeanor violations of Code Section 16-9-20 may, at any time before trial, demand that the case be removed to the state court of the county or to the superior court of the county if there is no state court. Such demand shall be written. Upon such written demand the court shall grant the demand. Failure to so demand removal of the case shall constitute a waiver of any right to trial by jury which the defendant may otherwise have had and of any other right which could have been secured by such a demand.

History. — Code 1981, § 15-10-201, enacted by Ga. L. 1987, p. 1032, § 2; Ga. L. 1988, p. 13, § 15.

15-10-202. Procedure.

(a) Prosecution for a misdemeanor violation of Code Section 16-9-20 may proceed by arrest, as provided in Chapter 4 of Title 17, and an accusation, as provided in Code Section 17-7-71, or by citation.

(b) Each citation shall be based upon an affidavit as in the issuance of an arrest warrant and said citation shall state the time and place at which the accused is to appear for trial, shall identify the offense with which the accused is charged, shall have an identifying number by which it shall be filed with the court, shall indicate the identity of the accused and the date of service, and shall be signed by a judge or clerk of the magistrate court.

(c) Prosecutions upon citations shall be commenced by the completion and signing of the citation by a judge or clerk of the magistrate court and service of the citation by a law enforcement officer. A copy of the citation shall be personally served upon the accused and the original shall promptly be filed with the court.

(d) If the prosecution is proceeding upon citation, the accused shall not be arrested prior to the time of trial; but any defendant who fails to appear for trial shall be arrested thereafter on the warrant of a judge of the magistrate court and required to post a bond for his future appearance. If the accused demands removal of the case to the state or superior court, the magistrate court may require that the accused post a bond for his future appearance in the state or superior court.

(e) The prosecuting attorney of the court in which the case would have been tried if a demand for removal had been made shall be responsible for the prosecution of the case in the magistrate court.

History. — Code 1981, § 15-10-202, enacted by Ga. L. 1987, p. 1032, § 2; Ga. L. 2000, p. 880, § 3.

Law reviews. — For article, "Should Georgia Change Its Misdemeanor Arrest Laws to Authorize Issuing More Field Citations? Can Alternative Arrest Process Help Alleviate Georgia's Jail Overcrowding and Reduce the Time Arresting Officers Expend Processing Nontraffic Misdemeanor Offenses?," see 22 Ga. St. U.L. Rev. 313 (2005).

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"Law enforcement officer" includes constables. — Since, although constables do not have general police powers, the constables do have the power to arrest with a warrant and to execute and return all warrants, summons, executions, and other processes directed to the constable by the magistrate court, and constables are to perform all other duties required of the constable by law or which relate to the constable's offices, under O.C.G.A. §§ 15-10-102 and 15-10-103, one can logically conclude that the term "law enforcement officer" as used in subsection (c) of O.C.G.A. § 15-10-202 includes constables of the magistrate court, and, therefore, constables can serve citations pursuant to that subsection. 1987 Op. Att'y Gen. No. U87-21.

Commencement of prosecution. — Prosecution for a violation of O.C.G.A. § 16-9-20 is commenced within the meaning of the statute of limitations on misdemeanors, O.C.G.A. § 17-3-1(d), when a citation meets the requirements contained in subsections (b) and (c) of O.C.G.A. § 15-10-202, including the signature of the judge or clerk of the magistrate court and personal service of the citation by a law enforcement officer. 1998 Op. Att'y Gen. No. 98-1.

15-10-203. Optional procedure for forfeiture of bonds on misdemeanor deposit account fraud violations; failure to appear at trial; bench warrants; no contest cash bonds and related schedules.

(a) The chief magistrate of each county may by written order establish a schedule of no contest cash bonds which the accused may

post when arrested or accused by warrant or citation pursuant to subsection (d) of Code Section 15-10-202. The schedule of no contest cash bond amounts shall be sufficient to cover court costs, minimum fines as set forth in Code Section 16-9-20, and restitution in the full amount of the dishonored check. At the time of posting a no contest cash bond, the receipt shall contain the following language: "IF YOU GIVE A NO CONTEST CASH BOND AND FAIL TO APPEAR FOR TRIAL, THIS BOND MAY BE FORFEITED AND, IF SO FORFEITED, SHALL CONSTITUTE A MISDEMEANOR GUILTY PLEA AND A WAIVER OF CERTAIN CONSTITUTIONAL RIGHTS," which shall be acknowledged by the person arrested.

(b) A person arrested or accused by warrant or citation pursuant to subsection (d) of Code Section 15-10-202 who does not wish to post a no contest cash bond may post a property bond or standard appearance bond to assure his or her future appearance in court.

(c) If a person who gives a no contest cash bond fails subsequently to appear for trial, such failure shall constitute a guilty plea and the no contest cash bond shall be forfeited, unless the court proceeds under the provisions of subsection (d) of this Code section. It shall not be necessary for the state to take any further action to forfeit the no contest cash bond. Forfeiture of a no contest cash bond shall be considered to constitute imposition and payment of a fine and restitution and, if so considered, shall be a bar to a subsequent prosecution of the accused for the violation in accordance with Code Section 16-9-20.

(d) If the judge determines at the time of the nonappearance at trial of the defendant in his or her sole discretion that substantial justice will not be accomplished by the forfeiture of the no contest cash bond amount and the disposition of the charges with prejudice, the posting of the no contest cash bond shall not be considered a plea of guilty nor constitute a bar to a subsequent prosecution of the defendant for the violation, and any moneys posted under the no contest cash bond shall be held in the court's registry pending subsequent prosecution, and the defendant shall be served with a citation for a reasonable future appearance date, and, in default of the defendant's appearance, the court shall issue a bench warrant for the defendant's arrest.

(e) Upon a conviction under a subsequent prosecution, the proceeds of any no contest cash bond shall be applied and distributed toward restitution, fine, and court costs imposed by the court.

(f) If a defendant posts a property bond or standard appearance bond and thereafter fails to appear at the designated time, a bench warrant shall be issued for such person and the bond shall be forfeited as provided by Code Section 17-6-17.

History. — Code 1981, § 15-10-203, enacted by Ga. L. 1994, p. 865, § 1.

Law reviews. — For note on the 1994 enactment of this Code section, see 11 Ga. St. U.L. Rev. 91 (1994).

ARTICLE 11

SENIOR MAGISTRATES

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1993, Article 11, as enacted by Ga. L. 1993, p. 982, § 5, was redesignated as Article 12 (§ 15-10-240) since Ga. L. 1993, p. 910, § 2, also enacted an Article 11.

Law reviews. — For article, "Courts: Juvenile Justice Reform," see 30 Ga. St. U.L. Rev. 63 (2013).

15-10-220. Creation of office; qualifications.

There is created the office of senior magistrate. Subject to the approval of the governing authority, any chief magistrate of this state may appoint to the office of senior magistrate any retired chief magistrate, magistrate, or judge who prior to retirement served at least eight consecutive years as chief magistrate or magistrate, or a combination of such offices, or served eight consecutive years as a judge of a court of record or juvenile court, or a combination of such offices. A senior magistrate need not be a member of the State Bar of Georgia, unless required by local law. The term of an appointment made pursuant to this Code section shall not exceed the current term of the appointing officer.

History. — Code 1981, § 15-10-220, enacted by Ga. L. 1993, p. 910, § 2.

15-10-221. Assumption of duties and powers of magistrate.

Upon the request of any chief magistrate of this state, a senior magistrate may discharge all of the duties of a magistrate and may assume and exercise all of the jurisdiction, power, and authority of a magistrate.

History. — Code 1981, § 15-10-221, enacted by Ga. L. 1993, p. 910, § 2.

15-10-222. Oath of office.

Before entering on the duties of his or her office, a senior magistrate shall subscribe before the judge of the probate court in which he or she is first appointed the oath prescribed in Code Section 45-3-1 and the following oath:

"I swear or affirm that I will duly and faithfully perform all the duties required of me as senior magistrate and that I will support the Constitution of the United States and the Constitution of Georgia."

History. — Code 1981, § 15-10-222, enacted by Ga. L. 1993, p. 910, § 2.

15-10-223. Training.

In order to maintain the status of senior magistrate, a senior magistrate shall complete the hours of training as required by the Georgia Magistrate Courts Training Council as provided for in subsection (c) of Code Section 15-10-137 in each calendar year in which he or she serves as a senior magistrate.

History. — Code 1981, § 15-10-223, enacted by Ga. L. 1993, p. 910, § 2; Ga. L. 2011, p. 537, § 4/SB 47.

ARTICLE 12

REMITTANCE OF INTEREST FROM FUNDS

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1993, this article originally enacted as Article 11 (§ 15-10-220) was redesignated as Article 12 (§ 15-10-240) since Ga. L. 1993, p. 910, § 2, also enacted an Article 11.

Law reviews. — For article, "Courts: Juvenile Justice Reform," see 30 Ga. St. U.L. Rev. 63 (2013).

15-10-240. Remittance of interest from funds.

When funds are paid into the court registry, the clerk shall deposit such funds in interest-bearing trust accounts, and the interest from those funds shall be remitted to the Georgia Superior Court Clerks' Cooperative Authority in accordance with the provisions of subsections (c) through (i) of Code Section 15-6-76.1 for distribution to the Georgia Public Defender Council.

History. — Code 1981, § 15-10-240, enacted by Ga. L. 1993, p. 982, § 5; Ga. L. 2003, p. 191, § 5; Ga. L. 2008, p. 846, § 8/HB 1245; Ga. L. 2015, p. 519, § 8-5/HB 328.

Law reviews. — For note on the 2003 amendment to this Code section, see 20 Ga. St. U.L. Rev. 105 (2003).

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Interest remitted to Georgia Indigent Defense Council. — When clerks of superior court, state court, and magistrate court hold funds paid in for security or judicial disposition, the funds must be placed in interest-bearing trust accounts,

and the interest remitted to the Georgia Indigent Defense Council. 1997 Op. Att'y Gen. No. U97-21.

ARTICLE 13

TRIALS OF CERTAIN MISDEMEANORS

Law reviews. — For article, "Courts: Juvenile Justice Reform," see 30 Ga. St. U. L. Rev. 63 (2013).

15-10-260. Jurisdiction; penalties.

(a) This article governs trials of misdemeanor violations of Code Sections 16-13-30, 16-13-2, 16-8-14, 16-8-14.1, 3-3-23, and 16-7-21.

(b) Magistrate courts are authorized to conduct trials and impose sentences for violations of misdemeanors specified in subsection (a) of this Code section; provided, however, that the violation must have occurred in the unincorporated area of the county.

(c) A person convicted of violation of a misdemeanor specified in subsection (a) of this Code section shall be punished as provided in paragraphs (1) through (4) of this subsection as follows:

(1) For possession of less than one ounce of marijuana, as provided in subsection (b) of Code Section 16-13-2;

(2) For misdemeanor theft by shoplifting, as provided in paragraph (1) of subsection (b) of Code Section 16-8-14;

(3) For misdemeanor refund fraud, as provided in paragraph (1) of subsection (b) of Code Section 16-8-14.1;

(4) For furnishing alcoholic beverages to, and purchase and possession of alcoholic beverages by, a person under 21 years of age, as provided in Code Section 3-3-23.1; and

(5) For criminal trespass, as provided in subsection (d) of Code Section 16-7-21.

(d) The jurisdiction of magistrate courts to try and dispose of the misdemeanor violations enumerated in subsection (a) of this Code section shall be concurrent with the jurisdiction of any other courts having jurisdiction to try and dispose of such cases.

History. — Code 1981, § 15-10-260, enacted by Ga. L. 2000, p. 1155, § 3; Ga. L. 2012, p. 899, § 8-2/HB 1176; Ga. L. 2014, p. 404, § 2-1/SB 382.

Editor's notes. — Ga. L. 2012, p. 899, § 9-1(a)/HB 1176, not codified by the General Assembly, provides: "This Act shall become effective on July 1, 2012, and shall apply to offenses which occur on or after that date. Any offense occurring before July 1, 2012, shall be governed by the statute in effect at the time of such offense

and shall be considered a prior conviction for the purpose of imposing a sentence that provides for a different penalty for a subsequent conviction for the same type of offense, of whatever degree or level, pursuant to this Act."

Ga. L. 2014, p. 404, § 3-1/SB 382, not codified by the General Assembly, provides, in part, that this Act shall apply to all conduct occurring on or after July 1, 2014.

Law reviews. — For article, "Should Georgia Change Its Misdemeanor Arrest Laws to Authorize Issuing More Field Citations? Can Alternative Arrest Process Help Alleviate Georgia's Jail Overcrowding and Reduce the Time Arresting Officers Expend Processing Nontraffic Misdemeanor Offenses?," see 22 Ga. St. U.L. Rev. 313 (2005). For article on the 2012 amendment of this Code section, see 29 Ga. St. U.L. Rev. 290 (2012).

15-10-261. Waiver of jury trial.

There shall be no jury trials in the magistrate court. A magistrate court shall not have the power to dispose of the misdemeanor offenses enumerated in subsection (a) of Code Section 15-10-260 unless the defendant shall first waive in writing a trial by jury. If the defendant does not waive a trial by jury, the defendant shall notify the court and, if probable cause exists, the defendant shall be immediately bound over to a court in the county having jurisdiction to try the offense wherein a jury may be impaneled.

History. — Code 1981, § 15-10-261, enacted by Ga. L. 2000, p. 1155, § 3.

15-10-262. Prosecutorial procedure.

(a) Prosecution for misdemeanor violations authorized in this article may proceed by citation, summons, arrest, citation and arrest, or by arrest warrant as provided in Chapter 4 of Title 17, or by an accusation as provided in Code Section 17-7-71.

(b) The solicitor-general of counties having solicitors-general, or the county attorney or another attorney designated by the county governing authority, may act as the prosecuting attorney of the magistrate court in proceedings under this article.

History. — Code 1981, § 15-10-262, enacted by Ga. L. 2000, p. 1155, § 3; Ga. L. 2012, p. 775, § 15/HB 942.

Law reviews. — For article, "Should Georgia Change Its Misdemeanor Arrest Laws to Authorize Issuing More Field Citations? Can Alternative Arrest Process Help Alleviate Georgia's Jail Overcrowding and Reduce the Time Arresting Officers Expend Processing Nontraffic Misdemeanor Offenses?," see 22 Ga. St. U.L. Rev. 313 (2005).

15-10-263. No contest cash bonds; other bonds.

(a) The chief magistrate of each county may by written order establish a schedule of no contest cash bonds which the accused may post when arrested or accused by warrant or citation pursuant to this

article. The schedule of no contest cash bond amounts shall be sufficient to cover court costs and minimum fines as set forth in the Code section applicable to the alleged offense. At the time of posting a no contest cash bond, the receipt shall contain the following language: "IF YOU GIVE A NO CONTEST CASH BOND AND FAIL TO APPEAR FOR TRIAL, THIS BOND MAY BE FORFEITED AND, IF SO FORFEITED, SHALL CONSTITUTE A MISDEMEANOR GUILTY PLEA AND A WAIVER OF CERTAIN CONSTITUTIONAL RIGHTS," which shall be acknowledged by the person arrested.

(b) A person arrested or accused by warrant or citation pursuant to this article who does not wish to post a no contest cash bond may post a property bond or standard appearance bond to assure his or her future appearance in court.

(c) If a person who gives a no contest cash bond fails subsequently to appear for trial, such failure shall constitute a guilty plea and the no contest cash bond shall be forfeited, unless the court proceeds under the provisions of subsection (d) of this Code section. It shall not be necessary for the state to take any further action to forfeit the no contest cash bond. Forfeiture of a no contest cash bond shall be considered to constitute imposition and payment of a fine and, if so considered, shall be a bar to a subsequent prosecution of the accused for the violation.

(d) If the judge determines at the time of the nonappearance at trial of the defendant in his or her sole discretion that substantial justice will not be accomplished by the forfeiture of the no contest cash bond amount and the disposition of the charges with prejudice, the posting of the no contest cash bond shall not be considered a plea of guilty nor constitute a bar to a subsequent prosecution of the defendant for the violation, and any moneys posted under the no contest cash bond shall be held in the court's registry pending subsequent prosecution, and the defendant shall be served with a citation for a reasonable future appearance date, and, in default of the defendant's appearance, the court shall issue a bench warrant for the defendant's arrest.

(e) Upon a conviction under a subsequent prosecution, the proceeds of any no contest cash bond shall be applied and distributed toward the fine and court costs imposed by the court.

(f) If a defendant posts a property bond or standard appearance bond and thereafter fails to appear at the designated time, a bench warrant shall be issued for such person and the bond shall be forfeited as provided by Code Section 17-6-17.

History. — Code 1981, § 15-10-263, enacted by Ga. L. 2000, p. 1155, § 3.

CHAPTER 11

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Cross references. — Interstate Compact for Juveniles, T. 49, C. 4B.

Editor's notes. — Ga. L. 2013, p. 294, § 5-1/HB 242, not codified by the General Assembly, provides that: "This Act shall become effective on January 1, 2014, and shall apply to all offenses which occur and juvenile proceedings commenced on and after such date. Any offense occurring before January 1, 2014, shall be governed by the statute in effect at the time of such offense and shall be considered a prior adjudication for the purpose of imposing a disposition that provides for a different penalty for subsequent adjudications, of whatever class, pursuant to this Act. The enactment of this Act shall not affect any prosecutions for acts occurring before January 1, 2014, and shall not act as an abatement of any such prosecutions."

Ga. L. 2013, p. 294, § 1/HB 242, effective January 1, 2014, repealed the Code

sections formerly codified at this chapter and enacted the current chapter. The former chapter consisted of Code Sections 15-11-1 through 15-11-3, 15-11-3.1, 15-11-4, 15-11-4.1, 15-11-5, 15-11-5.1, 15-11-6 through 15-11-9, 15-11-9.1, 15-11-10 through 15-11-17, 15-11-17.1 (Part 1 of Article 1); 15-11-18, 15-11-18.1, 15-11-19 through 15-11-24, 15-11-24.1, 15-11-24.2, 15-11-24.3, 15-11-25 through 15-11-27 (Part 2 of Article 1); 15-11-28 through 15-11-30, 15-11-30.1 through 15-11-30.5, 15-11-31 through 15-11-34 (Part 3 of Article 1); 15-11-35, 15-11-35.1, 15-11-36, 15-11-36.1, 15-11-37, 15-11-38, 15-11-38.1, 15-11-39, 15-11-39.1, 15-11-39.2, 15-11-40, 15-11-40.1, 15-11-41, 15-11-41.1, 15-11-42 through 15-11-44 (Part 4 of Article 1); 15-11-45, 15-11-46, 15-11-46.1, 15-11-47 through 15-11-49, 15-11-49.1, 15-11-50 through 15-11-53 (Part 5 of Article 1); 15-11-54, 15-11-55, 15-11-55.1, 15-11-56, 15-11-56.1, 15-11-57, 15-11-58, 15-11-58.1, 15-11-59 through 15-11-61 (Part 6 of Article 1); 15-11-62 through 15-11-64, 15-11-64.1, 15-11-64.2, 15-11-65, 15-11-66, 15-11-66.1, 15-11-67 through 15-11-73 (Part 7 of Article 1); 15-11-75 (Part 7A of Article 1); 15-11-78, 15-11-79, 15-11-79.1, 15-11-79.2, 15-11-80 through 15-11-86 (Part 8 of Article 1); 15-11-87 through 15-11-89, 15-11-89.1, 15-11-90 through 15-11-92 (Part 9 of Article 1); 15-11-93 through 15-11-106 (Article 2); 15-11-110 through 15-11-118 (Article 3); 15-11-149 through 15-11-153, 15-11-153.1, 15-11-153.2, 15-11-154, 15-11-155 (Article 4); 15-11-170 through 15-11-177 (Article 5); and 15-11-200 through 15-11-208 (Article 6) and was based on Ga. L. 1908, p. 1107, §§ 2, 6, 9; Penal Code 1910, §§ 886, 892, 893, 895; Ga. L. 1915, p. 35, §§ 1-6, 9, 11-19, 21, 22, 26, 27, 29, 30-32, 35; Ga. L. 1916, p. 58, §§ 2-5; Code 1933, §§ 24-2401—24-2406, 24-2409, 24-2411—24-2419, 24-2421, 24-2422, 24-2426; 24-2427, 24-2429—24-2432, 24-2435; 24-2442, 24A-101, 24A-201, 24A-401, 24A-301, 24A-302, 24A-501, 24A-502, 24A-601—24A-603, 24A-701, 24A-801, 24A-802, 24A-901, 24A-1001, 24A-1101, 24A-1201, 24A-1301, 24A-1401—24A-1404, 24A-1501, 24A-1601—24A-1603, 24A-1701, 24A-1702, 24A-1801, 24A-1901, 24A-2001, 24A-2002, 24A-2101, 24A-2201, 24A-2301, 24A-2301A, 24A-2302, 24A-2302A, 24A-2303, 24A-2401, 24A-2501, 24A-2502, 24A-2601, 24A-2701, 24A-2801, 24A-2901, 24A-3001—24A-3005, 24A-3101, 24A-3102, 24A-3301, 24A-3401, 24A-3401a, 24A-3501—24A-3504, 24A-3601, 24A-3701, 24A-3801, 24A-3901; Ga. L. 1935, p. 399, §§ 1, 3-7; Ga. L. 1950, p. 367, §§ 2-14, 16-19, 21, 23, 24, 26-28, 30, 33; Ga. L. 1950, p. 1107, § 19; Ga. L. 1951, p. 291, §§ 2-6, 8-15, 17, 19, 21, 22, 24, 26, 29, 30, 33; Ga. L. 1953, Nov.-Dec. Sess., p. 87, §§ 1-3; Ga. L. 1953, p. 352, § 1; Ga. L. 1955, p. 581, §§ 1, 2; Ga. L. 1955, p. 610, § 1; Ga. L. 1956, p. 69, §§ 1, 3, 6; Ga. L. 1956, p. 527, § 1; Ga. L. 1956, p. 603, § 1; Ga. L. 1956, p. 799, § 1; Ga. L. 1957, p. 307, § 1; Ga. L. 1960, p. 200, § 1; Ga. L. 1962, p. 150, § 1; Ga. L. 1962, p. 518, § 1; Ga. L. 1963, p. 621, § 1; Ga. L. 1965, p. 433, § 1; Ga. L. 1968, p. 1013, §§ 1, 2, 2A, 3-7, 9-16, 18-21; Ga. L. 1969, p. 760, § 1; Ga. L. 1971, p. 709, § 1; Ga. L. 1973, p. 579, §§ 1, 2; Ga. L. 1973, p. 882, §§ 1-9; Ga. L. 1974, p. 586, § 1; Ga. L. 1974, p. 1126, §§ 1-6, 8, 9, 15; Ga. L. 1976, p. 1064, §§ 1, 2; Ga. L. 1976, p. 1066, § 3; Ga. L. 1977, p. 181, § 1; Ga. L. 1977, p. 700, § 1; Ga. L. 1977, p. 812, § 1; Ga. L. 1977, p. 1237, §§ 1-7; Ga. L. 1978, p. 1512, §§ 1-3; Ga. L. 1978, p. 1758, § 1; Ga. L. 1979, p. 774, § 1; Ga. L. 1979, p. 1179, § 1; Ga. L. 1979, p. 1404, § 1; Ga. L. 1980, p. 416, §§ 1, 2; Ga. L. 1980, p. 1013, § 2; Ga. L. 1981, p. 862, § 1; Ga. L. 1981, p. 1390, § 1; Ga. L. 1982, p. 3, § 15; Ga. L. 1982, p. 928, §§ 1, 2; Ga. L. 1982, p. 1871, §§ 1-6; Ga. L. 1982, p. 2199, §§ 1, 2, 3; Ga. L. 1983, p. 539, § 1; Ga. L. 1983, p. 829, § 1; Ga. L. 1983, p. 1000, § 17; Ga. L. 1984, p. 22, § 15; Ga. L. 1984, p. 562, § 1; Ga. L. 1984, p. 565, § 1; Ga. L. 1984, p. 794, § 1; Ga. L. 1984, p. 894, § 1; Ga. L. 1985, p. 149, § 15; Ga. L. 1985, p. 283, § 1; Ga. L. 1985, p. 1313, §§ 1-4; Ga. L. 1986, p. 192, § 1; Ga. L. 1986, p. 277, § 1; Ga. L. 1986, p. 1017, §§ 1, 2, 4; Ga. L. 1986, p. 1097, § 1; Ga. L. 1987, p. 3, § 15; Ga. L. 1987, p. 479, § 1; Ga. L. 1987, p. 1012, § 1; Ga. L. 1987, p. 1013, §§ 1, 2; Ga. L. 1988, p. 13, § 15; Ga. L. 1988, p. 661, § 1; Ga. L. 1988, p. 1799, § 2; Ga. L. 1989, p. 46, § 1; Ga. L. 1989, p. 824, § 1; Ga. L. 1989, p. 838, § 1; Ga. L. 1989, p.

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15-11-101	15-11-302
15-11-102	None
15-11-103(a), (b), (d)	15-11-321
15-11-103(c)	15-11-320
15-11-103(e)	15-11-322
15-11-104	15-11-300
15-11-105	15-11-260
15-11-106	15-11-301
Article 3	
15-11-110	15-11-680
15-11-111	15-11-681
15-11-112	15-11-682
15-11-113	15-11-683
15-11-114	15-11-684
15-11-115	15-11-685

Former Provisions	New Chapter 11
15-11-116	15-11-686
15-11-117	15-11-687
15-11-118	15-11-688
Article 4	
15-11-149	15-11-658
15-11-150(a)	15-11-650
15-11-151	15-11-2, 15-11-651
15-11-152(a)	15-11-652
15-11-152(b)-(g)	15-11-653
15-11-153(a)-(e), (h)	15-11-655
15-11-153(g)	15-11-656
15-11-153.1	15-11-656
15-11-153.2	15-11-654
15-11-154	15-11-450, 15-11-658
15-11-155(a)-(f), (j)	15-11-451
15-11-155(d)	15-11-658
Article 5	
15-11-170	15-11-740
15-11-171	15-11-741
15-11-172	15-11-742
15-11-173	15-11-743
15-11-174	15-11-744
15-11-175	15-11-745
15-11-176	15-11-746
15-11-177	15-11-747
Article 6	
15-11-200	15-11-2
15-11-201	15-11-720
15-11-202	15-11-721
15-11-203	15-11-722
15-11-204	15-11-723
15-11-205(a), (c), (d), (e)	15-11-725
15-11-205(b)	15-11-724
15-11-206	15-11-726
15-11-207	15-11-727
15-11-208	15-11-728

New Code Sections to Former Code Sections

This table lists each Code section of Title 15, Chapter 11, effective on January 1, 2014 and comparable provisions in the version of Title 15, Chapter 11, effective until January 1, 2014.

New Chapter 11	Former Provisions
Article 1	
15-11-1	15-11-1
15-11-2	15-11-2; 15-11-9; 15-11-9.1(a); 15-11-10(a); 15-11-24.3; 15-11-30.3; 15-11-58(a); 15-11-63(a); 15-11-151; 15-11-200
15-11-3	None
15-11-4	None
15-11-5	None
15-11-6	None
15-11-7	15-11-4(a)
15-11-8	15-11-4(b)
15-11-9	15-11-4(c)
15-11-10	15-11-28(a)
15-11-11	15-11-28(c), (e)
15-11-12	None
15-11-13	15-11-30.1(a)(1)
15-11-14	None
15-11-15	15-11-30.1(b)
15-11-16	15-11-35
15-11-17	15-11-29; 15-11-41(a), (b)
15-11-18	15-11-36
15-11-19	15-11-7(a)
15-11-20	None
15-11-21	None
15-11-22	None
15-11-23	None
15-11-24	None
15-11-25	None
15-11-26	None
15-11-27	15-11-12(b)
15-11-28	15-11-7(b)
15-11-29	15-11-11
15-11-30	15-11-13
15-11-31	15-11-5
15-11-32	15-11-40
15-11-33	15-11-30.5

New Chapter 11	Former Provisions
15-11-34	15-11-50
15-11-35	15-11-3
15-11-36	15-11-8
15-11-37	15-11-71
15-11-38	15-11-10(b), (e)
15-11-39	15-11-10(c)
15-11-40	15-11-10(d)
15-11-41	None
Article 2	
15-11-50	15-11-18(a), (b), (c), (d)(3), (f), (h)
15-11-51	15-11-18(e)
15-11-52	15-11-18(d)(1), (d)(2)
15-11-53	15-11-18(g)
15-11-54	15-11-18(i)
15-11-55	15-11-18(j)
15-11-56	15-11-18(k)
15-11-57	15-11-18.1
15-11-58	15-11-19
15-11-59	15-11-20
15-11-60	15-11-21(a), (b)
15-11-61	15-11-22(a)
15-11-62	15-11-23
15-11-63	15-11-24
15-11-64	None
15-11-65	15-11-25
15-11-66	15-11-24.1
15-11-67	15-11-24.2
15-11-68	None
15-11-69	15-11-24.3
Article 3	
Part 1	
15-11-100	None
15-11-101	15-11-12(b)
15-11-102	15-11-49(b), (e)
15-11-103	15-11-6(b)
15-11-104	15-11-9(b); 15-11-9.1(j)(1)
15-11-105	15-11-9.1(d), (f), (g), (h)
15-11-106	15-11-9.1(b), (c), (j)
15-11-107	15-11-2(8)
15-11-108	None
15-11-109	15-11-55.1; 15-11-58(p)
15-11-110	15-11-56(b)
15-11-111	15-11-58(p)
15-11-112	None
15-11-113	15-11-58(k)
Part 2	
15-11-125	15-11-29(a)
Part 3	
15-11-130	15-11-14
15-11-131	15-11-15
15-11-132	None
15-11-133	15-11-45; 15-11-47(a); 15-11-49(a)
15-11-134	15-11-58(a)
15-11-135	15-11-48(e)
Part 4	
15-11-145	15-11-49(c)(3), (c)(4), (d), (e)
15-11-146	None
Part 5	
15-11-150	15-11-38
15-11-151	15-11-49(e)
15-11-152	15-11-38.1
15-11-153	None
Part 6	
15-11-160	15-11-39(b)-(e)
15-11-161	15-11-39.1
15-11-162	15-11-39(c)
15-11-163	15-11-39.2
Part 7	
15-11-170	None
Part 8	
15-11-180	15-11-54(c)
15-11-181	15-11-39(a); 15-11-54
Part 9	
15-11-190	15-11-12(a)
15-11-191	15-11-12(a)
Part 10	
15-11-200	15-11-58(b)-(d), (f)
15-11-201	15-11-58(c)
15-11-202	15-11-58(a)(1), (2), (3), (6)
15-11-203	15-11-58(a)(3), (a)(4), (a)(5)
15-11-204	15-11-58(e), (g), (h), (i)(1), (j)
Part 11	

New Chapter 11	Former Provisions
15-11-210	15-11-56(a)
15-11-211	15-11-55(a)(2)(B)-(D)
15-11-212	15-11-28(c)(2); 15-11-55(a)(1), (a)(2)(A), (a)(3), (b), (c), (e), (f); 15-11-57
15-11-213	None
15-11-214	15-11-58(k); 15-11-58.1
15-11-215	15-11-55(d)
15-11-216	15-11-58(k)
15-11-217	15-11-58(k), (l)
15-11-218	15-11-58(l)
Part 12	
15-11-230	15-11-58(o)(1), (o)(4)
15-11-231	15-11-58(o)(2), (o)(6),
15-11-232	15-11-58(o)(5)-(7)
15-11-233	15-11-58(m)
Part 13	
15-11-240	15-11-30.1(a)(2)(A), (a)(2)(B)
15-11-241	15-11-30.1(a)(2)(F)
15-11-242	15-11-30.1(a)(2)(C), (a)(2)(G)
15-11-243	15-11-30.1(a)(2)(E)
15-11-244	15-11-30.1(a)(2)(D)
Article 4	
Part 1	
15-11-260	15-11-105
15-11-261	15-11-93
15-11-262	15-11-98
15-11-263	15-11-100
15-11-264	None
15-11-265	None
Part 2	
15-11-270	15-11-29(a)
Part 3	
15-11-280	15-11-38.1; 15-11-95
15-11-281	15-11-39(e); 15-11-96(a)-(c)
15-11-282	15-11-39.1; 15-11-96(b), (c)
15-11-283	15-11-96(d), (e), (f)-(i)
15-11-284	None
15-11-285	15-11-97
Part 4	
15-11-300	15-11-104
15-11-301	15-11-106
15-11-302	15-11-101
15-11-303	15-11-99
Part 5	
15-11-310	15-11-94(a), (b)(1)-(3), (b)(4)(A), (b)(5)
15-11-311	15-11-94(b)(4)(B), (b)(4)(C)
Part 6	
15-11-320	15-11-94(a), (c); 15-11-103(c)
15-11-321	15-11-103(a), (b), (d)
15-11-322	15-11-103(e)
15-11-323	None
Article 5	
Part 1	
15-11-380	None
15-11-381	15-11-2
Part 2	
15-11-390	15-11-38; 15-11-38.1
Part 3	
15-11-400	15-11-39(a); 15-11-39.1; 15-11-48(e); 15-11-49(b), (c)(2); 15-11-65(a)
15-11-401	15-11-29(a); 15-11-30(b), (d)
15-11-402	15-11-6(b); 15-11-9(b)
15-11-403	None
15-11-404	None
15-11-405	15-11-64
Part 4	
15-11-410	15-11-45(a)(3), (a)(5); 15-11-47(a)(2); 15-11-49.1
15-11-411	15-11-47(e)
15-11-412	15-11-47(e)(1); 15-11-48(e)
15-11-413	15-11-49(c)(2), (c)(4)
15-11-414	15-11-49(c)(2)
15-11-415	15-11-46; 15-11-46.1
Part 5	
15-11-420	15-11-37; 15-11-38

New Chapter 11	Former Provisions
15-11-421	15-11-39(a)
15-11-422	15-11-38.1
15-11-423	15-11-39(b), (d), (e)
15-11-424	15-11-39.1
15-11-425	15-11-39(c)
Part 6	
15-11-440	15-11-65(a)
15-11-441	15-11-39(a)
15-11-442	15-11-67
15-11-443	15-11-70(a), (d), (e)
15-11-444	15-11-40(b)
15-11-445	None
Part 7	
15-11-450	15-11-154
15-11-451	15-11-155(a)-(f), (j)
Article 6	
Part 1	
15-11-470	None
15-11-471	15-11-2; 15-11-40.1(a); 15-11-63(a)(3); 15-11-66.1(a)
15-11-472	15-11-49(b), (c)
15-11-473	15-11-64.1
15-11-474	None
15-11-475	15-11-6(b)
15-11-476	15-11-9(b)
15-11-477	None
15-11-478	15-11-65(c)
15-11-479	None
15-11-480	None
15-11-481	15-11-64.2
Part 2	
15-11-490	15-11-29(a); 15-11-30(b), (c), (d)
Part 3	
15-11-500	15-11-49.1
15-11-501	15-11-45(a)(1)-(3), (c); 15-11-47(c)
15-11-502	15-11-47(a)
15-11-503	15-11-46; 15-11-46.1(a), (c)-(e)
15-11-504	15-11-48
15-11-505	15-11-49(a)
15-11-506	15-11-49
15-11-507	15-11-47(d)
15-11-508	15-11-51

New Chapter 11	Former Provisions
Part 4	
15-11-510	15-11-49(b)
15-11-511	None
Part 5	
15-11-515	15-11-69
Part 6	
15-11-520	15-11-38
15-11-521	15-11-49(b), (e)
15-11-522	15-11-38.1
15-11-523	None
Part 7	
15-11-530	15-11-39(b), (d)
15-11-531	15-11-39.1
15-11-532	15-11-39(c)
Part 8	
15-11-540	15-11-64.1
15-11-541	15-11-75(a)-(c), (h)
15-11-542	15-11-75(e)
15-11-543	15-11-75(d)
15-11-544	15-11-75(c)
15-11-545	15-11-75(g)
15-11-546	15-11-75(f)
Part 9	
15-11-560	15-11-28(b)
15-11-561	15-11-30.2
15-11-562	None
15-11-563	15-11-30.2(e)
15-11-564	None
15-11-565	15-11-48(b), (c)
15-11-566	15-11-30.2(c)
15-11-567	15-11-30.4
Part 10	
15-11-580	None
15-11-581	15-11-65(a)
15-11-582	15-11-39(a); 15-11-65(a)
Part 11	
15-11-590	15-11-12(a)
Part 12	
15-11-600	15-11-65(a), (b)
15-11-601	15-11-66; 15-11-68
15-11-602	15-11-63(b)-(h)
15-11-603	15-11-66.1(b)-(e)

New Chapter 11	Former Provisions
15-11-604	15-11-66(b)(2)(B)
15-11-605	15-11-40.1(b)-(h)
15-11-606	15-11-72
15-11-607	15-11-70
15-11-608	15-11-40(b)
Part 13	
15-11-620	None
15-11-621	None
15-11-622	None
Part 14	
15-11-630	15-11-73
Article 7	
15-11-650	15-11-150(a)
15-11-651	15-11-151
15-11-652	15-11-152(a)
15-11-653	15-11-152(b)-(g)
15-11-654	15-11-153.2
15-11-655	15-11-153(a)-(e), (h)
15-11-656	15-11-153(g); 15-11-153.1
15-11-657	None
15-11-658	15-11-149; 15-11-154; 15-11-155(d)
15-11-659	None
15-11-660	None
Article 8	
15-11-680	15-11-110
15-11-681	15-11-111
15-11-682	15-11-112
15-11-683	15-11-113
15-11-684	15-11-114
15-11-685	15-11-115
15-11-686	15-11-116
15-11-687	15-11-117
15-11-688	15-11-118
Article 9	
15-11-700	15-11-78
15-11-701	15-11-79.2
15-11-702	15-11-83
15-11-703	15-11-79.1
15-11-704	15-11-79
15-11-705	None
15-11-706	None
15-11-707	15-11-63(h); 15-11-80
15-11-708	15-11-82(a)-(d), (f)
15-11-709	15-11-81
15-11-710	15-11-84
Article 10	
15-11-720	15-11-201
15-11-721	15-11-202
15-11-722	15-11-203
15-11-723	15-11-204
15-11-724	15-11-205(b)
15-11-725	15-11-205(a), (c), (d), (e)
15-11-726	15-11-206
15-11-727	15-11-207
15-11-728	15-11-208
Article 11	
15-11-740	15-11-170
15-11-741	15-11-171
15-11-742	15-11-172
15-11-743	15-11-173
15-11-744	15-11-174
15-11-745	15-11-175
15-11-746	15-11-176
15-11-747	15-11-177

Administrative rules and regulations. — Department of Juvenile Justice, Official Compilation of the Rules and Regulations of the State of Georgia, Title 97.

Law reviews. — For article, "Gender and Justice in the Courts: A Report to the Supreme Court of Georgia by the Commission on Gender Bias in the Judicial System," see 8 Ga. St. U.L. Rev. 539 (1992). For article, "Media Access to Juvenile Records: In Search of a Solution," see 16 Ga. St. U.L. Rev. 337 (1999). For annual survey article discussing developments in domestic relations law, see 52 Mercer L. Rev. 213 (2000). For article, "Georgia's Juvenile Code: New Law for the New Year," see 19 Ga. St. B. J. 13 (Dec. 2013).

For note, "An Aggravating Adolescence: An Analysis of Juvenile Convictions as Statutory Aggravators in Capital Cases," see 51 Ga. L. Rev. 673 (2017). For note, "Big Brother is Watching: When Should Georgia Get Involved in Issues of Family Privacy to Protect Children's Liberties?," see 34 Ga. St. U.L. Rev. 819 (2018).

For comment, "School Bullies — They Aren't Just Students: Examining School Interrogations and the Miranda Warning," see 59 Mercer L. Rev. 731 (2008).

RESEARCH REFERENCES

Am. Jur. Trials. — Juvenile Court Proceedings, 14 Am. Jur. Trials 619.

Social Worker Malpractice for Failure to Protect Foster Children, 41 Am. Jur. Trials 1.

ARTICLE 1

GENERAL PROVISIONS

Cross references. — Public school tribunals established to consider suspension or expulsion of students from public schools, § 20-2-750 et seq. Treatment of offenders between ages 17 and 25 confined to institutions under jurisdiction of Department of Corrections, T. 42, C. 7. Programs and protection for children and youth, T. 49, C. 5. Uniform Rules for the Juvenile Courts of Georgia. Uniform Transfer Rules.

Law reviews. — For survey article on recent developments in Georgia juvenile law, see 34 Mercer L. Rev. 395 (1982). For annual survey of domestic relations law, see 35 Mercer L. Rev. 127 (1983). For annual survey of law on juvenile court practice and procedure, see 35 Mercer L. Rev. 199 (1983). For annual survey of juvenile law, see 36 Mercer L. Rev. 393 (1984). For article discussing recent developments in juvenile law, see 39 Mercer L. Rev. 411 (1987). For article, "Juvenile Court Mediation," see 4 Ga. St. B. J. 48 (1998).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former T. 15, C. 11, A. 1, which was subsequently repealed but was succeeded by provisions in this article, are included in the annotations for this article.

Jurisdiction over handicapped or abused children. — Juvenile courts may choose to retain jurisdiction over a handicapped or abused child, and make disposition to a person or agency other than the Department of Human Resources, as contemplated by former O.C.G.A. §§ 15-11-34, 15-11-35, 15-11-36 and 15-11-40 (see now O.C.G.A. §§ 15-11-16, 15-11-18, and 15-11-32). In this way, the court could continue to supervise the child's treatment, and the costs could be borne by the county treasury, the parents, guardians, or other persons legally obligated to care for the child. 1989 Op. Att'y Gen. No. U89-6 (decided under former T. 15, C. 11).

Juvenile courts are without authority to compel state agencies or local school systems to provide or fund specialized services for handicapped or abused children, although a child involved is a handicapped child within the meaning of 20 U.S.C. § 1401 et seq., the Education for All Handicapped Act. 1989 Op. Att'y Gen. No. U89-6 (decided under former T. 15, C. 11).

15-11-1. Purpose of chapter.

The purpose of this chapter is to secure for each child who comes within the jurisdiction of the juvenile court such care and guidance, preferably in his or her own home, as will secure his or her moral, emotional, mental, and physical welfare as well as the safety of both the child and community. It is the intent of the General Assembly to promote a juvenile justice system that will protect the community, impose accountability for violations of law, provide treatment and

rehabilitation, and equip juvenile offenders with the ability to live responsibly and productively. It is the intent of the General Assembly to preserve and strengthen family relationships, countenancing the removal of a child from his or her home only when state intervention is essential to protect such child and enable him or her to live in security and stability. In every proceeding, this chapter seeks to guarantee due process of law, as required by the Constitutions of the United States and the State of Georgia, through which every child and his or her parent and all other interested parties are assured fair hearings at which legal rights are recognized and enforced. Above all, this chapter shall be liberally construed to reflect that the paramount child welfare policy of this state is to determine and ensure the best interests of its children.

History. — Code 1981, § 15-11-1, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

Cross references. — Programs and protection for children and youth, T. 49, C. 5.

Law reviews. — For comment on Parham v. J.R., 442 U.S. 584 (1979); Secretary of Pub. Welfare v. Institutionalized Juveniles, 442 U.S. 640 (1979), regarding juvenile commitment to state mental hospitals upon application of parents or guardians, see 29 Emory L. J. 517 (1980). For comment, "Victim Offender Mediation: When Divergent Paths and Destroyed Lives Come Together for Healing," see 32 Ga. St. U.L. Rev. 577 (2016). For comment, "Pre-Adjudication Access to Counsel for Juveniles," see 69 Emory L.J. 359 (2019).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 24A-101 and former Code Section 15-11-1, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Legislative intent for exclusive custody and control of committed juvenile. — Ga. L. 1963, p. 81 and Ga. L. 1971, p. 709, when construed in pari materia, evidence a legislative intent that, once the juvenile court judge in the judge's discretion commits a juvenile to the Division for Children and Youth (now Department of Human Resources), custody and control of the juvenile is thereby and thereafter exclusively in the department. In re R.D., 141 Ga. App. 843, 234 S.E.2d 680 (1977); In re R.L.M., 171 Ga. App. 940, 321 S.E.2d 435 (1984) (decided under former O.C.G.A. § 15-11-1).

Purpose of Ga. L. 1971, p. 709, as stated in Ga. L. 1971, p. 709, § 1 was to "assist, protect, and restore" a child, and therein was specific statutory intent that Ga. L. 1971, p. 709 shall be liberally construed to that end. P.R. v. State, 133 Ga. App. 346, 210 S.E.2d 839 (1974) (decided under former Code 1933, § 24A-101).

Construction with former juvenile code provisions. — Stated purpose of the juvenile code to protect and restore children whose well-being was threatened supported a finding that the term "subsistence", as used in former O.C.G.A. § 15-11-8 (see now O.C.G.A. § 15-11-36), included expenses that might be incurred due to the need for emergency medical treatment of a child in the physical custody of the Department of Juvenile Justice. In the Interest of J.S., 282 Ga. 623, 652 S.E.2d 547 (2007) (decided under former O.C.G.A. § 15-11-1).

Juvenile court's primary responsibility is to consider the welfare of the child. Gardner v. Lenon, 154 Ga. App. 748, 270 S.E.2d 36 (1980) (decided under Ga. L. 1971, p. 709, § 31); In re B.H., 190 Ga. App. 131, 378 S.E.2d 175 (1989) (decided under former O.C.G.A. § 15-11-1).

Authority to require letters of apology. — Juvenile court had the authority to order a juvenile defendant to write a 300-word letter of apology to a bailiff and a 500-word essay on appropriate behavior in court. In the Interest of P.W., 289 Ga. App. 323, 657 S.E.2d 270 (2008) (decided under former O.C.G.A. § 15-11-1).

Orders terminating parental rights not beyond reach of court. — Legislature has declared that Ga. L. 1971, p. 709 should be construed toward the end of providing for a child's welfare, "preferably in his own home." To this end, the appellate courts will not declare orders terminating parental rights, removing the child permanently from the child's own home, to be beyond the reach of the court issuing the order. To the contrary, the juvenile court judge who has second thoughts about such an action should take whatever steps necessary to ensure the correctness of the judge's action. In re P.S.C., 143 Ga. App. 887, 240 S.E.2d 165 (1977) (decided under Ga. L. 1971, p. 709, § 1).

Preference for preservation of family counsels against deprivation evidence. — Former statute counseled against any unreasoned expansion of the type of evidence which will suffice to show deprivation, and probable continued deprivation, causing or likely to cause serious harm to a child, because of the Code's expressed preference for preservation of the family unit. Leyva v. Brooks, 145 Ga. App. 619, 244 S.E.2d 119 (1978) (decided under Ga. L. 1971, p. 709, § 1).

Commitment of delinquent for purpose of rehabilitation or treatment. — Commitment of a delinquent child to a facility operated under the direction of the juvenile court, or to another local public authority, or to the Division of Children and Youth (now Department of Human Resources), or to the Department of Corrections is for essentially the purpose of rehabilitation or treatment. A.B.W. v. State, 231 Ga. 699, 203 S.E.2d 512 (1974) (decided under Ga. L. 1971, p. 709, § 1).

Confinement of juvenile implies need of supervision, correction, and training. — Confinement as provided for by the juvenile code necessarily deprives the parents of their prima facie prerogative of training and supervision, and implies that the juvenile is, within the terms of the juvenile law, one who is in need of supervision beyond the control of the juvenile's parents and in need of correction and training which the parents cannot provide. Young v. State, 120 Ga. App. 605, 171 S.E.2d 756 (1969) (decided under Ga. L. 1971, p. 709, § 1).

Deprivation was supported by sufficient evidence. — Deprivation finding was supported by sufficient evidence which showed that the child victim suffered multiple fractures all over the body which indicated that the fractures occurred at different times, and the child had no disease predisposing the child to the fractures, and a doctor testified that the injuries were consistent with abusive non-accidental trauma. In the Interest of T.J., 273 Ga. App. 547, 615 S.E.2d 613 (2005) (decided under former O.C.G.A. § 15-11-1).

Because the Department of Family and Children Services presented clear and convincing evidence of a parent's inability to control a son to the extent necessary for that child's mental, physical, and emotional health, and the parent was afforded sufficient due process, the juvenile court's deprivation finding was upheld on appeal; moreover, absent evidence of a custody dispute, the proceeding was not a pretextual custody battle which divested the juvenile court of jurisdiction. In the Interest of D.T., 284 Ga. App. 336, 643 S.E.2d 842 (2007) (decided under former O.C.G.A. § 15-11-1).

Under the circumstances in the mother's case, the juvenile court correctly found that the evidence of the children's deprivation was clear and convincing under former O.C.G.A. §§ 15-11-1 and 15-11-2 (see now O.C.G.A. §§ 15-11-1 and 15-11-2) in that the evidence demonstrated that the minor children were not receiving adequate support for the children's mental health issues. The uncontrolled behavior of the children related to those issues was negatively affecting the children's academic and social well-being and there was also clear and convincing evidence that the mother was not utilizing available resources to address the children's problems, and that the mother had attempted to have one of the children

hospitalized because she could not control the child; moreover, one of the children also exhibited severe mental health issues, including cutting herself and attacking other children, that were not adequately addressed. In the Interest of D. Q., 307 Ga. App. 121, 704 S.E.2d 444 (2010) (decided under former O.C.G.A. § 15-11-1).

Custody questions may be resolved by juvenile court. — Generally, the purpose of former O.C.G.A. T. 15, C. 11 was not to settle questions of custody by and between the parents of a minor child or children. However, it was proper for the juvenile court to decide custody issues when properly transferred to that court by the superior court. Neal v. Washington, 158 Ga. App. 39, 279 S.E.2d 294 (1981) (decided under former Ga. L. 1971, p. 709, § 1).

No equal protection violation. — Treating deprived children who were placed in the legal custody of the Department of Families and Children Services because there was no relative committed to the child who was available for immediate placement differently from deprived children who did have a committed parent or guardian available for immediate placement did not violate the equal protection clause or Ga. Const. 1983, Art. I, Sec. I, Para. II as the classes were not similarly situated and the laws were rationally related to the goal of minimizing government intervention while ensuring that children were reared in a familial environment. In the Interest of A.N., 281 Ga. 58, 636 S.E.2d 496 (2006) (decided under former O.C.G.A. § 15-11-1).

Entry of Alford plea by juvenile. — Juvenile court erred by denying a juvenile's request to enter an Alford plea since the Georgia General Assembly did not expressly prohibit the entry of Alford pleas in juvenile court, and the juvenile court was required to construe O.C.G.A. § 15-11-580 liberally to ensure the juvenile's best interests. In the Interest of B. C., 333 Ga. App. 763, 777 S.E.2d 52 (2015).

Commitment to Department of Juvenile Justice proper. — Contrary to the defendant's contention, the commitment to the Department of Juvenile Justice harmonized with the goals set forth in former O.C.G.A. § 15-11-1 and did not constitute cruel and unusual punishment. In the Interest of B. Q. L. E., 297 Ga. App. 273, 676 S.E.2d 742, cert. denied, No. S09C1197, 2009 Ga. LEXIS 787 (Ga. 2009) (decided under former O.C.G.A. § 15-11-1).

Juvenile court had no authority to impose attorney fees. — Juvenile court properly concluded that the court had no authority to impose attorney fees under the Civil Practice Act, O.C.G.A. § 9-15-14, because the juvenile court had not adopted O.C.G.A. § 9-15-14, and there was no implicit attorney fee award for frivolous litigation in the former Juvenile Court Code, former O.C.G.A. § 15-11-1 et seq.; the Act does not apply to juvenile courts. In re T.M.M.L., 313 Ga. App. 638, 722 S.E.2d 386 (2012) (decided under former O.C.G.A. § 15-11-1).

Cited in In the Interest of C. A. J., 331 Ga. App. 788, 771 S.E.2d 457 (2015); In the Interest of D. H., 332 Ga. App. 274, 772 S.E.2d 70 (2015).

OPINIONS OF THE ATTORNEY GENERAL

Appoint guardian in deprivation proceedings. — Under the principle that the former Juvenile Court Code was to be liberally construed toward the protection of the child whose well-being is threatened, deprivation proceedings arising from child abuse and neglect by a parent or caretaker present a conflict of interest, wherein the provisions of Ga. L. 1971, p. 709, § 1 concerning the appointment of a guardian ad litem would apply. 1976 Op. Att'y Gen. No. 76-131 (decided under Ga. L. 1971, p. 709, § 1).

Juvenile Court Code (see now O.C.G.A. § 15-11-1 et seq.) and the Children and Youth Act (see now O.C.G.A. § 49-5-1 et seq.) should be read in pari materia. 1980 Op. Att'y Gen. No. 80-53 (decided under Ga. L. 1971, p. 709, § 1).

RESEARCH REFERENCES

Am. Jur. 2d. — 42 Am. Jur. 2d, Infants, § 13 et seq. 47 Am. Jur. 2d, Juvenile Courts and Delinquent and Dependent Children, § 1 et seq.

C.J.S. — 43 C.J.S., Infants, § 5 et seq.

U.L.A. — Uniform Juvenile Court Act (U.L.A.) § 1.

ALR. — Parent's involuntary confinement, or failure to care for child as result thereof, as evincing neglect, unfitness, or the like in dependency or divestiture proceeding, 79 A.L.R.3d 417.

15-11-2. (See Editor's notes.) Definitions.

As used in this chapter, the term:

(1) "Abandonment" or "abandoned" means any conduct on the part of a parent, guardian, or legal custodian showing an intent to forgo parental duties or relinquish parental claims. Intent to forgo parental duties or relinquish parental claims may be evidenced by:

(A) Failure, for a period of at least six months, to communicate meaningfully with a child;

(B) Failure, for a period of at least six months, to maintain regular visitation with a child;

(C) Leaving a child with another person without provision for his or her support for a period of at least six months;

(D) Failure, for a period of at least six months, to participate in any court ordered plan or program designed to reunite a child's parent, guardian, or legal custodian with his or her child;

(E) Leaving a child without affording means of identifying such child or his or her parent, guardian, or legal custodian and:

(i) The identity of such child's parent, guardian, or legal custodian cannot be ascertained despite diligent searching; and

(ii) A parent, guardian, or legal custodian has not come forward to claim such child within three months following the finding of such child;

(F) Being absent from the home of his or her child for a period of time that creates a substantial risk of serious harm to a child left in the home;

(G) Failure to respond, for a period of at least six months, to notice of child protective proceedings; or

(H) Any other conduct indicating an intent to forgo parental duties or relinquish parental claims.

(2) "Abuse" means:

(A) Any nonaccidental physical injury or physical injury which is inconsistent with the explanation given for it suffered by a child as the result of the acts or omissions of a person responsible for the care of a child;

(B) Emotional abuse;

(C) Sexual abuse or sexual exploitation;

(D) Prenatal abuse; or

(E) The commission of an act of family violence as defined in Code Section 19-13-1 in the presence of a child. An act includes a single act, multiple acts, or a continuing course of conduct. As used in this subparagraph, the term "presence" means physically present or able to see or hear.

(3) "Adult" means any individual who is not a child as defined in paragraph (10) of this Code section.

(4) "Affiliate court appointed special advocate program" means a locally operated program operating with the approval of the local juvenile court which screens, trains, and supervises volunteers to advocate for the best interests of an abused or neglected child in dependency proceedings.

(5) "Aggravated circumstances" means the parent has:

(A) Abandoned a child;

(B) Aided or abetted, attempted, conspired, or solicited to commit murder or voluntary manslaughter of another child of such parent;

(C) Subjected a child or his or her sibling to torture, chronic abuse, sexual abuse, or sexual exploitation;

(D) Committed the murder or voluntary manslaughter of his or her child's other parent or has been convicted of aiding or abetting, attempting, conspiring, or soliciting the murder or voluntary manslaughter of his or her child's other parent;

(E) Committed the murder or voluntary manslaughter of another child of such parent;

(F) Committed an assault that resulted in serious bodily injury to his or her child or another child of such parent; or

(G) Caused his child to be conceived as a result of having nonconsensual sexual intercourse with the mother of his child or when the mother is less than ten years of age.

(6) "Biological father" means the male who impregnated the biological mother resulting in the birth of a child.

(7) "Business day" means Mondays through Fridays and shall not include weekends or legal holidays.

(8) "Caregiver" means any person providing a residence for a child or any person legally obligated to provide or secure adequate care for a child, including his or her parent, guardian, or legal custodian.

(9) "Case plan" means a plan which is designed to ensure that a child receives protection, proper care, and case management and may include services for a child, his or her parent, guardian, or legal custodian, and other caregivers.

(10) "Child" means any individual who is:

(A) Under the age of 18 years;

(B) Under the age of 17 years when alleged to have committed a delinquent act;

(C) Between 18 and 21 years of age and receiving extended care youth services from DFCS; or

(D) Under the age of 21 years who committed an act of delinquency before reaching the age of 17 years and who has been placed under the supervision of the court or on probation to the court for the purpose of enforcing orders of the court.

(11) "Child in need of services" means:

(A) A child adjudicated to be in need of care, guidance, counseling, structure, supervision, treatment, or rehabilitation and who is adjudicated to be:

(i) Subject to compulsory school attendance and who is habitually and without good and sufficient cause truant, as such term is defined in Code Section 15-11-381, from school;

(ii) Habitually disobedient of the reasonable and lawful commands of his or her parent, guardian, or legal custodian and is ungovernable or places himself or herself or others in unsafe circumstances;

(iii) A runaway, as such term is defined in Code Section 15-11-381;

(iv) A child who has committed an offense applicable only to a child;

(v) A child who wanders or loiters about the streets of any city or in or about any highway or any public place between the hours of 12:00 Midnight and 5:00 A.M.;

(vi) A child who disobeys the terms of supervision contained in a court order which has been directed to such child who has been adjudicated a child in need of services; or

(vii) A child who patronizes any bar where alcoholic beverages are being sold, unaccompanied by his or her parent, guardian, or legal custodian, or who possesses alcoholic beverages; or

(B) A child who has committed a delinquent act and is adjudicated to be in need of supervision but not in need of treatment or rehabilitation.

(12) "Class A designated felony act" means a delinquent act committed by a child 13 years of age or older which, if committed by an adult, would be one or more of the following crimes:

(A)(i) Aggravated assault in violation of paragraph (3) of subsection (a) of Code Section 16-5-21;

(ii) Aggravated assault in violation of paragraph (1) or (4) of subsection (a) of Code Section 16-5-21 other than upon a public safety officer as such acts are prohibited under subsection (c) of Code Section 16-5-21, not involving a firearm; or

(iii) Aggravated assault upon an individual or situation described in subsection (d), (h), or (k) of Code Section 16-5-21 or assault with a deadly weapon or with any object, device, or instrument which, when used offensively against a person, actually does result in serious bodily injury, provided that such deadly weapon is not a firearm; and provided, further, that such injured person is not a public safety officer as defined in Code Section 16-5-19 and such acts are not prohibited under subsection (c) of Code Section 16-5-21;

(B) Aggravated battery not upon a public safety officer as such acts are prohibited under subsection (c) of Code Section 16-5-24;

(C) Armed robbery not involving a firearm;

(D) Arson in the first degree;

(E) Attempted murder;

(F) Escape in violation of Code Section 16-10-52, if such child has previously been adjudicated to have committed a class A designated felony act or class B designated felony act;

(G) Hijacking a motor vehicle in the first degree;

(G.1) Home invasion in the first degree;

(H) Kidnapping;

(I) Participating in criminal gang activity, as defined in subparagraphs (A) through (G) and (J) of paragraph (1) of Code Section 16-15-3, in violation of Code Section 16-15-4;

(J) Trafficking of substances in violation of Code Section 16-13-31 or 16-13-31.1;

(K) Any other act which, if committed by an adult, would be a felony in violation of Chapter 5 or 6 of Title 16, if such child has three times previously been adjudicated for delinquent acts all of which, if committed by an adult, would have been felonies in violation of any chapter of Title 16, provided that the prior adjudications of delinquency shall not have arisen out of the same transaction or occurrence or series of events related in time and location; or

(L) Any other act which, if committed by an adult, would be a felony, if such child has three times previously been adjudicated for delinquent acts all of which, if committed by an adult, would have been felonies in violation of any chapter of Title 16 and one of which, if committed by an adult, would have been a felony in violation of Chapter 5 or 6 of Title 16, provided that the prior adjudications of delinquency shall not have arisen out of the same transaction or occurrence or series of events related in time and location.

(13) "Class B designated felony act" means a delinquent act committed by a child 13 years of age or older which, if committed by an adult, would be one or more of the following crimes:

(A)(i) Aggravated assault in violation of subsection (e), (f), or (i) of Code Section 16-5-21; or

(ii) Aggravated assault involving an assault with a deadly weapon or with any object, device, or instrument which, when used offensively against a person, would be likely to result in serious bodily injury but which did not result in serious bodily injury;

(B) Arson in the second degree;

(C) Attempted kidnapping;

(D) Battery in violation of Code Section 16-5-23.1, if the victim is a teacher or other school personnel;

(E) Racketeering in violation of Code Section 16-14-4;

(F) Robbery;

(F.1) Home invasion in the second degree;

(G) Participating in criminal gang activity, as defined in subparagraph (H) of paragraph (1) of Code Section 16-15-3, in violation of Code Section 16-15-4;

(H) Smash and grab burglary;

(I) Possessing, manufacturing, transporting, distributing, possessing with the intent to distribute, or offering to distribute a destructive device in violation of Code Section 16-7-82;

(J) Distributing certain materials to persons under the age of 21 in violation of Code Section 16-7-84;

(K) Any subsequent violation of Code Sections 16-8-2 through 16-8-5 or 16-8-5.2 through 16-8-9, if the property which was the subject of the theft was a motor vehicle and such child has had one or more separate, prior adjudications of delinquency based upon a violation of Code Sections 16-8-2 through 16-8-5 or 16-8-5.2 through 16-8-9, provided that the prior adjudications of delinquency shall not have arisen out of the same transaction or occurrence or series of events related in time and location;

(L) Any subsequent violation of Code Section 16-7-85 or 16-7-87, if such child has had one or more separate, prior adjudications of delinquency based upon a violation of Code Section 16-7-85 or 16-7-87, provided that the prior adjudications of delinquency shall not have arisen out of the same transaction or occurrence or series of events related in time and location;

(M) Any subsequent violation of subsection (b) of Code Section 16-11-132, if such child has had one or more separate, prior adjudications of delinquency based upon a violation of subsection (b) of Code Section 16-11-132, provided that the prior adjudications of delinquency shall not have arisen out of the same transaction or occurrence or series of events related in time and location;

(N)(i) An act which constitutes a violation of Code Section 16-11-127.1 involving a:

(I) Firearm, as defined in Code Section 16-11-131;

(II) Dangerous weapon or machine gun, as defined in Code Section 16-11-121; or

(III) Weapon, as defined in Code Section 16-11-127.1, together with an assault; or

(ii) An act which constitutes a second or subsequent adjudication of delinquency based on a violation of Code Section 16-11-127.1; or

(O) Any other act which, if committed by an adult, would be a felony in violation of any chapter of Title 16 other than Chapter 5 or 6 of Title 16, if such child has three times previously been adjudicated for delinquent acts, all of which, if committed by an

adult, would have been felonies in violation of any chapter of Title 16 other than Chapter 5 or 6 of Title 16, provided that the prior adjudications of delinquency shall not have arisen out of the same transaction or occurrence or series of events related in time and location.

(13.1) "Community supervision officer" means an individual employed by the Department of Community Supervision who supervises probationers who were adjudicated for committing a Class A designated felony act or Class B designated felony act, placed in restrictive custody, and released from such custody.

(14) "Complaint" is the initial document setting out the circumstances that resulted in a child being brought before the court.

(15) "Court" means the juvenile court or the court exercising jurisdiction over juvenile matters.

(16) "Court appointed special advocate" or "CASA" means a community volunteer who:

(A) Has been screened and trained regarding child abuse and neglect, child development, and juvenile court proceedings;

(B) Has met all the requirements of an affiliate court appointed special advocate program;

(C) Is being actively supervised by an affiliate court appointed special advocate program; and

(D) Has been sworn in by a judge of the juvenile court in the court or circuit in which he or she wishes to serve.

(17) "Criminal justice purposes" means the performance of any activity directly involving:

(A) The investigation, detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of children or adults who are accused of, convicted of, adjudicated of, or charged with crimes or delinquent acts; or

(B) The collection, storage, and dissemination of criminal history record information.

(18) "DBHDD" means the Department of Behavioral Health and Developmental Disabilities.

(19) "Delinquent act" means:

(A) An act committed by a child designated a crime by the laws of this state, or by the laws of another state if the act occurred in

that state, under federal laws, or by local ordinance, and the act is not an offense applicable only to a child or a juvenile traffic offense;

(B) The act of disobeying the terms of supervision contained in a court order which has been directed to a child who has been adjudicated to have committed a delinquent act; or

(C) Failing to appear as required by a citation issued for an act that would be a crime if committed by an adult.

(20) "Delinquent child" means a child who has committed a delinquent act and is in need of treatment or rehabilitation.

(21) "Department" means the Department of Human Services.

(22) "Dependent child" means a child who:

(A) Has been abused or neglected and is in need of the protection of the court:

(B) Has been placed for care or adoption in violation of law; or

(C) Is without his or her parent, guardian, or legal custodian.

(23) "Detention assessment" shall have the same meaning as set forth in Code Section 49-4A-1.

(24) "Developmental disability" shall have the same meaning as set forth in Code Section 37-1-1.

(25) "Developmental level" is a child's ability to understand and communicate, taking into account such factors as age, maturity, mental capacity, level of education, cultural background, and degree of language acquisition.

(26) "DFCS" means the Division of Family and Children Services of the department.

(27) "Diligent search" means the efforts of DFCS to identify and locate a parent whose identity or location is unknown or a relative or other person who has demonstrated an ongoing commitment to a child.

(28) "DJJ" means the Department of Juvenile Justice.

(29) "Emancipation" means termination of the rights of a parent to the custody, control, services, and earnings of a child.

(30) "Emotional abuse" means acts or omissions by a person responsible for the care of a child that cause any mental injury to such child's intellectual or psychological capacity as evidenced by an observable and significant impairment in such child's ability to function within a child's normal range of performance and behavior or that create a substantial risk of impairment, if the impairment or

substantial risk of impairment is diagnosed and confirmed by a licensed mental health professional or physician qualified to render such diagnosis.

(31) "Evaluation" means a comprehensive, individualized examination of a child by an examiner that may include the administration of one or more assessment instruments, diagnosing the type and extent of a child's behavioral health disorders and needs, if any, making specific recommendations, and assessing a child's legal competencies.

(32) "Examiner" means a licensed psychologist, psychiatrist, or clinical social worker who has expertise in child development specific to severe or chronic disability of children attributable to intellectual impairment or mental illness and has received training in forensic evaluation procedures through formal instruction, professional supervision, or both.

(32.1) "Family and permanency team" shall consist of all appropriate biological family members, relatives, and fictive kin of the child, as well as, as appropriate, professionals who are a resource to the family of the child, such as teachers, medical or mental health providers who have treated the child, or clergy, and not more than two members of the case planning team or permanency planning team selected by a child who is age 14 or older. The two members selected by the child shall not be a foster parent of, or caseworker for, the child. DFCS may reject an individual selected by the child if DFCS has good cause to believe that the individual would not act in the best interest of the child.

(33) "Fictive kin" means a person who is not related to the child by blood, marriage, or adoption but who prior to his or her placement in foster care is known to the family, has a substantial and positive relationship with the child, and is willing and able to provide a suitable home for the child.

(34) "Foster care" means placement in foster family homes, child care institutions, or another substitute care setting approved by the department. Such term shall exclude secure residential facilities or other facilities operated primarily for the purpose of detention of a child adjudicated for delinquent acts.

(35) "Guardian ad litem" means an individual appointed to assist the court in determining the best interests of a child.

(36) "Guardianship order" means the court judgment that establishes a permanent guardianship and enumerates a permanent guardian's rights and responsibilities concerning the care, custody, and control of a child.

(37) "Identification data" means the fingerprints, name, race, sex, date of birth, and any other unique identifiers of a child.

(38) "Indigent person" means a person who, at the time of requesting an attorney, is unable without undue financial hardship to provide for full payment of an attorney and all other necessary expenses for representation or a child who is a party to a dependency proceeding. To determine indigence in a delinquency proceeding, the court shall follow the standards set forth in Chapter 12 of Title 17.

(39) "Informal adjustment" means the disposition of a case other than by formal adjudication and disposition.

(40) "Judge" means the judge of the court exercising jurisdiction over juvenile matters.

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

(42) "Legal custodian" means:

(A) A person to whom legal custody of a child has been given by order of a court; or

(B) A public or private agency or other private organization licensed or otherwise authorized by law to receive and provide care for a child to which legal custody of such child has been given by order of a court.

(43) "Legal father" means a male who has not surrendered or had terminated his rights to a child and who:

(A) Has legally adopted such child;

(B) Was married to the biological mother of such child at the time such child was born or within the usual period of gestation, unless paternity was disproved by a final order pursuant to Article 3 of Chapter 7 of Title 19;

(C) Married the legal mother of such child after such child was born and recognized such child as his own, unless paternity was disproved by a final order pursuant to Article 3 of Chapter 7 of Title 19; or

(D) Has legitimated such child by a final order pursuant to Code Section 19-7-22.

(44) "Legal mother" means the female who is the biological or adoptive mother of a child and who has not surrendered or had terminated her rights to such child.

(45) "Mediation" means the proceeding in which a mediator facilitates communication between the parties concerning the matters in dispute and explores possible solutions to promote collaboration, understanding, and settlement.

(46) "Mediator" means a neutral third party who attempts to focus the attention of the parties upon their needs and interests rather than upon their rights and positions and who lacks the authority to impose any particular agreement upon the parties or to recommend any particular disposition of the case to the court.

(47) "Mentally ill" means having a disorder of thought or mood which significantly impairs judgment, behavior, capacity to recognize reality, or ability to cope with the ordinary demands of life.

(48) "Neglect" means:

(A) The failure to provide proper parental care or control, subsistence, education as required by law, or other care or control necessary for a child's physical, mental, or emotional health or morals;

(B) The failure to provide a child with adequate supervision necessary for such child's well-being; or

(C) The abandonment of a child by his or her parent, guardian, or legal custodian.

(49) "Nonsecure residential facility" means community residential facilities that provide 24 hour care in a residential setting that are not hardware secured.

(50) "Other persons who have demonstrated an ongoing commitment to a child" includes fictive kin and other individuals, including but not limited to neighbors, teachers, scout masters, caregivers, or parents of friends of such child and with whom such child has resided or had significant contact.

(51) "Parent" means either the legal father or the legal mother of a child.

(52) "Party" means the state, a child, parent, guardian, legal custodian, or other person subject to any judicial proceeding under this chapter; provided, however, that for purposes of Articles 5 and 6 of this chapter, only a child and the state shall be a party.

(53) "Permanency plan" means a specific written plan prepared by DFCS designed to ensure that a child is reunified with his or her

family or ensure that such child quickly attains a substitute long-term home when return to such child's family is not possible or is not in such child's best interests.

(54) "Permanent placement" means:

(A) Return of the legal custody of a child to his or her parent;

(B) Placement of a child with an adoptive parent pursuant to a final order of adoption; or

(C) Placement of a child with a permanent guardian.

(55) "Person responsible for the care of a child" means:

(A) An adult member of a child's household;

(B) A person exercising supervision over a child for any part of the 24 hour day; or

(C) Any adult who, based on his or her relationship to the parent, guardian, or legal custodian or a member of a child's household, has access to such child.

(56) "Prenatal abuse" means exposure to chronic or severe use of alcohol or the unlawful use of any controlled substance, as such term is defined in Code Section 16-13-21, which results in:

(A) Symptoms of withdrawal in a newborn or the presence of a controlled substance or a metabolite thereof in a newborn's body, blood, urine, or meconium that is not the result of medical treatment; or

(B) Medically diagnosed and harmful effects in a newborn's physical appearance or functioning.

(57) "Probation and intake officer" means any probation officer and any personnel of a juvenile court to whom are delegated the duties of an intake officer under this chapter, other than a juvenile court judge, associate juvenile court judge, or court service worker.

(58) "Probation officer" means any personnel of a juvenile court or staff of DJJ to whom are delegated the duties of a probation officer under this chapter, other than a juvenile court judge or associate juvenile court judge.

(59) "Prosecuting attorney" means an attorney designated by the district attorney of the judicial circuit in which juvenile proceedings are instituted, unless otherwise provided in subsection (c) of Code Section 15-18-6.1.

(60) "Putative father registry" means the registry established and maintained pursuant to subsections (d) and (e) of Code Section 19-11-9.

(60.1) "Qualified individual" means a trained professional or licensed clinician who is not an employee of the department and who is not connected to, or affiliated with, any placement setting in which children are placed by the department.

(60.2) "Qualified residential treatment program" means a program that:

(A) Has a trauma-informed treatment model that is designed to address the needs, including clinical needs as appropriate, of children with serious emotional or behavioral disorders or disturbances and, with respect to a child, is able to implement the treatment identified for the child by the assessment to determine appropriateness of placement as provided for in Code Section 15-11-219;

(B) Has registered or licensed nursing staff and other licensed clinical staff who:

(i) Provide care within the scope of their practice; and

(ii) Are available 24 hours a day and seven days a week;

(C) To the extent appropriate, and in accordance with the child's best interests, facilitates participation of family members in the child's treatment program;

(D) Facilitates outreach to the family members of the child, including siblings;

(E) Documents how the outreach is made, including contact information, and maintains contact information for any known biological family and fictive kin of the child;

(F) Documents how family members are integrated into the treatment process for the child, including post-discharge, and how sibling connections are maintained;

(G) Provides discharge planning and family based aftercare support for at least six months post-discharge; and

(H) Is licensed in accordance with 42 U.S.C. Section 471(a)(10) and accredited in accordance with 42 U.S.C. Section 672(k)(4).

(61) "Reasonable efforts" means due diligence and the provision of appropriate services.

(62) "Relative" means a person related to a child by blood, marriage, or adoption, including the spouse of any of those persons even if the marriage was terminated by death or dissolution.

(63) "Restitution" means any property, lump sum, or periodic payment ordered to be made to any victim. Restitution may also be in the form of services ordered to be performed by a child.

(64) "Restrictive custody" means in the custody of DJJ for purposes of housing in a secure residential facility or nonsecure residential facility.

(65) "Risk assessment" shall have the same meaning as set forth in Code Section 49-4A-1.

(66) "Screening" means a relatively brief process to identify a child who potentially may have mental health or substance abuse needs, through administration of a formal screening instrument, to identify a child who may warrant immediate attention or intervention or a further, more comprehensive evaluation.

(67) "Secure residential facility" means a hardware secure residential institution operated by or on behalf of DJJ and shall include a youth development center or a regional youth detention center.

(68) "Services" means assistance including but not limited to care, guidance, education, counseling, supervision, treatment, and rehabilitation or any combination thereof.

(69) "Sexual abuse" means a caregiver or other person responsible for the care of a child employing, using, persuading, inducing, enticing, or coercing any child to engage in any act which involves:

(A) Sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex;

(B) Bestiality;

(C) Masturbation;

(D) Lewd exhibition of the genitals or pubic area of any person;

(E) Flagellation or torture by or upon a person who is nude;

(F) The condition of being fettered, bound, or otherwise physically restrained on the part of a person who is nude;

(G) Physical contact in an act of apparent sexual stimulation or gratification with any person's clothed or unclothed genitals, pubic area, or buttocks or with a female's clothed or unclothed breasts;

(H) Defecation or urination for the purpose of sexual stimulation; or

(I) Penetration of the vagina or rectum by any object except when done as part of a recognized medical procedure by a licensed health care professional.

(70) "Sexual exploitation" means conduct by a caregiver or other person responsible for the care of a child who allows, permits, encourages, or requires a child to engage in:

(A) Prostitution, in violation of Code Section 16-6-9; or

(B) Sexually explicit conduct for the purpose of producing any visual or print medium depicting such conduct, in violation of Code Section 16-12-100.

(71) "Sibling" means a person with whom a child shares a biological father or one or both parents in common by blood, adoption, or marriage, even if the marriage was terminated by death or dissolution.

(72) "Staffing" means a meeting held periodically to develop and review progress on plans for meeting the identified needs of a child.

(73) "Statutory overnight delivery" means delivery of notice as provided in Code Section 9-10-12.

(73.1) "Temporary alternatives to foster care" means measures that a juvenile court may order in lieu of removal of or placement of a child or children alleged to be dependent in protective custody which will prevent or reduce the trauma or removal; allow a child to be cared for by persons with whom the child has an existing bond or attachment; or that ensure the safety of the child pending further action by the court on the dependency complaint or petition.

(74) "Unsupervised probation" means a period of probation or community supervision prior to the termination of a child's disposition in which:

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

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

(C) A probation officer shall not actively supervise such child.

(75) "Visitation" means a period of access to a child by a parent, guardian, legal custodian, sibling, other relative, or any other person who has demonstrated an ongoing commitment to a child in order to maintain parental and familial involvement in a child's life when he or she is not residing with such person.

(76) "Weekend" means Saturday or Sunday.

History. — Code 1981, § 15-11-2, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242; Ga. L. 2014, p. 426, §§ 1, 2/HB 770; Ga. L. 2014, p. 432, § 2-1/HB 826; Ga. L. 2014, p. 441, §§ 2, 3/HB 911; Ga. L. 2014, p. 780, § 1-1/SB 364; Ga. L. 2015, p. 422, § 5-8/HB 310; Ga. L. 2015, p. 540, § 1-1/HB 361; Ga. L. 2015, p. 805, § 1/HB 492; Ga. L. 2016, p. 219, § 1/SB 331; Ga. L. 2016, p. 304, § 1/SB 64; Ga. L. 2017, p. 417, § 2-1/SB 104; Ga. L. 2017, p. 500, § 2-1/SB 160; Ga. L. 2018, p. 927, § 1-1/HB 906; Ga. L. 2019, p. 67, § 1/HB 472; Ga. L. 2019, p. 893, § 1/SB 225; Ga. L. 2020, p. 493, § 15/SB 429.

The 2018 amendment, effective July 1, 2020, substituted the present provisions of paragraph (10) for the former

provisions, which read: "'Child' means any individual who is:

"(A) Under the age of 18 years;

"(B) Under the age of 17 years when alleged to have committed a delinquent act;

"(C) Under the age of 22 years and in the care of DFCS as a result of being adjudicated dependent before reaching 18 years of age;

"(D) Under the age of 23 years and eligible for and receiving independent living services through DFCS as a result of being adjudicated dependent before reaching 18 years of age; or

"(E) Under the age of 21 years who committed an act of delinquency before reaching the age of 17 years and who has been placed under the supervision of the court or on probation to the court for the purpose of enforcing orders of the court."

The 2019 amendments. — The first 2019 amendment, effective April 18, 2019, substituted the present provisions of paragraph (33) for the former provisions, which read: "'Fictive kin' means a person who is known to a child as a relative, but is not, in fact, related by blood or marriage to such child and with whom such child has resided or had significant contact."; and added paragraph (73.1). The second 2019 amendment, effective May 7, 2019, added paragraphs (32.1), (60.1), and (60.2).

The 2020 amendment, effective July 29, 2020, part of an Act to revise, modernize, and correct the Code, substituted "family based" for "family-based" in subparagraph (60.2)(G).

Cross references. — Rights of minors, § 1-2-8. Sale of alcoholic beverages to or by underage persons generally, § 3-3-23 et seq. Minors, contracts for property or valuable consideration; contracts for necessaries, § 13-3-20. Officers of the court and court personnel, Uniform Rules for the Juvenile Courts of Georgia, Rule 2.1 et seq.

Editor's notes. — Ga. L. 2015, p. 422, § 6-1/HB 310, not codified by the General Assembly, provides, in part, that the amendment by this Act shall apply to sentences entered on or after July 1, 2015.

Ga. L. 2016, p. 304, § 18/SB 64, not codified by the General Assembly, provides that: "This Act shall not be construed to affect a voluntary acknowledgement of legitimation that was valid under the former provisions of Code Section 19-7-21.1, nor any of the rights or responsibilities flowing therefrom, if it was executed on or before June 30, 2016."

Ga. L. 2017, p. 417, § 2-1/SB 104, which amended this Code section, purported to amend subparagraph (a)(12)(G) but actually amended subparagraph (12)(G).

Ga. L. 2017, p. 500, § 1-1/SB 160, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Back the Badge Act of 2017.'"

For application of this statute in 2020, see Executive Order 04.23.20.02.

Law reviews. — For article recommending more consistency in age requirements of laws pertaining to the welfare of minors, see 6 Ga. St. B. J. 189 (1969). For article, "An Outline of Juvenile Court Jurisdiction with Focus on Child Custody," see 10 Ga. St. B. J. 275 (1973).

For article surveying developments in Georgia juvenile court practice and procedure from mid-1980 through mid-1981, see 33 Mercer L. Rev. 167 (1981). For article, "'Committable for Mental Illness,': Is This a True Challenge to Transfer?," see 4 Ga. St. B. J. 32 (1998). For article, "A Child's Right to Legal Representation in Georgia Abuse and Neglect Proceedings," see 10 Ga. St. B. J. 12 (2004). For annual survey of domestic relations cases, see 57 Mercer L. Rev. 173 (2005); 58 Mercer L. Rev. 133 (2006). For article, "The Next Generation of Child Advocacy: Protecting the Best Interest of Children by Promoting a Child's Right to Counsel in Abuse and Neglect Proceedings," see 13 Ga. St. B. J. 22 (2007). For annual survey on criminal law, see 66 Mercer L. Rev. 37 (2014). For article on the 2015 amendment of this Code section, see 32 Ga. St. U.L. Rev. 231 (2015). For article, "See No Evil, Speak No Evil: Georgia Supreme Court Narrows Requirements for Mandatory Reporters in May v. State," see 66 Mercer L. Rev. 837 (2015). For annual survey of criminal law, see 67 Mercer L. Rev. 31 (2015). For article on the 2016 amendment of this Code section, see 33 Georgia St. U.L. Rev. 127

(2016). For article on the 2017 amendment of this Code section, see 34 Ga. St. U.L. Rev. 61 (2017). For article on the 2017 amendment of this Code section, see 34 Ga. St. U.L. Rev. 89 (2017). For annual survey on criminal law, see 69 Mercer L. Rev. 73 (2017). For annual survey on domestic relations, see 69 Mercer L. Rev. 83 (2017).

For note criticizing jurisdiction of juvenile justice system over runaways and advocating alternative legal approaches, see 24 Emory L. J. 1075 (1975).

For comment on Stanton v. Stanton, 213 Ga. 545, 100 S.E.2d 289 (1957), holding that parents cannot by contract restrict the discretion of the court in awarding custody and provision regulating the religious upbringing of the child may be entirely disregarded by the court, see 20 Ga. B. J. 546 (1958). For comment, "Seen But Not Heard: Advocating for the Legal Representation of a Child's Expressed Wish in Protection Proceedings and Recommendations for New Standards in Georgia," see 48 Emory L. J. 1431 (1999).

JUDICIAL DECISIONS

Analysis

General Consideration
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General Consideration

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, §§ 24A-401 and 24A-2701, pre-2000 Code Sections 15-11-37, 15-11-41, 15-11-55, and pre-2014 Code Sections 15-11-2, 15-11-58(a), and 15-11-63(a), which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Appointment of an interested party as a child's guardian ad litem conflicted with the legislative aim of safeguarding a child's interest by providing the child with representation separate from any other interest in the litigation. In re J.S.C., 182 Ga. App. 721, 356 S.E.2d 754 (1987) (decided under former O.C.G.A. § 15-11-55).

Stated purpose of the juvenile code to protect and restore children whose well-being was threatened supported a finding that the term "subsistence ", as used in former O.C.G.A. § 15-11-8 (see now O.C.G.A. § 15-11-36), included expenses that might be incurred due to the need for emergency medical treatment of a child in the physical custody of the Department of Juvenile Justice. In the Interest of J.S., 282 Ga. 623, 652 S.E.2d 547 (2007) (decided under O.C.G.A. § 15-11-2).

Jurisdiction. — Superior court properly declined jurisdiction in a custody action brought by grandparents because once a juvenile court took jurisdiction of a deprivation action concerning the child and, later, a termination action of parental rights, the court took jurisdiction of the entire case of the minor child including the issues of disposition and custody. Segars v. State, 309 Ga. App. 732, 710 S.E.2d 916 (2011) (decided under former O.C.G.A. § 15-11-58).

Serious injury not required for state intervention. — Georgia law does not require a child to suffer serious injury before state intervention. In the Interest of T. S., 348 Ga. App. 263, 820 S.E.2d 773 (2018).

Foster children. — Former O.C.G.A. §§ 15-11-13 and 15-11-58 (see now O.C.G.A. §§ 15-11-2, 15-11-30, 15-11-134, and 15-11-200 et seq.), 20-2-690.1, and 49-5-12 were not too vague and amorphous to be enforced by the judiciary and impose specific duties on the state defendants; thus, the federal regulatory scheme embodied in the CSFR process did not relieve the state defendants of the defendants obligation to fulfill the defendants

statutory duties to the foster children, nor did the former statute provide a legal excuse for the defendants failure to do so. Kenny A. v. Perdue, No. 1:02-cv-1686-MHS, 2004 U.S. Dist. LEXIS 27025 (N.D. Ga. Dec. 11, 2004) (decided under former O.C.G.A. § 15-11-58).

No equal protection violation. — Treating deprived children who were placed in the legal custody of the Department of Families and Children Services because there was no relative committed to the child who was available for immediate placement differently from deprived children who did have a committed parent or guardian available for immediate placement did not violate the equal protection clause or Ga. Const. 1983, Art. I, Sec. I, Para. II. as the classes were not similarly situated and the laws were rationally related to the goal of minimizing government intervention while ensuring that children were reared in a familial environment. In the Interest of A.N., 281 Ga. 58, 636 S.E.2d 496 (2006) (decided under former O.C.G.A. § 15-11-58).

Juvenile proceeding to destination certain not unruly. — Juvenile was not unruly, since the court rejected the notion that a juvenile returning home or proceeding to a destination certain would be "wandering" within the meaning of former O.C.G.A. § 15-11-2(12)(E) (see now O.C.G.A. §§ 15-11-2(ii)(A)(v), 15-11-381, and 15-11-471), as the section only applied to juveniles who were wandering or loitering on the streets, highways, or public places between those hours. In re T.H., 258 Ga. App. 416, 574 S.E.2d 461 (2002) (decided under former O.C.G.A. § 15-11-2).

Desert defined. — "Desert," in its most common verb form, is defined as "to withdraw from or leave usually without intent to return;" accordingly, in order for a child to "desert" the child's home within the meaning of former O.C.G.A. § 15-11-2(12)(D) (see now O.C.G.A. §§ 15-11-2, 15-11-381, and 15-11-471), the child must leave the home without an intent to return to the home. Thus, when the defendant, a juvenile, left home for nearly two days but then returned voluntarily, the defendant's delinquency adjudication for being an unruly child had to be reversed. In the Interest of D.B., 284 Ga. App. 445, 644 S.E.2d 305 (2007) (decided under former O.C.G.A. § 15-11-2).

Unruliness based on habitual disobedience. — Parent's testimony that on successive occasions the defendant, a juvenile, disobeyed the parent's instructions to return home at a specific time was sufficient to support the adjudication of the defendant as unruly based on habitual disobedience. In the Interest of B.B., 298 Ga. App. 432, 680 S.E.2d 497 (2009) (decided under former O.C.G.A. § 15-11-2).

Unruliness based on running away. — Defendant, a juvenile, was properly found unruly based on running away when the defendant went to a grandparent's house without the parent's permission and did not return of the defendant's own volition. In the Interest of B.B., 298 Ga. App. 432, 680 S.E.2d 497 (2009) (decided under former O.C.G.A. § 15-11-2).

Question in proceeding for termination of parental rights is not that parents must be punished by termination of their parental rights because of their misconduct, though parental misconduct is an essential consideration, but whether children were without proper parental care or control, subsistence, or education as required by law, or other care or control necessary for their physical, mental or emotional health, or morals. Vermilyea v. Department of Human Resources, 155 Ga. App. 746, 272 S.E.2d 588 (1980) (decided under former Code 1933, § 24A-401).

Order for termination need not be explicit when facts can be derived. — With regard to an order for termination of parental rights, it is not always necessary to state explicitly that lack of parental care is serious or egregious when the found facts are expressive of that state and conclusions are of deprivation and probable continuation of that condition. Vermilyea v. Department of Human Resources, 155 Ga. App. 746, 272 S.E.2d 588 (1980) (decided under former Code 1933, § 24A-401).

Evidentiary standards. — Termination of parental rights is a severe measure. If a third party sues the custodial parent to obtain custody of a child and to terminate the parent's custodial rights in the child, the parent is entitled to custody

General Consideration (Cont'd)

of the child unless the third party shows by "clear and convincing evidence" that the parent is unfit or otherwise not entitled to custody under O.C.G.A. §§ 19-7-1 and 19-7-4. Former O.C.G.A. § 15-11-33(b) required the court after a hearing to find "clear and convincing evidence" of "deprivation" before an order of deprivation may be entered. Heath v. McGuire, 167 Ga. App. 489, 306 S.E.2d 741 (1983) (decided under former Code 1933, § 24A-401).

Evidence of deprivation sufficient. — Evidence that over the course of about two years after the child was born the mother failed multiple drug tests and missed numerous drug screenings was sufficient to support the juvenile court's findings that the child was deprived and the mother's lack of proper parental care caused the deprivation. In the Interest of S. O. C., 332 Ga. App. 738, 774 S.E.2d 785 (2015) (decided under former Code 1933, § 24A-401).

Evidence sufficient to support dependency finding. — Order finding two children dependent as to their mother was affirmed because sufficient evidence supported the juvenile court's finding of abuse or neglect due in part to the mother's knowing violation of the terms of the safety plan on multiple occasions by failing to keep the children away from the mother's boyfriend, who had shot the children with a toy BB gun. In the Interest of T. S., 348 Ga. App. 263, 820 S.E.2d 773 (2018).

Evidence was sufficient to show by clear and convincing evidence that the child was dependent due to the mother's unfitness and abandonment at the time the juvenile court entered the court's order as the evidence showed that the mother was mentally and economically unstable, lacked stable housing, abused illegal drugs, and actually abandoned the child. In the Interest of A. B., 350 Ga. App. 575, 829 S.E.2d 842 (2019).

Insufficient evidence of dependency. — Juvenile court lacked clear and convincing evidence to support the court's finding of dependency in that the juveniles had been abused or neglected because the evidence showed that the parent had passed all but one of the parent's drug screens, the parent was forthcoming and compliant in the parent's outpatient treatment, and there was no evidence that the parent's probation violations resulted in abuse or neglect of the children. In the Interest of G. M., 347 Ga. App. 487, 819 S.E.2d 909 (2018).

Juvenile court's dependency determination was not supported by clear and convincing evidence because no evidence or testimony was proffered regarding other children in foster care, and any concerns about the mother's residence and the evidence of drug use through two positive hair follicle drug screenings was controverted by the mother presenting three negative hair follicle drug screenings covering the same time period. In the Interest of M. S., 352 Ga. App. 249, 834 S.E.2d 343 (2019).

Juvenile court's conclusion that the child was dependent based on neglect was not supported by clear and convincing evidence in the record that the mother neglected the child or that the mother was unfit, rather the evidence showed that the mother had, at least temporarily, located suitable housing and the evidence did not support a finding of unfitness but rather showed that the mother was taking care of the child, the child was current on vaccinations, appropriately clothed, not underweight or malnourished, and appropriately bonded with the mother. In the Interest of V G., 352 Ga. App. 404, 834 S.E.2d 901 (2019).

Juvenile court erred in concluding there was clear and convincing evidence to support a finding that the father failed to protect and properly supervise the children and that the children were dependent as the trial court indicated that there was no evidence the children had been harmed by the father's actions and the father had been working from home and not left the children alone with the mother, who had a substance abuse problem. In the Interest of L. K., 353 Ga. App. 855, 840 S.E.2d 76 (2020).

Evidence sufficient to support dependency finding. — Evidence that the mother routinely yelled at and threatened the children, disciplined the younger chil-

dren by striking the children with a hand or belt so hard it left a mark, and frequently bit the children's heads or slapped their lips was sufficient to support a finding that the children were dependent. In the Interest of R. D., 346 Ga. App. 257, 816 S.E.2d 132 (2018).

Poverty and instability did not demonstrate profoundly detrimental parental conduct. — Although evidence showed poverty and instability in the mother's living arrangements, the evidence did not demonstrate the profoundly detrimental and egregious parental conduct which led to termination of rights in previous cases. R.C.N. v. State, 141 Ga. App. 490, 233 S.E.2d 866 (1977) (decided under former Code 1933, § 24A-401).

Improvements in housing and employment. — In determining whether the parent's current situation is stable, the juvenile court may consider the parent's past conduct and decide what weight, if any, is to be given to recent improvements in the parent's housing and employment circumstance. In the Interest of T. S., 348 Ga. App. 263, 820 S.E.2d 773 (2018).

Lack of housing and support caused by irregular employment. — Lack of stable housing and lack of support due to a parent's unstable or irregular employment are appropriate factors in determining deprivation. In the Interest of T. S., 348 Ga. App. 263, 820 S.E.2d 773 (2018).

Failure to address child's special immigrant juvenile status. — In a deprivation proceeding, a juvenile court erred by failing to address the child's special immigrant juvenile status under 8 U.S.C. § 1101(a)(27)(J)(ii) and a remand was necessary since the juvenile court had to determine whether the evidence supported the findings so that the federal government could address the issue in separate deportation proceedings. In the Interest of J. J. X. C., 318 Ga. App. 420, 734 S.E.2d 120 (2012) (decided under former O.C.G.A. § 15-11-2).

Non-accidental injuries. — Eighteen-month-old child was properly found to be a dependent child because the child was a victim of abuse under O.C.G.A. § 15-11-2(2)(A) based on multiple bruises, a skull fracture, and other non-accidental injuries the child suffered while in the care of the mother and her boyfriend, who both acknowledged that no other person had been caring for the child. In the Interest of S. C. S., 336 Ga. App. 236, 784 S.E.2d 83 (2016).

Evidence of deprived child. — Juvenile court did not err in concluding that the child was a deprived child and that the father was the reason for that deprivation because the evidence showing the father's lack of involvement in the child's welfare, leaving the child vulnerable to neglect inflicted by the mother, supported a finding that the father's failure to exercise proper care and control caused the child's deprivation; at the time of the February 2014 deprivation hearing, the father had been unemployed for almost a year, had no source of income, relied on the father's mother for financial support and housing, and was not actively seeking employment; and the father refused to submit to the required home evaluation, which included a drug test. In the Interest of M. R., 333 Ga. App. 30, 775 S.E.2d 281 (2015) (decided under former O.C.G.A. § 15-11-2(8)(A)).

Hearing in juvenile court seeking termination of probation must be treated as delinquency trial. K.E.S. v. State, 134 Ga. App. 843, 216 S.E.2d 670 (1975) (decided under former Code 1933, § 24A-401).

One becomes of full age on day preceding anniversary of one's birth, on the first moment of that day. Edmonds v. State, 154 Ga. App. 650, 269 S.E.2d 512 (1980) (decided under former Code 1933, § 24A-401).

Age of child at time of arrest. — Delinquency petition against a juvenile was properly transferred to the state court on the ground that the juvenile was arrested for possessing marijuana on the day before the juvenile's seventeenth birthday; pursuant to former O.C.G.A. §§ 15-11-2 and 15-11-28 (see now O.C.G.A. §§ 15-11-2 and 15-11-10), the juvenile was deemed to have been 17 at the earliest moment of the day before the juvenile's birthday, which was the day the juvenile was arrested. In the Interest of A.P.S., 304 Ga. App. 513, 696 S.E.2d 483 (2010) (decided under former O.C.G.A. § 15-11-2).

General Consideration (Cont'd)

Former O.C.G.A. § 15-11-2 was inapplicable to an unborn fetus who was facing almost certain death because of complications in pregnancy. Jefferson v. Griffin Spalding County Hosp. Auth., 247 Ga. 86, 274 S.E.2d 457 (1981) (decided under former O.C.G.A. § 15-11-2).

Statement of 17-year old admissible as not child. — Fact that the defendant was 17 did not affect the admissibility of the defendant's statement. The defendant was not a "child" under former O.C.G.A. § 15-11-2. Robertson v. State, 297 Ga. App. 228, 676 S.E.2d 871 (2009), cert. denied, No. S09C1300, 2009 Ga. LEXIS 406 (Ga. 2009) (decided under former O.C.G.A. § 15-11-2).

Carrying weapon on school grounds Class B felony. — Juvenile court erred by modifying the juvenile's disposition after determining that the disposition was void on the ground that the juvenile's conduct did not qualify as a Class-B felony because carrying a weapon in a school zone qualified as a Class-B designated felony under O.C.G.A. § 15-11-2 and "firearm" included "handguns" under O.C.G.A. § 16-11-131. In the Interest of D. B., 341 Ga. App. 559, 802 S.E.2d 19 (2017).

Third party must show grounds for custody by clear and convincing evidence. — As between a natural parent and a third party (grandparent), the parent can be deprived of custody only if one of the conditions specified in O.C.G.A. § 19-7-1 or O.C.G.A. § 19-7-4, or some other legal grounds is found to exist by clear and convincing evidence. Brant v. Bazemore, 159 Ga. App. 659, 284 S.E.2d 674 (1981) (decided under former O.C.G.A. § 15-11-2).

Admissibility of juvenile's confession. — Issue of whether officer to whom juvenile was taken and to whom the juvenile made confession was a "juvenile court intake officer" did not affect admissibility of the statement when Miranda warnings were given and the juvenile's mother was present. Houser v. State, 173 Ga. App. 378, 326 S.E.2d 513 (1985) (decided under former O.C.G.A. § 15-11-2).

Violation of safety plan. — When evidence shows that a parent violates a safety plan by placing a child in an abusive environment, a court may find dependency and order loss of custody. In the Interest of T. S., 348 Ga. App. 263, 820 S.E.2d 773 (2018).

Cited in In the Interest of H. J. C., 331 Ga. App. 506, 771 S.E.2d 184 (2015); In the Interest of G. R. B., 330 Ga. App. 693, 769 S.E.2d 119 (2015); In the Interest of C. M., 331 Ga. App. 16, 769 S.E.2d 737 (2015); In the Interest of S. P., 336 Ga. App. 488, 784 S.E.2d 846 (2016); In the Interest of M.D.H., 300 Ga. 46, 793 S.E.2d 49 (2016); In the Interest of J. N., 344 Ga. App. 409, 810 S.E.2d 191 (2018); In the Interest of K. D., 344 Ga. App. 423, 810 S.E.2d 193 (2018); In the Interest of I. L. M., 304 Ga. 114, 816 S.E.2d 620 (2018); In the Interest of M. F., 305 Ga. 820, 828 S.E.2d 350 (2019); In the Interest of A. L. S., 350 Ga. App. 636, 829 S.E.2d 900 (2019).

Jurisdiction of Court

Jurisdiction. — Under former O.C.G.A. §§ 15-11-2(2)(B) and 15-11-28(a)(1)(F) (see now O.C.G.A. §§ 15-11-2, 15-11-381, and 15-11-471), a juvenile court lacked jurisdiction over the defendant, who was over 17 when a probation violation occurred; thus, the defendant's commitment under O.C.G.A. § 15-11-63 (see now O.C.G.A. §§ 15-11-2, 15-11-471, and 15-11-602) was void. The state had not filed a petition for probation revocation, but only for a violation of probation. In the Interest of T.F., 314 Ga. App. 606, 724 S.E.2d 892 (2012) (decided under former O.C.G.A. § 15-11-63).

Juvenile may receive restrictive custody for the designated felony act of aggravated assault alone. C.P. v. State, 167 Ga. App. 374, 306 S.E.2d 688 (1983) (decided under former Code 1933, § 24A-401).

If the juvenile court made all the factual findings required by former O.C.G.A. § 15-11-37 and (see now O.C.G.A. §§ 15-11-2, 15-11-471, 15-11-602) and specifically found "the child is in need of restrictive custody" in the juvenile court's order of commitment, there was no error in confining the child in a youth development center. In re T.T., 236 Ga. App. 46,

510 S.E.2d 901 (1999) (decided under former O.C.G.A. § 15-11-37).

Trial court did not err in placing the defendants, both juveniles, in restrictive custody, as the aggravated assault that the defendants committed was a designated felony under former O.C.G.A. § 15-11-63(a) (see now O.C.G.A. § 15-11-2) that required a finding under O.C.G.A. § 15-11-63(b) (see now O.C.G.A. § 15-11-62) as to whether defendants required restrictive custody; the circumstances under former O.C.G.A. § 15-11-63(c) (see now O.C.G.A. § 15-11-62) supported the imposition of restrictive custody since the crime was severe, the crime was premeditated, and the crime had a devastating impact on the victim's life. In the Interest of T.K.L., 277 Ga. App. 461, 627 S.E.2d 98 (2006) (decided under former O.C.G.A. § 15-11-63).

Juvenile's sentence of four years in custody was proper on six counts of aggravated assault and one count of possession of a handgun by an underage person because the juvenile was not subject to one of the most severe punishments allowed by law, but was sentenced under former O.C.G.A. § 15-11-63 (see now O.C.G.A. §§ 15-11-2 and 15-11-602), which had the central purpose of rehabilitation and treatment of the child and not punishment. In the Interest of T. D. J., 325 Ga. App. 786, 755 S.E.2d 29 (2014) (decided under former O.C.G.A. § 15-11-63).

Petition necessary to revoke probation. — Juvenile court cannot sua sponte revoke probation and order a disposition as for a "designated felony act " after conducting a hearing on a petition which alleges only delinquency by reason of the commission of an act not within the ambit of former O.C.G.A. § 15-11-37 (see now O.C.G.A. §§ 15-11-2 and 15-11-602). Before a juvenile court may revoke an order granting probation, a petition must be filed requesting such relief. In re B.C., 169 Ga. App. 200, 311 S.E.2d 857 (1983) (decided under former O.C.G.A. § 15-11-37).

No age requirement for previous designated felony acts. — Juvenile court did not err in finding that the defendant committed a designated felony act under subparagraph (a)(2)(D) of former O.C.G.A. § 15-11-37 (see now O.C.G.A. §§ 15-11-2 and 15-11-602), although the previous adjudicated delinquent acts were not committed when the defendant was 13 or more years of age. The previous act of burglary to which former subparagraph (a)(2)(D) referred carried no age requirement. The only requirement was that the juvenile commit a felonious act after three previous adjudications for acts which would have been felonies if committed by an adult. In re K.A.B., 188 Ga. App. 515, 373 S.E.2d 395 (1988) (decided under O.C.G.A. § 15-11-37).

Child molestation. — Because child molestation was not an offense listed in former O.C.G.A. § 15-11-28(b)(2)(A) (see now O.C.G.A. §§ 15-11-401 and 15-11-490), the trial court erred in using former O.C.G.A. § 15-11-63(a)(2)(D) (see now O.C.G.A. §§ 15-11-2 and 15-11-602) to classify the offense as a designated felony act when the court sentenced a juvenile. In the Interest of M. S., 277 Ga. App. 706, 627 S.E.2d 422 (2006) (decided under former O.C.G.A. § 15-11-63).

Sentence vacated. — Although the state argued that a juvenile had been adjudicated on five separate petitions setting out five separate felonies, because the record revealed that adjudication had occurred on only two prior occasions for acts which, if done by an adult, would have been felonies, the juvenile's sentence under former O.C.G.A. § 15-11-63(a)(2)(B)(vii) (see now O.C.G.A. § 15-11-2) was vacated, and the case was remanded for resentencing. In the Interest of P.R., 282 Ga. App. 480, 638 S.E.2d 898 (2006) (decided under former O.C.G.A. § 15-11-63).

No exclusive original jurisdiction over certain youthful offenders. — Ga. L. 1971, p. 709, § 1 does not vest exclusive original jurisdiction in the juvenile court over the following class of youthful offenders: persons between the ages of 17 and 21 years, who have committed noncapital felonies, and who are under the supervision of or are on probation to a juvenile court for acts of delinquency committed before reaching the age of 17 years. State v. Crankshaw, 243 Ga. 183, 253 S.E.2d 69 (1979) (decided under former Code 1933, § 24A-401).

Former Code 1933, § 24A-401 was intended merely as a device for ex-

Jurisdiction of Court (Cont'd)

tending jurisdiction of juvenile courts to take actions against persons between the age of 17 and 21 years authorized under Ga. L. 1971, p. 709, § 1. State v. Crankshaw, 243 Ga. 183, 253 S.E.2d 69 (1979) (decided under former Code 1933, § 24A-401).

Noncapital felonies committed by persons over 17 years. — Former statute should not be construed as giving the juvenile courts jurisdiction over noncapital felonies committed by persons after those people have reached the age of 17 years. State v. Crankshaw, 243 Ga. 183, 253 S.E.2d 69 (1979) (decided under former Code 1933, § 24A-401).

Age at time of offense controls. — Although a juvenile no longer qualified as a child under former O.C.G.A. § 15-11-2(2)(A) and (B) after the juvenile's seventeenth birthday, it was the juvenile's age at the time of the offense which controls; therefore, because the juvenile was under the age of 17 at the time the act of delinquency occurred, the juvenile court properly exercised exclusive original jurisdiction over the juvenile's case. In the Interest of J.T.D., 242 Ga. App. 243, 529 S.E.2d 377 (2000) (decided under former O.C.G.A. § 15-11-2).

Violation of probation. — Under former O.C.G.A. §§ 15-11-2(2)(B) and 15-11-28(a)(1)(F (see now O.C.G.A. §§ 15-11-2 and 15-11-10), a juvenile court lacked jurisdiction over the defendant, who was over 17 when a probation violation occurred; thus, the defendant's commitment under former O.C.G.A. § 15-11-63 (In the Interest of T.F., 314 Ga. App. 606, 724 S.E.2d 892 (2012) (decided under former O.C.G.A. § 15-11-2).

Court without original jurisdiction of custody and support contest. — Jurisdiction of a custody and support contest between parents, in the nature of habeas corpus, alleging that the children were deprived as defined by former Code 1933, § 24A-401 was governed by former Code 1933, § 50-103 (see now O.C.G.A. § 9-14-4). The juvenile court did not have original jurisdiction of such a contest. Griggs v. Griggs, 233 Ga. 752, 213 S.E.2d 649 (1975) (decided under former Code 1933, § 24A-401).

Juvenile court erred by granting custody of child to grandparents instead of father, after mother died, since the petition was not a deprivation action but a custody dispute as the juvenile court had no jurisdiction. In the Interest of K.R.S., 253 Ga. App. 678, 560 S.E.2d 292 (2002) (decided under former O.C.G.A. § 15-11-2).

Juvenile court jurisdiction over both adoption and parental termination proceedings. — Trial court did not err in concluding that the court had jurisdiction over adoption and termination of parental rights proceeding as statutory law granted the trial court jurisdiction over adoption proceedings and other proceedings that were not granted exclusively to the juvenile courts; since the juvenile courts were granted exclusive jurisdiction over deprivation proceedings, those types of matters were to be heard by the juvenile courts, but the trial court had the authority to hear adoption and other matters, such as the adoptive parents' adoption petition filed to adopt the biological parents' minor child. Snyder v. Carter, 276 Ga. App. 426, 623 S.E.2d 241 (2005) (decided under former O.C.G.A. § 15-11-2).

Jurisdiction of juvenile court in transferred custody proceeding. — Georgia Supreme Court affirmed the transfer of a father's petition for custody from Gwinnett County, Georgia, to Douglas County, Georgia because the "complaint for custody" that the father filed in Gwinnett County fairly was read as a petition to modify, vacate, or revoke the permanent guardianship, a petition over which the Juvenile Court of Douglas County had exclusive jurisdiction under the circumstances. In the Interest of M. F., 298 Ga. 138, 780 S.E.2d 291 (2015).

Jurisdiction over legitimation petition and for placement. — Contrary to a mother's contention, the custody order showed on the order's face such facts as were necessary to give the juvenile court jurisdiction of the person and subject matter because the order referenced and incorporated the legitimation order entered days earlier, reflected on the order's face that all parties were served with a copy of the pleadings and were present, along

with their counsel, and the mother did not contest the juvenile court's personal jurisdiction. In the Interest of B. H.-W., 332 Ga. App. 269, 772 S.E.2d 66 (2015).

Transfer from Superior Court needed for permanent custody order. — In a private deprivation action brought by the maternal grandmother of a 9-year-old child, the juvenile court lacked authority to grant the grandmother permanent custody over the child for purposes of adoption because the case was not commenced in the Georgia Superior Court, which had jurisdiction over issues of permanent child custody; therefore, without a transfer order from the Superior Court under O.C.G.A. § 15-11-28, the custody award could not stand. In the Interest of C. A. J., 331 Ga. App. 788, 771 S.E.2d 457 (2015).

Delinquency

"Delinquent act" is one designated crime by state or federal law. Hartley v. Clack, 239 Ga. 113, 236 S.E.2d 63 (1977) (decided under former Code 1933, § 24A-401).

Probation violation included in justification of delinquency petition. — Juvenile court erred when the court dismissed the state's petition alleging that a child had committed the delinquent act of violating probation as O.C.G.A. § 15-11-2(19)(B) plainly included a probation violation in the category of actions that may give rise to a new delinquency petition and O.C.G.A. § 15-11-608(b) plainly permitted the filing of a motion for revocation of probation, and no court is authorized to ignore either a petition brought under the first or a motion brought under the second. In the Interest of H. J. C., 331 Ga. App. 506, 771 S.E.2d 184 (2015).

Crime may be delinquent act when committed by juvenile. — Juvenile court might well find that any act which is designated a crime under Georgia law is a delinquent act when committed by a juvenile. In order to do this, it is not necessary that the juvenile be considered or found guilty of a crime. K.M.S. v. State, 129 Ga. App. 683, 200 S.E.2d 916 (1973) (decided under former Code 1933, § 24A-401).

Crime committed even though child not yet 13 years. — Juvenile court may adjudicate a child a delinquent based upon a petition alleging that the child committed an act designated a crime under Georgia law when the child has not yet attained the age of 13 years. K.M.S. v. State, 129 Ga. App. 683, 200 S.E.2d 916 (1973) (decided under former Code 1933, § 24A-401).

Delinquent act ceases to be "crime" only for proceedings in juvenile court and the resultant effects of its adjudication. A petition designating the act by another name does not destroy the act's essence so as to preclude legitimate proceedings elsewhere. J.E. v. State, 127 Ga. App. 589, 194 S.E.2d 288 (1972) (decided under former Code 1933, § 24A-401).

Delinquent acts including another or coincident crimes. — It is necessary to an adjudication of a "delinquent act" that the act be one which is defined as, and would be, a "crime" if the act were committed by an adult, and this includes "delinquent acts" which would include another or coincident "crime" if committed by an adult, such as the crime of "possession of a firearm during the commission of a felony." In re D.T.C., 226 Ga. App. 364, 487 S.E.2d 21 (1997) (decided under former O.C.G.A. § 15-11-2).

Possession of alcohol as delinquent act. — Possession of alcohol by a minor may be either a delinquent or an unruly offense, and, since it may be a delinquent act, violating a court-ordered probation imposed for such an offense may likewise be a delinquent act. In re C.P., 217 Ga. App. 505, 458 S.E.2d 166 (1995) (decided under former O.C.G.A. § 15-11-2).

Unnecessary to find adult intent. — In order to find a juvenile defendant guilty of the delinquent act of attempted aggravated child molestation, the court must find that the defendant attempted aggravated child molestation with an intent to satisfy the defendant's own desires. Whether the juvenile defendant had the sexual intent or knowledge of an adult would be irrelevant. In re W.S.S., 266 Ga. 685, 470 S.E.2d 429 (1996) (decided under former O.C.G.A. § 15-11-2).

Driving without a license. — Although the juvenile court could find that

Delinquency (Cont'd)

the juvenile was delinquent for driving without a license, the state did not prove that the juvenile was wandering or loitering in violation of former O.C.G.A. § 15-11-2(12)(E) since the juvenile was proceeding to a destination certain. In the Interest of T. H., 258 Ga. App. 416, 574 S.E.2d 461 (2002) (decided under former O.C.G.A. § 15-11-2).

Probation violation a delinquent act. — Juvenile defendant's commitment to the Department of Juvenile Justice (DJJ) was proper because the defendant's violation of probation terms was a delinquent act and the defendant was found in need of treatment or rehabilitation under former O.C.G.A. § 15-11-66(a)(4) (see now O.C.G.A. § 15-11-601). In the Interest of B. Q. L. E., 297 Ga. App. 273, 676 S.E.2d 742, cert. denied, No. S09C1197, 2009 Ga. LEXIS 787 (Ga. 2009) (decided under former O.C.G.A. § 15-11-2).

Juvenile court had jurisdiction to hear and decide the state's petition alleging that the defendant, a juvenile, had committed the new delinquent act of violating probation, irrespective of whether the one-year terms of the defendant's probation ended after the commencement of the new delinquency proceedings. In the Interest of J. M. A., 340 Ga. App. 155, 796 S.E.2d 773 (2017).

Petition insufficient to charge juvenile as unruly. — Juvenile court erred in denying the defendant juvenile's special demurrer to a petition accusing the defendant of being unruly pursuant to former O.C.G.A. §§ 15-11-2 and 15-11-67 (see now O.C.G.A. §§ 15-11-2 and 15-11-442) because the petition did not allege the defendant's misconduct with particularity, and the defendant was unable to determine what acts of disobedience supported the allegation that the defendant was unruly; although the petition alleged the date the defendant was disobedient, the petition provided no factual details, and the petition merely mirrored the language of former O.C.G.A. § 15-11-2(12)(B). In the Interest of C.H., 306 Ga. App. 834, 703 S.E.2d 407 (2010) (decided under former O.C.G.A. § 15-11-2).

Evidence insufficient to support adjudication of delinquency. — Adjudication of children as delinquent for being outside their residence past their probationary curfew was error in the absence of competent proof that either child was subject to court-ordered probation and to a defined curfew as a term of that probation. In re B.K., 239 Ga. App. 822, 522 S.E.2d 255 (1999) (decided under former O.C.G.A. § 15-11-2).

Defendant's adjudication of juvenile delinquency based on a charge that the defendant was violating the terms of probation by associating with gang members was reversed; the state failed to prove the predicate acts of a count charging the defendant with participation in criminal street gang activity, and the state admitted that the probation violation count did not contain sufficient factual details to inform the defendant of the nature of the offense charged. In the Interest of L.J.L., 284 Ga. App. 801, 645 S.E.2d 371 (2007) (decided under former O.C.G.A. § 15-11-2).

Evidence sufficient to support adjudication of delinquency. — When juvenile defendants confessed to entering a vacant home and causing damage therein, and a police officer testified to the condition of the home and the damage the officer found upon investigation, together with witnesses' statements from people who were with the defendants prior to and after the acts, wherein the witnesses' testified that the defendants indicated their intent to damage the house, there was sufficient evidence to support an adjudication of delinquency pursuant to former O.C.G.A. § 15-11-2. In the Interest of Q.D., 263 Ga. App. 293, 587 S.E.2d 336 (2003) (decided under former O.C.G.A. § 15-11-2).

Officer's testimony that the officer encountered a group of juveniles, including the appellant, at 1:30 A.M., the juveniles could not explain their presence in the area, the juveniles did not have identification, and the juveniles gave conflicting stories about the owner of a vehicle the juveniles were standing around was sufficient to prove the offenses of curfew violation, loitering, and prowling beyond a reasonable doubt. It was immaterial that the appellant did not attempt to flee from the officer, refuse to identify himself, or at-

tempt to conceal himself. In the Interest of R.F., 279 Ga. App. 708, 632 S.E.2d 452 (2006) (decided under former O.C.G.A. § 15-11-2).

Trial court did not err in adjudicating the defendant juvenile delinquent for a violation of the Anti-Mask Act, O.C.G.A. § 16-11-38, and a violation of O.C.G.A. § 16-11-36 for loitering or prowling because there was sufficient evidence to permit a rational trier of fact to conclude beyond a reasonable doubt that the defendant intended to conceal the defendant's identity and to threaten, intimidate, or provoke the apprehension of violence; the circumstances and the defendant's actions, together with a friend's actions, supported the conclusion that a justifiable and reasonable alarm or immediate concern for the safety of the occupants of a house was warranted. In the Interest of I.M.W., 313 Ga. App. 624, 722 S.E.2d 586 (2012) (decided under former O.C.G.A. § 15-11-2).

Evidence that the defendant received $775 a month in Supplemental Security Income benefits, was physically able to work from the adjudication of delinquency until a foot injury but failed to try to obtain work, failed to pay the $75 supervision fee, and failed to complete community service hours despite the flexibility afforded by the probation officer was sufficient to support the adjudication as delinquent for violating probation. In the Interest of J. M. A., 340 Ga. App. 155, 796 S.E.2d 773 (2017).

Delinquency adjudication for burglary. — Evidence was sufficient for any rational trier of fact to find the juvenile delinquent due to the juvenile's involvement in the burglary of a pharmacy because an accomplice's testimony that the juvenile participated in the burglary was corroborated; the extraneous evidence, even if slight and entirely circumstantial, connected the juvenile to the burglary. In the Interest of R.W., 315 Ga. App. 227, 726 S.E.2d 708 (2012) (decided under former O.C.G.A. § 15-11-2).

Delinquency adjudication for criminal damage to property. — Juvenile court did not err in finding the defendant juvenile delinquent for committing the offense of criminal damage to property in violation of O.C.G.A. § 16-7-23(a)(1) because the evidence presented including the extent of the damage and the defendant's admission that the defendant and others kicked and pushed on the door to a rental home was sufficient. In the Interest of C.H., 306 Ga. App. 834, 703 S.E.2d 407 (2010) (decided under former O.C.G.A. § 15-11-2).

Delinquency adjudication for gang activity. — There was sufficient evidence to support the defendant juvenile's adjudication of delinquency for participation in criminal street gang activity in violation of O.C.G.A. § 16-15-4 because the evidence established that the defendant was a gang member and that there was a nexus between the shooting and an intent to further gang activity; the defendant admitted that the defendant was a member of the gang, and a police detective, who was qualified as an expert in gang investigations, testified that the defendant was a known member of the gang, that the defendant had previously admitted to the detective that the defendant was a member of that gang, that a black bandana was attire associated with the gang, and that wearing such a bandana during a shooting was particularly significant because the bandana proclaimed to the world that the defendant was a member and that the shooting was a gang act. In the Interest of D. M., 307 Ga. App. 751, 706 S.E.2d 683 (2011) (decided under former O.C.G.A. § 15-11-2).

Mental Instability

Evidence of deprived child. — Evidence established that a child was deprived due to parental unfitness under former O.C.G.A. § 15-11-2(8)(A) (see now O.C.G.A. §§ 15-11-2 and 15-11-107) because the mother was unable to care for the child from birth due to mental instability, the father was intentionally absent for the first two months of the child's life, and although the parents had married, neither had a job or stable housing, and the mother's mental instability had not been addressed. In re V.D., 303 Ga. App. 155, 692 S.E.2d 780 (2010) (decided under former O.C.G.A. § 15-11-2).

Parent unable to independently parent child due to cognitive deficits. — Judgment of the trial court terminating

Mental Instability (Cont'd)

a mother's parental rights was affirmed because although the mother met most case plan goals, the evidence of parental inability was sufficient to support the termination based on the mother's significant cognitive deficits which left the mother unable to independently parent the child, who, because of developmental issues, presented extraordinary parenting challenges. In the Interest of T. A., 331 Ga. App. 92, 769 S.E.2d 797 (2015).

Sexual Abuse

Evidence of deprived child. — Evidence supported the juvenile court's finding that a father's son and daughter were deprived because, although there was testimony from witnesses stating that the witnesses never saw any problems with the children, the court of appeals neither weighed the evidence nor determined the credibility of witnesses but instead deferred to the juvenile court's factfinding and affirmed unless the appellate standard was not met; the evidence that the father physically abused the son, sexually abused the daughter, and neglected the children's hygiene was sufficient to meet that standard. In the Interest of R. C. H., 307 Ga. App. 774, 706 S.E.2d 686 (2011) (decided under former O.C.G.A. § 15-11-2).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, §§ 24A-401, 24A-2301A, 24A-2302A, and 24A-3301, and pre-2000 Code Section 15-11-37, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section.

Statutory rape and the combined offenses of statutory rape and criminal trespass may not be considered designated felony acts under paragraph (a)(2) of former O.C.G.A. § 15-11-37 (see now O.C.G.A. §§ 15-11-2 and 15-11-602). 1983 Op. Att'y Gen. No. 83-17 (decided under former O.C.G.A. § 15-11-37).

Designated felony act. — Unless a juvenile had been adjudicated a delinquent in prior court appearances for acts of burglary, a multiple count petition was not sufficient to fall within former subparagraph (a)(2)(D) of former O.C.G.A. § 15-11-37 (see O.C.G.A. § 15-11-63). 1983 Op. Att'y Gen. No. U83-10 (decided under former O.C.G.A. § 15-11-37).

Custody of Department of Human Resources may not terminate at age 18. — Under the provisions of the juvenile code, the Department of Human Resources' custody of a child is not necessarily terminated when the child reaches the child's eighteenth birthday; former Code 1933, § 74-104 (see O.C.G.A. § 39-1-1), relating to age of majority, had no effect on the termination of the department's custody. 1974 Op. Att'y Gen. No. 74-139 (decided under former Code 1933, § 24A-401).

Department of Human Resources' rule for committed child. — Even if the child is committed to the Department of Human Resources before the child's seventeenth birthday, the department cannot confine the child beyond that date and the department's legal responsibility for the child terminates on that day; prior to a committed child's seventeenth birthday the department should notify the sentencing court that a further disposition or a release must be made. 1974 Op. Att'y Gen. No. 74-139 (decided under former Code 1933, § 24A-401).

RESEARCH REFERENCES

Am. Jur. 2d. — 47 Am. Jur. 2d, Juvenile Courts and Delinquent and Dependent Children, §§ 7, 10 et seq., 49, 56.

Am. Jur. Proof of Facts. — Defendant's Competency to Stand Trial, 40 POF2d 171.

C.J.S. — 43 C.J.S., Infants, § 224 et seq. 67A C.J.S., Parent and Child, §§ 38 et seq., 63 et seq., 73 et seq., 90 et seq.

U.L.A. — Uniform Juvenile Court Act (U.L.A.) § 2.

ALR. — Age of child at time of alleged offense or delinquency, or at time of legal proceedings, as criterion of jurisdiction of juvenile court, 89 A.L.R.2d 506.

Truancy as indicative of delinquency or incorrigibility, justifying commitment of infant or juvenile, 5 A.L.R.4th 1211.

Power of court or other public agency to order medical treatment over parental religious objections for child whose life is not immediately endangered, 21 A.L.R.5th 248.

Validity and efficacy of minor's waiver of right to counsel — cases decided since application of Gault, 387 U.S. 1, 87 S. Ct. 1428, 18 L. Ed. 2d 527 (1967), 101 A.L.R.5th 351.

15-11-3. Direct calendaring.

Through direct calendaring, whenever possible, a single judge shall hear all successive cases or proceedings involving the same child or family.

History. — Code 1981, § 15-11-3, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

15-11-4. Other laws apply to chapter.

Where procedures are not provided in this chapter, the court shall proceed in accordance with:

(1) Title 17 in a delinquency proceeding; and

(2) Chapter 11 of Title 9 in all other matters.

History. — Code 1981, § 15-11-4, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

JUDICIAL DECISIONS

Cited in In the Interest of M.D.H., 300 Ga. 46, 793 S.E.2d 49 (2016).

15-11-5. Computations of time.

(a) When a period of time measured in days, weeks, months, years, or other measurements of time is prescribed for the exercise of any privilege or the discharge of any duty, the first day shall not be counted but the last day shall be counted; and, if the last day falls on a weekend, the party having such privilege or duty shall have through the following business day to exercise such privilege or discharge such duty.

(b) When the last day prescribed for the exercise of any privilege or the discharge of any duty falls on a public and legal holiday as set forth

in Code Section 1-4-1, the party having such privilege or duty shall have through the next business day to exercise such privilege or discharge such duty.

(c) When the period of time prescribed is less than seven days, intermediate weekends and legal holidays shall be excluded in the computation.

History. — Code 1981, § 15-11-5, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242; Ga. L. 2014, p. 780, § 1-2/SB 364.

JUDICIAL DECISIONS

Weekend days excluded. — Trial court properly denied the defendant juvenile's motion to dismiss because the delinquency petition, which was filed on the Tuesday after the Thursday on which the defendant was detained, was timely filed since the 72-hour period was clearly less than seven days and the weekend days were excluded from computation. In the Interest of C. M. B., 335 Ga. App. 456, 781 S.E.2d 570 (2016).

15-11-6. Computation of age.

(a) Except as provided in subsection (b) of this Code section, a child attains a specified age the first second past midnight on the day of the anniversary of such child's birth.

(b) A child born on February 29 attains a specified age on March 1 of any year that is not a leap year.

History. — Code 1981, § 15-11-6, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

Law reviews. — For article, "Georgia's Juvenile Code: New Law for the New Year," see 19 Ga. St. B. J. 13 (Dec. 2013).

15-11-7. Court of inquiry.

(a) The juvenile court shall have jurisdiction to act as a court of inquiry with all the powers and rights allowed courts of inquiry in this state and to examine or investigate into the circumstances or causes of any conduct or acts of any person 17 or more years of age that may be in violation of the laws of this state whenever such person is brought before the court in the course of any proceeding instituted under this chapter. The court shall cause the person to be apprehended and brought before it upon either a writ of summons, a warrant duly issued, or by arrest.

(b) When, after hearing evidence, the court has reasonably ascertained that there is probable cause to believe that the person has committed a misdemeanor or felony as prescribed under the laws of this state, the court shall commit, bind over to the court of proper jurisdic-

tion in this state, or discharge the person. When justice shall require, the court shall cause the person to make such bail as the court shall deem proper under the circumstances and to cause the person to appear before the court of proper jurisdiction in this state to be acted upon as provided by law.

History. — Code 1981, § 15-11-7, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

Cross references. — Juvenile Court records, Uniform Rules for the Juvenile Courts of Georgia, Rules 3.1 et seq. Juvenile Court as court of inquiry, Uniform Rules for the Juvenile Courts of Georgia, Rules 14.1 and 14.2.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarities of the statutory provisions, decisions under pre-2000 Code Section 15-11-65 and pre-2014 Code Section 15-11-4, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Juvenile courts have all powers and rights of courts of inquiry. — Subsection (a) of former O.C.G.A. § 15-11-4 granted juvenile courts all the powers and rights of courts of inquiry. This included the power to issue search warrants under O.C.G.A. § 17-5-21 since a juvenile court as a court of inquiry was specifically authorized by former O.C.G.A. § 15-11-4 to examine into the arrest of an offender against the penal laws. State v. Belcher, 157 Ga. App. 137, 276 S.E.2d 649 (1981) (decided under former O.C.G.A. § 15-11-65).

Powers of court supplemented by application to persons not juveniles. — Concluding clause of the first sentence of subsection (a) of former O.C.G.A. § 15-11-4 did not limit the grant of authority to act as a court of inquiry; the clause merely supplemented those powers by specifically applying those powers to a class of persons who were not, by definition, juveniles. State v. Belcher, 157 Ga. App. 137, 276 S.E.2d 649 (1981) (decided under former O.C.G.A. § 15-11-65).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under pre-2000 Code Section 15-11-65, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Concurrent warrant-issuing magistrates. — See 1984 Op. Att'y Gen. No. U84-30 (decided under former O.C.G.A. § 15-11-65).

RESEARCH REFERENCES

Am. Jur. 2d. — 47 Am. Jur. 2d, Juvenile Courts and Delinquent and Dependent Children, § 39 et seq.

15-11-8. Court of record.

The juvenile court is a court of record having a seal. The judge and the judge's duly appointed representatives shall each have power to administer oaths and affirmations.

History. — Code 1981, § 15-11-8, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

Cross references. — Juvenile Court records, Uniform Rules for the Juvenile Courts of Georgia, Rules 3.1 et seq. Juvenile Court as court of inquiry, Uniform Rules for the Juvenile Courts of Georgia, Rules 14.1 and 14.2.

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under pre-2000 Code Section 15-11-65, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Concurrent warrant-issuing magistrates. — See 1984 Op. Att'y Gen. No. U84-30 (decided under former O.C.G.A. § 15-11-65).

RESEARCH REFERENCES

Am. Jur. 2d. — 47 Am. Jur. 2d, Juvenile Courts and Delinquent and Dependent Children, § 39 et seq.

15-11-9. Authority to issue arrest warrants.

The juvenile court judge, associate juvenile court judge, and judge pro tempore shall have authority to issue a warrant for the arrest of any child for an offense committed against the laws of this state, based either on personal knowledge or the information of others given under oath.

History. — Code 1981, § 15-11-9, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under pre-2000 Code Section 15-11-4, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Commitment to Department of Juvenile Justice proper. — Contrary to the defendant's contention, the defendant's commitment to the Department of Juvenile Justice (DJJ) pursuant to former O.C.G.A. § 15-11-66(a)(4) (see now O.C.G.A. § 15-11-601) was authorized as the defendant was on probation for a delinquent act and violated the terms of probation which was also a delinquent act and commitment to DJJ was found to be the treatment or rehabilitation best suited to the child's needs. In the Interest of B. Q. L. E., 297 Ga. App. 273, 676 S.E.2d 742, cert. denied, No. S09C1197, 2009 Ga. LEXIS 787 (Ga. 2009) (decided under former O.C.G.A. § 15-11-4).

RESEARCH REFERENCES

Am. Jur. 2d. — 5 Am. Jur. 2d, Arrest, § 10 et seq.

15-11-10. Exclusive original jurisdiction.

Except as provided in Code Section 15-11-560, the juvenile court shall have exclusive original jurisdiction over juvenile matters and shall be the sole court for initiating action:

(1) Concerning any child who:

(A) Is alleged to be a delinquent child;

(B) Is alleged to be a child in need of services;

(C) Is alleged to be a dependent child;

(D) Is alleged to be in need of treatment or commitment as a mentally ill or developmentally disabled child;

(E) Has been placed under the supervision of the court or on probation to the court; provided, however, that such jurisdiction shall be for the purpose of completing, effectuating, and enforcing such supervision or a probation begun either prior to such child's seventeenth birthday if the order is entered as a disposition for an adjudication for delinquency or prior to such child's eighteenth birthday if the order is entered for an adjudication for a child in need of services;

(F) Is receiving extended care youth services; provided, however, that such jurisdiction shall be for the purpose of reviewing the status of the case, determining that extended care youth services are in the best interests of such child, adopting a transition plan for such child, ensuring the provision of developmentally appropriate services and supports consistent with such plans, and determining whether reasonable efforts are being made to transition such child to independent living or another planned permanent adult living arrangement; or

(G) Requires a comprehensive services plan in accordance with Code Section 15-11-658;

(2) Concerning any individual under the age of 17 years alleged to have committed a juvenile traffic offense as defined in Code Section 15-11-630; or

(3) Involving any proceedings:

(A) For obtaining judicial consent to the marriage, employment, or enlistment in the armed services of any child if such consent is required by law;

(B) For permanent guardianship brought pursuant to the provisions of Article 3 of this chapter;

(C) Under Chapter 4B of Title 49, the Interstate Compact for Juveniles, or any comparable law, enacted or adopted in this state;

(D) For the termination of the legal parent-child relationship and the rights of the biological father who is not the legal father of the child in accordance with Article 4 of this chapter; provided, however, that such jurisdiction shall not affect the superior court's exclusive jurisdiction to terminate the legal parent-child relationship and the rights of a biological father who is not the legal father of the child as set forth in Chapters 6 through 9 of Title 19;

(E) For emancipation brought pursuant to the provisions of Article 10 of this chapter;

(F) Under Article 8 of this chapter, relating to prior notice to a parent, guardian, or legal custodian relative to an unemancipated minor's decision to seek an abortion; or

(G) Brought by a local board of education pursuant to Code Section 20-2-766.1, relating to court orders requiring that a parent, guardian, or legal custodian attend a conference or participate in programs or treatment to improve a student's behavior.

History. — Code 1981, § 15-11-10, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242; Ga. L. 2014, p. 763, § 3-1/HB 898; Ga. L. 2014, p. 780, § 1-3/SB 364; Ga. L. 2015, p. 540, § 1-2/HB 361; Ga. L. 2018, p. 927, § 1-2/HB 906.

The 2018 amendment, effective July 1, 2020, substituted the present provisions of subparagraph (1)(F) for the former provisions, which read: "Has remained in foster care after such child's eighteenth birthday or who is receiving independent living services from DFCS after such child's eighteenth birthday; provided, however, that such jurisdiction shall be for the purpose of reviewing the status of such child and the services being provided to such child as a result of such child's independent living plan or status as a child in foster care; or".

Cross references. — Interstate Compact for Juveniles, T. 49, C. 4B.

Administrative rules and regulations. — Student attendance, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Education, Regional Educational Services, Rule 160-5-1-.10.

Law reviews. — For article recommending more consistency in age requirements of laws pertaining to the welfare of minors, see 6 Ga. St. B. J. 189 (1969). For article discussing the uneasy sharing of powers and responsibilities between the superior and juvenile courts in their concurrent jurisdiction over juveniles aged 13 to 18 and suggesting reforms, see 23 Mercer L. Rev. 341 (1972). For article, "An Outline of Juvenile Court Jurisdiction with Focus on Child Custody," see 10 Ga. St. B. J. 275 (1973). For article, "Child Custody—Jurisdiction and Procedure," see 35 Emory L. J. 291 (1986). For article, "The Prosecuting Attorney in Georgia's Juvenile Courts," see 13 Ga. St. B. J. 27 (2008). For annual survey on administrative law, see 66 Mercer L. Rev. 1 (2014).

For comment on Stanton v. Stanton, 213 Ga. 545, 100 S.E.2d 289 (1957), holding that parents cannot by contract restrict the discretion of the court in awarding custody and provision regulating the religious upbringing of the child may be entirely disregarded by the court, see 20 Ga. B. J. 546 (1958). For comment on J.W.A. v.

State, 233 Ga. 683, 212 S.E.2d 849 (1975), see 27 Mercer L. Rev. 335 (1975). For comment on Parham v. J.R., 442 U.S. 584 (1979) and Secretary of Pub. Welfare v. Institutionalized Juveniles, 442 U.S. 640 (1979), regarding juvenile commitment to state mental hospitals upon application of parents or guardians, see 29 Emory L. J. 517 (1980).

JUDICIAL DECISIONS

Analysis

General Consideration
General Jurisdiction
Exclusive Jurisdiction

General Consideration

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, §§ 24-2402, 24-2408 and 24A-301, pre-2000 Code Section 15-11-5 and pre-2014 Code Section 15-11-28(a), which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Additionally, many of the annotations found under this Code section were taken from cases decided prior to the adoption of the 1983 Constitution. See Ga. Const. 1983, Art. VI, Sec. III, Para. I and Ga. Const. 1983, Art. VI, Sec. IV, Para. I.

Constitutionality of application. — Defendant's contention that the provision for charging juveniles as adults was applied in an unconstitutionally discriminatory manner against the defendant and other black males was not established by any evidence. Skidmore v. State, 226 Ga. App. 130, 485 S.E.2d 540 (1997) (decided under former O.C.G.A. § 15-11-28).

Determination that deprivation proceeding not custody dispute. — Juvenile court did not have jurisdiction of a deprivation proceeding brought against a mother brought by the child's temporary guardian in a transparent attempt to use the juvenile court to seek custody of the child. In re B.C.P., 229 Ga. App. 111, 493 S.E.2d 258 (1997) (decided under former O.C.G.A. § 15-11-5).

Deprivation proceeding not a custody dispute. — Because the pleadings established that the petition was a properly filed and factually supported deprivation petition, and due to the presence of unchallenged, valid allegations of deprivation, the deprivation proceeding was not a disguised custody matter; accordingly, the juvenile court properly exercised the court's jurisdiction over the proceeding. In the Interest of K.L.H., 281 Ga. App. 394, 636 S.E.2d 117 (2006) (decided under former O.C.G.A. § 15-11-28).

Specific custody controversies not within supreme court appellate jurisdiction. — Custody controversies involving delinquent children, unruly children, or deprived children are not cases "in the nature of habeas corpus" and are not within the appellate jurisdiction of the supreme court. Moss v. Moss, 233 Ga. 688, 212 S.E.2d 853 (1975) (decided under former Code 1933, § 24A-301).

Superior court had exclusive jurisdiction to terminate the parental rights in the adoption case and the juvenile court's jurisdiction in the termination of parental rights case had no impact on the superior court's ability to exercise jurisdiction. Dep't of Human Servs. v. Wyttenbach, 348 Ga. App. 810, 824 S.E.2d 680 (2019).

Jurisdiction of juvenile court in transferred custody proceeding. — Georgia Supreme Court affirmed the transfer of a father's petition for custody from Gwinnett County, Georgia, to Douglas County, Georgia because the "complaint for custody" that the father filed in Gwinnett County fairly was read as a petition to modify, vacate, or revoke the permanent guardianship, a petition over which the Juvenile Court of Douglas County had exclusive jurisdiction under the circumstances. In the Interest of M. F., 298 Ga. 138, 780 S.E.2d 291 (2015).

General Consideration (Cont'd)

Juvenile court required to determine what is in child's best interest. — In a dependency case, sua sponte order dismissing the proceeding was vacated because the juvenile court failed to make proper resolution of the dependency petition as the juvenile court was required to determine what was in the child's best interest. In the Interest of A. L. S., 350 Ga. App. 636, 829 S.E.2d 900 (2019).

Proceeding for termination of parental rights is custody controversy involving deprived child. Moss v. Moss, 233 Ga. 688, 212 S.E.2d 853 (1975) (decided under former Code 1933, § 24A-301).

Actions in which one parent seeks termination of the parental rights of the other parent by means of a deprivation petition are not all prima facie custody cases and it is not required that all such actions must be filed in superior court. In re M.C.J., 271 Ga. 546, 523 S.E.2d 6 (1999) reversing In re W. W. W., 213 Ga. App. 732, 445 S.E.2d 832 (1994); (decided under former O.C.G.A. § 15-11-5); In re M.A., 218 Ga. App. 433, 461 S.E.2d 600 (1995) (decided under former O.C.G.A. § 15-11-5); In re M.C.J., 236 Ga. App. 225, 511 S.E.2d 533 (1999) (decided under former O.C.G.A. § 15-11-5).

Pursuant to former O.C.G.A. § 15-11-28(a)(2)(C), the superior court did not have subject matter jurisdiction to terminate the husband's parental rights because the biological father's petition to legitimate a child who was born in wedlock was a petition to terminate the parental rights of the legal father; after the superior court determined that the biological father had not abandoned his opportunity interest, the issue became whether the superior court could grant the petition to legitimate the child, and to grant the legitimation petition required the superior court to first terminate the parental rights of the husband, who was the legal father. Brine v. Shipp, 291 Ga. 376, 729 S.E.2d 393 (2012) (decided under former O.C.G.A. § 15-11-28).

Juvenile court does not lose jurisdiction if agency has custody. — That a "deprived child" may be in agency custody at the time of the hearing on termination of parental rights does not oust the juvenile court from jurisdiction to determine the ultimate issue. In re K.C.O., 142 Ga. App. 216, 235 S.E.2d 602 (1977) (decided under former O.C.G.A. § 15-11-5).

Petition to terminate the parental rights to a child previously adjudicated "deprived" and in agency custody is cognizable in the juvenile court. In re K.C.O., 142 Ga. App. 216, 235 S.E.2d 602 (1977) (decided under former O.C.G.A. § 15-11-5).

Custody dispute of orphaned children. — In a custody dispute involving children orphaned by the murder-suicide of their parents, a superior court did not err in denying an aunt's motion to dismiss for lack of jurisdiction because the superior court correctly held that, in the absence of an earlier-filed action in juvenile court or probate court, it was the first court to take jurisdiction and properly retained jurisdiction. Stone-Crosby v. Mickens-Cook, 318 Ga. App. 313, 733 S.E.2d 842 (2012) (decided under former O.C.G.A. § 15-11-28).

Superior court in habeas corpus action for child custody lacks authority to enter order terminating parental rights. Dein v. Mossman, 244 Ga. 866, 262 S.E.2d 83 (1979) (decided under former Code 1933, § 24A-301).

General requirements necessary to terminate parental rights. — Generally, the requirements necessary to terminate the parental rights of the mother are deprivation, probable continued deprivation, and that the child will probably suffer serious emotional harm. Beasley v. Jones, 149 Ga. App. 317, 254 S.E.2d 472 (1979) (decided under former Code 1933, § 24A-301).

Definition of "full age." — One becomes of "full age" on the day preceding the anniversary of one's birth, on the first moment of that day. Edmonds v. State, 154 Ga. App. 650, 269 S.E.2d 512 (1980) (decided under former Code 1933, § 24A-301).

Child turned 17 on the earliest moment of the day before juvenile's birthday. — Delinquency petition against a juvenile was properly transferred to the state court on the ground that the juvenile was arrested for possess-

ing marijuana on the day before the juvenile's seventeenth birthday; pursuant to former O.C.G.A. §§ 15-11-2 and 15-11-28 (see now O.C.G.A. §§ 15-11-2, 15-11-10, 15-11-11, 15-11-212, and 15-11-560), the juvenile was deemed to have been 17 at the earliest moment of the day before the juvenile's birthday, which was the day the juvenile was arrested. In the Interest of A.P.S., 304 Ga. App. 513, 696 S.E.2d 483 (2010) (decided under former O.C.G.A. § 15-11-28).

Juvenile subject to criminal adjudication when case transferred to superior court. — Juvenile whose case is properly transferred to the superior court is subject to the criminal sanctions which may be imposed in that court. Thus, an adjudication of guilt of a juvenile in superior court is a criminal adjudication. Carrindine v. Ricketts, 236 Ga. 283, 223 S.E.2d 627 (1976) (decided under former Code 1933, § 24A-301).

Confinement implies juvenile in need of supervision, correction, and training. — Confinement necessarily deprives the parents of their prima facie prerogative of training and supervision, and implies that the juvenile is, within the terms of the juvenile law, one who is in need of supervision beyond the control of the parents and in need of correction and training which the parents cannot provide. Young v. State, 120 Ga. App. 605, 171 S.E.2d 756 (1969) (decided under former Code 1933, § 24A-301).

Juvenile court has jurisdiction despite indictment for noncapital felony. — Indictment of a juvenile for a noncapital felony in the superior court does not oust the juvenile court of the court's first obtained jurisdiction under the Georgia Constitution and statute law. J.W.A. v. State, 233 Ga. 683, 212 S.E.2d 849 (1975) commented on in 27 Mercer L. Rev. 335 (1975) (decided under former Code 1933, § 24A-301).

Defendant claimed to be under 17 at the time offenses were committed. — Superior court had authority to try the defendant who claimed to be under 17 at the time the offenses were committed since the jury was instructed that the defendant should be found guilty only if the defendant committed the alleged acts after the defendant turned 17. Johnson v. State, 214 Ga. App. 319, 447 S.E.2d 663 (1994) (decided under former O.C.G.A. § 15-11-5).

Juvenile court not divested of jurisdiction unless transfer proceeding held. — Since jurisdiction is first acquired by the juvenile court, a subsequent superior court indictment does not divest the juvenile court of the juvenile court's jurisdiction unless a proper transfer proceeding has been held. Hartley v. Clack, 239 Ga. 113, 236 S.E.2d 63 (1977) (decided under former Code 1933, § 24A-301).

Superior court retained jurisdiction when no transfer to juvenile court made. — Superior court erred in concluding that the superior court did not have jurisdiction and therefore erred by dismissing the child custody action because when the superior court did not transfer the custody matter to the juvenile court, the superior court retained jurisdiction and erred by dismissing the aunt and uncle's petition for permanent custody for lack of jurisdiction. Kasper v. Martin, 354 Ga. App. 831, 841 S.E.2d 488 (2020).

Superior court referral of custody case retained juvenile court's jurisdiction. — Jurisdiction of divorce in superior court, and referral by the superior court to the juvenile court for custody determination, gave the juvenile court jurisdiction over the custody issue. Order by the superior court, in response to a party's motion for modification of custody, when the custody issue had not yet been resolved by the juvenile court, was void. Owen v. Owen, 195 Ga. App. 545, 394 S.E.2d 580 (1990) (decided under former O.C.G.A. § 15-11-5).

Referral from superior court to juvenile court for special findings. — Since a custody case was referred to the juvenile court for only an investigation and report with the judgment of the superior court resting on these findings as well as testimony and other evidence before the superior court, the superior court's judgment was not void, but at most was voidable only if an appeal had been perfected. Jackson v. Gamble, 232 Ga. 149, 205 S.E.2d 256 (1974) (decided under former Code 1933, § 24A-301).

Exceptions to superior court jurisdiction to try juvenile. — Superior

General Consideration (Cont'd)

court has jurisdictional power to try a juvenile defendant accused of an offense or offenses for which the maximum criminal penalty is neither life imprisonment nor death. J.J. v. State, 135 Ga. App. 660, 218 S.E.2d 668 (1975) (decided under former Code 1933. § 24A-301).

Jurisdiction in superior court. — Superior court had exclusive jurisdiction over the trial of two persons, 15 and 16 years of age, who were alleged to have committed armed robbery with a rifle, and there was no error in the court's refusal to transfer the case to juvenile court. Bearden v. State, 241 Ga. App. 842, 528 S.E.2d 275 (2000) (decided under former O.C.G.A. § 15-11-28).

Unaccepted offer to reduce armed robbery to robbery did not obligate the state to reduce the charge because armed robbery was punishable by life imprisonment, it was not a transferable offense, and the trial court was without authority to transfer the armed robbery case from superior court to juvenile court. State v. Harper, 271 Ga. App. 761, 610 S.E.2d 699 (2005) (decided under former O.C.G.A. § 15-11-28).

While an original child molestation charge brought against a juvenile was properly filed in the juvenile court, once the state added an aggravated sexual battery count via an amendment, the superior court gained jurisdiction. Thus, the juvenile's allegations that the state failed to comply with the procedural requirements under former O.C.G.A. §§ 15-11-49(c)(1) and (e) (see now O.C.G.A. § 15-11-472) should have been raised in the superior court, and had no bearing on the validity of the delinquency petitions or the substantive charges against the juvenile in juvenile court. In the Interest of K.C., 290 Ga. App. 416, 659 S.E.2d 821 (2008) (decided under former O.C.G.A. § 15-11-28).

Since an armed robbery was completed when control of the money in a cash register was ceded to the defendant and the other four robbers, the facts were sufficient to indict the defendant, who was 16 years old, for armed robbery under O.C.G.A. § 16-8-41(a); therefore, the superior court lacked authority under former O.C.G.A. § 15-11-28(b)(2)(B) (see now O.C.G.A. § 15-11-560) to transfer the case to a juvenile court. Gutierrez v. State, 306 Ga. App. 371, 702 S.E.2d 642 (2010) (decided under former O.C.G.A. § 15-11-28).

Trial court did not err in sentencing the defendant to 20 years to serve 10 in prison pursuant to O.C.G.A. § 16-8-41(b) and (d) because, although the defendant was only 13 years old, the defendant participated in an armed robbery; the legislature's determination that the superior court has jurisdiction over minors 13 to 17 years of age who are alleged to have committed certain serious offenses is founded on a rational basis, including the need for secure placement of certain violent juvenile offenders and the safety of students and citizens of Georgia. Cuvas v. State, 306 Ga. App. 679, 703 S.E.2d 116 (2010) (decided under former O.C.G.A. § 15-11-28).

Superior court loss of jurisdiction after 180 days. — Because a grand jury did not indict a juvenile within 180 days after the juvenile's detention as required by former O.C.G.A. § 15-11-28(b)(2)(A)(vii) and no extension of time had been granted as of that date, the grand jury lost authority over the case by operation of law. The trial court's order granting the state's request for an out-of-time extension was void. Nunnally v. State, 311 Ga. App. 558, 716 S.E.2d 608 (2011) (decided under former O.C.G.A. § 15-11-28).

Same 180-day time limitation applied to both former O.C.G.A. §§ 15-11-28(b) and 15-11-30.2 (see now O.C.G.A. §§ 15-11-560, 15-11-561, 15-11-563, and 15-11-566), and that 180 days began to run on the day the juvenile was detained whenever the superior court was exercising jurisdiction under either section; it necessarily follows that anytime the superior court loses jurisdiction which was conferred by former O.C.G.A. § 15-11-28(b) because the state failed to obtain an indictment within 180 days of the date the juvenile was detained, the time will also have expired within which the state could procure an indictment if the superior court were proceeding under

former O.C.G.A. § 15-11-30.2 and, thus, a transfer back to the superior court under those circumstances is pointless since an indictment returned by the grand jury would be void. In the Interest of C.B., 313 Ga. App. 778, 723 S.E.2d 21 (2012) (decided under former O.C.G.A. § 15-11-28).

Although O.C.G.A. § 17-7-50.1 allows the state to request one automatic 90-day extension, this extension cannot be granted after the expiration of the 180 days; the legislature intended to set time limitations for the state to act in those situations in which the juvenile is detained and the superior court is exercising jurisdiction over the matter pursuant to either former O.C.G.A. § 15-11-28(b) (see now O.C.G.A. 15-11-560) or former O.C.G.A. § 15-11-30.2 (see now O.C.G.A. §§ 15-11-561, 15-11-563, and 15-11-566). In the Interest of C.B., 313 Ga. App. 778, 723 S.E.2d 21 (2012) (decided under former O.C.G.A. § 15-11-28).

Exceptions to juvenile court's exclusive original jurisdiction. — Former Code 1933, §§ 24A-301 and 24A-401 (see now O.C.G.A. §§ 15-11-2, 15-11-10, 15-11-11, 15-11-212, and 15-11-560) did not vest exclusive original jurisdiction in the juvenile court over the following class of youthful offenders: persons between the ages of 17 and 21 years, who have committed noncapital felonies, and who were under the supervision of or were on probation to a juvenile court for acts of delinquency committed before reaching the age of 17 years. State v. Crankshaw, 243 Ga. 183, 253 S.E.2d 69 (1979) (decided under former Code 1933, § 24A-301).

Transfer to superior court not required if no exclusive jurisdiction. — In a child molestation case, it was not necessary for the juvenile court to transfer the charges to the superior court in order for the superior court to have jurisdiction because the juvenile court's finding that there was no evidence that the defendant was under 17 when the acts were committed amounted to a finding that the juvenile court did not have exclusive jurisdiction. Landrum v. State, 210 Ga. App. 275, 436 S.E.2d 40 (1993) (decided under former O.C.G.A. § 15-11-5).

Transfer from superior court. — State did not show that a superior court abused the court's discretion in reaching a decision that a 14-year-old defendant's aggravated sexual assault case was "extraordinary" and should be heard in juvenile court due to the defendant's social immaturity. State v. Ware, 258 Ga. App. 564, 574 S.E.2d 632 (2002) (decided under former O.C.G.A. § 15-11-28).

Collateral estoppel did not prohibit transfer back to superior court. — Disregarding the question of whether collateral estoppel actually applied in the context of a case, the transfer of an involuntary manslaughter case, under former O.C.G.A. § 15-11-30.4 (see now O.C.G.A. § 15-11-567), against a juvenile to the juvenile court did not collaterally estop a later transfer of the case back to the superior court under former O.C.G.A. § 15-11-30.2 (see now O.C.G.A. §§ 15-11-561, 15-11-563, 15-11-566) because the first transfer was based on the jurisdictional restrictions in former O.C.G.A. § 15-11-28(b) (see now O.C.G.A. § 15-11-560) and at the time of that transfer, the superior court did not consider or rule on the multiple factors in former § 15-11-30.2 on which the second transfer was based. In the Interest of C.G., 291 Ga. App. 743, 662 S.E.2d 823 (2008) (decided under former O.C.G.A. § 15-11-28).

Habeas corpus petition does not confer superior court jurisdiction. — If a juvenile court order entered pursuant to former Code 1933, § 24A-2301 (see now O.C.G.A. §§ 15-11-211, 15-11-212, 15-11-215) after notice and hearing was still in effect, the superior court had no jurisdiction of the related habeas corpus petition. West v. Cobb County Dep't of Family & Children Servs., 243 Ga. 425, 254 S.E.2d 373 (1979) (decided under former Code 1933, § 24A-301).

Violation of probation. — Under former O.C.G.A. §§ 15-11-2(2)(B) and 15-11-28(a)(1)(F) (see now O.C.G.A. §§ 15-11-2, 15-11-10, and 15-11-11), a juvenile court lacked jurisdiction over the defendant, who was over 17 when a probation violation occurred; thus, the defendant's commitment under former O.C.G.A. § 15-11-63 (see now O.C.G.A. §§ 15-11-2 and 15-11-602) was void. The state had not filed a petition for probation revocation, but only for a violation of pro-

General Consideration (Cont'd)

bation. In the Interest of T.F., 314 Ga. App. 606, 724 S.E.2d 892 (2012) (decided under former O.C.G.A. § 15-11-28).

Juvenile court did not retain jurisdiction to hear grandparents' petition for permanent custody after determining that the mother's four children were deprived since the grandparents' complaint for permanent custody was not in the nature of a deprivation petition and did not allege that the grandparents should be granted permanent custody of the children on the basis that the children were deprived. In re C.C., 193 Ga. App. 120, 387 S.E.2d 46 (1989) (decided under former O.C.G.A. § 15-11-5).

Jurisdiction over children born in U.S. to Mexican citizens. — Juvenile court had jurisdiction to terminate the parental rights of Mexican citizens because, when the termination petition was filed, the children, who were born in the United States, were citizens of Georgia and thereby entitled to the protection of Georgia law, which specifically provides for the termination of parental rights. In the Interest of J.H., 244 Ga. App. 788, 536 S.E.2d 805 (2000) (decided under former O.C.G.A. § 15-11-28).

Custody case could not determine other civil issues. — Because the trial court relied upon documents other than the pleadings, a motion to dismiss should in fact have been treated as a motion for summary judgment; a juvenile court had no jurisdiction over claims of fraud, breach of contract, perjury, and defamation made by a former husband against his former wife, and thus, a custody case between parties which was litigated in juvenile court was not an adjudication of the husband's claim for purposes of res judicata. Litsky v. Schaub, 269 Ga. App. 254, 603 S.E.2d 754 (2004) (decided under former O.C.G.A. § 15-11-28).

Child molestation. — Because child molestation was not an offense listed in former O.C.G.A. § 15-11-28(b)(2)(A) (see now O.C.G.A. § 15-11-560), the trial court erred in using former O.C.G.A. § 15-11-63(a)(2)(D) (see now O.C.G.A. § 15-11-2) to classify the offense as a designated felony act when the court sentenced a juvenile. In the Interest of M. S., 277 Ga. App. 706, 627 S.E.2d 422 (2006) (decided under former O.C.G.A. § 15-11-28).

Because the indictment alleged and the evidence at trial authorized a finding that the defendant committed aggravated child molestation on some date after July 1, 2006, the trial court could not be divested of jurisdiction pursuant to former O.C.G.A. § 15-11-28(b)(2)(B) (see now O.C.G.A. §§ 15-11-2 and 15-11-560). Therefore, the trial court correctly denied the motion to transfer the case to juvenile court. Adams v. State, 288 Ga. 695, 707 S.E.2d 359 (2011) (decided under former O.C.G.A. § 15-11-28).

Armed robbery. — Denial of the defendant's motion to transfer under former O.C.G.A. § 15-11-28(b)(2)(B) (see now O.C.G.A. § 15-11-560) was upheld; the armed robbery was completed at the time the cash register was opened and the flap resting on the top of the cash raised, thereby ceding control of the money to the perpetrators and satisfying the requisite slightest change of location necessary for the armed robbery. Gutierrez v. State, 290 Ga. 643, 723 S.E.2d 658 (2012) (decided under former O.C.G.A. § 15-11-28).

Order addressing issue not raised was a nullity. — Since a written order issued by a juvenile court did not show deprivation of the child with regard to the child's father, and since all parties stipulated that the child was not deprived with regard to the child's father, the order was void to the extent the order directed removal of the child from the father's home; moreover, to the extent that a later contempt finding was based on the trial court's void order, it was a nullity; the trial court's direction as to removal of the child was not binding and the court's later contempt finding based on that order was improper. In re Tidwell, 279 Ga. App. 734, 632 S.E.2d 690 (2006) (decided under former O.C.G.A. § 15-11-28).

Transfer to superior court was improper. — Juvenile court erred in granting the state's motion to transfer the defendant juvenile's case back to the superior court pursuant to former O.C.G.A. § 15-11-30.2 (see now O.C.G.A. §§ 15-11-561, 15-11-563, and 15-11-566)

because the superior court had properly transferred the case to the juvenile court since the defendant was not indicted within 180 days of detention as required by O.C.G.A. § 17-7-50.1; the time limits set forth in § 17-7-50.1 were plainly stated and mandatory and clearly express the legislative intent that when a juvenile was detained and the superior court was exercising jurisdiction under either former O.C.G.A. § 15-11-28(b) (see now O.C.G.A. § 15-11-560) or former O.C.G.A. § 15-11-30.2, the state must obtain an indictment within the specified time or the superior court lost the jurisdiction conferred by those provisions. In the Interest of C.B., 313 Ga. App. 778, 723 S.E.2d 21 (2012) (decided under former O.C.G.A. § 15-11-28).

Cited in Mathenia v. Brumbelow, 843 S.E.2d 582, No. S19G0426, 2020 Ga. LEXIS 353 (2020).

General Jurisdiction

Transferral of custody habeas corpus case by superior court. — In a custody controversy in the nature of habeas corpus, the juvenile court has concurrent jurisdiction to decide the issue only if the case is transferred to the juvenile court by proper order of the superior court; and in such a transferred case, appellate jurisdiction is lodged in the supreme court of this state. In re J.R.T., 233 Ga. 204, 210 S.E.2d 684 (1974) (decided under former Code 1933, § 24A-301). Moss v. Moss, 233 Ga. 688, 212 S.E.2d 853 (1975) (decided under former Code 1933, § 24A-301).

Original and appellate jurisdiction in certain custody controversies. — Juvenile court has original jurisdiction in a custody controversy involving a delinquent child, an unruly child, or a deprived child and appellate jurisdiction in such cases is vested in the court of appeals. In re J.R.T., 233 Ga. 204, 210 S.E.2d 684 (1974) (decided under former Code 1933, § 24A-301). Moss v. Moss, 233 Ga. 688, 212 S.E.2d 853 (1975) (decided under former Code 1933, § 24A-301).

Jurisdiction over offenses committed when juvenile 16. — Juvenile court retained jurisdiction over the defendant for an offense the defendant committed when the defendant was 16 years old until the entry of the court's order transferring the case to the superior court. In re D.L., 228 Ga. App. 503, 492 S.E.2d 273 (1997) (decided under former O.C.G.A. § 15-11-5).

Lack of jurisdiction to award permanent custody. — Judgment was reversed because the juvenile court's authority to place a child in the custody of a "willing" and "qualified" relative was not authority to award permanent custody of the child as custody was determined by discerning the best interests of the child and not the willingness or the qualifications of a person to take temporary custody of the child. Ertter v. Dunbar, 292 Ga. 103, 734 S.E.2d 403 (2012) (decided under former O.C.G.A. § 15-11-28).

Juvenile court is court of special and limited jurisdiction, and the court's judgments must show on the judgment's face such facts as are necessary to give the court jurisdiction of the person and subject matter. If the order of a juvenile court fails to recite the jurisdictional facts, the judgment is void. Williams v. Department of Human Resources, 150 Ga. App. 610, 258 S.E.2d 288 (1979) (decided under former Code 1933, § 24A-301).

Juvenile courts are courts of limited jurisdiction, possessing only those powers specifically conferred upon the courts by statute. In re J.O., 191 Ga. App. 521, 382 S.E.2d 214 (1989), overruled on other grounds, In re T.A.W., 265 Ga. 106, 454 S.E.2d 134 (1995) (decided under former O.C.G.A. § 15-11-5).

Order which fails to recite jurisdictional grounds is void. — If the order of the juvenile court taking custody, control, and supervision of a minor child fails to show that it was by reason of one of the several grounds set out in the statute, such order is void for want of jurisdiction. Ferguson v. Hunt, 221 Ga. 728, 146 S.E.2d 756 (1966) (decided under former Code 1933, § 24-2402).

Jurisdiction of juvenile court, being civil in nature, extends only to those minors who are residents of the county. Giles v. State, 123 Ga. App. 700, 182 S.E.2d 140 (1971) (decided under former Code 1933, § 24-2402).

Jurisdiction of capital felonies and custody cases distinguished. — Juve-

General Jurisdiction (Cont'd)

nile court and the superior court have concurrent jurisdiction of delinquent acts which constitute capital felonies, but the juvenile court may consider questions of custody only if such issues are transferred to the juvenile court from the superior court. Quire v. Clayton County Dep't of Family & Children Servs., 242 Ga. 85, 249 S.E.2d 538 (1978) (decided under former Code 1933, § 24-2402).

Jurisdiction of included offenses. — Superior court had jurisdiction to convict a juvenile defendant of aggravated assault since that offense was part of the same transaction as the greater offense of armed robbery over which the court had jurisdiction. Leeks v. State, 226 Ga. App. 227, 483 S.E.2d 691 (1997) (decided under former O.C.G.A. § 15-11-5); Houston v. State, 237 Ga. App. 878, 517 S.E.2d 357 (1999) (decided under former O.C.G.A. § 15-11-5).

Jurisdiction to enter child support award. — Since a parent's children were found to be deprived and were placed temporarily with relatives, pursuant to former O.C.G.A. § 15-11-28(c)(2)(A) (see now O.C.G.A. §§ 15-11-10, 15-11-11, and 15-11-212), the trial court had jurisdiction to order the parent to pay temporary support. However, the court lacked jurisdiction to enter a final award of support under O.C.G.A. § 19-6-15 as no final order was entered disposing of the case. In the Interest of R.F., 295 Ga. App. 739, 673 S.E.2d 108 (2009) (decided under former O.C.G.A. § 15-11-28).

Granting of temporary custody of the mother's child to the mother's ex-boyfriend and his wife following their petition to have the boy adjudicated deprived was inappropriate because the juvenile court lacked jurisdiction over the proceeding under former O.C.G.A. § 15-11-28(a)(1)(C) (see now O.C.G.A. §§ 15-11-10, 15-11-11, and 15-11-212). The petition did not contain valid allegations of deprivation and nothing in the record demonstrated that present drug use on the part of the mother had a negative effect on the child rising to the level of present deprivation; the petition was an attempt to obtain custody of the child. In the Interest of C. L. C., 299 Ga. App. 729, 683 S.E.2d 690 (2009); Mauldin v. Mauldin, 322 Ga. App. 507, 745 S.E.2d 754 (2013) (decided under former O.C.G.A. § 15-11-28).

Jurisdiction over legitimation petition and for placement. — Contrary to a mother's contention, the custody order showed on the order's face such facts as were necessary to give the juvenile court jurisdiction of the person and subject matter because the order referenced and incorporated the legitimation order entered days earlier, reflected on the order's face that all parties were served with a copy of the pleadings and were present, along with their counsel, and the mother did not contest the juvenile court's personal jurisdiction. In the Interest of B. H.-W., 332 Ga. App. 269, 772 S.E.2d 66 (2015).

Exclusive Jurisdiction

Superior court had exclusive jurisdiction to terminate the parental rights in the adoption case and the juvenile court's jurisdiction in the termination of parental rights case had no impact on the superior court's ability to exercise jurisdiction. Dep't of Human Servs. v. Wyttenbach, 348 Ga. App. 810, 824 S.E.2d 680 (2019).

Juvenile Code confers exclusive original jurisdiction to juvenile court over certain juvenile matters, and designates the juvenile court the sole court for initiating action concerning any child that is alleged to be deprived and for the termination of the legal parent-child relationship. Brooks v. Leyva, 147 Ga. App. 616, 249 S.E.2d 628 (1978) (decided under former Code 1933, § 24A-301).

Age at time of offense controls. — Although a juvenile no longer qualified as a child under former O.C.G.A. § 15-11-2(2)(A) and (B) (see now O.C.G.A. § 15-11-2) after the seventeenth birthday, it is the juvenile's age at the time of the offense that controls; therefore, because the juvenile was under the age of 17 at the time the act of delinquency was committed, the juvenile court properly exercised exclusive original jurisdiction over the juvenile's case. In the Interest of J.T.D., 242 Ga. App. 243, 529 S.E.2d 377 (2000) (decided under former O.C.G.A. § 15-11-28).

As there was evidence that the defendant molested the victim after turning 17, the juvenile court did not have exclusive jurisdiction over the defendant's sexual molestation case, and the defendant's conviction in a superior court was proper. McGruder v. State, 279 Ga. App. 851, 632 S.E.2d 730 (2006) (decided under former O.C.G.A. § 15-11-28).

Juvenile court does not have original jurisdiction over custody controversy. — It was not the intention of the General Assembly to give original jurisdiction of the custody of a child to a juvenile court when there is a dispute over the custody between the parents. Bartlett v. Bartlett, 99 Ga. App. 770, 109 S.E.2d 821 (1959) (decided under former Code 1933, § 24-2402).

Original and appellate jurisdiction in custody disputes between parents. — In a case of dispute over custody between parents, original jurisdiction exists exclusively in courts having jurisdiction of habeas corpus or divorce and alimony actions, in both of which the supreme court has exclusive jurisdiction on appeal. Bartlett v. Bartlett, 99 Ga. App. 770, 109 S.E.2d 821 (1959) (decided under former Code 1933, § 24-2402).

Termination of parental rights via divorce decree. — Under former O.C.G.A. § 15-11-28(a)(2)(C) (see now O.C.G.A. §§ 15-11-10, 15-11-11, and 15-11-212), except in connection with an adoption proceeding, a juvenile court was the sole court for an action involving any proceeding for the termination of parental rights. However, the parent affirmatively invoked the jurisdiction of the superior court for the purpose of obtaining the divorce, consented to the superior court's incorporation of the settlement agreement, and then failed to file a motion to set aside the judgment of divorce for four years; thus, the parent's acts and omissions estopped the parent from attacking the divorce judgment. Amerson v. Vandiver, 285 Ga. 49, 673 S.E.2d 850 (2009) (decided under former O.C.G.A. § 15-11-28).

Superior court had jurisdiction over a biological father's legitimation petition because, although the child was born while the mother was married to another man, that man's responsibility to the child was ended by stipulation of the parties in their divorce; the former husband was no longer the child's legal father, O.C.G.A. § 19-7-21.1(a)(2)(B), he had no parental rights to terminate, and the juvenile court's jurisdiction under O.C.G.A. § 15-11-10(3)(D) was not invaded. Smith v. Pearce, 334 Ga. App. 84, 778 S.E.2d 248 (2015), cert. denied, No. S16C0247, 2016 Ga. LEXIS 33 (Ga. 2016).

Noncapital juvenile cases. — Juvenile courts have exclusive original jurisdiction over noncapital juvenile cases. State v. Crankshaw, 243 Ga. 183, 253 S.E.2d 69 (1979) (decided under former Code 1933, § 24A-301).

Deprivation and termination of parental rights. — Juvenile court shall be sole court for initiating action for termination of legal parent-child relationship. Dein v. Mossman, 244 Ga. 866, 262 S.E.2d 83 (1979) (decided under former Code 1933, § 24A-301).

Juvenile court has exclusive jurisdiction to hear cases involving deprivation and termination of parental rights. Abrams v. Daffron, 155 Ga. App. 182, 270 S.E.2d 278 (1980) (decided under former Code 1933, § 24A-301).

Superior court has jurisdiction to consider termination of the rights of a putative father only "in connection with adoption proceedings." Alexander v. Guthrie, 216 Ga. App. 460, 454 S.E.2d 805 (1995) (decided under former O.C.G.A. § 15-11-5).

Superior court lacked subject matter jurisdiction to consider divorced mother's petition for termination of the father's parental rights. In re A.D.B., 232 Ga. App. 697, 503 S.E.2d 596 (1998) (decided under former O.C.G.A. § 15-11-5).

Juvenile court has exclusive original jurisdiction over actions involving termination of parental rights. The juvenile court properly exercised jurisdiction over a grandmother's petition to terminate a mother's parental rights because the grandmother already had custody of the children and the mother was facing allegations of having deprived her children. In the Interest of K.N.C., 264 Ga. App. 475, 590 S.E.2d 792 (2003) (decided under former O.C.G.A. § 15-11-28).

Exclusive Jurisdiction (Cont'd)

Jurisdiction over deprivation cases is exclusive. — Subparagraph (a)(1)(C) of former O.C.G.A. § 15-11-5 (see now O.C.G.A. §§ 15-11-10, 15-11-11, and 15-11-212) clearly placed exclusive jurisdiction in the juvenile court as the sole court for initiating an action concerning any child who is alleged to be deprived. Williams v. Davenport, 159 Ga. App. 531, 284 S.E.2d 45 (1981) (decided under former O.C.G.A. § 15-11-5).

Juvenile court had exclusive original jurisdiction over deprivation proceedings, and the juvenile court had the authority to order the disposition best suited to the needs of the children, including the transfer of temporary legal custody. In re A.L.L., 211 Ga. App. 767, 440 S.E.2d 517 (1994) (decided under former O.C.G.A. § 15-11-5).

Because the action appealed from involved a deprivation proceeding, and the court's order reflected on the order's face that the order was addressing the alleged deprivation of the child at issue, the juvenile court clearly had subject matter jurisdiction over the deprivation petition. In the Interest of T. L., 269 Ga. App. 842, 605 S.E.2d 432 (2004) (decided under former O.C.G.A. § 15-11-28).

Absent evidence of a custody dispute, a deprivation proceeding was not a pretextual custody battle which divested the juvenile court of the juvenile court's exclusive jurisdiction. In the Interest of D.T., 284 Ga. App. 336, 643 S.E.2d 842 (2007) (decided under former O.C.G.A. § 15-11-28).

Exclusive jurisdiction for two years over children found deprived. — Juvenile Code vests exclusive jurisdiction in the juvenile court for at least two years over matters concerning children whom the juvenile court has duly found to be deprived. West v. Cobb County Dep't of Family & Children Servs., 243 Ga. 425, 254 S.E.2d 373 (1979) (decided under former Code 1933, § 24A-301).

Child was not deprived so as to confer jurisdiction since it was admitted that both grandparental homes were suitable as placements for the child. In re C.F., 199 Ga. App. 858, 406 S.E.2d 279 (1991) (decided under former O.C.G.A. § 15-11-5).

Termination-of-rights petition which seeks adoption of child. — If a petition for termination of the rights of a putative father of an illegitimate child specifically states that it is in pursuance of the petitioners' prospective adoption of the child, the petition is "in connection with adoption proceedings" within the meaning of subparagraph (a)(2)(C) of former O.C.G.A. § 15-11-5 (see now O.C.G.A. §§ 15-11-10, 15-11-11, and 15-11-212). H.C.S. v. Grebel, 253 Ga. 404, 321 S.E.2d 321 (1984) (decided under former O.C.G.A. § 15-11-5). H.C.S. v. Grebel, 172 Ga. App. 819, 325 S.E.2d 925 (1984) (decided under former O.C.G.A. § 15-11-5).

Juvenile court lacked jurisdiction to consider a petition for termination of parental rights because the termination was sought "in connection with" an adoption proceeding. In re B.G.D., 224 Ga. App. 124, 479 S.E.2d 439 (1996) (decided under former O.C.G.A. § 15-11-5).

Termination action in which adoption will be pursued at a later date. — Under former O.C.G.A. § 15-11-28(a)(2)(C) (see now O.C.G.A. §§ 15-11-10, 15-11-11, and 15-11-212), the juvenile court had exclusive original jurisdiction over a child's grandparents' action seeking termination of the child's parents' parental rights. Although the grandparents planned to adopt the child, the grandparents intended to adopt the child under the laws of Florida, where the grandparents lived. In re J. S., 302 Ga. App. 342, 691 S.E.2d 250 (2010) (decided under former O.C.G.A. § 15-11-28).

Speeding is an act designated a crime by O.C.G.A. § 40-6-1 (now subsection (a) of § 40-6-1) and, therefore, a speeding charge against a 16-year-old juvenile could be tried only in juvenile court. In re L.J.V., 180 Ga. App. 400, 349 S.E.2d 37 (1986) (decided under former O.C.G.A. § 15-11-5).

Acts constituting armed robbery with a firearm. — Trial court did not err in denying the defendant's motion to dismiss an indictment on the ground that the prosecution was barred by double jeopardy since the defendant previously had been adjudicated delinquent in juvenile

court for the acts alleged in the indictment because the juvenile court's adjudication of the defendant as delinquent was void, and jeopardy did not attach during the juvenile court proceeding; because the superior court had exclusive jurisdiction under former O.C.G.A. § 15-11-28(b)(2)(vii) (see now O.C.G.A. § 15-11-560) since the defendant was alleged in the juvenile court to have committed acts constituting armed robbery with a firearm, the juvenile court lacked jurisdiction to adjudicate the defendant delinquent for acts constituting armed robbery, notwithstanding the state's initial participation in the juvenile proceedings or the defendant's admission of the allegations in that court. Bonner v. State, 302 Ga. App. 57, 690 S.E.2d 216 (2010) (decided under former O.C.G.A. § 15-11-528).

Violation of probation. — Although the violation of probation may constitute a "delinquent act" in and of itself, a violation of probation which occurs after the juvenile's 17th birthday will not authorize the initiation of a new delinquency petition against the juvenile. The juvenile court's jurisdiction would extend only to revoking the juvenile's probation for the juvenile's previous adjudication of delinquency. In re B.S.L., 200 Ga. App. 170, 407 S.E.2d 123 (1991) (decided under former O.C.G.A. § 15-11-5).

Juvenile court properly dismissed delinquency petition since transfer hearing did not apply. — Juvenile court properly dismissed a delinquency petition without a hearing, which petition alleged that the juvenile committed aggravated sodomy, as former O.C.G.A. § 15-11-30.2(f) (see now O.C.G.A. § 15-11-561) expressly provided that the transfer hearing provisions did not apply to any proceeding within the exclusive jurisdiction of a superior court, pursuant to former O.C.G.A. § 15-11-28(b)(2)(A) (see now O.C.G.A. § 15-11-560), which included aggravated sodomy. In the Interest of N.C., 293 Ga. App. 374, 667 S.E.2d 181 (2008) (decided under former O.C.G.A. § 15-11-28).

Exclusive original jurisdiction existed in juvenile court. — Because there was a bona fide allegation that a child was deprived, because the issue of permanent custody or modification of the divorce decree had not been transferred to the juvenile court, and because a mother's temporary custody had expired, the juvenile court had authority to exercise the court's exclusive original jurisdiction under former O.C.G.A. § 15-11-28(a)(1)(C) (see now O.C.G.A. §§ 15-11-10, 15-11-11, and 15-11-212); therefore, the habeas court erred in denying the father's petition for relief. Douglas v. Douglas, 285 Ga. 548, 678 S.E.2d 904 (2009) (decided under former O.C.G.A. § 15-11-28).

Juvenile court properly exercised jurisdiction over termination proceedings pursuant to former O.C.G.A. §§ 15-11-28 and 15-11-94 (see now O.C.G.A. §§ 15-11-10, 15-11-11, 15-11-212, 15-11-310, 15-11-311, and 15-11-320) as the petition was filed by the mother, who had already been awarded sole physical custody of the child and as the termination petition dealt specifically with factors relating to the father's inability to provide proper care and support for the child such that the father's parental rights should be terminated. In the Interest of A.R.K.L., 314 Ga. App. 847, 726 S.E.2d 77 (2012) (decided under former O.C.G.A. § 15-11-28).

Juvenile court did not retain jurisdiction. — Although a great aunt and great step-uncle argued that the trial court erred in exercising subject matter jurisdiction in a custody matter at a time when the juvenile court had exclusive original jurisdiction, there was no order of the superior court transferring the petition to the juvenile court, and the jurisdiction obtained during an original deprivation proceeding did not serve to retain such jurisdiction; therefore, the juvenile court did not retain jurisdiction. The complaint for permanent custody filed by the grandmother and the step-grandfather was not in the nature of a deprivation petition. Wiepert v. Stover, 298 Ga. App. 683, 680 S.E.2d 707 (2009), overruled on other grounds, Artson, LLC v. Hudson, 322 Ga. App. 859, 747 S.E.2d 68 (2013) (decided under former O.C.G.A. § 15-11-28).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, § 24A-301, pre-2000 Code Section 15-11-5 and pre-2014 Code Section 15-11-28(a), which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Character of proceeding determines jurisdiction. — It is the character of the proceeding, rather than the specific items of relief granted, which determines jurisdiction. 1976 Op. Att'y Gen. No. U76-15 (decided under former Code 1933, § 24A-301).

Scope of exclusive jurisdiction. — Juvenile court has exclusive jurisdiction over the following classes of traffic offenders: (1) offenders under the age of 16 who have committed a "juvenile traffic offense"; (2) offenders under the age of 17 who have committed any traffic offense; and (3) offenders under the age of 21 who have committed any traffic offense, and "who committed an act of delinquency before reaching the age of 17 years, and who have been placed under the supervision of the court or on probation to the court." 1985 Op. Att'y Gen. No. U85-18 (decided under former O.C.G.A. § 15-11-5).

No conflict with jurisdictional grant over adoptions to superior courts. — Jurisdiction of superior courts over adoptions does not conflict with the general grant of "exclusive original jurisdiction over juvenile matters" to the juvenile courts. 1976 Op. Att'y Gen. No. U76-15 (decided under former Code 1933, § 24A-301).

Magistrate court judge must be designated to serve as a superior court judge in order to issue arrest warrants, conduct a first appearance hearing, and conduct a preliminary or committal hearing for juveniles prosecuted as adults. 1995 Op. Att'y Gen. No. U95-9 (decided under former O.C.G.A. § 15-11-5).

Magistrate court judge may issue arrest warrants for juveniles charged with an offense enumerated in subparagraph (b)(2)(A) of former O.C.G.A. § 15-11-5 (see now O.C.G.A. § 15-11-560). 1998 Op. Att'y Gen. No. U98-9 (decided under former O.C.G.A. § 15-11-5).

Superior court may terminate parent-child relationship only with adoption. — Although both superior and juvenile courts have jurisdiction to terminate the parent-child relationship, the superior court may do so only in conjunction with an adoption proceeding which has been filed in that court; the juvenile court remains the sole court for initiating a parental termination proceeding if there is no concomitant adoption proceeding in process. 1977 Op. Att'y Gen. No. U77-52 (decided under former Code 1933, § 24A-301).

Jurisdiction of superior courts not affected by Interstate Compact on Juveniles. — No provision of the Interstate Compact on Juveniles has any effect on the jurisdiction and authority of superior courts over matters of adoption. 1976 Op. Att'y Gen. No. U76-15 (decided under former Code 1933, § 24A-301).

Uniform Reciprocal Enforcement of Support Act proceedings. — Superior court may not transfer a Uniform Reciprocal Enforcement of Support Act, O.C.G.A. § 19-11-40 et seq., proceeding to a juvenile court. 1989 Op. Att'y Gen. No. U89-7 (decided under former O.C.G.A. § 15-11-5).

RESEARCH REFERENCES

Am. Jur. 2d. — 42 Am. Jur. 2d, Infants, § 27 et seq. 47 Am. Jur. 2d, Juvenile Courts and Delinquent and Dependent Children, § 39 et seq.

C.J.S. — 21 C.J.S., Courts, § 11 et seq. 43 C.J.S., Infants, §§ 43, 180 et seq., 287 et seq. 67A C.J.S., Parent and Child, §§ 99 et seq., 122 et seq.

U.L.A. — Uniform Juvenile Court Act (U.L.A.) §§ 3, 4.

ALR. — Constitutionality of statute as affected by discrimination in punishments

for same offense based upon age, color, or sex, 3 A.L.R. 1614; 8 A.L.R. 854.

Jurisdiction of another court over child as affected by assumption of jurisdiction by juvenile court, 11 A.L.R. 147; 78 A.L.R. 317; 146 A.L.R. 1153.

What constitutes delinquency or incorrigibility, justifying commitment of infant, 45 A.L.R. 1533; 85 A.L.R. 1099.

Power of juvenile court to exercise continuing jurisdiction over infant delinquent or offender, 76 A.L.R. 657.

Enlistment or mustering of minors into military service, 137 A.L.R. 1467; 147 A.L.R. 1311; 148 A.L.R. 1388; 149 A.L.R. 1457; 150 A.L.R. 1420; 151 A.L.R. 1455; 151 A.L.R. 1456; 152 A.L.R. 1452; 153 A.L.R. 1420; 153 A.L.R. 1422; 154 A.L.R. 1448; 155 A.L.R. 1451; 155 A.L.R. 1452; 156 A.L.R. 1450; 157 A.L.R. 1449; 157 A.L.R. 1450; 158 A.L.R. 1450.

Marriage as affecting jurisdiction of juvenile court over delinquent or dependent, 14 A.L.R.2d 336.

Homicide by juvenile as within jurisdiction of a juvenile court, 48 A.L.R.2d 663.

Age of child at time of alleged offense or delinquency, or at time of legal proceedings, as criterion of jurisdiction of juvenile court, 89 A.L.R.2d 506.

Parent's involuntary confinement, for failure to care for child as result thereof, as evincing neglect, unfitness, or the like in dependency or divestiture proceeding, 79 A.L.R.3d 417.

Authority of court to order juvenile delinquent incarcerated in adult penal institution, 95 A.L.R.3d 568.

Applicability of double jeopardy to juvenile court proceedings, 5 A.L.R.4th 234.

Jurisdiction or power of juvenile court to order parent of juvenile to make restitution for juvenile's offense, 66 A.L.R.4th 985.

15-11-11. Concurrent jurisdiction.

The juvenile court shall have concurrent jurisdiction to hear:

(1) Any legitimation petition filed pursuant to Code Section 19-7-22 concerning a child alleged to be dependent;

(2) Any legitimation petition transferred to the court by proper order of the superior court;

(3) The issue of custody and support when the issue is transferred by proper order of the superior court; provided, however, that if a demand for a jury trial as to support has been properly filed by either parent, then the case shall be transferred to superior court for the jury trial;

(4) Any petition for the establishment or termination of a temporary guardianship transferred to the court by proper order of the probate court; and

(5) Any criminal case transferred to the court pursuant to subsection (d) of Code Section 15-11-15.

History. — Code 1981, § 15-11-11, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242; Ga. L. 2016, p. 443, § 1-4/SB 367.

Law reviews. — For article recommending more consistency in age requirements of laws pertaining to the welfare of minors, see 6 Ga. St. B. J. 189 (1969). For article discussing the uneasy sharing of powers and responsibilities between the superior and juvenile courts in their concurrent jurisdiction over juveniles aged 13 to 18 and suggesting reforms, see 23 Mercer L. Rev. 341 (1972). For article, "An Outline of Juvenile Court Jurisdiction with Focus on Child Custody," see 10 Ga. St. B. J. 275 (1973). For article, "Child

Custody—Jurisdiction and Procedure," see 35 Emory L. J. 291 (1986). For article, "The Prosecuting Attorney in Georgia's Juvenile Courts," see 13 Ga. St. B. J. 27 (2008). For article on the 2016 amendment of this Code section, see 33 Georgia St. U.L. Rev. 139 (2016).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, §§ 24-2402, 24-2408 and 24A-301, pre-2000 Code Section 15-11-5 and pre-2014 Code Section 15-11-28(c) and (e), which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

In light of the reenactment of this chapter, effective January 1, 2014, the reader is advised to consult the annotations following Code Section 15-11-10, which may also be applicable to this Code section.

Additionally, many of the annotations found under this Code section were taken from cases decided prior to the adoption of the 1983 Constitution. See Ga. Const. 1983, Art. VI, Sec. III, Para. I and Ga. Const. 1983, Art. VI, Sec. IV, Para. I.

Juvenile court is court of special and limited jurisdiction, and the court's judgments must show on the judgment's face such facts as are necessary to give the court jurisdiction of the person and subject matter. If the order of a juvenile court fails to recite the jurisdictional facts, the judgment is void. Williams v. Department of Human Resources, 150 Ga. App. 610, 258 S.E.2d 288 (1979) (decided under former Code 1933, § 24A-301).

Jurisdiction over legitimation petition and for placement. — Contrary to a mother's contention, the custody order showed on the order's face such facts as were necessary to give the juvenile court jurisdiction of the person and subject matter because the order referenced and incorporated the legitimation order entered days earlier, reflected on the order's face that all parties were served with a copy of the pleadings and were present, along with their counsel, and the mother did not contest the juvenile court's personal jurisdiction. In the Interest of B. H.-W., 332 Ga. App. 269, 772 S.E.2d 66 (2015).

Juvenile courts are courts of limited jurisdiction, possessing only those powers specifically conferred upon the courts by statute. In re J.O., 191 Ga. App. 521, 382 S.E.2d 214 (1989), overruled on other grounds, In re T.A.W., 265 Ga. 106, 454 S.E.2d 134 (1995) (decided under former O.C.G.A. § 15-11-5).

Jurisdiction of juvenile court, being civil in nature, extends only to those minors who are residents of the county. Giles v. State, 123 Ga. App. 700, 182 S.E.2d 140 (1971) (decided under former Code 1933, § 24-2402).

Constitution authorizes concurrent jurisdictional scheme. — Law provides a concurrent jurisdictional scheme that is authorized by Ga. Const. 1976, Art. VI, Sec. IV, Para. I (see now Ga. Const. 1983, Art. VI, Sec. IV, Para. I). J.W.A. v. State, 233 Ga. 683, 212 S.E.2d 849 (1975), commented on in 27 Mercer L. Rev. 335 (1975) (decided under former Code 1933, § 24A-301).

When the controlling language of Ga. Const. 1976, Art. VI, Sec. IV, Para. I (see now Ga. Const. 1983, Art. VI, Sec. IV, Para. I) was read with the former Juvenile Code, it was apparent that a harmonious and reasonable system of concurrent jurisdiction between the juvenile courts and superior courts had been achieved. J.W.A. v. State, 233 Ga. 683, 212 S.E.2d 849 (1975), commented on in 27 Mercer L. Rev. 335 (1975) (decided under former Code 1933, § 24A-301).

Matters relating to custody and visitation. — Superior and juvenile courts exercise concurrent jurisdiction over all matters relating to custody and visitation, except in those situations in which exclusive jurisdiction is vested in the superior court. In re D.N.M., 193 Ga. App. 812, 389 S.E.2d 336, cert. denied, 193 Ga. App. 910, 389 S.E.2d 336 (1989) (decided under former O.C.G.A. § 15-11-5).

Concurrent jurisdiction over custody issues. — Subsection (c) of this

section is applicable only in those cases where the juvenile court and the superior court have concurrent jurisdiction and custody is the subject of controversy. Brooks v. Leyva, 147 Ga. App. 616, 249 S.E.2d 628 (1978) (decided under former Code 1933, § 24A-301).

Jurisdiction, once exercised, becomes exclusive. — Jurisdiction, once exercised, becomes exclusive rather than concurrent, subject to the right of either court to transfer to the other. J.T.M. v. State, 142 Ga. App. 635, 236 S.E.2d 764 (1977) (decided under former Code 1933, § 24A-301).

In custody litigation, the juvenile court errs in hearing a case in which there is no order transferring the case from the superior court. Further, if an order of a juvenile court fails to recite the jurisdictional facts (i.e., such facts as are necessary to give it jurisdiction of the person and subject matter), the judgment is void. Lockhart v. Stancil, 258 Ga. 634, 373 S.E.2d 355 (1988) (decided under former O.C.G.A. § 15-11-5); In re W.W.W., 213 Ga. App. 732, 445 S.E.2d 832 (1994), but see In re M.C.J., 271 Ga. 546, 523 S.E.2d 6 (1999) (decided under former O.C.G.A. § 15-11-5).

Juvenile court cannot modify superior court's custody determination. — Juvenile court, without proper transfer from superior court, is without authority to modify custody provisions of the final divorce decree in regard to the mother's visitation privileges. In re M.M.A., 174 Ga. App. 898, 332 S.E.2d 39 (1985) (decided under former O.C.G.A. § 15-11-5). Owen v. Owen, 183 Ga. App. 472, 359 S.E.2d 229 (1987) (decided under former O.C.G.A. § 15-11-5).

Juvenile court lacked jurisdiction since there was no order of the superior court transferring the issue of custody so as to meet the requirements of subsection (c) of former O.C.G.A. § 15-11-5 (see now O.C.G.A. § 15-11-212). In re C.F., 199 Ga. App. 858, 406 S.E.2d 279 (1991) (decided under former O.C.G.A. § 15-11-5).

Cited in In the Interest of D. H., 332 Ga. App. 274, 772 S.E.2d 70 (2015).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, § 24A-301, pre-2000 Code Section 15-11-5 and pre-2014 Code Section 15-11-28(c) and (e), which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Character of proceeding determines jurisdiction. — It is the character of the proceeding, rather than the specific items of relief granted, which determines jurisdiction. 1976 Op. Att'y Gen. No. U76-15 (decided under former Code 1933, § 24A-301).

Uniform Reciprocal Enforcement of Support Act proceedings. — Superior court may not transfer a Uniform Reciprocal Enforcement of Support Act, O.C.G.A. § 19-11-40 et seq., proceeding to a juvenile court. 1989 Op. Att'y Gen. No. U89-7 (decided under former O.C.G.A. § 15-11-5).

Paternity questions. — Since no provision would permit the transfer of paternity questions to a juvenile court, no case in which paternity is involved may be transferred by a superior court to a juvenile court. 1989 Op. Att'y Gen. No. U89-7 (decided under former O.C.G.A. § 15-11-5).

RESEARCH REFERENCES

Am. Jur. 2d. — 42 Am. Jur. 2d, Infants, § 27 et seq. 47 Am. Jur. 2d, Juvenile Courts and Delinquent and Dependent Children, § 39 et seq.

C.J.S. — 21 C.J.S., Courts, § 11 et seq. 43 C.J.S., Infants, §§ 180 et seq., 373 et seq. 67A C.J.S., Parent and Child, §§ 99 et seq., 122 et seq.

U.L.A. — Uniform Juvenile Court Act (U.L.A.) §§ 3, 4.

ALR. — Jurisdiction of another court over child as affected by assumption of

jurisdiction by juvenile court, 11 A.L.R. 147; 78 A.L.R. 317; 146 A.L.R. 1153.

15-11-12. Dual designation of children; consolidation of proceedings; time limitations.

(a) Nothing in this chapter shall be construed to prevent a child from being adjudicated both a dependent child and a delinquent child or both a dependent child and a child in need of services if there exists a factual basis for such a finding.

(b) If a child alleged or adjudicated to be a delinquent child or a child in need of services is also alleged or adjudicated to be a dependent child, dependency proceedings may be consolidated with delinquency or child in need of services proceedings to the extent consistent with due process of law as provided in Articles 3, 5, and 6 of this chapter.

(c) The time frames and requirements of Article 3 of this chapter shall apply to cases in which a child alleged or adjudicated to be a child in need of services or a delinquent child is placed in foster care and has also been alleged or adjudicated to be a dependent child.

History. — Code 1981, § 15-11-12, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242; Ga. L. 2015, p. 540, § 1-3/HB 361.

15-11-13. Appointment of guardian or conservator.

The court shall have jurisdiction to appoint a guardian of the person of any child in any proceeding authorized by this chapter. Any such appointment shall be made pursuant to the same requirements of notice and hearing as are provided for appointments of guardians of the persons of any child by the probate court. In the event a conservator for a child's property needs to be appointed, the court shall refer that matter to the probate court.

History. — Code 1981, § 15-11-13, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

Cross references. — Power of judge of probate court to appoint guardian for minor, § 29-2-14. Notice requirements relating to appointment of guardians for minors by judges of the probate court generally, § 29-2-17.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 24A-302, pre-2000 Code Section 15-11-6 and pre-2014 Code Section 15-11-30.1(a)(1), which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Award of permanent guardianship affirmed. — Award of permanent guard-

ianship to the aunt was affirmed because the parent gave no reason to believe that any objection to taking judicial notice of the deprivation order would have had any merit, nor did the parent identify specific evidence that the parent would have brought forward to challenge the earlier deprivation order. In the Interest of L. B., 319 Ga. App. 173, 735 S.E.2d 162 (2012) (decided under former O.C.G.A. § 15-11-30.1).

Cited in Drawdy v. Sasser, 335 Ga. App. 650, 782 S.E.2d 706 (2016).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 24A-302 and pre-2000 Code Section 15-11-6, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Jurisdiction to appoint guardians for children. — Former statute implicitly recognized that courts other than juvenile courts had jurisdiction to appoint guardians for children. 1976 Op. Att'y Gen. No. U76-15 (decided under former Code 1933, § 24A-302).

RESEARCH REFERENCES

Am. Jur. 2d. — 42 Am. Jur. 2d, Infants, § 27 et seq. 47 Am. Jur. 2d, Juvenile Courts and Delinquent and Dependent Children, § 39 et seq.

C.J.S. — 21 C.J.S., Courts, § 11 et seq. 43 C.J.S., Infants, § 180 et seq. 67A C.J.S., Parent and Child, § 366 et seq.

U.L.A. — Uniform Juvenile Court Act (U.L.A.) § 3.

ALR. — Parent's involuntary confinement, or failure to care for child as result thereof, as evincing neglect, unfitness, or the like in dependency or divestiture proceeding, 79 A.L.R.3d 417.

15-11-14. Transfers from probate court.

(a) The court shall hold a hearing within 30 days of receipt of a case transferred from the probate court pursuant to subsection (f) of Code Section 29-2-6 or subsection (b) of Code Section 29-2-8.

(b) After notice and hearing, the court may make one of the following orders:

(1) That the temporary guardianship be established or continued if the court determines that the temporary guardianship is in the best interests of a child. The order shall thereafter be subject to modification only as provided in Code Section 15-11-32; or

(2) That the temporary guardianship be terminated if the court determines it is in the best interests of a child. A child shall be returned to his or her parent unless the court determines that there is probable cause to believe that he or she will be abused, neglected, or abandoned in the custody of his or her parent.

(c) A case shall proceed as a dependency matter pursuant to the provisions of Article 3 of this chapter if, after notice and hearing, the court determines:

(1) That it is in the best interests of a child that the temporary guardianship not be established or that the temporary guardianship be terminated but there is probable cause to believe that he or she will be abused, neglected, or abandoned if returned to his or her parent; or

(2) That it is in the best interests of a child that the temporary guardianship be continued over the parent's objection.

(d) The court may refer to DFCS for further investigation a case transferred from probate court.

History. — Code 1981, § 15-11-14, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

JUDICIAL DECISIONS

Burden of proof in termination of parental rights. — In a mother's petition to terminate her parents' temporary guardianship over her child under O.C.G.A. § 15-11-14, the trial court erred in failing to consider whether the grandparents proved by clear and convincing evidence that termination would cause the child physical or long-term emotional harm; therefore, remand was required for further consideration. In the Interest of K. M., 344 Ga. App. 838, 811 S.E.2d 505 (2018).

15-11-15. Transfers from superior court; custody and support.

(a) In handling divorce, alimony, habeas corpus, or other cases involving the custody of a child, a superior court may transfer the question of the determination of custody, support, or custody and support to the juvenile court either for investigation and a report back to the superior court or for investigation and determination.

(b) If the referral is for investigation and determination, then the juvenile court shall proceed to handle the matter in the same manner as though the action originated under this chapter in compliance with the order of the superior court, except that the parties shall not be entitled to obtain an appointed attorney through the juvenile court.

(c) At any time prior to the determination of any question regarding custody, support, or custody and support, the juvenile court may transfer the jurisdiction of the question back to the referring superior court.

(d) In handling criminal cases involving an accused who is in jeopardy of having his or her parental rights terminated due to criminal charges, a superior court may transfer a criminal case to a family treatment court division of a juvenile court for treatment and a report back to the superior court so long as the prosecuting attorney and accused agree to such transfer; provided, however, that such

juvenile court may transfer such case back to the referring superior court at any time.

History. — Code 1981, § 15-11-15, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242; Ga. L. 2016, p. 443, § 1-5/SB 367.

Cross references. — Child custody proceedings generally, § 19-9-1 et seq. Transfer of custody and support questions from Superior Courts, Uniform Rules for the Juvenile Courts of Georgia, Rule 5.2.

Law reviews. — For article, "An Outline of Juvenile Court Jurisdiction with Focus on Child Custody," see 10 Ga. St. B. J. 275 (1973). For article, "Child Custody — Jurisdiction and Procedure," see 35 Emory L. J. 291 (1986). For article on the 2016 amendment of this Code section, see 33 Georgia St. U.L. Rev. 139 (2016).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 24A-302, pre-2000 Code Section 15-11-6 and pre-2014 Code Section 15-11-30.1(b), which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Purpose of subsection (b). — Legislature enacted the provisions of former subsection (b) of O.C.G.A. § 15-11-6 (see now O.C.G.A. § 15-11-15) simply to provide specific authorization for the transfer of questions concerning custody and support to the juvenile court in those cases over which the superior court otherwise would exercise exclusive jurisdiction. In re D.N.M., 193 Ga. App. 812, 389 S.E.2d 336, cert. denied, 193 Ga. App. 910, 389 S.E.2d 336 (1989) (decided under former O.C.G.A. § 15-11-6).

No error for juvenile court to make recommendation in report. — Subsection (b) of the former statute permitted superior courts handling divorce cases involving the custody of children to transfer the issue of custody to the juvenile court for investigation and report back to the superior court. It was not error for that report to contain a recommendation. Anderson v. Anderson, 238 Ga. 631, 235 S.E.2d 11 (1977) (decided under former Code 1933, § 24A-302).

Term "divorce cases," used in subsection (b) of former O.C.G.A. § 15-11-6 (see now O.C.G.A. § 15-11-15), includes contempt proceedings brought to enforce the provisions of a divorce decree. Hancock v. Coley, 258 Ga. 291, 368 S.E.2d 735 (1988) (decided under former O.C.G.A. § 15-11-6).

Visitation rights controlled by law relating to custody and changes of custody. — Visitation rights are a part of child custody and as such are controlled by the law relating to custody and change of custody. Hopkins v. Hopkins, 237 Ga. 845, 229 S.E.2d 751 (1976) (decided under former Code 1933, § 24A-302).

Jurisdiction of juvenile court in transferred custody proceeding. — In a custody proceeding transferred from the superior court, the juvenile court was authorized to issue an order restraining the future disclosure of information contained in the juvenile court's files and records and to punish for contempt any past unauthorized disclosure of that material. In re Burton, 271 Ga. 491, 521 S.E.2d 568 (1999) (decided under former O.C.G.A. § 15-11-6).

Jurisdiction of juvenile court in transferred custody proceeding. — In a custody proceeding transferred from the superior court, the juvenile court was authorized to issue an order restraining the future disclosure of information contained in the juvenile court's files and records and to punish for contempt any past unauthorized disclosure of that material. In re Burton, 271 Ga. 491, 521 S.E.2d 568 (1999) (decided under former O.C.G.A. § 15-11-6).

Jurisdiction of superior courts over habeas corpus cases. — All superior courts of this state have jurisdiction over the subject matter of habeas corpus cases or cases in the nature of habeas

corpus. Hopkins v. Hopkins, 237 Ga. 845, 229 S.E.2d 751 (1976) (decided under former Code 1933, § 24A-302).

Juvenile and superior court custody cases distinguished. — Proceeding in a juvenile court involving custody is a statutory custody action. A proceeding in the superior court involving custody is in the nature of habeas corpus. Hopkins v. Hopkins, 237 Ga. 845, 229 S.E.2d 751 (1976) (decided under former Code 1933, § 24A-302).

Superior court may transfer investigation to juvenile court. — If a change of circumstances is alleged subsequent to a decree of divorce awarding custody of a minor child to one of the two parties, it is not error for the judge of the superior court to transfer the investigation thus called for to the juvenile court for investigation. Slate v. Coggins, 181 Ga. 17, 181 S.E. 145 (1935) (decided under former Code 1933, § 24-2402(d)).

Upon transfer, substantive and procedural rules followed. — Subsection (b) of former O.C.G.A. § 15-11-6 (see now O.C.G.A. § 15-11-15) carefully provided that a referral or transfer for investigation and determination shall proceed in the same manner as though the action originated in the juvenile court. That meant the former Juvenile Code substantive and procedural rules for termination of parental rights must be followed, which carefully delineate the grounds for termination; those persons upon whom summons shall issue, including parents, guardians, lawful custodians, and those in physical custody of the child; and other concerns. Hancock v. Coley, 258 Ga. 291, 368 S.E.2d 735 (1988) (decided under former O.C.G.A. § 15-11-6).

Concurrent and appellate jurisdiction in habeas corpus custody case. — In a custody controversy in the nature of habeas corpus, the juvenile court has concurrent jurisdiction to decide the issue only if the case is transferred to the juvenile court by proper order of the superior court. In such a transferred case, appellate jurisdiction is lodged in the Supreme Court of Georgia. In re J.R.T., 233 Ga. 204, 210 S.E.2d 684 (1974) (decided under former Code 1933, § 24A-302).

Record of transferred case must include findings and conclusions. — Findings of fact and conclusions of law must be made by the trial judge and must be included in the record of transferred contested custody cases. Coleman v. Coleman, 238 Ga. 183, 232 S.E.2d 57 (1977) (decided under former Code 1933, § 24A-302).

Transfer of child custody case is continuation of that proceeding. Thus, a transfer order in a habeas corpus-child custody proceeding is not final and hence is not appealable without a certificate of immediate review. Fulton County Dep't of Family & Children Servs. v. Perkins, 244 Ga. 237, 259 S.E.2d 427 (1978) (decided under former Code 1933, § 24A-302).

Custody determined on report to which access denied to parent. — It is error for the issue of child custody to be decided on the basis of a report if either parent is denied access to the report and is thereby denied a hearing and the right to examine witnesses in an effort to refute the report. Anderson v. Anderson, 238 Ga. 631, 235 S.E.2d 11 (1977) (decided under former Code 1933, § 24A-302).

In cases originating in the superior court where referrals were made to the juvenile court or the Department of Family and Children Services for a written welfare report, the statute authorized the report, but it was error for the issue of child custody to be decided on the basis of that report if either parent was denied access to the report and thereby denied a hearing and the right to examine witnesses in an effort to refute the report. In re J.C., 242 Ga. 737, 251 S.E.2d 299 (1978), appeal dismissed, 441 U.S. 929, 99 S. Ct. 2046, 60 L. Ed. 2d 657 (1979) (decided under former Code 1933, § 24A-302).

Custody determined on report not disclosed to parties. — If a final order of a superior court, involving custody of children, expressly states that the order's findings are based in part upon a report prepared by a juvenile court, and the report is not filed or otherwise made available to either of the parties, the court's order cannot stand. Westmoreland v. Westmoreland, 241 Ga. 552, 246 S.E.2d 672 (1978) (decided under former Code 1933, § 24A-302).

Any error by superior court waived by consent of parties. — When the parties consent to the submission of the question of custody to the juvenile court, and after the report is received, it is further agreed that the superior court should then consider whether there has been a substantial change of condition since the divorce decree, and issue an order determining the matter of custody, any error by the superior court judge in having no independent hearing is waived by the parties. Haralson v. Moore, 236 Ga. 131, 223 S.E.2d 107 (1976) (decided under former Code 1933, § 24A-302).

Award of permanent guardianship affirmed. — Award of permanent guardianship to the aunt was affirmed because the parent gave no reason to believe that any objection to taking judicial notice of the deprivation order would have had any merit, nor did the parent identify specific evidence that the parent would have brought forward to challenge the earlier deprivation order. In the Interest of L. B., 319 Ga. App. 173, 735 S.E.2d 162 (2012) (decided under former O.C.G.A. § 15-11-30.1).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 24A-302 and pre-2000 Code Section 15-11-6, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Support proceedings. — Subsection (b) of former O.C.G.A. § 15-11-6 (see now O.C.G.A. § 15-11-15) authorized the superior court to transfer to the juvenile court support cases not involving a question of paternity as well as those support proceedings originating from a court-established support unit in the judicial circuit. 1989 Op. Att'y Gen. No. U89-7 (decided under former O.C.G.A. § 15-11-6).

Superior court may not transfer a Uniform Reciprocal Enforcement of Support Act proceeding to a juvenile court under subsection (b) of former O.C.G.A. § 15-11-6 (see now O.C.G.A. § 15-11-15). 1989 Op. Att'y Gen. No. U89-7 (decided under former O.C.G.A. § 15-11-6).

Paternity questions. — Since no provision under subsection (b) of former O.C.G.A. § 15-11-6 (see now O.C.G.A. § 15-11-15) would permit the transfer of paternity questions to a juvenile court, no case in which paternity was involved may be transferred under that statute by a superior court to a juvenile court. 1989 Op. Att'y Gen. No. U89-7 (decided under former O.C.G.A. § 15-11-6).

Permanent custody determination upon divorce decree. — When a superior court transfers the question of custody determination to a juvenile court pursuant to subsection (b) of former O.C.G.A. § 15-11-6 (see now O.C.G.A. § 15-11-15), the juvenile court may make only a temporary custody determination pending the outcome of the divorce action; but if the divorce decree is entered the juvenile court can then make a permanent custody determination. 1994 Op. Att'y Gen. No. U94-1 (decided under former O.C.G.A. § 15-11-6).

RESEARCH REFERENCES

Am. Jur. 2d. — 42 Am. Jur. 2d, Infants, § 27 et seq. 47 Am. Jur. 2d, Juvenile Courts and Delinquent and Dependent Children, § 39 et seq.

C.J.S. — 21 C.J.S., Courts, § 11 et seq. 43 C.J.S., Infants, § 180 et seq. 67A C.J.S., Parent and Child, § 366 et seq.

U.L.A. — Uniform Juvenile Court Act (U.L.A.) § 3.

ALR. — Parent's involuntary confinement, or failure to care for child as result thereof, as evincing neglect, unfitness, or the like in dependency or divestiture proceeding, 79 A.L.R.3d 417.

15-11-16. Commencement of proceedings.

(a) A proceeding under this chapter may be commenced:

(1) By an order of transfer of a case from another court as provided in Code Section 15-11-11 or 15-11-567, subsection (f) of Code Section 29-2-6, or subsection (b) of Code Section 29-2-8;

(2) By the summons, notice to appear, or other citation in a proceeding charging a juvenile traffic offense or a violation of the laws, rules, and regulations governing the Department of Natural Resources Game and Fish Division; or

(3) By the filing of a petition for legitimation under Code Section 15-11-11, or in other cases by the filing of a complaint or a petition as provided in Articles 3, 4, 5, 6, 7, 8, and 10 of this chapter.

(b) The petition and all other documents in the proceeding shall be entitled "In the interest of _____, a child," except upon appeal.

(c) On appeal, the anonymity of a child, and where appropriate, a victim or witness who is under the age of 18 years, shall be preserved by appropriate use of a child's, victim's, or witness's initials as appropriate.

History. — Code 1981, § 15-11-16, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242; Ga. L. 2014, p. 780, § 1-4/SB 364; Ga. L. 2015, p. 540, § 1-4/HB 361.

Cross references. — Commencement of formal proceedings, Uniform Rules for the Juvenile Courts of Georgia, Rule 5.1 et seq.

Law reviews. — For article proposing removal of delinquent or deprived juveniles from the category labeled "defendants," see 23 Mercer L. Rev. 341 (1972).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 24A-801, pre-2000 Code Section 15-11-11 and pre-2014 Code Section 15-11-35, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Deadline for filing delinquency petition. — Under O.C.G.A. § 15-11-521(b), the state must file a petition alleging delinquency against a juvenile who is not detained within 30 days of filing of the complaint or seek an extension of that deadline from the juvenile court; if the state misses the 30-day deadline and does not seek an extension, the case must be dismissed without prejudice. In the Interest of M.D.H., 300 Ga. 46, 793 S.E.2d 49 (2016).

Delinquency proceeding commences upon filing of petition when authorized. — Former Code 1933, § 24A-801 (see now O.C.G.A. § 15-11-16) provided that a proceeding under the Juvenile Code was commenced in cases of alleged delinquency by the filing of a petition when authorized under former Code 1933, § 24A-1601 (see now O.C.G.A. § 15-11-420). Hartley v. Clack, 239 Ga. 113, 236 S.E.2d 63 (1977) (decided under former Code 1933, § 24A-801).

Transfer of proceedings. — Juvenile court acquired jurisdiction when a juvenile complaint form was filed in that court, and the superior court correctly

transferred the case back to that court after an arrest warrant by the state attempted to establish jurisdiction in the superior court. In re C.R., 263 Ga. 155, 430 S.E.2d 3 (1993) (decided under former O.C.G.A. § 15-11-11).

Juvenile court's issuance of order of detention did not result in that court's taking jurisdiction because only a "petition" within the meaning of the former section could commence a juvenile proceeding. Longshore v. State, 239 Ga. 437, 238 S.E.2d 22 (1977) (decided under former Code 1933, § 24A-801).

Juvenile court retained jurisdiction over the defendant for an offense the defendant committed when the defendant was 16 years old until the entry of the juvenile court's order transferring the case to the superior court. In re D.L., 228 Ga. App. 503, 492 S.E.2d 273 (1997) (decided under former O.C.G.A. § 15-11-11).

Addressing child's special immigrant juvenile status. — In a deprivation proceeding, a juvenile court erred by failing to address the child's special immigrant juvenile status under 8 U.S.C. § 1101(a)(27)(J)(ii) and a remand was necessary since the juvenile court had to determine whether the evidence supported the findings so that the federal government could address the issue in separate deportation proceedings. In the Interest of J. J. X. C., 318 Ga. App. 420, 734 S.E.2d 120 (2012) (decided under former O.C.G.A. § 15-11-35).

Cited in In the Interest of D. H., 332 Ga. App. 274, 772 S.E.2d 70 (2015).

RESEARCH REFERENCES

C.J.S. — 43 C.J.S., Infants, § 180 et seq.

U.L.A. — Uniform Juvenile Court Act (U.L.A.) § 8.

ALR. — Validity and efficacy of minor's waiver of right to counsel — cases decided since application of Gault, 387 U.S. 1, 87 S. Ct. 1428, 18 L. Ed. 2d 527 (1967), 101 A.L.R.5th 351.

15-11-17. Conduct of hearings generally; applicability of Title 24.

(a) All hearings under this chapter shall be conducted by the court without a jury. Any hearing may be adjourned from time to time within the discretion of the court.

(b) Except as otherwise provided, all hearings shall be conducted in accordance with Title 24.

(c) Proceedings shall be recorded by stenographic notes or by electronic, mechanical, or other appropriate means capable of accurately capturing a full and complete record of all words spoken during the proceedings.

(d) A juvenile court judge, an associate juvenile court judge, a judge pro tempore of the juvenile court, or any person sitting as a juvenile court judge may conduct hearings in connection with any proceeding under this chapter in any county within the judicial circuit. When a superior court judge sits as a juvenile court judge, hearings in connection with any proceeding under this chapter may be heard before such judge in any county within the judicial circuit over which the judge presides.

History. — Code 1981, § 15-11-17, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

Cross references. — Venue for criminal actions generally, Ga. Const. 1983, Art. VI, Sec. II, Para. VI and § 17-2-2. Detention hearings in Juvenile Court, Uniform Rules for the Juvenile Courts of Georgia, Rules 8.1 — 8.6. Adjudicatory hearings in Juvenile Court, Uniform Rules for the Juvenile Courts of Georgia, Rules 11.1 — 11.4.

Law reviews. — For article discussing venue problems in juvenile court practice and suggesting solutions, see 23 Mercer L. Rev. 341 (1972). For article, "An Outline of Juvenile Court Jurisdiction with Focus on Child Custody," see 10 Ga. St. B. J. 275 (1973). For article, "The World Where Parallel Lines Converge: The Privilege Against Self-Incrimination in Concurrent Civil and Criminal Child Abuse Proceedings," see 24 Ga. L. Rev. 473 (1990). For article, "The Prosecuting Attorney in Georgia's Juvenile Courts," see 13 Ga. St. B. J. 27 (2008).

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General Consideration

Editor's notes. — Many of the following annotations should be examined in light of the amendment to Ga. Const. 1976, Art. VI, Sec. XIV, Para. VI (see Ga. Const. 1983, Art. VI, Sec. II, Para. VI) which took effect November 1, 1981.

In light of the similarity of the statutory provisions, decisions under former Code 1933, § 24A-1101, pre-2000 Code Section 15-11-15 and pre-2014 Code Sections 15-11-29 and 15-11-41, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

State as parens patriae created juvenile courts for protection of children. Robinson v. State, 227 Ga. 140, 179 S.E.2d 248 (1971) (decided under former Code 1933, § 24-2411).

Deprivation sufficiently alleged after petitioner alleged a child was committed to a state-run psychiatric institution in spite of contrary medical and psychological evaluations and that the child was denied care and education necessary for the child's physical, mental, and emotional health. In re A.V.B., 267 Ga. 728, 482 S.E.2d 275 (1997) (decided under former O.C.G.A. § 15-11-15).

Delinquency adjudication hearing serves same purpose as arraignment. — Delinquency adjudication hearing merely serves the same purpose in the civil juvenile court proceeding as an arraignment under the criminal code. M.E.B. v. State, 230 Ga. 154, 195 S.E.2d 891 (1973) (decided under former Code 1933, § 24A-1101); D.C.E. v. State, 130 Ga. App. 724, 204 S.E.2d 481 (1974) (decided under former Code 1933, § 24A-1101).

Adjudication proceeding is actually nothing more than pretrial hearing held in the county where the child was apprehended and in the custody of local authorities for committing the alleged unruly acts or delinquent behavior. M.E.B. v. State, 230 Ga. 154, 195 S.E.2d 891 (1973) (decided under former Code 1933, § 24A-1101).

Order entered following a delinquency adjudicatory hearing under former Code 1933, § 24A-1201 (see now O.C.G.A. §§ 15-11-17 and 15-11-490) was not a final judgment appealable under former Code 1933, § 6-701 (see now O.C.G.A. § 5-6-34) but was instead merely an order entered in a pretrial hearing similar to an arraignment. D.C.E. v. State, 130 Ga. App. 724, 204 S.E.2d 481 (1974) (decided under former Code 1933, § 24A-1101).

Venue

County of parent's residence. — Revision of Ga. Const. 1976, Art. VI, Sec. XIV, Para. VI (see now Ga. Const. 1983, Art. VI, Sec. II, Para. VI), providing that venue in juvenile court cases may be determined by the provisions of the Juvenile Court Code of Georgia, removed any constitutional impediment to applying former O.C.G.A. § 15-11-29 (see now O.C.G.A. §§ 15-11-17, 15-11-270, and 15-11-401) to parental termination proceedings when the parent resides in a different county from that in which an allegedly deprived child is found. In re R.A.S., 249 Ga. 236, 290 S.E.2d 34 (1982) (decided under former O.C.G.A. § 15-11-15).

Action to terminate parental rights on ground of deprivation need not be brought in county of parents' residence. In re S.H., 163 Ga. App. 419, 294 S.E.2d 621 (1982) (decided under former O.C.G.A. § 15-11-15).

County of child's foster home. — Proceeding to terminate parental rights may be commenced in the county in which the child resides in a foster home. Cain v. Department of Human Resources, 166 Ga. App. 801, 305 S.E.2d 492 (1983) (decided under former O.C.G.A. § 15-11-15).

Because the child was placed into the Department of Family and Children Service's legal custody, a rebuttable presumption arose that the child obtained a Jones County legal residence for the purposes of determining venue; thus, by alleging that the child was in the department's custody, and by setting forth the department's address in Jones County, the department's petition provided sufficient information to establish that the child's residence was in Jones County, making venue therein, proper. In the Interest of A.J.M., 277 Ga. App. 646, 627 S.E.2d 399 (2006) (decided under former O.C.G.A. § 15-11-29).

County where parent resides. — For cases holding that venue for termination proceedings lies in the county where the parent resides, decided under prior constitutional provisions, see Quire v. Clayton County Dep't of Family & Children Servs., 242 Ga. 85, 249 S.E.2d 538 (1978), and Williams v. Department of Human Resources, 150 Ga. App. 610, 258 S.E.2d 288 (1979) (decided under former Code 1933, § 24A-1101).

Determining legal residence. — Juvenile proceeding for delinquency or unruly conduct may be tried either in the county where the child resides or in the county where the unruly or delinquent conduct occurred. In re A.M.C., 213 Ga. App. 897, 446 S.E.2d 760 (1994) (decided under former O.C.G.A. § 15-11-15).

In determining where a juvenile resides for purposes of venue, it is generally the legal residence that controls. In re A.M.C., 213 Ga. App. 897, 446 S.E.2d 760 (1994) (decided under former O.C.G.A. § 15-11-15).

In a proceeding against a juvenile for the status offense of unruliness, the juvenile's legal residence for purposes of venue was in the county of the Department of Family & Children Services having custody over the juvenile, even though the place of the offense and the juvenile's family residence were in other counties. In re A.M.C., 213 Ga. App. 897, 446 S.E.2d 760 (1994) (decided under former O.C.G.A. § 15-11-15).

Since the requirements for venue in a county were met, the fact that the childrens' mother was in the process of moving to another state when the county department of family and children services obtained custody of her children was insufficient to rebut the presumption that the children resided in the county. In re K.M.L., 237 Ga. App. 662, 516 S.E.2d 363 (1999) (decided under former O.C.G.A. § 15-11-15).

Former statute did not conflict with general venue provisions of Constitution insofar as delinquency proceedings were concerned. G.S.K. v. State, 147 Ga. App. 571, 249 S.E.2d 671 (1978) (decided under former Code 1933, § 24A-1101).

Waiver of objection to venue. — Since the case was transferred from the county, where it was originally filed, to another county pursuant to appellants' own motion, appellants waived any objection to venue in the subsequent county when the appellants moved that the venue be transferred to that county and are estopped from raising this issue. In re M.J.G., 203 Ga. App. 452, 416 S.E.2d 796,

Venue (Cont'd)

cert. denied, 203 Ga. App. 906, 416 S.E.2d 796 (1992) (decided under former O.C.G.A. § 15-11-15).

By a parent's actions and inactions, the parent waived the parent's right to object to the venue of termination proceedings. In the Interest of H.D.M., 241 Ga. App. 805, 527 S.E.2d 633 (2000) (decided under former O.C.G.A. § 15-11-15).

Venue lies in county where juvenile committed criminal act. — Although some of the proceedings in juvenile court are of a criminal character, not all are. For those that are, delinquency, unruliness and juvenile traffic offenses, the venue provisions of the Juvenile Code and the state constitution, that venue lies in the county in which the act was committed, are in accord. Quire v. Clayton County Dep't of Family & Children Servs., 242 Ga. 85, 249 S.E.2d 538 (1978) (decided under former Code 1933, § 24A-1101).

Juvenile's change of residence did not bar the exercise of jurisdiction over the juvenile by the juvenile court in the county in which the offense occurred. In re D.L., 228 Ga. App. 503, 492 S.E.2d 273 (1997) (decided under former O.C.G.A. § 15-11-15).

Evidence showed that the delinquent conduct occurred in the victim's house, which was sufficient to establish the venue of the case wherein the juvenile was properly adjudicated. In the Interest of M.C., 322 Ga. App. 239, 744 S.E.2d 436 (2013) (decided under former O.C.G.A. § 15-11-29).

Insufficient proof of venue. — In a juvenile delinquency case, the state failed to prove venue since the state offered no evidence that a church where an aggravated assault occurred was within the boundaries of the county in question; as to charges of obstruction of an officer, there was no evidence as to the location of the houses where the acts in question occurred. In the Interest of D.D., 287 Ga. App. 512, 651 S.E.2d 817 (2007) (decided under former O.C.G.A. § 15-11-29).

Although there was sufficient evidence to support a juvenile's adjudication of delinquency based on the finding that the juvenile had committed acts, which, had the juvenile been an adult, would have supported a conviction for burglary in violation of O.C.G.A. § 16-7-1(a), the adjudication was reversed because the state failed to present any evidence to establish proof of venue beyond a reasonable doubt. The investigating officers' county of employment did not, in and of itself, constitute sufficient proof of venue to meet the beyond a reasonable doubt standard; however, the reviewing court noted that retrying the juvenile was not prohibited under the Double Jeopardy Clause because the evidence presented at trial was otherwise sufficient to support the adjudication of delinquency. In the Interest of B.R., 289 Ga. App. 6, 656 S.E.2d 172 (2007) (decided under former O.C.G.A. § 15-11-29).

Because the state failed to prove the element of venue beyond a reasonable doubt, and there was no indication in the record that the juvenile waived that requirement or that the court took judicial notice of venue as an element of the offenses charged, the juvenile's adjudications of delinquency had to be reversed. In the Interest of J.B., 289 Ga. App. 617, 658 S.E.2d 194 (2008) (decided under former O.C.G.A. § 15-11-29).

Dispositional hearings conducted in county where defendant resides. — It was at the dispositional hearings provided for in former Code 1933, § 24A-2201 (see now O.C.G.A. §§ 15-11-101 and 15-11-210) that the actual "case" was tried, thereby comporting with the constitutional mandate that civil cases shall be tried in the county where the defendant resided. M.E.B. v. State, 230 Ga. 154, 195 S.E.2d 891 (1973) (decided under former Code 1933, § 24A-1101).

In a deprivation proceeding, the court erred in basing venue on the childrens' brief visit to the county where the deprivation petitions were filed because the children were residing and attending school in another county at the time. In re B.G., 238 Ga. App. 227, 518 S.E.2d 451 (1999) (decided under former O.C.G.A. § 15-11-29).

Because a child was born in Lee County and had lived with the child's mother and maternal grandparents in Lee County for ten out of the 16 months of the child's life

when a petition alleging deprivation was filed under former O.C.G.A. § 15-11-29(a) (see now O.C.G.A. §§ 15-11-270 and 15-11-401), Lee County was the proper venue for the action. In the Interest of C.R., 292 Ga. App. 346, 665 S.E.2d 39 (2008) (decided under former O.C.G.A. § 15-11-29).

Service on mother in county of residence sufficient. — Service of process on the mother in the county of this state in which the mother of an illegitimate child resides is sufficient to give the county juvenile court jurisdiction over both the mother and the child regardless of whether there was a "detention" of the child and in spite of the fact that a welfare worker obtained possession of the child outside of the state. Sanchez v. Walker County Dep't of Family & Children Servs., 138 Ga. App. 49, 225 S.E.2d 441, rev'd on other grounds, 237 Ga. 406, 229 S.E.2d 66 (1976) (decided under former Code 1933, § 24A-1101).

Venue exists despite absence of child. — If a particular county is the residence of the child and of the child's mother, venue properly exists there for temporary custody actions even if the child was not personally present within the boundaries of that county on the date of the filing of the petition to the court for temporary custody. Sanchez v. Walker County Dep't of Family & Children Servs., 138 Ga. App. 49, 225 S.E.2d 441, rev'd on other grounds, 237 Ga. 406, 229 S.E.2d 66 (1976) (decided under former Code 1933, § 24A-1101).

Venue in county of child's residence and where child born. — Requirements for proving that venue was properly in Cobb County were met because a mother was residing in Cobb County when her child was born and when the underlying proceeding alleging deprivation commenced and that the child remained in the custody of Cobb County Department of Family and Children Services through the time the juvenile court entered the court's deprivation and non-reunification order. In re R. B., 309 Ga. App. 407, 710 S.E.2d 611 (2011) (decided under former O.C.G.A. § 15-11-29).

Challenge to court's jurisdiction unsuccessful. — Although former Code 1933, § 79-404 (see now O.C.G.A. § 19-2-4) provided that the domicile of an illegitimate child shall be that of his or her mother, yet, where the plea to the jurisdiction alleged "this court has accepted jurisdiction and custody of the minor child … and is holding said child subject to the order of this court," which clearly showed that the child was before the court, and there was no allegation showing the domicile of the mother, who was present in court, or any other reason why the juvenile court did not have jurisdiction, it was not error to overrule the plea. Springstead v. Cook, 215 Ga. 154, 109 S.E.2d 508 (1959) (decided under Ga. L. 1953, Nov.-Dec. Sess., p. 87, § 3).

Child was residing in Cobb County when an underlying proceeding alleging deprivation commenced and had remained in the custody of Cobb County Department of Family and Children Services through the time a termination of parental rights order was entered; accordingly, requirements for venue in Cobb County were met. In re R. J. D. B., 305 Ga. App. 888, 700 S.E.2d 898 (2010) (decided under former O.C.G.A. § 15-11-29).

There was sufficient evidence that venue was proper in Douglas County, Georgia, in a deprivation proceeding, as the Douglas County Department of Family and Children Services (DFCS) had been involved with the family for some time; the subject child's parent lived in a shelter in Douglas County in May and June of 2010, and at the time the deprivation petition was filed the child was in the custody of the Douglas County DFCS, where the child remained through the entry of the deprivation order. In the Interest of D. S., 316 Ga. App. 296, 728 S.E.2d 890 (2012) (decided under former O.C.G.A. § 15-11-29).

Conducting Hearings

Juvenile court proceedings are not criminal, but certain guaranties of due process applicable to criminal trials must be applied in the juvenile court hearings. Robinson v. State, 227 Ga. 140, 179 S.E.2d 248 (1971) (decided under former Code 1933, § 24-2411).

Juvenile hearing must meet essentials of due process and fair treat-

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ment. — Juvenile hearing need not conform with all of the requirements of a criminal trial or even of the usual administrative hearing; but the hearing must measure up to the essentials of due process and fair treatment. Robinson v. State, 227 Ga. 140, 179 S.E.2d 248 (1971) (decided under former Code 1933, § 24-2411).

Presentation of evidence. — In a hearing held to determine if a juvenile should be adjudged delinquent for committing acts that would have supported convictions for driving on the wrong side of the road and second degree vehicular homicide if the juvenile had been tried as an adult, the trial court did not abuse the court's discretion by allowing the state to reopen the state's case for the purpose of introducing evidence which showed that a person who sustained injuries in an accident the juvenile caused died as a result of those injuries. In the Interest of A.L.S., 261 Ga. App. 778, 584 S.E.2d 27 (2003) (decided under former O.C.G.A. § 15-11-41).

Requirement of independent corroboration of an accomplice's testimony, now set forth in O.C.G.A. § 24-4-8, is to be applicable to a juvenile proceeding. In re J.H.M., 202 Ga. App. 79, 413 S.E.2d 515 (1991) (decided under former O.C.G.A. § 15-11-28).

Juvenile probation officer cannot accuse child under own care. — It is error for a juvenile probation officer to conduct accusatory proceedings against a child who is or may be under the officer's care or supervision, even with a licensed attorney who thus could be considered "legal counsel for the child," because the official whose statutory responsibilities include the supervision and assisting of juveniles can best serve that function if the official remains an objective and unbiased figure. In re P.L.S., 170 Ga. App. 74, 316 S.E.2d 175 (1984) (decided under former O.C.G.A. § 15-11-28).

Appellant juvenile's failure to object to accusatory proceedings conducted by a juvenile probation officer denied appellant's right to rely on that error as a basis for reversal on appeal, but if such a procedure is allowed over proper objection appellate courts should not hesitate to reverse. In re P.L.S., 170 Ga. App. 74, 316 S.E.2d 175 (1984) (decided under former O.C.G.A. § 15-11-28).

Trial judge has right to propound question or series of questions to any witness for the purpose of developing fully the truth of the case; and the extent to which the examination conducted by the court shall go is a matter within the judge's discretion. T.L.T. v. State, 133 Ga. App. 895, 212 S.E.2d 650 (1975) (decided under former Code 1933, § 24A-1801).

Court examination may be cause for new trial. — Lengthy examination by the court of a witness called by either party will not be cause for a new trial, even though some of the questions propounded by the court were leading in character, unless the court, during the examination of the witness by the court, expresses or intimates an opinion on the facts of the case, or as to what has or has not been proved, or the examination takes such course as to become argumentative in character. T.L.T. v. State, 133 Ga. App. 895, 212 S.E.2d 650 (1975) (decided under former Code 1933, § 24A-1801).

Limits on exercise of right of cross-examination by judge. — It is most important that a juvenile court judge exercise the right of cross-examination so long as the examination does not constitute a manifest abuse of discretion nor go beyond the boundaries of becoming argumentative or expressing or intimating an opinion. T.L.T. v. State, 133 Ga. App. 895, 212 S.E.2d 650 (1975) (decided under former Code 1933, § 24A-1801).

No interference with juvenile court discretion unless manifest abuse. — Former Code 1933, § 24-2420 vested in the juvenile court judge broad discretion which the Court of Appeals had no right to control unless the discretion was manifestly abused by the juvenile court judge. Land v. State, 101 Ga. App. 448, 114 S.E.2d 165 (1960) (decided under former Code 1933, § 24-2411).

Hearings without jury were intended for benefit of child to spare the child from the unfavorable publicity of a public trial before a jury. Robinson v. State, 227 Ga. 140, 179 S.E.2d 248 (1971)

(decided under former Code 1933, § 24-2411).

Hearings without jury do not deny due process or fair treatment. — Provision that the hearing shall be without a jury does not deny due process or fair treatment to the juvenile. Robinson v. State, 227 Ga. 140, 179 S.E.2d 248 (1971) (decided under former Code 1933, § 24-2411).

Presence of murder victim's mother. — Trial judge did not err in allowing the mother of a murder victim to remain in the courtroom during delinquency proceedings. In re L.D.H., 213 Ga. App. 297, 444 S.E.2d 387 (1994) (decided under former O.C.G.A. § 15-11-28).

Presence of assault victim's relative during hearing. — Juvenile court may permit a relative of the victim of an assault to be present in the courtroom during the hearing on that offense since the victim has suffered a significant loss of vision as a result of the assault and the relative is the person who took the victim to the hospital after the assault. C.P. v. State, 167 Ga. App. 374, 306 S.E.2d 688 (1983) (decided under former O.C.G.A. § 15-11-28).

Juvenile must be warned before waiving counsel. — Juvenile did not make a knowing and intelligent decision to proceed without counsel since the referee did not warn the juvenile or the juvenile's mother of the danger of proceeding without counsel or of the consequences of an affirmative finding or admission of the charge enumerated in the petition; the juvenile appellant and the juvenile's mother did not stand before the court with open eyes, knowing the danger and consequences of proceeding without the benefit of legal representation. In re W.M.F., 180 Ga. App. 397, 349 S.E.2d 265 (1986) (decided under former O.C.G.A. § 15-11-28).

Recording Proceedings

Recording of proceedings are mandated, plainly and simply in the absence of waiver. In re R.L.M., 171 Ga. App. 940, 321 S.E.2d 435 (1984) (decided under former O.C.G.A. § 15-11-28).

Because the juvenile court primarily based the court's decision that a parent's two children were deprived, awarding temporary custody of the children to the county, on evidence received at an unrecorded hearing, and a waiver requiring a transcript of that hearing was not in evidence, those findings were reversed, and the case was remanded. In the Interest of D.P., 284 Ga. App. 453, 644 S.E.2d 299 (2007) (decided under former O.C.G.A. § 15-11-41).

Use of a tape recorder was a permissible means of recording and, although some of the disposition testimony could not be transcribed because the tape ran out, the transcription was sufficient since the juvenile court judge, the defense attorney, and the prosecutor signed the certification. In the Interest of E.D.F., 243 Ga. App. 68, 532 S.E.2d 424 (2000) (decided under former O.C.G.A. § 15-11-28).

Recording of proceeding. — Recording was waived since the juvenile court failed to record an in-chambers interview with a child and the parents acquiesced in such procedure. In the Interest of A.R., 248 Ga. App. 783, 546 S.E.2d 915 (2001) (decided under former O.C.G.A. § 15-11-41).

Quality of a tape-recording of a termination-of-parental rights hearing was so poor that the court reporter could not understand much of what was said; as it was the mother's burden to provide the transcript of the hearing and since the transcript was inadequate to address a claim of error, the appellate court assumed the trial court's ruling was correct. In the Interest of C.T.M., 278 Ga. App. 297, 628 S.E.2d 713 (2006) (decided under former O.C.G.A. § 15-11-41).

New hearing ordered for unrecorded proceedings. — Once it was discovered that a portion of the proceedings went unrecorded, a party was entitled to a new hearing on the party's modification petition, and to have such a hearing recorded in its entirety as mandated by former O.C.G.A. § 15-11-28 (see now O.C.G.A. § 15-11-17). In re T.M.C., 206 Ga. App. 595, 426 S.E.2d 247 (1992); In re L.G., 230 Ga. App. 153, 495 S.E.2d 628 (1998) (decided under former O.C.G.A. § 15-11-28).

Indigent parent entitled to paupered transcript for use in appeal. — Indigent parent, whose parental

Recording Proceedings (Cont'd)

rights have been terminated by an order of a juvenile court on a petition filed by an agency of the state, is entitled to a paupered transcript of the proceeding in the juvenile court for use in appealing the decision of that court. Nix v. Department of Human Resources, 236 Ga. 794, 225 S.E.2d 306 (1976) (decided under former Code 1933, § 24A-1801).

RESEARCH REFERENCES

Am. Jur. 2d. — 42 Am. Jur. 2d, Infants, § 27 et seq. 47 Am. Jur. 2d, Juvenile Courts and Delinquent and Dependent Children, §§ 39 et seq., 83 et seq., 91.

C.J.S. — 43 C.J.S., Infants, §§ 163 et seq., 180 et seq.

U.L.A. — Uniform Juvenile Court Act (U.L.A.) §§ 11, 24.

ALR. — Right to jury trial in juvenile court delinquency proceedings, 100 A.L.R.2d 1241.

Defense of infancy in juvenile delinquency proceedings, 83 A.L.R.4th 1135.

Propriety of exclusion of press or other media representatives from civil trial, 39 A.L.R.5th 103.

15-11-18. Subpoenas; application of Title 24.

Upon application of a party, the court, or any authorized officer of the court, the clerk of the court shall issue subpoenas in accordance with the provisions of Title 24 requiring attendance and testimony of witnesses and production of evidence at any hearing under this chapter. A delinquency proceeding conducted in this state shall be considered a criminal prosecution insofar as the applicability of Article 4 of Chapter 13 of Title 24.

History. — Code 1981, § 15-11-18, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under pre-2000 Code Section 15-11-22, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Information obtainable through sources other than attorney. — Child's paternal grandparents were not entitled to subpoena the attorney who had represented the child's mother in several DUI cases in order to obtain information concerning her "alcohol problem" since the information sought could have been obtained through other sources. In re N.S.M., 183 Ga. App. 398, 359 S.E.2d 185 (1987) (decided under former O.C.G.A. § 15-11-22).

RESEARCH REFERENCES

Am. Jur. 2d. — 81 Am. Jur. 2d, Witnesses, § 7 et seq.

C.J.S. — 98 C.J.S., Witnesses, §§ 13, 18 et seq.

U.L.A. — Uniform Juvenile Court Act (U.L.A.) § 18.

15-11-19. Rights of parties to proceedings.

(a) A party has the right to be present, to be heard, to present evidence material to the proceedings, to cross-examine witnesses, to examine pertinent court files and records, and to appeal the orders of the court; provided, however, that the court shall retain the discretion to exclude a child from any part or parts of any proceeding under Article 3 of this chapter if the court determines that it is not in such child's best interests to be present. An attorney for an excluded child shall not be excluded from the proceedings.

(b) A person afforded rights under this chapter shall be advised of such rights at that person's first appearance before the court.

History. — Code 1981, § 15-11-19, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

Law reviews. — For article discussing due process in juvenile court procedures in California and Georgia, in light of In re Gault, 387 U.S. 1, 87 S. Ct. 1428, 18 L. Ed. 2d 527 (1967), see 8 Ga. St. B. J. 9 (1971). For article, "Termination of Parental Rights: Recent Judicial and Legislative Trends," see 30 Emory L. J. 1065 (1981). For survey article on appellate practice and procedure, see 59 Mercer L. Rev. 21 (2007).

For comment, "School Bullies — They Aren't Just Students: Examining School Interrogations and the Miranda Warning," see 59 Mercer L. Rev. 731 (2008).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 24A-2002, pre-2000 Code Section 15-11-31 and pre-2014 Code Section 15-11-7(a), which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Right to cross-examine adverse witnesses guaranteed by former Code 1933, § 24A-2002 (see now O.C.G.A. § 15-11-19) was afforded upon request according to former Code 1933, § 24A-2201 (see now O.C.G.A. §§ 15-11-56 and 15-11-65). A.C.G. v. State, 131 Ga. App. 156, 205 S.E.2d 435 (1974) (decided under former Code 1933, § 24A-2002).

Private interview of child by father's counsel not necessary. — Requiring a child to submit privately and alone to an interview by his father's counsel is not necessary. The father's rights provided by statute are adequate and proper to ensure him a fair hearing. In re L.L.W., 141 Ga. App. 32, 232 S.E.2d 378 (1977) (decided under former Code 1933, § 24A-2002).

Former Code 1933, § 24A-2002 was implementation of constitutional right of due process. In re L.L.W., 141 Ga. App. 32, 232 S.E.2d 378 (1977) (decided under former Code 1933, § 24A-2002).

Fair trial required. — Adjudicatory phase of a delinquency proceeding is the functional equivalent of the trial in the regular criminal or civil process, and a juvenile charged with delinquency is entitled by right to have the court apply those common law jurisprudential principles which experience and reason have shown are necessary to give the accused the essence of a fair trial; those principles include the privilege against self-incrimination and the right of cross-examination under former O.C.G.A. § 15-11-7(a) and (b) (see now O.C.G.A. §§ 15-11-19 and 15-11-28). In the Interest

of J.C., 257 Ga. App. 657, 572 S.E.2d 21 (2002) (decided under former O.C.G.A. § 15-11-7).

Right to confront accusers. — Under former O.C.G.A. § 15-11-7(a), juveniles were entitled to confront their accusers through cross-examination during a delinquency proceeding's adjudicatory phase. In the Interest of J.C., 257 Ga. App. 657, 572 S.E.2d 21 (2002) (decided under former O.C.G.A. § 15-11-7).

Minor with mental disability may confess. — Mere showing that one who confessed to crime may have suffered from some mental disability is not a sufficient basis upon which to exclude the statement. Marshall v. State, 248 Ga. 227, 282 S.E.2d 301 (1981) (decided under former O.C.G.A. § 15-11-31).

Age alone is not determinative of whether a person can waive one's rights. Marshall v. State, 248 Ga. 227, 282 S.E.2d 301 (1981) (decided under former O.C.G.A. § 15-11-31).

Waiver of rights upheld on appeal absent clear error. — Question of whether or not a defendant is capable or incapable of making a knowing and intelligent waiver of the defendant's rights is to be answered by the trial judge and will be accepted by an appellate court unless such determination is clearly erroneous. Marshall v. State, 248 Ga. 227, 282 S.E.2d 301 (1981) (decided under former O.C.G.A. § 15-11-31).

Transfer hearings must meet essentials of due process and fair treatment. — Transfer hearings are critically important proceedings affecting important rights of the juvenile. While a hearing need not conform with all of the requirements of a criminal trial or even of the usual administrative hearing, the hearing must measure up to the essentials of due process and fair treatment. R.S. v. State, 156 Ga. App. 460, 274 S.E.2d 810 (1980) (decided under former Code 1933, § 24A-2002).

When former Code 1933, §§ 24A-2002 and 24A-2501 are read together, a juvenile faced with the possible transfer of the juvenile's case from juvenile court to "the appropriate court having jurisdiction of the offense" has the right to an evidentiary hearing at which the juvenile must be given "the opportunity to introduce evidence and otherwise be heard in his own behalf and to cross-examine adverse witnesses." R.S. v. State, 156 Ga. App. 460, 274 S.E.2d 810 (1980) (decided under former Code 1933, § 24A-2002).

Statutory provisions regarding transfer of juvenile case must be followed. — Under former Code 1933, § 24A-2501 (see now O.C.G.A. § 15-11-561), the juvenile court had discretion to determine whether there are "reasonable grounds" to order the transfer only after conducting an evidentiary hearing required under former paragraph (a)(1) of that section. The juvenile court may not simply "waive" juvenile jurisdiction and deny appellant the right to an evidentiary hearing on the "reasonable grounds" for the transfer. R.S. v. State, 156 Ga. App. 460, 274 S.E.2d 810 (1980) (decided under former Code 1933, § 24A-2002).

Court must conduct evidentiary hearing on transfer. — If the juvenile court judge refused to conduct a hearing at which evidence bearing upon the "transfer criteria" listed in former Code 1933, § 24A-2501 (see now O.C.G.A. §§ 15-11-181, 15-11-400, 15-11-421, 15-11-441, and 15-11-582) could be introduced, the judgment of the juvenile court transferring jurisdiction must be reversed and the case remanded for an appropriate evidentiary hearing. R.S. v. State, 156 Ga. App. 460, 274 S.E.2d 810 (1980) (decided under former Code 1933, § 24A-2002).

Fair trial not found. — Juvenile did not receive a fair trial since the juvenile was not permitted to confront the state's witness, and was questioned without being sworn or advised of the right to remain silent, and the consequences of foregoing that right. In the Interest of J.C., 257 Ga. App. 657, 572 S.E.2d 21 (2002) (decided under former O.C.G.A. § 15-11-7).

RESEARCH REFERENCES

Am. Jur. 2d. — 47 Am. Jur. 2d, Juvenile Courts and Delinquent and Dependent Children, § 96 et seq.

C.J.S. — 43 C.J.S., Infants, § 199 et seq.

U.L.A. — Uniform Juvenile Court Act (U.L.A.) § 27.

ALR. — Power of juvenile court to require children to testify, 151 A.L.R. 1229.

Applicability of rules of evidence in juvenile delinquency proceeding, 43 A.L.R.2d 1128.

Voluntariness and admissibility of minor's confession, 87 A.L.R.2d 624.

Defense of infancy in juvenile delinquency proceedings, 83 A.L.R.4th 1135.

Applicability of rules of evidence to juvenile transfer, waiver, or certification hearings, 37 A.L.R.5th 703.

Juvenile's guilty or no contest plea in adult court as waiver of defects in transfer or certification proceedings, 74 A.L.R.5th 453.

15-11-20. Referral for mediation.

(a) At any time during a proceeding under this chapter, the court may refer a case to mediation.

(b) When referring a case to mediation, the court shall take into consideration the guidelines from the Georgia Commission of Dispute Resolution for mediating cases involving domestic violence or family violence.

(c) A referral order shall recite that while the parties shall attend a scheduled mediation session and shall attempt to mediate in good faith, such parties shall not be required to reach an agreement.

(d) Victims in a delinquency case referred to mediation may attend and participate in such mediation, but shall not be required to do so as a condition of such case being heard by the juvenile court.

History. — Code 1981, § 15-11-20, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

Cross references. — Georgia Court-Connected Alternative Dispute Resolution Act, § 15-23-1 et seq.

Law reviews. — For comment, "Victim Offender Mediation: When Divergent Paths and Destroyed Lives Come Together for Healing," see 32 Ga. St. U.L. Rev. 577 (2016).

15-11-21. Selection and appointment of mediator.

(a) Once an order referring a case to mediation has been signed, the court shall appoint a mediator from a list of court approved mediators who are registered with the Georgia Office of Dispute Resolution to mediate juvenile court cases.

(b) The court shall appoint a qualified mediator within five days of signing the order referring the case to mediation.

History. — Code 1981, § 15-11-21, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

15-11-22. Agreement to mediate; procedure.

(a) The parties shall sign and date a written agreement to mediate. The agreement to mediate shall identify the controversies between the parties, affirm the parties' intent to resolve such controversies through mediation, and specify the circumstances under which mediation may continue. The agreement to mediate shall specify the confidentiality requirements of mediation and the exceptions to confidentiality in mediation as such are set forth in the Supreme Court of Georgia Alternative Dispute Resolution Rules and appendices.

(b) A mediator shall not knowingly assist the parties in reaching an agreement which would be unenforceable for reasons such as fraud, duress, the absence of bargaining ability, unconscionability, or lack of court jurisdiction.

(c) Prior to the parties signing an agreement to mediate, the mediator shall advise the parties that each of them may obtain review by an attorney of any agreement reached as a result of the mediation.

(d) The mediator shall at all times be impartial.

History. — Code 1981, § 15-11-22, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

15-11-23. Stay of proceeding pending mediation; time limitations.

(a) Upon issuing a referral to mediation the court may stay the proceeding.

(b) Mediation shall occur as soon as practicable and be scheduled within 30 days of the order referring the matter to mediation unless the time frame is extended by the court.

(c) The court may extend the timeline for scheduling a mediation for an additional 30 days.

History. — Code 1981, § 15-11-23, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

15-11-24. Termination of mediation.

(a) Any party in a mediation may withdraw from or terminate further participation in mediation at any time.

(b) A mediator shall terminate mediation when:

(1) The mediator concludes that the participants are unable or unwilling to participate meaningfully in the process;

(2) The mediator concludes that a party lacks the capacity to perceive and assert his or her own interests to the degree that a fair agreement cannot be reached;

(3) The mediator concludes that an agreement is unlikely; or

(4) The mediator concludes that a party is a danger to himself or herself or others.

History. — Code 1981, § 15-11-24, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242; Ga. L. 2015, p. 540, § 1-5/HB 361.

15-11-25. Approval of mediation agreements; exceptions.

(a) All mediation agreements shall be presented to the juvenile court judge for approval.

(b) The mediation agreement shall be made an order of the court unless, after further hearing, the court determines by clear and convincing evidence that the agreement is not in the best interests of the child.

History. — Code 1981, § 15-11-25, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

15-11-26. Best interests of child.

Whenever a best interests determination is required, the court shall consider and evaluate all of the factors affecting the best interests of the child in the context of such child's age and developmental needs. Such factors shall include:

(1) The physical safety and welfare of such child, including food, shelter, health, and clothing;

(2) The love, affection, bonding, and emotional ties existing between such child and each parent or person available to care for such child;

(3) The love, affection, bonding, and emotional ties existing between such child and his or her siblings, half siblings, and stepsiblings and the residence of such other children;

(4) Such child's need for permanence, including such child's need for stability and continuity of relationships with his or her parent,

siblings, other relatives, and any other person who has provided significant care to such child;

(5) Such child's sense of attachments, including his or her sense of security and familiarity, and continuity of affection for such child;

(6) The capacity and disposition of each parent or person available to care for such child to give him or her love, affection, and guidance and to continue the education and rearing of such child;

(7) The home environment of each parent or person available to care for such child considering the promotion of such child's nurturance and safety rather than superficial or material factors;

(8) The stability of the family unit and the presence or absence of support systems within the community to benefit such child;

(9) The mental and physical health of all individuals involved;

(10) The home, school, and community record and history of such child, as well as any health or educational special needs of such child;

(11) Such child's community ties, including church, school, and friends;

(12) Such child's background and ties, including familial, cultural, and religious;

(13) The least disruptive placement alternative for such child;

(14) The uniqueness of every family and child;

(15) The risks attendant to entering and being in substitute care;

(16) Such child's wishes and long-term goals;

(17) The preferences of the persons available to care for such child;

(18) Any evidence of family violence, substance abuse, criminal history, or sexual, mental, or physical child abuse in any current, past, or considered home for such child;

(19) Any recommendation by a court appointed custody evaluator or guardian ad litem; and

(20) Any other factors considered by the court to be relevant and proper to its determination.

History. — Code 1981, § 15-11-26, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

Law reviews. — For article, "Parentage Prenups and Midnups," see 31 Ga. St. U.L. Rev. 343 (2015).

JUDICIAL DECISIONS

Denial of petition to legitimate child. — Juvenile court did not abuse the court's discretion in denying the putative father's petition to legitimate the child because, although the father was not seeking custody of the child, the juvenile court did not err in basing the court's ruling on a determination of whether the father was fit to assume immediate custody of the child as the juvenile court properly considered the father's interest in caring for the child; the father's ability to support the child if placed in the father's care; and the child's current placement as part of the best interests analysis under O.C.G.A. § 15-11-26. In the Interest of J. M., 337 Ga. App. 811, 788 S.E.2d 888 (2016), cert. denied, No. S16C1860, 2017 Ga. LEXIS 120 (Ga. 2017).

15-11-27. Physical and mental examinations.

During the pendency of any proceeding under this chapter, the court may order:

(1) A child to be examined by outside parties or private providers at a suitable place by a physician or psychologist; provided, however, that orders to perform an evaluation shall not be imposed upon any state agency or county government unless such state agency or county government has funds available for such evaluation; and

(2) Medical or surgical treatment of a child suffering from a serious physical condition or illness which, in the opinion of a licensed physician, requires prompt treatment, even if the parent, guardian, or legal custodian has not been given notice of a hearing, is not available, or without good cause informs the court of his or her refusal to consent to the treatment.

History. — Code 1981, § 15-11-27, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

RESEARCH REFERENCES

C.J.S. — 43 C.J.S., Infants, § 209 et seq.

U.L.A. — Uniform Juvenile Court Act (U.L.A.) § 28.

ALR. — Defense of infancy in juvenile delinquency proceedings, 83 A.L.R.4th 1135.

15-11-28. Privilege against self-incrimination.

(a) No admission, confession, or incriminating information obtained from a child in the course of any screening that is undertaken in conjunction with proceedings under this chapter, including but not limited to court ordered screenings, shall be admitted into evidence in any adjudication hearing in which a child is accused under this chapter. Such admission, confession, or incriminating information may be considered by the court at disposition.

(b) No admission, confession, or incriminating information obtained from a child in the course of any assessment or evaluation, or any treatment that is undertaken in conjunction with proceedings under this chapter, including but not limited to court ordered detention or risk assessments and evaluations, shall be admitted into evidence against such child, except as rebuttal or impeachment evidence, or used as a basis for such evidence in any future adjudication hearing or criminal proceeding in which such child is accused. Such admission, confession, or incriminating information may be considered by the court at disposition.

History. — Code 1981, § 15-11-28, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

Law reviews. — For article discussing due process in juvenile court procedures in California and Georgia, in light of In re Gault, 387 U.S. 1, 87 S. Ct. 1428, 18 L. Ed. 2d 527 (1967), see 8 Ga. St. B. J. 9 (1971). For article, "Termination of Parental Rights: Recent Judicial and Legislative Trends," see 30 Emory L. J. 1065 (1981).

For comment, "School Bullies — They Aren't Just Students: Examining School Interrogations and the Miranda Warning," see 59 Mercer L. Rev. 731 (2008).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 24A-2002, pre-2000 Code Section 15-11-31 and pre-2014 Code Section 15-11-7(b), which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Private interview of child by father's counsel not necessary. — Requiring a child to submit privately and alone to an interview by his father's counsel is not necessary. The father's rights provided by statute are adequate and proper to ensure him a fair hearing. In re L.L.W., 141 Ga. App. 32, 232 S.E.2d 378 (1977) (decided under former Code 1933, § 24A-2002).

Former Code 1933, § 24A-2002 was implementation of constitutional right of due process. In re L.L.W., 141 Ga. App. 32, 232 S.E.2d 378 (1977) (decided under former Code 1933, § 24A-2002).

Constitutional privilege against self-incrimination was as applicable in juvenile cases as it was with respect to adults. K.E.S. v. State, 134 Ga. App. 843, 216 S.E.2d 670 (1975) (decided under former Code 1933, § 24A-2002).

Fair trial required. — Adjudicatory phase of a delinquency proceeding is the functional equivalent of the trial in the regular criminal or civil process, and a juvenile charged with delinquency is entitled by right to have the court apply those common law jurisprudential principles which experience and reason have shown are necessary to give the accused the essence of a fair trial; those principles include the privilege against self-incrimination and the right of cross-examination under former O.C.G.A. § 15-11-7(a) and (b) (see now O.C.G.A. §§ 15-11-19 and 15-11-28). In the Interest of J.C., 257 Ga. App. 657, 572 S.E.2d 21 (2002) (decided under former O.C.G.A. § 15-11-7).

Rule as to confessions of juveniles should be same as that for confessions of adults because law enforcement officers cannot be certain when law enforcement officers question a juvenile what kind of case may develop, and the statutory safeguards are applicable to both criminal and juvenile cases. Crawford v. State, 240 Ga. 321, 240 S.E.2d 824 (1977) (decided under former Code 1933, § 24A-2002).

Juvenile confessions judged with more care and caution. — Confessions

of juveniles are scanned with more care and received with greater caution. Crawford v. State, 240 Ga. 321, 240 S.E.2d 824 (1977) (decided under former Code 1933, § 24A-2002).

Voluntary pretrial statement admitted. — Since the defendant was a minor when the defendant's statement was given and the defendant's statement was made outside the presence or without the assistance of counsel or other responsible adult, and there was no evidence that the defendant's statements were involuntary, the defendant's pretrial statement was admissible. Duffy v. State, 262 Ga. 249, 416 S.E.2d 734 (1992) (decided under former O.C.G.A. § 15-11-31).

Minor has capacity to make voluntary confession even in a capital case, without the presence or consent of counsel or other responsible adult, with such absence being just one factor or circumstance to consider in determining the voluntariness of the confession. Marshall v. State, 248 Ga. 227, 282 S.E.2d 301 (1981) (decided under former O.C.G.A. § 15-11-31).

Minor with mental disability may confess. — Mere showing that one who confessed to crime may have suffered from some mental disability is not a sufficient basis upon which to exclude the statement. Marshall v. State, 248 Ga. 227, 282 S.E.2d 301 (1981) (decided under former O.C.G.A. § 15-11-31).

Presence of parents during questioning. — There is no provision requiring that one or both parents be present during the questioning. Marshall v. State, 248 Ga. 227, 282 S.E.2d 301 (1981); Duffy v. State, 262 Ga. 249, 416 S.E.2d 734 (1992) (decided under former O.C.G.A. § 15-11-31).

Parents were denied due process in a termination of parental rights proceeding since the parents were excluded from an observation room during an interview of their children, even though the parents' attorneys were present in the room, from which location no one would have been seen or heard by the children. In re M.S., 178 Ga. App. 380, 343 S.E.2d 152 (1986) (decided under former O.C.G.A. § 15-11-31).

Waiver of right against self-incrimination. — Question of a voluntary and knowing waiver by a juvenile of the juvenile's right not to incriminate oneself depends on the totality of circumstances to be analyzed by a consideration of nine factors: (1) the age of the accused; (2) the education of the accused; (3) knowledge of the accused as to both the substance of the charge and the nature of the accused's rights to consult with an attorney and remain silent; (4) whether the accused is held incommunicado or allowed to consult with relatives, friends, or an attorney; (5) whether the accused was interrogated before or after formal charges had been filed; (6) the methods used in the interrogation; (7) the length of the interrogation; (8) whether vel non the accused refused to give statements voluntarily on prior occasions; and (9) whether the accused has repudiated an extrajudicial statement at a later date. Marshall v. State, 248 Ga. 227, 282 S.E.2d 301 (1981) (decided under former O.C.G.A. § 15-11-31).

Age alone is not determinative of whether a person can waive one's rights. Marshall v. State, 248 Ga. 227, 282 S.E.2d 301 (1981) (decided under former O.C.G.A. § 15-11-31).

Waiver of rights upheld on appeal absent clear error. — Question of whether or not a defendant is capable or incapable of making a knowing and intelligent waiver of the defendant's rights is to be answered by the trial judge and will be accepted by an appellate court unless such determination is clearly erroneous. Marshall v. State, 248 Ga. 227, 282 S.E.2d 301 (1981) (decided under former O.C.G.A. § 15-11-31).

Delinquency found when acts corroborated confession. — Child's confession out-of-court corroborated by evidence that stolen items were found in the child's possession within a few hours of the crime with which the child was charged, theft, constituted sufficient proof to support a finding of delinquency. A.C.G. v. State, 131 Ga. App. 156, 205 S.E.2d 435 (1974) (decided under former Code 1933, § 24A-2002).

Transfer hearings must meet essentials of due process and fair treatment. — Transfer hearings are critically important proceedings affecting impor-

tant rights of the juvenile. While a hearing need not conform with all of the requirements of a criminal trial or even of the usual administrative hearing, the hearing must measure up to the essentials of due process and fair treatment. R.S. v. State, 156 Ga. App. 460, 274 S.E.2d 810 (1980) (decided under former Code 1933, § 24A-2002).

When former Code 1933, §§ 24A-2002 and 24A-2501 are read together, a juvenile faced with the possible transfer of the juvenile's case from juvenile court to "the appropriate court having jurisdiction of the offense" has the right to an evidentiary hearing at which the juvenile must be given "the opportunity to introduce evidence and otherwise be heard in his own behalf and to cross-examine adverse witnesses." R.S. v. State, 156 Ga. App. 460, 274 S.E.2d 810 (1980) (decided under former Code 1933, § 24A-2002).

Fair trial not found. — Juvenile did not receive a fair trial since the juvenile was not permitted to confront the state's witness, and was questioned without being sworn or advised of the right to remain silent, and the consequences of foregoing that right. In the Interest of J.C., 257 Ga. App. 657, 572 S.E.2d 21 (2002) (decided under former O.C.G.A. § 15-11-7).

Cited in In the Interest of D. H., 332 Ga. App. 274, 772 S.E.2d 70 (2015); Mathenia v. Brumbelow, 843 S.E.2d 582, No. S19G0426, 2020 Ga. LEXIS 353 (2020).

RESEARCH REFERENCES

Am. Jur. 2d. — 47 Am. Jur. 2d, Juvenile Courts and Delinquent and Dependent Children, § 96 et seq.

C.J.S. — 43 C.J.S., Infants, § 199 et seq.

U.L.A. — Uniform Juvenile Court Act (U.L.A.) § 27.

ALR. — Power of juvenile court to require children to testify, 151 A.L.R. 1229.

Applicability of rules of evidence in juvenile delinquency proceeding, 43 A.L.R.2d 1128.

Voluntariness and admissibility of minor's confession, 87 A.L.R.2d 624.

Defense of infancy in juvenile delinquency proceedings, 83 A.L.R.4th 1135.

Applicability of rules of evidence to juvenile transfer, waiver, or certification hearings, 37 A.L.R.5th 703.

Juvenile's guilty or no contest plea in adult court as waiver of defects in transfer or certification proceedings, 74 A.L.R.5th 453.

15-11-29. Protective orders.

(a) In any proceeding under this chapter, either on application of a party or on the court's own motion, the court may make an order restraining or otherwise controlling the conduct of a person if due notice of the application or motion and the grounds therefor and an opportunity to be heard thereon have been given to the person against whom the order is directed. Such an order may require any such person:

(1) To stay away from a person's home or a child;

(2) To permit a parent to visit his or her child at stated periods;

(3) To abstain from offensive conduct against a child, his or her parent, or any person to whom custody of such child is awarded;

(4) To give proper attention to the care of his or her home;

(5) 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 a child is referred by the court;

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

(7) To ensure that a child attends school pursuant to any valid law relating to compulsory attendance;

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

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

(b) After notice and opportunity for hearing afforded to a person subject to a protective order, a protective order may be modified or extended for a further specified period, or both, or may be terminated if the court finds that the best interests of the child and the public will be served thereby.

(c) Protective orders may be enforced by citation to show cause for contempt of court by reason of any violation thereof and, where protection of the welfare of a child so requires, by the issuance of a warrant to take the alleged violator into custody and bring him or her before the court.

History. — Code 1981, § 15-11-29, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under pre-2000 Code Section 15-11-57 and pre-2014 Code Section 15-11-11, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Psychological counseling. — Juvenile court order requiring a noncustodial parent to seek psychological counseling with a particular psychologist who is located 50 miles from the residence and work of the noncustodial parent is unreasonable and has to be stricken. In re A.S., 185 Ga. App. 11, 363 S.E.2d 325 (1987) (decided under former O.C.G.A. § 15-11-57).

Order was not a protective order. — When a trial court, upon finding a mother's children were deprived, left the children's custody with the mother upon certain conditions, this was not a protective order, despite the fact that this was what was prayed for at the hearing resulting in the order, but it was, rather, a deprivation order under former O.C.G.A. § 15-11-55(a)(1) (see now O.C.G.A. § 15-11-212), so, when the specified conditions were violated, the trial court was not limited to the remedies available in the protection order statute, but was authorized to remove the children from the mother's custody. In the Interest of S.Y., 264 Ga. App. 623, 591 S.E.2d 489 (2003) (decided under former O.C.G.A. § 15-11-11).

RESEARCH REFERENCES

C.J.S. — 43 C.J.S., Infants, § 4 et seq.
U.L.A. — Uniform Juvenile Court Act (U.L.A.) §§ 53, 54.

15-11-29.1. Parental accountability; court orders; enforcement.

(a) In any proceeding involving a child in need of services or a delinquent child or when a case plan has been imposed under Code Sections 15-11-38 and 15-11-39, upon the application of the prosecuting attorney or a party to the plan under Code Sections 15-11-38 and 15-11-39, or on the court's own motion, the court may issue an order restraining or otherwise controlling the conduct of such child's parent, guardian, or legal custodian so as to promote such child's treatment, rehabilitation, and welfare, provided that due notice of the application or motion and the grounds therefor and an opportunity to be heard thereon have been given to such parent, guardian, or legal custodian. When the court is determining if an order is appropriate, it shall consider:

(1) The best interests of such child;

(2) The risk to public safety such delinquent child poses;

(3) Evidence of a repeated pattern of behavior by such child; and

(4) The extent to which enhanced involvement and supervision of such child may ameliorate public safety concerns.

(b) An order issued under this Code section may require a parent, guardian, or legal custodian to:

(1) Ensure that the child attends school pursuant to any law relating to compulsory attendance;

(2) Monitor the child's school homework and studies after school;

(3) Attend school meetings as requested by the child's teacher, counselor, or school administrator;

(4) Participate with the child in any counseling or treatment deemed necessary, after consideration of employment and other family needs, and follow recommendations made by such professionals;

(5) Provide transportation for the child to attend counseling, programs, or other services ordered by the court;

(6) Provide instruction and guidance to improve the child's behavior;

(7) Prohibit specific individuals from having contact with the child or from entering the child's residence;

(8) When the child is on probation:

(A) Provide transportation to the probation office or any other counseling or program directed by the child's probation officer;

(B) Cooperate with the child's probation officer and answer all of his or her questions truthfully; and

(C) Allow access to the child upon the request of the probation officer;

(9) Enter into and successfully complete a substance abuse program approved by the court;

(10) Abstain from offensive conduct against the child;

(11) Pay for the costs and expenses of the child's counseling, treatment, or other services in the same manner as set forth in subsection (c) of Code Section 15-11-36;

(12) Pay restitution as set forth in Code Section 17-14-5;

(13) Pay any judgment entered pursuant to Code Section 51-2-3; and

(14) Take any other action or refrain from any other action that the court finds reasonably related to the child's treatment, rehabilitation, or welfare and the safety of the public.

(c) After notice and opportunity for hearing afforded to a person subject to an order entered under this Code section, such order may be modified or extended for a further specified period, or both, or may be terminated if the court finds that the best interests of the child and the public will be served thereby.

(d) An order entered pursuant to this Code section may be enforced by citation to show cause for contempt of court by reason of any violation thereof and, when protection of the welfare of a child so requires, by the issuance of a warrant to take the alleged violator into custody and bring him or her before the court.

History. — Code 1981, § 15-11-29.1, enacted by Ga. L. 2017, p. 604, § 1-1/SB 175.

Law reviews. — For annual survey on criminal law, see 69 Mercer L. Rev. 73 (2017).

15-11-30. Rights and duties of legal custodian.

A legal custodian has the right to physical custody of a child, the right to determine the nature of the care and treatment of such child, including ordinary medical care, and the right and duty to provide for

the care, protection, training, and education and the physical, mental, and moral welfare of such child, subject to the conditions and limitations of the order and to the remaining rights and duties of such child's parent or guardian.

History. — Code 1981, § 15-11-30, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

Law reviews. — For comment on Parham v. J.R., 442 U.S. 584 (1979); Secretary of Pub. Welfare v. Institutionalized Juveniles, 442 U.S. 640 (1979), regarding juvenile commitment to state mental hospitals upon application of parents or guardians, see 29 Emory L. J. 517 (1980).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 24A-2901, pre-2000 Code Section 15-11-43 and pre-2014 Code Section 15-11-13, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

"Legal guardian." — Grandmother was not a "legal guardian" of a child within the meaning of former O.C.G.A. § 15-11-13 or O.C.G.A. § 19-9-22(2). Stills v. Johnson, 272 Ga. 645, 533 S.E.2d 695 (2000) (decided under former O.C.G.A. § 15-11-13).

Right to consent to adoption of child is one of those residual rights retained by a parent, notwithstanding the transfer of temporary legal custody of the child to another person. Skipper v. Smith, 239 Ga. 854, 238 S.E.2d 917 (1977) (decided under former Code 1933, § 24A-2901); O'Neal v. Wilkes, 263 Ga. 850, 439 S.E.2d 490 (1994) (decided under former O.C.G.A. § 15-11-43).

Powers and duties of juvenile court. — Having committed a child to the Division of Children and Youth (now Division of Youth Services), which under former Code 1933, § 24A-2701 was self-executing in placing control over the child to the division for two years, or until the child was sooner discharged, or as provided for an extension of the two-year period on motion of the division, it was beyond the power of the trial judge to make further provision at that time in effect retaining jurisdiction over the child to prevent the mother from gaining physical custody of the child except subject to further order of the court or to require that the child upon release shall be returned to the child treatment center and the physical custody of this court. Mack v. State, 125 Ga. App. 639, 188 S.E.2d 828 (1972) (decided under former Code 1933, § 24A-2901).

Visitation rights of a parent of a child in the custody of the Department of Family and Children Services are a residual "parental tie" which is not severed by the mere placement of the child in the temporary custody of the department, without a specific finding as to that right. In re K.B., 188 Ga. App. 199, 372 S.E.2d 476 (1988) (decided under former O.C.G.A. § 15-11-43).

Right to control medical care. — Mother forfeited her right to control her child's medical care when she lost temporary custody of the child. In the Interest of C.R., 257 Ga. App. 159, 570 S.E.2d 609 (2002) (decided under former O.C.G.A. § 15-11-13).

Right of parent to object to immunization not found. — After a child has been found to be deprived, the only remaining parental rights under former O.C.G.A. § 15-11-13 (see now O.C.G.A. § 15-11-30) that have been recognized by the appellate courts were the rights to consent to an adoption of the child and to visit with the child; accordingly, the temporary custodian of the child had the authority to have the child immunized over the mother's religious objection to the immunization. In the Interest of C.R., 257 Ga. App. 159, 570 S.E.2d 609 (2002) (decided under former O.C.G.A. § 15-11-13).

Foster children. — Former O.C.G.A. §§ 15-11-13, 15-11-58 (see now O.C.G.A. §§ 15-11-30, 15-11-134, and 15-11-200 et seq.), and O.C.G.A. §§ 20-2-690.1, and 49-5-12, which set out in clear detail the rights and services to which foster children are entitled, were not too vague and amorphous to be enforced by the judiciary and imposed specific duties on the state defendants; thus, the federal regulatory scheme embodied in the CSFR process does not relieve the state defendants of their obligation to fulfill their statutory duties to the foster children, nor does it provide a legal excuse for their failure to do so. Kenny A. v. Perdue, No. 1:02-cv-1686-MHS, 2004 U.S. Dist. LEXIS 27025 (N.D. Ga. Dec. 11, 2004) (decided under former O.C.G.A. § 15-11-13).

Intervention of county agency in adoption proceeding proper. — County Department of Family and Children Services was properly permitted to intervene with regard to a couple's petition seeking to adopt a child as the child was adjudicated deprived and placed in the temporary custody of the department. While the biological parents' surrender of their parental rights was the basis for the adoption petition, the department remained the temporary legal custodian of the child and, given that the department's interest in the child as the temporary legal custodian, the juvenile court did not err by allowing the department to intervene through the department's objection to the adoption. Sastre v. McDaniel, 293 Ga. App. 671, 667 S.E.2d 896 (2008) (decided under former O.C.G.A. § 15-11-13).

Private cause of action. — Following factors are relevant in determining whether a private remedy is implicit in a statute not expressly providing one: first, is the plaintiff one of the class for whose special benefit the statute was enacted; second, is there any indication of legislative intent, explicit or implicit, either to create such a remedy or to deny one; third, is it consistent with the underlying purpose of the legislative scheme to imply such a remedy for plaintiff? If foster children alleged that certain children services agencies and officials violated former O.C.G.A. § 15-11-13 (see now O.C.G.A. § 15-11-30), then that section conferred upon the children a private cause of action. Kenny A. v. Perdue, 218 F.R.D. 277 (N.D. Ga. Aug. 18, 2003) (decided under former O.C.G.A. § 15-11-13).

Trial court erred in requiring a father to prove by clear and convincing proof that changed circumstances warranted modification of an order placing the father's children with their maternal aunts; the father retained an interest in the children, under former O.C.G.A. §§ 15-11-58(i)(1) and 15-11-13 (see now O.C.G.A. §§ 15-11-30 and 15-11-204), sufficient to support a right to petition for modification, and the father was only required to prove the motion under former O.C.G.A. § 15-11-40(b) (see now O.C.G.A. §§ 15-11-444 and 15-11-608)by a preponderance of the evidence. In re J. N., 302 Ga. App. 631, 691 S.E.2d 396 (2010) (decided under former O.C.G.A. § 15-11-13).

Cited in In the Interest of A. H., 332 Ga. App. 590, 774 S.E.2d 163 (2015).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, § 24A-2901, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Commitment does not necessarily require surrogate parent be appointed. — There is a distinction between children who are simply committed to the state for temporary care and supervision and those who are actually "wards of the state." Commitment of a child to the Division of Youth Services does not per se make a child a "ward of the state" for the purposes of 20 U.S.C. § 1401 et seq. of a surrogate parent. 1980 Op. Att'y Gen. No. 80-53 (decided under former Code 1933, § 24A-2901).

15-11-31. Contempt powers; other sanctions.

(a) In addition to all other inherent powers of the court to enforce its lawful orders, the court may punish an adult for contempt of court by imprisonment for not more than 20 days or a fine not to exceed $1,000.00 for willfully disobeying an order of the court or for obstructing or interfering with the proceedings of the court or the enforcement of its orders.

(b) The court shall restrict and limit the use of contempt powers with respect to commitment of a child to a secure residential facility or nonsecure residential facility and in no event shall a child solely alleged or adjudicated to be a dependent child be placed in a secure residential facility or nonsecure residential facility.

(c) A child may be placed in a secure residential facility or nonsecure residential facility for not more than 72 hours if:

(1) He or she is found in contempt of court; and

(2) Less restrictive alternatives have been considered and are unavailable or inappropriate or if such child has already been ordered to serve a less restrictive alternative sanction but failed to comply with the sanction.

(d) In addition or as an alternative to the punishment provided in subsection (a) of this Code section, after notice and opportunity to be heard, the court may impose any or all of the following sanctions when a parent, guardian, or legal custodian other than DJJ or DFCS willfully violates any order issued by the court directed to him or her:

(1) Require a child's parent, guardian, or legal custodian to make restitution as provided in Code Section 17-14-5;

(2) Reimburse the state for the costs of detention, treatment, or rehabilitation of a child;

(3) Require a child's parent, guardian, or legal custodian to participate in a court approved educational or counseling program designed to contribute to the ability to provide proper parental care and supervision of such child, including, but not limited to, parenting classes; or

(4) Require a child's parent, guardian, or legal custodian to enter into a contract or plan as a part of the disposition of any charges against such child so as to provide for the supervision and control of such child by his or her parent, guardian, or legal custodian and reunification with such child.

History. — Code 1981, § 15-11-31, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

Cross references. — Exercise of contempt power generally, § 15-1-4. Proceeding against parents for failure to cooperate in educational programs; penalty, § 20-2-766.1. Contempt orders, Uniform Rules for the Juvenile Courts of the State of Georgia, Rule 18.1 et seq.

Law reviews. — For article, "'Committable for Mental Illness': Is This a True Challenge to Transfer?," see 4 Ga. St. B. J. 32 (1998).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 24A-401, pre-2000 Code Section 15-11-62 and pre-2014 Code Sections 15-11-2 and 15-11-5, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

No exclusive original jurisdiction over certain youthful offenders. — Ga. L. 1971, p. 709, § 1 does not vest exclusive original jurisdiction in the juvenile court over the following class of youthful offenders: persons between the ages of 17 and 21 years, who have committed noncapital felonies, and who are under the supervision of or are on probation to a juvenile court for acts of delinquency committed before reaching the age of 17 years. State v. Crankshaw, 243 Ga. 183, 253 S.E.2d 69 (1979) (decided under former Code 1933, § 24A-401).

Contempt power not limited to adults, but applicable to juveniles as well. — There was nothing in former O.C.G.A. § 15-11-5 to indicate an intent to limit the contempt power of any Georgia court to adults alone. In the Interest of P.W., 289 Ga. App. 323, 657 S.E.2d 270 (2008) (decided under former O.C.G.A. § 15-11-5).

When criminal contemnor is a child, the case is recognized to be a juvenile matter, and a contempt of court proceeding can be viewed as a delinquency proceeding predicated on an allegation that the juvenile has committed criminal contempt of court. In re J.E.H., 202 Ga. App. 29, 413 S.E.2d 227 (1991) (decided under former O.C.G.A. § 15-11-62).

Error in finding contempt. — Because a custody transfer order had not been filed with the court clerk, in accordance with O.C.G.A. § 9-11-58(b), when an administrative employee allegedly failed to comply with the order, the trial court erred by finding the employee in contempt under former O.C.G.A. § 15-11-5(a). In the Interest of K.D., 272 Ga. App. 803, 613 S.E.2d 239 (2005) (decided under former O.C.G.A. § 15-11-5).

Because a written order issued by a juvenile court did not show deprivation of the child with regard to the child's father, the order was void to the extent the order directed removal of the child from the father's home, and a later contempt finding based on the trial court's void order was a nullity. The trial court's direction as to removal of the child was not binding and the court's later contempt finding based on that order was improper. In re Tidwell, 279 Ga. App. 734, 632 S.E.2d 690 (2006) (decided under former O.C.G.A. § 15-11-5).

Order holding an attorney in contempt pursuant to former O.C.G.A. § 15-11-5 was improper because, inter alia, the trial court immediately imposed punishment and did not provide the attorney the opportunity to speak on the attorney's own behalf, the attorney was not put on notice that a continuation of the offending conduct would have constituted contempt, it was highly unlikely that the attorney's allegedly offending conduct should have had any impact on the deliberations of the factfinder, a juvenile judge, and the trial court acted without warning and had obviously lost the court's patience with the attorney and the attorney's client and imposed sanctions for contempt when other actions might have achieved the same result without the disruption to the case that these contempt citations caused. In re Hughes, 299 Ga. App. 66, 681 S.E.2d 745 (2009) (decided under former O.C.G.A. § 15-11-5).

Father properly held in contempt. — In a situation where a juvenile protective order required a father to bring the father's son to the son's probation officer as required by the officer, and did not limit the number of visits, sufficient evidence supported a contempt finding against the father based on the father's decision to forgo a meeting requested by the probation officer. In re Liles, 278 Ga. App. 496, 629 S.E.2d 492 (2006) (decided under former O.C.G.A. § 15-11-5).

Attorney not in contempt. — Although a juvenile court has the power to hold a party in contempt of court, a juvenile court erred by holding an attorney in contempt based on a per se rule. The juvenile court determined that a per se rule existed that an attorney was in contempt when the attorney claimed ineffectiveness against themselves, but no such per se rule existed and, therefore, it was error to have adjudicated the attorney in contempt. Morris v. State, 295 Ga. App. 579, 672 S.E.2d 531 (2009) (decided under former O.C.G.A. § 15-11-5).

Criminal contempt finding and resulting sentence upheld. — Juvenile court properly held a juvenile defendant in contempt for not writing a required letter of apology and essay on courtroom conduct and for violating electronic monitoring, and sentenced the juvenile to 20 days in detention: (1) the juvenile court had the authority to order the defendant to write the letter and essay; (2) former O.C.G.A. § 15-11-5 did not limit the contempt power of a Georgia court to adults; and (3) juvenile courts had the power to punish contempt by imprisonment. In the Interest of P.W., 289 Ga. App. 323, 657 S.E.2d 270 (2008) (decided under former O.C.G.A. § 15-11-5).

Cited in In the Interest of C. W., 342 Ga. App. 484, 803 S.E.2d 618 (2017).

RESEARCH REFERENCES

Am. Jur. 2d. — 17 Am. Jur. 2d, Contempt, § 33 et seq. 47 Am. Jur. 2d, Juvenile Courts and Delinquent and Dependent Children, § 5.

C.J.S. — 17 C.J.S., Contempt, § 84 et seq.

U.L.A. — Uniform Juvenile Court Act (U.L.A.) § 58.

ALR. — Who may institute civil contempt proceedings, 61 A.L.R.2d 1083.

Court's power to punish for contempt a child within the age group subject to jurisdiction of juvenile court, 77 A.L.R.2d 1004.

Interference with enforcement of judgment in criminal or juvenile delinquent case as contempt, 8 A.L.R.3d 657.

Media's dissemination of material in violation of injunction or restraining order as contempt — federal cases, 91 A.L.R. Fed. 270.

15-11-32. Modification or vacation of orders; retroactive application.

(a) An order of the court shall be set aside if:

(1) It appears that it was obtained by fraud or mistake sufficient therefor in a civil action;

(2) The court lacked jurisdiction over a necessary party or the subject matter; or

(3) Newly discovered evidence so requires.

(b) An order of the court may also be changed, modified, or vacated on the ground that changed circumstances so require in the best interests of a child except an order of dismissal following a contested adjudicatory hearing.

(c) Except as otherwise provided in Code Section 15-11-602, an order committing a child to DJJ may only be modified after such child has been transferred to DJJ custody upon motion of DJJ.

(d) An order of adjudication of delinquency by a court may be modified or vacated if the child was adjudicated for a delinquent act for a sexual crime as defined in Code Section 16-3-6 and such crime resulted from the child being:

(1) Trafficked for sexual servitude in violation of Code Section 16-5-46; or

(2) A victim of sexual exploitation as defined in Code Section 49-5-40.

(e) Any party to the proceeding, the probation officer, or any other person having supervision or legal custody of or an interest in a child may petition the court for the relief provided in this Code section. Such petition shall set forth in clear and concise language the grounds upon which the relief is requested.

(f) After a petition seeking relief under this Code section is filed, the court shall fix a time for hearing and shall cause notice to be served on the parties to the proceeding or those affected by the relief sought. After the hearing, the court shall deny or grant relief as the evidence warrants.

(g) This Code section is intended to be retroactive and shall apply to any child who is under the jurisdiction of the court at the time of a hearing, regardless of the date of the original delinquency order.

History. — Code 1981, § 15-11-32, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242; Ga. L. 2014, p. sb0364, § 1-5/SB 364.

Cross references. — Post-disposition transfer of Juvenile Court cases for supervision, Uniform Rules for the Juvenile Courts of Georgia, Rule 5.3(c). Modification or vacation of order, Uniform Rules for the Juvenile Courts of Georgia, Rule 16.1 et seq.

Administrative rules and regulations. — Admission by order of a juvenile court, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Human Services, Mental Health, Developmental Disabilities, and Addictive Diseases, Rule 290-4-7-.07.

Law reviews. — For article, "An Outline of Juvenile Court Jurisdiction with Focus on Child Custody," see 10 Ga. St. B. J. 275 (1973).

JUDICIAL DECISIONS

Analysis

General Consideration
Modification or Vacation of Orders

General Consideration

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 24A-2801, pre-2000 Code Section 15-11-42, and pre-2014 Code Section 15-11-40, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Procedural requirements met. — Fact that the court denominated the child's "motion for new trial" as a "motion to reconsider" was not controlling since the nature of the motion, the court's consideration of the motion, the procedure employed, and the final outcome all met the procedural requirements of former O.C.G.A. § 15-11-42 (see now O.C.G.A. § 15-11-32) so as to give the juvenile court jurisdiction. In re J.O., 191 Ga. App. 521, 382 S.E.2d 214 (1989), overruled on other grounds, In re T.A.W., 265 Ga. 106, 454 S.E.2d 134 (1995) (decided under former O.C.G.A. § 15-11-42).

Personal jurisdiction. — Because former O.C.G.A. § 15-11-40 (see now O.C.G.A. § 15-11-32) allowed a juvenile court to change or vacate the court's orders without placing any time limit on this type of jurisdiction, there was no merit to a father's argument that the trial court lacked personal jurisdiction to restore a mother's parental rights because he and the children were then permanent residents of Florida. In the Interest of K.W., 291 Ga. App. 623, 662 S.E.2d 255, cert. dismissed, No. S08C1642, 2008 Ga. LEXIS 767 (Ga. 2008) (decided under former O.C.G.A. § 15-11-40).

Juvenile court erred in failing to set aside the court's adjudication order finding that a mother's children were deprived when the mother's physical location was known and service was never attempted because the juvenile court lacked personal jurisdiction over the mother for insufficient service of process. Taylor v. Padgett, 300 Ga. App. 314, 684 S.E.2d 434 (2009) (decided under former O.C.G.A. § 15-11-40).

Means to attack juvenile court order. — Juvenile court order can be challenged by the filing of a motion to modify or vacate. In re M.A.L., 202 Ga. App. 768, 415 S.E.2d 649 (1992), cert. denied, overruled on other grounds, In re T.A.W., 265 Ga. 106, 454 S.E.2d 134 (1995) (decided under former O.C.G.A. § 15-11-42).

When the parent's parental rights were terminated by order of the juvenile court, the parent's motion for reconsideration, based solely on sufficiency of the evidence, did not extend the time for filing a notice of appeal and it could not be regarded as a reason to vacate or modify the judgment of the court. In re A.C.J., 211 Ga. App. 865, 440 S.E.2d 751 (1994) (decided under former O.C.G.A. § 15-11-42).

Appellate court could not consider the merits of the juvenile court's order terminating the parental rights of the parents because the parents neither timely appealed that order nor filed a motion within 30 days that would extend the time to appeal. In the Interest of A. M., 324 Ga. App. 512, 751 S.E.2d 144 (2013).

Juvenile's motion for a new delinquency hearing based on newly discovered evidence amounted to a motion for a new trial on the grounds of newly discovered evidence and it was appropriate for the court to consider: (1) whether the evidence came to the juvenile's attention subsequent to the initial hearing; (2) that it was not owing to want of due diligence that the juvenile did not acquire the evidence sooner; (3) that the evidence was so material, and the evidence would have produced a different verdict; (4) that the evidence was not cumulative only; (5) that the affidavit of the witness personally should be procured or the affidavit's absence accounted for; and (6) that a new hearing would not be granted if the only effect of the evidence would be to impeach the credibility of a witness. In re A.D.C., 233 Ga. App. 73, 503 S.E.2d 334 (1998) (decided under former O.C.G.A. § 15-11-42).

Construction with other statutes. — Nonprofit advocacy organization was authorized to file a deprivation petition which was separate and distinct from the initial deprivation adjudication since there was no requirement that a petition for modification must be filed under former O.C.G.A. § 15-11-42 (see now

O.C.G.A. § 15-11-32), instead of a deprivation petition under former O.C.G.A. § 15-11-24 (see now O.C.G.A. § 15-11-63). In re A.V.B., 222 Ga. App. 241, 474 S.E.2d 114 (1996) (decided under former O.C.G.A. § 15-11-42).

Under former O.C.G.A. § 15-11-63(e)(1)(D) and (e)(2)(C) (see now O.C.G.A. § 15-11-602), a juvenile court may order a child released from a youth development center or transferred to a nonsecure facility during the period of restrictive custody set out in the initial order or may discharge a child from the custody of the Georgia Department of Juvenile Justice upon a motion after a year of custody. However, such an order may not be made on the ground that changed circumstances so require in the best interest of the child. Reading former O.C.G.A. §§ 15-11-40 and 15-11-63(e) (see now O.C.G.A. §§ 15-11-32 and 15-11-602) together, such a notion for release should be based on other grounds. In the Interest of J.W., 293 Ga. App. 408, 667 S.E.2d 161 (2008) (decided under former O.C.G.A. § 15-11-40).

Modification or Vacation of Orders

Inherent authority of juvenile court. — There was no error in allowing the court-appointed special advocate to continue termination proceedings by moving for a new trial, given that the nature of the proceedings was the protection of the children whose well-being was threatened, and the juvenile court had inherent authority to vacate or modify the juvenile court's earlier order. In re K.R.C., 235 Ga. App. 354, 510 S.E.2d 547 (1998) (decided under former O.C.G.A. § 15-11-42).

When a trial court, upon finding a mother's children were deprived, left their custody with the mother upon certain conditions, and provided that the violation of those conditions would subject the mother to possible punishment for contempt, when the mother violated those conditions, the trial court had the inherent authority, under former O.C.G.A. § 15-11-40 (see now O.C.G.A. §§ 15-11-32, 15-11-444, and 15-11-608), to modify the court's order and remove the children from their mother's custody. In the Interest of S.Y., 264 Ga. App. 623, 591 S.E.2d 489 (2003) (decided under former O.C.G.A. § 15-11-40).

Authority in juvenile court to rehear order. — Since the juvenile court judge has the power to revoke, even reverse, the juvenile court's order, it logically follows that the juvenile court has the authority to take the lesser step of ordering a rehearing to determine the correctness of the juvenile court's order. In re P.S.C., 143 Ga. App. 887, 240 S.E.2d 165 (1977) (decided under former Code 1933, § 24A-2801).

No hearing required prior to ordering rehearing. — Order granting a rehearing, although issued ex parte, is valid because no hearing is required prior to ordering a rehearing. In re P.S.C., 143 Ga. App. 887, 240 S.E.2d 165 (1977) (decided under former Code 1933, § 24A-2801).

Inherent power to modify judgments for length of statutory appeal period. — Juvenile court retains the juvenile court's inherent power to modify the court's own judgments at least for the length of the statutory appeal period. In re P.S.C., 143 Ga. App. 887, 240 S.E.2d 165 (1977) (decided under former Code 1933, § 24A-2801).

Temporary custody and visitation rights. — Juvenile court had jurisdiction to modify an order granting temporary custody of a deprived child to the Department of Family and Children Services and to permit visitation by parents who filed a petition for visitation rights four months after the custody order. In re K.B., 188 Ga. App. 199, 372 S.E.2d 476 (1988) (decided under former O.C.G.A. § 15-11-42).

Judge has authority to grant rehearing on termination matter. — Juvenile court judge, having issued an order terminating parental rights, has authority to grant a rehearing on the matter. In re P.S.C., 143 Ga. App. 887, 240 S.E.2d 165 (1977) (decided under former Code 1933, § 24A-2801).

Parent's parental rights restored. — Based upon newly discovered evidence that the caseworker of a parent who surrendered parental rights was a friend of the foster parents and had engaged in fraud and other illegalities, the trial court properly restored the parent's parental rights pursuant to former O.C.G.A.

Modification or Vacation of Orders (Cont'd)

§ 15-11-40(a)(3) (see now O.C.G.A. § 15-11-32). Thus, O.C.G.A. § 19-8-9, requiring a parent to revoke a surrender within 10 days, did not prevent the surrenders from being voidable. In the Interest of K.W., 291 Ga. App. 623, 662 S.E.2d 255, cert. dismissed, No. S08C1642, 2008 Ga. LEXIS 767 (Ga. 2008) (decided under former O.C.G.A. § 15-11-40).

Motion to modify termination of parental rights. — Motion for modification of a juvenile court order terminating parental rights is similar to a motion to set aside under O.C.G.A. § 9-11-60(d), which is appealable but does not sustain an appeal from the underlying judgment. In re H.A.M., 201 Ga. App. 49, 410 S.E.2d 319 (1991) (decided under former O.C.G.A. § 15-11-42).

Juvenile court did not err in denying the parents' motion to modify or vacate the order terminating their parental rights as the parents' residency status had been admitted at the termination hearing and was neither newly discovered nor a change in circumstances that established that it would be in the best interest of the children to change, modify, or vacate the order of termination; and the father's eligibility for legal residency status did not change the fact that termination was appropriate because of the children's extreme special needs, which required extra-ordinary, specialized care, and the parents' low levels of functioning. In the Interest of A. M., 324 Ga. App. 512, 751 S.E.2d 144 (2013) (decided under former O.C.G.A. § 15-11-40).

Contents of motion. — Since the substance of a post-trial motion made no reference to any of the factors which would warrant the vacation or modification of the juvenile court's order under former O.C.G.A. § 15-11-42 (see now O.C.G.A. § 15-11-32), it could not be considered a motion to modify or vacate, thus an appeal could not be taken. In re C.M., 205 Ga. App. 543, 423 S.E.2d 280 (1992) (decided under former O.C.G.A. § 15-11-42).

Burden of proof for modification is preponderance of the evidence. — Trial court erred in requiring a father to prove by clear and convincing proof that changed circumstances warranted modification of an order placing the father's children with their maternal aunts; the father retained an interest in the children, under former O.C.G.A. §§ 15-11-13 and 15-11-58(i)(1) (see now O.C.G.A. §§ 15-11-30 and 15-11-204), sufficient to support a right to petition for modification, and the father was only required to prove the motion under former O.C.G.A. § 15-11-40(b) (see now O.C.G.A. §§ 15-11-444 and 15-11-608) by a preponderance of the evidence. In re J. N., 302 Ga. App. 631, 691 S.E.2d 396 (2010) (decided under former O.C.G.A. § 15-11-40).

Appellate courts will not interfere with orders terminating parental rights. — Legislature has declared that the former Juvenile Code should be construed toward the end of providing for a child's welfare, "preferably in the child's own home." To this end, the appellate courts will not declare orders terminating parental rights, removing the child permanently from the child's own home, to be beyond the reach of the court issuing the order. To the contrary, the juvenile court judge who has second thoughts about such an action should take whatever steps necessary to ensure the correctness of the judge's action. In re P.S.C., 143 Ga. App. 887, 240 S.E.2d 165 (1977) (decided under former Code 1933, § 24A-2801).

Juvenile court retains jurisdiction when juvenile outside of county. — Former statute vested in the juvenile court of a county the jurisdiction to modify and vacate the juvenile court's orders on any of the grounds specified in former subsection (a), whether the juvenile is detained in that county or elsewhere, but the superior court of that county has no jurisdiction to exercise appellate review of judgments rendered by the juvenile court. Rossi v. Price, 237 Ga. 651, 229 S.E.2d 429 (1976) (decided under former Code 1933, § 24A-2801).

Delinquency adjudication. — Defendant juvenile's appeal of an order denying a motion to reconsider, vacate, or modify the delinquent adjudication was proper because the denial of the motion was a final judgment and was directly appeal-

able; therefore, the defendant could appeal the ruling on disposition as well as on the original finding of delinquency. An order denying a motion under former O.C.G.A. § 15-11-40(b) (see now O.C.G.A. §§ 15-11-32, 15-11-444, and 15-11-608) seeking a modification based on changed circumstances in a delinquency matter is a final judgment directly appealable under O.C.G.A. §§ 5-6-34(a)(1) and former O.C.G.A. § 15-11-3 (see now O.C.G.A. § 15-11-35). In the Interest of J. L. K., 302 Ga. App. 844, 691 S.E.2d 892 (2010) (decided under former O.C.G.A. § 15-11-40).

Modification of a sentencing order was proper since a juvenile had been committed to the Department of Children & Youth Services (DCYS) for a period of detention and treatment but had not been transferred to the physical custody of DCYS but was held in a detention center pending placement in a youth development campus. In re B.D.T., 219 Ga. App. 804, 466 S.E.2d 680 (1996) (decided under former O.C.G.A. § 15-11-42).

Modification was improper. — Since it was undisputed that after the juvenile court adjudicated the child as delinquent and committed the child to the Department of Juvenile Justice, and the child was placed in the physical custody of the Department, which confined the child for a year, the Department had already taken physical custody of the child and therefore the juvenile court could not subsequently modify the original dispositional order. In the Interest of S.S., 276 Ga. App. 666, 624 S.E.2d 251 (2005) (decided under former O.C.G.A. § 15-11-40).

Claim for commutation or reduction. — When former O.C.G.A. §§ 15-11-40(b), 15-11-63(e)(1)(D) and (e)(2)(c) (see now O.C.G.A. §§ 15-11-32, 15-11-444, 15-11-602, and 15-11-608) were read together to effectuate their meaning as required by O.C.G.A. § 1-3-1(a), the juvenile court did not err in denying a juvenile's motion to commute or reduce the sentence imposed. Allegations that the juvenile was rehabilitated while in restrictive custody and would benefit from being released were insufficient to grant the juvenile court authority to modify the juvenile court's commitment order once physical custody of the juvenile was transferred to the Department of Juvenile Justice. In the Interest of J.V., 282 Ga. App. 319, 638 S.E.2d 757 (2006) (decided under former O.C.G.A. § 15-11-40).

Reduction in sentence not authorized. — Although former O.C.G.A. § 15-11-40(b) (see now O.C.G.A. §§ 15-11-32, 15-11-444, and 15-11-608) prohibited the change, modification, or vacation of a commitment order once a child is in the custody of the Department of Juvenile Justice "on the ground that changed circumstances so require in the best interest of the child" or because the child had been rehabilitated, the statute did not prohibit the change, modification, or vacation of a commitment order on other grounds. Further the application of former § 15-11-40(b) did not render former O.C.G.A. § 15-11-63(e)(2)(C) (see now O.C.G.A. § 15-11-602) purposeless in these circumstances when the juvenile based a reduction in sentence on rehabilitation. In re T. H., 298 Ga. App. 536, 680 S.E.2d 569 (2009) (decided under former O.C.G.A. § 15-11-40).

Commitment order could not be changed. — Defendant moved for early release from a youth development center on grounds that alleged changed circumstances required release in the best interests of the child. The motion was properly denied because under former O.C.G.A. § 15-11-40(b) (see now O.C.G.A. §§ 15-11-32, 15-11-444, and 15-11-608), once the Georgia Department of Juvenile Justice had physical custody, a commitment order could not be changed on that basis but could be changed on other grounds. In the Interest of J.W., 293 Ga. App. 408, 667 S.E.2d 161 (2008) (decided under former O.C.G.A. § 15-11-40).

Modification of a juvenile commitment order under former O.C.G.A. § 15-11-40(b) (see now O.C.G.A. 15-11-32, 15-11-444, and 15-11-608) on the ground that changed circumstances required modification in the best interest of the child was not available to a minor because the minor was already in the custody of the Department of Juvenile Justice; the fact that the custody was based on the minor's restrictive custody under a different commitment order, and not on the commitment order the minor sought to

Modification or Vacation of Orders (Cont'd)

modify, had no bearing on whether the modification could be made. In the Interest of P.S., 295 Ga. App. 724, 673 S.E.2d 74 (2009) (decided under former O.C.G.A. § 15-11-40).

Although former O.C.G.A. § 15-11-63 (see now O.C.G.A. §§ 15-11-2, 15-11-471, 15-11-602, and 15-11-707) suggested that a juvenile defendant could move for early release from a youth development center after the defendant was already in custody, former O.C.G.A. § 15-11-40(b) (see now O.C.G.A. §§ 15-11-32, 15-11-444, and 15-11-608) prohibited modification of a commitment order on the grounds of changed circumstances. As a change in circumstances was the basis of the defendant's motion for early release, the juvenile court lacked jurisdiction to grant the motion. In re K.F., 299 Ga. App. 685, 683 S.E.2d 650 (2009) (decided under former O.C.G.A. § 15-11-40).

Trial court did not err in dismissing a juvenile's motion to set aside the adjudications of child molestation and aggravated child molestation because evidence that contradicted the victim's testimony that the victim did not have sexual intercourse with any other man did not go to the issue of whether the juvenile was guilty and the juvenile had admitted the allegations. In the Interest of D. H., 332 Ga. App. 274, 772 S.E.2d 70 (2015).

Juvenile court did not err in dismissing a juvenile's motion to modify the commitment order on the basis that the purpose of rehabilitation was not being served because the motion was not accompanied by a written recommendation from the juvenile's Georgia Department of Juvenile Justice counselor or placement supervisor; thus, O.C.G.A. §§ 15-11-32 and 15-11-602 barred the juvenile court from modifying the commitment order as requested. In the Interest of D. H., 332 Ga. App. 274, 772 S.E.2d 70 (2015).

Contents of motion. — If the substance of a post-trial motion made no reference to any of the factors which would warrant the vacation or modification of the juvenile court's order, it could not be considered a motion to modify or vacate, thus an appeal could not be taken. In re C.M., 205 Ga. App. 543, 423 S.E.2d 280, cert. denied, 205 Ga. App. 900, 423 S.E.2d 280 (1992) (decided under former O.C.G.A. § 15-11-42).

Evidence insufficient to support finding of delinquency. — Trial court erred in denying the defendant juvenile's motion to reconsider, vacate, or modify a delinquent adjudication for the offense of simple assault because the evidence was insufficient to support the finding of delinquency since, pursuant to O.C.G.A. § 16-5-20(a)(2), the crime of simple assault required proof that the defendant's actions placed the defendant's grandmother in reasonable apprehension of immediately receiving a violent injury, but the only evidence of that fact was hearsay; a police officer, who was the only witness, testified that the grandmother told the officer that the grandmother was afraid of the defendant, and that the defendant was perhaps going to hit the grandmother, but the officer admitted that there were no allegations that the defendant attempted to hit the grandmother, nor did the officer witness any of the alleged events. In the Interest of J. L. K., 302 Ga. App. 844, 691 S.E.2d 892 (2010) (decided under former O.C.G.A. § 15-11-40).

New disposition was sanction for original offense. — Although the initial act of bringing a weapon to school was not a designated felony under the statute in effect when a juvenile's probation was revoked, a dispositional order imposed upon revocation of probation related to the original delinquent act because the new disposition was a sanction for the original offense. In the Interest of N.M., 316 Ga. App. 649, 730 S.E.2d 127 (2012) (decided under former O.C.G.A. § 15-11-40).

Modification based on failure to provide interpreter to parents. — Juvenile court did not abuse its discretion in denying the parents' motion to modify or set aside the termination of parental rights order based on the parents' claim that a language barrier existed at the time of the termination hearing and during critical times in their case because the parents did not assert that the Georgia Department of Family and Children Ser-

vices should have provided them with an interpreter who spoke their Guatemalan dialect of Mam. In the Interest of A. M., 324 Ga. App. 512, 751 S.E.2d 144 (2013) (decided under former O.C.G.A. § 15-11-40).

RESEARCH REFERENCES

Am. Jur. 2d. — 42 Am. Jur. 2d, Infants, § 51. 47 Am. Jur. 2d, Juvenile Courts and Delinquent and Dependent Children, § 113 et seq.

C.J.S. — 43 C.J.S., Infants, § 245 et seq.

U.L.A. — Uniform Juvenile Court Act (U.L.A.) § 37.

15-11-33. Transfer when disposition incorporates reunification plan and parents reside in different counties.

(a) Whenever an order of disposition incorporates a reunification plan and the residence of the parent is not in the county of the court with jurisdiction or the residence of the parent changes to a county other than the county of the court with jurisdiction, the court may transfer jurisdiction to the juvenile court of the residence of the parent to whom the reunification plan is directed.

(b) Within 30 days of the filing of the transfer order, the transferring court shall provide the receiving court with certified copies of the adjudication order, the order of disposition, the order of transfer, the case plan, and any other court documents deemed necessary by the transferring court to enable the receiving court to assume jurisdiction over the matter.

(c) The transferring court shall retain jurisdiction until the receiving court acknowledges acceptance of the transfer.

(d) Compliance with this Code section shall terminate jurisdiction in the transferring court and confer jurisdiction in the receiving court.

History. — Code 1981, § 15-11-33, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under pre-2014 Code Section 15-11-30.5, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Counsel not ineffective for failure to file transfer motion. — Given the children services department's opposition to transferring a mother's reunification plan to the county where the mother was living, and given that the transfer was not mandatory under former O.C.G.A. § 15-11-30.5 (see now O.C.G.A. § 15-11-33), the mother's attorney was not deficient in failing to file a transfer motion. In the Interest of C.G., 279 Ga. App. 730, 632 S.E.2d 472 (2006) (decided under former O.C.G.A. § 15-11-30.5).

15-11-34. Commitment to adult correctional facility prohibited.

Except as otherwise provided by Code Section 17-10-14, a child shall not be committed to an adult correctional facility or other facility used primarily for the execution of sentences of persons convicted of a crime.

History. — Code 1981, § 15-11-34, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

Cross references. — Authority of Department of Corrections to establish separate correctional institutions for the care of juvenile offenders, § 42-5-52.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 24A-2401, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Commitment to Department of Corrections permitted. — Commitment of a juvenile to the Department of Corrections was not violative of the former provisions. A.B.W. v. State, 129 Ga. App. 346, 199 S.E.2d 636 (1973), aff'd, 231 Ga. 699, 203 S.E.2d 512 (1974) (decided under former Code 1933, § 24A-2401)).

Commitment of delinquent to rehabilitation or treatment facilities. — Commitment of a delinquent child under the Juvenile Code to a facility operated under the direction of the juvenile court, or to another local public authority, or to the Division of Children and Youth (now Division of Youth Services) or to the Department of Corrections is for essentially the purpose of rehabilitation or treatment. A.B.W. v. State, 231 Ga. 699, 203 S.E.2d 512 (1974) (decided under former Code 1933, § 24A-2401)).

Transfer delay violated due process and legislative intent. — Forty days commitment to an adult imprisonment facility is not a "reasonably short time," and such delay in transferring a juvenile to a Department of Human Resources facility violates due process as well as the legislative intent of the former provisions. Long v. Powell, 388 F. Supp. 422 (N.D. Ga.), vacated on other grounds, 423 U.S. 808, 96 S. Ct. 18, 46 L. Ed. 2d 28 (1975) (decided under former Code 1933, § 24A-2401).

Cited in In the Interest of G. R. B., 330 Ga. App. 693, 769 S.E.2d 119 (2015).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, § 24A-2401, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Effect of commitment to Department of Corrections. — If the court commits a youth to the Department of Corrections, the youth may be confined in one of that department's facilities because the Juvenile Code's prohibition against the incarceration of delinquent and unruly juveniles would not apply. 1975 Op. Att'y Gen. No. 75-98 (decided under former Code 1933, § 24A-2401).

Custody properly in Department under provisions of criminal sentence. — Department of Corrections properly has custody of an individual under the provisions of a criminal sentence which was imposed subsequent to an unexpired order of commitment; at the expiration of the criminal sentence alternative arrangements for custody should be made for the remainder of the term of commit-

ment. 1975 Op. Att'y Gen. No. 75-20 (decided under former Code 1933, § 24A-2401).

RESEARCH REFERENCES

Am. Jur. 2d. — 47 Am. Jur. 2d, Juvenile Courts and Delinquent and Dependent Children, §§ 56 et seq., 110 et seq.

C.J.S. — 43 C.J.S., Infants, § 224 et seq.

U.L.A. — Uniform Juvenile Court Act (U.L.A.) § 33.

15-11-35. Appeals.

In all cases of final judgments of the juvenile court, appeals shall be taken to the Court of Appeals or the Supreme Court in the same manner as appeals from the superior court. However, no such judgment or order shall be superseded or modified except in the discretion of the trial court; rather, the judgment or order of the court shall stand until reversed or modified by the reviewing court. The appeal of an order granting a petition to terminate parental rights shall stay an adoption proceeding related to the child who is the subject of such order until such order becomes final by the conclusion of appellate proceedings or the expiration of the time for seeking such review. Except for proceedings in connection with an adoption, the court shall continue to conduct hearings and issue orders in accordance with this chapter while an appeal in a case is pending.

History. — Code 1981, § 15-11-35, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242; Ga. L. 2018, p. 935, § 1/SB 131.

The 2018 amendment, effective July 1, 2018, inserted "or modified" in the middle of the second sentence and added the third and fourth sentences.

Cross references. — Appeals and supersedeas, Uniform Rules for the Juvenile Courts of Georgia, Rule 19.1 et seq.

Law reviews. — For article discussing due process in juvenile court procedures in California and Georgia, in light of In re Gault, 387 U.S. 1, 87 S. Ct. 1428, 18 L. Ed. 2d 527 (1967), see 8 Ga. St. B. J. 9 (1971). For annual survey of law on appellate practice and procedure, see 62 Mercer L. Rev. 25 (2010).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 24A-3801, pre-2000 Code Section 15-11-11 and pre-2014 Code Section 15-11-3, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Juveniles are granted same rights of appeal as are possessed by adults. J.J. v. State, 135 Ga. App. 660, 218 S.E.2d 668 (1975) (decided under former Code 1933, § 24A-3801).

"Final judgments" defined. — Former Code 1933, § 24A-3801 provided for appeals "in all cases of final judgments of a juvenile court judge," without defining "final judgments." Former Code 1933, § 6-701 (see now O.C.G.A. § 5-6-34) pro-

vided for appeals "[w]here the judgment is final — that is to say — where the cause is no longer pending in the court below." J.T.M. v. State, 142 Ga. App. 635, 236 S.E.2d 764 (1977) (decided under former Code 1933, § 24A-3801).

Order of a juvenile court adjudicating a juvenile delinquent and transferring the matter to another juvenile court for disposition was a final order and was appealable without the need for a certificate of immediate review. In re T.L.C., 266 Ga. 407, 467 S.E.2d 885 (1996) (decided under former O.C.G.A. § 15-11-64).

Transferral order is final and therefore appealable since the order operates to transfer the case to the superior court, after which the cause is no longer pending in "the court below," the juvenile court. J.T.M. v. State, 142 Ga. App. 635, 236 S.E.2d 764 (1977) (decided under former Code 1933, § 24A-3801).

Judgment or order stands until reversed or modified. — Even though a transfer order was on appeal at the time the defendant was indicted, the order remained in effect at that time, and the proceedings which occurred in the superior court, pursuant to the transfer order which had not been superseded, including the indictment, were valid. Rocha v. State, 234 Ga. App. 48, 506 S.E.2d 192 (1998) (decided under former O.C.G.A. § 15-11-64).

Transfer of child custody case is continuation of that proceeding. Thus, a transfer order in a habeas corpus-child custody proceeding is not final and hence is not appealable without a certificate of immediate review. Fulton County Dep't of Family & Children Servs. v. Perkins, 244 Ga. 237, 259 S.E.2d 427 (1978) (decided under former Code 1933, § 24A-3801).

Grant or denial of supersedeas. — Juvenile court, unlike a superior court dealing with the same subject matter, has the discretion to grant or deny supersedeas even though the case in the juvenile court emanated from a superior court. Elder v. Elder, 184 Ga. App. 167, 361 S.E.2d 46 (1987) (decided under former O.C.G.A. § 15-11-64).

Order denying petition subject to review. — Order denying the petition to vacate the order committing the juvenile is a judicial order, subject to judicial review. Rossi v. Price, 237 Ga. 651, 229 S.E.2d 429 (1976) (decided under former Code 1933, § 24A-3801).

Court of appeals was without jurisdiction to entertain the state's appeal of a dismissal of a juvenile court petition. In re J.H., 228 Ga. App. 154, 491 S.E.2d 209 (1997) (decided under former O.C.G.A. § 15-11-64).

Order holding all charges in abeyance during a period of good behavior was not a final judgment of adjudication and disposition on allegations contained in the petition. In re M.T., 223 Ga. App. 615, 478 S.E.2d 428 (1996) (decided under former O.C.G.A. § 15-11-64).

Adjudication order alone is not final, appealable judgment. — Adjudication order alone, without a dispositional order following a dispositional hearing under former Code 1933, § 24A-2401 was not a final, appealable judgment under former Code 1933, § 24A-3801 (see now O.C.G.A. § 15-11-35), nor was it made one by the provisions of former Code 1933, § 6-701 (see now O.C.G.A. § 5-6-34). M.K.H. v. State, 132 Ga. App. 143, 207 S.E.2d 645 (1974) (decided under former Code 1933, § 24A-3801); In re G.C.S., 186 Ga. App. 291, 367 S.E.2d 103 (1988) (decided under former O.C.G.A. § 15-11-64).

Indigent parent entitled to paupered transcript for use in appeal. — Indigent parent, whose parental rights have been terminated by an order of a juvenile court on a petition filed by an agency of the state, is entitled to a paupered transcript of the proceeding in the juvenile court for use in appealing the decision of that court. Nix v. Department of Human Resources, 236 Ga. 794, 225 S.E.2d 306 (1976) (decided under former Code 1933, § 24A-3801).

Delinquency adjudication. — Defendant juvenile's appeal of an order denying a motion to reconsider, vacate, or modify the delinquent adjudication was proper because the denial of the motion was a final judgment and was directly appealable; therefore, the defendant could appeal the ruling on disposition as well as on the original finding of delinquency. An order denying a motion under O.C.G.A.

§ 15-11-40(b) seeking a modification based on changed circumstances in a delinquency matter is a final judgment directly appealable under O.C.G.A. §§ 5-6-34(a)(1) and 15-11-3. In the Interest of J. L. K., 302 Ga. App. 844, 691 S.E.2d 892 (2010) (decided under former O.C.G.A. § 15-11-3).

Denial of motion to modify in child deprivation proceeding. — Phrase "child custody cases" within the meaning of O.C.G.A. § 5-6-34(a)(11) does not include a child deprivation proceeding in which a custody order has been entered; however, the decision to terminate reunification services is a final judgment directly appealable under O.C.G.A. §§ 5-6-34(a)(1) and 15-11-3. In re J. N., 302 Ga. App. 631, 691 S.E.2d 396 (2010) (decided under former O.C.G.A. § 15-11-3).

Juvenile court did not err in dismissing a juvenile's motion to modify the commitment order on the basis that the purpose of rehabilitation was not being served because the motion was not accompanied by a written recommendation from the juvenile's Georgia Department of Juvenile Justice counselor or placement supervisor; thus, O.C.G.A. §§ 15-11-32 and 15-11-602 barred the juvenile court from modifying the commitment order as requested. In the Interest of D. H., 332 Ga. App. 274, 772 S.E.2d 70 (2015).

RESEARCH REFERENCES

Am. Jur. 2d. — 47 Am. Jur. 2d, Juvenile Courts and Delinquent and Dependent Children, § 120 et seq.

C.J.S. — 43 C.J.S., Infants, § 246 et seq.

U.L.A. — Uniform Juvenile Court Act (U.L.A.) § 59.

15-11-36. Expenses charged to county; payment by parent on court order.

(a) The following expenses shall be a charge upon the funds of the county upon certification thereof by the court:

(1) The cost of medical and other examinations and treatment of a child ordered by the court;

(2) The cost of care and support of a child committed by the court to the legal custody of an individual or a public or private agency other than DJJ, but the court may order supplemental payments, if such are necessary or desirable for services;

(3) Reasonable compensation for services and related expenses of an attorney appointed by the court, when appointed by the court to represent a child and when appointed by the court to conduct the proceedings;

(4) Reasonable compensation for a guardian ad litem;

(5) The expense of service of summons, notices, and subpoenas; travel expenses of witnesses; transportation, subsistence, and detention of a child for juvenile court proceedings or superior court proceedings when a child is prosecuted in superior court pursuant to Code Section 15-11-560; and other like expenses incurred in the proceedings under this chapter; and

(6) The cost of counseling and counsel and advice required or provided under the provisions of Code Section 15-11-212 or 15-11-601.

(b) The court shall determine whether the expenses shall be a charge upon the funds of the county and certify such expenses to the county governing authority within 120 days from the date such expenses were submitted to the court for certification. If the court has not made such certification within 120 days, the court shall be deemed to have denied certification.

(c) If, after due notice to the parent or other person legally obligated to care for and support a child and after affording such person an opportunity to be heard, the court finds that such person is financially able to pay all or part of the costs and expenses outlined in subsection (a) of this Code section, the court may order such person to pay the same and prescribe the manner of payment. In addition, the court may order payment from a child's parent or other legally obligated person or entity to reimburse all or part of the costs and expenses of the department or DJJ for treatment, care, and support of a child. Unless otherwise ordered, payment shall be made to the clerk of the court for remittance to the person or agency, including the department or DJJ, to whom compensation is due or, if the costs and expenses have been paid by the county, to the appropriate officer of the county.

History. — Code 1981, § 15-11-36, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

Law reviews. — For article, "An Outline of Juvenile Court Jurisdiction with Focus on Child Custody," see 10 Ga. St. B. J. 275 (1973).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, §§ 24-2431 and 24-2432, pre-2000 Code Section 15-11-56 and pre-2014 Code Section 15-11-8, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Counsel on appeal. — There is no statutory provision whereby the Supreme Court can appoint counsel on appeals in habeas corpus cases contesting child custody. West v. Cobb County Dep't of Family & Children Servs., 243 Ga. 425, 254 S.E.2d 373 (1979) (decided under former Code 1933, §§ 24-2431 and 24-2432).

"Subsistence." — "Subsistence," as used in former O.C.G.A. § 15-11-8(a)(5), must be interpreted to include emergency medical procedures; thus, a juvenile court erred when the court refused to certify the emergency medical expenses incurred by a juvenile in the temporary custody of the Department of Juvenile Justice for payment by a county. In the Interest of J.S., 282 Ga. 623, 652 S.E.2d 547 (2007) (decided under former O.C.G.A. § 15-11-8).

Defendant. a juvenile, sustained a hand fracture while in the custody of the Georgia Department of Juvenile Justice. In view of a nurse's testimony that delaying treatment could have caused the hand to become deformed, the provision of medical services to treat the fracture was an emergency or necessary medical procedure that fell within the meaning of "subsistence" as provided in former O.C.G.A. § 15-11-8(a)(5); therefore, the county was obliged to pay these medical expenses. In

re A. G., 298 Ga. App. 804, 681 S.E.2d 649 (2009) (decided under former O.C.G.A. § 15-11-8).

Parents' income relevant to determination of juvenile's indigency. — It is proper for a court to consider a juvenile's parents' income when the court makes a decision concerning whether or not the juvenile is indigent. In re R.K.J., 179 Ga. App. 112, 345 S.E.2d 658 (1986) (decided under former O.C.G.A. § 15-11-8).

Reimbursement for medical expenses. — Trial court erred in refusing to certify the medical bills sought to be reimbursed by the Georgia Department of Juvenile Justice (DJJ) from a county in the amount of $4,568.50 incurred on behalf of a female juvenile detained in the custody of the DJJ, because the juvenile presented a life-threatening condition of galactorrhea, which required diagnostic testing at a medical center; the word subsistence, as provided in former O.C.G.A. § 15-11-8(a)(5), was held to include emergency medical treatment for a juvenile, therefore, DJJ was entitled to reimbursement from the county. In the Interest of J.S., 283 Ga. App. 448, 641 S.E.2d 682, aff'd, 282 Ga. 623, 652 S.E.2d 547 (2007) (decided under former O.C.G.A. § 15-11-8).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, §§ 24-2431 and 24-2432, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

County not charged costs in advance. — Costs in juvenile proceedings are properly charges against county in which case arises; the county may not be required to pay such costs in advance. 1978 Op. Att'y Gen. No. U78-19 (decided under former Code 1933, §§ 24-2431 and 24-2432).

Transportation of children under court jurisdiction responsibility of county. — Once a child has been brought to the court or a juvenile intake officer, subsequent transportation of children under the jurisdiction of a juvenile court is the county's responsibility, and that such transportation costs shall be a charge upon the funds of the county upon certification thereof by the court. 1979 Op. Att'y Gen. No. U79-13 (decided under former Code 1933, §§ 24-2431 and 24-2432).

Psychometric testing, psychological examinations, and remedial reading instructions were included in former provisions. 1979 Op. Att'y Gen. No. U79-4 (decided under former Code 1933, §§ 24-2431 and 24-2432).

RESEARCH REFERENCES

Am. Jur. 2d. — 47 Am. Jur. 2d, Juvenile Courts and Delinquent and Dependent Children, § 115.

U.L.A. — Uniform Juvenile Court Act (U.L.A.) § 52.

15-11-37. Supervision fees.

(a) The court may collect supervision fees from those who are placed under the court's formal or informal supervision in order that the court may use those fees to expand the provision of the following types of ancillary services:

(1) Housing in nonsecure residential facilities;

(2) Educational services, tutorial services, or both;

(3) Counseling and diagnostic testing;

(4) Mediation;

(5) Transportation to and from court ordered services;

(6) Truancy intervention services;

(7) Restitution programs;

(8) Job development or work experience programs;

(9) Community services; and

(10) Any other additional programs or services needed to meet the best interests, development, and rehabilitation of a child.

(b)(1) The juvenile court may order each delinquent child or child in need of services who receives supervision to pay to the clerk of the court:

(A) An initial court supervision user's fee of not less than $10.00 nor more than $200.00; and

(B) A court supervision user's fee of not less than $2.00 nor more than $30.00 for each month that a child receives supervision.

(2) A child and his or her parent, guardian, or legal custodian may be jointly and severally liable for the payment of fees set forth in paragraph (1) of this subsection and shall be subject to the enforcement procedure in subsection (c) of Code Section 15-11-36. The judge shall provide that any such fees shall be imposed on such terms and conditions as shall assure that the funds for the payment are from moneys earned by such child. All moneys collected by the clerk under this subsection shall be transferred to the county treasurer, or such other county official or employee who performs duties previously performed by the treasurer, who shall deposit the moneys into a county supplemental juvenile services fund. The governing authority of the county shall appropriate moneys from the county supplemental juvenile services fund to the juvenile court for the court's discretionary use in providing community services described in subsection (a) of this Code section to child offenders. These funds shall be administered by the county and the court may draw upon them by submitting invoices to the county. The county supplemental juvenile services fund may be used only for these services. Any moneys remaining in the fund at the end of the county fiscal year shall not revert to any other fund but shall continue in the county supplemental juvenile services fund. The county supplemental juvenile services fund may not be used to replace other funding of services.

(c) The clerk of the court shall be responsible for collections of fees as ordered by the court.

(d) For the purpose of this Code section, the term "legal custodian" shall not be interpreted or construed to include the department or DJJ.

History. — Code 1981, § 15-11-37, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

15-11-38. Community based risk reduction programs.

(a) Any court may order the establishment of a community based risk reduction program, within the geographical jurisdiction of the court, for the purpose of utilizing available community resources in assessment and intervention in cases of delinquency, dependency, or children in need of services so long as the court determines that sufficient funds are available for such programs. Subject to the procedures, requirements, and supervision established in the order creating such program, any individual and any public or private agency or entity may participate in the program.

(b) As part of a risk reduction program, a court may implement or adopt an early intervention program designed to identify children and families who are at risk of becoming involved with the court. Such early intervention program shall be for the purpose of developing and implementing intervention actions or plans to divert the children and their families from becoming involved in future cases in the court. The court's involvement shall be for the limited purpose of facilitating the development of the program and for the purpose of protecting the confidentiality of the children and families participating in the program.

(c) As part of an early intervention program, the court may enter into protocol agreements with school systems within the court's jurisdiction, the county division of family and children services, the county department of health, DJJ, any state or local department or agency, any mental health agency or institution, local physicians or health care providers, licensed counselors and social workers, and any other social service, charitable, or other entity or any other agency or individual providing educational or treatment services to families and children within the jurisdiction of the court. Such protocol agreements shall authorize the exchange of confidential information in the same manner and subject to the same restrictions, conditions, and penalties as provided in Code Section 15-11-40.

(d) When any agency or entity participating in a protocol agreement identifies a child who is at risk of becoming a delinquent child, dependent child, or child in need of services, the agency or entity shall refer the case to a multiagency staffing panel. The panel shall develop a multiagency intervention plan for such child. Such child or his or her

parent, or both, may be present during any review of such child's case by the panel. A child's parent, guardian, or legal custodian shall be notified of the intervention plan by the agency making the referral or by a person or entity designated by the panel to administer the program. The staff of the court, other than the judge, shall work with the other agencies involved to educate a child's parent, guardian, or legal custodian and such child on the importance of following the intervention plan and on the consequences if anyone is referred to the court. If an intervention plan is developed for a child and his or her parent, guardian, or legal custodian consents to such plan, the failure to comply with the plan or any portion thereof may constitute the basis for a referral to DFCS.

History. — Code 1981, § 15-11-38, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242; Ga. L. 2014, p. 780, § 1-6/SB 364.

Law reviews. — For article, "Georgia's Juvenile Code: New Law for the New Year," see 19 Ga. St. B. J. 13 (Dec. 2013).

RESEARCH REFERENCES

ALR. — Validity and efficacy of minor's waiver of right to counsel — cases decided since application of Gault, 387 U.S. 1, 87 S. Ct. 1428, 18 L. Ed. 2d 527 (1967), 101 A.L.R.5th 351.

15-11-39. Risk assessments or risk and needs assessments; case plans; issuance of orders.

(a) In any jurisdiction within which a risk reduction program has been established, when a child comes before the court for disposition, the court may order that a risk assessment or risk and needs assessment, as defined in Code Section 49-4A-1, be made of such child and the circumstances resulting in such child being before the court.

(b) If the results of a risk assessment or risk and needs assessment, as defined in Code Section 49-4A-1, demonstrates a need for a case plan, the court may order that a case plan be developed by a panel representing community agencies as authorized by the court. A case plan shall contain the proposed actions and alternatives for the proper and efficient use of available community resources to assist a child.

(c) A case plan shall be served on a child and his or her parent, guardian, or legal custodian. A case plan shall also include a cover letter which contains the following information:

(1) Sources to explain the process, procedures, and penalties for not responding to the court order in the prescribed time frame; and

(2) The deadline for responding to the court order and stating objections to the case plan or any portion thereof is ten days from the date of service.

(d) If no objection is made or if a child and his or her parent, guardian, or legal custodian consents to the case plan, the case plan shall be incorporated into and made a part of the disposition order entered in the case by entry of a supplemental order. The case plan may be modified by the court at any time such child is under the jurisdiction of the court.

(e) If a child or his or her parent, guardian, or legal custodian objects to the case plan, the court shall conduct a hearing. The court may decline to adopt the case plan or may confirm or modify the case plan. In implementing a case plan, the court shall have available all of the protective powers set forth in Code Section 15-11-29, without the necessity of a show cause hearing, unless objection is made to the case plan.

(f) In any jurisdiction within which a risk reduction program has been established, such court may issue an order authorized by Code Section 15-11-29.1.

History. — Code 1981, § 15-11-39, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242; Ga. L. 2017, p. 604, § 1-2/SB 175.

RESEARCH REFERENCES

ALR. — Validity and efficacy of minor's waiver of right to counsel — cases decided since application of Gault, 387 U.S. 1, 87 S. Ct. 1428, 18 L. Ed. 2d 527 (1967), 101 A.L.R.5th 351.

15-11-40. Information sharing; confidentiality.

(a) Notwithstanding any provision contained in this chapter or in any rule or regulation adopted by any department, board, or agency of the state to the contrary, the court and any individual, public or private agency, or other entity participating in a community based risk reduction program may exchange, as necessary, information, medical records, school records, immigration records, records of adjudication, treatment records, and any other records or information which may aid in the assessment of and intervention with the children and families in such program if such exchange of information is ordered by the court or consented to by the parties. Such information shall be used by such individuals and agencies only for the purposes provided in this chapter and as authorized by the court for the purpose of implementing the case plan and for the purposes permitted under each agency's own rules and regulations. Such information shall not be released to any other individual or agency except as may be necessary to effect the appropriate treatment or intervention as provided in the case plan. Such information shall otherwise remain confidential as required by state

and federal law and the court may punish any violations of confidentiality as contempt of court.

(b) Any person who authorizes or permits any unauthorized person or agency to have access to confidential records or reports of child abuse shall be guilty of a misdemeanor. Any person who knowingly and under false pretenses obtains or attempts to obtain confidential records or reports of child abuse or information contained therein shall be guilty of a misdemeanor.

(c) Confidential records or reports of child abuse and information obtained from such records may not be made a part of any record which is open to the public except that a prosecuting attorney may use and make public that record or information in the course of any criminal prosecution for any offense which constitutes or results from child abuse.

(d) This Code section shall not abridge the provisions relating to confidentiality of patient or client records and shall not serve to destroy or in any way abridge the confidential or privileged character thereof.

History. — Code 1981, § 15-11-40, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

Cross references. — Exchange of information, § 15-11-710.

RESEARCH REFERENCES

ALR. — Validity and efficacy of minor's waiver of right to counsel — cases decided since application of Gault, 387 U.S. 1, 87 S. Ct. 1428, 18 L. Ed. 2d 527 (1967), 101 A.L.R.5th 351.

JUDICIAL DECISIONS

Cited in In the Interest of H. J. C., 331 Ga. App. 506, 771 S.E.2d 184 (2015).

15-11-41. Compliance with privacy laws.

(a) Except as otherwise provided in Code Section 15-11-710, entities governed by federal or state privacy laws may require the following before sharing confidential information:

(1) For release of child abuse records by the department, a subpoena and subsequent order of the court requiring the release of such information in accordance with Code Section 49-5-41;

(2) For release of information relating to diagnosis, prognosis, or treatment of drug and alcohol abuse:

(A) If the person is 18 or has been emancipated, consent from the person to whom such information relates;

(B) If the person is under the age of 18 years and has not been emancipated, valid consent from such person's parent, guardian, or legal custodian or consent by a parent, guardian, or legal custodian to a confidentiality agreement between the health care provider and the unemancipated minor; provided, however, that consent from an unemancipated minor shall be sufficient for the release of such information if the unemancipated minor is allowed by law to consent to the health care service to which the records relate without the consent of a parent, guardian, or legal custodian and has not designated anyone as a personal representative; or

(C) A subpoena requiring the release of such information and protective order of the court regarding the release of such information; and

(3) For release of confidential health, mental health, or education records:

(A) If the person is 18 or has been emancipated, consent from the person to whom such information relates;

(B) If the person is under the age of 18 years and has not been emancipated, valid consent from such person's parent, guardian, or legal custodian or consent by a parent, guardian, or legal custodian to a confidentiality agreement between the health care provider and the unemancipated minor; provided, however, that consent from an unemancipated minor shall be sufficient for the release of such information if the unemancipated minor is allowed by law to consent to the health care service to which the records relate without the consent of a parent, guardian, or legal custodian and has not designated anyone as a personal representative;

(C) A subpoena requiring the release of such information; or

(D) An order of the court requiring the release of such information.

(b) In issuing an order for the release of information under this Code section, the court may:

(1) Include protections against further disclosure of the information;

(2) Limit the purposes for which the information may be used; and

(3) Require records to be redacted so that only relevant information is shared.

(c) Nothing in this Code section shall be deemed to replace the responsibility of entities governed by federal and state privacy laws to comply with such laws.

(d) Nothing in this Code section shall be construed as barring or limiting the release of confidential information referred to in this Code section pursuant to a search warrant.

History. — Code 1981, § 15-11-41, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

Law reviews. — For article, "Georgia's Juvenile Code: New Law for the New Year," see 19 Ga. St. B. J. 13 (Dec. 2013).

ARTICLE 2

JUVENILE COURT ADMINISTRATION

Law reviews. — For article, "Why (Jury-Less) Juvenile Courts are Unconstitutional," see 69 Emory L.J. 273 (2019).

For comment, "Pre-Adjudication Access to Counsel for Juveniles," see 69 Emory L.J. 359 (2019).

15-11-50. Creation of juvenile courts; appointment of judges.

(a) There is created a juvenile court in every county in the state.

(b) Except where election is provided by local law, the judge or a majority of the judges of the superior court in each circuit in the state may appoint one or more qualified persons as judge of the juvenile courts of the circuit. Such superior court judge or judges shall establish the total number of circuit-wide juvenile court judges and shall establish whether the judge or judges shall be full time or part time, or a combination of full time and part time. Each circuit-wide judge appointed shall have the authority to act as judge of each juvenile court in each county of the circuit.

(c) If no person is appointed as a juvenile court judge for a circuit, then a superior court judge of the circuit shall as part of the duties of the superior court judge assume the duties of the juvenile court judge in all counties in the circuit in which a separate juvenile court judgeship has not been established.

(d) All juvenile court judgeships established on or before October 1, 2000, and their methods of compensation, selection, and operation shall continue until such time as one or more circuit-wide juvenile court judges are appointed. However, in any circuit where a superior court judge assumes the duties of the juvenile court judge, such circuit shall not be entitled to the state funds provided for in Code Section 15-11-52.

(e) When one or more circuit-wide juvenile court judges are appointed or elected, any juvenile court judge in office at that time shall be authorized to fulfill his or her term of office. The jurisdiction of each judge shall be circuit wide.

(f) After the initial appointments and prior to any subsequent appointment or reappointment of any part-time or full-time juvenile

court judge, the judge or judges responsible for making the appointment shall publish notice of the vacancy of the juvenile court judgeship once a month for three months prior to such appointment or reappointment. Such notice shall be published in the official legal organ of each of the counties in the circuit where the juvenile court judge has venue. The expense of such publication shall be paid by the county governing authority in the county where such notice is published.

(g) In the event that more than one juvenile court judge is appointed, one judge shall be designated presiding judge.

(h) In any case in which action under this Code section is to be taken by a superior court judge of the circuit, such action shall be taken as follows:

(1) Where there are one or two superior court judges, such action shall be taken by the chief judge of the circuit; and

(2) Where there are more than two superior court judges, such action shall be taken by a majority vote of the judges of the circuit.

History. — Code 1981, § 15-11-50, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

Law reviews. — For comment, "Pre-Adjudication Access to Counsel for Juveniles," see 69 Emory L.J. 359 (2019).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 24A-201 and pre-2000 Code Section 15-11-3, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Juvenile court judge has authority to issue criminal warrants for adults as juvenile court is county court. Thornton v. State, 157 Ga. App. 75, 276 S.E.2d 125 (1981) (decided under former O.C.G.A. § 15-11-3).

If superior court judge sits as juvenile court judge, orders issued by the judge are orders of that court and not of the superior court and must conform to the legal requirements of courts of limited jurisdiction to be valid. Turnell v. Johnson, 223 Ga. 309, 154 S.E.2d 591 (1967) (decided under former Code 1933, § 24A-201).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former O.C.G.A. §§ 15-11-3 and 15-11-18 are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Existing terms unaffected by new judicial district. — Terms of the existing juvenile court judge for the counties of Pickens, Fannin, Gilmer, Forsyth, and Cherokee are not affected by the creation of the new Appalachian Judicial Circuit. 1983 Op. Att'y Gen. No. U83-26 (decided under former O.C.G.A. § 15-11-3).

Term of office. — Term of office of juvenile court judges appointed under former O.C.G.A. § 15-11-18 (see now O.C.G.A. §§ 15-11-50 and 15-11-52) was four years to run from the date of the expiration of the term of office of the

juvenile court judge's predecessor in office. 1984 Op. Att'y Gen. No. U84-32 (decided under former O.C.G.A. § 15-11-3).

All juvenile court judgeships are to be appointed to a term equal to that of superior court judges, which is currently four years. The provision for state contribution for circuit-wide juvenile court judges' compensation conditioned upon appropriation of the necessary funds for that purpose does not delay enactment of the remainder of the 1982 amendment. 1987 Op. Att'y Gen. No. U87-5 (decided under former O.C.G.A. § 15-11-3).

Appointment of retired superior court judge. — Superior court judge who retires under either of the two superior court judges retirement systems may be appointed to serve as a juvenile court judge; however, with one limited exception, his or her eligibility for senior judge status under either system will be suspended or delayed while appointed to that office. 1991 Op. Att'y Gen. No. 91-9 (decided under former O.C.G.A. § 15-11-3).

Appointment of superior court judge as juvenile court judge. — Senior superior court judge, who was not being appointed in that senior judge capacity pursuant to O.C.G.A. § 15-1-9.1, may be appointed to serve as a part-time state-funded juvenile court judge and, so long as the hours worked annually do not exceed 1040 hours, there is no effect on the senior judge's retirement. 2000 Op. Atty. Gen. No. U2000-9 (decided under former O.C.G.A. § 15-11-18).

Local legislation not necessary. — Local legislation is not necessary to establish a juvenile court for a particular county alone, but the powers of the juvenile court cannot be restricted to only that county. 2000 Op. Att'y Gen. No. U2000-3 (decided under former O.C.G.A. § 15-11-18).

RESEARCH REFERENCES

Am. Jur. 2d. — 47 Am. Jur. 2d, Juvenile Courts and Delinquent and Dependent Children, §§ 1, 6, 39 et seq.

ALR. — Jurisdiction of another court over child as affected by assumption of jurisdiction by juvenile court, 11 A.L.R. 147; 78 A.L.R. 317; 146 A.L.R. 1153.

15-11-51. Qualification of judges.

(a) No person shall be judge of the juvenile court unless, at the time of his or her appointment, he or she has attained the age of 30 years, has been a citizen of this state for three years, is a member of the State Bar of Georgia, and has practiced law for five years.

(b) A juvenile court judge shall be eligible for reappointment or reelection.

History. — Code 1981, § 15-11-51, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under pre-2014 O.C.G.A. §§ 15-11-3 and 15-11-18 are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Appointment of retired superior court judge. — Superior court judge who retires under either of the two superior court judges retirement systems may be appointed to serve as a juvenile court judge; however, with one limited exception, his or her eligibility for senior judge status under either system will be sus-

pended or delayed while appointed to that office. 1991 Op. Att'y Gen. No. 91-9 (decided under former O.C.G.A. § 15-11-3).

Appointment of superior court judge as juvenile court judge. — Senior superior court judge, who was not being appointed in that senior judge capacity pursuant to O.C.G.A. § 15-1-9.1, may be appointed to serve as a part-time state-funded juvenile court judge and, so long as the hours worked annually do not exceed 1040 hours, there is no effect on the senior judge's retirement. 2000 Op. Atty. Gen. No. U2000-9 (decided under former O.C.G.A. § 15-11-18).

15-11-52. Terms and compensation of judges.

(a) Each appointed juvenile court judge shall serve for a term of four years.

(b) The compensation of the full-time or part-time juvenile court judges shall be set by the superior court with the approval of the governing authority or governing authorities of the county or counties for which the juvenile court judge is appointed.

(c) Out of funds appropriated to the judicial branch of government, the state shall contribute toward the salary of the judges on a per circuit basis in the following amounts:

(1) Each circuit with one or more juvenile court judges who are not superior court judges assuming the duties of juvenile court judges shall receive a state grant of $100,000.00;

(2) In addition to the amount set forth in paragraph (1) of this subsection, each circuit which has more than four superior court judges shall be eligible for additional state grants in the amount of $25,000.00 per superior court judgeship exceeding four judges in such circuit;

(3) In circuits where the superior court judges elect to use the state grant for one or more part-time judges, the amount of the state grant shall be as follows; provided, however, that such grant shall not exceed the amount the circuit is eligible to receive under paragraphs (1) and (2) of this subsection:

(A) For each part-time judge who works one day weekly $20,000.00

(B) For each part-time judge who works two days weekly 40,000.00

(C) For each part-time judge who works three days weekly 60,000.00

(D) For each part-time judge who works four days weekly ..... 80,000.00; and

(4) All state grants provided by this subsection shall be spent solely on salaries for juvenile court judges and shall not be used for any other purposes.

History. — Code 1981, § 15-11-52, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242; Ga. L. 2017, p. 122, § 2-1/HB 5.

Editor's notes. — Ga. L. 2017, p. 122, § 3-1(b)/HB 5, not codified by the General Assembly, provided that Part II of this Act shall become effective on July 1, 2017, only if funds are appropriated for purposes of Part II of this Act in an appropriations Act enacted at the 2017 regular session of the General Assembly. If funds are not so appropriated, then Part II of this Act shall not become effective and shall stand repealed on July 1, 2017. Funds were appropriated at the 2017 session of the General Assembly.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under pre-2000 Code Section 15-11-3, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Setting of compensation. — Superior court was authorized to fix the compensation of a juvenile court judge without the approval of the governing authority of the county. Peters v. Followill, 269 Ga. 119, 497 S.E.2d 789 (1998) (decided under former O.C.G.A. § 15-11-3).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions decided under former Code 1933, § 24A-201 and pre-2000 Code Section 15-11-3, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Existing terms unaffected by new judicial district. — Terms of the existing juvenile court judge for the counties of Pickens, Fannin, Gilmer, Forsyth, and Cherokee are not affected by the creation of the new Appalachian Judicial Circuit. 1983 Op. Att'y Gen. No. U83-26 (decided under former O.C.G.A. § 15-11-3).

Superior court judge may fix salary of juvenile court judge. — Judge of a superior court may not fix the salary of the juvenile court judge until such time as the salary of the juvenile court judge is no longer fixed by legislative act. 1974 Op. Att'y Gen. No. U74-68 (decided under former Code 1933, § 24A-201).

Term of office. — Term of office of juvenile court judges appointed under former O.C.G.A. § 15-11-18 (see now O.C.G.A. §§ 15-11-50 and 15-11-52) was four years to run from the date of the expiration of the term of office of the juvenile court judge's predecessor in office. 1984 Op. Att'y Gen. No. U84-32 (decided under former O.C.G.A. § 15-11-3).

All juvenile court judgeships are to be appointed to a term equal to that of superior court judges, which is currently four years. The provision for state contribution for circuit-wide juvenile court judges' compensation conditioned upon appropriation of the necessary funds for that purpose does not delay enactment of the remainder of the 1982 amendment. 1987 Op. Att'y Gen. No. U87-5 (decided under former O.C.G.A. § 15-11-3).

15-11-53. Practice of law by judges.

(a) It shall be unlawful for any full-time juvenile court judge to engage in any practice of law outside his or her role as a juvenile court judge.

(b) It shall be unlawful for a part-time judge of any juvenile court to engage directly or indirectly in the practice of law in his or her own name or in the name of another as a partner in any manner in any case, proceeding, or matter of any kind in the court to which he or she is assigned or in any other court in any case, proceeding, or any other matters of which it has pending jurisdiction or has had jurisdiction.

(c) It shall be unlawful for any juvenile court judge, full time or part time, to give advice or counsel to any person on any matter of any kind whatsoever which has arisen directly or indirectly in court, except such advice or counsel as a judge is called upon to give while performing the duties of a juvenile court judge.

History. — Code 1981, § 15-11-53, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

Cross references. — Judges shall regulate their extra-judicial activities to minimize the risk of conflict with their judicial duties, Georgia Code of Judicial Conduct, Canon 5.

RESEARCH REFERENCES

ALR. — Validity and application of state statute prohibiting judge from practicing law, 17 A.L.R.4th 829.

15-11-54. Administration and expenses of juvenile courts.

(a) Each juvenile court shall be assigned and attached to the superior court of the county for administrative purposes.

(b) The governing authority of the county of residence of each juvenile court judge shall offer the juvenile court judge insurance benefits and any other benefits except retirement or pension benefits equivalent to those offered to employees of the county, with a right to contribution from other counties in the circuit for a pro rata contribution toward the costs of such benefits, based on county population. Counties shall continue to provide membership in retirement plans available to county employees for any juvenile court judge in office before July 1, 1998, who did not become a member of the Georgia Judicial Retirement System provided by Chapter 23 of Title 47.

(c) Except for state grants provided by Code Section 15-11-52, all expenditures of the court are declared to be an expense of the court and payable out of the county treasury with the approval of the governing

authority or governing authorities of the county or counties for which the juvenile court judge is appointed.

History. — Code 1981, § 15-11-54, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242; Ga. L. 2017, p. 122, § 2-2/HB 5.

RESEARCH REFERENCES

ALR. — Eligibility for special immigrant juvenile status under 8 U.S.C.A. § 1101(a)(27)(J) and 8 C.F.R. § 204.11, 67 A.L.R. Fed. 2d 299.

15-11-55. Applicability of local laws.

(a) To the extent that the provisions of this article conflict with a local constitutional amendment authorizing the election of a juvenile court judge and with the provisions of a local Act authorized by such local constitutional amendment to provide for the term of office, vacancies in office, qualifications, compensation, and full-time or part-time status of a juvenile court judge or judges, the provisions of such local constitutional amendment and such local Act shall govern.

(b) The state grants provided by Code Section 15-11-52 shall be provided to any circuit encompassing a juvenile court governed by the provisions of a local constitutional amendment and a local Act in the same manner as other circuits, except that, in any circuit with one or more elected juvenile court judges, the elected juvenile court judge who is senior in duration of service as a juvenile court judge shall establish, subject to other applicable provisions of law, the total number of circuit-wide juvenile court judges, whether the judge or judges shall be full time or part time or a combination of full time and part time, and the compensation of any part-time juvenile court judge or judges.

History. — Code 1981, § 15-11-55, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions decided under pre-2014 Code Section 15-11-18, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Local legislation not necessary. — Local legislation is not necessary to establish a juvenile court for a particular county alone, but the powers of the juvenile court cannot be restricted to only that county. 2000 Op. Att'y Gen. No. U2000-3 (decided under former O.C.G.A. § 15-11-18).

15-11-56. Simultaneous service by judges.

(a) No person who is serving as a full-time juvenile court judge shall at the same time hold the office of judge of any other class of court of this state.

(b) No person serving as a juvenile court judge after being elected juvenile court judge pursuant to a local law authorized by a constitutional amendment shall at the same time hold the office of judge of any other class of court of this state.

(c) Nothing in this Code section shall prevent any duly appointed or elected juvenile court judge from sitting by designation as a superior court judge pursuant to Code Section 15-1-9.1.

History. — Code 1981, § 15-11-56, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former O.C.G.A. §§ 15-11-3 and 15-11-18 are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Appointment of retired superior court judge. — Superior court judge who retires under either of the two superior court judges retirement systems may be appointed to serve as a juvenile court judge; however, with one limited exception, his or her eligibility for senior judge status under either system will be suspended or delayed while appointed to that office. 1991 Op. Att'y Gen. No. 91-9 (decided under former O.C.G.A. § 15-11-3).

Appointment of superior court judge as juvenile court judge. — Senior superior court judge, who was not being appointed in that senior judge capacity pursuant to O.C.G.A. § 15-1-9.1, may be appointed to serve as a part-time state-funded juvenile court judge and, so long as the hours worked annually do not exceed 1040 hours, there is no effect on the senior judge's retirement. 2000 Op. Atty. Gen. No. U2000-9 (decided under former O.C.G.A. § 15-11-18).

15-11-57. Commissioning of juvenile court judges; appointment of associate juvenile court judges.

(a) Whenever a juvenile court judge is appointed it shall be the duty of the clerk of the superior court to forward to the Secretary of State and to the Council of Juvenile Court Judges a certified copy of the order of appointment. The order of appointment shall set out the name of the person appointed, the term of office, the effective date of the appointment, the name of the person being succeeded, if any, and whether the office was vacated by resignation, death, or otherwise. Upon receipt of such order, the Secretary of State shall issue a commission as for superior court judges.

(b) Whenever an associate juvenile court judge is appointed to serve in a juvenile court, the clerk of the juvenile court shall forward a

certified copy of the order of appointment to the Council of Juvenile Court Judges.

History. — Code 1981, § 15-11-57, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

15-11-58. Council of Juvenile Court Judges; role; director.

(a) All of the judges and associate judges of the courts exercising jurisdiction over children shall constitute a Council of Juvenile Court Judges. The council shall annually elect from among its members a judge to serve as presiding judge and chairperson of the council.

(b) The Council of Juvenile Court Judges:

(1) Shall meet at stated times to be fixed by it or on call of the chairperson;

(2) May establish general policies for the conduct of courts exercising jurisdiction over children;

(3) May promulgate uniform rules and forms governing procedures and practices of the courts;

(4) Shall publish in print or electronically an annual report of the work of the courts exercising jurisdiction over children, which shall include statistical and other data on the courts' work and services, research studies the council may make of the problems of children and families dealt with by the courts, and any recommendations for legislation; and

(5) Shall be authorized to inspect and copy records of the courts, law enforcement agencies, the department, the Department of Community Supervision, and DJJ for the purpose of compiling statistical data on children.

(c) Subject to the approval of the Council of Juvenile Court Judges, the presiding judge of the council shall appoint a chief administrative and executive officer for the council who shall have the title of director of the Council of Juvenile Court Judges. Under the general supervision of the presiding judge of the council and within the policies established by the council, the director shall:

(1) Provide consultation to the courts regarding the administration of court services and the recruitment and training of personnel;

(2) Make recommendations to the council for improvement in court services;

(3) With the approval of the presiding judge, appoint consultants and necessary clerical personnel to perform the duties assigned to the council and the director;

(4) Collect necessary statistics and prepare an annual report of the work of the courts;

(5) Promulgate in cooperation with DJJ standard procedures for coordinating DJJ, the Department of Community Supervision, and county juvenile probation services throughout this state; and

(6) Perform such other duties as the presiding judge of the council shall specify.

History. — Code 1981, § 15-11-58, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242; Ga. L. 2015, p. 422, § 5-9/HB 310.

Editor's notes. — Ga. L. 2015, p. 422, § 6-1/HB 310, not codified by the General Assembly, provides, in part, that the amendment by this Act shall apply to sentences entered on or after July 1, 2015.

Law reviews. — For article on the 2015 amendment of this Code section, see 32 Ga. St. U.L. Rev. 231 (2015).

15-11-59. Educational seminars.

(a) The Council of Juvenile Court Judges, in conjunction with the Institute of Continuing Judicial Education of Georgia, shall establish seminars for all judges and associate juvenile court judges exercising juvenile court jurisdiction and may make provisions relative to such seminars by court rules properly adopted.

(b) Seminars shall offer instruction and training in juvenile law and procedure, child development and psychology, sociological theories relative to delinquency and breakdown of the family structure, and such other training and activities as the council may determine would promote the quality of justice in the juvenile court system.

(c) Expenses of administration of seminar programs and actual expenses incurred by the judges or associate juvenile court judges in attending such seminars shall be paid from state funds appropriated for the council for such purpose, from federal funds available to the council for such purpose, or from other sources. Judges and associate juvenile court judges shall receive the same expense and travel allowances which members of the General Assembly receive for attending meetings of legislative interim committees.

(d) Each judge and associate juvenile court judge exercising juvenile jurisdiction shall receive training appropriate to the role and participate in at least 12 hours of continuing legal education or continuing judicial education established or approved by the council each year and meet such rules as established by the council pertaining to such training. Superior court judges may meet this requirement by attending seminars held in conjunction with the seminars for superior court judges provided by the Institute of Continuing Judicial Education of Georgia. Judges and associate juvenile court judges shall not exercise juvenile court jurisdiction unless the council certifies that annual

training has been accomplished or unless the judge is in the first year of his or her initial appointment; provided, however, that the council may in hardship cases extend deadlines for compliance with this Code section.

History. — Code 1981, § 15-11-59, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

Cross references. — Rules and Regulations for the Organization and Government of the State Bar of Georgia Certification of Judicial Officers, Uniform Rules for the Juvenile Courts of Georgia, Rule 1.3.

15-11-60. Associate juvenile court judges; qualifications.

(a) A judge may appoint one or more persons to serve as associate juvenile court judges in juvenile matters on a full-time or part-time basis. The associate juvenile court judge shall serve at the pleasure of the judge, and his or her salary shall be fixed by the judge with the approval of the governing authority or governing authorities of the county or counties for which the associate juvenile court judge is appointed. The salary of each associate juvenile court judge shall be paid from county funds.

(b) Each associate juvenile court judge shall have the same qualifications as required for a judge of the juvenile court as provided in Code Section 15-11-51; provided, however, that any person serving as an associate juvenile court judge on July 1, 2007, shall be qualified for appointment thereafter to serve as an associate juvenile court judge.

History. — Code 1981, § 15-11-60, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

Cross references. — Appeals from referee's decision, Uniform Rules for the Juvenile Courts of Georgia, Rule 19.2. Officers of the court and court personnel, Uniform Rules for the Juvenile Courts of Georgia, Rule 2.1 et seq.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under pre-2000 Code Section 15-11-10 and pre-2014 Code Section 15-11-21, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Failure to comply with subsections (b) and (c). — Since the juvenile court referee [now associate judge] failed to comply with subsections (b) and (c) of former O.C.G.A. § 15-11-10 (see now O.C.G.A. § 15-11-60), the order of commitment in the case must be reversed and the case remanded for further proceedings in compliance with the foregoing provisions of the former Juvenile Court Code. In re W.M.F., 180 Ga. App. 397, 349 S.E.2d 265 (1986) (decided under former O.C.G.A. § 15-11-10).

Judge's failure to comply. — While the language of a juvenile court judge's order suggested that the judge conducted a de novo review of a decision by an associate judge, the judge erred in denying a juvenile's motion for rehearing. The disposition which the juvenile court judge

was authorized and required to make was a de novo determination as to the juvenile's delinquency, not an order granting or denying the juvenile's motion. In the Interest of J. C., 308 Ga. App. 336, 708 S.E.2d 1 (2011) (decided under former O.C.G.A. § 15-11-21).

Nature of rehearing. — Rehearing that was mandated by former subsection (d) (now subsection (e)) of former O.C.G.A. § 15-11-10 (see now O.C.G.A. § 15-11-60) differs from a review of a referee's findings and recommendations. A rehearing on reconsideration contemplates a second, de novo consideration or a retrial of the issues, while a review involves only the examination of the record by an appellate tribunal and consideration for the purpose of correction. In re M.E.T., 197 Ga. App. 255, 398 S.E.2d 30 (1990) (decided under former O.C.G.A. § 15-11-10).

Effect of timely request for rehearing. — Juvenile's timely request for a hearing required that the juvenile court judge make de novo findings and recommendations after conducting a de novo review of the original evidence that the referee considered. The judge could not ignore the timely request for a rehearing and merely "confirm" the findings and recommendations of the referee pursuant to subsection (e) of former O.C.G.A. § 15-11-10 (see now O.C.G.A. § 15-11-21). In re M.E.T., 197 Ga. App. 255, 398 S.E.2d 30 (1990) (decided under former O.C.G.A. § 15-11-10).

Authority to confirm associate judge's findings and recommendations. — Juvenile court judge is authorized to confirm the referee's findings and recommendation only if no rehearing is mandated. In re M.E.T., 197 Ga. App. 255, 398 S.E.2d 30 (1990) (decided under former O.C.G.A. § 15-11-10).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, § 24A-701, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Appointment of juvenile court personnel by superior court judge. — Superior court judge sitting as a juvenile court judge may appoint supporting personnel for the juvenile court pursuant to former Code 1933, §§ 24A-601, 24A-603 and 24A-701 (see now O.C.G.A. §§ 15-11-60, 15-11-63, and 15-11-66). 1977 Op. Att'y Gen. No. U77-11 (decided under former Code 1933, § 24A-701).

RESEARCH REFERENCES

C.J.S. — 43 C.J.S., Infants, §§ 214, 215.

U.L.A. — Uniform Juvenile Court Act (U.L.A.) § 7.

15-11-61. Associate juvenile court traffic judges.

(a) The judge may appoint one or more persons to serve at the pleasure of the judge as associate juvenile court traffic judges on a full-time or part-time basis.

(b) An associate juvenile court traffic judge shall be a member of the State Bar of Georgia.

(c) The compensation of associate juvenile court traffic judges shall be fixed by the judge with the approval of the governing authority of the county and shall be paid in equal monthly installments from county funds, unless otherwise provided by law.

History. — Code 1981, § 15-11-61, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

Cross references. — Prosecution of traffic offenses generally, § 40-13-1 et seq.

15-11-62. Pro tempore juvenile court judges.

(a) In the event of the disqualification, illness, or absence of the judge of the juvenile court, the judge of the juvenile court may appoint any member of the State Bar of Georgia who is resident in the judicial circuit in which the court lies and has practiced law for five years, any judge or senior judge of the superior courts, any duly appointed juvenile court judge, or any duly appointed associate juvenile court judge to serve as judge pro tempore of the juvenile court. In the event the judge of the juvenile court is absent or unable to make such appointment, the judge of the superior court of that county may so appoint.

(b) The person appointed shall have the authority to preside in the stead of the disqualified, ill, or absent judge and shall be paid from the county treasury such emolument as the appointing judge shall prescribe; provided, however, that the emolument shall not exceed the compensation received by the regular juvenile court judge for such services.

History. — Code 1981, § 15-11-62, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242; Ga. L. 2013, p. 122, § 2-1/HB 182.

Cross references. — Officers of the court and court personnel, Uniform Rules for the Juvenile Courts of Georgia, Rule 2.1 et seq.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 24A-3701 and pre-2000 Code Section 15-11-63, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Designation of judge while transferring jurisdiction does not void valid orders. — The designation of the judge pro tempore by the superior court while transferring jurisdiction of a case to the juvenile court, though surplusage, does not void the otherwise valid orders. K.G.W. v. State, 140 Ga. App. 571, 231 S.E.2d 421 (1976), cert. dismissed, 238 Ga. 599, 234 S.E.2d 535 (1977) (decided under former Code 1933, § 24A-3701).

Judge pro tempore not "official policymaker." — Juvenile court judge pro tempore is a state official and, as such, could not be the "official policymaker" responsible for establishing an alleged unconstitutional custom or policy on behalf of a county which was the defendant in a federal civil rights action. Bendiburg v. Dempsey, 692 F. Supp. 1354 (N.D. Ga. 1988) (decided under former O.C.G.A. § 15-11-63).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, § 24A-3701, which was subsequently repealed but was

succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Juvenile court judge pro tempore may be paid less. — Since former Code 1933, § 24A-3701 (see now O.C.G.A. § 15-11-62) by the statute's terms applied only to judges pro tempore, and former Code 1933, § 24A-701 did not provide a limit upon salaries of juvenile court referees (now associate judges), a juvenile court judge may be paid less than a referee (now associate judge). 1981 Op. Att'y Gen. No. U81-20 (decided under former Code 1933, § 24A-3701).

RESEARCH REFERENCES

ALR. — Construction and validity of state provisions governing designation of substitute, pro tempore, or special judge, 97 A.L.R.5th 537.

15-11-63. Clerks and other personnel.

(a) The judge of the juvenile court shall have the authority to appoint clerks and any other personnel necessary for the execution of the purposes of this chapter.

(b) The salary, tenure, compensation, and all other conditions of employment of such employees shall be fixed by the judge, with the approval of the governing authority of the county. The salaries of the employees shall be paid out of county funds.

(c) Any employee of the court may be removed for cause by the judge of the court, the reasons therefor to be assigned in writing.

History. — Code 1981, § 15-11-63, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

Cross references. — Officers of the court and court personnel, Uniform Rules for the Juvenile Courts of Georgia, Rule 2.1 et seq.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under pre-2014 Code Section 15-11-24, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Service by a correctional officer on incarcerated father. — Personal service of a summons and a petition of deprivation by a correctional officer upon an incarcerated father was sufficient as the service procedures in the Civil Practice Act were not adopted nor were those procedures binding on the juvenile court, and the correctional officer was acting under the direction of the court for the purposes of former O.C.G.A. § 15-11-39.1(c) (see now O.C.G.A. §§ 15-11-161, 15-11-282, 15-11-424, and 15-11-531). In the Interest of A.J.M., 277 Ga. App. 646, 627 S.E.2d 399 (2006) (decided under former O.C.G.A. § 15-11-24).

Cited in In the Interest of D. H., 332 Ga. App. 274, 772 S.E.2d 70 (2015).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, § 24A-603, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Appointment of juvenile court personnel by superior court judge. — Superior court judge sitting as a juvenile court judge may appoint supporting personnel for the juvenile court. 1977 Op. Att'y Gen. No. U77-11 (decided under former Code 1933, § 24A-603).

15-11-64. Collection of information by juvenile court clerks; reporting requirement; data collection.

(a) Each clerk of the juvenile court shall collect the following information for each child in need of services, delinquent child, and child accused of a class A designated felony act or class B designated felony act and provide such information to DJJ as frequently as requested by DJJ:

(1) Name;

(2) Date of birth;

(3) Sex;

(4) Race;

(5) Offense charged;

(6) Location of the offense, including the name of the school if the offense occurred in a school safety zone, as defined in Code Section 16-11-127.1;

(7) The name of the referral source, including the name of the school if the referring source was a school;

(8) Disposition of the case; and

(9) Date of and authority for commitment, if applicable.

(b) Each clerk of the juvenile court shall report to the Administrative Office of the Courts the total number of petitions or motions filed under subsection (b) of Code Section 15-11-682 for the previous calendar year and, of that number, the number in which the court appointed a guardian ad litem, the number in which the court appointed counsel, the number in which the judge issued an order authorizing an abortion without notification, the number in which the judge denied such an order, and, of the last, the number of denials from which an appeal was filed, the number of appeals that resulted in denials being affirmed, and the number of appeals that resulted in reversals of such denials. Each clerk shall make such report by March 15 of each year for the previous

calendar year. The individual reports made to the Administrative Office of the Courts shall be held confidential and not subject to disclosure under Article 4 of Chapter 18 of Title 50, relating to open records. The Administrative Office of the Courts shall provide aggregated statistics only in accordance with subsection (g) of Code Section 16-12-141.1. Such individual reports shall be destroyed six months after submission to the Administrative Office of the Courts.

(c) Pursuant to rules adopted by the Supreme Court of Georgia, on and after January 1, 2021, each clerk of the juvenile court shall collect data on each child alleged or adjudicated to be a delinquent child and transmit such data as required by such rules. The Supreme Court of Georgia shall make and publish in print or electronically such state-wide minimum standards and rules as it deems necessary to carry out this subsection. Each clerk of the juvenile court shall develop and enact policies and procedures necessary to carry out the standards and rules created by the Supreme Court of Georgia.

(d) Pursuant to rules adopted by the Supreme Court of Georgia, on and after January 1, 2021, each clerk of the juvenile court shall collect data on all cases in which a child alleged or adjudicated to be a child in need of services or a delinquent child is placed in foster care and has also been alleged or adjudicated to be a dependent child and shall transmit such data as required by such rules. Such data shall include, at a minimum, the adherence on each case by the court to the time frames contained in Code Section 15-11-102.

History. — Code 1981, § 15-11-64, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242; Ga. L. 2016, p. 350, § 1/HB 555; Ga. L. 2018, p. 550, § 1-4/SB 407; Ga. L. 2020, p. 191, § 1/HB 912.

The 2018 amendment, effective July 1, 2018, added subsection (c).

The 2020 amendment, effective July 1, 2020, in subsection (c), substituted "adopted by the Supreme Court of Georgia, on and after January 1, 2021" for "promulgated by the Judicial Council of Georgia, on and after January 1, 2019" in the first sentence and substituted "Supreme Court of Georgia" for "Judicial Council of Georgia" at the beginning of the second sentence and the end of the third sentence; and added subsection (d).

Law reviews. — For article on the 2018 amendment of this Code section, see 35 Ga. St. U.L. Rev. 45 (2018). For annual survey on criminal law, see 70 Mercer L. Rev. 63 (2018).

15-11-65. Training requirements for juvenile court clerks.

(a) Any person who is appointed as or is performing the duties of a clerk of the juvenile court shall satisfactorily complete 20 hours of training in the performance of the duties of a clerk of the juvenile court within the first 12 months following such appointment or the first performance of such duties.

(b) In each year after the initial appointment, any person who is appointed as or is performing the duties of a clerk of the juvenile court

shall satisfactorily complete in that year 12 hours of additional training in the performance of such person's duties as clerk.

(c) Training pursuant to this Code section shall be provided by the Institute of Continuing Judicial Education of Georgia. Upon satisfactory completion of such training, a certificate issued by the institute shall be placed into the minutes of the juvenile court record in the county in which such person serves as a clerk of the juvenile court. All reasonable expenses of such training including, but not limited to, any tuition fixed by such institution shall be paid from county funds by the governing authority of the county for which the person serves as a clerk of the juvenile court, unless funding is provided from other sources.

(d) A judge of the juvenile court shall appoint a clerk pro tempore for that court in order for the regular clerk to attend required training. Such clerk pro tempore shall not be required to meet the training requirements for performing the clerk's duties.

(e) The provisions of this Code section shall not apply to clerks of juvenile courts who also act as clerks of superior courts and who already have mandatory training requirements in such capacity.

History. — Code 1981, § 15-11-65, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

Cross references. — Officers of the court and court personnel, Rules for the Juvenile Courts of the State of Georgia, Rule 2.2.

15-11-66. Appointment and salaries of probation and intake officers.

(a) The judge may appoint one or more probation and intake officers.

(b) The salaries of the probation and intake officers shall be fixed by the judge with the approval of the governing authority of the county or counties for which he or she is appointed and shall be payable from county funds.

History. — Code 1981, § 15-11-66, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

Cross references. — Probation generally, § 42-8-1 et seq. Officers of the Juvenile Court and court personnel, Uniform Rules for the Juvenile Courts of Georgia, Rules 2.1 and 2.4.

JUDICIAL DECISIONS

Cited in In the Interest of D. D., 335 Ga. App. 676, 782 S.E.2d 728 (2016).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, § 24A-601, which was subsequently repealed but was

succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Appointment of juvenile court supporting personnel. — Superior court judge sitting as a juvenile court judge may appoint supporting personnel for the juvenile court. 1977 Op. Att'y Gen. No. U77-11 (decided under former Code 1933, § 24A-601).

RESEARCH REFERENCES

C.J.S. — 43 C.J.S., Infants, §§ 8, 9.
U.L.A. — Uniform Juvenile Court Act (U.L.A.) § 5.

15-11-67. Duties of probation or community supervision officers.

(a) A county juvenile probation officer or DJJ staff member serving as a juvenile probation officer or community supervision officer, as appropriate:

(1) Shall make investigations, reports, and recommendations to the court as directed by this chapter;

(2) Shall supervise and assist a child placed on probation or under the protective supervision or care of such officer by order of the court or other authority of law;

(3) May, unless otherwise ordered by the court, determine if a child should be placed on unsupervised probation and, if so, place a child on unsupervised probation;

(4) Shall make appropriate referrals to other private or public agencies of the community if such assistance appears to be needed or desirable;

(5) May take into custody and detain a child who is under the supervision or care of such officer if such officer has reasonable cause to believe that such child's health or safety or that of another is in imminent danger or that such child may abscond or be removed from the jurisdiction of the court, or when so ordered by the court pursuant to this chapter;

(6) May not conduct accusatory proceedings against a child who is or may be under such officer's care or supervision;

(7) Shall perform all other functions designated by this chapter or by order of the court pursuant to this chapter. Any of the functions specified in this Code section may be performed in another state if authorized by the court located in this state and permitted by the laws of the other state; and

(8) Other laws to the contrary notwithstanding, no such officer shall be liable for the acts of a child not detained or taken into custody

when, in the judgment of such officer, such detention or custody is not warranted.

(b) Notwithstanding subsection (a) of this Code section, DJJ, as the employer, shall maintain sole authority over the duties and responsibilities of all DJJ staff members serving as probation officers and the Department of Community Supervision shall maintain sole authority over the duties and responsibilities of all of such department's staff serving as community supervision officers.

History. — Code 1981, § 15-11-67, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242; Ga. L. 2015, p. 422, § 5-10/HB 310.

Cross references. — Probation generally, § 42-8-1 et seq. Probation officers, Uniform Rules for the Juvenile Courts of Georgia, Rule 2.4.

Editor's notes. — Ga. L. 2015, p. 422, § 6-1/HB 310, not codified by the General Assembly, provides, in part, that the amendment by this Act shall apply to sentences entered on or after July 1, 2015.

Law reviews. — For article on the 2015 amendment of this Code section, see 32 Ga. St. U.L. Rev. 231 (2015).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 24A-602, pre-2000 Code Section 15-11-8 and pre-2014 Code Section 15-11-24.2, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Juvenile court probation officer had no authority to apply for search warrant. Huff v. Walker, 125 Ga. App. 251, 187 S.E.2d 343 (1972) (decided under former Code 1933, § 24A-602).

Construction with other law. — Juvenile's interference with a juvenile probation officer's attempt to take the juvenile into custody, after the juvenile tested positive for illegal drug use, was sufficient to support an adjudication for felony obstruction under O.C.G.A. § 16-10-24(b); moreover, the probation officer was a legally authorized person lawfully discharging a duty to do so pursuant to former O.C.G.A. § 15-11-24.2(5). In the Interest of M.M., 287 Ga. App. 233, 651 S.E.2d 155 (2007), cert. denied, 2008 Ga. LEXIS 95 (Ga. 2008) (decided under former O.C.G.A. § 15-11-24.2).

Conducting of accusatory proceedings against child. — It was error for a juvenile probation officer to conduct accusatory proceedings against a child who was or may be under the officer's care or supervision, even if a licensed attorney who thus could be considered "legal counsel," because the official whose statutory responsibilities include the supervision and assisting of juveniles could best serve that function if the official remained an objective and unbiased figure. In re P.L.S., 170 Ga. App. 74, 316 S.E.2d 175 (1984) (decided under former O.C.G.A. § 15-11-8).

Consent to proceedings by juvenile probation officer waived error. — Appellant juvenile's failure to object to accusatory proceedings conducted by a juvenile probation officer denied appellant the right to rely on that error as a basis for reversal on appeal, but if such a procedure is allowed over proper objection appellate courts should not hesitate to reverse. In re P.L.S., 170 Ga. App. 74, 316 S.E.2d 175 (1984) (decided under former O.C.G.A. § 15-11-8).

Commitment to Department of Juvenile Justice did not violate statute. — Former O.C.G.A. § 15-11-24.2 set forth the duties of a probation officer, and the defendant showed no merit in the defendant's argument that the commitment to the Department of Juvenile Justice violated that Code section. In the Interest of B. Q. L. E., 297 Ga. App. 273, 676 S.E.2d

742, cert. denied, No. S09C1197, 2009 Ga. LEXIS 787 (Ga. 2009) (decided under former O.C.G.A. § 15-11-24.2).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code Section 15-11-24.2, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Authority of probation staff. — Department of Juvenile Justice's probation staff may assist prosecuting attorneys in obtaining necessary reports and files and in creating delinquency petitions but may not conduct an accusatory proceeding. The probation staff must also comply with valid court orders issued pursuant to former O.C.G.A. § 15-11-24.2(6). 2008 Op. Att'y Gen. No. 2008-5 (decided under former O.C.G.A. § 15-11-24.2).

RESEARCH REFERENCES

Am. Jur. 2d. — 47 Am. Jur. 2d, Juvenile Courts and Delinquent and Dependent Children, § 57 et seq.

C.J.S. — 43 C.J.S., Infants, §§ 8, 9.

U.L.A. — Uniform Juvenile Court Act (U.L.A.) § 6.

15-11-68. Duties of juvenile court intake officers; training.

(a) A juvenile court intake officer:

(1) Shall receive and examine complaints and charges of delinquency, of dependency, or that a child is a child in need of services for the purpose of considering the commencement of proceedings under this chapter;

(2) Shall make appropriate referrals to other private or public agencies of the community if such assistance appears to be needed or desirable;

(3) Shall compile on a regular basis the case files or a report on those cases that were informally adjusted for review by the judge;

(4) May not conduct accusatory proceedings against a child or draft judicial orders, official charges, or any other document which is required to be drafted by an attorney;

(5) Shall perform all other functions designated by this chapter or by order of the court pursuant to this chapter; and

(6) Except as provided in Article I, Section II, Paragraph IX(d) of the Constitution, no county juvenile court intake officer, or DJJ staff member serving as a juvenile court intake officer, shall be liable for the acts of a child not detained or taken into custody when, in the judgment of such officer, such detention or custody is not warranted.

(b) Notwithstanding subsection (a) of this Code section, DJJ, as the employer, shall maintain sole authority over the duties and responsi-

bilities of all DJJ staff members serving as juvenile court intake officers. No DJJ staff member shall serve as a juvenile court intake officer in a dependency proceeding commenced under Article 3 of this chapter.

(c) Each juvenile court intake officer exercising the authority to remove a child pursuant to the provisions of Articles 1 and 3 of this chapter shall first successfully complete, each year, eight hours of appropriate training relevant to the performance of such determinations, including, but not limited to, training concerning contrary to the welfare determinations, reasonable efforts to prevent removal of a child and diligent search requirements consistent with Article 3 of this chapter, reasonable alternatives to foster care, and DFCS policies and procedures related to the removal of a child and placement of such child in foster care.

History. — Code 1981, § 15-11-68, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242; Ga. L. 2019, p. 67, § 2/HB 472.

The 2019 amendment, effective April 18, 2019, added the second sentence in subsection (b) and added subsection (c).

15-11-69. Transfer of probation and intake services and employees to Department of Juvenile Justice.

(a) The probation and intake services of the juvenile court of each county may be transferred to and become a part of the state-wide juvenile and intake services and be fully funded through DJJ. The probation and intake officers of juvenile courts of those counties whose probation and intake services are transferred pursuant to this Code section shall become DJJ employees on the date of such transfer and on and after that date such employees shall be subject to the salary schedules and other DJJ personnel policies, except that the salaries of such employees shall not be reduced as a result of becoming DJJ employees.

(b) The probation and intake services of the juvenile court of a county may be transferred to DJJ by a local Act of the General Assembly that approves such transfer.

(c) Persons who were probation and intake officers of the juvenile court of a county on June 30, 1996, but who were transferred as probation and intake officers to and became a part of the state-wide juvenile and intake services system fully funded through DJJ before January 1, 1999, shall be covered employees in the classified service as defined in Code Section 45-20-2.

History. — Code 1981, § 15-11-69, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

Cross references. — Officers of the court and court personnel, Uniform Rules for the Juvenile Courts of Georgia, Rule

2.1 et seq.

15-11-70. "Risk and needs assessment" defined; establishment of family treatment court division; procedures; fees; acceptance of grants or donations.

(a)(1) As used in this subsection, the term "risk and needs assessment" means an actuarial tool, approved by the Council of Accountability Court Judges of Georgia and validated on a targeted population, scientifically proven to determine an individual's risk to recidivate and to identify criminal risk factors that, when properly addressed, can reduce such individual's likelihood of committing future criminal behavior.

(2) Any juvenile court may establish a family treatment court division to provide an alternative to the traditional judicial system for the disposition of dependancy cases and for assisting superior courts with criminal cases referred to such division under Code Section 15-11-15. The goal of a family treatment court division is to:

(A) Reduce alcohol or drug abuse and addiction for respondents in dependency proceedings;

(B) Improve permanency outcomes for families when dependency is based in part on alcohol or drug use and addiction;

(C) Increase the personal, familial, and societal accountability of respondents in dependency proceedings; and

(D) Promote effective intervention and use of resources among child welfare personnel, law enforcement agencies, treatment providers, community agencies, and the courts.

(3) In any criminal case transferred pursuant to Code Section 15-11-15, when the defendant meets the eligibility criteria for the family treatment court division, such case may be assigned to the family treatment court division:

(A) Prior to the entry of the sentence, if the prosecuting attorney consents;

(B) As part of a sentence in a case; or

(C) Upon consideration of a petition to revoke probation.

(4) Each family treatment court division shall establish a planning group to develop a work plan. The planning group shall include the judges, prosecuting attorneys, special assistant attorneys general, public defenders, attorneys who represent children and parents, law enforcement officials, probation officers, community supervision offi-

cers, court appointed special advocates, guardians ad litem, DFCS employees, and other individuals having expertise in services available to families in dependency proceedings. The work plan shall address the operational, coordination, resource, information management, and evaluation needs of the family treatment court division. The work plan shall include family treatment court division policies and practices related to implementing the standards and practices developed pursuant to paragraph (5) of this subsection. The work plan shall ensure a risk and needs assessment is used to identify the likelihood of recidivating and identify the needs that, when met, reduce recidivism. The work plan shall include eligibility criteria for the family treatment court division. The family treatment court division shall combine judicial supervision, treatment of family treatment court division participants, drug testing, and mental health treatment.

(5)(A) The Council of Accountability Court Judges of Georgia shall establish standards and practices for family treatment court divisions, taking into consideration guidelines and principles based on current research and findings that are published by experts on family treatment health needs and treatment options in a dependency setting. Standards and practices shall include, but shall not be limited to, the use of a risk and needs assessment to identify the likelihood of recidivating and identify the needs that, when met, reduce recidivism. The Council of Accountability Court Judges of Georgia shall update its standards and practices to incorporate research, findings, and developments in the family treatment court field. Each family treatment court division shall adopt policies and practices that are consistent with the standards and practices published by the Council of Accountability Court Judges of Georgia.

(B) The Council of Accountability Court Judges of Georgia shall provide technical assistance to family treatment court divisions to assist them with the implementation of policies and practices, including, but not limited to, guidance on the implementation of risk and needs assessments in family treatment court divisions.

(C) The Council of Accountability Court Judges of Georgia shall create and manage a certification and peer review process to ensure family treatment court divisions are adhering to the Council of Accountability Court Judges of Georgia's standards and practices and shall create a waiver process for family treatment court divisions to seek an exception to the Council of Accountability Court Judges of Georgia's standards and practices. The Council of Accountability Court Judges of Georgia shall create a certification process to allow a court to demonstrate its need for additional state

grant funds, as authorized by Code Section 15-11-52, for one or more part-time judges to operate a family treatment court division. In order to receive state appropriated funds, any family treatment court division established on and after July 1, 2017, shall be certified pursuant to this subparagraph or, for good cause shown to the Council of Accountability Court Judges of Georgia, shall receive a waiver from the Council of Accountability Court Judges of Georgia.

(D) On and after July 1, 2017, the award of any state funds for a family treatment court division shall be conditioned upon a family treatment court division attaining certification or a waiver by the Council of Accountability Court Judges of Georgia. On or before September 1, the Council of Accountability Court Judges of Georgia shall publish an annual report listing certified family treatment court divisions.

(E) The Council of Accountability Court Judges of Georgia shall develop and manage an electronic information system for performance measurement and accept submission of performance data in a consistent format from all family treatment court divisions. The Council of Accountability Court Judges of Georgia shall identify elements necessary for performance measurement, including, but not limited to, the number of children reunited with participants in a family treatment court division, drug testing results, drug testing failures, participant employment, the number of participants who successfully complete the program, and the number of participants who fail to complete the program.

(F) On or before July 1, 2017, and every three years thereafter, the Council of Accountability Court Judges of Georgia shall conduct a performance peer review of the family treatment court divisions for the purpose of improving family treatment court division policies and practices and the certification and recertification process.

(6) A court instituting the family treatment court division may request any of the following individuals to serve in the family treatment court division:

(A) One or more prosecuting attorneys designated by the prosecuting attorney for the jurisdiction;

(B) A special assistant attorney general; or

(C) One or more assistant public defenders designated by the public defender, if any.

(7) The clerk of the juvenile court that is instituting the family treatment court division or such clerk's designee shall serve as the clerk of the family treatment court division.

(8) The court instituting the family treatment court division may request community supervision officers, probation officers, and other employees of the court to perform duties for the family treatment court division. Such individuals shall perform duties as directed by the judges of the family treatment court division.

(9) The court instituting the family treatment court division may enter into agreements with other courts and agencies for the assignment of personnel and probation supervision from other courts and agencies to the family treatment court division.

(10) Expenses for salaries, equipment, services, and supplies incurred in implementing this Code section may be paid from state funds, funds of the county or political subdivision implementing such family treatment court division, federal grant funds, and funds from private donations.

(11) A court instituting a family treatment court division shall comply with the periodic review process as required by Code Section 15-11-216.

(b) Each family treatment court division shall establish criteria which define the successful completion of the family treatment court division program. If the family treatment court division participant who was referred to the family treatment court division on a criminal charge by a superior court successfully completes the family treatment court division program, a report of such completion shall be communicated to the referring superior court judge.

(c) Any statement made by a family treatment court division participant as part of participation in such court division, or any report made by the staff of such court division or program connected to such court division, regarding a participant's substance usage shall not be admissible as evidence against the participant in any legal proceeding or prosecution; provided, however, that, if the participant violates the conditions of his or her participation in the program or is terminated from the family treatment court division, the reasons for the violation or termination may be considered in sanctioning, sentencing, or otherwise disposing of the participant's case.

(d) Notwithstanding any provision of law to the contrary, family treatment court division staff shall be provided, upon request, with access to all records relevant to the treatment of the family treatment court division participant from any state or local government agency. All such records and the contents thereof shall be treated as confidential, shall not be disclosed to any person outside of the family treatment court division, and shall not be subject to Article 4 of Chapter 18 of Title 50, relating to open records, or subject to subpoena, discovery, or introduction into evidence in any civil or criminal proceeding. Such

records and the contents thereof shall be maintained by the family treatment court division and originating court in a confidential file not available to the public.

(e) Any fees received by a family treatment court division from a family treatment court division participant as payment for substance abuse treatment and services shall not be considered as court costs or a fine.

(f) The court may have the authority to accept grants, donations, and other proceeds from outside sources for the purpose of supporting the family treatment court division. Any such grants, donations, or proceeds shall be retained by the family treatment court division for expenses.

History. — Code 1981, § 15-11-70, enacted by Ga. L. 2016, p. 443, § 1-6/SB 367; Ga. L. 2017, p. 585, §§ 1-2, 1-3/SB 174.

Law reviews. — For article on the 2016 enactment of this Code section, see 33 Georgia St. U.L. Rev. 139 (2016). For article on the 2017 amendment of this Code section, see 34 Ga. St. U.L. Rev. 115 (2017).

RESEARCH REFERENCES

C.J.S. — 43 C.J.S., Infants, § 389 et seq.

ARTICLE 3

DEPENDENCY PROCEEDINGS

PART 1

GENERAL PROVISIONS

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION
DEPRIVATION
1. IN GENERAL
2. DEPRIVATION FOUND
3. DEPRIVATION NOT FOUND
INADEQUATE HOUSING

General Consideration

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 24A-401, pre-2014 Code Section 15-11-2, which were subsequently repealed but were succeeded by provisions in this article, are included in the annotations for this part. See the Editor's note at the beginning of the chapter.

Deprivation

Broad definition of "deprived child." — Former statute defined "deprived child" in broad enough terminology to allow sufficient latitude of discretion for

Deprivation (Cont'd)

juvenile court. Moss v. Moss, 135 Ga. App. 401, 218 S.E.2d 93 (1975) (decided under former Code 1933, § 24A-401).

Definition of "deprived child" focuses upon needs of child regardless of parental fault. Brown v. Fulton County Dep't of Family & Children Servs., 136 Ga. App. 308, 220 S.E.2d 790 (1975); Cox v. Department of Human Resources, 148 Ga. App. 43, 250 S.E.2d 839 (1978); Hainut v. Houston County Dep't of Family & Children Servs., 154 Ga. App. 556, 269 S.E.2d 61 (1980); Gardner v. Lenon, 154 Ga. App. 748, 270 S.E.2d 36 (1980) (decided under former O.C.G.A. § 15-11-2).

In considering a deprivation petition, the petition is brought on behalf of the child and it is the child's welfare and not who is responsible for the conditions which amount to deprivation that is the issue. Furthermore, such deprivation must be shown by clear and convincing evidence. In the Interest of D.L.W., 264 Ga. App. 168, 590 S.E.2d 183 (2003) (decided under former O.C.G.A. § 15-11-2).

Primary factor in determining whether children are deprived is not the parents' circumstances, but the children's need. In the Interest of R.M., 276 Ga. App. 707, 624 S.E.2d 182 (2005) (decided under former O.C.G.A. § 15-11-2).

Petition failed to allege valid allegations of deprivation. — Granting of temporary custody of the mother's child to the mother's ex-boyfriend and his wife following their petition to have the boy adjudicated deprived was inappropriate because the juvenile court lacked jurisdiction over the proceeding. The petition did not contain valid allegations of deprivation under former O.C.G.A. § 15-11-2(8) (see now O.C.G.A. §§ 15-11-2 and 15-11-107) and nothing in the record demonstrated that present drug use on the part of the mother had a negative effect on the child rising to the level of present deprivation; the petition was an attempt to obtain custody of the child. In the Interest of C. L. C., 299 Ga. App. 729, 683 S.E.2d 690 (2009) (decided under former O.C.G.A. § 15-11-2).

Children with special needs. — When employing the two-step test before terminating a parent's rights, a juvenile court order that a child was deprived, pursuant to former O.C.G.A. § 15-11-2(8)(A) (see now O.C.G.A. §§ 15-11-2 and 15-11-107), which was not appealed, was binding on a mother and satisfied the first factor of the test under former O.C.G.A. § 15-11-94 (see now O.C.G.A. § 15-11-310); the juvenile court determined that due in part to a medical problem, the child had special needs and the mother lacked the ability to provide for the physical, mental, emotional, and moral conditions and needs of the child. In the Interest of J.T.W., 270 Ga. App. 26, 606 S.E.2d 59 (2004) (decided under former O.C.G.A. § 15-11-2).

Because the juvenile court properly focused on the subject parent's abandonment of the child in support of the court's deprivation finding, and hence, the focus could not be on the adequate level of care given by the child's maternal grandparent, the court's deprivation finding was supported by sufficient evidence. Moreover, the state adequately showed that the parent was incapable of caring for any child, let alone this child, given that the child had special medical needs. In the Interest of A.B., 289 Ga. App. 655, 658 S.E.2d 205 (2008) (decided under former O.C.G.A. § 15-11-2).

Present deprivation required. — Juvenile courts of the state have jurisdiction with regard to a child who is alleged to be deprived, not a child who has allegedly been or will allegedly be deprived while in the legal custody of a nonresident parent. Lewis v. Winzenreid, 263 Ga. 459, 435 S.E.2d 602 (1993) (decided under former O.C.G.A. § 15-11-2).

Juvenile court's concern that a mother's children, who were previously deemed deprived, might be deprived in the future if the mother did not have an acceptable plan to prevent future occurrences of domestic violence did not support extending an agency's custody of the children due to a finding that the children continued to be deprived under former O.C.G.A. § 15-11-2(8)(A) (see now O.C.G.A. §§ 15-11-2 and 15-11-107); there was no evidence that the mother's present actions rose to the level of deprivation of the children. In the Interest of T. D., 309 Ga.

App. 9, 709 S.E.2d 883 (2011) (decided under former O.C.G.A. § 15-11-2).

Standing to challenge deprivation finding. — Despite being the child's primary caretaker since the death of the child's parent, because the child's grandparent had no legal right to custody of the child, the grandparent was not aggrieved by an order finding the child deprived, an award of custody to the child's cousin, and an attorney-fee award and, therefore, had no standing to challenge such order. In the Interest of J.R.P., 287 Ga. App. 621, 652 S.E.2d 206 (2007), cert. denied, 2008 Ga. LEXIS 207 (Ga. 2008) (decided under former O.C.G.A. § 15-11-2).

Merger of charges against the defendant for cruelty to children and contributing to the deprivation of a minor was not required because, although based on similar facts, each charge required proof of a fact not required to prove the other. Porter v. State, 243 Ga. App. 498, 532 S.E.2d 407 (2000) (decided under former O.C.G.A. § 15-11-2).

Findings necessary. — Because the trial court treated a deprivation determination as part of a custody determination, which does not require specific findings of fact, the case was remanded with direction that the court prepare findings of fact employing statutory standards for a determination of deprivation. In re J.B., 241 Ga. App. 679, 527 S.E.2d 275 (1999) (decided under former O.C.G.A. § 15-11-2).

Juvenile court's conclusion that returning a child to the mother's home after the child was in agency custody would be contrary to the child's welfare because of domestic violence issues and that the child's placement in a residential treatment program was appropriate for the child's needs was improper under former O.C.G.A. § 15-11-2(8)(A) (see now O.C.G.A. §§ 15-11-2 and 15-11-107) as the juvenile court had to make appropriate findings of fact upon which the court based the court's finding of deprivation. In the Interest of T. D., 309 Ga. App. 9, 709 S.E.2d 883 (2011) (decided under former O.C.G.A. § 15-11-2).

Findings are binding. — Since a parent did not appeal a trial court's finding that the child was deprived, the parent was bound by that finding in the subsequent termination of parental rights proceeding. In the Interest of T.A., 279 Ga. App. 377, 631 S.E.2d 399 (2006) (decided under former O.C.G.A. § 15-11-2).

1. In General

Consideration of past conduct in finding deprivation. — Mother's argument that the events leading to the instant deprivation petition represented a "one-time incident" during which she simply "fell off the wagon" lacked any merit because even though there was some evidence that the mother has experienced brief periods of relative stability as an adult, the record showed that she had been unable to maintain such stability; the court could consider the past conduct of the mother in making the court's determination that the deprivation of the children would continue if the children were left in the mother's care. In the Interest of H.E., 272 Ga. App. 604, 612 S.E.2d 909 (2005) (decided under former O.C.G.A. § 15-11-2).

Juvenile court may consider a mother's inability to properly care for one child as evidence that the mother will not be able to care for the mother's other children. In the Interest of R. B., 322 Ga. App. 421, 745 S.E.2d 677 (2013).

Deprivation of love and nurture is equally as serious as mental or physical disability. Elrod v. Hall County Dep't of Family & Children Servs., 136 Ga. App. 251, 220 S.E.2d 726 (1975) (decided under former Code 1933, § 24A-401).

Unfortunate circumstances do not excuse improper care. — While because of unfortunate economic or personal circumstances every family cannot demand nor expect an always adequate supply of the material necessities and conveniences for which the standard of living in the United States justly creates an expectation, at the same time occurrence of those unfortunate circumstances does not create carte blanche for ignoring proper care of dependent children. Vermilyea v. Department of Human Resources, 155 Ga. App. 746, 272 S.E.2d 588 (1980) (decided under former Code 1933, § 24A-401).

Quality of evidence affects determination of deprivation. — Court must wait for deprivation to actually occur. Past

Deprivation (Cont'd)
1. In General (Cont'd)

acts of deprivation are certainly stronger proof and more convincing evidence upon which to decide the issue. But there is no reason why a determination of deprivation may not be made on proof that the conditions under which the child would be raised in the parent's home strongly indicate that deprivation will occur in the future. Jones v. Department of Human Resources, 155 Ga. App. 371, 271 S.E.2d 27 (1980) (decided under former Code 1933, § 24A-401).

Discretion of court in determining deprivation. — Determination of deprivation and the decision to terminate parental rights based thereon is an exercise of discretion by the trial court and if based upon evidence will not be controlled by a reviewing court. Roberts v. State, 141 Ga. App. 268, 233 S.E.2d 224 (1977), overruled on other grounds, Chancey v. Department of Human Resources, 156 Ga. App. 338, 274 S.E.2d 728 (1980) (decided under former Code 1933, § 24A-401).

Deprivation from educational neglect. — Evidence was sufficient to support the juvenile court's findings that the parents' children were deprived due to educational neglect as evidenced by the children's truancy, the home was unsafe with pill bottles laying around and a nail gun under the sink, and the parents' drug abuse. In the Interest of J.C., 264 Ga. App. 598, 591 S.E.2d 475 (2003) (decided under former O.C.G.A. § 15-11-2).

Findings made in unrecorded hearing reversed. — Because the juvenile court primarily based the court's decision that a parent's two children were deprived, awarding temporary custody of the children to the county, on evidence received at an unrecorded hearing, and a waiver requiring a transcript of that hearing was not in evidence, those findings were reversed, and the case was remanded. In the Interest of D.P., 284 Ga. App. 453, 644 S.E.2d 299 (2007) (decided under former Code 1933, § 24A-401).

Discovery from guardian ad litem's file. — Juvenile order granting a guardian a protective order against a mother was vacated because the juvenile court erred in imposing blanket protection for the guardian ad litem's file under a privilege exception to discovery; on remand, the juvenile court was directed to exercise the court's discretion to determine whether the material sought by the mother was privileged or otherwise should not be subject to discovery. In the Interest of J. N., 344 Ga. App. 409, 810 S.E.2d 191 (2018).

2. Deprivation Found

Absence of proper parental care. — In a criminal trial on charges that the defendant allowed the repeated rapes of the defendant's 11-year-old child, the rule of lenity did not require that the defendant's felony convictions for being a party to rape and cruelty to children to be subsumed by the misdemeanor conviction for contributing to the deprivation of a minor because different facts were necessary to prove the offenses. The rape conviction required proof under O.C.G.A. §§ 16-2-20 and 16-6-1(a)(1) that the defendant took affirmative steps to aid the rapist. The cruelty to children conviction required proof under O.C.G.A. § 16-5-70(b) that the defendant caused excessive mental pain to the child. The conviction for contributing to the deprivation of a minor required proof under former O.C.G.A. § 15-11-2(8)(A) (see now O.C.G.A. §§ 15-11-2 and 15-11-107) and O.C.G.A. § 16-12-1(b)(3) that the defendant failed to provide the child with proper care necessary for the child's health, which the state proved by showing that the defendant failed to seek prenatal care for the child even though the defendant knew that the child was pregnant. Johnson v. State, 283 Ga. App. 99, 640 S.E.2d 644 (2006) (decided under former O.C.G.A. § 15-11-2).

Given evidence that the defendant's two young children were left unattended, resulting in one going outside in near freezing weather without the proper clothing, causing that child's body temperature to drop two degrees and suffer mild hypothermia, the defendant's two convictions for contributing to the deprivation of a minor were upheld on appeal. Ellis v. State, 283 Ga. App. 808, 642 S.E.2d 869

(2007) (decided under former O.C.G.A. § 15-11-2).

Appeals court found that the evidence supported the juvenile court's finding that a parent's six children were deprived, and that the unexplained abuse was the result of the parent's inability to protect the children as the evidence showed that: (1) one child suffered unexplained sexual abuse while in the parent's care, and sustained a head injury while allegedly in the parent's aunt's care; and (2) another child was molested while the parent was asleep. In the Interest of S.Y., 284 Ga. App. 218, 644 S.E.2d 145 (2007) (decided under former O.C.G.A. § 15-11-2).

Because the older of two children sustained multiple unexplained fractures while in the custody of the child's parents, this was sufficient evidence authorizing the juvenile court's finding that the older child was deprived and further supported evidence that a younger sibling was also deprived; thus, the juvenile court was authorized to find a lack of proper parental care and control based on the parent's failure to protect both children from injury. In the Interest of A.R., 287 Ga. App. 334, 651 S.E.2d 467 (2007) (decided under former O.C.G.A. § 15-11-2).

Trial court properly terminated parental rights of two biological parents to their four children, ages seven, five, four, and two, as clear and convincing evidence established that parents were unable to feed and house the children and that they had essentially abandoned their parental responsibilities; examples of parental misconduct and inability of the parents to provide for the children included the parents' failure to show significant compliance with the reunification goals, their eviction from their home, and their failure to make regular visitation with the children. In the Interest of C.G., 289 Ga. App. 844, 658 S.E.2d 448 (2008) (decided under former O.C.G.A. § 15-11-2).

Termination of a parent's rights to two children was upheld on appeal as the evidence supported the juvenile court's finding that the children were deprived at the time of the termination hearing based on the parent's failure to provide proper parental care and control. The evidence also established that for over three years, the parent failed to make any progress in meeting reunification goals that were set, which demonstrated that the children's deprivation was likely to continue, and the best interests of the children included finding stability with the foster parent, who desired to adopt the children. In the Interest of A.G., 293 Ga. App. 383, 667 S.E.2d 176 (2008) (decided under former O.C.G.A. § 15-11-2).

Deprivation prior to birth. — Juvenile court erred in taking judicial notice of a psychological evaluation and citizen review panel's report issued in a mother's case prior to a child's birth because the juvenile court could not consider the evaluation or report to determine whether the child was without proper parental care or control or that the mother was unfit to parent the child; neither of the documents were tendered into evidence, and there was no testimony as to the contents of the documents. In the Interest of S. D., 316 Ga. App. 86, 728 S.E.2d 749 (2012) (decided under former O.C.G.A. § 15-11-2).

Parent imprisoned. — The statutory finding of deprivation is based on an absence of proper parental care or control, not the temporary guardianship provided when the parent is in prison. In re J.L.M., 204 Ga. App. 46, 418 S.E.2d 415 (1992) (decided under former O.C.G.A. § 15-11-2).

Termination of a mother's parental rights was upheld on appeal since the evidence showed that the mother never bonded with the child, was repeatedly incarcerated, and never attempted to contact the child's caregiver, the mother's aunt, to whom guardianship had been granted; the juvenile court's determination that the child was deprived and that such deprivation was likely to continue based on the mother's continuous criminal activity was supported by the evidence. In the Interest of S.R.M., 283 Ga. App. 463, 641 S.E.2d 666 (2007) (decided under former O.C.G.A. § 15-11-2).

Although children were deprived under O.C.G.A. § 15-11-2(8)(A) because their parent, who had been incarcerated on forgery and firearms charges, was living in a homeless shelter at the time of the termination hearing and was then unable to provide them with proper parental care,

Deprivation (Cont'd)
2. Deprivation Found (Cont'd)

it had not been proven that the causes of the children's deprivation were likely to continue; the termination petition was filed while the parent was still incarcerated, and the parent was not given any realistic opportunity to fulfill the goals of a reunification plan. In the Interest of R.C.M., 284 Ga. App. 791, 645 S.E.2d 363 (2007) (decided under former O.C.G.A. § 15-11-2).

Deprivation from inadequate treatment of psychological problems. — Juvenile court did not err in finding that a 12-year-old child was deprived under former O.C.G.A. § 15-11-2(8)(A) (see now O.C.G.A. §§ 15-11-2 and 15-11-107) due to the child's severe psychological problems, which required in-patient treatment, because the child's mother had been unable to obtain the recommended treatment for the child and the child's mental health was deteriorating. In the Interest of V.A.D., 305 Ga. App. 23, 699 S.E.2d 346 (2010) (decided under former O.C.G.A. § 15-11-2).

Evidence of deprived child. — Judge found by clear and convincing evidence that the child was a deprived child within the meaning of former O.C.G.A. § 15-11-2 and that such deprivation was likely to continue; that the continued deprivation was likely to cause serious physical, mental, emotional, or moral harm to the child since the mother was serving jail time for a felony conviction, was a drug user, and failed to communicate with the child for over a year. In re H.M.T., 203 Ga. App. 247, 416 S.E.2d 567 (1992) (decided under former O.C.G.A. § 15-11-2).

Evidence was sufficient to permit the juvenile court to find clear and convincing evidence of the child's deprivation and that the child's mother's misconduct or inability to care for the child's needs resulted in abuse or neglect sufficient to render the mother unfit to retain custody. In re C.N., 231 Ga. App. 639, 500 S.E.2d 400 (1998) (decided under former O.C.G.A. § 15-11-2).

Since the evidence at the hearing described the home life of a mother's three children and her failure to comply with Department of Family and Children's Service requests, it was sufficient for the juvenile court to find that one of the children was a deprived child. In re C.S., 236 Ga. App. 312, 511 S.E.2d 895 (1999) (decided under former O.C.G.A. § 15-11-2).

Parents' choice in exposing their child to an inappropriate and dangerous living environment showed a lack of parental judgment and careless disregard for the child's health and safety that was sufficient to support a finding that the child was deprived. In the Interest of B.M.B., 241 Ga. App. 609, 527 S.E.2d 250 (1999) (decided under former O.C.G.A. § 15-11-2).

On appeal, the mother argued that the juvenile court erred in considering her testimony during the deprivation hearing because the court had previously found her incompetent, but even without the mother's testimony, ample evidence supported the juvenile court's decision to extend the deprivation order because the juvenile court found that the child was deprived because the mother: (1) had not obtained counseling; (2) had not found stable housing; (3) did not have any source of income; (4) failed to attend parenting classes; and (5) failed to comply with the reunification plan. Additionally, because the crux of the juvenile court's inquiry was the mother's competence as a parent, it was illogical to preclude a trial court from considering the mother's testimony for that purpose. In the Interest of B.B., 267 Ga. App. 360, 599 S.E.2d 304 (2004) (decided under former O.C.G.A. § 15-11-2).

Juvenile court did not err in finding that there was ample evidence to support the court's finding that two children were deprived, that remaining in their mother's care was contrary to their welfare, and that the children needed protection while she endeavored to comply with a reunification plan because the mother repeatedly relapsed back into an unstable dangerous lifestyle, particularly when she was involved with abusive men or those with substance abuse problems. In the Interest of H.E., 272 Ga. App. 604, 612 S.E.2d 909 (2005) (decided under former O.C.G.A. § 15-11-2).

Clear and convincing evidence supported a trial court's determination that a

mother's child was deprived, pursuant to former O.C.G.A. § 15-11-2(8)(A) (see now O.C.G.A. §§ 15-11-2 and 15-11-107), due to the lack of proper parental care, that such deprivation was likely to continue or not be remedied due to the mother's failure to take responsibility for the child and to work at succeeding at the goals of the case plan, and that such deprivation would cause serious harm to the child, who needed a stable family environment; accordingly, termination of the mother's parental rights was proper pursuant to former O.C.G.A. § 15-11-94(a) (see now O.C.G.A. §§ 15-11-310 and 15-11-320). In the Interest of B.S., 274 Ga. App. 647, 618 S.E.2d 695 (2005) (decided under former O.C.G.A. § 15-11-2).

Children were properly found to be deprived, under former O.C.G.A. § 15-11-2(8)(A) (see now O.C.G.A. §§ 15-11-2 and 15-11-107), because their mother did not show that she was able to support them, she showed no past or present ability to care for them or house them, and she had exposed them to drug and alcohol abuse by other family members, as well as domestic violence. In the Interest of L.F., 275 Ga. App. 247, 620 S.E.2d 476 (2005) (decided under former O.C.G.A. § 15-11-2).

Termination of a father's parental rights was supported by evidence of the adverse impact on the child of the mother's continuous drug abuse, the father's neglect of the father's other children, and by the two years the father waited before filing a petition to legitimate the child; the termination of a mother's parental rights was supported by evidence of the mother's egregious drug abuse, the repeated removal of the children from the mother's care, and the mother's failure to comply with the case plan goals. In the Interest of T.L., 279 Ga. App. 7, 630 S.E.2d 154 (2006) (decided under former O.C.G.A. § 15-11-2).

Parent's admission to methamphetamine use during a period that a child protective services investigation was pending, when the children had recently come into the parent's care, and after the parent had agreed to a drug screen, allowed a trial court to infer that the parent had a chronic drug problem which adversely affected the children, and supported the trial court's finding that the children were deprived. In the Interest of K.W., 279 Ga. App. 319, 631 S.E.2d 110 (2006) (decided under former O.C.G.A. § 15-11-2).

Although a parent made substantial progress on a reunification plan while incarcerated, an order extending temporary custody for an additional year in favor of the Department of Family and Children Services was upheld on appeal as sufficient evidence was presented that the parent was unable to: (1) establish stable housing; (2) complete a substance abuse assessment; and (3) demonstrate six months of clean drug screens. In the Interest of R.B., 285 Ga. App. 556, 647 S.E.2d 300 (2007) (decided under former O.C.G.A. § 15-11-2).

On appeal from an order finding the subject child was deprived, assuming certain findings of the juvenile court were not supported by the record, as the appealing parent contended, evidence that the child was physically and emotionally abused by that parent, and that the child lived in an unstable environment, was sufficient to support the order of deprivation. In the Interest of M.K., 288 Ga. App. 71, 653 S.E.2d 354 (2007) (decided under former O.C.G.A. § 15-11-2).

Based on clear and convincing evidence that one parent admittedly suffered from a schizoaffective disorder that was both ignored and not treated with medication, and the other parent denied the existence of that disorder by continuing to leave the child in the first parent's care, sufficient evidence supported the juvenile court's finding that the child was deprived under former O.C.G.A. § 15-11-2(8)(A) (see now O.C.G.A. §§ 15-11-2 and 15-11-107). Moreover, the appeals court was not required to wait until the child suffered from harm before finding that child to be deprived. In the Interest of D.H.D., 289 Ga. App. 32, 656 S.E.2d 183 (2007) (decided under former O.C.G.A. § 15-11-2).

As a parent's actions, including not feeding the child or changing the child's diaper often enough, placed the child at risk, and the parent received one-on-one instruction and training for a considerable period of time, yet failed to put the train-

Deprivation (Cont'd)
2. Deprivation Found (Cont'd)

ing into practice and continued to risk the child's well-being, there was clear and convincing evidence to support the trial court's finding that the child was a "deprived child" as defined by former O.C.G.A. § 15-11-2(8)(A). In the Interest of W. A. P., 293 Ga. App. 433, 667 S.E.2d 197 (2008) (decided under former O.C.G.A. § 15-11-2).

Petition made valid allegations of deprivation as defined by former O.C.G.A. § 15-11-2(8)(A) (see now O.C.G.A. §§ 15-11-2 and 15-11-107), including the mother's leaving the children with the father and not visiting them, the mother's lack of appropriate housing and stable employment, the mother's lack of financial support for the children, and the mother's use of one child's disability benefits to pay the mother's own bills rather than to care for the child. In the Interest of M. M., 315 Ga. App. 673, 727 S.E.2d 279 (2012) (decided under former O.C.G.A. § 15-11-2).

Order finding the children to be deprived and discontinuing reunification services was supported by the evidence; the fact that the father was unable to provide parental care and control of the children at the time of the deprivation hearing because of the conditions of the father's bond constituted clear and convincing evidence that the children were deprived. In addition, there was evidence that the father moved the children to three different states to hide the children from the juvenile court, and the father had abused the children's mother causing the mother to leave the children to escape the father. In the Interest of A. S., 318 Ga. App. 457, 734 S.E.2d 225 (2012) (decided under former O.C.G.A. § 15-11-2).

Juvenile court properly determined that a mother's child was deprived within the meaning of O.C.G.A. § 15-11-2 based on evidence in the record that the mother was living in the home where the putative father was residing despite the sexual abuse allegation the mother made against the father and, the mother failed to comply with the case plan for another child, including an investigation of the sexual abuse allegations against the father. In the Interest of R. B., 322 Ga. App. 421, 745 S.E.2d 677 (2013) (decided under former O.C.G.A. § 15-11-2).

When it is established that a parent has previously deprived, neglected, or abused one or more of their children and that the detrimental conditions existing at that time have not significantly changed, a juvenile court is under no obligation to return a child to the parent and wait until the child is harmed in order to find that there is evidence of that child's current deprivation.Specifically, a juvenile court is allowed to hear and weigh evidence of the past deprivation of other siblings when assessing the current deprivation of a child. In the Interest of R. B., 322 Ga. App. 421, 745 S.E.2d 677 (2013) (decided under former O.C.G.A. § 15-11-2).

Exposure to "sexualized environment". — There was ample evidence a child was deprived because a psychologist found that the child exhibited sexual knowledge that was unusual for the child's age and that the knowledge could indicate the child was exposed to a "sexualized environment," pornography, or sexual abuse; the child exhibited reactive attachment disorder as a result of being frequently "uprooted" and exposed to a transient and chaotic lifestyle, the child needed a stable environment in which the child could feel safe, and that the child would need long-term psychological treatment to address relationship issues. In the Interest of H.E., 272 Ga. App. 604, 612 S.E.2d 909 (2005) (decided under former O.C.G.A. § 15-11-2).

Child with multiple fractures. — Deprivation finding was supported by sufficient evidence which showed that the child victim suffered multiple fractures all over the child's body which indicated that the fractures occurred at different times, the child had no disease predisposing the child to the fractures, and a doctor testified that the injuries were consistent with abusive non-accidental trauma. In the Interest of T.J., 273 Ga. App. 547, 615 S.E.2d 613 (2005) (decided under former O.C.G.A. § 15-11-2).

Parental admission of not wanting to parent. — There was clear and convincing evidence that supported a juvenile

court's determination that a parent's child was deprived pursuant to former O.C.G.A. § 15-11-2 due to the parent's admission that the parent did not want to parent the child, the parent's actions which were contrary to the child's best interest, the fact that the parent was placed under house arrest following two arrests for assault, and the parent's failure to comply with the goals of the parent's reunification plan within the context of a parental rights termination proceeding. In the Interest of J.D., 280 Ga. App. 861, 635 S.E.2d 226 (2006) (decided under former O.C.G.A. § 15-11-2).

Failure to maintain parental bond. — Evidence showed that two children were deprived for purposes of the termination of a parent's rights as: (1) the children had been found to be deprived and were not in the parent's custody; (2) the parent failed to maintain a parental bond as the parent did not visit the children once in nine months, failed to give the children birthday presents, and did not contact the foster parents; (3) the parent failed to complete the case plan although the parent completed parenting classes and a substance abuse evaluation, the parent moved at least nine times in two years and did not maintain regular contact with a child services agency; and (4) the parent paid $60 of $900 owed in child support and failed to support the children. In the Interest of C.M., 282 Ga. App. 502, 639 S.E.2d 323 (2006) (decided under former O.C.G.A. § 15-11-2).

Sexual abuse. — Evidence supported a finding that two of a mother's children were deprived under former O.C.G.A. § 15-11-2 when the mother continued to expose the children to their grandfather even though she believed an allegation that he had sexually abused one of them, repeatedly told DFCS personnel that the children were liars despite her own history of sexual abuse as a child, and continued to live with her fiancé despite allegations that he had sexually abused the other child; furthermore, several referrals had been made to the DFCS pertaining to the children, including a substantiated claim of physical abuse. In the Interest of N.D., 286 Ga. App. 236, 648 S.E.2d 771 (2007) (decided under former O.C.G.A. § 15-11-2).

Parental inability resulting from death of other child. — Trial court properly found that children were deprived; evidence authorized the court to find that anguish the parent felt at the death of another child, combined with other emotional and mental factors, made the parent unable or unwilling to provide the surviving children with proper parental care or control and that this situation, which existed in 2006, had not been remedied in 2007. In the Interest of T.P., 291 Ga. App. 83, 661 S.E.2d 211 (2008) (decided under former O.C.G.A. § 15-11-2).

Evidence from forensic pediatrician and clinical psychologist. — There was no merit to a father's argument that the trial court erred in admitting certain evidence in finding that three children were deprived and in authorizing the grant of a motion for nonreunification with the father. Although the father claimed that certain documents contained hearsay, it was presumed that the trial court in a nonjury trial would select only legal evidence; the father had not shown that the opinions of a forensic pediatrician and a clinical psychologist who were qualified as experts should have been excluded; the father had not made any argument as to how he was prejudiced by evidence apparently introduced against the mother; and an indictment for one child's injuries was properly admitted as the father's custody status was an issue in the case. In the Interest of A.R., 295 Ga. App. 22, 670 S.E.2d 858 (2008) (decided under former O.C.G.A. § 15-11-2).

Psychological testimony on developmental delay. — Evidence was sufficient to show that three children were deprived and to authorize the grant of a motion for nonreunification with their father. There was evidence that one child was seriously and intentionally injured while in either the sole or joint care of the father; the psychologist who evaluated the children, as well as their foster parent, testified as to numerous ways the children were developmentally delayed when initially taken into protective custody; and the father cited no evidence that he had made any attempt to maintain a parental bond with any of his children, met any of the other goals of the reunification plans,

Deprivation (Cont'd)
2. Deprivation Found (Cont'd)

or otherwise provided for the needs of his children. In the Interest of A.R., 295 Ga. App. 22, 670 S.E.2d 858 (2008) (decided under former O.C.G.A. § 15-11-2).

Parental mental illness. — Despite evidence that a parent had fulfilled many of the goals set for the parent by a juvenile court, sufficient evidence supported the court's finding that, as a result of the parent's mental illness, the parent could not adequately care for the parent's child, even if the parent's unfitness was unintentional. Therefore, sufficient evidence supported the juvenile court's conclusion that the child was deprived under former O.C.G.A. § 15-11-2(8)(A) (see now O.C.G.A. §§ 15-11-2 and 15-11-107) as to the parent. In re J. G., 308 Ga. App. 127, 706 S.E.2d 741 (2011) (decided under former O.C.G.A. § 15-11-2).

Inadequate parental supervision. — Because a mother's children had been found to be deprived, as defined in former O.C.G.A. § 15-11-2(8) (see now O.C.G.A. §§ 15-11-2 and 15-11-107), because her persistent failure to adequately supervise the children supported a finding that the deprivation was likely to continue, and because continued deprivation was likely to seriously harm the children, the mother's parental rights were properly terminated. In the Interest of T. A. H., 310 Ga. App. 93, 712 S.E.2d 115 (2011) (decided under former O.C.G.A. § 15-11-2).

Parent imprisoned. — Parent's continued incarceration at the time of a termination of parental rights hearing authorized the court to find that the parent's children were presently deprived. In the Interest of D.T.A., 312 Ga. App. 26, 717 S.E.2d 536 (2011) (decided under former O.C.G.A. § 15-11-2).

Unsubstantiated claims of child's illness. — A 12-year-old child was deprived, given evidence that the child's mother made unsubstantiated claims that the child had 34 types of seizure disorders as well as ten to eleven deadly allergies, could not read more than 10 books a year in school, and could not bring books home from school; and the father testified that he would continue working, leaving the child in the care of the mother. In the Interest of A.L., 313 Ga. App. 858, 723 S.E.2d 76 (2012) (decided under former O.C.G.A. § 15-11-2).

Failure to complete counseling. — Juvenile court properly held that a 13-year-old grandson continued to be deprived under former O.C.G.A. § 15-11-2(8)(A) (see now O.C.G.A. §§ 15-11-2 and 15-11-107) because clear and convincing evidence established that the child was without the care necessary for the child's mental or emotional health based on the grandmother/guardian failing to complete family counseling as required. In the Interest of J. B., 319 Ga. App. 796, 738 S.E.2d 639 (2013) (decided under former O.C.G.A. § 15-11-2).

Videotaping, stripping, and spanking resulted in deprivation. — Evidence that the children's mother permitted and/or assisted her husband in making videotapes for distribution of the children being stripped and spanked was sufficient to show that the children were deprived under former O.C.G.A. § 15-11-2(8)(A) (see now O.C.G.A. §§ 15-11-2 and 15-11-107). In the Interest of J.P., 253 Ga. App. 732, 560 S.E.2d 318 (2002) (decided under former O.C.G.A. § 15-11-2).

Medical issues resulting in deprivation. — Clear and convincing evidence supported an order adjudicating two children deprived under former O.C.G.A. § 15-11-2(8)(A) (see now O.C.G.A. §§ 15-11-2 and 15-11-107) because their sibling died of complications from tuberculosis (TB) after not receiving medical treatment for at least a month, the father had been twice diagnosed with active TB, but refused to admit he had TB, and the mother refused to take medication to keep her latent TB from becoming active, and would not admit that TB had anything to do with the death of the sibling. In the Interest of R.M., 276 Ga. App. 707, 624 S.E.2d 182 (2005) (decided under former O.C.G.A. § 15-11-2).

An order finding that a mother's two children were deprived was upheld on appeal since the evidence established that the mother's 12-year-old daughter was pregnant with the mother's 38-year-old boyfriend's child and the daughter had at

least four sexual partners since the age of nine, and the mother's son had cavities so large that the cavities were visible in the boy's teeth and he had a very poor educational status; also, the mother failed to accept responsibility for the condition of the children. In the Interest of A.S., 285 Ga. App. 563, 646 S.E.2d 756 (2007) (decided under former O.C.G.A. § 15-11-2).

Grandparent caused deprivation. — When a grandparent who had adopted three grandchildren struck one in the face, leaving a mark, pushed a child into a tub of water after asking if the child wanted to drown, spanked the children with a belt, and struck one child with a belt buckle and another with an extension cord, there was sufficient evidence of deprivation under former O.C.G.A. § 15-11-2(8)(A) (see now O.C.G.A. §§ 15-11-2 and 15-11-107). In the Interest of T.R., 284 Ga. App. 742, 644 S.E.2d 880 (2007) (decided under former O.C.G.A. § 15-11-2).

Alcohol abuse and domestic violence resulting in deprivation. — In a deprivation case involving four children, sufficient evidence existed to support the order adjudicating the children deprived since the evidence established that the parents admitted chronically abusing alcohol and admitted that such abuse lead to domestic violence; the father of the children falsely accused child molestation against one of the children, which affected that child so badly that the child refused to live at home and required psychiatric treatment, and even without testimony as to the effect on the children, the juvenile court was authorized to infer from the evidence that the alcohol abuse and domestic violence in the home had an adverse effect on the minor children. In the Interest of E.D., 287 Ga. App. 152, 650 S.E.2d 800 (2007) (decided under former O.C.G.A. § 15-11-2).

Molestation resulting in deprivation. — Trial court properly found that a child was deprived and placed her in the temporary custody of her grandmother, given the evidence that the mother's boyfriend was molesting the child, that the mother knew of allegations that the boyfriend was molesting the child but continued to live with him, that the mother did not seek medical treatment for the child's vaginal rashes, and that the child had exhibited abnormal behavior over a period of months. In the Interest of L.A.T., 291 Ga. App. 312, 661 S.E.2d 679 (2008) (decided under former O.C.G.A. § 15-11-2).

In a mother's appeal of a juvenile court's declaration that a child was deprived, the juvenile court did not abuse the court's discretion in making that conclusion based on the sexual abuse of the child by the stepfather because the record established by clear and convincing evidence that the mother did not fully appreciate all that had to be done to protect the child and the child was minimizing the abuse and masking the continuing emotional impact of the experience due to psychological pressure from the mother. In the Interest of A. P., 299 Ga. App. 886, 684 S.E.2d 22 (2009) (decided under former O.C.G.A. § 15-11-2).

False allegations against spouse result in deprivation. — Children, ages four and six, were deprived as defined in former O.C.G.A. § 15-11-2(8)(A) (see now O.C.G.A. §§ 15-11-2 and 15-11-107) based on their mother's unwarranted and unrelenting insistence that their father, whom she was divorcing, had abused them, subjecting the children to repeated forensic interviews and invasive medical examinations, despite being warned that these repeated interviews were harmful to the children. In the Interest of S.K., 301 Ga. App. 35, 686 S.E.2d 814 (2009) (decided under former O.C.G.A. § 15-11-2).

Since the evidence in the record showed that the child had been subjected to numerous medical examinations for sexual abuse at the mother's behest, in an apparent effort to frustrate or foreclose the father's right of visitation, and she persisted in having the child examined for possible sexual abuse, the juvenile court properly found that the mother's conduct was egregious and was properly considered by the juvenile court in reaching the court's deprivation finding. In the Interest of M.E., 265 Ga. App. 412, 593 S.E.2d 924 (2004) (decided under former O.C.G.A. § 15-11-2).

Death of sibling factor in deprivation proceeding. — Juvenile court did

Deprivation (Cont'd)
2. Deprivation Found (Cont'd)

not err in adjudicating a child deprived and granting temporary custody of the child to the Department of Family and Children Services because the juvenile court did not rely mainly on hearsay testimony to establish the facts on which the court based the court's deprivation finding; the record contained clear and convincing evidence establishing that the child's sibling died under circumstances that constituted substantial evidence that such injury or death resulted from parental neglect or abuse pursuant to former O.C.G.A. § 15-11-94(b)(4)(B) (see now O.C.G.A. § 15-11-311), and the record also contained evidence that the child was physically abused while in the parent's custody and, therefore, lacked the proper parental care necessary for physical and emotional health. In the Interest of K.B., 302 Ga. App. 50, 690 S.E.2d 627 (2010) (decided under former O.C.G.A. § 15-11-2).

Parental mental illness. — Juvenile court's order finding a one-year-old child to be deprived was upheld on appeal as clear and convincing evidence existed that: (1) one parent suffered from a psychological disorder, which was not controlled by medication, and caused that parent to have delusions; and (2) the other parent, knowing the aforementioned condition of the first parent, left the child in that parent's care. In the Interest of M.D., 283 Ga. App. 805, 642 S.E.2d 863 (2007) (decided under former O.C.G.A. § 15-11-2).

Termination order was upheld on appeal because the juvenile court was presented with clear and convincing proof sufficient to support the termination of parental rights: (1) the parent's mental health problems were unlikely to be remedied, resulting in a lack of proper parental care or control and the likelihood that the parent would not be able to provide a stable home; and (2) the parent failed to protect the children from harm in the past. Moreover, as a result of the aforementioned, the children faced a fairly grim scenario of mental health concerns of increasing severity as the children aged. In the Interest of H.K., 288 Ga. App. 831, 655 S.E.2d 698 (2007) (decided under former O.C.G.A. § 15-11-2).

There was sufficient evidence that a child was deprived based on the mother's increasingly severe mental health problems resulting in repeated hospitalizations, her unpredictable, angry, and violent outbursts directed at or committed in the presence of family members, her poor prognosis for bringing her behavior under control in the short term, and her conduct and demeanor during the deprivation hearing. In the Interest of S.D.H., 287 Ga. App. 684, 652 S.E.2d 570 (2007) (decided under former O.C.G.A. § 15-11-2).

Evidence sufficient to find deprivation or termination of parental rights. — Evidence that parents were imprisoned for abusing one of their three children, and their parental rights were terminated as to that child; that a second child, while in their care, sustained permanent brain injuries due to abusive head trauma, and the child's arm was fractured in a manner consistent with abuse; and the fact that the parents invoked the Fifth Amendment during the deprivation hearing was sufficient to allow the trial court to find by clear and convincing evidence that their two children were deprived as defined by former O.C.G.A. § 15-11-2(8)(A) (see now O.C.G.A. §§ 15-11-2 and 15-11-107). In the Interest of A.A., 293 Ga. App. 471, 667 S.E.2d 641 (2008) (decided under former O.C.G.A. § 15-11-2).

Clear and convincing evidence supported the termination of a mother's parental rights over her three children pursuant to former O.C.G.A. § 15-11-94(b)(4)(A) (see now O.C.G.A. § 15-11-310), based on a showing that the children were deprived pursuant to former O.C.G.A. § 15-11-2(8) (see now O.C.G.A. §§ 15-11-2 and 15-11-107), such deprivation continued due to the mother's lack of proper care or control, the deprivation was likely to continue, it was likely harmful to the children, and termination was in their best interests; the mother had chronic drug and alcohol abuse problems, as well as a lack of employment, and despite continuing case plans, she failed to comply or to correct those issues. In the

Interest of P. D. W., 296 Ga. App. 189, 674 S.E.2d 338 (2009) (decided under former O.C.G.A. § 15-11-2).

There was sufficient clear and convincing evidence presented to authorize the juvenile court to find that a mother's child was deprived and that the deprivation was likely to continue, and consequently, that reunification of the child with the mother would be detrimental to the child and was not in the child's best interest because, while the juvenile court took into consideration the previous termination of the mother's parental rights in determining whether the child was deprived, the juvenile court also heard substantial evidence showing that the mother's mental, emotional, and financial condition had not changed significantly since her parental rights to her children were terminated and that despite the assistance of the Department of Family and Children Services and the loss of her four children the mother still lacked the necessary skills, judgment, and resources to properly care for the child. In re R. B., 309 Ga. App. 407, 710 S.E.2d 611 (2011) (decided under former O.C.G.A. § 15-11-2).

Trial court did not err by finding, pursuant to former O.C.G.A. §§ 15-11-2 and 15-11-94 (see now O.C.G.A. §§ 15-11-2, 15-11-381, 15-11-310, 15-11-311, 15-11-320, and 15-11-471), that the child was deprived at the time of a termination hearing and that the mother was the cause of the deprivation as the evidence showed that the mother had a 12-year history of drug addiction, that she repeatedly used methamphetamine while pregnant with the child, that the mother's two other children were not in her custody, that she had multiple felony drug convictions, that she was in jail after the child's birth, that she failed to financially support the child until four weeks before the termination hearing, that she had lived in five separate residences since giving birth to the child, and that she made no attempt whatsoever to visit the child until one month prior to the termination hearing. In the Interest of Z. P., 314 Ga. App. 347, 724 S.E.2d 48 (2012) (decided under former O.C.G.A. § 15-11-2).

Juvenile court did not err in terminating a mother's parental rights pursuant to former O.C.G.A. § 15-11-94 (see now O.C.G.A. §§ 15-11-310, 15-11-311, and 15-11-320) because clear and convincing evidence supported the court's finding that the children were deprived under former O.C.G.A. § 15-11-2(8)(A) (see now O.C.G.A. §§ 15-11-2 and 15-11-107); the mother failed to complete counseling for her depression and parenting aide counseling, and the mother failed to exercise scheduled visits with the children. In the Interest of A. R., 315 Ga. App. 357, 726 S.E.2d 800 (2012) (decided under former O.C.G.A. § 15-11-2).

Inability to control child. — Because the Department of Family and Children Services presented clear and convincing evidence of a parent's inability to control a child to the extent necessary for that child's mental, physical, and emotional health, and the parent was afforded sufficient due process, the juvenile court's deprivation finding was upheld on appeal; moreover, absent evidence of a custody dispute, the proceeding was not a pretextual custody battle which divested the juvenile court of jurisdiction. In the Interest of D.T., 284 Ga. App. 336, 643 S.E.2d 842 (2007) (decided under former O.C.G.A. § 15-11-2).

Under the circumstances in the mother's case, the juvenile court correctly found that the evidence of the children's deprivation was clear and convincing under former O.C.G.A. §§ 15-11-1 and 15-11-2 (see now O.C.G.A. §§ 15-11-1, 15-11-2, 15-11-381, and 15-11-471) in that the evidence demonstrated that the minor children were not receiving adequate support for the children's mental health issues. The uncontrolled behavior of the children related to those issues was negatively affecting the children's academic and social well-being and there was also clear and convincing evidence that the mother was not utilizing available resources to address the children's problems, and that the mother had attempted to have one of the children hospitalized because she could not control the child; moreover, one of the children also exhibited severe mental health issues, including cutting herself and attacking other children, that were not adequately addressed. In the Interest of D. Q., 307 Ga.

Deprivation (Cont'd)
2. Deprivation Found (Cont'd)

App. 121, 704 S.E.2d 444 (2010) (decided under former O.C.G.A. § 15-11-2).

Failure to take steps to reunite with child. — Father's failure for three years to take the steps necessary to be reunited with a four-year-old daughter provided clear and convincing evidence that the deprivation was likely to continue, and the evidence was sufficient to establish that the termination of the father's parental rights was in the best interest of the child in light of the fact that at the time of the termination hearing, the child had spent three of the four years of life in foster care and the evidence showed the father's failure to establish a suitable home and a stable income, become drug free, or comply with reunification plan goals. In the Interest of J.A., 286 Ga. App. 704, 649 S.E.2d 882 (2007) (decided under former O.C.G.A. § 15-11-2).

Physical abuse of other parent. — Evidence was sufficient to support the juvenile court's ruling that a child was deprived pursuant to former O.C.G.A. § 15-11-2(8)(A) (see now O.C.G.A. §§ 15-11-2 and 15-11-107) because the father had a history of physical abuse to the mother, and the child was exposed to repeated incidences of abuse; there was clear and compelling evidence showing a lack of proper parental control to such an extent that the child was adversely affected because the evidence showed that the child began exhibiting disturbing "cutting" and "burning" behaviors when the child and the mother moved in with the father, and the mother testified about the father's aggressive behavior toward the child. In the Interest of W. W., 308 Ga. App. 407, 707 S.E.2d 611 (2011) (decided under former O.C.G.A. § 15-11-2).

Physical abuse of child. — There was sufficient evidence to support a juvenile court's finding that a child was deprived under former O.C.G.A. § 15-11-2(8)(A) (see now O.C.G.A. §§ 15-11-2 and 15-11-107) because the mother physically abused the child on at least two occasions to the extent that officials at the child's school became concerned for the child's physical and emotional well being; although the mother sought anger-management counseling, the psychologist working with the mother testified that it was unwise to return the child to the mother's custody until and unless the mother sought further psychiatric counseling. In re T.S., 310 Ga. App. 100, 712 S.E.2d 121 (2011) (decided under former O.C.G.A. § 15-11-2).

Juvenile court did not err in finding that children were deprived and that their father was unable to provide proper parental care for the children because there was clear and convincing evidence to show that the father had engaged in past egregious conduct of a physically abusive nature toward one of the children; there was medical evidence regarding the nature and extent of the child's injuries and evidence that the injuries had been inflicted by the father. In the Interest of T. P., 310 Ga. App. 684, 713 S.E.2d 874 (2011) (decided under former O.C.G.A. § 15-11-2).

Failure to seek family counseling. — Clear and convincing evidence authorized the juvenile court to find that a child was currently deprived because the child was without the care necessary for the child's mental or emotional health; although the father argued that his completion of the case plan goals eliminated the original causes of the deprivation, the failure to complete family counseling continued the deprivation. In the Interest of H. J., 313 Ga. App. 255, 721 S.E.2d 197 (2011) (decided under former O.C.G.A. § 15-11-2).

Deprivation of adopted child. — In a deprivation case involving a nine-year-old adopted child, there was clear and convincing evidence establishing that the child was deprived by both parents based on one parent's sexual abuse of the child and the other parent's failure to protect the child from such abuse. In the Interest of B.H., 295 Ga. App. 297, 671 S.E.2d 303 (2008) (decided under former O.C.G.A. § 15-11-2).

Termination for continuing deprivation. — Since there was a prior hearing in which the appellant's children were determined to be "deprived," and in the termination hearing, the judge made explicit findings of fact concerning events since the original hearing and concluded

that the conditions and causes of the deprivation were likely to continue and would not be remedied and that by reason thereof the children were suffering and would probably suffer serious physical, mental, moral, or emotional harm, an order of termination was proper. Wynn v. Department of Human Resources, 149 Ga. App. 559, 254 S.E.2d 883 (1979) (decided under former Code 1933, § 24A-401).

Court of Appeals of Georgia rejected a parent's challenge to the sufficiency of the evidence supporting an order terminating that parent's parental rights as the evidence showed that the parent failed to: (1) ensure that the child's educational needs were met; (2) safeguard the child from a sexually abusive relative; (3) maintain regular contact with the child; and (4) maintain adequate and stable housing and employment. Thus, because the child had been in foster care for three years prior to the termination hearing, had bonded with them and expressed a desire to be adopted by them, and the foster parents stood ready to adopt, termination was in the child's best interest. In the Interest of K.A.C., 290 Ga. App. 310, 659 S.E.2d 703 (2008) (decided under former O.C.G.A. § 15-11-2).

In a termination of parental rights proceeding, the evidence showed that the child's deprivation was likely to continue under former O.C.G.A. §§ 15-11-2 and 15-11-94 (see now O.C.G.A. §§ 15-11-2, 15-11-310, 15-11-311, and 15-11-320) as the mother's sobriety was recent, her compliance with the drug treatment was mandatory to avoid jail, she failed to adequately support the child, her testimony in the termination hearing was evasive, she relinquished and lost custody of her two other children, she made no efforts whatsoever to contact or visit the child until the child was nine months old, and she was willing to reconcile with the father, who was also addicted to methamphetamine and had not completed any type of drug treatment. In the Interest of Z. P., 314 Ga. App. 347, 724 S.E.2d 48 (2012) (decided under former O.C.G.A. § 15-11-2).

Sexual abuse. — Evidence was sufficient to support the trial court's determination that the children were deprived within the meaning of former paragraph (8) of O.C.G.A. § 15-11-2 (see now O.C.G.A. §§ 15-11-2 and 15-11-107) since medical evidence showed that the children had been sexually abused. In re J.E.L., 189 Ga. App. 203, 375 S.E.2d 490 (1988) (decided under former O.C.G.A. § 15-11-2).

After finding there was clear and convincing evidence the father had molested the child, the trial court did not abuse the court's discretion by considering the evidence and deciding that the court had no choice but to protect the child by removing custody from the mother as well as the father since the mother refused to believe that the father had molested the child and was unwilling to remove the child from the danger presented by living with the father. In re B.H., 190 Ga. App. 131, 378 S.E.2d 175 (1989) (decided under former O.C.G.A. § 15-11-2).

Finding that the father had sexually molested his youngest daughter in the presence of his eldest child along with expert testimony that the father was not responding to therapy provided clear and convincing evidence that the children were deprived due to parental misconduct and that the cause of that deprivation was likely to continue, warranting termination of the father's parental rights. In re R.E., 207 Ga. App. 178, 427 S.E.2d 512 (1993) (decided under former O.C.G.A. § 15-11-2).

Juvenile court's finding that there was clear and convincing evidence of deprivation was supported by the record because, in addition to the evidence that the minor child's legal father and the child's stepmother were touching the child inappropriately, there was evidence that the child was sexually abused by the legal father's cousins, and, based on the legal father's testimony, it did not appear that the legal father believed the child or that the father would protect the child from these cousins in the future. C.A.L. v. State, 307 Ga. App. 658, 705 S.E.2d 885 (2011) (decided under former O.C.G.A. § 15-11-2).

There was sufficient evidence to support a juvenile court's finding that two children and their younger siblings were deprived because the evidence showed that the father abused one of the children by forcing

Deprivation (Cont'd)
2. Deprivation Found (Cont'd)

her to have sexual intercourse with him and that he also abused the second child by forcing her to fully undress and touching her breasts and buttocks in an inappropriate manner; the father admitted to those actions before later recanting, and several witnesses testified that the mother admitted to catching the father having sexual intercourse with the first child and doing nothing to stop it. As to the younger siblings, the juvenile court was authorized to find that the younger siblings were also deprived; even without direct testimony as to the effect on the younger siblings, the juvenile court was authorized to infer from the evidence that the sexual abuse of the children in the home had an adverse effect on the younger siblings. In the Interest of S.B., 312 Ga. App. 180, 718 S.E.2d 49 (2011) (decided under former O.C.G.A. § 15-11-2).

Deprivation circumstances authorize removal of child from parent's custody. — Evidence of the father's unfitness, his relationship with the children, and his abandonment of the children are sufficient to authorize a finding that the best interest of the children would not be served by placing the children in his custody. Milford v. Maxwell, 140 Ga. App. 85, 230 S.E.2d 93 (1976) (decided under former Code 1933, § 24A-401).

Evidence which established that the parents, both substance abusers, failed to provide proper parental care for their child, that the child suffered health problems as a result of the parent's neglect, and the parents' own admissions that they were incapable of providing for their child financially were sufficient for the juvenile court to find by clear and convincing evidence that the child was a "deprived child." In re C.N.G., 204 Ga. App. 239, 419 S.E.2d 42 (1992) (decided under former O.C.G.A. § 15-11-2).

There was no merit in the mother's claim that the juvenile court erred in finding the child deprived because there was clear and convincing evidence that the acts complained of negatively impacted the child. The mother correctly argues that a deprivation petition brought under former O.C.G.A. § 15-11-2(8)(A) (see now O.C.G.A §§ 15-11-2 and 15-11-107) focuses upon the needs of the child regardless of the parental fault. However, the mother's fitness to parent is nonetheless in issue. Pertinently, it is undisputed in the evidence that being left at home alone had frightened the child; that the child markedly improved in school after the child's removal from the home; and that the mother was in complete noncompliance with the safety plan that she had signed. In the Interest of D.C., 268 Ga. App. 882, 602 S.E.2d 885 (2004) (decided under former O.C.G.A. § 15-11-2).

Intervention of social worker did not preclude deprivation. — Intense supervision of mother and her child by the mother's caseworker did not satisfy the care and control requirements of the law; although the intervention of the caseworker prevented the child from suffering any lasting harm, this did not preclude the child from being classified as deprived. Jones v. Department of Human Resources, 155 Ga. App. 371, 271 S.E.2d 27 (1980) (decided under former Code 1933, § 24A-401).

Parental decision to entrust child to caretakers was not deprivation. — Trial court erred in concluding that a child was deprived since the evidence showed that the child's mother exercised good parental judgment in temporarily placing the child with caretakers and showed that while in their care, all of the child's physical, mental, and emotional needs were met. In the Interest of C.C., 249 Ga. App. 101, 547 S.E.2d 738 (2001) (decided under former O.C.G.A. § 15-11-2).

Parental decision to continue to live with abuser. — As mother contravened the trial court's order by allowing the man who molested the mother's older child to continue living with her, the mother's younger child was deprived under former O.C.G.A. § 15-11-2(8)(A) (see now O.C.G.A. §§ 15-11-2 and 15-11-107) as the child was without proper parental care or control necessary for the child's physical, mental, or emotional health. In the Interest of K.C.H., 257 Ga. App. 529, 571 S.E.2d 515 (2002) (decided under for-

mer O.C.G.A. § 15-11-2).

Mother's past behavior relevant. — In deciding whether children were deprived, under former O.C.G.A. § 15-11-2(8)(A) (see now O.C.G.A. §§ 15-11-2 and 15-11-107), it was proper for a trial court to consider evidence of the mother's past conduct in deciding the likelihood that such conduct would continue in the future. In the Interest of L.F., 275 Ga. App. 247, 620 S.E.2d 476 (2005) (decided under former O.C.G.A. § 15-11-2).

Evidence sufficient for finding of deprivation. — See In re J.R., 202 Ga. App. 418, 414 S.E.2d 540 (1992); In re W.J.G., 216 Ga. App. 168, 453 S.E.2d 768 (1995); In re S.S., 232 Ga. App. 287, 501 S.E.2d 618 (1998); In the Interest of S.B., 242 Ga. App. 184, 528 S.E.2d 278 (2000); In the Interest of W.P.H., 249 Ga. App. 890, 549 S.E.2d 513 (2001) (decided under former O.C.G.A. § 15-11-2).

Juvenile court's termination of parental rights over the child was proper pursuant to former O.C.G.A. § 15-11-94 (see now O.C.G.A. §§ 15-11-310, 15-11-311, and 15-11-320) when the parent's lack of proper parental care or control amounted to deprivation of the child under former O.C.G.A. § 15-11-2 (see now O.C.G.A. §§ 15-11-2), the parent failed to establish a bond with the child or substantially complete the goals of the parent's reunification plan, and the parent did not provide support to the child under O.C.G.A. § 19-7-2; further, the deprivation was deemed likely to continue and likely to result in harm to the child, and the child's best interest was served by termination of the parent's rights as the child had formed a bond with the foster parent. In the Interest of J.D., 280 Ga. App. 861, 635 S.E.2d 226 (2006) (decided under former O.C.G.A. § 15-11-2).

Juvenile court's deprivation finding entered against a parent was upheld on appeal given that the parent: (1) waived any claim of error to evidence submitted by the guardian ad litem during an ex parte meeting; and (2) failed to show any harm from the denial of a motion to continue the deprivation hearing, despite becoming ill during the proceedings, as the hearing had nearly concluded and no other evidence was to have been presented. In the Interest of S.P., 282 Ga. App. 82, 637 S.E.2d 802 (2006) (decided under former O.C.G.A. § 15-11-2).

Parent's challenge to the finding of deprivation by the juvenile court was rejected given clear and convincing evidence of a prior molestation by the parent's then live-in boyfriend and allegations of a subsequent molestation by the parent's current live-in boyfriend, which the parent refused to believe; these circumstances supported a finding that the parent failed to protect the child from emotional, if not physical, harm, and thus the child was deprived. In the Interest of S.V., 285 Ga. App. 772, 648 S.E.2d 109 (2007) (decided under former O.C.G.A. § 15-11-2).

Department of family and children services established that a parent's children were deprived under former O.C.G.A. § 15-11-94(b)(4)(A)(i) (see now O.C.G.A. § 15-11-310) with the following evidence: (1) the parent was not receiving drug treatment, had no stable housing, and had paid no child support; (2) the parent had not received mandated drug treatment or paid any child support; (3) the parent admitted having no suitable housing at the time the termination petition was filed, and the parent's post-petition acquisition of adequate housing was based solely on the ongoing good graces of the parent's new romantic companion, who was married to someone else. In the Interest of P. D. W., 296 Ga. App. 189, 674 S.E.2d 338 (2009) (decided under former O.C.G.A. § 15-11-2).

Trial court's findings that a parent's children were deprived were supported by clear and convincing evidence; one child's bed-wetting and both children's excessive hunger were being punished with methods found inappropriate or abusive. Moreover, the parent was uncooperative and directed the children to be uncooperative. In the Interest of Z. D., 296 Ga. App. 389, 674 S.E.2d 630 (2009) (decided under former O.C.G.A. § 15-11-2).

As a parent's children had previously been deemed deprived, and the trial court was entitled to consider the fact that the parent had not completed a case plan as evidence that the children's deprivation was likely to continue if the children were returned to the parent, the evidence was

Deprivation (Cont'd)
2. Deprivation Found (Cont'd)

sufficient to support the trial court's findings of deprivation under former O.C.G.A. § 15-11-2(8)(A) (see now O.C.G.A. §§ 15-11-2 and 15-11-107). In re J. A., 298 Ga. App. 11, 679 S.E.2d 52 (2009) (decided under former O.C.G.A. § 15-11-2).

Juvenile court did not err in finding that an infant was deprived because a rational trier of fact could have found by clear and convincing evidence that the infant was deprived and that the deprivation was a result of the mother's parental misconduct or incapability when the infant was sexually abused during a time period in which the infant was in the care of the mother and father; the juvenile court was not required to determine which of the parents was responsible for the harm to the infant but that pursuant to former O.C.G.A. § 15-11-2(8) (see now O.C.G.A. §§ 15-11-2 and 15-11-107), the infant was without proper parental care or control, subsistence, education as required by law, or other care or control necessary for the child's physical, mental, or emotional health or morals, which was clearly shown based on the infant's being sexually abused while in the mother's care. In the Interest of K. L., 300 Ga. App. 557, 685 S.E.2d 464 (2009) (decided under former O.C.G.A. § 15-11-2).

Evidence was sufficient to sustain a juvenile court's determination that a child was deprived by the father because the child's mother presented a danger to the child, and the father deprived the child by failing to protect the child from the mother, who had chronic substance abuse problems and an extensive history of criminal activity; there was testimony that the father admitted that the father understood the danger and threat that the mother posed to the mother's children and that the father was permitting the mother to have contact with the child, despite the danger that the mother presented to the child, and given the conflicts in the testimony, the juvenile court was entitled to conclude that the father was dishonest in the father's testimony and was authorized to infer from the father's dishonesty that the father had permitted the child to have contact with the mother and that the father put the interests of the mother ahead of the best interest of the child. In the Interest of C.B., 308 Ga. App. 158, 706 S.E.2d 752 (2011) (decided under former O.C.G.A. § 15-11-2).

Evidence supported a juvenile court's order finding a parent's child to be deprived, as the parent failed to obtain stable housing or a job, and relied on others for transportation; moreover, the parent had failed to maintain meaningful contact with the child, admitting that the parent was emotionally unable to do so. In the Interest of D. S., 316 Ga. App. 296, 728 S.E.2d 890 (2012) (decided under former O.C.G.A. § 15-11-2).

Parental mental illness. — Evidence was sufficient to support a juvenile court's finding that a child was deprived within the meaning of former O.C.G.A. § 15-11-2(8)(A) (see now O.C.G.A. §§ 15-11-2 and 15-11-107) since: (1) the mother suffered from a severe psychological disorder; (2) the mother could not care for the child without daily supervision; and (3) the mother's mental disorder was potentially dangerous to the child. In the Interest of D.L.W., 264 Ga. App. 168, 590 S.E.2d 183 (2003) (decided under former O.C.G.A. § 15-11-2).

Juvenile court did not err in considering the mother's testimony in determining whether her child was deprived, even though the juvenile court had previously found her mentally incompetent, as the juvenile court was authorized to consider any testimony, including that of the allegedly impaired parent, in determining the central issue of whether the parent was able to adequately provide for the child's needs; also, consideration of the mother's testimony supported the findings of the psychologist who testified that the mother's multiple mental disorders interfered with her ability to adequately care for her child. In the Interest of B.B., 268 Ga. App. 603, 602 S.E.2d 330 (2004) (decided under former O.C.G.A. § 15-11-2).

Inadequate housing and employment. — Court properly found that a child was deprived and terminated a mother's parental rights since the mother lacked permanent housing, the state had no verification that she was employed, she

was in denial about her mental health condition, and she refused all treatment. In the Interest of B.B., 268 Ga. App. 858, 603 S.E.2d 333 (2004) (decided under former O.C.G.A. § 15-11-2).

Court noting prior deprivation proceedings. — Finding of deprivation was supported by the court taking judicial notice of prior deprivation proceedings before the same court relating to the parent's two older children. In the Interest of A.B., 285 Ga. App. 288, 645 S.E.2d 716 (2007) (decided under former O.C.G.A. § 15-11-2).

Parental drug abuse. — Minor child was properly found to be deprived under former O.C.G.A. § 15-11-2(8)(A) (see now O.C.G.A. §§ 15-11-2 and 15-11-107) based on the unrehabilitated drug abuse under former O.C.G.A. § 15-11-94(b)(4)(B)(ii) (see now O.C.G.A. § 15-11-310) by the mother, including during the pregnancy with the child, the juvenile court could properly infer an adverse impact on the child; the juvenile court was entitled to reject the mother's testimony that the mother had given up drugs, particularly in light of a positive drug screen just two months before the deprivation hearing and the lack of treatment. In the Interest of N.H., 297 Ga. App. 344, 677 S.E.2d 399 (2009) (decided under former O.C.G.A. § 15-11-2).

Juvenile court did not err in granting a motion filed by a county department of family and children services to extend the department's temporary custody of a mother's children because clear and convincing evidence supported the juvenile court's conclusion that the children remained deprived; there was evidence that the mother was a chronic drug user who remained unrehabilitated even after her children had been removed from her custody, and the evidence of chronic unrehabilitated drug use, along with the evidence that the mother had not completed her reunification case plan goals, authorized the juvenile court to conclude that the children would continue to be deprived if the children were returned to the mother. In the Interest of Q.A., 306 Ga. App. 386, 702 S.E.2d 701 (2010) (decided under former O.C.G.A. § 15-11-2).

Inadequate housing. — In a termination of parental rights proceeding, clear and convincing evidence showed the children were presently deprived, under former O.C.G.A. §§ 15-11-2(8)(A) and 15-11-94(b)(4)(A)(i) (see now O.C.G.A. §§ 15-11-2, 15-11-107, and 15-11-310), because the children's father said the father could not care for the children at the time of the termination hearing and had no stable housing. In the Interest of E.G., 315 Ga. App. 35, 726 S.E.2d 510 (2012) (decided under former O.C.G.A. § 15-11-2).

3. Deprivation Not Found

No showing of abandonment or deprivation found. — See In re J.C.P., 167 Ga. App. 572, 307 S.E.2d 1 (1983); In re E.R.D., 172 Ga. App. 590, 323 S.E.2d 723 (1984); In re D.S., 217 Ga. App. 29, 456 S.E.2d 715 (1995); In the Interest of M.L.C., 249 Ga. App. 435, 548 S.E.2d 137 (2001) (decided under former O.C.G.A. § 15-11-2).

Evidence insufficient for finding of deprivation. — Evidence was uncontroverted that the appellant had taken care of her child to the best of her ability and that the child's basic physical, mental, and emotional needs had been met by the appellant; thus, while the court did not condone the appellant's transitory lifestyle, her previous drug use, her relationship with an abusive husband, and her leaving the child unsupervised in her car for even a short period of time, such conduct alone was not clear and convincing evidence that the child was deprived under the definition set forth in O.C.G.A. § 15-11-2(8)(A) and that temporarily removing custody of the child from the appellant would be best for the child's welfare. In re D.E.K., 236 Ga. App. 574, 512 S.E.2d 690 (1999) (decided under former O.C.G.A. § 15-11-2).

Trial court improperly concluded, based on mischaracterization of evidence and reliance on inadmissible evidence, that a father's abuse of the mother rendered the father's children by a previous relationship deprived. In the Interest of C.D.E., 248 Ga. App. 756, 546 S.E.2d 837 (2001) (decided under former O.C.G.A. § 15-11-2).

Trial court erred in finding that a child was deprived pursuant to former O.C.G.A. § 15-11-2(8)(A) (see now O.C.G.A.

Deprivation (Cont'd)
3. Deprivation Not Found (Cont'd)

§§ 15-11-2 and 15-11-107), and in ordering that temporary custody be placed in the child's aunt, as the trial court's order reflected that the order was based on a stipulation of deprivation, which was inaccurate, and the mother had only stipulated to a grant of temporary custody for a short time, but had not conceded the issue of deprivation; moreover, the court's order was also based on a mischaracterization and misstatement of the evidence, as well as on unsubstantiated hearsay, rendering the evidence insufficient to support the finding of deprivation. In the Interest of S.J., 270 Ga. App. 598, 607 S.E.2d 225 (2004) (decided under former O.C.G.A. § 15-11-2).

Trial court erred in finding that the child was deprived as defined in former O.C.G.A. § 15-11-2 and in ordering continued custody in the Department of Family and Children Services because there was no competent evidence of the mother's present mental impairment, evidence did not substantiate the finding that the child was at risk for child abuse, and none of the evidence presented reflected poorly on the mother's parental fitness. In the Interest of K.S., 271 Ga. App. 891, 611 S.E.2d 150 (2005) (decided under former O.C.G.A. § 15-11-2).

Juvenile court erred in finding that two children were deprived since: (1) one child's appointment with a therapist was missed due to transportation issues and was not timely rescheduled because the mother did not have a telephone; (2) there was no evidence that the mother's occasional drug use adversely affected the children; (3) the mother denied allegations that a child had been crying for long periods of time, that she had shouted at the child to "shut the hell up," and that men were coming in and out of the apartment at all hours; and (4) there was no indication that additional drug screenings and assessments were required under a protective order. In the Interest of A.J.I., 277 Ga. App. 226, 626 S.E.2d 195 (2006) (decided under former O.C.G.A. § 15-11-2).

Juvenile court's order finding that a mother deprived her child, and an award of temporary custody to the child's paternal grandparents, was reversed because: (1) the order was not supported by sufficient evidence; (2) evidence concerning the amount of support the mother provided at a time when she was a non-custodial parent became largely irrelevant once the prior temporary custody order expired and she regained custody; (3) once this occurred, a new deprivation proceeding had to be commenced, requiring proof of current deprivation, and such was not proven; (4) the record was ambiguous regarding the finding that the mother's current employment was insufficient to cover her monthly expenses; and (5) the mother was taking steps to care for the child's needs, such as ensuring that the child's Medicaid eligibility was in proper order, enrolling the child in pre-kindergarten, and scheduling dental and medical appointments. In the Interest of G.S., 279 Ga. App. 89, 630 S.E.2d 607 (2006) (decided under former O.C.G.A. § 15-11-2).

Juvenile court erred in extending temporary custody in the Department of Family and Children Services for an additional 12 months as: (1) the child's father was found to be a fit parent and was fully able to assume custody; (2) there was no testimony that the father was not capable of taking care of the child; and (3) the father completed every aspect of the case plan and was eligible for day-care assistance; thus, the evidence presented at the hearing fell far short of meeting the clear and convincing standard necessary to support a finding of deprivation. In the Interest of J.P., 280 Ga. App. 100, 633 S.E.2d 442 (2006) (decided under former O.C.G.A. § 15-11-2).

Juvenile court erred in finding that a child was deprived under former O.C.G.A. § 15-11-2(8)(A) (see now O.C.G.A. §§ 15-11-2 and 15-11-107) because the evidence demonstrated that the mother properly cared for the child and that the child's needs were being met; the only reason a county department of family and children services (DFACS) filed the deprivation petition was because the mother was in DFACS care and because of possible future deprivation, but that was not the standard since the state had to pres-

ent evidence of present deprivation, which the state failed to do. In the Interest of S. D., 316 Ga. App. 86, 728 S.E.2d 749 (2012) (decided under former O.C.G.A. § 15-11-2).

Evidence did not support a finding of deprivation because there was no psychological evaluation included in the record, or reports from treating physicians, or medical reports indicating any mental impairment or how that mental impairment might limit the mother's parental abilities, and the only other evidence in this regard was from the grandmother about the mother having ADHD, learning disabilities, and being "mildly retarded." In the Interest of D. W., 318 Ga. App. 725, 734 S.E.2d 543 (2012).

Juvenile court erred in finding that the child was deprived as the mother and the child lived with the maternal grandmother, there was no evidence that the mother was unable to care for the child, and the isolated instance of the child being without supervision, caused by the mother's temporary hospitalization and the grandmother being away, did not constitute parental unfitness authorizing a finding of deprivation and severance of the parent-child relationship. In the Interest of L. K., 322 Ga. App. 163, 744 S.E.2d 352 (2013) (decided under former O.C.G.A. § 15-11-2).

Juvenile court erred by finding that a mother's three children were deprived under O.C.G.A. § 15-11-2(8)(A) because the case lacked clear and convincing evidence to support that finding since only one incident of domestic violence occurred in front of the children, and the mother responded appropriately by calling the police. In the Interest of H. B., 324 Ga. App. 36, 749 S.E.2d 38 (2013) (decided under former O.C.G.A. § 15-11-2).

Mother was entitled to reversal of an order finding the child deprived because the only witness was the child's case manager, who testified that the child was taken into custody because the mother's seven other children were previously adjudicated deprived and there was concern with regard to mental health issues and housing, both of which had been dealt with by the mother. In the Interest of R. S. T., 323 Ga. App. 860, 748 S.E.2d 498 (2013) (decided under former O.C.G.A. § 15-11-2).

Cluttered and dirty home insufficient for deprivation. — Juvenile court erred in finding that a child was deprived because although the mother's home appeared cluttered and dirty, the environment was otherwise suitable; moreover, for about three weeks prior to the hearing, the mother showed continued improvement in achieving the goal of the safety plan, which appeared to be to provide a suitable environment for the child. In the Interest of T. L., 269 Ga. App. 842, 605 S.E.2d 432 (2004) (decided under former O.C.G.A. § 15-11-2).

Criticism of child insufficient for deprivation. — While there was evidence in a child deprivation proceeding of a stepfather's anger and verbal aggression towards State of Georgia employees and that the child at issue was often quiet and withdrawn while in the mother's and stepfather's care, an order finding the child deprived and removing the child from the mother was reversed since insufficient evidence existed to establish deprivation. The state failed to provide clear and convincing evidence to support the deprivation finding since the state presented evidence of only one episode where the stepfather criticized the child. In the Interest of D.S., 283 Ga. App. 767, 642 S.E.2d 431 (2007) (decided under former O.C.G.A. § 15-11-2).

Single episode of pulling gun on parent insufficient for deprivation. — Juvenile court erred by finding that clear and convincing evidence existed supporting a finding that three children were deprived within the meaning of former O.C.G.A. § 15-11-2(8)(A) (see now O.C.G.A. §§ 15-11-2 and 15-11-107) because a single incident, albeit highly inappropriate, wherein the mother's boyfriend pulled a gun on the mother was insufficient and did not demonstrate abuse of the children. In the Interest of S. M., 321 Ga. App. 827, 743 S.E.2d 497 (2013) (decided under former O.C.G.A. § 15-11-2).

No proof of harm to child. — Finding that a one-year-old child was deprived was reversed on appeal because the mother's parenting ability had never been called into question, and the only other

Deprivation (Cont'd)
3. Deprivation Not Found (Cont'd)

issue identified in the record was a single altercation between the father and mother, who no longer resided together and that incident did not involve abuse of the child, who was two months old at the time, and the record contained no allegation nor proof of harm to the child. In the Interest of R. L., 321 Ga. App. 837, 743 S.E.2d 502 (2013) (decided under former O.C.G.A. § 15-11-2).

Domestic abuse insufficient for deprivation. — There was absolutely no basis for the trial court to conclude that a father's abuse of the mother rendered the mother's child by a previous relationship a deprived child at the time of the deprivation hearing since: (1) there was absolutely no evidence presented that the mother was anything other than a fit parent for her children, and the only person who even expressed an opinion on the subject testified that she had no concerns whatsoever about the mother's ability to parent her children; (2) the only basis for asserting that any of the children were deprived was the father's violence toward the mother; and (3) the evidence was undisputed that the mother and father were no longer living together at the time of the deprivation hearing and were in the process of obtaining a divorce. In the Interest of C.D.E., 248 Ga. App. 756, 546 S.E.2d 837 (2001) (decided under former O.C.G.A. § 15-11-2).

It was error to find deprivation under former O.C.G.A. § 15-11-2(8)(A) (see now O.C.G.A. §§ 15-11-2 and 15-11-107) since the trial court relied on a history of domestic violence between the parents, but the only evidence of such history was the hearsay statement of the mother; even if an incident of domestic violence between the parents happened as the child described, there was no evidence that the child was harmed. In the Interest of H.S., 285 Ga. App. 839, 648 S.E.2d 143 (2007) (decided under former O.C.G.A. § 15-11-2).

Requiring financial assistance insufficient for deprivation. — Trial court erred in finding the father's child was deprived and in transferring the child to the custody of the county child welfare agency. The child was not "deprived" within the meaning of that term under Georgia law as clear and convincing evidence did not show that the child was without proper parental care or control, subsistence, education as required by law, or other care or control necessary for the child's physical, mental, or emotional health or morals, although the record did show that the parent at times struggled to provide for the child and needed the financial assistance of others from time to time in order to do so. In the Interest of E.M., 264 Ga. App. 277, 590 S.E.2d 241 (2003) (decided under former O.C.G.A. § 15-11-2).

Reading ability of parents as justification for deprivation. — Trial court's judgment finding that a mother's children continued to be deprived was reversed since, although the trial court based the court's finding partly on the mother's reading level, the case plan only required that the mother enroll and participate in literacy training, not that she reach a certain reading milestone. The mother substantially complied with the goals of the case plan, and there was no evidence of continued deprivation presented to reach the clear and convincing threshold. In the Interest of C.F., 266 Ga. App. 325, 596 S.E.2d 781 (2004) (decided under former O.C.G.A. § 15-11-2).

Parent's Munchausen Syndrome by Proxy insufficient for deprivation. — Trial court erred in finding a child deprived due to her mother's Munchausen Syndrome by Proxy (MSBP) since: (1) the child's symptoms were witnessed by medical professionals; (2) the child's symptoms began to subside before the child was removed from her parents; (3) the mother's therapist did not diagnose her with MSBP; (4) the trial court's decision was based on experts' opinions that were based on incorrect assumptions; and (5) the child services department's expert's opinion did not show that the mother had abused the child by subjecting her to unnecessary medical treatment or that she was a deprived child. In the Interest of A.B., 267 Ga. App. 466, 600 S.E.2d 409 (2004) (decided under former O.C.G.A. § 15-11-2).

No deprivation of special needs child. — Although a child's disability, when coupled with a parent's limitations, might form a legitimate basis for finding the child to be deprived, when the evidence presented against that parent did not meet the definition of "deprived," and no evidence was presented that the parent was incapable of meeting the child's special needs, clear and convincing evidence was lacking to support a deprivation finding entered against that parent. In the Interest of D.N.K., 282 Ga. App. 430, 638 S.E.2d 861 (2006) (decided under former O.C.G.A. § 15-11-2).

Improper actions of grandparent not deprivation. — Juvenile court erred when the court entered an order finding a young child deprived as defined by former O.C.G.A. § 15-11-2(8)(A) (see now O.C.G.A. §§ 15-11-2 and 15-11-107); although the child's grandparent acted improperly in yelling at the child and pushing the child's face into the side of a car, there was no evidence of any physical or emotional harm to the child, the incident was isolated, and there was no evidence that the grandparent had any past mental or emotional problems. In the Interest of C.L.Z., 283 Ga. App. 247, 641 S.E.2d 243 (2007) (decided under former O.C.G.A. § 15-11-2).

Evidence of deprivation supports finding that child will suffer serious harm. — Same facts that support a juvenile court's conclusion that a child is deprived under former O.C.G.A. § 15-11-2(8)(A) (see now O.C.G.A. §§ 15-11-2 and 15-11-107), and that the deprivation is likely to continue if placed with the parent, also support a conclusion that continued deprivation would likely cause the child serious harm under former O.C.G.A. § 15-11-94(b)(4)(A) (see now O.C.G.A. § 15-11-310). In re A. R., 302 Ga. App. 702, 691 S.E.2d 402 (2010) (decided under former O.C.G.A. § 15-11-2).

Willfulness in abuse by babysitter. — Evidence of willfulness necessary to sustain conviction under former O.C.G.A. § 15-11-2(8)(A) (see now O.C.G.A. §§ 15-11-2 and 15-11-107), the contributing to the deprivation of a minor statute, was shown since the evidence established that the defendant babysitter knew that the infant needed immediate medical attention, and that the babysitter failed to seek medical treatment for the infant. Hoang v. State, 250 Ga. App. 403, 551 S.E.2d 813 (2001) (decided under former O.C.G.A. § 15-11-2).

Psychological evaluation. — In determining that children were deprived, the trial court did not err in 2007 in considering a deposition of a psychologist who had evaluated a parent in 2006; that evaluation contained both an assessment of the parent's parental incompetency at the time of the evaluation and a prediction of the likelihood of future improvement; moreover, the trial court had held evidence open for any additional testimony from the psychologist, although none was presented. In the Interest of T.P., 291 Ga. App. 83, 661 S.E.2d 211 (2008) (decided under former O.C.G.A. § 15-11-2).

Father not found unfit. — Trial court erred in awarding temporary custody of a child to the department of family and children services. While the mother's unfitness due to her drug use was proved by clear and convincing evidence, the trial court did not find that the father's threats to and arguments with the mother and her family members harmed the child and, therefore, the court's findings did not establish the father's unfitness. In the Interest of C.R., 292 Ga. App. 346, 665 S.E.2d 39 (2008) (decided under former Code 1933, § 24A-401).

Inadequate Housing

Evidence of deprived child. — Juvenile court's ruling that a child was deprived under former O.C.G.A. § 15-11-2(8)(A) (see now O.C.G.A. §§ 15-11-2 and 15-11-107) was supported by clear and convincing evidence of deprivation based on evidence of the parent's multiple unconfirmed allegations of sexual abuse and the parent's lack of employment and stable housing. In the Interest of J.S., 295 Ga. App. 861, 673 S.E.2d 331 (2009) (decided under former O.C.G.A. § 15-11-2).

Children had been found to have been deprived due to inadequate housing and the parent's failure to provide adequate support for the children due to the parent's unstable employment. Since, by the

Inadequate Housing (Cont'd)

time of the subsequent termination hearing, the parent had failed to comply with a case plan by staying drug-free, maintaining stable housing and employment, attending weekly Narcotics Anonymous meetings, and paying child support, the conditions leading to the prior unappealed finding of deprivation continued to exist. In the Interest of K.R., 298 Ga. App. 436, 680 S.E.2d 532 (2009) (decided under former O.C.G.A. § 15-11-2).

Evidence that a mother provided her children with inadequate housing for over a year, had been unemployed for over a year, had not completed a budget, and had just applied for public assistance and Social Security benefits was sufficient to support a judgment that the children were deprived under former O.C.G.A. § 15-11-2(8)(A) (see now O.C.G.A. §§ 15-11-2 and 15-11-107). In the Interest of T.V., 302 Ga. App. 124, 690 S.E.2d 457 (2010) (decided under former O.C.G.A. § 15-11-2).

Trial court did not err in terminating a mother's rights to three minor children under former O.C.G.A. § 15-11-94(a) (see now §§ 15-11-310 and 15-11-320) because the children were deprived under former O.C.G.A. § 15-11-2(8)(A) (see now O.C.G.A. §§ 15-11-2 and 15-11-107) as the parents failed to provide the children with adequate and stable housing and financial support, and the mother failed to maintain an emotional bond with the children. In the Interest of T. C., 302 Ga. App. 693, 691 S.E.2d 603 (2010) (decided under former O.C.G.A. § 15-11-2).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, §§ 24A-401, 24A-2301A, 24A-2302A, and 24A-3301, and pre-2000 Code Section 15-11-37, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Court's jurisdiction encompasses deprivation proceedings. — Inasmuch as the juvenile court's jurisdiction encompasses proceedings in which a child was alleged to be deprived, Ga. L. 1971, p. 709, § 1 (see now O.C.G.A. §§ 15-11-211, 15-11-212, and 15-11-215) applied to a "deprived child" as defined in the statute. 1976 Op. Att'y Gen. No. 76-131 (decided under former Code 1933, § 24A-401).

"Deprived child" includes child who is abused, neglected, or exploited. — Although Ga. L. 1974, p. 438, § 1 (see now O.C.G.A. § 19-7-5) did not explicitly mention "deprived" children that definition was certainly inclusive of a child who was abused, neglected, or exploited. 1976 Op. Att'y Gen. No. 76-131 (decided under former Code 1933, § 24A-401).

"Threatened harm to child's welfare" included in "deprived child." — Inasmuch as the court in Elrod v. Department of Family & Children Servs., 136 Ga. App. 251, 220 S.E.2d 726 (1975), spoke of "probable deprivation," "substantial danger," and the "likelihood of substantial threat to a child's physical, mental, moral or emotional well-being," the definitional elements of "deprived child" include "threatened harm to the child's welfare." 1976 Op. Att'y Gen. No. 76-131 (decided under former Code 1933, § 24A-401).

Appointment of guardian in deprivation proceedings. — Under the principle that the law is to be liberally construed toward the protection of the child whose well-being is threatened, deprivation proceedings arising from child abuse and neglect by a parent or caretaker present a conflict of interest wherein the provisions concerning the appointment of a guardian ad litem would apply. 1976 Op. Att'y Gen. No. 76-131 (decided under former Code 1933, § 24A-3301).

15-11-100. Purpose of article.

The purpose of this article is:

(1) To assist and protect children whose physical or mental health and welfare is substantially at risk of harm from abuse, neglect, or exploitation and who may be further threatened by the conduct of others by providing for the resolution of dependency proceedings in juvenile court;

(2) To ensure that dependency proceedings are conducted expeditiously to avoid delays in permanency plans for children;

(3) To provide the greatest protection as promptly as possible for children; and

(4) To ensure that the health, safety, and best interests of a child be the paramount concern in all dependency proceedings.

History. — Code 1981, § 15-11-100, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

Law reviews. — For article, "Georgia's Juvenile Code: New Law for the New Year," see 19 Ga. St. B. J. 13 (Dec. 2013).

JUDICIAL DECISIONS

Cited in In the Interest of K. M., 344 Ga. App. 838, 811 S.E.2d 505 (2018); In the Interest of I. L. M., 304 Ga. 114, 816 S.E.2d 620 (2018).

15-11-100.1. Exemption when governed by Indian Child Welfare Act.

A proceeding under this article shall not be subject to this article to the extent that it is governed by the Indian Child Welfare Act, P.L. 95-608, as amended, Chapter 21 of Title 25 of the United States Code. In those circumstances, compliance with such federal law shall be required.

History. — Code 1981, § 15-11-100.1, enacted by Ga. L. 2019, p. 893, § 2/SB 225.

Effective date. — This Code section became effective May 7, 2019.

RESEARCH REFERENCES

ALR. — Who are "qualified expert witnesses" under Indian Child Welfare Act (ICWA), 25 U.S.C.A. § 1912(e), (f) and state ICWA statutes, requiring certain testimony by such witnesses before foster care placement or termination of parental rights may be ordered, 38 A.L.R.7th Art. 1.

Am. Jur. 2d. — 41 Am. Jur. 2d, Indians; Native Americans, § 99 et seq.

C.J.S. — 42 C.J.S., Indians, § 138 et seq.

15-11-101. Medical and psychological evaluation orders when investigating child abuse and neglect.

(a) If necessary, the investigator of a report of child abuse and neglect may apply to the court for certain medical examinations and evaluations of a child or other children in the household.

(b) Upon a showing of probable cause in an affidavit executed by the applicant, the court may order a physical examination and evaluation of a child or other children in the household by a physician. Such order may be granted ex parte.

(c) Upon a showing of probable cause in an affidavit executed by the applicant and after a hearing, the court may order a psychological or psychiatric examination and evaluation of a child or other children in the household by a psychologist, psychiatrist, or other licensed mental health professional.

(d) Upon a showing of probable cause in an affidavit executed by the applicant and after a hearing, the court may order a forensic examination and evaluation of a child or other children in the household by a psychologist, psychiatrist, or other licensed mental health professional.

(e) Upon a showing of probable cause in an affidavit executed by the applicant and after a hearing, the court may order a physical, psychological, or psychiatric examination of a child's parent, guardian, or legal custodian.

History. — Code 1981, § 15-11-101, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

Cross references. — Persons required to report instances of child abuse, § 19-7-5. Hearsay, T. 24, C. 8. Giving of consent for surgical or medical treatment generally, § 31-9-1 et seq. Right of minor to obtain medical services for treatment of venereal disease on minor's consent alone, § 31-17-7.

RESEARCH REFERENCES

C.J.S. — 43 C.J.S., Infants, § 209 et seq.

U.L.A. — Uniform Juvenile Court Act (U.L.A.) § 28.

ALR. — Defense of infancy in juvenile delinquency proceedings, 83 A.L.R.4th 1135.

15-11-102. Dependency case time limitations.

(a) A preliminary protective hearing shall be held promptly and no later than 72 hours after a child is placed in foster care, provided that, if the 72 hour time frame expires on a weekend or legal holiday, such hearing shall be held on the next day which is not a weekend or legal holiday.

(b) If a child was not taken into protective custody or is released from foster care at a preliminary protective hearing, the following time frames apply:

(1) A petition for dependency shall be filed within 30 days of the child's preliminary protective hearing;

(2) Summons shall be served at least 72 hours before the dependency adjudication hearing;

(3) The dependency adjudication hearing shall be held no later than 60 days after the filing of a petition for dependency; and

(4) If the child's dispositional hearing is not held in conjunction with the dependency adjudication hearing, it shall be held and completed within 30 days after the conclusion of the dependency adjudication hearing.

(c) If a child is not released from foster care at the preliminary protective hearing, the following time frames apply:

(1) A petition for dependency shall be filed within five days of the child's preliminary protective hearing;

(2) Summons shall be served at least 72 hours before the dependency adjudication hearing;

(3) The dependency adjudication hearing shall be held no later than ten days after the filing of a petition for dependency;

(4) DFCS shall submit to the court its written report within 30 days of the date a child who is placed in the custody of DFCS is removed from the home and at each subsequent review of the disposition order. If the DFCS report does not contain a plan for reunification services, a nonreunification hearing shall be held no later than 30 days from the time the report is filed; and

(5) If a dispositional hearing is not held in conjunction with the dependency adjudication hearing, it shall be held and completed within 30 days after the conclusion of the dependency adjudication hearing.

(d) An initial periodic review hearing shall be held within 75 days following a child's removal from his or her home. An additional periodic review shall be held within four months following such initial review.

(e) Permanency plan hearings shall be held no later than 30 days after DFCS has submitted a written report to the court which does not provide a plan for reunification services or:

(1) For children under seven years of age at the time a petition for dependency is filed, no later than nine months after such child is

considered to have entered foster care, whichever comes first. Thereafter a permanency plan hearing shall be held every six months while such child continues in DFCS custody or more frequently as deemed necessary by the court until the court determines that such child's permanency plan and goal have been achieved; or

(2) For children seven years of age and older at the time a petition is filed, no later than 12 months after such child is considered to have entered foster care, whichever comes first. Thereafter a permanency plan hearing shall be held every six months while such child continues in DFCS custody or more frequently as deemed necessary by the court until the court determines that such child's permanency plan and goal have been achieved.

(f) A supplemental order of the court adopting a child's permanency plan shall be entered within 30 days after the court has determined that reunification efforts need not be made by DFCS.

History. — Code 1981, § 15-11-102, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, §§ 24A-1404 and 24A-1701, pre-2014 Code Section 15-11-49, which were subsequently repealed but were succeeded by provisions in this article, are included in the annotations for this Code section. See the Editor's note at the beginning of the chapter.

Notice and hearing requirements were mandatory and must be adhered to in order for the juvenile court to proceed with the adjudicatory hearing. If for some reason the statutes were not, dismissal of the petition would be without prejudice. Sanchez v. Walker County Dep't of Family & Children Servs., 237 Ga. 406, 229 S.E.2d 66 (1976) (decided under former Code 1933, § 24A-1404).

Failure to comply with notice and hearing requirements of the Juvenile Code, after an allegedly deprived child has been taken from the parent's custody, prejudices or injures the rights of the parent, primarily the right to possession of the child under former Code 1933, §§ 74-106, 74-108, and 74-203 (see now O.C.G.A. §§ 19-7-1, 19-7-25, and 19-9-2). Sanchez v. Walker County Dep't of Family & Children Servs., 237 Ga. 406, 229 S.E.2d 66 (1976) (decided under former Code 1933, § 24A-1404).

Failure to comply with time limits requires dismissal. — Time limits established by the General Assembly in the Juvenile Code are jurisdictional and must be strictly adhered to. A failure to comply with the time periods set out in the statute requires dismissal. R.A.S. v. State, 156 Ga. App. 366, 274 S.E.2d 752 (1980), overruled on other grounds, In re R.D.F., 66 Ga. 294, 466 S.E.2d 572 (1996) (decided under former Code 1933, § 24A-1404).

Dismissal without prejudice for violating five day time limit. — In dismissing a deprivation petition because the petition was filed outside of the five-day limit of former O.C.G.A. § 15-11-49(e), the trial court properly made the dismissal without prejudice. The Georgia Supreme Court had stated that in such a case any dismissal for failure to follow one of the procedural rules was without prejudice. In the Interest of E.C., 291 Ga. App. 440, 662 S.E.2d 252 (2008) (decided under former Code 1933, § 24A-1404).

Waiver of requirements of section. — Although the procedural requirements

in parental termination proceedings have been held to be mandatory, such requirements can be waived. Irvin v. Department of Human Resources, 159 Ga. App. 101, 282 S.E.2d 664 (1981) (decided under former Code 1933, § 24A-1404).

Definition of "day." — Word "day," not being qualified, means a calendar or civil day consisting of 24 hours from midnight to midnight. J.B.H. v. State, 139 Ga. App. 199, 228 S.E.2d 189 (1976), overruled on other grounds, In re R.D.F., 266 Ga. 294, 466 S.E.2d 572 (1996) (decided under former Code 1933, § 24A-1404).

15-11-103. Right to attorney.

(a) A child and any other party to a proceeding under this article shall have the right to an attorney at all stages of the proceedings under this article.

(b) The court shall appoint an attorney for an alleged dependent child. The appointment shall be made as soon as practicable to ensure adequate representation of such child and, in any event, before the first court hearing that may substantially affect the interests of such child.

(c) A child's attorney owes to his or her client the duties imposed by the law of this state in an attorney-client relationship.

(d) If an attorney has been appointed to represent a child in a prior proceeding under this chapter, the court, when possible, shall appoint the same attorney to represent such child in any subsequent proceeding.

(e) An attorney appointed to represent a child in a dependency proceeding shall continue the representation in any subsequent appeals unless excused by the court.

(f) Neither a child nor a representative of a child may waive a child's right to an attorney in a dependency proceeding.

(g) A party other than a child shall be informed of his or her right to an attorney prior to any hearing. A party other than a child shall be given an opportunity to:

(1) Obtain and employ an attorney of such party's own choice;

(2) Obtain a court appointed attorney if the court determines that such party is an indigent person; or

(3) Waive the right to an attorney, provided that such waiver is made knowingly, voluntarily, and on the record.

History. — Code 1981, § 15-11-103, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242; Ga. L. 2018, p. 935, § 2/SB 131.

The 2018 amendment, effective July 1, 2018, added the proviso at the end of paragraph (g)(3).

Cross references. — Constitutional guarantee of benefit of counsel, Ga. Const. 1983, Art. I, Sec. I, Para. XIV. Cases in which public defender representation required; timing of representation; juvenile divisions; contract with local govern-

ments, O.C.G.A. § 17-12-32.

Law reviews. — For article discussing due process in juvenile court procedures in California and Georgia, in light of In re Gault, 387 U.S. 1, 87 S. Ct. 1428, 18 L. Ed. 2d 527 (1967), see 8 Ga. St. B. J. 9 (1971). For article, "Termination of Parental Rights: Recent Judicial and Legislative Trends," see 30 Emory L. J. 1065 (1981). For article, "A Child's Right to Legal Representation in Georgia Abuse and Neglect Proceedings," see 10 Ga. St. B. J. 12 (2004). For article, "The Next Generation of Child Advocacy: Protecting the Best Interest of Children by Promoting a Child's Right to Counsel in Abuse and Neglect Proceedings," see 13 Ga. St. B. J. 22 (2007).

For comment on Freeman v. Wilcox, 119 Ga. App. 325, 167 S.E.2d 163 (1969) and a juvenile's right to counsel at pre-adjudicatory stages of juvenile proceedings, see 22 Mercer L. Rev. 597 (1971). For comment on Parham v. J.R., 442 U.S. 584, 99 S. Ct. 2493, 61 L. Ed. 2d 101 (1979); Secretary of Pub. Welfare v. Institutionalized Juveniles, 442 U.S. 640, 99 S. Ct. 2523, 61 L. Ed. 2d 142 (1979), regarding juvenile commitment to state mental hospitals upon application of parents or guardians, see 29 Emory L. J. 517 (1980). For comment, "Seen But Not Heard: Advocating for the Legal Representation of a Child's Expressed Wish in Protection Proceedings and Recommendations for New Standards in Georgia," see 48 Emory L. J. 1431 (1999).

JUDICIAL DECISIONS

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General Consideration

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 24A-2001, pre-2000 Code Section 15-11-30 and pre-2014 Code Section 15-11-6, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Due process requires notice of right to counsel. — Due process clause of U.S. Const., amend. 14, requires that in respect of proceedings to determine delinquency which may result in commitment to an institution in which the juvenile's freedom is curtailed, the child and the child's parents must be notified of the child's right to be represented by counsel retained by the parents, or if the parents are unable to afford counsel, that counsel will be appointed to represent the child. Freeman v. Wilcox, 119 Ga. App. 325, 167 S.E.2d 163 (1969), disapproved in Riley v. State, 237 Ga. 124, 226 S.E.2d 922 (1976), to the extent that no automatic exclusionary rule should be applied to incriminating statements made by a juvenile whose parents were not separately advised of the right to counsel (decided under former Code 1933, § 24A-2001).

Right to counsel at delinquency hearing. — General Assembly intended that in a juvenile court a child is of right entitled to counsel at a hearing which covers a determination by the court concerning the existence of delinquency by reason of the violation of probation conditions. K.E.S. v. State, 134 Ga. App. 843, 216 S.E.2d 670 (1975) (decided under former Code 1933, § 24A-2001).

No right to counsel before judicial citizens review panel. — Former O.C.G.A. § 15-11-6(b) (see now O.C.G.A. §§ 15-11-103, 15-11-402, and 15-11-475) did not apply to reviews by a judicial citizens review panel as the proceedings mentioned in former § 15-11-6(b) were proceedings before the juvenile court; the citizen's review panel's findings of fact and recommendations are not legal evidence as the panel were not a court of record and the panel's actions were not necessarily in compliance with regard to legal due process considerations. In the Interest of

K.M.C., 273 Ga. App. 276, 614 S.E.2d 896 (2005) (decided under former O.C.G.A. § 15-11-6).

Parent entitled to representation at all stages of deprivation proceeding. — Under former O.C.G.A. § 15-11-6(b), a parent was entitled to representation at all stages of the proceedings alleging deprivation. In the Interest of A. R., 296 Ga. App. 62, 673 S.E.2d 586 (2009) (decided under former O.C.G.A. § 15-11-6).

Parent entitled to effective representation. — Mother was entitled to effective representation in termination hearing. In re A.H.P., 232 Ga. App. 330, 500 S.E.2d 418 (1998) (decided under former O.C.G.A. § 15-11-30).

Right applies to informal detention hearing and other stages. — Accused juvenile was entitled to counsel at an "informal detention hearing" required by Ga. L. 1971, p. 709, § 1 (see now O.C.G.A. § 15-11-60), or at any of the other stages of any proceedings alleging delinquency, unruliness, and deprivation. A.C.G. v. State, 131 Ga. App. 156, 205 S.E.2d 435 (1974) (decided under former Code 1933, § 24A-2001).

Juvenile entitled to principles necessary for fair trial. — Juvenile charged with "delinquency" is entitled by right to have the court apply those common-law jurisprudential principles which experience and reason have shown are necessary to give the accused the essence of a fair trial. T.L.T. v. State, 133 Ga. App. 895, 212 S.E.2d 650 (1975) (decided under former Code 1933, § 24A-2001).

Ingredients of fair trial. — To give one accused in a juvenile proceeding a fair trial, the trial must include such ingredients as the presumption of innocence, the requirement that if the conviction is based entirely upon circumstantial evidence then the proved facts shall exclude every other reasonable hypothesis save that of guilt, and the necessity of producing independent corroborative evidence to that of an accomplice for a finding of guilt when based upon the latter's testimony. T.L.T. v. State, 133 Ga. App. 895, 212 S.E.2d 650 (1975) (decided under former Code 1933, § 24A-2001).

Cannot reverse delinquency adjudication unless deprivation of counsel harmful. — Although an accused is entitled to counsel at the stage known as "a detention hearing", there is no authority for reversing an adjudication of delinquency after a fair trial with legal representation because of lack of counsel at the detention hearing, unless it appears that deprivation of counsel at that stage resulted in harm to the juvenile. T.K. v. State, 126 Ga. App. 269, 190 S.E.2d 588 (1972) (decided under former Code 1933, § 24A-2001).

Juvenile Code recognizes that a parent is a "party" to proceedings involving the parent's child. Sanchez v. Walker County Dep't of Family & Children Servs., 237 Ga. 406, 229 S.E.2d 66 (1976) (decided under former Code 1933, § 24A-2001).

Physical presence of parent cannot be equated with meaningful representation. K.E.S. v. State, 134 Ga. App. 843, 216 S.E.2d 670 (1975) (decided under former Code 1933, § 24A-2001).

Indigent putative father's performance of the duties of a parent does not control the determination of whether he is entitled to appointed representation; the crucial inquiry is whether the putative father was a "party" to any of the proceedings within the meaning of the former statute. Wilkins v. Georgia Dep't of Human Resources, 255 Ga. 230, 337 S.E.2d 20 (1985) (decided under former O.C.G.A. § 15-11-30).

Former Code section did not imply that foster parents may have certain rights. Drummond v. Fulton County Dep't of Family & Children Servs., 237 Ga. 449, 228 S.E.2d 839 (1976), cert. denied, 432 U.S. 905, 97 S. Ct. 2949, 53 L. Ed. 2d 1077 (1977) (decided under former Code 1933, § 24A-2001).

Parent's right to representation not violated. — Mother's right to appointed counsel was not violated since, after being notified of such right, she did not request counsel until shortly before the termination hearing and did not identify any proceeding at which she appeared unrepresented. In re A.M.R., 230 Ga. App. 133, 495 S.E.2d 615 (1998) (decided under former O.C.G.A. § 15-11-30).

Juvenile court did not err by refusing to dismiss the proceedings to terminate a

General Consideration (Cont'd)

mother's parental rights for the failure of the mother to be represented by counsel at the judicial citizens review panel as the proceedings mentioned in former O.C.G.A. § 15-11-6(b) (see now O.C.G.A. §§ 15-11-103, 15-11-402, and 15-11-475) were proceedings before the juvenile court and were not reviews by the panel; further, any error was harmless as the juvenile court did not rely on the panel's recommendations in terminating the mother's parental rights. In the Interest of K.M.C., 273 Ga. App. 276, 614 S.E.2d 896 (2005) (decided under former O.C.G.A. § 15-11-6).

Parent, who was represented by counsel during the course of a termination of parental rights proceeding, could not prove that the parent was denied counsel during the proceeding because, beyond the claim that the parent was denied counsel, the parent failed to show what arguments the parent would have advanced, what evidence the parent would have produced in the parent's favor, or how the parent would have been successful had the parent been represented by counsel; moreover, in light of the overwhelming evidence supporting the termination of the parent's parental rights, there was nothing in the record that would support a finding of harm. In the Interest of M.S., 279 Ga. App. 254, 630 S.E.2d 856 (2006), overruled on other grounds, In re J.M.B., 296 Ga. App. 786, 676 S.E.2d 9 (2009) (decided under former O.C.G.A. § 15-11-6).

Right to counsel of choice. — In a dependency action, the juvenile court did not err by denying the mother's request for a continuance to hire counsel of the mother's choice because the mother was advised that the mother could retain an attorney but that the mother should do that so that counsel was ready for trial. In the Interest of A.B., 350 Ga. App. 158, 828 S.E.2d 394 (2019).

Indigent parent entitled to paupered transcript for use in appeal. — Indigent parent, whose parental rights have been terminated by an order of the juvenile court on a petition filed by an agency of the state, is entitled to a paupered transcript of the proceeding in the juvenile court for use in appealing the decision of that court. Nix v. Department of Human Resources, 236 Ga. 794, 225 S.E.2d 306 (1976) (decided under former Code 1933, § 24A-2001).

Trial court committed reversible error in failing to determine whether appointed counsel was required for parent. — Fact that there was sufficient evidence to support the termination of a parent's rights did not relieve the trial court of the court's obligation to determine whether counsel should have been appointed for the parent under former O.C.G.A. § 15-11-6(b) (see now O.C.G.A. §§ 15-11-103, 15-11-402, and 15-11-475). The trial court's limited inquiry as to whether the parent waived the right to counsel, and the court's failure to ascertain the parent's financial status was reversible error. In the Interest of P. D. W., 296 Ga. App. 189, 674 S.E.2d 338 (2009) (decided under former O.C.G.A. § 15-11-6).

Cited in In the Interest of J. N., 344 Ga. App. 409, 810 S.E.2d 191 (2018).

Waiver

Right to counsel may be waived unless child is not represented by the child's parents, guardian, or custodian. A.C.G. v. State, 131 Ga. App. 156, 205 S.E.2d 435 (1974) (decided under former Code 1933, § 24A-2001).

Determination of voluntary and knowing waiver of right. — Question of a voluntary and knowing waiver of a juvenile's right to counsel depends on the totality of the circumstances and the state has a heavy burden in showing that the juvenile did understand and waive the juvenile's right to counsel. Crawford v. State, 240 Ga. 321, 240 S.E.2d 824 (1977) (decided under former Code 1933, § 24A-2001).

Trial court apparently determined that, given the court's finding that the mother was not competent, the mother was unable to show a knowing and voluntary waiver of her right to appointed counsel at the child deprivation hearing; thus, the trial court did not err in refusing to allow her to proceed pro se. Additionally, the mother failed to establish that she was

harmed by her counsel's representation; thus, without harm, the mother's alleged error presented no basis for reversal. In the Interest of B.B., 267 Ga. App. 360, 599 S.E.2d 304 (2004) (decided under former O.C.G.A. § 15-11-6).

Factors considered in determining proper waiver. — Several of the factors to be considered among the totality of the circumstances in determining whether the juvenile's waiver of counsel is made knowingly and voluntarily are: (1) age of the accused; (2) education of the accused; (3) knowledge of the accused as to both the substance of the charge and the nature of the accused's rights to consult with an attorney and remain silent; (4) whether the accused was held incommunicado or allowed to consult with relatives, friends, or an attorney; (5) whether the accused was interrogated before or after formal charges were filed; (6) methods used in interrogations; (7) length of interrogations; (8) whether vel non the accused refused to voluntarily give statements on prior occasions; and (9) whether the accused repudiated an extra-judicial statement at a later date. Crawford v. State, 240 Ga. 321, 240 S.E.2d 824 (1977) (decided under former 1933, § 24A-2001).

Juvenile court proceeding null if no waiver. — If in a juvenile court proceeding, there was neither waiver of right of a mother, nor proper service upon the parties and since the hearing was not taken under oath, or waived by any of the parties, the proceeding was an absolute nullity. McBurrough v. Dep't of Human Resources, 150 Ga. App. 130, 257 S.E.2d 35 (1979) (decided under former Code 1933 § 24A-2001).

Mother who waives child's rights must be unbiased mother, free of interests conflicting with the needs of her daughter whom she undertakes to represent; an ally, not an adversary. K.E.S. v. State, 134 Ga. App. 843, 216 S.E.2d 670 (1975) (decided under former Code 1933 § 24A-2001).

Right to counsel waived. — Trial judge's determination that a 15-year-old girl knowingly and voluntarily waived her right to counsel in a murder case was not clearly erroneous since she was interrogated before formal charges were filed, was not held incommunicado, and there was no evidence that coercive or deceptive interrogation techniques were employed. J.E.W. v. State, 256 Ga. 464, 349 S.E.2d 713 (1986) (decided under former O.C.G.A. §§ 15-11-6 and 15-11-30).

Right to counsel not waived. — In a proceeding for termination of parental rights, an indigent parent did not waive the right to appointed counsel in a knowing, intelligent, and voluntary manner simply because the parent failed to request counsel prior to the hearing as directed by the court. The court's denial of the parent's request for counsel was reversible error. In re J. M. B., 296 Ga. App. 786, 676 S.E.2d 9 (2009) (decided under former O.C.G.A. § 15-11-6).

Juvenile court's orders in a dependency proceeding were void because the record clearly demonstrated that the parents were denied the parents' right to counsel at the judicial review despite indicating that the parents had obtained counsel who asked the parents to obtain a continuance and the juvenile court's failure to inquire into whether the parents were indigent and entitled to appointed counsel. In the Interest of C. H., 343 Ga. App. 1, 805 S.E.2d 637 (2017), vacated, cert. denied, 2018 Ga. LEXIS 774 (Ga. 2018).

Error in proceeding without counsel harmless. — As a juvenile court in a mother's parental rights termination proceeding failed to make inquiry as to whether the mother was indigent and whether she was waiving the right to counsel pursuant to O.C.G.A. § 15-11-6(b), the judgment terminating her parental rights over her three children could not stand. Moreover, the record demonstrated many instances of harm caused by the mother's lack of counsel. In the Interest of P. D. W., 296 Ga. App. 189, 674 S.E.2d 338 (2009) (decided under former O.C.G.A. § 15-11-6).

Juvenile did not make a knowing and intelligent decision to proceed without counsel where the referee did not warn her or her mother of the danger of proceeding without counsel or of the consequences of an affirmative finding or admission of the charge enumerated in the petition; the juvenile appellant and her mother did not stand before the court with

Waiver (Cont'd)

open eyes, knowing the danger and consequences of proceeding without the benefit of legal representation. In re W.M.F., 180 Ga. App. 397, 349 S.E.2d 265 (1986) (decided under former O.C.G.A. § 15-10-30).

RESEARCH REFERENCES

Am. Jur. 2d. — 47 Am. Jur. 2d, Juvenile Courts and Delinquent and Dependent Children, § 79 et seq.

C.J.S. — 43 C.J.S., Infants, §§ 172 et seq., 181.

U.L.A. — Uniform Juvenile Court Act (U.L.A.) § 26.

ALR. — Right to an appointment of counsel in juvenile court proceedings, 60 A.L.R.2d 691; 25 A.L.R.4th 1072.

Right of juvenile court defendant to be represented during court proceedings by parent, 11 A.L.R.4th 719.

Validity and efficacy of minor's waiver of right to counsel — modern cases, 25 A.L.R.4th 1072.

15-11-104. Appointment and removal of guardian ad litem; use of a CASA.

(a) The court shall appoint a guardian ad litem for an alleged dependent child.

(b) An attorney for an alleged dependent child may serve as such child's guardian ad litem unless or until there is conflict of interest between the attorney's duty to such child as such child's attorney and the attorney's considered opinion of such child's best interests as guardian ad litem.

(c) A party to the proceeding, the employee or representative of a party to the proceeding, or any other individual with a conflict of interest shall not be appointed as guardian ad litem.

(d) A court shall appoint a CASA to act as guardian ad litem whenever possible, and a CASA may be appointed in addition to an attorney who is serving as a guardian ad litem.

(e) A lay guardian shall not engage in activities which could reasonably be construed as the practice of law.

(f) Before the appointment as a guardian ad litem, such person shall have received training appropriate to the role as guardian ad litem which is administered or approved by the Office of the Child Advocate for the Protection of Children. For attorneys, preappointment guardian ad litem training shall be satisfied within the attorney's existing continuing legal education obligations and shall not require the attorney to complete additional training hours in addition to the hours required by the State Bar of Georgia.

(g) Any volunteer guardian ad litem authorized and acting in good faith, in the absence of fraud or malice and in accordance with the duties required by this Code section, shall have immunity from any

liability, civil or criminal, that might otherwise be incurred or imposed as a result of taking or failing to take any action pursuant to this Code section.

(h) The court may remove a guardian ad litem from a case upon finding that the guardian ad litem acted in a manner contrary to a child's best interests, has not appropriately participated in the case, or if the court otherwise deems continued service as inappropriate or unnecessary.

(i) A guardian ad litem shall not engage in ex parte contact with the court except as otherwise provided by law.

(j) The court, a child, or any other party may compel a guardian ad litem for a child to attend a trial or hearing relating to such child and to testify, if appropriate, as to the proper disposition of a proceeding.

(k) The court shall ensure that parties have the ability to challenge recommendations made by the guardian ad litem or the factual basis for the recommendations in accordance with the rules of evidence applicable to the specific proceeding.

(l) A guardian ad litem's report shall not be admissible into evidence prior to the disposition hearing except in accordance with the rules of evidence applicable to the specific proceeding.

(m) A guardian ad litem who is not also serving as attorney for a child may be called as a witness for the purpose of cross-examination regarding the guardian ad litem's report even if the guardian ad litem is not identified as a witness by a party.

History. — Code 1981, § 15-11-104, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under pre-2014 Code Sections 15-11-9(b) and 15-11-9.1(j)(1), which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Impeachment testimony from CASA representative properly excluded. — In an action wherein two parents were found to have deprived an adopted child due to one parent's sexual abuse of the child and the other parent's failure to protect the child from such abuse, the juvenile court properly refused to allow a court-appointed special advocate (CASA) to impeach a prior foster child whom the parents had previously cared for as former O.C.G.A. § 15-11-9.1 established confidentiality of the CASA's information. Further, allowing such testimony was inconsistent with the CASA program and the parents had multiple witnesses to impeach the foster child. In the Interest of B.H., 295 Ga. App. 297, 671 S.E.2d 303 (2008) (decided under former O.C.G.A. § 15-11-9.1).

Discovery from guardian ad litem's file. — Juvenile order granting a guardian a protective order against a mother

was vacated because the juvenile court erred in imposing blanket protection for the guardian ad litem's file under a privilege exception to discovery; on remand, the juvenile court was directed to exercise the court's discretion to determine whether the material sought by the mother was privileged or otherwise should not be subject to discovery. In the Interest of J. N., 344 Ga. App. 409, 810 S.E.2d 191 (2018).

Attorney also serving as guardian ad litem. — Aside from arguing that counsel's hasty appointment as guardian ad litem precluded counsel from assessing whether a conflict of interest existed, the defendant juvenile failed to identify what if any conflict of interest existed or how the defendant was harmed by the dual appointment and without such a showing the defendant's argument that the dual appointment was error failed. In the Interest of N. T., 355 Ga. App. 205, 843 S.E.2d 877 (2020).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under pre-2014 Code Section 15-11-9(b), which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Appointment of guardian in deprivation proceedings. — Under the principle that the law is to be liberally construed toward the protection of the child whose well-being is threatened, deprivation proceedings arising from child abuse and neglect by a parent or caretaker present a conflict of interest wherein the provisions concerning the appointment of a guardian ad litem would apply. 1976 Op. Att'y Gen. No. 76-131.

Applicability to deprivation proceedings. — Inasmuch as the juvenile court's jurisdiction encompasses proceedings in which a child was alleged to be deprived, former Code 1933, § 24A-3301 (see former O.C.G.A. § 15-11-9) applied to a deprived child as defined in former Code 1933, § 24A-401 (see former O.C.G.A. § 15-11-2). 1976 Op. Att'y Gen. No. 76-131.

RESEARCH REFERENCES

Am. Jur. 2d. — 42 Am. Jur. 2d, Infants, § 151 et seq.

C.J.S. — 43 C.J.S., Infants, § 308 et seq.

U.L.A. — Uniform Juvenile Court Act (U.L.A.) § 51.

15-11-105. Powers and duties of guardian ad litem.

(a) A guardian ad litem shall advocate for a child's best interests in the proceeding for which the guardian ad litem has been appointed.

(b) In determining a child's best interests, a guardian ad litem shall consider and evaluate all of the factors affecting the best interests of a child in the context of a child's age and developmental needs. Such factors shall include:

(1) The physical safety and welfare of such child, including food, shelter, health, and clothing;

(2) The mental and physical health of all individuals involved;

(3) Evidence of domestic violence in any current, past, or considered home for such child;

(4) Such child's background and ties, including familial, cultural, and religious;

(5) Such child's sense of attachments, including his or her sense of security and familiarity and continuity of affection for the child;

(6) The least disruptive placement alternative for such child;

(7) The child's wishes and long-term goals;

(8) The child's community ties, including church, school, and friends;

(9) The child's need for permanence, including his or her need for stability and continuity of relationships with a parent, siblings, and other relatives;

(10) The uniqueness of every family and child;

(11) The risks attendant to entering and being in substitute care;

(12) The preferences of the persons available to care for such child; and

(13) Any other factors considered by the guardian ad litem to be relevant and proper to his or her determination.

(c) Unless a child's circumstances render the following duties and responsibilities unreasonable, a guardian ad litem shall at a minimum:

(1) Maintain regular and sufficient in-person contact with the child and, in a manner appropriate to his or her developmental level, meet with and interview such child prior to custody hearings, adjudication hearings, disposition hearings, judicial reviews, and any other hearings scheduled in accordance with the provisions of this chapter;

(2) In a manner appropriate to such child's developmental level, ascertain such child's needs, circumstances, and views;

(3) Conduct an independent assessment to determine the facts and circumstances surrounding the case;

(4) Consult with the child's attorney, if appointed separately, regarding the issues in the proceeding;

(5) Communicate with health care, mental health care, and other professionals involved with such child's case;

(6) Review case study and educational, medical, psychological, and other relevant reports relating to such child and the respondents;

(7) Review all court related documents;

(8) Attend all court hearings and other proceedings to advocate for such child's best interests;

(9) Advocate for timely court hearings to obtain permanency for such child;

(10) Protect the cultural needs of such child;

(11) Contact the child prior to any proposed change in such child's placement;

(12) Contact the child after changes in such child's placement;

(13) Request a judicial citizen review panel or judicial review of the case;

(14) Attend judicial citizen panel review hearings concerning such child and if unable to attend the hearings, forward to the panel a letter setting forth such child's status during the period since the last judicial citizen panel review and include an assessment of the DFCS permanency and treatment plans;

(15) Provide written reports to the court and the parties on the child's best interests, including, but not limited to, recommendations regarding placement of such child, updates on such child's adjustment to placement, DFCS's and respondent's compliance with prior court orders and treatment plans, such child's degree of participation during visitations, and any other recommendations based on the best interests of the child;

(16) When appropriate, encourage settlement and the use of any alternative forms of dispute resolution and participate in such processes to the extent permitted; and

(17) Monitor compliance with the case plan and all court orders.

(d)(1) Except as provided in Article 11 of this chapter, a guardian ad litem shall receive notices, pleadings, or other documents required to be provided to or served upon a party and shall be notified of all court hearings, judicial reviews, judicial citizen review panels, and other significant changes of circumstances of a child's case which he or she is appointed to the same extent and in the same manner as the parties to the case are notified of such matters.

(2) A guardian ad litem shall be notified of the formulation of any case plan of a child's case which he or she is appointed and may be given the opportunity to be heard by the court about such plans.

(e) Upon presentation of an order appointing a guardian ad litem, such guardian ad litem shall have access to all records and information relevant to a child's case to which he or she is appointed when such records and information are not otherwise protected from disclosure

pursuant to Code Section 19-7-5. Such records and information shall not include records and information provided under Article 11 of this chapter or provided under Chapter 4A of Title 49.

(f) All records and information acquired or reviewed by a guardian ad litem during the course of his or her appointment shall be deemed confidential and shall not be disclosed except as ordered by the court.

(g) Except as provided in Code Section 49-5-41, regarding access to records, any guardian ad litem who discloses confidential information obtained during the course of his or her appointment, in violation of law, shall be guilty of a misdemeanor. A guardian ad litem shall maintain all information and records regarding mental health, developmental disability, and substance abuse according to the confidentiality requirements contained in Code Section 37-3-166, 37-4-125, or 37-7-166, as applicable.

(h) In the event of a change of venue, the original guardian ad litem shall, as soon as possible, communicate with the appointed guardian ad litem in the new venue and shall forward all pertinent information to the new guardian ad litem.

History. — Code 1981, § 15-11-105, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242; Ga. L. 2014, p. 780, § 1-7/SB 364.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under pre-2014 Code Section 15-11-9.1(d), (f), (g), and (h), which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Impeachment testimony from CASA representative properly excluded. — In an action wherein two parents were found to have deprived an adopted child due to one parent's sexual abuse of the child and the other parent's failure to protect the child from such abuse, the juvenile court properly refused to allow a court-appointed special advocate (CASA) to impeach a prior foster child whom the parents had previously cared for as former O.C.G.A. § 15-11-9.1 (see now O.C.G.A. § 15-11-105) established confidentiality of the CASA's information. Further, allowing such testimony was inconsistent with the CASA program and the parents had multiple witnesses to impeach the foster child. In the Interest of B.H., 295 Ga. App. 297, 671 S.E.2d 303 (2008).

Discovery from guardian ad litem's file. — Juvenile order granting a guardian a protective order against a mother was vacated because the juvenile court erred in imposing blanket protection for the guardian ad litem's file under a privilege exception to discovery; on remand, the juvenile court was directed to exercise the court's discretion to determine whether the material sought by the mother was privileged or otherwise should not be subject to discovery. In the Interest of J. N., 344 Ga. App. 409, 810 S.E.2d 191 (2018).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under pre-2014 Code Section 15-11-9.1, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Fingerprinting of offenders not required. — Violation of former O.C.G.A. § 15-11-9.1(h)(2) (see now O.C.G.A. § 15-11-105(g)) was not an offense designated as one that requires fingerprinting. 2008 Op. Att'y Gen. No. 2008-1.

15-11-106. Participation of a CASA.

(a)(1) Before executing duties as a CASA, and upon completion of all the requirements of an affiliate court appointed special advocate program, a CASA shall be sworn in by a judge of the juvenile court in the court or circuit in which he or she wishes to serve. A CASA shall not be assigned a case prior to being sworn in by a juvenile court judge as set forth in this paragraph.

(2) If a juvenile court judge determines that a child involved in a dependency proceeding needs a CASA, the judge shall have the authority to appoint a CASA, and in such circumstance shall sign an order appointing a CASA at the earliest possible stage of the proceedings. Such order shall impose on a CASA all the duties, rights, and responsibilities set forth in this Code section and Code Sections 15-11-104 and 15-11-105.

(b) The role of a CASA in juvenile court dependency proceedings shall be to advocate for the best interests of the child.

(c) In addition to the reasons stated in subsection (h) of Code Section 15-11-104, the court may discharge a CASA upon finding that the CASA has acted in a manner contrary to the mission and purpose of the affiliate court appointed special advocate program.

History. — Code 1981, § 15-11-106, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under pre-2014 Code Section 15-11-9.1, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Impeachment testimony from CASA representative properly excluded. — In an action wherein two parents were found to have deprived an adopted child due to one parent's sexual abuse of the child and the other parent's failure to protect the child from such abuse, the juvenile court properly refused to allow a court-appointed special advocate (CASA) to impeach a prior foster child whom the parents had previously

cared for as former O.C.G.A. § 15-11-9.1 established confidentiality of the CASA's information. Further, allowing such testimony was inconsistent with the CASA program and the parents had multiple witnesses to impeach the foster child. In the Interest of B.H., 295 Ga. App. 297, 671 S.E.2d 303 (2008) (decided under former O.C.G.A. § 15-11-9.1).

15-11-107. Treatment by spiritual means; life-threatening condition or disability exception.

(a) A parent, guardian, or legal custodian's reliance on prayer or other religious nonmedical means for healing in lieu of medical care, in the exercise of religious beliefs, shall not be the sole basis for considering his or her child to be a dependent child; provided, however, that the religious rights of a parent, guardian, or legal custodian shall not limit the access of a child to medical care in a life-threatening situation or when the condition will result in serious disability.

(b) In order to make a determination as to whether a child is in a life-threatening situation or that a child's condition will result in serious disability, the court may order a medical evaluation of a child.

(c) If the court determines, on the basis of any relevant evidence before the court, including the court ordered medical evaluation and the affidavit of the attending physician, that a child is in a life-threatening situation or that a child's condition will result in serious disability, the court may order that medical treatment be provided for such child.

(d) A child whose parent, guardian, or legal custodian inhibits or interferes with the provision of medical treatment in accordance with a court order shall be considered to be a dependent child and the court may find the parent, guardian, or legal custodian in contempt and enter any order authorized by and in accordance with the provisions of Code Section 15-11-31.

History. — Code 1981, § 15-11-107, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

Cross references. — Freedom of religion, U.S. Const., amend. 1. Religious opinion and freedom of religion, Ga. Const. 1983, Art. I, Sec. I, Para. IV. Consent for surgical treatment, T. 31, C. 9.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 24A-401 and pre-2014 Code Section 15-11-2, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

In light of the reenactment of this chapter, effective January 1, 2014, the reader is advised to consult the annotations following Code Section 15-11-2(8), for annotations which may also be applicable to this Code section.

Absence of proper parental care. — In a criminal trial on charges that the defendant allowed the repeated rapes of the defendant's 11-year-old child, the rule of lenity did not require that the defen-

dant's felony convictions for being a party to rape and cruelty to children to be subsumed by the misdemeanor conviction for contributing to the deprivation of a minor because different facts were necessary to prove the offenses. The rape conviction required proof under O.C.G.A. §§ 16-2-20 and 16-6-1(a)(1) that the defendant took affirmative steps to aid the rapist. The cruelty to children conviction required proof under O.C.G.A. § 16-5-70(b) that the defendant caused excessive mental pain to the child. The conviction for contributing to the deprivation of a minor required proof under former O.C.G.A. § 15-11-2(8)(A) (see now O.C.G.A. §§ 15-11-2 and 15-11-107) and O.C.G.A. 16-12-1(b)(3) that the defendant failed to provide the child with proper care necessary for the child's health, which the state proved by showing that the defendant failed to seek prenatal care for the child even though the defendant knew that the child was pregnant. Johnson v. State, 283 Ga. App. 99, 640 S.E.2d 644 (2006) (decided under former O.C.G.A. § 15-11-2).

Deprivation prior to birth. — Juvenile court erred in taking judicial notice of a psychological evaluation and citizen review panel's report issued in a mother's case prior to a child's birth because the juvenile court could not consider the evaluation or report to determine whether the child was without proper parental care or control or that the mother was unfit to parent the child; neither of the documents were tendered into evidence, and there was no testimony as to the contents of the documents. In the Interest of S. D., 316 Ga. App. 86, 728 S.E.2d 749 (2012) (decided under former O.C.G.A. § 15-11-2).

Children with special needs. — When employing the two-step test before terminating a parent's rights, a juvenile court order that a child was deprived, pursuant to former O.C.G.A. § 15-11-2(8)(A) (see now O.C.G.A. §§ 15-11-2 and 15-11-107), which was not appealed, was binding on a mother and satisfied the first factor of the test under former O.C.G.A. § 15-11-94 (see now O.C.G.A. § 15-11-310); the juvenile court determined that due in part to a medical problem, the child had special needs and the mother lacked the ability to provide for the physical, mental, emotional, and moral conditions and needs of the child. In the Interest of J.T.W., 270 Ga. App. 26, 606 S.E.2d 59 (2004) (decided under former O.C.G.A. § 15-11-2).

Because the juvenile court properly focused on the subject parent's abandonment of the child in support of the court's deprivation finding, and hence, the focus could not be on the adequate level of care given by the child's maternal grandparent, the court's deprivation finding was supported by sufficient evidence. Moreover, the state adequately showed that the parent was incapable of caring for any child, let alone this child, given that the child had special medical needs. In the Interest of A.B., 289 Ga. App. 655, 658 S.E.2d 205 (2008) (decided under former O.C.G.A. § 15-11-2).

Parent with schizophrenia. — Evidence supported the finding that a child was deprived within the meaning of former O.C.G.A. § 15-11-2(8) (see now O.C.G.A. §§ 15-11-2 and 15-11-107), and that termination of the mother's parental rights was in the child's best interest, pursuant to former O.C.G.A. § 15-11-94(a) (see now O.C.G.A. §§ 15-11-310 and 15-11-2320), because the mother, who was homeless and suffering from schizophrenia, failed to maintain contact with the agency or visit with the child for more than one year, and the mother never accomplished court-ordered goals for reunification or demonstrated the ability to adequately care for the child. In the Interest of S.G., 271 Ga. App. 776, 611 S.E.2d 86 (2005) (decided under former O.C.G.A. § 15-11-2).

Child was deprived as defined in former O.C.G.A. § 15-11-2(8) (see now O.C.G.A. §§ 15-11-2 and 15-11-107) because the mother had borderline intellectual functioning and was at a high risk of engaging in physical child abuse, the child was a special needs child with developmental disorders and physical problems who was not being properly supervised in a dirty home where there was little food, the mother needed long-term intensive psychological treatment but failed to obtain counseling and stopped taking her medications, and the mother failed to support the child or to comply with case plan

goals. In the Interest of A.K., 272 Ga. App. 429, 612 S.E.2d 581 (2005) (decided under former O.C.G.A. § 15-11-2).

Child with multiple fractures. — Clear and convincing evidence supported a trial court's determination that a mother's child was deprived, pursuant to former O.C.G.A. § 15-11-2(8)(A) (see now O.C.G.A. §§ 15-11-2 and 15-11-107), due to the lack of proper parental care, that such deprivation was likely to continue or not be remedied due to the mother's failure to take responsibility for the child and to work at succeeding at the goals of the case plan, and that such deprivation would cause serious harm to the child, who needed a stable family environment; accordingly, termination of the mother's parental rights was proper pursuant to former O.C.G.A. § 15-11-94(a) (see now O.C.G.A. §§ 15-11-310 and 15-11-320). In the Interest of B.S., 274 Ga. App. 647, 618 S.E.2d 695 (2005) (decided under former O.C.G.A. § 15-11-2).

Failure to change baby's diaper. — As a parent's actions, including not feeding the child or changing the child's diaper often enough, placed the child at risk, and the parent received one-on-one instruction and training for a considerable period of time, yet failed to put the training into practice and continued to risk the child's well-being, there was clear and convincing evidence to support the trial court's finding that the child was a "deprived child" as defined by former O.C.G.A. § 15-11-2(8)(A). In the Interest of W. A. P., 293 Ga. App. 433, 667 S.E.2d 197 (2008) (decided under former O.C.G.A. § 15-11-2).

Failure to complete counseling. — Juvenile court properly held that a 13-year-old grandson continued to be deprived under former O.C.G.A. § 15-11-2(8)(A) (see now O.C.G.A. §§ 15-11-2 and 15-11-107) because clear and convincing evidence established that the child was without the care necessary for the child's mental or emotional health based on the grandmother/guardian failing to complete family counseling as required. In the Interest of J. B., 319 Ga. App. 796, 738 S.E.2d 639 (2013) (decided under former O.C.G.A. § 15-11-2).

Medical issues resulting in deprivation. — Clear and convincing evidence supported an order adjudicating two children deprived under former O.C.G.A. § 15-11-2(8)(A) (see now O.C.G.A. §§ 15-11-2 and 15-11-107) because their sibling died of complications from tuberculosis (TB) after not receiving medical treatment for at least a month, the father had been twice diagnosed with active TB, but refused to admit he had TB, and the mother refused to take medication to keep her latent TB from becoming active, and would not admit that TB had anything to do with the death of the sibling. In the Interest of R.M., 276 Ga. App. 707, 624 S.E.2d 182 (2005) (decided under former O.C.G.A. § 15-11-2).

An order finding that a mother's two children were deprived was upheld on appeal since the evidence established that the mother's 12-year-old daughter was pregnant with the mother's 38-year-old boyfriend's child and the daughter had at least four sexual partners since the age of nine, and the mother's son had cavities so large that the cavities were visible in the boy's teeth and he had a very poor educational status; also, the mother failed to accept responsibility for the condition of the children. In the Interest of A.S., 285 Ga. App. 563, 646 S.E.2d 756 (2007) (decided under former O.C.G.A. § 15-11-2).

Grandparent caused deprivation. — When a grandparent who had adopted three grandchildren struck one in the face, leaving a mark, pushed a child into a tub of water after asking if the child wanted to drown, spanked the children with a belt, and struck one child with a belt buckle and another with an extension cord, there was sufficient evidence of deprivation under former O.C.G.A. § 15-11-2(8)(A) (see now O.C.G.A. §§ 15-11-2 and 15-11-107). In the Interest of T.R., 284 Ga. App. 742, 644 S.E.2d 880 (2007) (decided under former O.C.G.A. § 15-11-2).

False allegations against spouse result in deprivation. — Children, ages four and six, were deprived as defined in former O.C.G.A. § 15-11-2(8)(A) (see now O.C.G.A. §§ 15-11-2 and 15-11-107) based on their mother's unwarranted and unrelenting insistence that their father, whom she was divorcing, had abused them, subjecting

the children to repeated forensic interviews and invasive medical examinations, despite being warned that these repeated interviews were harmful to the children. In the Interest of S.K., 301 Ga. App. 35, 686 S.E.2d 814 (2009) (decided under former O.C.G.A. § 15-11-2).

Evidence sufficient to find deprivation or termination of parental rights. — Evidence that parents were imprisoned for abusing one of their three children, and their parental rights were terminated as to that child; that a second child, while in their care, sustained permanent brain injuries due to abusive head trauma, and the child's arm was fractured in a manner consistent with abuse; and the fact that the parents invoked the Fifth Amendment during the deprivation hearing was sufficient to allow the trial court to find by clear and convincing evidence that their two children were deprived as defined by former O.C.G.A. § 15-11-2(8)(A) (see now O.C.G.A. §§ 15-11-2 and 15-11-107). In the Interest of A.A., 293 Ga. App. 471, 667 S.E.2d 641 (2008) (decided under former O.C.G.A. § 15-11-2).

Failure to provide adequate mental health support to children. — Under the circumstances in the mother's case, the juvenile court correctly found that the evidence of the children's deprivation was clear and convincing under former O.C.G.A. §§ 15-11-1 and 15-11-2 (see now O.C.G.A. §§ 15-11-1, 15-11-2, 15-11-381, and 15-11-471) in that the evidence demonstrated that the minor children were not receiving adequate support for the children's mental health issues. The uncontrolled behavior of the children related to those issues was negatively affecting the children's academic and social well-being and there was also clear and convincing evidence that the mother was not utilizing available resources to address the children's problems, and that the mother had attempted to have one of the children hospitalized because she could not control the child; moreover, one of the children also exhibited severe mental health issues, including cutting herself and attacking other children, that were not adequately addressed. In the Interest of D. Q., 307 Ga. App. 121, 704 S.E.2d 444 (2010) (decided under former O.C.G.A. § 15-11-2).

Deprivation from inadequate treatment of psychological problems. — Juvenile court did not err in finding that a 12-year-old child was deprived under former O.C.G.A. § 15-11-2(8)(A) (see now O.C.G.A. §§ 15-11-2 and 15-11-107) due to the child's severe psychological problems, which required in-patient treatment, because the child's mother had been unable to obtain the recommended treatment for the child and the child's mental health was deteriorating. In the Interest of V.A.D., 305 Ga. App. 23, 699 S.E.2d 346 (2010) (decided under former O.C.G.A. § 15-11-2).

Medical evidence supported finding of physical abuse of child. — Juvenile court did not err in finding that children were deprived and that their father was unable to provide proper parental care for the children because there was clear and convincing evidence to show that the father had engaged in past egregious conduct of a physically abusive nature toward one of the children; there was medical evidence regarding the nature and extent of the child's injuries and evidence that the injuries had been inflicted by the father. In the Interest of T. P., 310 Ga. App. 684, 713 S.E.2d 874 (2011) (decided under former O.C.G.A. § 15-11-2).

Failure of babysitter to seek medical treatment. — Evidence of willfulness necessary to sustain conviction under former O.C.G.A. § 15-11-2(8)(A) (see now O.C.G.A. §§ 15-11-2 and 15-11-107), the contributing to the deprivation of a minor statute, was shown since the evidence established that the defendant babysitter knew that the infant needed immediate medical attention, and that the babysitter failed to seek medical treatment for the infant. Hoang v. State, 250 Ga. App. 403, 551 S.E.2d 813 (2001) (decided under former O.C.G.A. § 15-11-2).

15-11-108. Notice of postadjudication hearings to parties.

(a) The court shall give to all parties written notice of the date, time, place, and purpose of the following postadjudication hearings or reviews:

(1) Nonreunification hearings;

(2) Disposition hearings;

(3) Periodic review hearings;

(4) Periodic reviews by judicial citizen review panel;

(5) Permanency plan hearings;

(6) Termination of parental rights hearings; and

(7) Posttermination of parental rights review hearings.

(b) Issuance and service of summons, when appropriate, shall comply with the requirements of Code Sections 15-11-160 and 15-11-161.

(c) Unless otherwise provided in this chapter, written notice shall be delivered to the recipient at least 72 hours before the hearing or review by United States mail, e-mail, or hand delivery.

History. — Code 1981, § 15-11-108, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

15-11-109. (For effective date, see note.) Notice of hearings to specified nonparties.

(a) In advance of each hearing or review, DFCS shall give written notice of the date, time, place, and purpose of the review or hearing, including the right to be heard, to the caregiver of a child, the foster parent of a child, any preadoptive parent, or any relative providing care for a child. The written notice shall be delivered to the recipient at least 72 hours before the review or hearing, except in the case of preliminary protective hearings or emergency hearings when such notice is not possible, by United States mail, e-mail, or hand delivery.

(b) Notice of a hearing or review shall not be construed to require a legal custodian, foster parent, preadoptive parent, or relative caring for a child to be made a party to the hearing or review solely on the basis of such notice and opportunity to be heard.

(c) Upon placement of a child, DFCS shall provide the caregiver, foster parent, preadoptive parent, or relative providing care for such child with the following information in writing:

(1) At the time of placement:

(A) An explanation of the process for enrolling the child in school and any information necessary to complete the process;

(B) A description of any financial assistance for which the caregiver, foster parent, preadoptive parent, or relative may be eligible, including any financial assistance available for child care;

(C) A description of the reasonable and prudent parenting standard defined in Code Section 49-5-3; and

(D) Contact information for a county or district department of family and children services; and

(2) At the time of placement, if available:

(A) A copy of or recommendations from the child's most recent physical and dental examinations and any available information on the child's known medical conditions and current medications;

(B) A copy of or recommendations from the child's most recent developmental assessment, trauma assessment, and psychological evaluation;

(C) A copy of any court scheduling order or the dates and times for any scheduled hearings relating to the child; and

(D) Health insurance information for the child, including the child's Medicaid number.

If the information listed in this paragraph is not available to DFCS at the time of placement, DFCS shall request such information no later than 15 days after the child enters foster care and provide such information to the caregiver, foster parent, preadoptive parent, or relative providing care for the child. Provision of records in accordance with this paragraph shall not be considered a violation of subsection (b) of Code Section 49-5-40.

(d) (For effective date, see note.) At each hearing or review, the court shall make specific findings of fact in writing regarding participation by the caregiver of a child, the foster parent of a child, any preadoptive parent, or any relative providing care for a child. Such findings of fact shall include:

(1) Whether the caregiver was provided notice of the hearing or review, including the method, and whether the caregiver expressed an interest in being heard at the hearing or review; and

(2) If the caregiver is present, specific information regarding the caregiver's views, including, but not limited to, concerning the child's well-being, health, and safety; any changes the caregiver believes are necessary to advance the child's well-being, health, and safety; and the timeliness, necessity, and quality of services being provided to the

child and caregiver; and a summary of documentation presented by the caregiver regarding the child's well-being, health, and safety, including, but not limited to, reports from physicians, counselors, psychologists, and teachers.

History. — Code 1981, § 15-11-109, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242; Ga. L. 2018, p. 927, § 3-1/HB 906; Ga. L. 2020, p. 241, § 1/SB 439.

Delayed effective date. — Subsection (d), as set out above, becomes effective January 1, 2021. Until January 1, 2021, there is no subsection (d).

The 2018 amendment, effective July 1, 2018, added subsection (c).

The 2020 amendment, effective January 1, 2021, added subsection (d).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under pre-2014 Code Section 15-11-58, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Court had jurisdiction to enter termination of parental rights. — Juvenile court had jurisdiction to enter a termination of parental rights order because the juvenile court scheduled a timely hearing on the Department of Human Resource's motion for an extension, and the mother was served with notice of the hearing; the mother, however, failed to appear for the scheduled hearing. By failing to appear for a timely hearing of which the mother had notice, the mother waived the requirement of a hearing before the expiration of the earlier custody order. In the Interest of M.S.S., 308 Ga. App. 614, 708 S.E.2d 570 (2011) (decided under former O.C.G.A. § 15-11-58).

RESEARCH REFERENCES

C.J.S. — 67A C.J.S., Parent and Child, §§ 94 et seq., 122 et seq.

15-11-110. Continuance of a hearing in dependency proceedings.

(a) Upon request of an attorney for a party, the court may continue any hearing under this article beyond the time limit within which the hearing is otherwise required to be held; provided, however, that no continuance shall be granted that is contrary to the interests of the child. In considering a child's interests, the court shall give substantial weight to a child's need for prompt resolution of his or her custody status, the need to provide a child with a stable environment, and the damage to a child of prolonged temporary placements.

(b) Continuances shall be granted only upon a showing of good cause and only for that period of time shown to be necessary by the evidence presented at the hearing on the motion. Whenever any continuance is granted, the facts proved which require the continuance shall be entered in the court record.

(c) A stipulation between attorneys or the convenience of the parties shall not constitute good cause. Hearings with dependency case time limitations required by Code Section 15-11-102 and termination of parental rights hearings shall take priority in attorney conflict resolution over all other civil and criminal hearings and nonjury appearances in any other class of trial court. The need for discovery shall not constitute good cause unless the court finds that a person or entity has failed to comply with an order for discovery.

(d) In any case in which a child or his or her parent, guardian, or legal custodian is represented by an attorney and no objection is made to an order continuing any such hearing beyond the time limit, the absence of such an objection shall be deemed a consent to the continuance; provided, however, that even with consent, the court shall decide whether to grant the continuance in accordance with subsection (a) of this Code section.

History. — Code 1981, § 15-11-110, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242; Ga. L. 2014, p. 780, § 1-8/SB 364; Ga. L. 2020, p. 191, § 2/HB 912.

The 2020 amendment, effective July 1, 2020, substituted "Hearings with dependency case time limitations required by Code Section 15-11-102 and termination of parental rights hearings shall take priority in attorney conflict resolution over all other civil and criminal hearings and nonjury appearances in any other class of trials court." for "Except as otherwise provided by judicial rules governing attorney conflict resolution, a pending criminal prosecution or family law matter shall not constitute good cause." in subsection (c).

Cross references. — Dispositional hearings in Juvenile Court, Uniform Rules for the Juvenile Courts of Georgia, Rule 12.1.

Law reviews. — For article discussing due process in juvenile court procedures in California and Georgia, in light of In re Gault, 387 U.S. 1, 87 S. Ct. 1428, 18 L. Ed. 2d 527 (1967), see 8 Ga. St. B. J. 9 (1971). For article, "The Child as a Party in Interest in Custody Proceedings," see 10 Ga. St. B. J. 577 (1974). For article, "Termination of Parental Rights: Recent Judicial and Legislative Trends," see 30 Emory L. J. 1065 (1981). For article, "Georgia's Juvenile Code: New Law for the New Year," see 19 Ga. St. B. J. 13 (Dec. 2013).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 24A-2201, pre-2000 Code Section 15-11-33, and pre-2014 Code Section 15-11-56, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Juvenile Code requires separate trials with each having different goals. — First or adjudicatory process in a delinquency case is a full scale fact-finding hearing to determine if the child committed the act with which the child is charged and whether that constitutes delinquency. D.C.A. v. State, 135 Ga. App. 234, 217 S.E.2d 470 (1975) (decided under former Code 1933, § 24A-2201); J.B. v. State, 139 Ga. App. 545, 228 S.E.2d 712 (1976) (decided under former Code 1933, § 24A-2201).

Purpose of division of juvenile trials into two phases. — In dividing juvenile trials into two phases lawmakers intended to give the juvenile judge an opportunity to conduct the "functional equivalent" of a regular trial (the

adjudicatory hearing) in a manner which would satisfy the required constitutional procedures concomitant with the usual legal rules, such as those dealing with admissibility of evidence, proof beyond a reasonable doubt, and similar requirements applicable to adults. Thereafter, at the dispositional phase, the judge was to explore all available additional avenues, including psychiatric and sociological studies, which would enable the judge to provide a solution for the youngster and the family aimed at making the child a secure law-abiding member of society. D.C.A. v. State, 135 Ga. App. 234, 217 S.E.2d 470 (1975) (decided under former Code 1933, § 24A-2201).

Continuances under O.C.G.A. § 15-11-110 apply only to dependency proceedings. — O.C.G.A. § 15-11-110, which assists and protects children whose physical or mental health and welfare is substantially at risk of harm from abuse, neglect, or exploitation and who may be further threatened by the conduct of others, applies to dependency proceedings and not to delinquency proceedings. In the Interest of A. H., 332 Ga. App. 590, 774 S.E.2d 163 (2015).

Continuation of a dispositional hearing should have been allowed when the probation officer notified the court that the officer was not prepared to make a recommendation regarding disposition. In re M.D., 233 Ga. App. 261, 503 S.E.2d 888 (1998) (decided under former O.C.G.A. § 15-11-33).

In a child dependency case involving a child to whom the 10-day hearing time limit in O.C.G.A. § 15-11-181(a) applied, the juvenile court's grant of a continuance until four weeks later did not meet the stringent requirements of O.C.G.A. § 15-11-110 for granting a continuance; dismissal without prejudice should have been granted. In the Interest of I. L. M., 304 Ga. 114, 816 S.E.2d 620 (2018).

15-11-111. Court orders.

(a) At any hearing held with respect to a child, the court in its discretion, and based upon the evidence, may enter an order:

(1) Accepting or rejecting any DFCS report;

(2) Ordering an additional evaluation; or

(3) Undertaking such other review as it deems necessary and appropriate to determine the disposition that is in the child's best interests.

(b) The court's order:

(1) May incorporate all or part of the DFCS report; and

(2) Shall include findings of fact which reflect the court's consideration of the oral and written testimony offered by all parties, as well as nonparties, who are required to be provided with notice and a right to be heard in any hearing to be held with respect to a child, and DFCS.

History. — Code 1981, § 15-11-111, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

JUDICIAL DECISIONS

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General Consideration

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 24A-701, pre-2000 Code Section 15-11-41, and pre-2014 Code Section 15-11-58, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

In light of the reenactment of this chapter, effective January 1, 2014, the reader is advised to consult the annotations following Code Section 15-11-2, for annotations which may also be applicable to this Code section.

Termination

Court had jurisdiction to enter termination of parental rights. — Juvenile court had jurisdiction to enter a termination of parental rights order because the juvenile court scheduled a timely hearing on the Department of Human Resource's motion for an extension, and the mother was served with notice of the hearing; the mother, however, failed to appear for the scheduled hearing. By failing to appear for a timely hearing of which the mother had notice, the mother waived the requirement of a hearing before the expiration of the earlier custody order. In the Interest of M.S.S., 308 Ga. App. 614, 708 S.E.2d 570 (2011) (decided under former O.C.G.A. § 15-11-58).

Reunification

1. Reunification Efforts Not Required

Presumption that reunification services are inappropriate. — Pursuant to former O.C.G.A. § 15-11-58(h) (see now O.C.G.A. § 15-11-204), reunification services were inappropriate if reasonable efforts to reunify a child with the child's family would be detrimental to the child; although rebuttable, a presumption existed. In the Interest of J.P.V., 261 Ga. App. 194, 582 S.E.2d 170 (2003) (decided under former O.C.G.A. § 15-11-58).

Juvenile court's decision to terminate parental rights was supported by clear and convincing evidence including the family's history of instability, the fact that the children lived in filth for their entire lives, their developmental and emotional problems, and evidence of malnourishment and poor hygiene. The mother failed to rebut the presumption that reunification services should not be provided to the family and that efforts to reunify the children with the mother would be detrimental to the children. In the Interest of T.D.B., 266 Ga. App. 434, 597 S.E.2d 537 (2004) (decided under former O.C.G.A. § 15-11-58).

Because the parental rights to a mother's other four children had previously been terminated around the time the mother's infant child was born, the juvenile court did not err in approving a nonreunification plan involving that infant child pursuant to O.C.G.A. § 15-11-58(a)(4)(C); further, a presumption of nonreunification arose based on the mother's medically verified mental deficiency. In the Interest of J.P., 280 Ga. App. 100, 633 S.E.2d 442 (2006) (decided under former O.C.G.A. § 15-11-58).

Presumption against reunification. — Because there was no evidence that parents suffered from a medically verifiable deficiency of their mental health, no presumption against reunification arose on such account. In the Interest of A.M.,

306 Ga. App. 358, 702 S.E.2d 686 (2010) (decided under former O.C.G.A. § 15-11-58).

Notice of nonreunification. — Parent had notice that the Georgia Department of Family and Children Services was seeking nonreunification and had the opportunity to contest the issue; after a hearing the court continued the case, noting that a nonreunification case plan had been filed and the parent was contesting the issue of nonreunification, and the hearing was held on the later date with the parent and the parent's attorney present at the hearing. In the Interest of A. E., 314 Ga. App. 206, 723 S.E.2d 499 (2012) (decided under former O.C.G.A. § 15-11-58).

Reasonable efforts at reunification not required. — Reasonable efforts toward reunification of a father with his child were not required because the court made findings of aggravated circumstances including a finding that the father had sexually abused the child and the child's siblings. In the Interest of B.M., 252 Ga. App. 716, 556 S.E.2d 883 (2001) (decided under former O.C.G.A. § 15-11-58).

Clear and convincing evidence supported a juvenile court's judgment that reunification services were inappropriate for a mother with a history of drug and alcohol use, whose minor child had been taken from her home on three occasions because of the mother's inability to provide adequate food, clothing, and shelter for the child. In the Interest of J.P.V., 261 Ga. App. 194, 582 S.E.2d 170 (2003) (decided under former O.C.G.A. § 15-11-58).

Although former O.C.G.A. § 15-11-58(a) (see now O.C.G.A. §§ 15-11-2 and 15-11-134) required a juvenile court to make a finding of fact as to whether reasonable efforts at reunification were made prior to placement of the children in a county agency in a parental rights termination proceeding, such finding was not required because the children had already been found to be deprived by the mother. In the Interest of S.N.L., 275 Ga. App. 600, 621 S.E.2d 792 (2005) (decided under former O.C.G.A. § 15-11-58).

Termination of a parent's rights to a child was not barred by the parent's claim that a county department of family and children services established a nonreunification plan before contacting the parent and then denied the parent's requests for information; former O.C.G.A. § 15-11-58 did not impose upon termination proceedings the same procedures that applied to disposition orders and recommendations regarding reunification and did not obligate the department in every case to create a plan for reunification, and when the department afforded the parent an opportunity to participate in the case by mailing the initial case plan to the parent and explaining the need to legitimize the child, the parent failed to seize the opportunity or to comply timely with the instructions on legitimization. In the Interest of T.C., 282 Ga. App. 659, 639 S.E.2d 601 (2006) (decided under former O.C.G.A. § 15-11-58).

2. Reunification Efforts

Reasonable efforts at reunification. — Because a caseworker began working with the father even before he established paternity, and because the Department of Family and Children Services prepared a case plan for the father, pursuant to former O.C.G.A. § 15-11-58(a)(1) (see now O.C.G.A. § 15-11-202), reasonable efforts were made to place the child with the father before the child was placed with the Department. In re T.B.W., 312 Ga. App. 733, 719 S.E.2d 589 (2011) (decided under former O.C.G.A. § 15-11-58).

Reunification plan. — Because the juvenile court entered court-ordered goals for reunification, but failed to enter a specific plan for reunification after the deprivation finding, and the mother's attorney was left with virtually no time to file any motions requesting visitation or a case plan for reunification, under the mandate of former O.C.G.A. § 15-11-58(a)(2) (see now O.C.G.A. § 15-11-202), the juvenile court was required to set out a plan for reunification and give the mother the opportunity to meet those goals. In the Interest of B.C., 250 Ga. App. 152, 550 S.E.2d 707 (2001) (decided under former O.C.G.A. § 15-11-58).

Mother's claim that the reunification plan that the state family welfare depart-

Reunification (Cont'd)
2. Reunification Efforts (Cont'd)

ment imposed on her was too vague to comply with the applicable statutory requirements was waived because that claim was not raised in the trial court, but, in any event, the plan was sufficiently specific to meet the statutory requirements. In the Interest of D.E., 269 Ga. App. 753, 605 S.E.2d 394 (2004) (decided under former O.C.G.A. § 15-11-41).

Failure to comply with previous reunification plan. — One of the noted factors in finding a child to be deprived was proof that a parent had unjustifiably failed to comply with a previously ordered plan designed to reunite the family under former O.C.G.A. § 15-11-58(h)(1) (see now O.C.G.A. § 15-11-204). In the Interest of R.M., 276 Ga. App. 707, 624 S.E.2d 182 (2005) (decided under former O.C.G.A. T. 15, C. 11).

3. Reunification Inappropriate

Reunification not appropriate. — Evidence that reunification would subject the child to further educational neglect, inadequate supervision, and domestic violence, that the mother's cognitive limitations placed the child at risk, that the mother failed to make progress despite intervention, and that there were no other services that could be provided to eliminate the risk of harm to child, made it clear reunification would be detrimental. In re C.N., 231 Ga. App. 639, 500 S.E.2d 400 (1998) (decided under former O.C.G.A. § 15-11-41).

Since the evidence showed that children were deprived due to a mother's lack of parental care, that the deprivation was likely to continue and cause serious harm to the children, and that the mother unjustifiably failed to comply with previous reunification plans, the trial court did not err in approving the nonreunification plan. In re C.S., 236 Ga. App. 312, 511 S.E.2d 895 (1999) (decided under former O.C.G.A. § 15-11-41).

Reunification was not appropriate since evidence showed that parents unjustifiably failed to comply with plans designed to reunite the parents with the children, the children were removed from the parents' custody on two or more occasions, reunification services were previously provided, and there were grounds for terminating parental rights. In re R.U., 239 Ga. App. 573, 521 S.E.2d 610 (1999) (decided under former O.C.G.A. § 15-11-41).

Juvenile court did not err in approving a nonreunification plan when convincing evidence showed reunification was not in the best interests of the children and the likelihood that it would only prolong their deprivation. In the Interest of U.B., 246 Ga. App. 328, 540 S.E.2d 278 (2000) (decided under former O.C.G.A. T. 15, C. 11).

Evidence that the children's mother permitted and/or assisted her husband in making videotapes for distribution of the children being stripped and spanked was sufficient to show that reunification services between the children and their mother should not be provided under former O.C.G.A. § 15-11-58(h) (see now O.C.G.A. § 15-11-204); furthermore, a presumption against nonreunification existed because of the evidence of the mother's past egregious conduct, and there was insufficient evidence to overcome the presumption favoring reunifications. In the Interest of J.P., 253 Ga. App. 732, 560 S.E.2d 318 (2002) (decided under former O.C.G.A. T. 15, C. 11).

Reunification was not appropriate since evidence of the children's starvation, coupled with the mother's complete denial of responsibility for their emaciated condition, amply supported the juvenile court's findings that she physically neglected the children and that reunification would be detrimental to the children. In the Interest of R.N.R., 257 Ga. App. 93, 570 S.E.2d 388 (2002) (decided under former Code O.C.G.A. § 15-11-58).

Evidence was sufficient to support a juvenile court's approval of nonreunification of the mother and her child under former O.C.G.A. § 15-11-58(h) (see now O.C.G.A. § 15-11-204) as the mother failed to rebut the presumption that reunification services not be provided due to her medically verifiable health deficiency when the mother provided evidence that she complied with her prenatal care, did fine during pregnancy even though she was not on her medication, and was a loving mother,

but a psychiatrist testified that the mother was mentally ill, that the illness could cause the mother to hurt the child, and that the mother's mental condition was likely to continue. In the Interest of D.L.W., 264 Ga. App. 168, 590 S.E.2d 183 (2003) (decided under former O.C.G.A. T. 15, C. 11).

As the trial court found clear and convincing evidence of a medically verifiable condition creating the parent's inability to properly parent the children, this finding created a presumption that reunification services need not be provided. In the Interest of A.W., 264 Ga. App. 705, 592 S.E.2d 177 (2003) (decided under former O.C.G.A. § 15-11-58).

Evidence was sufficient to support the trial court's judgment that reunification efforts should be discontinued as to the mother as clear and convincing evidence showed that the mother had not, as required by the reunification plan, gone six consecutive months without testing positive for drugs and had refused to submit to two drug screenings; also, the mother had not rebutted the presumption that reunification efforts should be discontinued. In the Interest of J.B., 274 Ga. App. 564, 618 S.E.2d 187 (2005) (decided under former O.C.G.A. § 15-11-58).

Plan for nonreunification under former O.C.G.A. § 15-11-58(h) (see now O.C.G.A. § 15-11-204) was in the child's best interests since: (1) the grandmother relapsed after regaining custody and became so drunk that she passed out and left the four-year-old child unsupervised; (2) the incident resulted in the grandmother's father applying for a protection order; (3) the grandmother was dismissed from a substance abuse treatment program; (4) the grandmother pled guilty to driving under the influence and child endangerment two years earlier; and (5) the child had behavioral problems that resulted in hospitalization and that led a child services agency to seek therapeutic foster care before seeking permanent adoption. In the Interest of J.B., 274 Ga. App. 20, 619 S.E.2d 305 (2005) (decided under former O.C.G.A. § 15-11-58).

Trial court properly granted an agency's motion to end reunification services provided to the parents as the evidence indicated that the parents refused to cooperate with case plans and had completely denied responsibility for placing the children in a harmful situation. In the Interest of D.B., 277 Ga. App. 454, 627 S.E.2d 101 (2006) (decided under former O.C.G.A. § 15-11-58).

Rational trier of fact could have found clear and convincing evidence that the parent unjustifiably failed to comply with the reunification plan and that reasonable efforts to reunify the child with the parent would be detrimental to the child under former O.C.G.A. § 15-11-58(h) (see now O.C.G.A. § 15-11-204); the parent failed to complete parenting classes, failed to obtain stable housing and employment, failed to pay child support, failed to attend psychotherapy, and disappeared for months at a time without explanation and without visiting the child. In the Interest of C.A., 279 Ga. App. 747, 632 S.E.2d 698 (2006) (decided under former O.C.G.A. § 15-11-58).

In the termination of parental rights case, contrary to the mother's argument, the reunification plan complied with former O.C.G.A. § 15-11-58(c)(3) (see now O.C.G.A. § 15-11-201); the plan required the mother, who was mentally retarded, to prove that the mother could be a fit parent, and the mother failed to show this. In the Interest of H.F.G., 281 Ga. App. 22, 635 S.E.2d 338 (2006) (decided under former O.C.G.A. § 15-11-58).

Order holding that reunification efforts on the part of a mother were not in the best interest of her two children was upheld on appeal pursuant to former O.C.G.A. § 15-11-58(h) (see now O.C.G.A. § 15-11-204) since the record established that the mother suffered from mental illness and was unable to care for her children. The mother failed to rebut the presumption that reunification services were inappropriate when she had unjustifiably failed to comply with a previously ordered plan. In the Interest of T.L., 285 Ga. App. 526, 646 S.E.2d 728 (2007) (decided under former O.C.G.A. § 15-11-58).

Although a parent made substantial progress on a reunification plan while incarcerated, an order extending temporary custody for an additional year in favor of the Department of Family and

Reunification (Cont'd)
3. Reunification Inappropriate (Cont'd)

Children Services was upheld on appeal as sufficient evidence was presented that the parent was unable to: (1) establish stable housing; (2) complete a substance abuse assessment; and (3) demonstrate six months of clean drug screens; further, as the parent was living with the other parent who evidence showed to be an unrehabilitated drug user, the trial court was authorized to conclude that the child at issue would not be in a safe environment if returned to the parent. In the Interest of R.B., 285 Ga. App. 556, 647 S.E.2d 300 (2007) (decided under former O.C.G.A. § 15-11-58).

Juvenile court did not err in approving nonreunification with regard to a parent and two twin children as some evidence showed that the parent: unjustifiably failed to comply with the case plan goals to provide financial support for the children; failed to maintain stable housing and employment; failed to attend all scheduled psychological evaluations; exhibited paranoid and psychopathic personality tendencies to the extent that the parent's ability to care for the children was severely impaired; and was convicted of threatening a prior spouse and stalking that spouse and children and, thus, had engaged in actions which constituted egregious conduct toward those children. In the Interest of T.W., 288 Ga. App. 386, 654 S.E.2d 218 (2007) (decided under former O.C.G.A. § 15-11-58).

Trial court properly extended a department of family and child services' custody of a child when the child's mother, communicating with the child over the Internet while posing as an adult man, had pretended to have witnessed a sexually graphic event; the child was especially vulnerable to sexually inappropriate behavior; and the mother's conduct during visitation with the child, including her statements that the child would be a suspect if anything happened to the mother, that the child would never live with her father, and that the child was "acting like a whore," was also probative of whether she would act abusively toward her daughter if she were returned to her custody. The fact that the mother had substantially completed her reunification case plan did not mandate that the child be returned to her custody. In the Interest of Q.H., 291 Ga. App. 598, 662 S.E.2d 358 (2008) (decided under former O.C.G.A. § 15-11-58).

There was sufficient clear and convincing evidence presented to authorize the juvenile court to find that a mother's child was deprived and that the deprivation was likely to continue, and consequently, that reunification of the child with the mother would be detrimental to the child and was not in the child's best interest because, while the juvenile court took into consideration the previous termination of the mother's parental rights in determining whether the child was deprived, the juvenile court also heard substantial evidence showing that the mother's mental, emotional, and financial condition had not changed significantly since her parental rights to her children were terminated and that, despite the assistance of the Department of Family and Children Services and the loss of her four children, the mother still lacked the necessary skills, judgment, and resources to properly care for the child. In re R. B., 309 Ga. App. 407, 710 S.E.2d 611 (2011) (decided under former O.C.G.A. § 15-11-58).

Juvenile court did not err in terminating the reunification services and approving the non-reunification plan because clear and convincing evidence supported the juvenile court's conclusion that the child was deprived based on the mother's long-term substance abuse and that such deprivation was likely to continue and cause harm to the child. In the Interest of J. T., 322 Ga. App. 4, 743 S.E.2d 571 (2013) (decided under former O.C.G.A. § 15-11-58).

Reunification inappropriate when children had severe medical issues. — Trial court did not err in granting a motion filed by the Department of Family and Children Services for nonreunification because evidence supported the trial court's finding that the parents were not able to meet their children's medical needs, and the children's lives would be endangered if the appropri-

ate level of care was not maintained; the parents' physical neglect of the children and their continuing inability to meet their children's extensive medical needs was sufficient for any rational trier of fact to find by clear and convincing evidence that reunification efforts would be detrimental to the children. In the Interest of A.M., 306 Ga. App. 358, 702 S.E.2d 686 (2010) (decided under former O.C.G.A. § 15-11-58).

Report recommending nonreunification met requirements of former O.C.G.A. § 15-11-58(b) (see now O.C.G.A. § 15-11-200), notwithstanding evidence which the mother contended showed that the contents of the report recommending nonreunification were determined prior to her meeting with caseworkers for the county Department of Family and Children Services. Although the court agreed with the mother that a report should not be finalized until after such a meeting had been conducted, it disagreed with the mother's apparent contention that nothing should be committed to writing prior to such meeting. In the Interest of T.R., 248 Ga. App. 310, 548 S.E.2d 621 (2001) (decided under former O.C.G.A. § 15-11-58).

Discontinuing efforts for reunification appropriate. — Because a trial court found in the court's unappealed orders that the children were deprived and that such deprivation was caused by their father, in a second unappealed order finding that the deprivation was likely to continue and that the father was untruthful, evasive, and inconsistent in his testimony, the statutory criteria for discontinuing efforts for reunification of the family were met. In re L.S.M., 236 Ga. App. 537, 512 S.E.2d 397 (1999) (decided under former O.C.G.A. § 15-11-41).

Denial of reunification was proper based on findings that this was the third time that the children had been removed from the mother's care, that the Department of Family and Children Services had previously undertaken reasonable efforts to reunify the family, that the mother had unjustifiably failed to comply with prior plans, and that she had serious medical problems. In re K.M., 240 Ga. App. 67, 522 S.E.2d 667 (1999) (decided under former O.C.G.A. § 15-11-41).

Order terminating reunification services was proper after a case manager testified that the mother did not meet the case plan requirements, and although the mother claimed that she worked "daily" to clean up her house and satisfy the other case plan goals, she readily admitted that she failed to make her home safe for the child within the 90-day time period established by the court. In the Interest of B.D.G., 262 Ga. App. 843, 586 S.E.2d 736 (2003) (decided under former O.C.G.A. § 15-11-58).

Termination of reunification services was affirmed since the evidence showed that the parent had a history of chronic unrehabilitated abuse of alcohol or controlled substances with the effect of rendering the parent incapable of providing adequately for the needs of the children. In the Interest of S.A., 263 Ga. App. 610, 588 S.E.2d 805 (2003) (decided under former O.C.G.A. § 15-11-58).

Record supported the juvenile court's judgment that a parent did not fulfill the terms of a case plan that was established by the Department of Family and Children's Services because the parent continued using cocaine and refused to attend substance abuse treatment; thus, the child was deprived and custody was properly placed in the department. In the Interest of J.L., 269 Ga. App. 226, 603 S.E.2d 742 (2004) (decided under former O.C.G.A. § 15-11-58).

Because a mother unjustifiably failed to comply with the court-ordered case-plan goals, ample evidence supported the juvenile court's order approving the termination of reunification services under former O.C.G.A. § 15-11-58(h) (see now O.C.G.A. § 15-11-204). In the Interest of K.R., 270 Ga. App. 296, 605 S.E.2d 911 (2004) (decided under former O.C.G.A. § 15-11-58).

Because a presumption of nonunification arose after a parent failed to pay child support or comply with the reunification plan, reunification services were properly discontinued; but a placement order with a foster care agency was reversed as a grandparent presented uncontradicted evidence supporting a consideration for alternative placement. In the Interest of J.J., 287 Ga. App. 746, 652 S.E.2d 639 (2007) (decided under former O.C.G.A. § 15-11-58).

Reunification (Cont'd)
3. Reunification
Inappropriate (Cont'd)

Juvenile court properly terminated reunification services under since the child's parent had been incarcerated for the majority of the child's life and faced additional jail time if convicted of several pending charges, and the parent's child enjoyed a significant bond with the child's aunt and uncle, with whom the child had lived for several years. In the Interest of C.P., 291 Ga. App. 699, 662 S.E.2d 802 (2008) (decided under former O.C.G.A. § 15-11-58).

Grant of a petition to cease efforts to reunify the mother with the mother's three children was supported by evidence that the mother continued to live with the mother's drug-supplier boyfriend and use illegal drugs, had not obtained a source of income, and had not ensured that the children had no contact with the mother's boyfriend, who allegedly touched one of the children inappropriately. In the Interest of R. G., 322 Ga. App. 523, 745 S.E.2d 752 (2013).

4. Procedure

Notice. — At a permanency hearing, at which a mother appeared represented by counsel, the mother was not entitled to prior notice by report or motion that DFCS would seek termination of reunification services and an award of long-term custody at the hearing. In the Interest of D. H., 313 Ga. App. 664, 722 S.E.2d 388 (2012) (decided under former O.C.G.A. § 15-11-58).

Discontinuing efforts for reunification not appropriate. — Evidence that the mother had substantially complied with the reunification plan and that, in the opinion of the psychologist retained by the Department of Family and Children Services, the psychologist did not understand why the department was seeking to end reunification efforts when the only way it was possible to determine if the mother would be able to effectively parent her eight year old child in the future was by reuniting the mother and child overcame the statutory presumption that reunification was not appropriate in cases when a child had been removed from the mother's home on at least two prior occasions and reunification services had been made available on those occasions. In the Interest of M.H., 251 Ga. App. 528, 554 S.E.2d 616 (2001) (decided under former O.C.G.A. § 15-11-58).

Because the record failed to contain clear and convincing evidence to support the termination of reunification services to a parent, but instead showed that the parent substantially met the goals outlined in the reunification plan, maintained an income level appropriate to meet the needs of the parent's family, and cooperated in submitting to a psychological evaluation and any recommended treatment, that part of the lower court's judgment was reversed; but, the denial of the parent's reunification motion and the extension of temporary custody was affirmed. In the Interest of S.L.E., 280 Ga. App. 145, 633 S.E.2d 454 (2006) (decided under former O.C.G.A. § 15-11-58).

Trial court improperly granted a motion filed by the Department of Family and Children Services to discontinue efforts to reunify parents with their children because the trial court erred in finding that the parents suffered from a medically verifiable deficiency of their mental health such as to render them incapable of providing for the physical needs of the children; the four psychological reports, two for each parent, that were submitted into evidence for consideration by the trial court provided no evidentiary support for the trial court's finding of a "medically verifiable deficiency" of the parents' mental health because the reports did not suggest that either parent lacked the mental competency to care for their children. In the Interest of A.M., 306 Ga. App. 358, 702 S.E.2d 686 (2010) (decided under former O.C.G.A. § 15-11-58).

A juvenile court's orders terminating reunification services and awarding custody of a child to the maternal grandmother were not supported by clear and convincing evidence because the mother demonstrated that she had Supplemental Security Income for two other children and that she could live comfortably with her children at her mother's home. In the Interest of D. H., 313 Ga. App. 664, 722

S.E.2d 388 (2012) (decided under former O.C.G.A. § 15-11-58).

Failure to challenge deprivation order. — Failure to challenge a deprivation order precluded a parent's challenge to the sufficiency of the evidence showing that reasonable reunification efforts were made. In the Interest of R.D.B., 282 Ga. App. 628, 639 S.E.2d 565 (2006) (decided under former O.C.G.A. § 15-11-58).

Finding of reunification efforts not required. — Because the children had not been placed in the custody of the Department of Family and Children Services, the trial court was not required to find that the agency had made reasonable reunification efforts. In the Interest of T.R., 284 Ga. App. 742, 644 S.E.2d 880 (2007) (decided under former O.C.G.A. § 15-11-58).

Parent's complicity in murder. — When a mother's boyfriend was charged with murdering one of her three children, and she was charged with complicity, and since there was no evidence she knew that the boyfriend abused her children, and none of the aggravated circumstances contained in former O.C.G.A. § 15-11-58(a)(4)(A)-(C) (see now O.C.G.A. § 15-11-203) had been shown, the trial court erred in excusing the state from making reasonable efforts toward reunification. In the Interest of A.B., 263 Ga. App. 697, 589 S.E.2d 264 (2003) (decided under former O.C.G.A. § 15-11-58).

Reunification plan requiring English classes. — Trial court did not misread parents' case plan to include goals that were not expressed in the plan because evidence supported the trial court's finding that the parents' case plan required the parents to have a psychological examination and follow through with recommended treatment; because the psychologist who recommended English as a second language classes pointed to the parents' language limitations as causing them to miss information necessary to provide appropriate medical care for the children, the recommended action was directly related to the circumstances which required the children be separated from the parents, and the recommended action could be included in the case plan without further judicial review. In the Interest of A.M., 306 Ga. App. 358, 702 S.E.2d 686 (2010) (decided under former O.C.G.A. § 15-11-58).

Findings of fact not set forth separately from conclusions of law. — After the now-15-year-old child was removed from an aunt and uncle's custody and adjudicated dependent based on allegations that the aunt had physically abused the child, the juvenile court erred in entering an order granting a motion for nonreunification filed by the County Department of Family and Children Services because the nonreunification order did not set forth the juvenile court's findings of facts, separate from the conclusions of law, in a manner that would permit the appellate court to make an intelligent review of the merits of the challenges to the sufficiency of the evidence. In the Interest of B. G., 345 Ga. App. 167, 812 S.E.2d 552 (2018).

Juvenile court's order finding the child to be dependent and granting the maternal grandmother custody failed to sufficiently explain the court's conclusion as to dependency and third-party custody because the order did not set forth findings of fact, separate from conclusions of law, in a manner permitting the appellate court to review the merits of the challenges to the sufficiency of the evidence. In the Interest of J. G., 350 Ga. App. 588, 829 S.E.2d 828 (2019).

In a dependency case, the juvenile court's order denying the mother's motion for immediate reunification and return of the mother's six children to the mother's custody on the court's belief that the mother would not protect the children from the biological father of five of the children once the father was released from prison was vacated as the order did not include findings of fact, separate from the court's apparent conclusions of law, in a manner that would permit the appellate court to make an intelligent or meaningful review of the challenges to the sufficiency of the evidence. In the Interest of T. Y., 350 Ga. App. 553, 829 S.E.2d 808 (2019).

Reunification order insufficient to allow for meaningful appellate review. — Juvenile court's order that reunification was not in a child's best interests was vacated because the juvenile court

Reunification (Cont'd)
4. Procedure (Cont'd)

found that reunification efforts would be detrimental to the child but did not specify which, if any, of the presumptions under former O.C.G.A. § 15-11-58(h) (see now O.C.G.A. § 15-11-204) supported the court's finding; therefore, it was impossible for the court of appeals to determine whether the order was supported by clear and convincing evidence. In re T.S., 310 Ga. App. 100, 712 S.E.2d 121 (2011) (decided under former O.C.G.A. § 15-11-58).

15-11-112. Court ordered visitation.

(a) When a child is removed from his or her home, the court shall order reasonable visitation that is consistent with the age and developmental needs of a child if the court finds that it is in a child's best interests. The court's order shall specify the frequency, duration, and terms of visitation including whether or not visitation shall be supervised or unsupervised.

(b) There shall be a presumption that visitation shall be unsupervised unless the court finds that unsupervised visitation is not in a child's best interests.

(c) Within 30 days of the court finding that there is a lack of substantial progress towards completion of a case plan, the court shall review the terms of visitation and determine whether the terms continue to be appropriate for a child or whether the terms need to be modified.

History. — Code 1981, § 15-11-112, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

15-11-113. Date child is considered to have entered foster care.

When a child is alleged to be a dependent child, the date such child is considered to have entered foster care shall be the date of the first judicial finding that such child has been subjected to child abuse or neglect or the date that is 60 days after the date on which such child is removed from his or her home, whichever is earlier.

History. — Code 1981, § 15-11-113, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

PART 2

VENUE FOR DEPENDENCY PROCEEDINGS

15-11-125. Venue.

(a) A proceeding under this article may be commenced:

(1) In the county in which a child legally resides; or

(2) In the county in which a child is present when the proceeding is commenced if such child is present without his or her parent, guardian, or legal custodian or the acts underlying the dependency allegation are alleged to have occurred in that county.

(b) For the convenience of the parties, the court may transfer the proceeding to the county in which a child legally resides. If the proceeding is transferred, certified copies of all legal and social documents and records pertaining to the proceeding on file with the clerk of court shall accompany the transfer.

History. — Code 1981, § 15-11-125, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

Law reviews. — For article discussing venue problems in juvenile court practice and suggesting solutions, see 23 Mercer L. Rev. 341 (1972). For article, "An Outline of Juvenile Court Jurisdiction with Focus on Child Custody," see 10 Ga. St. B. J. 275 (1973).

JUDICIAL DECISIONS

Editor's notes. — Many of the following annotations should be examined in light of the amendment to Ga. Const. 1976, Art. VI, Sec. XIV, Para. VI (see now Ga. Const. 1983, Art. VI, Sec. II, Para. VI) which took effect November 1, 1981.

In light of the similarity of the statutory provisions, decisions under former Code 1933, § 24A-1101, pre-2000 Code Section 15-11-15 and pre-2014 Code Section 15-11-29, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Determining legal residence. — In determining where a juvenile resides for purposes of venue, it is generally the legal residence that controls. In re A.M.C., 213 Ga. App. 897, 446 S.E.2d 760 (1994) (decided under former O.C.G.A. § 15-11-15).

Challenge to court's jurisdiction unsuccessful. — Although former Code 1933, § 79-404 (see now O.C.G.A. § 19-2-4) provided that the domicile of an illegitimate child shall be that of his or her mother, yet, where the plea to the jurisdiction alleged "this court has accepted jurisdiction and custody of the minor child … and is holding said child subject to the order of this court," which clearly showed that the child was before the court, and there was no allegation showing the domicile of the mother, who was present in court, or any other reason why the juvenile court did not have jurisdiction, it was not error to overrule the plea. Springstead v. Cook, 215 Ga. 154, 109 S.E.2d 508 (1959) (decided under Ga. L. 1953, Nov.-Dec. Sess., p. 87, § 3).

RESEARCH REFERENCES

Am. Jur. 2d. — 42 Am. Jur. 2d, Infants, § 27 et seq. 47 Am. Jur. 2d, Juvenile Courts and Delinquent and Dependent Children, § 39 et seq.

C.J.S. — 43 C.J.S., Infants, § 180 et seq.

U.L.A. — Uniform Juvenile Court Act (U.L.A.) § 11.

PART 3

TAKING INTO CARE

15-11-130. Emergency care and supervision of child without court order; immunity.

(a) Notwithstanding Code Sections 15-11-133 and 15-11-135, DFCS shall be authorized to provide emergency care and supervision to any child without seeking a court order for a period not to exceed seven days when:

(1)(A) As a result of an emergency or illness, the person who has physical and legal custody of a child is unable to provide for the care and supervision of such child, and such person or a law enforcement officer, emergency personnel employed by a licensed ambulance provider, fire rescue personnel, or a hospital administrator or his or her designee requests that DFCS exercise such emergency custody; and

(B) A child is not at imminent risk of abuse or neglect, other than the risks arising from being without a caretaker; or

(2) The child is a victim of trafficking for labor or sexual servitude under Code Section 16-5-46.

(b) During the period when a child is in the temporary care and supervision of DFCS, DFCS shall endeavor to place such child with a relative of such child's parent, guardian, or legal custodian, in foster care, or in emergency foster care or shall make other appropriate placement arrangements. DFCS shall have the same rights and powers with regard to such child as does his or her parent, guardian, or legal custodian including the right to consent to medical treatment.

(c) Immediately upon receiving custody of a child, DFCS shall begin a diligent search for a relative or other designee of a child's parent who can provide for the care and supervision of such child.

(d) At any time during such seven-day period, and upon notification to DFCS that a child's parent, guardian, or legal custodian or an expressly authorized relative, or designee thereof, is able to provide care to and exercise control over a child, DFCS shall release such child to the person having custody of such child at the time such child was

taken into DFCS custody or to such person's authorized relative or designee.

(e) Upon the expiration of such seven-day period, if a child has not been released or if DFCS determines that there is an issue of neglect, abandonment, or abuse, DFCS shall promptly contact a juvenile court intake officer or bring such child before the juvenile court. If, upon making an investigation, the juvenile court intake officer finds that foster care is warranted for such child, then, for purposes of this chapter, such child shall be deemed to have been placed in foster care at the time such finding was made and DFCS may file a dependency petition.

(f) DFCS and its successors, agents, assigns, and employees shall be immune from any and all liability for providing care and supervision in accordance with this Code section, for consenting to medical treatment for a child, and for releasing a child.

History. — Code 1981, § 15-11-130, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242; Ga. L. 2019, p. 74, § 1-2/SB 158.

The 2019 amendment, effective July 1, 2019, redesignated former paragraphs (a)(1) and (a)(2) as present subparagraphs (a)(1)(A) and (a)(1)(B), respectively; added "; or" at the end of subparagraph (a)(1)(B); and added paragraph (a)(2). See Editor's note for applicability.

Editor's notes. — Ga. L. 2019, p. 74, § 1-1/SB 158, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Anti-Human Trafficking Protective Response Act.'"

Ga. L. 2019, p. 74, § 3-1/SB 158, not codified by the General Assembly, provides: "This Act shall become effective on July 1, 2019, and shall apply to offenses which occur on or after that date. Any offense occurring before July 1, 2019, shall be governed by the statute in effect at the time of such offense, and any resulting conviction shall be considered a prior conviction for the purpose of imposing a sentence that provides for a different penalty for a subsequent conviction."

Law reviews. — For article on the 2019 amendment of this Code section, see 36 Ga. St. U.L. Rev. 63 (2019).

15-11-130.1. Referral to victim assistance organizations of child suspected of being a victim of sexual exploitation or trafficking.

A law enforcement officer or agency or DFCS shall refer any child suspected of being a victim of sexual exploitation or trafficking under Code Section 16-5-46 to an available victim assistance organization, as certified by the Criminal Justice Coordinating Council pursuant to Code Section 15-21-132, which provides comprehensive trauma-informed services designed to alleviate the adverse effects of trafficking victimization and to aid in the child's healing, including, but not limited to, assistance with case management, placement, access to educational and legal services, and mental health services.

History. — Code 1981, § 15-11-130.1, enacted by Ga. L. 2019, p. 74, § 1-3/SB 158.

Effective date. — This Code section became effective July 1, 2019. See Editor's note for applicability.

Cross references. — Victim compensation, T. 17, C. 15. State Victim Services Commission, § 35-6-1 et seq.

Editor's notes. — Ga. L. 2019, p. 74, § 1-1/SB 158, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Anti-Human Trafficking Protective Response Act.'"

Ga. L. 2019, p. 74, § 3-1/SB 158, not codified by the General Assembly, provides: "This Act shall become effective on July 1, 2019, and shall apply to offenses which occur on or after that date. Any offense occurring before July 1, 2019, shall be governed by the statute in effect at the time of such offense, and any resulting conviction shall be considered a prior conviction for the purpose of imposing a sentence that provides for a different penalty for a subsequent conviction."

Administrative rules and regulations. — Certification of Crime Victim Assistance Programs, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Criminal Justice Coordinating Council, Functions and Powers, Rule 144-4-.05.

RESEARCH REFERENCES

C.J.S. — 43 C.J.S., Infants, § 190 et seq.

15-11-131. Temporary protective custody of child by physician without court order and without parental consent; immunity.

(a) Notwithstanding Code Section 15-11-133, a physician licensed to practice medicine in this state who is treating a child may take or retain temporary protective custody of such child, without a court order and without the consent of his or her parent, guardian, or legal custodian, provided that:

(1) A physician has reasonable cause to believe that such child is in a circumstance or condition that presents an imminent danger to such child's life or health as a result of suspected abuse or neglect; or

(2) There is reasonable cause to believe that such child has been abused or neglected and there is not sufficient time for a court order to be obtained for temporary custody of such child before such child may be removed from the presence of the physician.

(b) A physician holding a child in temporary protective custody shall:

(1) Make reasonable and diligent efforts to inform the child's parents, guardian, or legal custodian of the whereabouts of such child;

(2) As soon as possible, make a report of the suspected abuse or neglect which caused him or her to take temporary custody of the child and inform DFCS that such child has been held in temporary custody; and

(3) Not later than 24 hours after such child is held in temporary custody:

(A) Contact a juvenile court intake officer, and inform such intake officer that such child is in imminent danger to his or her life or health as a result of suspected abuse or neglect; or

(B) Contact a law enforcement officer who shall take such child and promptly bring such child before a juvenile court intake officer.

(c) A child who meets the requirements for inpatient admission shall be retained in a hospital or institution until such time as such child is medically ready for discharge. Upon notification by the hospital or institution to DFCS that a child who is not eligible for inpatient admission or who is medically ready for discharge has been taken into custody by a physician and such child has been placed in DFCS custody, DFCS shall take physical custody of such child within six hours of being notified.

(d) If a juvenile court intake officer determines that a child is to be placed in foster care and the court orders that such child be placed in DFCS custody, then:

(1) If such child remains in the physical care of the physician, DFCS shall take physical possession of such child within six hours of being notified by the physician, unless such child meets the criteria for admission to a hospital or other medical institution or facility; or

(2) If such child has been brought before the court by a law enforcement officer, DFCS shall promptly take physical possession of such child.

(e) If a juvenile court intake officer determines that a child should not be placed in foster care, such child shall be released.

(f) If a child is placed in foster care, then the court shall notify such child's parents, guardian, or legal custodian, the physician, and DFCS of the preliminary protective hearing which is to be held within 72 hours.

(g) If after the preliminary protective hearing a child is not released, DFCS shall file a petition alleging dependency in accordance with this article, provided that there is a continued belief that such child's life or health is in danger as a result of suspected abuse or neglect.

(h) Any hospital or physician authorized and acting in good faith and in accordance with acceptable medical practice in the treatment of a child under this Code section shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed as a result of taking or failing to take any action pursuant to this Code

section. This Code section shall not be construed as imposing any additional duty not already otherwise imposed by law.

History. — Code 1981, § 15-11-131, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

Cross references. — Child abuse, T. 19, C. 15.

JUDICIAL DECISIONS

Cited in In the Interest of R. M., 354 Ga. App. 36, 840 S.E.2d 144 (2020).

15-11-132. Verbal custody order.

(a) The facts supporting the issuance of an order of removal may be relayed orally, including telephonically, to the judge or a designated juvenile court intake officer, and the order directing that a child be taken into custody may be issued orally or electronically.

(b) When a child is taken into custody under exceptional circumstances, an affidavit or sworn complaint containing the information previously relayed orally, including telephonically, shall be filed with the clerk of the court the next business day, and a written order shall be issued if not previously issued. The written order shall include the court's findings of fact supporting the necessity for such child's removal from the custody of his or her parent, guardian, or legal custodian in order to safeguard such child's welfare and shall designate a child's legal custodian.

(c) The affidavit or sworn complaint filed after a child has been placed shall indicate whether the child was released to such child's parent, guardian, or legal custodian or remains removed.

(d) DFCS shall promptly notify the parent, guardian, or legal custodian of the nature of the allegations forming the basis for taking a child into custody and, if such child is not released, of the time and place of the preliminary protective hearing.

History. — Code 1981, § 15-11-132, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

15-11-133. Removal of child from the home; protective custody; consideration of alternatives.

(a) A child may be removed from his or her home, without the consent of his or her parents, guardian, or legal custodian:

(1) Pursuant to an order of the court under this article; or

(2) By a law enforcement officer or duly authorized officer of the court if:

(A) A child is in imminent danger of abuse or neglect if he or she remains in the home; or

(B) A child is a victim of trafficking for labor or sexual servitude under Code Section 16-5-46.

(b) Upon removing a child from his or her home, a law enforcement officer or duly authorized officer of the court shall:

(1) Immediately deliver such child to a medical facility if such child is believed to suffer from a serious physical condition or illness which requires prompt treatment, and, upon delivery, shall promptly contact DFCS;

(2) Bring such child immediately before the juvenile court or promptly contact the juvenile court; and

(3) Promptly give notice to the court and such child's parents, guardian, or legal custodian that such child is in protective custody, together with a statement of the reasons for taking such child into protective custody.

(c) The removal of a child from his or her home by a law enforcement officer shall not be deemed an arrest.

(d) A law enforcement officer removing a child from his or her home has all the privileges and immunities of a law enforcement officer making an arrest.

(e) A law enforcement officer shall promptly contact the juvenile court for issuance of a court order once such officer has taken a child into protective custody and delivered such child to a medical facility.

(f) The juvenile court shall immediately determine if a child should be released, remain in protective custody, or be brought before the court upon being contacted by a law enforcement officer, duly authorized officer of the court, or DFCS that a child has been taken into protective custody.

(g) In addition to the requirements of Code Section 15-11-134, prior to authorizing the removal of a child from his or her home as provided in paragraph (1) of subsection (a) of this Code section or ordering a child to remain in protective custody as provided in subsection (f) of this Code section, the court shall consider whether there are reasonable alternatives to the removal of the child and placement of the child in foster care and may order temporary alternatives to foster care in lieu of removing the child and placing the child in protective custody or continuing the child in protective custody pursuant to Code Section 15-11-133.1.

History. — Code 1981, § 15-11-133, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242; Ga. L. 2019, p. 67, § 3/HB 472; Ga. L. 2019, p. 74, § 1-4/SB 158.

The 2019 amendments. — The first 2019 amendment, effective April 18, 2019, substituted "the juvenile court" for "a juvenile court intake officer" at the end of paragraph (b)(2) and near the beginning of subsection (e); substituted "The juvenile court" for "A juvenile court intake officer" at the beginning of subsection (f); and added subsection (g). The second 2019 amendment, effective July 1, 2019, rewrote paragraph (a)(2), which formerly read: "By a law enforcement officer or duly authorized officer of the court if a child is in imminent danger of abuse or neglect if he or she remains in the home." See Editor's note for applicability.

Cross references. — Exercise of power of arrest generally, § 17-4-1 et seq. Authority of peace officer to assume temporary custody of child absent from school without lawful authority or excuse, § 20-2-698 et seq.

Editor's notes. — Ga. L. 2019, p. 74, § 1-1/SB 158, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Anti-Human Trafficking Protective Response Act.'"

Ga. L. 2019, p. 74, § 3-1/SB 158, not codified by the General Assembly, provides: "This Act shall become effective on July 1, 2019, and shall apply to offenses which occur on or after that date. Any offense occurring before July 1, 2019, shall be governed by the statute in effect at the time of such offense, and any resulting conviction shall be considered a prior conviction for the purpose of imposing a sentence that provides for a different penalty for a subsequent conviction."

Law reviews. — For article, "The Prosecuting Attorney in Georgia's Juvenile Courts," see 13 Ga. St. B. J. 27 (2008). For article on the 2019 amendment of this Code section, see 36 Ga. St. U.L. Rev. 63 (2019).

For note criticizing jurisdiction of juvenile justice system over runaways and advocating alternative legal approaches, see 24 Emory L. J. 1075 (1975).

For comment, "School Bullies — They Aren't Just Students: Examining School Interrogations and the Miranda Warning," see 59 Mercer L. Rev. 731 (2008).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 24A-1402, pre-2000 Code Sections 15-11-17 and 15-11-19, and pre-2014 Code Sections 15-11-45 and 15-11-47, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Authority of county department of family and children services. — Former O.C.G.A. § 15-11-17 (see now O.C.G.A. § 15-11-133) empowered a county department of family and children services to act in a situation of medical neglect. Bendiburg v. Dempsey, 909 F.2d 463 (11th Cir. 1990), cert. denied, 500 U.S. 932, 111 S. Ct. 2053, 114 L. Ed. 2d 459 (1991) (decided under former O.C.G.A. § 15-11-17).

Removal from custody improper. — Trial court erred in sua sponte removing two boys from their mother's custody and placing the boys in the temporary custody of DFCS as part of the court's ruling on a deprivation petition involving their sisters; no petition was filed with regard to the boys and the court could not find that former O.C.G.A. § 15-11-45(a)(4) (see now O.C.G.A. § 15-11-133) authorized the boys' removal as the trial court made no findings as to one boy and only limited ones as to the other, which did not demand a loss of custody. In the Interest of N.D., 286 Ga. App. 236, 648 S.E.2d 771 (2007) (decided under former O.C.G.A. § 15-11-45).

Escape from custody. — Juvenile who was taken into custody by the police for a probation violation, and who escaped, could not be adjudicated delinquent based on the adult crime of misdemeanor escape since the juvenile was not in custody prior to or after having been convicted of a

felony, misdemeanor, or violation of a municipal ordinance. In re J.B., 222 Ga. App. 252, 474 S.E.2d 111 (1996) (decided under former O.C.G.A. § 15-11-17).

Purpose. — Purpose of former Code 1933, § 24A-1402 (see now O.C.G.A. §§ 15-11-133, 15-11-501, and 15-11-502) was to make certain that a juvenile's rights were protected when the juvenile was taken into custody or placed in detention. Paxton v. State, 159 Ga. App. 175, 282 S.E.2d 912, cert. denied, 248 Ga. 231, 283 S.E.2d 235 (1981) (decided under former Code 1933, § 24A-1402).

Importance of procedural due process in juvenile proceedings. — Safeguarding of the child's procedural rights takes on the same importance that procedural due process has in an adult criminal proceeding context. R.A.S. v. State, 156 Ga. App. 366, 274 S.E.2d 752 (1980), overruled on other grounds, In re R.D.F., 66 Ga. 294, 466 S.E.2d 572 (1996) (decided under former Code 1933, § 24A-1402).

Applicability of statutory safeguards. — Statutory safeguards were applicable to juvenile cases and a criminal case when a juvenile was tried as an adult. Bussey v. State, 144 Ga. App. 875, 243 S.E.2d 99 (1978) (decided under former Code 1933, § 24A-1402).

Trial court did not err in admitting a juvenile defendant's videotaped statement to the police because the police did not follow the juvenile intake procedures outlined in former O.C.G.A. § 15-11-47(a) (see now O.C.G.A. §§ 15-11-133 and 15-11-502) as: (1) defendant was 15-years-old at the time of the shooting and police discussed the nature of the charges; (2) police read defendant the Miranda rights, and all questioning took place with defendant's mother present; (3) both defendant and the mother voluntarily signed a waiver of counsel form that explained defendant's Miranda rights prior to any questioning taking place; (4) defendant averred that no threats, promises, tricks, or other forms of persuasion were used to induce the defendant to sign the waiver form; (5) the interview itself lasted only 15 or 20 minutes, and police did not employ any tactics to pressure or coerce the defendant into giving a statement; and (6) police ceased all questioning the moment that the defendant's mother asked for an attorney. Williams v. State, 273 Ga. App. 42, 614 S.E.2d 146 (2005) (decided under former O.C.G.A. § 15-11-47).

Because a juvenile's allegations that the state failed to comply with the procedural requirements under former O.C.G.A. § 15-11-49(c)(1) and (e) (see now O.C.G.A. §§ 15-11-102, 15-11-145, 15-11-151, 15-11-472, and 15-11-521) should have been raised in the superior court and had no bearing on the validity of the delinquency petitions or the substantive charges against the juvenile in juvenile court, the juvenile court properly prevented the juvenile from presenting evidence regarding the procedural violations. In the Interest of K.C., 290 Ga. App. 416, 659 S.E.2d 821 (2008) (decided under former O.C.G.A. § 15-11-47).

Procedural requirements are applicable when child is taken into custody or temporarily detained, regardless of whether it is for alleged delinquency, unruliness, or deprivation. Sanchez v. Walker County Dep't of Family & Children Servs., 237 Ga. 406, 229 S.E.2d 66 (1976) (decided under former Code 1933, § 24A-1402).

Failure to follow mandated procedures warrants dismissal without prejudice of a petition alleging deprivation of a child. Another petition can be filed without delay if there is reason to believe the child is being neglected or abused. Sanchez v. Walker County Dep't of Family & Children Servs., 140 Ga. App. 175, 230 S.E.2d 139 (1976) (decided under former Code 1933, § 24A-1402).

Failure to follow procedures did not warrant dismissal. — Even though taking a juvenile to police headquarters before releasing the juvenile to the juvenile's parents was a violation of subsection (a) of former O.C.G.A. § 15-11-19 (see now O.C.G.A. §§ 15-11-133 and 15-11-502), dismissal of the delinquency petition was not required because the violation did not cause injury or prejudice to the juvenile. In re C.W., 227 Ga. App. 763, 490 S.E.2d 442 (1997) (decided under former O.C.G.A. § 15-11-19).

Former statute directed person taking child into custody to follow one

of specified courses, "without first taking the child elsewhere," such as to the police station. M.K.H. v. State, 135 Ga. App. 565, 218 S.E.2d 284 (1975) (decided under former Code 1933, § 24A-1402).

When failure to bring juvenile promptly before court not prejudicial. — Any deviation from former O.C.G.A. § 15-11-19 (see now O.C.G.A. §§ 15-11-133, 15-11-410, 15-11-411, 15-11-412, 15-11-501, 15-11-502, and 15-11-507) resulting from a police officer taking a juvenile to the scene of a crime for show-up identification following the juvenile's arrest but prior to taking the juvenile before the juvenile court was minimal and not prejudicial error. M.A.K. v. State, 171 Ga. App. 151, 318 S.E.2d 828 (1984) (decided under former O.C.G.A. § 15-11-19).

Failure of the state police to take a defendant promptly before a judicial officer does not make the defendant's conviction constitutionally infirm unless the defendant's defense was prejudiced thereby. Paxton v. Jarvis, 735 F.2d 1306 (11th Cir.), cert. denied, 469 U.S. 935, 105 S. Ct. 335, 83 L. Ed. 2d 271 (1984); Barnes v. State, 178 Ga. App. 205, 342 S.E.2d 388 (1986) (decided under former O.C.G.A. § 15-11-19).

Juvenile may first be booked if rights are observed. — There was no violation of former Code 1933, § 24A-1402) (see now O.C.G.A. §§ 15-11-133, 15-11-410, 15-11-411, 15-11-412, 15-11-501, 15-11-502, and 15-11-507) because a juvenile suspect was first taken to a police station for booking purposes, if the juvenile was advised of the juvenile's rights under that section to be questioned elsewhere; the juvenile signed a waiver of these rights on an "advice to juveniles" form and was detained at a youth development center. Marshall v. State, 248 Ga. 227, 282 S.E.2d 301 (1981) (decided under former Code 1933, § 24A-1402).

Juvenile court intake officers act in a judicial capacity; therefore, law enforcement officers, who perform an executive function, are per se disqualified from acting as intake officers. Brown v. Scott, 266 Ga. 44, 464 S.E.2d 607 (1995) (decided under former O.C.G.A. § 15-11-19).

Juvenile court intake officer is a public officer for purposes of a quo warranto proceeding. Brown v. Scott, 266 Ga. 44, 464 S.E.2d 607 (1995) (decided under former O.C.G.A. § 15-11-19).

Failure to comply with notice and hearing requirements of the Juvenile Code, after an allegedly deprived child has been taken from the parent's custody, prejudices or injures the rights of the parent, primarily the right to possession of the child under former Code 1933, §§ 74-106, 74-108, and 74-203 (see now O.C.G.A. §§ 19-7-1, 19-7-25, and 19-9-2). Sanchez v. Walker County Dep't of Family & Children Servs., 237 Ga. 406, 229 S.E.2d 66 (1976) (decided under former Code 1933, § 24A-1402).

Time limits are jurisdictional and must be adhered to. — Time limits established by the General Assembly in the Juvenile Code are jurisdictional and must be strictly adhered to. A failure to comply with the time periods requires dismissal. R.A.S. v. State, 156 Ga. App. 366, 274 S.E.2d 752 (1980), overruled on other grounds, In re R.D.F., 66 Ga. 294, 466 S.E.2d 572 (1996) (decided under former Code 1933, § 24A-1402).

No jurisdiction for acts punishable by loss of life or confinement for life. — Juvenile court did not have exclusive jurisdiction over delinquent acts for which a child (under 17 years old) may be punished by loss of life or confinement for life in the penitentiary. Nevertheless, the statutory safeguards provided were applicable to both criminal and juvenile cases. Jackson v. State, 146 Ga. App. 375, 246 S.E.2d 407 (1978) (decided under former Code 1933, § 24A-1402).

Incriminating statements obtained in violation of the Juvenile Code are not rendered per se inadmissible; rather, the issue to be considered is whether there was a knowing and intelligent waiver by the appellant of the appellant's constitutional rights in making the incriminating statements. Lattimore v. State, 265 Ga. 102, 454 S.E.2d 474 (1995) (decided under former O.C.G.A. § 15-11-19); Barber v. State, 267 Ga. 521, 481 S.E.2d 813 (1997) (decided under former O.C.G.A. § 15-11-19); Skidmore v. State, 226 Ga. App. 130, 485 S.E.2d 540 (1997) (decided

under former O.C.G.A. § 15-11-19); Gilliam v. State, 268 Ga. 690, 492 S.E.2d 185 (1997) (decided under former O.C.G.A. § 15-11-19); Simon v. State, 269 Ga. 208, 497 S.E.2d 231 (1998) (decided under former O.C.G.A. § 15-11-19); Hanifa v. State, 269 Ga. 797, 505 S.E.2d 731 (1998) (decided under former O.C.G.A. § 15-11-19); Attaway v. State, 244 Ga. App. 5, 534 S.E.2d 580 (2000) (decided under former O.C.G.A. § 15-11-19).

Evidence not inadmissible because of technical violations. — Since no injury appeared to have resulted, technical violations of former O.C.G.A. § 15-11-19 (see now O.C.G.A. §§ 15-11-133, 15-11-410, 15-11-411, 15-11-412, 15-11-501, and 15-11-502) would not render infirm evidence obtained as a result of such violations. In re J.D.M., 187 Ga. App. 285, 369 S.E.2d 920 (1988) (decided under former O.C.G.A. § 15-11-19).

Guardian cooperating with police. — By notifying the defendant's guardian of the defendant's arrest and the grounds therefor, the police complied with subsection (c) of former O.C.G.A. § 15-11-19 (see now O.C.G.A. § 15-11-501). That the guardian cooperated with the police in the police investigation of the defendant's involvement in the crime did not require a finding that the statement was not voluntarily made. Burnham v. State, 265 Ga. 129, 453 S.E.2d 449 (1995), overruled on other grounds, Stinski v. State, 281 Ga. 783, 642 S.E.2d 1 (2007) (decided under former O.C.G.A. § 15-11-19).

Rule as to confessions of juveniles should be same as that for confessions of adults because law enforcement officers cannot be certain when officers question a juvenile what kind of case may develop, and the statutory safeguards are applicable to both criminal and juvenile cases. Crawford v. State, 240 Ga. 321, 240 S.E.2d 824 (1977) (decided under former Code 1933, § 24A-1402); Jackson v. State, 146 Ga. App. 375, 246 S.E.2d 407 (1978) (decided under former Code 1933, § 24A-1402).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under pre-2000 Code Section 15-11-19, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section.

Juvenile court intake officers. — Officers of the juvenile division of the sheriff's department may not also serve as juvenile court intake officers for purposes of compliance with former statutory provisions. 1983 Op. Att'y Gen. No. U83-66 (decided under former O.C.G.A. § 15-11-19).

RESEARCH REFERENCES

Am. Jur. 2d. — 47 Am. Jur. 2d, Juvenile Courts and Delinquent and Dependent Children, §§ 7, 66.

C.J.S. — 43 C.J.S., Infants, § 141 et seq.

U.L.A. — Uniform Juvenile Court Act (U.L.A.) § 13.

ALR. — Constitutionality of statute which for reformatory purposes deprives parent of custody or control of child, 60 A.L.R. 1342.

Applicability of double jeopardy to juvenile court proceedings, 5 A.L.R.4th 234.

Truancy as indicative of delinquency or incorrigibility, justifying commitment of infant or juvenile, 5 A.L.R.4th 1211.

15-11-133.1. Temporary alternatives to foster care; orders; minimal preliminary assessments; preliminary protective hearing; time for hearings.

(a) Temporary alternatives to foster care may be ordered by the court ex parte, prior to a preliminary protective hearing, or may be ordered following a preliminary protective hearing. A temporary alternative to foster care may include one or more of the following:

(1) A temporary order authorizing the child to be cared for by a relative or fictive kin;

(2) A temporary protective order pursuant to the provisions of Code Section 15-11-29; or

(3) An order that the DFCS investigate and report to the court whether removal is necessary.

(b) An order pursuant to paragraph (1) of subsection (a) of this Code section requiring the child to be cared for by a relative or fictive kin shall be based upon a finding by the court that continuation of the child in his or her home would be contrary to his or her welfare. Such findings shall be made on an individualized basis and shall be documented in the court's written order.

(c) When entering an order pursuant to paragraph (1) of subsection (a) of this Code section, the court shall order a preliminary assessment of the person who is to provide care for the child by a probation officer, or such other individual or agency as the court may designate, which shall include, at a minimum:

(1) A walk-through of such person's residence to identify safety hazards;

(2) An in-state criminal record check, pursuant to subsection (a) or (c) of Code Section 35-3-34, of such person and all other adults living in such person's residence;

(3) A search of the Georgia Sex Offender Registry for the name of such person and all other adults living in such person's residence; and

(4) A search of data provided electronically to the public by the Department of Community Supervision and the Department of Corrections for information concerning such person and all adults living in such person's residence.

Such preliminary assessment shall be completed no later than 72 hours after the time such order is entered except that if such order is entered on a weekend, such preliminary assessment may be completed no later than five days after the order is entered.

(d) Upon issuance of an order for a temporary alternative to foster care, a preliminary protective hearing shall be completed as provided in Code Section 15-11-145, except that such preliminary protective hearing shall be held within five days of the order for a temporary alternative to foster care.

(e) Unless modified by the court, temporary alternatives to foster care ordered by the court in accordance with this Code section shall remain in effect until modified by the court or until the court has held the preliminary protective hearing. The court may continue to impose the temporary alternatives to foster care after the preliminary protective hearing in accordance with subsection (b) of Code Section 15-11-146.

History. — Code 1981, § 15-11-133.1, enacted by Ga. L. 2019, p. 67, § 4/HB 472; Ga. L. 2020, p. 181, § 1/HB 993.

Effective date. — This Code section became effective April 18, 2019.

The 2020 amendment, effective July 1, 2020, added "and" at the end of paragraph (c)(3), substituted a period for "; and" at the end of paragraph (c)(4), and deleted former paragraph (c)(5), which read: "If DFCS is conducting the assessment, a search of the child abuse registry."

RESEARCH REFERENCES

C.J.S. — 16D C.J.S., Constitutional Law, § 2137 et seq.

81 C.J.S., Social Security and Public Welfare, § 228.

15-11-134. Required findings justifying removal from the home.

(a) Any order authorizing the removal of a child from his or her home shall be based on a finding by the court that continuation in his or her home would be contrary to his or her welfare.

(b) Any order continuing a child's placement outside of the physical custody of his or her parent, guardian, or legal custodian shall be based on a finding by the court that return of such child to such custody would be contrary to his or her welfare.

(c) Findings under this Code section shall be made on an individualized case-by-case basis and shall be documented in the court's written order.

History. — Code 1981, § 15-11-134, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

Cross references. — Motion for extension of Juvenile Court order, Uniform Rules for the Juvenile Courts of Georgia, Rule 4.5. Time limitations upon other orders of disposition in Juvenile Court proceedings, Uniform Rules for the Juvenile Courts of Georgia, Rule 15.3.

Law reviews. — For article, "An Outline of Juvenile Court Jurisdiction with Focus on Child Custody," see 10 Ga. St. B. J. 275 (1973).

JUDICIAL DECISIONS

Analysis

General Consideration
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General Consideration

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 24A-2701, pre-2000 Code Section 15-11-41, and pre-2014 Code Section 15-11-58, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Applicability. — Former O.C.G.A. § 15-11-58(a) (see now O.C.G.A. §§ 15-11-2 and 15-11-134) was inapplicable since a child remained in the legal custody of the child's father with whom the child had been residing for several months prior to the deprivation hearing as the child was not placed in the custody of the Georgia Department of Family and Children Services. In the Interest of K.J., 268 Ga. App. 843, 602 S.E.2d 861 (2004) (decided under former O.C.G.A. § 15-11-58).

In a termination of parental rights case, the court rejected the parents' argument that the parents had been deprived of the opportunity to achieve reunification under former O.C.G.A. § 15-11-58(a)(2) (see now O.C.G.A. § 15-11-202) because the Department of Family and Children Services had not promptly presented a second reunification plan; while the parents had made laudable efforts to comply with the second case plan, the parent had not complied with the first plan; moreover, former § 15-11-58 did not apply to termination proceedings. In the Interest of T.W.O., 283 Ga. App. 771, 643 S.E.2d 255 (2007) (decided under former O.C.G.A. § 15-11-58).

Limits on dispositional power of trial judge after initial commitment. — Except as provided in subsection (b) (now subsection (a)) of former Code 1933, § 24A-2701 (see now O.C.G.A. §§ 15-11-2 and 15-11-134) the commitment for an additional two years, the trial judge can neither terminate nor extend the disposition, and after the Division of Youth Services had physical custody under the order, the judge was also prevented from changing, modifying, or vacating the order on the ground that changed circumstances so required in the best interests of the child. Department of Human Resources v. J.R.S., 161 Ga. App. 262, 287 S.E.2d 713 (1982) (decided under former O.C.G.A. § 15-11-41).

Jurisdiction. — Superior court properly declined jurisdiction in a custody action brought by grandparents because once a juvenile court took jurisdiction of a deprivation action concerning the child and, later, a termination action of parental rights, the court took jurisdiction of the entire case of the minor child including the issues of disposition and custody. Segars v. State, 309 Ga. App. 732, 710 S.E.2d 916 (2011) (decided under former O.C.G.A. § 15-11-58).

Foster children. — Former O.C.G.A. §§ 15-11-13 and 15-11-58 (see now O.C.G.A. §§ 15-11-2, 15-11-30, 15-11-134, and 15-11-200 et seq.), 20-2-690.1, and 49-5-12 were not too vague and amorphous to be enforced by the judiciary and impose specific duties on the state defendants; thus, the federal regulatory scheme embodied in the CSFR process did not relieve the state defendants of the defendants obligation to fulfill the defendants statutory duties to the foster children, nor did the former statute provide a legal excuse for the defendants failure to do so. Kenny A. v. Perdue, No. 1:02-cv-1686-MHS, 2004 U.S. Dist. LEXIS 27025 (N.D. Ga. Dec. 11, 2004) (decided under former O.C.G.A. § 15-11-58).

Removal from home. — Since a minor was living with the minor's aunt and uncle for over 10 years and they thereafter commenced a private child deprivation proceeding against the minor's mother, it was determined that former O.C.G.A. § 15-11-58(a) (see now O.C.G.A. §§ 15-11-2 and 15-11-134) was inapplica-

ble to the action and, accordingly, the procedures outlined therein did not have to be followed prior to the juvenile court making an order that the legal custody be vested in the aunt and uncle. Former O.C.G.A. § 15-11-58 required that the child be "removed" from the child's home, but since the child already considered home to be with the child's aunt and uncle, the juvenile court had not removed the child and the procedures therein did not apply. In the Interest of J.W.K., 276 Ga. 314, 578 S.E.2d 396 (2003) (decided under former O.C.G.A. § 15-11-58).

There was sufficient support for the trial court's finding that continued custody in a grandparent who had adopted three grandchildren would be contrary to the welfare of the children since the grandparent had struck one child in the face, leaving a mark, spanked the children with a belt, pushed one child into a tub of water after asking if the child wanted to die and drown, and struck one child with an extension cord and another with a belt buckle; the trial court found that the children had suffered emotional trauma because of the grandparent's acts and that the grandchildren's condition improved significantly when the grandchildren were removed from the grandparent's home and placed with relatives. In the Interest of T.R., 284 Ga. App. 742, 644 S.E.2d 880 (2007) (decided under former O.C.G.A. § 15-11-58).

Relative placement not a priority. — Children were entitled to have juvenile court's order awarding the aunt and uncle custody vacated because the rehearing court erroneously held that the Juvenile Code established a preference for relative placement; while former O.C.G.A. § 15-11-58 (see now O.C.G.A. §§ 15-11-2, 15-11-134, 15-11-202, and 15-11-203) listed the custody options available to a juvenile judge in a certain order, the list was not to be construed as expressing a legislative intent for priority of placement. In the Interest of J. C. W., 318 Ga. App. 772, 734 S.E.2d 781 (2012) (decided under former O.C.G.A. § 15-11-58).

Evidence insufficient for finding of deprivation. — Juvenile court erred in extending temporary custody in the Department of Family and Children Services for an additional 12 months as: (1) the child's father was found to be a fit parent and was fully able to assume custody; (2) there was no testimony that the father was not capable of taking care of the child; and (3) the father completed every aspect of the case plan and was eligible for day-care assistance; thus, the evidence presented at the hearing fell far short of meeting the clear and convincing standard necessary to support a finding of deprivation. In the Interest of J.P., 280 Ga. App. 100, 633 S.E.2d 442 (2006) (decided under former O.C.G.A. § 15-11-41).

Evidence sufficient for finding of deprivation. — Because the Department of Family and Children Services presented clear and convincing evidence of a parent's inability to control a child to the extent necessary for that child's mental, physical, and emotional health, and the parent was afforded sufficient due process, the juvenile court's deprivation finding was upheld on appeal; moreover, absent evidence of a custody dispute, the proceeding was not a pretextual custody battle which divested the juvenile court of jurisdiction. In the Interest of D.T., 284 Ga. App. 336, 643 S.E.2d 842 (2007) (decided under former O.C.G.A. § 15-11-58).

In a deprivation case involving four children, sufficient evidence existed to support the order adjudicating the children deprived since the evidence established that the parents admitted chronically abusing alcohol and admitted that such abuse led to domestic violence; the father of the children falsely accused child molestation against one of the children, which affected that child so badly that the child refused to live at home and required psychiatric treatment, and even without testimony as to the effect on the children, the juvenile court was authorized to infer from the evidence that the alcohol abuse and domestic violence in the home had an adverse effect on the minor children. In the Interest of E.D., 287 Ga. App. 152, 650 S.E.2d 800 (2007) (decided under former O.C.G.A. § 15-11-58).

Mother's parental unfitness based on the mother's long term drug abuse, including during the mother's pregnancy with the minor child, was shown by clear and convincing evidence and permitted

General Consideration (Cont'd)

the award of temporary custody of the child to the county department of family and children services under former O.C.G.A. § 15-11-58(a) (see now O.C.G.A. §§ 15-11-2, 15-11-134, 15-11-202, and 15-11-203). In the Interest of N.H., 297 Ga. App. 344, 677 S.E.2d 399 (2009) (decided under former O.C.G.A. § 15-11-58).

Clear and convincing evidence under O.C.G.A. § 15-11-58(a) established that a child was deprived due to parental unfitness because the mother was unable to care for the child from birth due to mental instability, the father was intentionally absent for the first two months of the child's life, and although the parents had married, neither had a job or stable housing, and the mother's mental instability had not been addressed. In re V.D., 303 Ga. App. 155, 692 S.E.2d 780 (2010) (decided under former O.C.G.A. § 15-11-58).

Juvenile court did not err in granting a motion filed by a county department of family and children services to extend the department's temporary custody of a mother's children because clear and convincing evidence supported the juvenile court's conclusion that the children remained deprived; there was evidence that the mother was a chronic drug user who remained unrehabilitated even after her children had been removed from her custody, and the evidence of chronic unrehabilitated drug use, along with the evidence that the mother had not completed her reunification case plan goals, authorized the juvenile court to conclude that the children would continue to be deprived if the children were returned to the mother. In the Interest of Q.A., 306 Ga. App. 386, 702 S.E.2d 701 (2010) (decided under former O.C.G.A. § 15-11-58).

No equal protection violation. — Treating deprived children who were placed in the legal custody of the Department of Families and Children Services because there was no relative committed to the child who was available for immediate placement differently from deprived children who did have a committed parent or guardian available for immediate placement did not violate the equal protection clause or Ga. Const. 1983, Art. I, Sec. I, Para. II. as the classes were not similarly situated and the laws were rationally related to the goal of minimizing government intervention while ensuring that children were reared in a familial environment. In the Interest of A.N., 281 Ga. 58, 636 S.E.2d 496 (2006) (decided under former O.C.G.A. § 15-11-58).

Procedure

Findings made without transcript reversed. — Because the juvenile court primarily based the court's decision that a parent's two children were deprived, awarding temporary custody of the children to the county, on evidence received at an unrecorded hearing, and a waiver requiring a transcript of that hearing was not in evidence, those findings were reversed, and the case was remanded. In the Interest of D.P., 284 Ga. App. 453, 644 S.E.2d 299 (2007) (decided under former O.C.G.A. § 15-11-58).

Failure to follow required procedures. — Juvenile court erred by not holding a preliminary protective hearing within 72 hours after the children were placed in foster care, by not giving the mother proper notice of the hearing, and by not making the required written findings regarding the children's welfare. In the Interest of R. B., 346 Ga. App. 564, 816 S.E.2d 706 (2018).

Temporary custody and visitation rights. — Juvenile court had jurisdiction to modify an order granting temporary custody of a deprived child to the Department of Family and Children Services and to permit visitation by parents who filed a petition for visitation rights four months after the custody order. In re K.B., 188 Ga. App. 199, 372 S.E.2d 476 (1988) (decided under former O.C.G.A. § 15-11-41).

Consolidated proceedings not appealable when party consented. — Having consented to the consolidation of nonreunification proceedings with termination proceedings, the mother could not challenge the procedure for the first time on appeal. In the Interest of A.S.O., 243 Ga. App. 1, 530 S.E.2d 261 (2000), cert denied, 531 U.S. 1176, 121 S. Ct. 1150, 148 L. Ed. 2d 1012 (2001) (decided under former O.C.G.A. § 15-11-41).

RESEARCH REFERENCES

Am. Jur. 2d. — 42 Am. Jur. 2d, Infants, § 50. 47 Am. Jur. 2d, Juvenile Courts and Delinquent and Dependent Children, §§ 56 et seq., 110 et seq.

C.J.S. — 43 C.J.S., Infants, § 224 et seq. 67A C.J.S., Parent and Child, §§ 38 et seq., 63 et seq., 73 et seq., 90 et seq.

U.L.A. — Uniform Juvenile Court Act (U.L.A.) § 36.

15-11-135. Placement in eligible foster care.

(a) A child taken into custody shall not be placed in foster care prior to the hearing on a petition for dependency unless:

(1) Foster care is required to protect the child;

(2) The child has no parent, guardian, or legal custodian or other person able to provide supervision and care and return him or her to the court when required; or

(3) An order for the child's foster care has been made by the court.

(b) No child alleged to be or adjudicated as a dependent child shall be detained in any jail, adult lockup, or adult detention facility, nor shall a child be detained in a secure residential facility or nonsecure residential facility unless a child is also alleged to have committed a delinquent act or adjudicated to be a delinquent child and the court determines that the requirements for detention under Article 6 of this chapter are met.

(c) An alleged dependent child may be placed in foster care only in:

(1) A licensed or approved foster home or a home approved by the court which may be a public or private home;

(2) The home of the child's noncustodial parent;

(3) The home of a relative;

(4) The home of fictive kin;

(5) A facility operated by a licensed child welfare agency; or

(6) A licensed shelter care facility approved by the court.

(d) The actual physical placement of a child pursuant to this Code section shall require the approval of the judge of the juvenile court or his or her designee.

(e) In any case in which a child is taken into protective custody of DFCS:

(1) DFCS shall give preference for placement to an adult who is a relative or fictive kin over a nonrelated caregiver, provided that such relative or fictive kin has met all requirements for a DFCS relative or

fictive kin placement and such placement is in the best interests of the child; and

(2) Such child shall be placed together with his or her siblings who are also in protective custody or DFCS shall include a statement in its report and case plan of continuing efforts to place the siblings together or document why such joint placement would be contrary to the safety or well-being of any of the siblings. If siblings are not placed together, DFCS shall provide for frequent visitation or other ongoing interaction between siblings, unless DFCS documents that such frequent visitation or other ongoing interaction would be contrary to the safety or well-being of any of the siblings.

History. — Code 1981, § 15-11-135, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242; Ga. L. 2014, p. 780, § 1-9/SB 364; Ga. L. 2016, p. 134, § 1-1/HB 887; Ga. L. 2018, p. 1112, § 15/SB 365.

The 2018 amendment, effective May 8, 2018, part of an Act to revise, modernize, and correct the Code, revised punctuation in the first and second sentences of paragraph (e)(2).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2016, "that such relative" was substituted for "that the such relative" in paragraph (e)(1).

Law reviews. — For note criticizing jurisdiction of juvenile justice system over runaways and advocating alternative legal approaches, see 24 Emory L. J. 1075 (1975).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 24A-1403, pre-2000 Code Section 15-11-20, and pre-2014 Code Section 15-11-48, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Applicability. — Contrary to the defendant's claims, neither former O.C.G.A. § 15-11-67 (see now O.C.G.A. § 15-11-442) nor former O.C.G.A. § 15-11-48(e) (see now O.C.G.A. §§ 15-11-135, 15-11-400, and 15-11-412) applied to the defendant's case because both provisions applied when the child was found "unruly," and the defendant was adjudicated delinquent, not unruly. In the Interest of B. Q. L. E., 297 Ga. App. 273, 676 S.E.2d 742, cert. denied, No. S09C1197, 2009 Ga. LEXIS 787 (Ga. 2009) (decided under former O.C.G.A. § 15-11-48).

Suspect may first be booked if rights are observed. — There was no violation of former O.C.G.A. § 15-11-20 (see now O.C.G.A. §§ 15-11-155, 15-11-400, 15-11-412, and 15-11-504) because a juvenile suspect was first taken to a police station for booking purposes, if the juvenile was advised of the juvenile's rights under that section to be questioned elsewhere; the juvenile signed a waiver of these rights on an "advice to juveniles" form and was detained at a youth development center. Marshall v. State, 248 Ga. 227, 282 S.E.2d 301 (1981) (decided under former Code 1933, § 24A-1403).

Confession admissible if juvenile taken before county police. — Juvenile defendant's confession was admissible despite the fact that the juvenile was not taken before an impartial juvenile intake officer but a member of the county police department since the defendant's mother was present during the juvenile's interrogation and it was not alleged that the officer failed to perform any duty imposed upon the officer. Worthy v. State, 253 Ga. 661, 324 S.E.2d 431 (1985) (decided under former O.C.G.A. § 15-11-20).

All detention facilities not supervised and controlled by juvenile

courts. — Juvenile courts are not granted the power and authority to supervise and control all the various detention facilities. Jones v. State, 134 Ga. App. 611, 215 S.E.2d 483 (1975) (decided under former Code 1933, § 24A-1403).

No guarantee of all bed space desired by courts. — Subsection (a) of former section contemplated otherwise than that the Department of Human Resources guarantee all bed space desired by the juvenile courts. Jones v. State, 134 Ga. App. 611, 215 S.E.2d 483 (1975) (decided under former Code 1933, § 24A-1403).

Confinement designation not exercise of court's jurisdiction. — Juvenile court's order for detention was merely an order pursuant to the former statute; designating the place of confinement was not an exercise of jurisdiction by that court. Hartley v. Clack, 239 Ga. 113, 236 S.E.2d 63 (1977) (decided under former Code 1933, § 24A-1403).

Foster relationship gives rise to no state-created rights. — Children are placed in foster homes as an alternative to institutional care for what is clearly designed as a transitional phase in the child's life. Therefore, in the eyes of the state, which creates the foster relationship, the relationship is considered temporary at the outset and gives rise to no state-created rights in the foster parents. Drummond v. Fulton County Dep't of Family & Children's Servs., 563 F.2d 1200 (5th Cir. 1977), cert. denied, 437 U.S. 910, 98 S. Ct. 3103, 57 L. Ed. 2d 1141 (1978) (decided under former Code 1933, § 24A-1403).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, § 24A-1403, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Juvenile intake officer to locate appropriate juvenile facility. — Juvenile intake officer should make all reasonable efforts to locate an appropriate juvenile facility for the detention of an allegedly delinquent child before determining that such a facility was "not available" for purposes of the former statute. 1978 Op. Att'y Gen. No. U78-13 (decided under former Code 1933, § 24A-1403).

RESEARCH REFERENCES

Am. Jur. 2d. — 47 Am. Jur. 2d, Juvenile Courts and Delinquent and Dependent Children, §§ 47 et seq., 53 et seq., 66 et seq.

C.J.S. — 43 C.J.S., Infants, §§ 140 et seq., 226 et seq., 239.

U.L.A. — Uniform Juvenile Court Act (U.L.A.) § 16.

ALR. — What constitutes delinquency or incorrigibility, justifying commitment of infant, 45 A.L.R. 1533; 85 A.L.R. 1099.

Authority of court to order juvenile delinquent incarcerated in adult penal institution, 95 A.L.R.3d 568.

Truancy as indicative of delinquency or incorrigibility, justifying commitment of infant or juvenile, 5 A.L.R.4th 1211.

Foster parent's right to immunity from foster child's negligence claims, 55 A.L.R.4th 778.

PART 4

PRELIMINARY PROTECTIVE HEARINGS

15-11-145. Preliminary protective hearing requirements.

(a) If an alleged dependent child is removed from his or her home and is not returned home, the preliminary protective hearing shall be held promptly and not later than 72 hours after such child is placed in foster care; provided, however, that if the 72 hour time frame expires on a weekend or legal holiday, the hearing shall be held on the next day which is not a weekend or legal holiday.

(b) Reasonable oral or written notice of the preliminary protective hearing, stating the time, place, and purpose of the hearing, shall be given to the child who is a party in such hearing and, if such person can be found, to his or her parent, guardian, or legal custodian.

(c) If an alleged dependent child's parent, guardian, or legal custodian has not been notified of the preliminary protective hearing and did not appear or waive appearance at such hearing and thereafter files an affidavit showing such facts, the court shall rehear the matter without unnecessary delay and shall order such child's release unless it appears from such hearing that such child's foster care is warranted or required.

(d) The following persons shall have the right to participate in the preliminary protective hearing:

(1) A child's parent, guardian, or legal custodian, unless such person cannot be located or fails to appear in response to the notice;

(2) A child's attorney and guardian ad litem if a guardian ad litem has been appointed;

(3) A child who was removed from his or her home, unless the court finds, after considering evidence of harm to such child that will result from such child's presence at the proceeding, that being present is not in such child's best interests;

(4) A parent's attorney if an attorney has been retained or appointed;

(5) The assigned DFCS caseworker; and

(6) The attorney for DFCS.

(e) The court may allow the following parties to be present at the preliminary protective hearing, if the court finds it is in the best interests of the child:

(1) Any relative or other persons who have demonstrated an ongoing commitment to a child with whom a child might be placed;

(2) DFCS employees involved in the case;

(3) An advocate as requested by an alleged dependent child's parent, guardian, or legal custodian; and

(4) Other persons who have knowledge of or an interest in the welfare of the child who is alleged to be dependent.

(f) At the commencement of a preliminary protective hearing, the court shall inform the parties of:

(1) The contents of the complaint in terms understandable to the parties;

(2) The nature of the proceedings in terms understandable to the parties; and

(3) The parties' due process rights, including the parties' right to an attorney and to an appointed attorney if they are indigent persons, the right to call witnesses and to cross-examine all witnesses, the right to present evidence, and the right to a trial by the court on the allegations in the complaint or petition.

(g) If a child is not released at the preliminary protective hearing, a petition for dependency shall be made and presented to the court within five days of such hearing.

History. — Code 1981, § 15-11-145, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 24A-1404, which were subsequently repealed but were succeeded by provisions in this article, are included in the annotations for this Code section. See the Editor's note at the beginning of the chapter.

Notice and hearing requirements were mandatory and must be adhered to in order for the juvenile court to proceed with the adjudicatory hearing. If for some reason the statutes were not, dismissal of the petition would be without prejudice. Sanchez v. Walker County Dep't of Family & Children Servs., 237 Ga. 406, 229 S.E.2d 66 (1976) (decided under former Code 1933, § 24A-1404).

Failure to comply with notice and hearing requirements of the Juvenile Code, after an allegedly deprived child has been taken from the parent's custody, prejudices or injures the rights of the parent, primarily the right to possession of the child under former Code 1933, §§ 74-106, 74-108, and 74-203 (see now O.C.G.A. §§ 19-7-1, 19-7-25, and 19-9-2). Sanchez v. Walker County Dep't of Family & Children Servs., 237 Ga. 406, 229 S.E.2d 66 (1976) (decided under former Code 1933, § 24A-1404).

Juvenile court erred by not holding a preliminary protective hearing within 72 hours after the children were placed in foster care, by not giving the mother proper notice of the hearing, and by not making the required written findings regarding the children's welfare. In the Interest of R. B., 346 Ga. App. 564, 816 S.E.2d 706 (2018).

Failure to comply with time limits requires dismissal. — Time limits es-

tablished by the General Assembly in the Juvenile Code are jurisdictional and must be strictly adhered to. A failure to comply with the time periods set out in the statute requires dismissal. R.A.S. v. State, 156 Ga. App. 366, 274 S.E.2d 752 (1980), overruled on other grounds, In re R.D.F., 66 Ga. 294, 466 S.E.2d 572 (1996) (decided under former Code 1933, § 24A-1404).

Definition of "day." — Word "day," not being qualified, means a calendar or civil day consisting of 24 hours from midnight to midnight. J.B.H. v. State, 139 Ga. App. 199, 228 S.E.2d 189 (1976), overruled on other grounds, In re R.D.F., 266 Ga. 294, 466 S.E.2d 572 (1996) (decided under former Code 1933, § 24A-1404).

RESEARCH REFERENCES

ALR. — Right of indigent parent to appointed counsel in proceeding for involuntary termination of parental rights, 80 A.L.R.3d 1141.

15-11-146. Preliminary protective hearing; findings.

(a) At the preliminary protective hearing, the court shall determine:

(1) Whether there is probable cause to believe a child is a dependent child; and

(2) Whether protective custody of a child is necessary to prevent abuse or neglect pending the hearing on the dependency petition.

(b) The court:

(1) On finding that the complainant has proven neither of the required elements prescribed in subsection (a) of this Code section, shall dismiss the case and shall return the child before the court to his or her parent, guardian, or legal custodian;

(2) On finding that the complainant has not met the burden of proving that protective custody is necessary, shall return the child before the court to his or her parent, guardian, or legal custodian pending the hearing on the dependency petition. The court may also order a temporary alternative to foster care as provided in subsection (a) of Code Section 15-11-133.1 if it determines that such an order is necessary to prevent abuse or neglect prior to the adjudicatory hearing and to prevent the need for the child to be placed in foster care; or

(3) On finding that the complainant has met the burden prescribed in subsection (a) of this Code section, may place the child before the court in the temporary custody of DFCS pending the hearing on the dependency petition. DFCS shall prioritize temporary placement with an adult who is a relative or fictive kin, provided that such individual has met DFCS's requirements for relative placement and such temporary placement is in the best interests of such child.

(c) A court's order removing a child from his or her home or ordering a temporary alternative to foster care in accordance with paragraph (1)

of subsection (a) of Code Section 15-11-133.1 shall be based upon a finding that:

(1) Continuation in his or her home would be contrary to such child's welfare; or

(2) Removal is in such child's best interests.

(d) The court shall make written findings as to whether DFCS has made reasonable efforts to prevent or eliminate the need for removal of a child from his or her home and to make it possible for such child to safely return home. If the court finds that no services were provided but that reasonable services would not have eliminated the need for protective custody, the court shall consider DFCS to have made reasonable efforts to prevent or eliminate the need for protective custody. The court shall include in the written findings a brief description of what preventive and reunification efforts were made by DFCS.

(e) In determining whether a child shall be removed or continued out of his or her home, the court shall consider whether reasonable efforts can prevent or eliminate the need to separate the family. The court shall make a written finding in every order of removal that describes why it is in the best interests of the child that he or she be removed from his or her home or continued in foster care.

(f) To aid the court in making the required written findings, DFCS shall present evidence to the court outlining the reasonable efforts made to prevent taking a child into protective custody and to provide services to make it possible for such child to safely return to his or her home and why protective custody is in the best interests of the child.

History. — Code 1981, § 15-11-146, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242; Ga. L. 2015, p. 540, § 1-6/HB 361; Ga. L. 2016, p. 134, § 1-2/HB 887; Ga. L. 2019, p. 67, § 5/HB 472.

The 2019 amendment, effective April 18, 2019, added the second sentence in paragraph (b)(2); inserted "or ordering a temporary alternative to foster care in accordance with paragraph (1) of subsection (a) of Code Section 15-11-133.1" in the introductory language of subsection (c); and substituted "or" for "and" at the end of paragraph (c)(1).

Part 5

Dependency Petitions

15-11-150. Authority to file petition.

A DFCS employee, a law enforcement officer, or any person who has actual knowledge of the abuse, neglect, or abandonment of a child or is informed of the abuse, neglect, or abandonment of a child that he or she believes to be truthful may make a petition alleging dependency. Such petition shall not be accepted for filing unless the court or a person

authorized by the court has determined and endorsed on the petition that the filing of the petition is in the best interests of the public and such child.

History. — Code 1981, § 15-11-150, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242; Ga. L. 2014, p. 780, § 1-10/SB 364.

Cross references. — Definition of grandparent and securing of rights, § 19-7-3.

Law reviews. — For article, "See No Evil, Speak No Evil: Georgia Supreme Court Narrows Requirements for Mandatory Reporters in May v. State," see 66 Mercer L. Rev. 837 (2015).

For note criticizing jurisdiction of juvenile justice system over runaways and advocating alternative legal approaches, see 24 Emory L. J. 1075 (1975).

For comment on grandparents' visitation rights in Georgia, see 29 Emory L. J. 1083 (1980).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under pre-2000 Code Section 15-11-24, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Construction with former provisions. — Nonprofit advocacy organization was authorized to file a deprivation petition which was separate and distinct from the initial deprivation adjudication since there is no statutory requirement that a petition for modification must be filed under former O.C.G.A. § 15-11-42 (see now O.C.G.A. § 15-11-312), instead of a deprivation petition under former O.C.G.A. § 15-11-24 (see now O.C.G.A. §§ 15-11-150, 15-11-390, and 15-11-420). In re A.V.B., 222 Ga. App. 241, 474 S.E.2d 114 (1996) (decided under former O.C.G.A. § 15-11-24).

Great aunt and uncle. — Child's great aunt and uncle had standing to bring a petition to terminate the parental rights of the child's father and mother. In re J.J., 225 Ga. App. 682, 484 S.E.2d 681 (1997) (decided under former O.C.G.A. § 15-11-24).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, § 24-2403, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

School official not liable for investigative referral of deprivation. — School official would not be held liable in a legal action founded upon the official's good faith referral of a child neglect, abuse, or abandonment situation to a county department of family and children services for investigation. 1963-65 Op. Att'y Gen. p. 746 (decided under former Code 1933, § 24-2403).

RESEARCH REFERENCES

Am. Jur. 2d. — 47 Am. Jur. 2d, Juvenile Courts and Delinquent and Dependent Children, § 75 et seq.

C.J.S. — 43 C.J.S., Infants, §§ 184 et seq., 191 et seq.

U.L.A. — Uniform Juvenile Court Act (U.L.A.) § 20.

15-11-151. Time limitations for filing petition.

(a) If a child was removed from his or her home, a petition alleging dependency shall be filed within five days of the preliminary protective hearing.

(b) If a child was not removed from his or her home or if a child was removed from his or her home but was released from protective custody at the preliminary protective hearing, a petition alleging dependency shall be filed within 30 days of the preliminary protective hearing.

(c) Upon a showing of good cause and notice to all parties, the court may grant a requested extension of time for filing a petition alleging dependency in accordance with the best interests of the child. The court shall issue a written order reciting the facts justifying the extension.

(d) If a petition alleging dependency is not filed within the required time frame, the complaint shall be dismissed without prejudice.

History. — Code 1981, § 15-11-151, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 24A-1404, which were subsequently repealed but were succeeded by provisions in this article, are included in the annotations for this Code section. See the Editor's note at the beginning of the chapter.

Notice and hearing requirements were mandatory and must be adhered to in order for the juvenile court to proceed with the adjudicatory hearing. If for some reason the statutes were not, dismissal of the petition would be without prejudice. Sanchez v. Walker County Dep't of Family & Children Servs., 237 Ga. 406, 229 S.E.2d 66 (1976) (decided under former Code 1933, § 24A-1404).

Failure to comply with notice and hearing requirements of the Juvenile Code, after an allegedly deprived child has been taken from the parent's custody, prejudices or injures the rights of the parent, primarily the right to possession of the child under former Code 1933, §§ 74-106, 74-108, and 74-203 (see now O.C.G.A. §§ 19-7-1, 19-7-25, and 19-9-2). Sanchez v. Walker County Dep't of Family & Children Servs., 237 Ga. 406, 229 S.E.2d 66 (1976) (decided under former Code 1933, § 24A-1404).

Failure to comply with time limits requires dismissal. — Time limits established by the General Assembly in the Juvenile Code are jurisdictional and must be strictly adhered to. A failure to comply with the time periods set out in the statute requires dismissal. R.A.S. v. State, 156 Ga. App. 366, 274 S.E.2d 752 (1980), overruled on other grounds, In re R.D.F., 66 Ga. 294, 466 S.E.2d 572 (1996) (decided under former Code 1933, § 24A-1404).

Definition of "day." — Word "day," not being qualified, means a calendar or civil day consisting of 24 hours from midnight to midnight. J.B.H. v. State, 139 Ga. App. 199, 228 S.E.2d 189 (1976), overruled on other grounds, In re R.D.F., 266 Ga. 294, 466 S.E.2d 572 (1996) (decided under former Code 1933, § 24A-1404).

RESEARCH REFERENCES

ALR. — Right of indigent parent to appointed counsel in proceeding for involuntary termination of parental rights, 80 A.L.R.3d 1141.

15-11-152. Contents of petition.

A petition alleging dependency shall be verified and may rely on information and belief and shall set forth plainly and with particularity:

(1) The facts which bring a child within the jurisdiction of the court, with a statement that it is in the best interests of the child and the public that the proceeding be brought;

(2) The name, date of birth, and residence address of the child named in the petition;

(3) The name and residence address of the parent, guardian, or legal custodian of the child named in the petition; or, if such child's parent, guardian, or legal custodian does not reside or cannot be found within the state or if such place of residence address is unknown, the name of any known adult relative of such child residing within the county or, if there is none, the known adult relative of such child residing nearest to the location of the court;

(4) Whether the child named in the petition is in protective custody and, if so, the place of his or her foster care and the time such child was taken into protective custody; and

(5) Whether any of the information required by this Code section is unknown.

History. — Code 1981, § 15-11-152, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

Law reviews. — For article discussing due process in juvenile court procedures in California and Georgia, in light of In re Gault, 387 U.S. 1, 87 S. Ct. 1428, 18 L. Ed. 2d 527 (1967), see 8 Ga. St. B. J. 9 (1971). For article, "Child Custody—Jurisdiction and Procedure," see 35 Emory L. J. 291 (1986).

For comment on grandparents' visitation rights in Georgia, see 29 Emory L. J. 1083 (1980).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 24A-1603, pre-2000 Code Section 15-11-25 and pre-2014 Code Section 15-11-38.1, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Juvenile petition must satisfy "due process." — Although a juvenile petition does not have to be drafted with the exactitude of a criminal accusation, the petition must satisfy "due process." T.L.T. v.

State, 133 Ga. App. 895, 212 S.E.2d 650 (1975) (decided under former Code 1933, § 24A-1603).

Since the state's petition failed to set forth in ordinary and concise language the facts demonstrating the nature of the parent's alleged failure to provide proper parental care or control, the parent lacked sufficient information to enable the parent to prepare a defense, and this amounted to a denial of due process. In re D.R.C., 191 Ga. App. 278, 381 S.E.2d 426 (1989) (decided under former O.C.G.A. § 15-11-25).

To meet constitutional requirement of due process the language of a juvenile petition must pass two tests: (1) the petition must contain sufficient factual details to inform the juvenile of the nature of the offense; and (2) the petition must provide data adequate to enable the accused to prepare a defense. T.L.T. v. State, 133 Ga. App. 895, 212 S.E.2d 650 (1975) (decided under former Code 1933, § 24A-1603).

Allege with particularity. — Due process requires that the petition alleging delinquency must set forth with specificity the alleged violation of law either in the language of the particular section, or so plainly that the nature of the offense charged may be easily understood by the child and the child's parents or guardian. D.P. v. State, 129 Ga. App. 680, 200 S.E.2d 499 (1973) (decided under former Code 1933, § 24A-1603).

Petition filed alleging delinquency, deprivation, or unruliness must set forth alleged misconduct with particularity. A.C.G. v. State, 131 Ga. App. 156, 205 S.E.2d 435 (1974) (decided under former Code 1933, § 24A-1603).

Insufficient notice to juvenile of alleged offense. — If a juvenile is brought to trial on a petition alleging delinquency based on a violation of former Code 1933, § 26-1601 (see now O.C.G.A. § 16-7-1) but was adjudicated delinquent for violating former Code 1933, § 26-1806 (see now O.C.G.A. § 16-8-7), there was insufficient notice to the juvenile of the offense alleged to be the basis of the juvenile's delinquency and the trial court must be reversed. D.P. v. State, 129 Ga. App. 680, 200 S.E.2d 499 (1973) (decided under former Code 1933, § 24A-1603).

Statement of custody irrelevant if jurisdiction otherwise exists. — If jurisdiction otherwise existed, such as if the action was brought in the county of the residence of both mother and son, then the requirement in paragraph (4) of former Code 1933, § 24A-1603 had no relevancy to the right of the trial court to handle the case. Sanchez v. Walker County Dep't of Family & Children Servs., 138 Ga. App. 49, 225 S.E.2d 441, rev'd on other grounds, 237 Ga. 406, 229 S.E.2d 66 (1976) (decided under former Code 1933, § 24A-1603).

Assumption of jurisdiction linked to authorized petition. — An order for detention clearly did not meet the requirements of a petition filed pursuant to former Code 1933, § 24A-1603 (see now O.C.G.A. §§ 15-11-152, 15-11-280, 15-11-390, 15-11-420, 15-11-422, and 15-11-522) to commence proceedings under former Code 1933, § 24A-1601 (see now O.C.G.A. § 15-11-420), and the assumption of jurisdiction by the juvenile court is linked to the authorized petition. Hartley v. Clack, 239 Ga. 113, 236 S.E.2d 63 (1977) (decided under former Code 1933, § 24A-1603).

In a hearing on parental custody in a divorce action, the trial court erred in awarding custody of the parties' minor children to the Department of Family and Children Services based upon findings that the children were deprived and the parents unfit because the mother had no notice that the superior court judge might award custody of the children to a third party based upon standards of deprivation. Watkins v. Watkins, 266 Ga. 269, 466 S.E.2d 860 (1996) (decided under former O.C.G.A. § 15-11-25).

Preparation and verification. — Because counsel for the Department of Children & Family Services stated to the court that counsel prepared the termination petition, that the petition was reviewed, verified, and then signed by counsel the next day, this was sufficient to comply with the requirements of former O.C.G.A. § 15-11-25 (see now O.C.G.A. §§ 15-11-152, 15-11-280, 15-11-390, 15-11-422, and 15-11-522). In re A.K.M., 235 Ga. App. 853, 510 S.E.2d 611 (1998) (decided under former O.C.G.A. § 15-11-25).

Service by correctional officer upon incarcerated father. — Personal service of a summons and a petition of deprivation by a correctional officer upon an incarcerated father was sufficient as the service procedures in the Civil Practice Act, O.C.G.A. § 9-11-1 et seq., were not adopted nor were binding on the juvenile court, and the correctional officer was acting under the direction of the court for the purposes of former O.C.G.A. § 15-11-39.1(c) (see now O.C.G.A. §§ 15-11-161, 15-11-282, 15-11-400, 15-11-424, and 15-11-531). In the Interest of A.J.M., 277 Ga. App. 646, 627 S.E.2d 399 (2006) (decided under former O.C.G.A. § 15-11-38.1).

RESEARCH REFERENCES

Am. Jur. 2d. — 47 Am. Jur. 2d, Juvenile Courts and Delinquent and Dependent Children, § 75 et seq.

C.J.S. — 43 C.J.S., Infants, § 191 et seq.

U.L.A. — Uniform Juvenile Court Act (U.L.A.) § 21.

15-11-153. Amendment of petition.

(a) The petitioner may amend the petition alleging dependency at any time:

(1) To cure defects of form; and

(2) Prior to the adjudication hearing, to include new allegations of fact or requests for adjudication.

(b) When the petition is amended after the initial service to include new allegations of fact or requests for adjudication, the amended petition shall be served on the parties and provided to the attorneys of record.

(c) The court shall grant the parties additional time to prepare only as may be required to ensure a full and fair hearing; provided, however, that when a child is in protective custody or in detention, an adjudication hearing shall not be delayed more than ten days beyond the time originally fixed for the hearing.

History. — Code 1981, § 15-11-153, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

Part 6

Summons and Service

15-11-160. Issuance of summons.

(a) The court shall direct the issuance of a summons to a child if such child is 14 years of age or older, such child's parent, guardian, or legal custodian, such child's attorney, such child's guardian ad litem, if any,

and any other persons who appear to the court to be proper or necessary parties to the proceeding, requiring them to appear before the court at the time fixed to answer the allegations of the petition alleging dependency. A copy of the petition alleging dependency shall accompany the summons unless the summons is served by publication, in which case the published summons shall indicate the general nature of the allegations and where a copy of the petition alleging dependency can be obtained.

(b) A summons shall state that a party is entitled to an attorney in the proceedings and that the court will appoint an attorney if the party is an indigent person.

(c) The court may endorse upon the summons an order directing a child's parent, guardian, or legal custodian to appear personally at the hearing and directing the person having the physical custody or control of a child to bring such child to the hearing.

(d) A party other than a child may waive service of summons by written stipulation or by voluntary appearance at the hearing.

History. — Code 1981, § 15-11-160, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

Cross references. — Amendment to Juvenile Court petition, Uniform Rules for the Juvenile Courts of Georgia, Rule 6.6. Continuance of adjudicatory hearing in Juvenile Court, Uniform Rules for the Juvenile Courts of Georgia, Rule 11.3.

Law reviews. — For article discussing due process in juvenile court procedures in California and Georgia, in light of In re Gault, 387 U.S. 1, 87 S. Ct. 1428, 18 L. Ed. 2d 527 (1967), see 8 Ga. St. B. J. 9 (1971).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 24A-1701, pre-2000 Code Section 15-11-26 and pre-2014 Code Section 15-11-39, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Parent's right to appeal delinquency adjudication. — As parties to their child's delinquency action pursuant to former O.C.G.A. § 15-11-39(b) (see now O.C.G.A. §§ 15-11-160, 15-11-423, and 15-11-530), the child's parents had the right to appeal the juvenile court's judgment and to participate in the appellate process. In the Interest of J.L.B., 280 Ga. App. 556, 634 S.E.2d 514 (2006) (decided under former O.C.G.A. § 15-11-39).

Proceeding null when no waiver of rights nor proper service. — If, in a juvenile court proceeding, there was neither waiver of the right of a mother, nor proper service upon the parties and if the hearing is not taken under oath, or waived by any of the parties, the proceeding is an absolute nullity. McBurrough v. Dep't of Human Resources, 150 Ga. App. 130, 257 S.E.2d 35 (1979) (decided under former Code 1933, § 24A-1701).

No fixed date on summons. — Summons served upon a parent did not have to require the parent to appear in court on any fixed date in order to answer allegations in a petition to terminate the parent's parental rights. In re W.R.S., 213 Ga. App. 616, 445 S.E.2d 367 (1994) (decided under former O.C.G.A. § 15-11-26).

If there was no service of process and notice as required by former O.C.G.A. §§ 15-11-26(b) and 15-11-27(a)

(see now O.C.G.A. § 15-1-1 et seq.) and there was no valid waiver of notice of the pending charge by service of process or otherwise, the entire hearing is a nullity. In re W.M.F., 180 Ga. App. 397, 349 S.E.2d 265 (1986) (decided under former O.C.G.A. § 15-11-26).

Waiver of right to prior notice of charge. — If neither the juvenile nor the mother were represented by counsel at the dispositional hearing, neither party knew the nature of the charge filed against the minor, and neither party knew of the serious consequences which may result in the case of an adverse adjudication of the petition filed against the juvenile, it is highly unlikely that the parties understood the significance of waiving their right to prior notice of the pending charge. In re W.M.F., 180 Ga. App. 397, 349 S.E.2d 265 (1986) (decided under former O.C.G.A. § 15-11-26).

15-11-161. Service of summons.

(a) If a party to be served with a summons is within this state and can be found, the summons shall be served upon him or her personally as soon as possible and at least 72 hours before the adjudication hearing.

(b) If a party to be served is within this state and cannot be found but his or her address is known or can be ascertained with due diligence, the summons shall be served upon such party at least five days before the adjudication hearing by mailing him or her a copy by registered or certified mail or statutory overnight delivery, return receipt requested.

(c) If a party to be served is outside this state but his or her address is known or can be ascertained with due diligence, service of the summons shall be made at least five days before the adjudication hearing either by delivering a copy to such party personally or by mailing a copy to him or her by registered or certified mail or statutory overnight delivery, return receipt requested.

(d) If, after due diligence, a party to be served with a summons cannot be found and such party's address cannot be ascertained, whether he or she is within or outside this state, the court may order service of the summons upon him or her by publication. The adjudication hearing shall not be earlier than five days after the date of the last publication.

(e)(1) Service by publication shall be made once a week for four consecutive weeks in the official organ of the county where the petition alleging dependency has been filed. Service shall be deemed complete upon the date of the last publication.

(2) When served by publication, the notice shall contain the names of the parties, except that the anonymity of a child shall be preserved by the use of appropriate initials, and the date the petition alleging dependency was filed. The notice shall indicate the general nature of the allegations and where a copy of the petition alleging dependency can be obtained and require the party to be served by publication to

appear before the court at the time fixed to answer the allegations of the petition alleging dependency.

(3) Within 15 days after the filing of the order of service by publication, the clerk of court shall mail a copy of the notice, a copy of the order of service by publication, and a copy of the petition alleging dependency to the last known address of the party being served by publication.

(f) Service of the summons may be made by any suitable person under the direction of the court.

(g) The court may authorize the payment from county funds of the costs of service and of necessary travel expenses incurred by persons summoned or otherwise required to appear at the hearing.

History. — Code 1981, § 15-11-161, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

Cross references. — Amendment to Juvenile Court petition, Uniform Rules for the Juvenile Courts of Georgia, Rule 6.6.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, §§ 24-2406 and 24A-1702, pre-2000 Code Section 15-11-27 and pre-2014 Code Section 15-11-39.1, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

There was no equal protection violation in framework of this former Code section since similarly situated residents and nonresidents were accorded equal treatment and it was only in cases when laws were applied differently to different persons under the same or similar circumstances that the equal protection of the law was denied. In re M.A.C., 244 Ga. 645, 261 S.E.2d 590 (1979) (decided under former Code 1933, § 24A-1702).

When service by publication sufficient in adoption proceeding. — Service by publication was sufficient to bestow jurisdiction over putative fathers of children whose natural mothers wish to give the children up for adoption. In re J.B., 140 Ga. App. 668, 231 S.E.2d 821 (1976) (decided under former Code 1933, § 24A-1702).

Service of summons and termination petition was ineffective since, even though the summons was left at the mother's residence, there was no evidence that the summons was left with a statutorily appropriate person, and service of the petition the day before the hearing was not timely. In re D.R.W., 229 Ga. App. 571, 494 S.E.2d 379 (1997) (decided under former O.C.G.A. § 15-11-27).

Order terminating an out-of-state incarcerated parent's parental rights was reversed as: (1) service of the termination petition and summons upon the parent via certified mail was insufficient under both O.C.G.A. § 9-11-4 and former O.C.G.A. § 15-11-96(c) (see now O.C.G.A. §§ 15-11-281 and 15-11-282); (2) a correctional officer who personally delivered the documents to the parent did not amount to sufficient and lawful personal service as the officer lacked the inherent authority to perfect service under O.C.G.A. § 9-11-4(c) and no court order existed to grant the authority; and (3) the trial court's reliance on the service provisions of former O.C.G.A. § 15-11-39.1 (see now O.C.G.A. §§ 15-11-161, 15-11-282, 15-11-400, 15-11-424, and 15-11-531), a statute dealing with service in juvenile court proceedings generally, was misplaced. In the In-

terest of C.S., 282 Ga. 7, 644 S.E.2d 812 (2007) (decided under former O.C.G.A. § 15-11-39.1).

Service by publication in termination proceeding. — Juvenile court may order service of process by publication in a termination proceeding if, after reasonable effort, a party cannot be found and the party's address cannot be ascertained. In re M.J.B., 238 Ga. App. 833, 520 S.E.2d 497 (1999) (decided under former O.C.G.A. § 15-11-39.1).

Service by publication in deprivation proceeding. — Juvenile court erred in granting service by publication of the paternal grandparents' petition alleging that the mother's children were deprived because the grandparents failed to exercise reasonable diligence to find the mother, the juvenile court concluded that the mother could not be found with due diligence within the State of Georgia without any competent evidence to support that finding, and the juvenile court failed to place any burden on the grandparents to determine what notice the grandparents had given to the mother of the grandparents' deprivation petition and simply relied on evidence about the father's efforts to contact her; the grandparents did not file a written motion for service by publication and supporting affidavit as required by O.C.G.A. § 9-11-4(f)(1)(A), the grandparents had some means of communicating with the mother because the father had the mother's telephone number and was able to notify the mother by phone of the 72-hour hearing, the grandparents could have contacted the mother's relatives to ascertain the mother's whereabouts, and the grandparents could have attempted to serve the mother personally or by registered or certified mail at the mother's prior address. Taylor v. Padgett, 300 Ga. App. 314, 684 S.E.2d 434 (2009) (decided under former O.C.G.A. § 15-11-39.1).

Service by correctional officer on incarcerated parent. — Personal service of a summons and a petition of deprivation, by a correctional officer upon an incarcerated parent, was sufficient as the service procedures in the Civil Practice Act, O.C.G.A. § 9-11-1 et seq., were not adopted nor were binding on the juvenile court, and the correctional officer was acting under the direction of the court for the purposes of former O.C.G.A. § 15-11-39.1(c) (see now O.C.G.A. §§ 15-11-161, 15-11-282, 15-11-400, 15-11-424, and 15-11-531). In the Interest of A.J.M., 277 Ga. App. 646, 627 S.E.2d 399 (2006) (decided under former O.C.G.A. § 15-11-39.1).

Service not perfected on incarcerated person. — Deprivation order had to be vacated and the case remanded because service of the deprivation petition on the parent in question, who was incarcerated, was not perfected in accordance with former O.C.G.A. § 15-11-39.1(a) (see now O.C.G.A. §§ 15-11-161, 15-11-282, 15-11-400, 15-11-424, and 15-11-531). The parent had not waived personal service and personal service was not waived simply by actual notice having been achieved. In the Interest of A. R., 296 Ga. App. 62, 673 S.E.2d 586 (2009) (decided under former O.C.G.A. § 15-11-39.1).

Requirement of "reasonable effort" to find party. — Former statute required a showing by the department that a "reasonable effort" had been made to find a putative father or ascertain his address. In re J.B., 140 Ga. App. 668, 231 S.E.2d 821 (1976) (decided under former O.C.G.A. § 15-11-39.1).

Permissibility of publication notice dependent upon investigation. — Whether publication notice is permissible necessarily depends upon an investigation of whether the whereabouts of putative fathers were unknown and whether the fathers could be found with reasonable diligence. In re J.B., 140 Ga. App. 668, 231 S.E.2d 821 (1976) (decided under former O.C.G.A. § 15-11-39.1).

If there was no service of process and notice as required by the former provisions and there was no valid waiver of notice of the pending charge by service of process or otherwise, the entire hearing is a nullity. In re W.M.F., 180 Ga. App. 397, 349 S.E.2d 265 (1986) (decided under former O.C.G.A. § 15-11-39.1).

Waiver of right to notice. — If neither the juvenile nor the juvenile's mother were represented by counsel at the dispositional hearing, neither party knew the nature of the charge filed against the

minor, and neither party knew of the serious consequences which may result in the case of an adverse adjudication of the petition filed against the juvenile, it is highly unlikely that the parties understood the significance of waiving the parties right to prior notice of the pending charge. In re W.M.F., 180 Ga. App. 397, 349 S.E.2d 265 (1986) (decided under former O.C.G.A. § 15-11-39.1).

Timeliness of petition. — Juvenile was entitled to a copy of the delinquency petition filed against the juvenile, and pursuant to former O.C.G.A. § 15-11-39.1 (see now O.C.G.A. §§ 15-11-161, 15-11-282, 15-11-400, 15-11-424, and 15-11-531), the juvenile had a right to receive the petition at least 24 hours prior to the adjudicatory hearing; however, the juvenile waived any objection the juvenile had on the grounds of improper service since the juvenile received the petition right before the hearing as the juvenile did not make an objection or request a continuance on the basis that the juvenile was unprepared. In the Interest of E.S., 262 Ga. App. 768, 586 S.E.2d 691 (2003) (decided under former O.C.G.A. § 15-11-39.1).

Permitting state's mid-trial amendment of petition to change the charge against the juvenile from a misdemeanor to a felony was error since the amendment was done without notice and provision of a continuance to allow additional time for preparation of a defense. In re D.W, 232 Ga. App. 777, 503 S.E.2d 647 (1998) (decided under former O.C.G.A. § 15-11-39.1).

Reliance on section by trial court misplaced. — Because former O.C.G.A. § 15-11-96(c) (see now O.C.G.A. §§ 15-11-281 and 15-11-282) related specifically to service in termination-of-parental-rights proceedings, the trial court's reliance on the service provisions of former O.C.G.A. § 15-11-39.1 (see now O.C.G.A. §§ 15-11-161, 15-11-282, 15-11-400, 15-11-424, and 15-11-531), a statute dealing with service in juvenile court proceedings generally, was misplaced; moreover, for purposes of statutory interpretation, a specific statute prevailed over a general statute, absent any indication of a contrary legislative intent. In the Interest of C.S., 282 Ga. 7, 644 S.E.2d 812 (2007) (decided under former O.C.G.A. § 15-11-39.1).

RESEARCH REFERENCES

Am. Jur. 2d. — 47 Am. Jur. 2d, Juvenile Courts and Delinquent and Dependent Children, §§ 72, 73.

C.J.S. — 43 C.J.S., Infants, § 195 et seq.

U.L.A. — Uniform Juvenile Court Act (U.L.A.) § 23.

15-11-162. Sanctions for failure to obey summons.

(a) In the event a parent, guardian, or legal custodian of a child named in a petition alleging dependency is brought willfully fails to appear personally at a hearing after being ordered to so appear or willfully fails to bring such child to a hearing after being so directed, the court may issue an order against the person directing the person to appear before the court to show cause why he or she should not be held in contempt of court.

(b) If a parent, guardian, or legal custodian of a child named in a petition alleging dependency is brought fails to appear in response to an order to show cause, the court may issue a bench warrant directing that such parent, guardian, or legal custodian be brought before the court

without delay to show cause why he or she should not be held in contempt and the court may enter any order authorized by and in accordance with the provisions of Code Section 15-11-31.

History. — Code 1981, § 15-11-162, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

Cross references. — Amendment to Juvenile Court petition, Uniform Rules for the Juvenile Courts of Georgia, Rule 6.6. Continuance of adjudicatory hearing in Juvenile Court, Uniform Rules for the Juvenile Courts of Georgia, Rule 11.3.

Law reviews. — For article discussing due process in juvenile court procedures in California and Georgia, in light of In re Gault, 387 U.S. 1, 87 S. Ct. 1428, 18 L. Ed. 2d 527 (1967), see 8 Ga. St. B. J. 9 (1971).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 24A-1701, pre-2000 Code Section 15-11-26 and pre-2014 Code Section 15-11-39, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Waiver of notice. — In a juvenile delinquency case, although neither defendants nor their parents were served with copies of the petitions and hearing summonses as required by former O.C.G.A. § 15-11-39 (see now O.C.G.A. §§ 15-11-162, 15-11-281, 15-11-423, 15-11-425, and 15-11-532), the defendants and their parents appeared at the hearings with their attorneys without objecting to lack of notice; thus, the defendants and their parents waived the notice issue. In the Interest of T.K.L., 277 Ga. App. 461, 627 S.E.2d 98 (2006) (decided under former O.C.G.A. § 15-11-39).

Implied waiver of service on behalf of child. — If a child is present at a juvenile court hearing with the child's parent and counsel, the child's parent impliedly may waive service of a summons on a child's behalf by voluntary appearance at a hearing without objection to lack of service. Fulton County Detention Center v. Robertson, 249 Ga. 864, 295 S.E.2d 101 (1982) (decided under former O.C.G.A. § 15-11-26).

Parent's right to appeal delinquency adjudication. — As parties to their child's delinquency action pursuant to former O.C.G.A. § 15-11-39(b) (see now O.C.G.A. §§ 15-11-160, 15-11-423, and 15-11-530), the child's parents had the right to appeal the juvenile court's judgment and to participate in the appellate process. In the Interest of J.L.B., 280 Ga. App. 556, 634 S.E.2d 514 (2006) (decided under former O.C.G.A. § 15-11-39).

Proceeding null when no waiver of rights nor proper service. — If, in a juvenile court proceeding, there was neither waiver of the right of a mother, nor proper service upon the parties and if the hearing is not taken under oath, or waived by any of the parties, the proceeding is an absolute nullity. McBurrough v. Dep't of Human Resources, 150 Ga. App. 130, 257 S.E.2d 35 (1979) (decided under former Code 1933, § 24A-1701).

15-11-163. Interlocutory order of disposition when summons served by publication.

(a) If service of summons upon a party is made by publication, the court may conduct a provisional hearing upon the allegations of the petition alleging dependency and enter an interlocutory order of disposition if:

(1) The petition alleges dependency of a child;

(2) The summons served upon any party:

(A) States that prior to the final hearing on such petition a provisional hearing will be held at a specified time and place;

(B) Requires the party who is served other than by publication to appear and answer the allegations of the petition alleging dependency at the provisional hearing;

(C) States further that findings of fact and orders of disposition made pursuant to the provisional hearing will become final at the final hearing unless the party served by publication appears at the final hearing; and

(D) Otherwise conforms to the requirements of Code Section 15-11-160; and

(3) A child named in a petition alleging dependency is brought is personally before the court at the provisional hearing.

(b) Findings of fact and orders of disposition shall have only interlocutory effect pending final hearing on the petition alleging dependency.

(c) If a party served by publication fails to appear at the final hearing on the petition alleging dependency, the findings of fact and interlocutory orders made shall become final without further evidence. If a party appears at the final hearing, the findings and orders shall be vacated and disregarded and the hearing shall proceed upon the allegations of such petition without regard to this Code section.

History. — Code 1981, § 15-11-163, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 24A-1901, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Challenge to temporary order made while proceedings still pending. — If petition in the juvenile court alleges deprivation of a child and if the service of summons is made by publication, the juvenile court is authorized to enter an interlocutory order of disposition and any challenge to the service or to the temporary order must be made by the appellant in the juvenile court where the proceedings are still pending. Chastain v. Smith, 243 Ga. 262, 253 S.E.2d 560 (1979) (decided under former Code 1933, § 24A-1901).

RESEARCH REFERENCES

Am. Jur. 2d. — 47 Am. Jur. 2d, Juvenile Courts and Delinquent and Dependent Children, §§ 66 et seq., 110 et seq.

C.J.S. — 43 C.J.S., Infants, § 195 et seq.

U.L.A. — Uniform Juvenile Court Act (U.L.A.) § 25.

PART 7

PREADJUDICATION PROCEDURES

15-11-170. Discovery.

(a) In all cases under this article, any party shall, upon written request to the party having actual custody, control, or possession of the material to be produced, have full access to the following for inspection, copying, or photographing:

(1) The names and telephone numbers of each witness likely to be called to testify at the hearing by another party;

(2) A copy of any formal written statement made by the alleged dependent child or any witness that relates to the subject matter concerning the testimony of the witness that a party intends to call as a witness at the hearing;

(3) Except as otherwise provided in subsection (b) of this Code section, any scientific or other report which is intended to be introduced at any hearing or that pertains to physical evidence which is intended to be introduced;

(4) Any drug screen concerning the alleged dependent child or his or her parent, guardian, or legal custodian;

(5) Any case plan concerning the alleged dependent child or his or her parent, guardian, or legal custodian;

(6) Any visitation schedule related to the alleged dependent child;

(7) Photographs and any physical evidence which are intended to be introduced at any hearing;

(8) Copies of any police incident reports regarding an occurrence which forms part or all of the basis of the petition; and

(9) Any other relevant evidence not requiring consent or a court order under subsection (b) of this Code section.

(b) Upon presentation of a court order or written consent from the appropriate person or persons permitting access to the party having actual custody, control, or possession of the material to be produced, any

party shall have access to the following for inspection, copying, or photographing:

(1) Any psychological, developmental, physical, mental or emotional health, or other assessments of the alleged dependent child or his or her family, parent, guardian, or legal custodian;

(2) Any school record concerning the alleged dependent child;

(3) Any medical record concerning the alleged dependent child;

(4) Transcriptions, recordings, and summaries of any oral statement of the alleged dependent child or of any witness, except child abuse reports that are confidential pursuant to Code Section 19-7-5 and work product of counsel;

(5) Any family team meeting report or multidisciplinary team meeting report concerning the alleged dependent child or his or her parent, guardian, or legal custodian;

(6) Supplemental police reports, if any, regarding an occurrence which forms part of all of the basis of the petition; and

(7) Immigration records concerning the alleged dependent child.

(c) If a party requests disclosure of information pursuant to subsection (a) or (b) of this Code section, it shall be the duty of such party to promptly make the following available for inspection, copying, or photographing to every other party:

(1) The names and last known addresses and telephone numbers of each witness to the occurrence which forms the basis of the party's defense or claim;

(2) Any scientific or other report which is intended to be introduced at the hearing or that pertains to physical evidence which is intended to be introduced;

(3) Photographs and any physical evidence which are intended to be introduced at the hearing; and

(4) A copy of any written statement made by any witness that relates to the subject matter concerning the testimony of the witness that the party intends to call as a witness.

(d) A request for discovery or reciprocal discovery shall be complied with promptly and not later than five days after the request is received or 72 hours prior to any hearing except when later compliance is made necessary by the timing of such request. If such request for discovery is made fewer than 48 hours prior to an adjudicatory hearing, the discovery response shall be produced in a timely manner. If, subsequent to providing a discovery response in compliance with this Code section,

the existence of additional evidence is found, it shall be promptly provided to the party making the discovery request.

(e) If a request for discovery or consent for release is refused, application may be made to the court for a written order granting discovery. Motions for discovery shall certify that a request for discovery or consent was made and was unsuccessful despite good faith efforts made by the requesting party. An order granting discovery shall require reciprocal discovery. Notwithstanding the provisions of subsection (a) or (b) of this Code section, the court may deny, in whole or in part, or otherwise limit or set conditions concerning a discovery response upon a sufficient showing by a person or entity to whom a request for discovery is made that disclosure of the information would:

(1) Jeopardize the safety of a party, witness, or confidential informant;

(2) Create a substantial threat of physical or economic harm to a witness or other person;

(3) Endanger the existence of physical evidence;

(4) Disclose privileged information; or

(5) Impede the criminal prosecution of a minor who is being prosecuted as an adult or the prosecution of an adult charged with an offense arising from the same transaction or occurrence.

(f) No deposition shall be taken of an alleged dependent child unless the court orders the deposition, under such conditions as the court may order, on the ground that the deposition would further the purposes of this part.

(g) If at any time during the course of the proceedings it is brought to the attention of the court that a person or entity has failed to comply with an order issued pursuant to this Code section, the court may grant a continuance, prohibit the party from introducing in evidence the information not disclosed, or enter such other order as the court deems just under the circumstances.

(h) Nothing contained in this Code section shall prohibit the court from ordering the disclosure of any information that the court deems necessary for proper adjudication.

(i) Any material or information furnished to a party pursuant to this Code section shall remain in the exclusive custody of the party and shall only be used during the pendency of the case and shall be subject to such other terms and conditions as the court may provide.

History. — Code 1981, § 15-11-170, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

Cross references. — Discovery, T. 17, C. 16.

Law reviews. — For article, "The Prosecuting Attorney in Georgia's Juvenile Courts," see 13 Ga. St. B. J. 27 (2008).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under pre-2014 Code Section 15-11-75, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

No Brady violation shown. — In a juvenile proceeding wherein the juvenile was adjudicated delinquent as a result of a battery against a schoolmate on a school bus, the trial court did not err in allegedly failing to enforce the discovery provisions of former O.C.G.A. § 15-11-75(a)(7) (see now O.C.G.A. § 15-11-541) and in allegedly failing to remedy a Brady violation because the videotape at issue was not in the custody and control of the State of Georgia; the juvenile could have obtained the evidence had the juvenile simply subpoenaed the video prior to trial and, significantly, the unrebutted evidence of record established that the videotape lacked any exculpatory or evidentiary value since the videotape was blank. In the Interest of E.J., 283 Ga. App. 648, 642 S.E.2d 179 (2007) (decided under former O.C.G.A. § 15-11-75).

Discovery from guardian ad litem's file. — Juvenile order granting a guardian a protective order against a mother was vacated because the juvenile court erred in imposing blanket protection for the guardian ad litem's file under a privilege exception to discovery; on remand, the juvenile court was directed to exercise the court's discretion to determine whether the material sought by the mother was privileged or otherwise should not be subject to discovery. In the Interest of J. N., 344 Ga. App. 409, 810 S.E.2d 191 (2018).

Part 8

Adjudication

Cross references. — Evidence, T. 24.

15-11-180. Standard of proof.

The petitioner shall have the burden of proving the allegations of a dependency petition by clear and convincing evidence.

History. — Code 1981, § 15-11-180, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under pre-2014 Code Section 15-11-54, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Sufficient findings of deprivation. — Evidence that parents were imprisoned

for abusing one of their three children, and their parental rights were terminated as to that child; that a second child, while in their care, sustained permanent brain injuries due to abusive head trauma, and the child's arm was fractured in a manner consistent with abuse; and the fact that the parents invoked the Fifth Amendment during the deprivation hearing was sufficient to allow the trial court to find by clear and convincing evidence that their two additional children were deprived as defined by former O.C.G.A. § 15-11-2(8)(A) (see now O.C.G.A. § 15-11-107). In the Interest of A.A., 293 Ga. App. 471, 667 S.E.2d 641 (2008) (decided under former O.C.G.A. § 15-11-54).

Father's contention that the juvenile court's deprivation order was deficient was without merit because, pursuant to former O.C.G.A. § 15-11-54(a) (see now O.C.G.A. § 15-11-181), the juvenile court's order clearly stated that the court's finding of deprivation was based on the father's sexual abuse of his children and the mother's failure to stop such abuse as alleged. In the Interest of S.B., 312 Ga. App. 180, 718 S.E.2d 49 (2011) (decided under former O.C.G.A. § 15-11-54).

Eighteen-month-old child was properly found to be a dependent child because the child was a victim of abuse under O.C.G.A. § 15-11-2(2)(A) based on multiple bruises, a skull fracture, and other non-accidental injuries the child suffered while in the care of the mother and her boyfriend, who both acknowledged that no other person had been caring for the child. In the Interest of S. C. S., 336 Ga. App. 236, 784 S.E.2d 83 (2016).

Juvenile court's dependency determination was not supported by clear and convincing evidence because no evidence or testimony was proffered regarding other children in foster care, and any concerns about the mother's residence and the evidence of drug use through two positive hair follicle drug screenings was controverted by the mother presenting three negative hair follicle drug screenings covering the same time period. In the Interest of M. S., 352 Ga. App. 249, 834 S.E.2d 343 (2019).

15-11-181. Adjudication hearing.

(a) The court shall fix a time for an adjudication hearing. If the alleged dependent child is in foster care, the hearing shall be scheduled for no later than ten days after the filing of the petition alleging dependency. If the alleged dependent child is not in foster care, but the court has ordered a temporary alternative to foster care, the adjudication hearing shall be held no later than 30 days after the filing of the petition alleging dependency. Otherwise, the adjudication hearing shall be held no later than 60 days after the filing of the petition alleging dependency. If adjudication is not completed within 60 days from the date such child was taken into protective custody, the petition alleging dependency may be dismissed without prejudice.

(b) The following persons shall have the right to participate in the adjudication hearing:

(1) The parent, guardian, or legal custodian of the alleged dependent child, unless such person cannot be located or fails to appear in response to the notice;

(2) The attorney and guardian ad litem of the alleged dependent child;

(3) The alleged dependent child, unless the court finds, after considering evidence of harm to such child that will result from his or

her presence at the proceeding, that being present is not in the child's best interests;

(4) The attorneys for the parent, guardian, or legal custodian of the alleged dependent child if attorneys have been retained or appointed;

(5) The assigned DFCS caseworker; and

(6) The attorney for DFCS.

(c) If the court finds it is in the best interests of the alleged dependent child, the court may allow the following to be present at the adjudication hearing:

(1) Any relative or other persons who have demonstrated an ongoing commitment to a child alleged to be a dependent child with whom he or she might be placed;

(2) DFCS employees involved with the case;

(3) An advocate as requested by the parent, guardian, or legal custodian of the alleged dependent child; and

(4) Other persons who have knowledge of or an interest in the welfare of such child.

(d) Except as provided in this subsection, the adjudication hearing shall be conducted in accordance with Title 24. Testimony or other evidence relevant to the dependency of a child or the cause of such condition may not be excluded on any ground of privilege, except in the case of:

(1) Communications between a party and his or her attorney; and

(2) Confessions or communications between a priest, rabbi, or duly ordained minister or similar functionary and his or her confidential communicant.

(e) After hearing the evidence, the court shall make and file specific written findings as to whether a child is a dependent child.

(f) If the court finds that a child is not a dependent child, it shall dismiss the petition alleging dependency and order such child discharged from foster care or other restriction previously ordered.

(g) If the court adjudicates a child as a dependent child, the court shall proceed immediately or at a postponed hearing to make a proper disposition of the case.

(h) If the court adjudicates a child as a dependent child, the court shall also make and file a finding whether such dependency is the result of substance abuse by such child's parent, guardian, or legal custodian.

(i) If the disposition hearing is held on the same day as the adjudication hearing, the court shall schedule the dates and times for the first periodic review hearing and for the permanency plan hearing.

History. — Code 1981, § 15-11-181, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242; Ga. L. 2019, p. 67, § 6/HB 472.

The 2019 amendment, effective April 18, 2019, inserted ", but the court has ordered a temporary alternative to foster care, the adjudication hearing shall be held no later than 30 days after the filing of the petition alleging dependency. Otherwise," in the third sentence of subsection (a).

Cross references. — Amendment to Juvenile Court petition, Uniform Rules for the Juvenile Courts of Georgia, Rule 6.6. Continuance of adjudicatory hearing in Juvenile Court, Uniform Rules for the Juvenile Courts of Georgia, Rule 11.3.

Law reviews. — For article discussing due process in juvenile court procedures in California and Georgia, in light of In re Gault, 387 U.S. 1, 87 S. Ct. 1428, 18 L. Ed. 2d 527 (1967), see 8 Ga. St. B. J. 9 (1971).

JUDICIAL DECISIONS

Analysis

General Consideration
Waiver of Time Limits
Substance Abuse
Appeals

General Consideration

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 24A-1701, pre-2000 Code Section 15-11-26 and pre-2014 Code Sections 15-11-39 and 15-11-54, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Time limits set forth in the former statute were jurisdictional and the adjudicatory hearing must be set for a time not later than that prescribed by statute. J.T.G. v. State, 141 Ga. App. 184, 233 S.E.2d 40 (1977) (decided under former Code 1933, § 24A-1701).

Time limits established by the General Assembly in the Juvenile Code are jurisdictional and must be strictly adhered to. Crews v. Brantley County Dep't of Family & Children Servs., 146 Ga. App. 408, 246 S.E.2d 426 (1978) (decided under former Code 1933, § 24A-1701).

Language of former statute was mandatory and the time for the hearing must be set for a time not later than ten days after the petition was filed. J.B.H. v. State, 139 Ga. App. 199, 228 S.E.2d 189 (1976) (decided under former Code 1933, § 24A-1701); Crews v. Brantley County Dep't of Family & Children Servs., 146 Ga. App. 408, 246 S.E.2d 426 (1978) (decided under former Code 1933, § 24A-1701); Irvin v. Department of Human Resources, 159 Ga. App. 101, 282 S.E.2d 664 (1981) (decided under former Code 1933, § 24A-1701).

Language of former subsection (a) of this section was mandatory and the adjudicatory hearing must be set for a time not later than that prescribed. Sanchez v. Walker County Dep't of Family & Children Servs., 237 Ga. 406, 229 S.E.2d 66 (1976) (decided under former Code 1933, § 24A-1701).

Goal sought to be accomplished by the ten-day hearing requirement for detained children was the same goal for the 60-day hearing requirement for non-detained children and, thus, the latter requirement was mandatory, rather than directory. In re R.D.F., 266 Ga. 294, 466 S.E.2d 572 (1996) (decided under former O.C.G.A. § 15-11-26).

Time limits for speedy trial must be strictly adhered to. — If a legislative body has defined the right to speedy trial

in terms of days, then the time limits must be strictly complied with. J.B.H. v. State, 139 Ga. App. 199, 228 S.E.2d 189 (1976) (decided under former Code 1933, § 24A-1701).

Trial court erred in setting the date for a hearing twelve days, rather than ten days, from the date of the filing of a petition charging a juvenile with the commission of the delinquent act of burglary. In re M.D.C., 214 Ga. App. 59, 447 S.E.2d 143 (1994) (decided under former O.C.G.A. § 15-11-26).

Provision of former O.C.G.A. § 15-11-26 (see now O.C.G.A. §§ 15-11-181, 15-11-400, 15-11-421, 15-11-441, and 15-11-582) that the time for a hearing shall not be later than ten days after filing of the petition if the child was in custody was the equivalent of a speedy trial demand which did not require a specific demand by the child. However, the statute's protection could be waived if not properly raised and, furthermore, the trial court had discretion to grant a continuance of a hearing properly set for a date within ten days from the filing of the petition. In re M.D.C., 214 Ga. App. 59, 447 S.E.2d 143 (1994) (decided under former O.C.G.A. § 15-11-26).

Former O.C.G.A. § 15-11-26 (see now O.C.G.A. §§ 15-11-181, 15-11-400, 15-11-421, 15-11-441, and 15-11-582) did not constitute a speedy trial demand and, therefore, the failure to comply with the former statute's provisions resulted in dismissal of the petition without prejudice. In re R.D.F., 266 Ga. 294, 466 S.E.2d 572 (1996) (decided under former O.C.G.A. § 15-11-26).

Time limits satisfied by hearing adjudicatory in nature. — When a juvenile and the juvenile's parents were summoned to appear at a hearing to defend against charges and to show cause why the juvenile should not be dealt with according to law, were instructed to remain in attendance at the hearing until final adjudication of the petition, were informed of the possibility of a continuance, and were told that the state would seek transfer to the superior court, the hearing was adjudicatory in nature and satisfied the requirements of former O.C.G.A. § 15-11-26. In re L.A.E., 265 Ga. 698, 462 S.E.2d 148 (1995) (decided under former O.C.G.A. § 15-11-26).

Construction with other law. — Because a juvenile's allegations that the state failed to comply with the procedural requirements under former O.C.G.A. § 15-11-49(c)(1) and (e) (see now O.C.G.A. §§ 15-11-102, 15-11-145, 15-11-151, 15-11-472, and 15-11-521) should have been raised in the superior court, and had no bearing on the validity of the delinquency petitions or the substantive charges against the juvenile in juvenile court, the court properly denied the presentation of evidence regarding the delinquency and substantive issues. In the Interest of K.C., 290 Ga. App. 416, 659 S.E.2d 821 (2008) (decided under former O.C.G.A. § 15-11-39).

Arraignment during adjudicatory hearing. — In the absence of a transcript, a juvenile failed to establish that former O.C.G.A. § 15-11-26 (see now O.C.G.A. §§ 15-11-181, 15-11-400, 15-11-421, 15-11-441, and 15-11-582) was violated since a hearing was timely scheduled and held, an arraignment was conducted at the beginning, the juvenile requested legal counsel and was found eligible to receive counsel, and a continuance was granted so counsel could be secured; conducting an arraignment was not inconsistent with an adjudicatory hearing. In re R.D.F., 266 Ga. 294, 466 S.E.2d 572 (1996), reversing In re R.D.F., 216 Ga. App. 563, 455 S.E.2d 77 (1995) (decided under former O.C.G.A. § 15-11-26).

Arraignment hearing scheduled within the 60-day time period is not sufficient to satisfy the requirement that an adjudicatory hearing must be set within that period. In re R.O.B., 216 Ga. App. 181, 453 S.E.2d 776 (1995) (decided under former O.C.G.A. § 15-11-26).

Hearing requirement applicable when child in detention when petition filed. — Ten-day hearing requirement was applicable when a child was "in detention" on the date the petition was filed in court. Sanchez v. Walker County Dep't of Family & Children Servs., 237 Ga. 406, 229 S.E.2d 66 (1976) (decided under former Code 1933, § 24A-1701).

Time for adjudicatory hearing is not mandatory. — Former O.C.G.A.

General Consideration (Cont'd)

§ 15-11-26 (see now O.C.G.A. §§ 15-11-181, 15-11-400, 15-11-421, 15-11-441 and 15-11-582) required that an adjudicatory hearing date be set within ten days after a filing of a petition charging a minor with commission of delinquent acts, but does not require that a hearing be actually held within ten days after the filing of the petition. P.L.A. v. State, 172 Ga. App. 820, 324 S.E.2d 781 (1984) (decided under former O.C.G.A. § 15-11-26); Johnson v. State, 183 Ga. App. 168, 358 S.E.2d 313 (1987) (decided under former O.C.G.A. § 15-11-26); In re L.T.W., 211 Ga. App. 441, 439 S.E.2d 716 (1993) (decided under former O.C.G.A. § 15-11-26); In re B.W.S., 265 Ga. 567, 458 S.E.2d 847 (1995) (decided under former O.C.G.A. § 15-11-26).

Ten-day hearing rule was not absolute, and a continuance could be granted in the sound discretion of the trial court. Johnson v. State, 183 Ga. App. 168, 358 S.E.2d 313 (1987) (decided under former O.C.G.A. § 15-11-26).

Adjudicatory hearing timely. — Juvenile court did not err in denying the defendant juvenile's motion to dismiss a petition because the adjudicatory hearing was set and held within ten days of the filing of the petition pursuant to former O.C.G.A. § 15-11-39(a) (see now O.C.G.A. §§ 15-11-181, 15-11-400, 15-11-421, 15-11-441, and 15-11-582), although the hearing was then continued, which was an action that was within the juvenile court's discretion. In the Interest of C.H., 306 Ga. App. 834, 703 S.E.2d 407 (2010) (decided under former O.C.G.A. § 15-11-39).

Continuance requested by parent did not violate time limit. — When a hearing on a deprivation petition was held within ten days of the petition's filing, but the case was continued for eight days because the mother's counsel had a scheduling conflict, there was no violation of former O.C.G.A. § 15-11-39(a)'s (see now O.C.G.A. §§ 15-11-181 15-11-400, 15-11-421, 15-11-441, and 15-11-582) ten-day time limit. In the Interest of C.R., 292 Ga. App. 346, 665 S.E.2d 39 (2008) (decided under former O.C.G.A. § 15-11-39).

Adjudication hearing required after an initial hearing. — By restraining the child at an initial hearing, the juvenile court implicitly found probable cause, pursuant to former O.C.G.A. § 15-11-46.1 (see now O.C.G.A. §§ 15-11-415 and 15-11-503). The juvenile court therefore erred in later deciding that a 10-day adjudication hearing was actually a detention hearing and in resetting the 10-day adjudication hearing. In the Interest of K.L., 303 Ga. App. 679, 694 S.E.2d 372 (2010) (decided under former O.C.G.A. § 15-11-39).

Failure to follow mandated procedures warrants dismissal without prejudice of a petition alleging deprivation of a child. Another petition can be filed without delay if there is reason to believe the child is being neglected or abused. Sanchez v. Walker County Dep't of Family & Children Servs., 140 Ga. App. 175, 230 S.E.2d 139 (1976) (decided under former Code 1933, § 24A-1701).

Motion to dismiss necessary if no provision for automatic dismissal. — If there is no provision in the statute for automatic dismissal, there should be a motion to dismiss directed to the trial judge and it should appear that the delay is not due to the actions of the defendant. E.S. v. State, 134 Ga. App. 724, 215 S.E.2d 732 (1975) (decided under former Code 1933, § 24A-1701).

Violation of ten-day mandate does not deprive jurisdiction. — Violation of the statutory mandate to set the hearing date not later than ten days after filing of the petition if the child is in detention would not deprive the court of jurisdiction that would otherwise exist. Sanchez v. Walker County Dep't of Family & Children Servs., 138 Ga. App. 49, 225 S.E.2d 441, rev'd on other grounds, 237 Ga. 406, 229 S.E.2d 66 (1976) (decided under former Code 1933, § 24A-1701).

Legislature intended incarceration be limited according to calendar days. — General Assembly intended that a juvenile who is incarcerated after the court has had a preliminary detention hearing should have the juvenile's incarceration limited and the juvenile's fate determined according to calendar days, not "working days." J.B.H. v. State, 139

Ga. App. 199, 228 S.E.2d 189 (1976), overruled on other grounds, In re R.D.F., 266 Ga. 294, 466 S.E.2d 572 (1996) (decided under former O.C.G.A. § 15-11-26).

No habeas corpus if compliance with statutory requirements. — Habeas corpus will not lie if the juvenile court, after notice and hearing, enters an order pursuant to former Code 1933, § 24-2409 (see now O.C.G.A. §§ 15-11-211, 15-11-212, and 15-11-215). Chaffins v. Lowndes County Dep't of Family & Children Servs., 243 Ga. 528, 255 S.E.2d 360 (1979) (decided under former Code 1933, § 24A-1701).

Effect of failure to show compliance with hearing requirement. — If the parents, in their petition seeking return of their children, allege that there has been no hearing as required by statute, and the record of prior juvenile court proceedings is silent as to whether such a hearing was ever set, continued, or held, and since the hearing requirement was mandatory, the defendant County Family and Children Services Department did not show compliance with the hearing requirement, and the parents stated claims for habeas relief which may be granted. Chaffins v. Lowndes County Dep't of Family & Children Servs., 243 Ga. 528, 255 S.E.2d 360 (1979) (decided under former Code 1933, § 24A-1701).

Permitting state's mid-trial amendment of petition to change the charge against the juvenile from a misdemeanor to a felony was error since the amendment was done without notice and provision of a continuance to allow additional time for preparation of a defense. In re D.W, 232 Ga. App. 777, 503 S.E.2d 647 (1998) (decided under former O.C.G.A. § 15-11-26).

Illegal detention. — If a petition was not presented within 72 hours of a detention hearing as required by former O.C.G.A. § 15-11-21(e) (see now O.C.G.A. §§ 15-11-145, 15-11-400, 15-11-413, 15-11-414, and 15-11-472), the state cannot thus illegally detain the child and then render such a jurisdictional defect harmless by setting the adjudication hearing within 13 days (72 hours plus 10 days) of the detention hearing under subsection (a) of former O.C.G.A. § 15-11-26 (see now O.C.G.A. §§ 15-11-181, 15-11-400, 15-11-421, 15-11-441, and 15-11-582). In re B.A.P., 180 Ga. App. 433, 349 S.E.2d 218 (1986) (decided under former O.C.G.A. § 15-11-26).

Visitation restrictions unauthorized if complaint dismissed. — Since the children were not found to be deprived, the trial court, in dismissing a deprivation complaint, was without authority to impose restrictions on the mother's visitation, and the order imposing those restrictions was reversed. In the Interest of C.F., 266 Ga. App. 325, 596 S.E.2d 781 (2004) (decided under former O.C.G.A. § 15-11-54).

Preparation of order by counsel not judge. — That the trial court's termination order was prepared by counsel for the department of family and children services at the trial court's direction did not violate former O.C.G.A. § 15-11-54(a) (see now O.C.G.A. § 15-11-181) as the order adequately reflected the court's holdings. In the Interest of A.G., 293 Ga. App. 493, 667 S.E.2d 662 (2008) (decided under former O.C.G.A. § 15-11-54).

Addressing child's special immigrant juvenile status. — In a deprivation proceeding, a juvenile court erred by failing to address the child's special immigrant juvenile status under 8 U.S.C. § 1101(a)(27)(J)(ii) and a remand was necessary since the juvenile court had to determine whether the evidence supported the findings so that the federal government could address the issue in separate deportation proceedings. In the Interest of J. J. X. C., 318 Ga. App. 420, 734 S.E.2d 120 (2012) (decided under former O.C.G.A. § 15-11-54).

Guardian ad litem could examine witnesses and challenge evidence. — Juvenile court did not err by allowing a non-lay guardian ad litem (GAL) to examine witnesses and challenge certain evidence in the service of the children's best interest because the limitation in O.C.G.A. § 15-11-104 only applied to lay guardians, while O.C.G.A. § 15-11-181(b)(2) permitted the GAL to participate in the hearing. In the Interest of R. D., 346 Ga. App. 257, 816 S.E.2d 132 (2018).

Waiver of Time Limits

Waiver of procedural requirements. — Time limits on setting juvenile hearings are mandatory, but procedural requirements can be waived. J.T.G. v. State, 141 Ga. App. 184, 233 S.E.2d 40 (1977) (decided under former O.C.G.A. § 15-11-26); Cox v. Department of Human Resources, 148 Ga. App. 338, 250 S.E.2d 728 (1978), overruled on other grounds, 156 Ga. App. 338, 274 S.E.2d 728 (1980) (decided under former O.C.G.A. § 15-11-26).

With regard to a juvenile's adjudication of delinquency for acts which, if committed by an adult, would have constituted the offense of child molestation, the juvenile court did not err by denying the juvenile's motion to dismiss, which was based on an extended pre-trial detention as the juvenile and defense counsel agreed to a continuance and acquiesced in a hearing date delaying the adjudication for at least 48 days following the filing of the delinquency petition, which caused the juvenile to waive the right to complain that the adjudication hearing date was not set to occur in compliance with former O.C.G.A. § 15-11-39 (see now O.C.G.A. §§ 15-11-181, 15-11-400, 15-11-421, 15-11-441, and 15-11-582). However, the adjudication was reversed and the case was remanded to the juvenile court since the juvenile court erroneously applied a clear and convincing standard of proof and the standard of proof on charges of a criminal nature was the same as that used in criminal proceedings against adults, namely proof beyond a reasonable doubt. In the Interest of A.S., 293 Ga. App. 710, 667 S.E.2d 701 (2008) (decided under former O.C.G.A. § 15-11-39).

Juvenile waived the right under former O.C.G.A. § 15-11-39(a) (see now O.C.G.A. §§ 15-11-181, 15-11-400, 15-11-421, 15-11-441, and 15-11-582) to have an adjudicatory hearing within 10 days of the delinquency petition being filed by failing to object to the date proposed for the adjudicatory hearing, which was one month after the filing of the petition. In re A. T., 302 Ga. App. 713, 691 S.E.2d 642 (2010), overruled in part by Worthen v. State, 304 Ga. 862, 823 S.E.2d 291 (2019) (decided under former O.C.G.A. § 15-11-39).

Trial court did not err in denying the defendant's motion to dismiss for failure to comply with former O.C.G.A. § 15-11-39(a) (see now O.C.G.A. §§ 15-11-181, 15-11-400, 15-11-421, 15-11-441, and 15-11-582) because the defendant's parent, the defendant's representative, and an attorney acknowledged that the parent did not object when, at the arraignment hearing, it was announced that the adjudicatory hearing would be set outside of the 60-day window; the parent also did not object within the statutorily prescribed 60-day-time period, and the motion to dismiss was filed outside of the 60-day requirement. In the Interest of I.M.W., 313 Ga. App. 624, 722 S.E.2d 586 (2012) (decided under former O.C.G.A. § 15-11-39).

Hearing time limit can be waived. — If the party does not enter an objection during the course of the trial the party will not be heard to complain on appeal and if a hearing is set within the statutory time limit, the court may in the court's discretion grant a continuance. Sanchez v. Walker County Dep't of Family & Children Servs., 237 Ga. 406, 229 S.E.2d 66 (1976) (decided under former Code § 24A-1701); In re J.B., 183 Ga. App. 229, 358 S.E.2d 620, cert. denied, 183 Ga. App. 906, 358 S.E.2d 620 (1987) (decided under former O.C.G.A. § 15-11-26).

Juvenile was entitled to a copy of the delinquency petition filed against the juvenile, and pursuant to former O.C.G.A. § 15-11-39.1 (see now O.C.G.A. §§ 15-11-161, 15-11-282, 15-11-400, 15-11-424, and 15-11-531), the juvenile had a right to receive the petition at least 24 hours prior to the adjudicatory hearing; however, the juvenile waived any objection based on the grounds of improper service since the juvenile received notice right before the hearing as the juvenile did not make an objection or request a continuance on the basis that the juvenile was unprepared. In the Interest of E.S., 262 Ga. App. 768, 586 S.E.2d 691 (2003) (decided under former O.C.G.A. § 15-11-39).

Delay negotiated by defendant waives time limit. — If the statute does

not require dismissal as a matter of law regardless of the reason for the delay, it is clear that a delay negotiated and obtained by the defendant personally would constitute a waiver of the 60-day requirement. E.S. v. State, 134 Ga. App. 724, 215 S.E.2d 732 (1975) (decided under former Code 1933, § 24A-1701).

Proceeding null when no waiver of rights nor proper service. — If, in a juvenile court proceeding, there was neither waiver of the right of a mother, nor proper service upon the parties and if the hearing is not taken under oath, or waived by any of the parties, the proceeding is an absolute nullity. McBurrough v. Dep't of Human Resources, 150 Ga. App. 130, 257 S.E.2d 35 (1979) (decided under former Code 1933, § 24A-1701).

Order granting continuance failed to show extended time was necessary. — In a child dependency case involving a child to whom the 10-day hearing time limit in O.C.G.A. § 15-11-181(a) applied, the juvenile court's grant of a continuance until four weeks later did not meet the stringent requirements of O.C.G.A. § 15-11-110 for granting a continuance; dismissal without prejudice should have been granted. In the Interest of I. L. M., 304 Ga. 114, 816 S.E.2d 620 (2018).

Substance Abuse

Results of drug abuse. — Juvenile court did not err when the court found that a parent's decision to continue using cocaine and the parent's refusal to attend substance abuse treatment adversely affected the child, and that the child was deprived as a result. In the Interest of J.L., 269 Ga. App. 226, 603 S.E.2d 742 (2004) (decided under former O.C.G.A. § 15-11-54).

In view of the trial court's reliance on other evidence to support the court's findings as to a parent's continuing drug problems, including avoidance of court-ordered drug screens, the parent did not show that the parent was harmed by admission of the results of the drug tests at a deprivation hearing. In addition, urinalysis was a medically accepted and widely used method of drug testing, and although neither witness who testified about the test results received formal training from test manufacturers, one witness's longtime practical experience in administering the test and the other witness's government certification provided some basis for the determination that the witnesses were qualified to testify about the test results. In the Interest of J.R.N., 291 Ga. App. 521, 662 S.E.2d 300 (2008) (decided under former O.C.G.A. § 15-11-54).

Appeals

Parent's right to appeal delinquency adjudication. — As parties to their child's delinquency action pursuant to former O.C.G.A. § 15-11-39(b) (see now O.C.G.A. §§ 15-11-160, 15-11-423, and 15-11-530), the child's parents had the right to appeal the juvenile court's judgment and to participate in the appellate process. In the Interest of J.L.B., 280 Ga. App. 556, 634 S.E.2d 514 (2006) (decided under former O.C.G.A. § 15-11-39).

Allegation of failure to comply with time requirements not appealable. — If the defendant, prior to a hearing to determine the defendant's delinquency, appealed from the juvenile court's denial of the defendant's motion to dismiss based solely upon an alleged failure to comply with the time requirements of subsection (a) of former O.C.G.A. § 15-11-26 (see now O.C.G.A. §§ 15-11-181, 15-11-400, 15-11-421, 15-11-441, and 15-11-582), the Court of Appeals dismissed the appeal since a motion under that Code section cannot be analogized to the denial of a O.C.G.A. § 17-7-170 motion and did not involve a question of speedy trial rights which would be directly appealable. In re M.O.B., 190 Ga. App. 474, 378 S.E.2d 898 (1989) (decided under former O.C.G.A. § 15-11-26).

RESEARCH REFERENCES

Am. Jur. 2d. — 47 Am. Jur. 2d, Juvenile Courts and Delinquent and Dependent Children, § 66 et seq.

C.J.S. — 43 C.J.S., Infants, § 195 et seq.

U.L.A. — Uniform Juvenile Court Act (U.L.A.) § 22.

ALR. — Omission of signature of issuing officer on civil process or summons as affecting jurisdiction of the person, 37 A.L.R.2d 928.

Part 9

Predisposition Social Studies

15-11-190. Social study.

If the allegations of the petition alleging dependency are admitted or after an adjudication hearing the court has adjudicated a child as a dependent child, the court may direct that a written social study and report be made by a person designated by the court.

History. — Code 1981, § 15-11-190, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under pre-2014 Code Section 15-11-12, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Hearsay evidence may be admitted. — Consideration of evidence containing some hearsay may technically violate provisions of this section but in a case tried without a jury, the trial judge has a much broader discretion in the admission of evidence and the judge's judgment will not be reversed if there is any legal evidence to support the finding. Moss v. Moss, 135 Ga. App. 401, 218 S.E.2d 93 (1975) (decided under former O.C.G.A. § 15-11-12).

Reports containing hearsay may be admitted. — Consideration of written reports containing hearsay matter at a fact-finding child deprivation hearing is more than a technical violation of the law, but under the particular facts of a case it may not be reversible error. In re J.C., 242 Ga. 737, 251 S.E.2d 299 (1978), appeal dismissed, 441 U.S. 929, 99 S. Ct. 2046, 60 L. Ed. 2d 657 (1979) (decided under former O.C.G.A. § 15-11-12).

Presumption that judge did not rely on hearsay. — When a written welfare report in a child in a child deprivation hearing was made by the caseworker who testified and was cross-examined at the hearing and when the evidence introduced at the hearing, not considering the report, was sufficient to support the findings of fact made by the judge, it will be presumed that the judge did not consider any hearsay testimony in the report in the judge's determination that the children were deprived. In re J.C., 242 Ga. 737, 251 S.E.2d 299 (1978), appeal dismissed, 441 U.S. 929, 99 S. Ct. 2046, 60 L. Ed. 2d 657 (1979) (decided under former O.C.G.A. § 15-11-12).

RESEARCH REFERENCES

C.J.S. — 43 C.J.S., Infants, § 209 et seq.

U.L.A. — Uniform Juvenile Court Act (U.L.A.) § 28.

ALR. — Defense of infancy in juvenile delinquency proceedings, 83 A.L.R.4th 1135.

15-11-191. Contents of social study.

Each social study shall include, but not be limited to, a factual discussion of each of the following subjects:

(1) What plan, if any, for the return of the child adjudicated to be a dependent child to his or her parent and for achieving legal permanency for such child if efforts to reunify fail is recommended to the court;

(2) Whether the best interests of the child will be served by granting reasonable visitation rights to his or her other relatives in order to maintain and strengthen the child adjudicated to be a dependent child's family relationships;

(3) Whether the child adjudicated to be a dependent child has siblings under the court's jurisdiction, and, if so:

(A) The nature of the relationship between such child and his or her siblings;

(B) Whether the siblings were raised together in the same home and whether the siblings have shared significant common experiences or have existing close and strong bonds;

(C) Whether the child adjudicated to be a dependent child expresses a desire to visit or live with his or her siblings and whether ongoing contact is in such child's best interests;

(D) The appropriateness of developing or maintaining sibling relationships;

(E) If siblings are not placed together in the same home, why the siblings are not placed together and what efforts are being made to place siblings together or why those efforts are not appropriate;

(F) If siblings are not placed together, the frequency and nature of the visits between siblings; and

(G) The impact of the sibling relationship on the child adjudicated to be a dependent child's placement and planning for legal permanence;

(4) The appropriateness of any placement with a relative of the child adjudicated to be a dependent child; and

(5) Whether a caregiver desires and is willing to provide legal permanency for a child adjudicated to be a dependent child if reunification is unsuccessful.

History. — Code 1981, § 15-11-191, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under pre-2014 Code Section 15-11-12, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Hearsay evidence may be admitted. — Consideration of evidence containing some hearsay may technically violate provisions of this section but in a case tried without a jury, the trial judge has a much broader discretion in the admission of evidence and the judge's judgment will not be reversed if there is any legal evidence to support the finding. Moss v. Moss, 135 Ga. App. 401, 218 S.E.2d 93 (1975) (decided under former O.C.G.A. § 15-11-12).

Reports containing hearsay may be admitted. — Consideration of written reports containing hearsay matter at a fact-finding child deprivation hearing is more than a technical violation of the law, but under the particular facts of a case it may not be reversible error. In re J.C., 242 Ga. 737, 251 S.E.2d 299 (1978), appeal dismissed, 441 U.S. 929, 99 S. Ct. 2046, 60 L. Ed. 2d 657 (1979) (decided under former O.C.G.A. § 15-11-12).

Presumption that judge did not rely on hearsay. — When a written welfare report in a child in a child deprivation hearing was made by the caseworker who testified and was cross-examined at the hearing and when the evidence introduced at the hearing, not considering the report, was sufficient to support the findings of fact made by the judge, it will be presumed that the judge did not consider any hearsay testimony in the report in the judge's determination that the children were deprived. In re J.C., 242 Ga. 737, 251 S.E.2d 299 (1978), appeal dismissed, 441 U.S. 929, 99 S. Ct. 2046, 60 L. Ed. 2d 657 (1979) (decided under former O.C.G.A. § 15-11-12).

RESEARCH REFERENCES

C.J.S. — 43 C.J.S., Infants, § 209 et seq.

U.L.A. — Uniform Juvenile Court Act (U.L.A.) § 28.

ALR. — Defense of infancy in juvenile delinquency proceedings, 83 A.L.R.4th 1135.

Part 10

Family Reunification Determination

Law reviews. — For article, "An Outline of Juvenile Court Jurisdiction with Focus on Child Custody," see 10 Ga. St. B. J. 275 (1973).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 24A-2701, pre-2000 Code Section

15-11-41, and pre-2014 Code Section 15-11-58, which were subsequently repealed but were succeeded by provisions in this part, are included in the annotations for this part. See the Editor's notes at the beginning of the chapter.

Jurisdiction. — Superior court properly declined jurisdiction in a custody action brought by grandparents because once a juvenile court took jurisdiction of a deprivation action concerning the child and, later, a termination action of parental rights, the court took jurisdiction of the entire case of the minor child including the issues of disposition and custody. Segars v. State, 309 Ga. App. 732, 710 S.E.2d 916 (2011) (decided under former O.C.G.A. § 15-11-58).

Foster children. — Former O.C.G.A. §§ 15-11-13 and 15-11-58 (see now O.C.G.A. §§ 15-11-2, 15-11-30, 15-11-134, and 15-11-200 et seq.), and O.C.G.A. § 20-2-690.1, and 49-5-12 were not too vague and amorphous to be enforced by the judiciary and impose specific duties on the state defendants; thus, the federal regulatory scheme embodied in the CSFR process did not relieve the state defendants of the defendants obligation to fulfill the defendants statutory duties to the foster children, nor did the former statute provide a legal excuse for the defendants failure to do so. Kenny A. v. Perdue, No. 1:02-cv-1686-MHS, 2004 U.S. Dist. LEXIS 27025 (N.D. Ga. Dec. 11, 2004) (decided under former O.C.G.A. § 15-11-58).

No equal protection violation. — Treating deprived children who were placed in the legal custody of the Department of Families and Children Services because there was no relative committed to the child who was available for immediate placement differently from deprived children who did have a committed parent or guardian available for immediate placement did not violate the equal protection clause or Ga. Const. 1983, Art. I, Sec. I, Para. II. as the classes were not similarly situated and the laws were rationally related to the goal of minimizing government intervention while ensuring that children were reared in a familial environment. In the Interest of A.N., 281 Ga. 58, 636 S.E.2d 496 (2006) (decided under former O.C.G.A. § 15-11-58).

Temporary custody and visitation rights. — Juvenile court had jurisdiction to modify an order granting temporary custody of a deprived child to the Department of Family and Children Services and to permit visitation by parents who filed a petition for visitation rights four months after the custody order. In re K.B., 188 Ga. App. 199, 372 S.E.2d 476 (1988) (decided under former O.C.G.A. § 15-11-41).

RESEARCH REFERENCES

Am. Jur. 2d. — 42 Am. Jur. 2d, Infants, § 50. 47 Am. Jur. 2d, Juvenile Courts and Delinquent and Dependent Children, §§ 56 et seq., 110 et seq.

C.J.S. — 43 C.J.S., Infants, § 224 et seq. 67A C.J.S., Parent and Child, §§ 38 et seq., 63 et seq., 73 et seq., 90 et seq.

U.L.A. — Uniform Juvenile Court Act (U.L.A.) § 36.

15-11-200. DFCS report; case plan.

(a) Within 30 days of the date a child who is placed in DFCS custody is removed from his or her home and at each subsequent review of the disposition order, DFCS shall submit a written report to the court which shall either:

(1) Include a case plan for a reunification of the family; or

(2) Include a statement of the factual basis for determining that a plan for reunification is not appropriate.

(b) The report submitted by DFCS shall become a discrete part of the case record in a format determined by DFCS and shall be made available to a child who is placed in DFCS custody if such child is 14 years of age or older, his or her attorney, his or her guardian ad litem, if any, and the parent, guardian, or legal custodian of such child. The contents of the report shall be determined at a meeting to be held by DFCS in consultation with the parent, guardian, or legal custodian and child who was placed in DFCS custody, when appropriate. The parent, guardian, or legal custodian, the child who was placed in DFCS custody if such child is 14 years of age or older, his or her attorney, and guardian ad litem, if any, shall be given written notice of the meeting at least five days in advance of such meeting and shall be advised that the report will be submitted to the court for consideration as an order of the court. The report submitted to the court shall also contain any dissenting recommendations of the judicial citizen review panel, if applicable, and any recommendations of the parent, guardian, or legal custodian of the child who was placed in DFCS custody, if such are available.

(c) If the court adopts a report that contains a case plan for reunification services, it shall be in effect until modification by the court. A case plan shall address each reason requiring removal of a child from his or her home and shall, at a minimum, comply with the requirements of Code Section 15-11-201.

(d) If the submitted DFCS report contains a proposed case plan for reunification services:

(1) DFCS shall provide the caregiver, the foster parent, and any preadoptive parent or relative providing care for the child who was placed in DFCS custody with a copy of those portions of the court approved case plan that involve the permanency goal and the services to be provided to the child;

(2) A copy of the DFCS report and case plan shall be delivered to the parent, guardian, or legal custodian by United States mail, e-mail, or hand delivery at the same time the report and case plan are transmitted to the court, along with written notice that such report will be considered by the court without a hearing unless, within five days from the date the copy of such report and case plan were delivered, the parent, guardian, or legal custodian of the child who was placed in DFCS custody requests a hearing before the court to review such report and case plan; and

(3) If no hearing is requested, the court shall enter a disposition order or supplemental order incorporating all elements of the case plan for reunification services which the court finds essential to reunification, specifying what shall be accomplished by all parties before reunification of the family can be achieved.

(e) When DFCS recommends that reunification services are not appropriate and should not be allowed, the DFCS report shall address each reason requiring removal of a child from his or her home and shall contain at least the following:

(1) The purpose for which the child in DFCS custody was placed in foster care, including a statement of the reasons why such child cannot be adequately and safely protected at his or her home and the harm which may occur if such child remains in his or her home and a description of the services offered and the services provided to prevent removal of such child from his or her home;

(2) A clear statement describing all of the reasons supporting a finding that reunification of a child with his or her parent will be detrimental to such child and that reunification services therefore need not be provided, including specific findings as to whether any of the grounds for terminating parental rights exist; and

(3) The statements, provisions, and requirements found in paragraphs (11) and (12) of subsection (b) of Code Section 15-11-201.

History. — Code 1981, § 15-11-200, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 24A-2701 and pre-2014 Code Section 15-11-41, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

No error for failing to meet time requirements. — Since the plaintiff failed to show that it was the Department of Family and Children's Service's fault that the citizens review panel meeting was held outside the statutory time frame, there was no error justifying reversal of the juvenile court's judgment. In re C.S., 236 Ga. App. 312, 511 S.E.2d 895 (1999) (decided under former O.C.G.A. § 15-11-41).

Custody by Department suspends parental right. — Removal of custody of the child from the parents is a determination that, for whatever length of time custody is exercised by the Department of Family and Children Services, this right has been suspended, although not finally terminated. Rodgers v. Department of Human Resources, 157 Ga. App. 235, 276 S.E.2d 902 (1981) (decided under former Code 1933, § 24A-2701).

15-11-201. DFCS case plan; contents.

(a) A case plan shall be designed to achieve placement in the most appropriate, least restrictive, and most family-like setting available and in close proximity to the alleged dependent child's parent's home, consistent with the best interests and special needs of such child, and

shall consider the placement's proximity to the school in which such child is enrolled at the time of placement.

(b) A case plan shall be developed by DFCS and the parent, guardian, or legal custodian of the alleged dependent child and, when appropriate, such child. A case plan shall include, but not be limited to, all of the following:

(1) A description of the circumstances that resulted in such child being placed under the jurisdiction of the court and in foster care;

(2) An assessment of such child's and his or her family's strengths and needs and the type of placement best equipped to meet those needs;

(3)(A) A description of the type of home or institution in which such child is to be placed, including a discussion of the safety and appropriateness of the placement.

(B) If a child is placed in a qualified residential treatment program, DFCS must document:

(i) Reasonable and good faith efforts to identify and include all the individuals of the child's family and permanency team;

(ii) All contact information for members of the family and permanency team;

(iii) All contact information for other family members and fictive kin who are not part of the family and permanency team;

(iv) Evidence that meetings of the family and permanency team, including meetings relating to the assessment required by Code Section 15-11-219, are held at a time and place convenient for family;

(v) If reunification is the goal, evidence demonstrating that the parent from whom the child was removed provided input on the members of the family and permanency team;

(vi) Evidence that the assessment required by Code Section 15-11-219 is determined in conjunction with the family and permanency team;

(vii) The placement preferences of the family and permanency team relative to the assessment that recognizes children should be placed with their siblings unless there is a finding by the court that such placement is contrary to their best interest; and

(viii) If the placement preferences of the family and permanency team and child are not the placement setting recommended by the qualified individual conducting the assessment

under Code Section 15-11-219, the reasons why the preferences of the team and of the child were not recommended.

(C) If a child is placed in a qualified residential treatment program for more than six consecutive or nonconsecutive months, DFCS must maintain:

(i) Documentation of the assessment completed by a qualified individual, including written recommendations regarding the placement that will provide the child with the most effective level of care in the least restrictive environment and how that placement is consistent with the permanency goals established for the child; and

(ii) Documentation of the determination and approval or disapproval of the placement in a qualified residential treatment program by the court;

(4) Specific time-limited goals and related activities designed to enable the safe return of such child to his or her home, or, in the event that return to his or her home is not possible, activities designed to result in permanent placement or emancipation;

(5) Assignment of specific responsibility for accomplishing the planned activities;

(6) The projected date of completion of the case plan objectives;

(7) The date time-limited services will be terminated;

(8) A schedule of visits between such child and his or her siblings and other appropriate family members and an explanation if no visits are scheduled;

(9) When placement is made in a foster family home, group home, or other child care institution that is either a substantial distance from the home of such child's parent, guardian, or legal custodian or out of state, the case plan shall specify the reasons why the placement is the most appropriate and is in the best interests of the child;

(10) When an out-of-state group home placement is recommended or made, the case plan shall comply with Code Section 39-4-4, the Interstate Compact on the Placement of Children. In addition, documentation of the recommendation of the multidisciplinary team and the rationale for such particular placement shall be included. The case plan shall also address what in-state services or facilities were used or considered and why they were not recommended;

(11) If applicable, a statement that reasonable efforts have been made and a requirement that reasonable efforts shall be made for so long as such child remains in the custody of the department:

(A) To place siblings removed from their home in the same foster care, kinship care, guardianship, or adoptive placement, unless DFCS documents that such a joint placement would be contrary to the safety or well-being of any of the siblings; and

(B) In the case of siblings removed from their home who are not so jointly placed, for frequent visitation or other ongoing interaction between the siblings, unless DFCS documents that such frequent visitation or other ongoing interaction would be contrary to the safety or well-being of any of the siblings;

(12) Provisions ensuring the educational stability of such child while in foster care, including:

(A) An assurance that the placement of such child in foster care takes into account the appropriateness of the current educational setting and the proximity to the school in which such child is enrolled at the time of placement;

(B) An assurance that the state agency has coordinated with appropriate local educational agencies to ensure that such child remains in the school in which such child is enrolled at the time of placement; or

(C) If remaining in such school is not in the best interests of the child, an assurance by DFCS that DFCS and the local educational agencies have cooperated to assure the immediate and appropriate enrollment in a new school, with all of the educational records of such child provided to such new school;

(13) An account of health and education information about such child including school records, immunizations, known medical problems, any known medications he or she may be taking, names and addresses of his or her health and educational providers; such child's grade level performance; assurances that such child's placement in foster care takes into account proximity to the school in which he or she was enrolled at the time of placement; and other relevant health and educational information;

(14) A recommendation for a permanency plan for such child. If, after considering reunification, adoptive placement, permanent guardianship, or placement with a fit and willing relative, DFCS recommends placement in another planned permanent living arrangement for a child who has attained the age of 16, the case plan shall include:

(A) Documentation of a compelling reason or reasons why reunification, termination of parental rights and adoption, permanent guardianship, or placement with a fit and willing relative are not in the child's best interests;

(B) Documentation of the intensive, ongoing, and unsuccessful efforts made by the state agency to return the child home or secure a placement for the child with a fit and willing relative, a legal guardian, or an adoptive parent, including through efforts that utilize search technology, including social media, to find biological family members for the child; and

(C) Documentation of the steps the state agency is taking to ensure that the child's foster family home or child care institution is following the reasonable and prudent parent standard, as defined in Code Section 49-5-3, and documentation that the child has regular, ongoing opportunities to engage in age or developmentally appropriate activities, as defined in Code Section 49-5-3, including by consulting with the child in an age-appropriate manner about the opportunities of the child to participate in the activities.

For purposes of this paragraph, a "compelling reason" shall have the same meaning as in paragraph (2) of subsection (b) of Code Section 15-11-233;

(15)(A) A statement that the parent, guardian, or legal custodian of such child and the child have had an opportunity to participate in the development of the case plan, to review the case plan, to sign the case plan, and to receive a copy of the plan, or an explanation about why such persons were not able to participate or sign the case plan.

(B) The case plan for each child in foster care who has attained the age of 14 years old shall be developed and revised in consultation with the child and, at the option of the child, up to two members of the case planning team who are chosen by the child and who are not a foster parent of, or caseworker for, the child. DFCS may reject an individual selected by a child to be a member of the case planning team at any time if DFCS has good cause to believe that the individual would not act in the best interests of the child. One such member may be designated to be the child's advisor and, as necessary, advocate, with respect to the application of the reasonable and prudent parent standard to the child.

(C) The case plan for each child in foster care who has attained the age of 14 years old shall include:

(i) A document describing the rights of the child with respect to education, health, visitation, and court participation, the right to be provided with a consumer report pursuant to 42 U.S.C. Section 675(5)(I), and the right to stay safe and avoid exploitation; and

(ii) A signed acknowledgment by the child that the child has been provided with a copy of the document described in division

(i) of this subparagraph and that the rights contained in the document have been explained to the child in an age-appropriate way;

(16) A requirement that the DFCS case manager and staff and, as appropriate, other representatives of such child provide him or her with assistance and support in developing a transition plan that is personalized at the direction of such child, including specific options on housing, health insurance, education, local opportunities for mentors and continuing support services, and workforce supports and employment services, and is as detailed as such child may elect. The transition plan shall be completed in the 90 day period immediately prior to the date on which such child will attain 18 years of age;

(17) For such child in out-of-home care who is 14 years of age or older, a written description of the programs and services which will help him or her prepare for the transition from foster care to independent living; and

(18) The identity of the person within DFCS or other agency who is directly responsible for ensuring that the case plan is implemented.

History. — Code 1981, § 15-11-201, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242; Ga. L. 2014, p. 780, § 1-11/SB 364; Ga. L. 2015, p. 552, § 13/SB 138; Ga. L. 2018, p. 927, § 1-3/HB 906; Ga. L. 2019, p. 893, § 3/SB 225; Ga. L. 2019, p. 1056, § 15/SB 52.

The 2018 amendment, effective July 1, 2020, in paragraph (b)(16), substituted "workforce" for "work force" near the end of the first sentence, in the second sentence, substituted "The transition plan shall be completed in the 90 day period immediately prior to the date on which such child will attain 18 years of age" for "The transition plan shall be completed in the 90 day period: (A) Immediately prior to the date on which such child will attain 18 years of age; or", and deleted former subparagraph (b)(16)(B), which read: "If such child remains in the care of DFCS past his or her eighteenth birthday, before his or her planned exit from DFCS care."

The 2019 amendments. — The first 2019 amendment, effective May 7, 2019, designated the existing provisions of paragraph (b)(3) as subparagraph (b)(3)(A); substituted a period for a semicolon at the end of subparagraph (b)(3)(A); and added subparagraphs (b)(3)(B) and (b)(3)(C). The second 2019 amendment, effective May 12, 2019, part of an Act to revise, modernize, and correct the Code, revised punctuation at the end of subparagraph (b)(16).

JUDICIAL DECISIONS

Private cause of action. — Following factors were relevant in determining whether a private remedy was implicit in a statute not expressly providing one: first, was the plaintiff one of the class for whose special benefit the statute was enacted; second, was there any indication of legislative intent, explicit or implicit, either to create such a remedy or to deny one; third, was it consistent with the underlying purpose of the legislative scheme to imply such a remedy for plaintiff? When foster children alleged that certain child services agencies and officials violated former O.C.G.A. § 15-11-58(c) and (o)(1) (see now O.C.G.A. §§ 15-11-201 and 15-11-230), then the former statute conferred upon the children a private cause of action. Kenny A. v. Perdue, 218 F.R.D. 277 (N.D. Ga. Aug. 18, 2003) (decided under former O.C.G.A. § 15-11-58).

Timing of case plan made it impos-

sible to comply with case plan. — Record provided no support for a finding that the aunt and uncle failed to comply with the goals of a case plan for reunification with the child, and to the extent the juvenile court based the court's ruling on such a failure, the court erred because the only written case plans were an unfiled case plan dated May 6, 2016, and another case plan dated May 10, 2016, and filed May 12, 2016; the first hearing on the motion for nonreunification was held on May 13, 2016, the day after the May 10 case plan was filed with the juvenile court; and the juvenile court issued the order on August 16, 2016, nunc pro tunc June 2, 2016, even though the May 10 case plan gave the aunt and uncle until September 30, 2016, to complete several reunification goals. In the Interest of B. G., 345 Ga. App. 167, 812 S.E.2d 552 (2018).

15-11-202. Reasonable efforts by DFCS to preserve or reunify families.

(a) Except as provided in subsection (a) of Code Section 15-11-203, reasonable efforts shall be made to preserve or reunify families:

(1) Prior to the placement of an alleged dependent child in DFCS custody to prevent the need for removing him or her from his or her home; or

(2) To eliminate the need for removal and make it possible for a child alleged to be or adjudicated as a dependent child to return safely to his or her home at the earliest possible time.

(b) In determining the type of reasonable efforts to be made to a child alleged to be or adjudicated as a dependent child and in making such reasonable efforts, such child's health and safety shall be the paramount concern.

(c) Appropriate services to meet the needs of a child alleged to be or adjudicated as a dependent child and his or her family may include those provided by DFCS and other services available in the community.

(d) The court shall be required to review the appropriateness of DFCS's reasonable efforts at each stage of the proceedings.

(e)(1) At the preliminary protective hearing, DFCS has the burden of demonstrating that:

(A) It has made reasonable efforts to prevent placement of an alleged dependent child in foster care;

(B) There are no appropriate services or efforts which could allow an alleged dependent child to safely remain in the home given the particular circumstances of such child and his or her family at the time of his or her removal and so the absence of such efforts was justifiable; or

(C) Reasonable efforts to prevent placement and to reunify an alleged dependent child with his or her family are not required

because of the existence of one or more of the circumstances enumerated in subsection (a) of Code Section 15-11-203.

(2) At the adjudication hearing, DFCS has the burden of demonstrating that:

(A) It has made reasonable efforts to eliminate the need for removal of an alleged dependent child from his or her home and to reunify such child with his or her family at the earliest possible time; or

(B) Reasonable efforts to prevent placement and to reunify an alleged dependent child with his or her family are not required because of the existence of one or more of the circumstances enumerated in subsection (a) of Code Section 15-11-203.

(3) At each other hearing, DFCS has the burden of demonstrating that:

(A) It has made reasonable efforts to eliminate the need for removal of a child alleged to be or adjudicated as a dependent child from his or her home and to reunify such child with his or her family at the earliest possible time; or

(B) It has made reasonable efforts to finalize an alternative permanent home for a child alleged to be or adjudicated as a dependent child.

(f)(1) When determining whether reasonable efforts have been made, the court shall consider whether services to the child alleged to be or adjudicated as a dependent child and his or her family were:

(A) Relevant to the safety and protection of such child;

(B) Adequate to meet the needs of such child and his or her family;

(C) Culturally and linguistically appropriate;

(D) Available and accessible;

(E) Consistent and timely; and

(F) Realistic under the circumstances.

(2) In determining whether reasonable efforts have been made to finalize an alternative permanent home for a child adjudicated dependent, the court shall also consider whether DFCS has completed the diligent search required by subsection (e) of Code Section 15-11-211 and has provided notice to persons identified in such diligent search as required by subsection (c) of Code Section 15-11-211.

(g) A finding that reasonable efforts have not been made shall not preclude the entry of an order authorizing a child alleged to be or adjudicated as a dependent child's placement when the court finds that placement is necessary for the protection of such child.

(h) When efforts to prevent the need for a child alleged to be or adjudicated as a dependent child's placement were precluded by an immediate threat of harm to such child, the court may make a finding that reasonable efforts were made if it finds that the placement of such child in the absence of such efforts was justifiable.

(i) Reasonable efforts to place a child adjudicated as a dependent child for adoption or with a guardian or legal custodian may be made concurrently with reasonable efforts to reunify. When DFCS decides to concurrently make reasonable efforts for both reunification and permanent placement away from the parent, guardian, or legal custodian of a child adjudicated as a dependent child, DFCS shall disclose its decision and both plans to all parties and obtain approval from the court. When DFCS proceeds on both plans, the court's review of reasonable efforts shall include efforts under both plans.

(j) An order placing or continuing the placement of a child alleged to be or adjudicated as a dependent child in DFCS custody shall contain, but not be limited to, written findings of facts stating:

(1) That such child's continuation in or return to his or her home would be contrary to his or her welfare;

(2) Whether reasonable efforts have been made to prevent or eliminate the need for placement of such child, unless the court has determined that such efforts are not required or shall cease; and

(3) Whether reasonable efforts should continue to be made to prevent or eliminate the need for placement of such child, unless the court has previously determined that such efforts are not required or shall cease.

History. — Code 1981, § 15-11-202, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242; Ga. L. 2019, p. 456, § 1/SB 167.

The 2019 amendment, effective July 1, 2019, designated the existing provisions of subsection (f) as paragraph (f)(1); redesignated former paragraphs (f)(1) through (f)(6) as present subparagraphs (f)(1)(A) through (f)(1)(F), respectively; and added paragraph (f)(2).

JUDICIAL DECISIONS

Analysis

General Consideration
Reunification

General Consideration

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 24A-2701, pre-2000 Code Section 15-11-41, and pre-2014 Code Section 15-11-58, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Applicability. — Former O.C.G.A. § 15-11-58(a) (see now O.C.G.A. §§ 15-11-2 and 15-11-134) was inapplicable since a child remained in the legal custody of the child's father with whom the child had been residing for several months prior to the deprivation hearing as the child was not placed in the custody of the Georgia Department of Family and Children Services. In the Interest of K.J., 268 Ga. App. 843, 602 S.E.2d 861 (2004) (decided under former O.C.G.A. § 15-11-58).

In a termination of parental rights case, the court rejected the parents' argument that the parents had been deprived of the opportunity to achieve reunification under former O.C.G.A. § 15-11-58(a)(2) (see now O.C.G.A. § 15-11-202) because the Department of Family and Children Services had not promptly presented a second reunification plan; while the parents had made laudable efforts to comply with the second case plan, the parent had not complied with the first plan; moreover, former § 15-11-58 did not apply to termination proceedings. In the Interest of T.W.O., 283 Ga. App. 771, 643 S.E.2d 255 (2007) (decided under former O.C.G.A. § 15-11-58).

Reunification

Notice. — At a permanency hearing, at which a mother appeared represented by counsel, the mother was not entitled to prior notice by report or motion that DFCS would seek termination of reunification services and an award of long-term custody at the hearing. In the Interest of D. H., 313 Ga. App. 664, 722 S.E.2d 388 (2012) (decided under former O.C.G.A. § 15-11-58).

Presumption that reunification services are inappropriate. — Pursuant to former O.C.G.A. § 15-11-58(h) (see now O.C.G.A. § 15-11-204), reunification services were inappropriate if reasonable efforts to reunify a child with the child's family would be detrimental to the child; although rebuttable, a presumption existed. In the Interest of J.P.V., 261 Ga. App. 194, 582 S.E.2d 170 (2003) (decided under former O.C.G.A. § 15-11-58).

Juvenile court's decision to terminate parental rights was supported by clear and convincing evidence including the family's history of instability, the fact that the children lived in filth for their entire lives, their developmental and emotional problems, and evidence of malnourishment and poor hygiene. The mother failed to rebut the presumption that reunification services should not be provided to the family and that efforts to reunify the children with the mother would be detrimental to the children. In the Interest of T.D.B., 266 Ga. App. 434, 597 S.E.2d 537 (2004) (decided under former O.C.G.A. § 15-11-58).

Because the parental rights to a mother's other four children had previously been terminated around the time the mother's infant child was born, the juvenile court did not err in approving a nonreunification plan involving that infant child pursuant to former O.C.G.A. § 15-11-58(a)(4)(C) (see now O.C.G.A. § 15-11-203); further, a presumption of nonreunification arose based on the mother's medically verified mental deficiency. In the Interest of J.P., 280 Ga. App. 100, 633 S.E.2d 442 (2006) (decided under former O.C.G.A. § 15-11-58).

Presumption against reunification. — Because there was no evidence that parents suffered from a medically verifiable deficiency of their mental health, no presumption against reunification arose on such account. In the Interest of A.M., 306 Ga. App. 358, 702 S.E.2d 686 (2010) (decided under former O.C.G.A. § 15-11-58).

Notice of nonreunification. — Parent had notice that the Georgia Department of Family and Children Services was seeking nonreunification and had the opportunity to contest the issue; after a hearing the court continued the case, noting that a nonreunification case plan had

been filed and the parent was contesting the issue of nonreunification, and the hearing was held on the later date with the parent and the parent's attorney present at the hearing. In the Interest of A. E., 314 Ga. App. 206, 723 S.E.2d 499 (2012) (decided under former O.C.G.A. § 15-11-58).

Reasonable efforts at reunification not required. — Reasonable efforts toward reunification of a father with his child were not required because the court made findings of aggravated circumstances including a finding that the father had sexually abused the child and the child's siblings. In the Interest of B.M., 252 Ga. App. 716, 556 S.E.2d 883 (2001) (decided under former O.C.G.A. § 15-11-58).

Clear and convincing evidence supported a juvenile court's judgment that reunification services were inappropriate for a mother with a history of drug and alcohol use, whose minor child had been taken from her home on three occasions because of the mother's inability to provide adequate food, clothing, and shelter for the child. In the Interest of J.P.V., 261 Ga. App. 194, 582 S.E.2d 170 (2003) (decided under former O.C.G.A. § 15-11-58).

Although former O.C.G.A. § 15-11-58(a) (see now O.C.G.A. §§ 15-11-2 and 15-11-134) required a juvenile court to make a finding of fact as to whether reasonable efforts at reunification were made prior to placement of the children in a county agency in a parental rights termination proceeding, such finding was not required because the children had already been found to be deprived by the mother. In the Interest of S.N.L., 275 Ga. App. 600, 621 S.E.2d 792 (2005) (decided under former O.C.G.A. § 15-11-58).

Termination of a parent's rights to a child was not barred by the parent's claim that a county department of family and children services established a nonreunification plan before contacting the parent and then denied the parent's requests for information; former O.C.G.A. § 15-11-58 did not impose upon termination proceedings the same procedures that applied to disposition orders and recommendations regarding reunification and did not obligate the department in every case to create a plan for reunification, and when the department afforded the parent an opportunity to participate in the case by mailing the initial case plan to the parent and explaining the need to legitimize the child, the parent failed to seize the opportunity or to comply timely with the instructions on legitimization. In the Interest of T.C., 282 Ga. App. 659, 639 S.E.2d 601 (2006) (decided under former O.C.G.A. § 15-11-58).

Reasonable efforts at reunification. — Because a caseworker began working with the father even before he established paternity, and because the Department of Family and Children Services prepared a case plan for the father, pursuant to former O.C.G.A. § 15-11-58(a)(1) (see now O.C.G.A. § 15-11-202), reasonable efforts were made to place the child with the father before the child was placed with the Department. In re T.B.W., 312 Ga. App. 733, 719 S.E.2d 589 (2011) (decided under former O.C.G.A. § 15-11-58).

Reunification plan. — Because the juvenile court entered court-ordered goals for reunification, but failed to enter a specific plan for reunification after the deprivation finding, and the mother's attorney was left with virtually no time to file any motions requesting visitation or a case plan for reunification, under the mandate of former O.C.G.A. § 15-11-58(a)(2) (see now O.C.G.A. § 15-11-202), the juvenile court was required to set out a plan for reunification and give the mother the opportunity to meet those goals. In the Interest of B.C., 250 Ga. App. 152, 550 S.E.2d 707 (2001) (decided under former O.C.G.A. § 15-11-58).

Mother's claim that the reunification plan that the state family welfare department imposed on her was too vague to comply with the applicable statutory requirements was waived because that claim was not raised in the trial court, but, in any event, the plan was sufficiently specific to meet the statutory requirements. In the Interest of D.E., 269 Ga. App. 753, 605 S.E.2d 394 (2004) (decided under former O.C.G.A. § 15-11-41).

Failure to comply with previous reunification plan. — One of the noted factors in finding a child to be deprived

Reunification (Cont'd)

was proof that a parent had unjustifiably failed to comply with a previously ordered plan designed to reunite the family under former O.C.G.A. § 15-11-58(h)(1) (see now O.C.G.A. § 15-11-204). In the Interest of R.M., 276 Ga. App. 707, 624 S.E.2d 182 (2005).

Reunification not appropriate. — Evidence that reunification would subject the child to further educational neglect, inadequate supervision, and domestic violence, that the mother's cognitive limitations placed the child at risk, that the mother failed to make progress despite intervention, and that there were no other services that could be provided to eliminate the risk of harm to child, made it clear reunification would be detrimental. In re C.N., 231 Ga. App. 639, 500 S.E.2d 400 (1998) (decided under former O.C.G.A. § 15-11-41).

Since the evidence showed that children were deprived due to a mother's lack of parental care, that the deprivation was likely to continue and cause serious harm to the children, and that the mother unjustifiably failed to comply with previous reunification plans, the trial court did not err in approving the nonreunification plan. In re C.S., 236 Ga. App. 312, 511 S.E.2d 895 (1999) (decided under former O.C.G.A. § 15-11-41).

Reunification was not appropriate since evidence showed that parents unjustifiably failed to comply with plans designed to reunite the parents with the children, the children were removed from the parents' custody on two or more occasions, reunification services were previously provided, and there were grounds for terminating parental rights. In re R.U., 239 Ga. App. 573, 521 S.E.2d 610 (1999) (decided under former O.C.G.A. § 15-11-41).

Juvenile court did not err in approving a nonreunification plan when convincing evidence showed reunification was not in the best interests of the children and the likelihood that it would only prolong their deprivation. In the Interest of U.B., 246 Ga. App. 328, 540 S.E.2d 278 (2000) (decided under former O.C.G.A. § 15-11-41).

Evidence that the children's mother permitted and/or assisted her husband in making videotapes for distribution of the children being stripped and spanked was sufficient to show that reunification services between the children and their mother should not be provided under former O.C.G.A. § 15-11-58(h) (see now O.C.G.A. § 15-11-204); furthermore, a presumption against nonreunification existed because of the evidence of the mother's past egregious conduct, and there was insufficient evidence to overcome the presumption favoring reunifications. In the Interest of J.P., 253 Ga. App. 732, 560 S.E.2d 318 (2002) (decided under former O.C.G.A. § 15-11-41).

Reunification was not appropriate since evidence of the children's starvation, coupled with the mother's complete denial of responsibility for their emaciated condition, amply supported the juvenile court's findings that she physically neglected the children and that reunification would be detrimental to the children. In the Interest of R.N.R., 257 Ga. App. 93, 570 S.E.2d 388 (2002) (decided under former O.C.G.A. § 15-11-41).

Evidence was sufficient to support a juvenile court's approval of nonreunification of the mother and her child under former O.C.G.A. § 15-11-58(h) (see now O.C.G.A. § 15-11-204) as the mother failed to rebut the presumption that reunification services not be provided due to her medically verifiable health deficiency when the mother provided evidence that she complied with her prenatal care, did fine during pregnancy even though she was not on her medication, and was a loving mother, but a psychiatrist testified that the mother was mentally ill, that the illness could cause the mother to hurt the child, and that the mother's mental condition was likely to continue. In the Interest of D.L.W., 264 Ga. App. 168, 590 S.E.2d 183 (2003).

As the trial court found clear and convincing evidence of a medically verifiable condition creating the parent's inability to properly parent the children, this finding created a presumption that reunification services need not be provided. In the Interest of A.W., 264 Ga. App. 705, 592 S.E.2d 177 (2003) (decided under former O.C.G.A. § 15-11-58).

Evidence was sufficient to support the trial court's judgment that reunification efforts should be discontinued as to the mother as clear and convincing evidence showed that the mother had not, as required by the reunification plan, gone six consecutive months without testing positive for drugs and had refused to submit to two drug screenings; also, the mother had not rebutted the presumption that reunification efforts should be discontinued. In the Interest of J.B., 274 Ga. App. 564, 618 S.E.2d 187 (2005) (decided under former O.C.G.A. § 15-11-58).

Plan for nonreunification under former O.C.G.A. § 15-11-58(h) (see now O.C.G.A. § 15-11-204) was in the child's best interests since: (1) the grandmother relapsed after regaining custody and became so drunk that she passed out and left the four-year-old child unsupervised; (2) the incident resulted in the grandmother's father applying for a protection order; (3) the grandmother was dismissed from a substance abuse treatment program; (4) the grandmother pled guilty to driving under the influence and child endangerment two years earlier; and (5) the child had behavioral problems that resulted in hospitalization and that led a child services agency to seek therapeutic foster care before seeking permanent adoption. In the Interest of J.B., 274 Ga. App. 20, 619 S.E.2d 305 (2005) (decided under former O.C.G.A. § 15-11-58).

Trial court properly granted an agency's motion to end reunification services provided to the parents as the evidence indicated that the parents refused to cooperate with case plans and had completely denied responsibility for placing the children in a harmful situation. In the Interest of D.B., 277 Ga. App. 454, 627 S.E.2d 101 (2006) (decided under former O.C.G.A. § 15-11-58).

Rational trier of fact could have found clear and convincing evidence that the parent unjustifiably failed to comply with the reunification plan and that reasonable efforts to reunify the child with the parent would be detrimental to the child under former O.C.G.A. § 15-11-58(h) (see now O.C.G.A. § 15-11-204); the parent failed to complete parenting classes, failed to obtain stable housing and employment, failed to pay child support, failed to attend psychotherapy, and disappeared for months at a time without explanation and without visiting the child. In the Interest of C.A., 279 Ga. App. 747, 632 S.E.2d 698 (2006) (decided under former O.C.G.A. § 15-11-58).

In the termination of parental rights case, contrary to the mother's argument, the reunification plan complied with former O.C.G.A. § 15-11-58(c)(3) (see now O.C.G.A. § 15-11-201); the plan required the mother, who was mentally retarded, to prove that the mother could be a fit parent, and the mother failed to show this. In the Interest of H.F.G., 281 Ga. App. 22, 635 S.E.2d 338 (2006) (decided under former O.C.G.A. § 15-11-58).

Order holding that reunification efforts on the part of a mother were not in the best interest of her two children was upheld on appeal pursuant to former O.C.G.A. § 15-11-58(h) (see now O.C.G.A. § 15-11-204) since the record established that the mother suffered from mental illness and was unable to care for her children. The mother failed to rebut the presumption that reunification services were inappropriate when she had unjustifiably failed to comply with a previously ordered plan. In the Interest of T.L., 285 Ga. App. 526, 646 S.E.2d 728 (2007) (decided under former O.C.G.A. § 15-11-58).

Although a parent made substantial progress on a reunification plan while incarcerated, an order extending temporary custody for an additional year in favor of the Department of Family and Children Services was upheld on appeal as sufficient evidence was presented that the parent was unable to: (1) establish stable housing; (2) complete a substance abuse assessment; and (3) demonstrate six months of clean drug screens; further, as the parent was living with the other parent who evidence showed to be an unrehabilitated drug user, the trial court was authorized to conclude that the child at issue would not be in a safe environment if returned to the parent. In the Interest of R.B., 285 Ga. App. 556, 647 S.E.2d 300 (2007) (decided under former O.C.G.A. § 15-11-58).

Juvenile court did not err in approving nonreunification with regard to a parent

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and two twin children as some evidence showed that the parent: unjustifiably failed to comply with the case plan goals to provide financial support for the children; failed to maintain stable housing and employment; failed to attend all scheduled psychological evaluations; exhibited paranoid and psychopathic personality tendencies to the extent that the parent's ability to care for the children was severely impaired; and was convicted of threatening a prior spouse and stalking that spouse and children and, thus, had engaged in actions which constituted egregious conduct toward those children. In the Interest of T.W., 288 Ga. App. 386, 654 S.E.2d 218 (2007) (decided under former O.C.G.A. § 15-11-58).

Trial court properly extended a department of family and child services' custody of a child when the child's mother, communicating with the child over the Internet while posing as an adult man, had pretended to have witnessed a sexually graphic event; the child was especially vulnerable to sexually inappropriate behavior; and the mother's conduct during visitation with the child, including her statements that the child would be a suspect if anything happened to the mother, that the child would never live with her father, and that the child was "acting like a whore," was also probative of whether she would act abusively toward her daughter if she were returned to her custody. The fact that the mother had substantially completed her reunification case plan did not mandate that the child be returned to her custody. In the Interest of Q.H., 291 Ga. App. 598, 662 S.E.2d 358 (2008) (decided under former O.C.G.A. § 15-11-58).

There was sufficient clear and convincing evidence presented to authorize the juvenile court to find that a mother's child was deprived and that the deprivation was likely to continue, and consequently, that reunification of the child with the mother would be detrimental to the child and was not in the child's best interest because, while the juvenile court took into consideration the previous termination of the mother's parental rights in determining whether the child was deprived, the juvenile court also heard substantial evidence showing that the mother's mental, emotional, and financial condition had not changed significantly since her parental rights to her children were terminated and that, despite the assistance of the Department of Family and Children Services and the loss of her four children, the mother still lacked the necessary skills, judgment, and resources to properly care for the child. In re R. B., 309 Ga. App. 407, 710 S.E.2d 611 (2011) (decided under former O.C.G.A. § 15-11-58).

Juvenile court did not err in terminating the reunification services and approving the non-reunification plan because clear and convincing evidence supported the juvenile court's conclusion that the child was deprived based on the mother's long-term substance abuse and that such deprivation was likely to continue and cause harm to the child. In the Interest of J. T., 322 Ga. App. 4, 743 S.E.2d 571 (2013) (decided under former O.C.G.A. § 15-11-58).

Reunification inappropriate when children had severe medical issues. — Trial court did not err in granting a motion filed by the Department of Family and Children Services for nonreunification because evidence supported the trial court's finding that the parents were not able to meet their children's medical needs, and the children's lives would be endangered if the appropriate level of care was not maintained; the parents' physical neglect of the children and their continuing inability to meet their children's extensive medical needs was sufficient for any rational trier of fact to find by clear and convincing evidence that reunification efforts would be detrimental to the children. In the Interest of A.M., 306 Ga. App. 358, 702 S.E.2d 686 (2010) (decided under former O.C.G.A. § 15-11-58).

Report recommending nonreunification met requirements of former O.C.G.A. § 15-11-58(b) (see now O.C.G.A. § 15-11-200), notwithstanding evidence which the mother contended showed that the contents of the report recommending nonreunification were determined prior to her meeting

with caseworkers for the county Department of Family and Children Services. Although the court agreed with the mother that a report should not be finalized until after such a meeting had been conducted, it disagreed with the mother's apparent contention that nothing should be committed to writing prior to such meeting. In the Interest of T.R., 248 Ga. App. 310, 548 S.E.2d 621 (2001) (decided under former O.C.G.A. § 15-11-58).

Discontinuing efforts for reunification appropriate. — Because a trial court found in the court's unappealed orders that the children were deprived and that such deprivation was caused by their father, in a second unappealed order finding that the deprivation was likely to continue and that the father was untruthful, evasive, and inconsistent in his testimony, the statutory criteria for discontinuing efforts for reunification of the family were met. In re L.S.M., 236 Ga. App. 537, 512 S.E.2d 397 (1999) (decided under former O.C.G.A. § 15-11-41).

Denial of reunification was proper based on findings that this was the third time that the children had been removed from the mother's care, that the Department of Family and Children Services had previously undertaken reasonable efforts to reunify the family, that the mother had unjustifiably failed to comply with prior plans, and that she had serious medical problems. In re K.M., 240 Ga. App. 67, 522 S.E.2d 667 (1999) (decided under former O.C.G.A. § 15-11-41).

Order terminating reunification services was proper after a case manager testified that the mother did not meet the case plan requirements, and although the mother claimed that she worked "daily" to clean up her house and satisfy the other case plan goals, she readily admitted that she failed to make her home safe for the child within the 90-day time period established by the court. In the Interest of B.D.G., 262 Ga. App. 843, 586 S.E.2d 736 (2003) (decided under former O.C.G.A. § 15-11-58).

Termination of reunification services was affirmed since the evidence showed that the parent had a history of chronic unrehabilitated abuse of alcohol or controlled substances with the effect of rendering the parent incapable of providing adequately for the needs of the children. In the Interest of S.A., 263 Ga. App. 610, 588 S.E.2d 805 (2003) (decided under former O.C.G.A. § 15-11-58).

Record supported the juvenile court's judgment that a parent did not fulfill the terms of a case plan that was established by the Department of Family and Children's Services because the parent continued using cocaine and refused to attend substance abuse treatment; thus, the child was deprived and custody was properly placed in the department. In the Interest of J.L., 269 Ga. App. 226, 603 S.E.2d 742 (2004) (decided under former O.C.G.A. § 15-11-58).

Because a mother unjustifiably failed to comply with the court-ordered case-plan goals, ample evidence supported the juvenile court's order approving the termination of reunification services under former O.C.G.A. § 15-11-58(h) (see now O.C.G.A. § 15-11-204). In the Interest of K.R., 270 Ga. App. 296, 605 S.E.2d 911 (2004) (decided under former O.C.G.A. § 15-11-58).

Because a presumption of non-unification arose after a parent failed to pay child support or comply with the reunification plan, reunification services were properly discontinued; but a placement order with a foster care agency was reversed as a grandparent presented uncontradicted evidence supporting a consideration for alternative placement. In the Interest of J.J., 287 Ga. App. 746, 652 S.E.2d 639 (2007) (decided under former O.C.G.A. § 15-11-58).

Juvenile court properly terminated reunification services under since the child's parent had been incarcerated for the majority of the child's life and faced additional jail time if convicted of several pending charges, and the parent's child enjoyed a significant bond with the child's aunt and uncle, with whom the child had lived for several years. In the Interest of C.P., 291 Ga. App. 699, 662 S.E.2d 802 (2008) (decided under former O.C.G.A. § 15-11-58).

Grant of a petition to cease efforts to reunify the mother with the mother's three children was supported by evidence that the mother continued to live with the mother's drug-supplier boyfriend and use

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illegal drugs, had not obtained a source of income, and had not ensured that the children had no contact with the mother's boyfriend, who allegedly touched one of the children inappropriately. In the Interest of R. G., 322 Ga. App. 523, 745 S.E.2d 752 (2013).

Discontinuing efforts for reunification not appropriate. — Evidence that the mother had substantially complied with the reunification plan and that, in the opinion of the psychologist retained by the Department of Family and Children Services, the psychologist did not understand why the department was seeking to end reunification efforts when the only way it was possible to determine if the mother would be able to effectively parent her eight year old child in the future was by reuniting the mother and child overcame the statutory presumption that reunification was not appropriate in cases when a child had been removed from the mother's home on at least two prior occasions and reunification services had been made available on those occasions. In the Interest of M.H., 251 Ga. App. 528, 554 S.E.2d 616 (2001) (decided under former O.C.G.A. § 15-11-58).

Because the record failed to contain clear and convincing evidence to support the termination of reunification services to a parent, but instead showed that the parent substantially met the goals outlined in the reunification plan, maintained an income level appropriate to meet the needs of the parent's family, and cooperated in submitting to a psychological evaluation and any recommended treatment, that part of the lower court's judgment was reversed; but, the denial of the parent's reunification motion and the extension of temporary custody was affirmed. In the Interest of S.L.E., 280 Ga. App. 145, 633 S.E.2d 454 (2006) (decided under former O.C.G.A. § 15-11-58).

Trial court improperly granted a motion filed by the Department of Family and Children Services to discontinue efforts to reunify parents with their children because the trial court erred in finding that the parents suffered from a medically verifiable deficiency of their mental health such as to render them incapable of providing for the physical needs of the children; the four psychological reports, two for each parent, that were submitted into evidence for consideration by the trial court provided no evidentiary support for the trial court's finding of a "medically verifiable deficiency" of the parents' mental health because the reports did not suggest that either parent lacked the mental competency to care for their children. In the Interest of A.M., 306 Ga. App. 358, 702 S.E.2d 686 (2010) (decided under former O.C.G.A. § 15-11-58).

A juvenile court's orders terminating reunification services and awarding custody of a child to the maternal grandmother were not supported by clear and convincing evidence because the mother demonstrated that she had Supplemental Security Income for two other children and that she could live comfortably with her children at her mother's home. In the Interest of D. H., 313 Ga. App. 664, 722 S.E.2d 388 (2012) (decided under former O.C.G.A. § 15-11-58).

Failure to challenge deprivation order. — Failure to challenge a deprivation order precluded a parent's challenge to the sufficiency of the evidence showing that reasonable reunification efforts were made. In the Interest of R.D.B., 282 Ga. App. 628, 639 S.E.2d 565 (2006) (decided under former O.C.G.A. § 15-11-58).

Finding of reunification efforts not required. — Because the children had not been placed in the custody of the Department of Family and Children Services, the trial court was not required to find that the agency had made reasonable reunification efforts. In the Interest of T.R., 284 Ga. App. 742, 644 S.E.2d 880 (2007) (decided under former O.C.G.A. § 15-11-58).

Failure of Department of Family and Children Services to make reasonable efforts. — Even assuming that the Department of Family and Children Services made no reasonable effort to prevent a newborn's removal from her mother's custody, the juvenile court's factual findings that the mother's older child had been removed months earlier due to physical abuse inflicted by the mother, her boyfriend, or both, and that the newborn

was the child of the mother and her boyfriend, who had since married, supported the award of custody to the Department pursuant to O.C.G.A. § 15-11-202(g). In the Interest of S. C. S., 336 Ga. App. 236, 784 S.E.2d 83 (2016).

Parent's complicity in murder did not excuse lack of reunification efforts. — When a mother's boyfriend was charged with murdering one of her three children, and she was charged with complicity, and since there was no evidence she knew that the boyfriend abused her children, and none of the aggravated circumstances contained in former O.C.G.A. § 15-11-58(a)(4)(A)-(C) (see now O.C.G.A. § 15-11-203) had been shown, the trial court erred in excusing the state from making reasonable efforts toward reunification. In the Interest of A.B., 263 Ga. App. 697, 589 S.E.2d 264 (2003) (decided under former O.C.G.A. § 15-11-58).

Reunification plan requiring English classes. — Trial court did not misread parents' case plan to include goals that were not expressed in the plan because evidence supported the trial court's finding that the parents' case plan required the parents to have a psychological examination and follow through with recommended treatment; because the psychologist who recommended English as a second language classes pointed to the parents' language limitations as causing them to miss information necessary to provide appropriate medical care for the children, the recommended action was directly related to the circumstances which required the children be separated from the parents, and the recommended action could be included in the case plan without further judicial review. In the Interest of A.M., 306 Ga. App. 358, 702 S.E.2d 686 (2010) (decided under former O.C.G.A. § 15-11-58).

Reunification order insufficient to allow for meaningful appellate review. — Juvenile court's order that reunification was not in a child's best interests was vacated because the juvenile court found that reunification efforts would be detrimental to the child but did not specify which, if any, of the presumptions under former O.C.G.A. § 15-11-58(h) (see now O.C.G.A. § 15-11-204) supported the court's finding; therefore, it was impossible for the court of appeals to determine whether the order was supported by clear and convincing evidence. In re T.S., 310 Ga. App. 100, 712 S.E.2d 121 (2011) (decided under former O.C.G.A. § 15-11-58).

15-11-203. When reasonable efforts by DFCS not required.

(a) The court may direct that reasonable efforts to eliminate the need for placement of an alleged dependent child shall not be required or shall cease if the court determines and makes written findings of fact that a parent of an alleged dependent child:

(1) Has subjected his or her child to aggravated circumstances;

(2) Has been convicted of the murder or murder in the second degree of another child of such parent;

(3) Has been convicted of the voluntary manslaughter of another child of such parent;

(4) Has been convicted of aiding or abetting, attempting, conspiring, or soliciting to commit murder or voluntary manslaughter of another child of such parent;

(5) Has been convicted of committing a felony assault that results in serious bodily injury to the child or another child of such parent;

(6) Has been convicted of rape, sodomy, aggravated sodomy, child molestation, aggravated child molestation, incest, sexual battery, or

aggravated sexual battery of the alleged dependent child or another child of the parent;

(7) Is required to register as a sex offender and that preservation of a parent-child relationship is not in the alleged dependent child's best interests; or

(8) Has had his or her rights to a sibling of the alleged dependent child terminated involuntarily and the circumstances leading to such termination of parental rights to that sibling have not been resolved.

(b) If the court determines that one or more of the circumstances enumerated in subsection (a) of this Code section exist or DFCS has submitted a written report to the court which does not contain a plan for reunification services, then:

(1) A permanency plan hearing shall be held for a child adjudicated as a dependent child within 30 days; and

(2) Reasonable efforts shall be made to place a child adjudicated as a dependent child in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of such child.

History. — Code 1981, § 15-11-203, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242; Ga. L. 2014, p. 444, § 2-2/HB 271.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 24A-2701, pre-2000 Code Section 15-11-41, and pre-2014 Code Section 15-11-58, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Father fit and able to assume custody. — Juvenile court erred in extending temporary custody in the Department of Family and Children Services for an additional 12 months as: (1) the child's father was found to be a fit parent and was fully able to assume custody; (2) there was no testimony that the father was not capable of taking care of the child; and (3) the father completed every aspect of the case plan and was eligible for day-care assistance; thus, the evidence presented at the hearing fell far short of meeting the clear and convincing standard necessary to support a finding of deprivation. In the Interest of J.P., 280 Ga. App. 100, 633 S.E.2d 442 (2006) (decided under former O.C.G.A. § 15-11-41).

Notice. — At a permanency hearing, at which a mother appeared represented by counsel, the mother was not entitled to prior notice by report or motion that DFCS would seek termination of reunification services and an award of long-term custody at the hearing. In the Interest of D. H., 313 Ga. App. 664, 722 S.E.2d 388 (2012) (decided under former O.C.G.A. § 15-11-58).

Presumption that reunification services are inappropriate. — Because the parental rights to a mother's other four children had previously been terminated around the time the mother's infant child was born, the juvenile court did not err in approving a nonreunification plan involving that infant child pursuant to O.C.G.A. § 15-11-58(a)(4)(C); further, a presump-

tion of nonreunification arose based on the mother's medically verified mental deficiency. In the Interest of J.P., 280 Ga. App. 100, 633 S.E.2d 442 (2006) (decided under former O.C.G.A. § 15-11-58).

15-11-204. Nonreunification hearing.

(a) If the DFCS report does not contain a plan for reunification services, the court shall hold a nonreunification hearing to review the report and the determination that a plan for reunification services is not appropriate.

(b) The nonreunification hearing shall be held no later than 30 days from the time the DFCS report is filed. Notice of the nonreunification hearing shall be provided, by summons, to the child adjudicated as a dependent child if he or she is 14 years of age or older, his or her parent, guardian, or legal custodian, attorney, guardian ad litem, if any, and specified nonparties entitled to notice.

(c) At the nonreunification hearing:

(1) DFCS shall notify the court whether and when it intends to proceed with termination of parental rights; and

(2) The court shall also hold a permanency plan hearing, at which the court shall consider in-state and out-of-state permanent placement options for the child adjudicated as a dependent child and shall incorporate a permanency plan for such child in its order.

(d) DFCS shall have the burden of demonstrating by clear and convincing evidence that a reunification plan is not appropriate considering the health and safety of the child adjudicated as a dependent child and such child's need for permanence. There shall be a presumption that reunification is detrimental to a child adjudicated as a dependent child and reunification services should not be provided if the court finds by clear and convincing evidence that:

(1) Such child's parent has unjustifiably failed to comply with a previously ordered plan designed to reunite the family;

(2) An alleged dependent child has been removed from his or her home on at least two previous occasions and reunification services were made available on those occasions;

(3) A ground for terminating parental rights exists; or

(4) Any of the circumstances set out in subsection (a) of Code Section 15-11-203 exist, making it unnecessary to provide reasonable efforts to reunify.

(e) If the court has entered an order finding that reasonable efforts to reunify a child adjudicated as a dependent child with his or her family

are not required but the court finds further that referral for termination of parental rights and adoption is not in the best interests of such child, the court may, upon proper petition, place such child in the custody of a permanent guardian pursuant to the provisions of this article.

History. — Code 1981, § 15-11-204, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 24A-2701, pre-2000 Code Section 15-11-41, and pre-2014 Code Section 15-11-58, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Jurisdiction to award permanent custody over juvenile court's award of temporary custody. — Judgment was reversed because the juvenile court's authority to place a child in the custody of a "willing" and "qualified" relative was not authority to award permanent custody of the child as custody was determined by discerning the best interests of the child and not the willingness or the qualifications of a person to take temporary custody of the child. Ertter v. Dunbar, 292 Ga. 103, 734 S.E.2d 403 (2012) (decided under former O.C.G.A. § 15-11-58).

No equal protection violation. — Treating deprived children who were placed in the legal custody of the Department of Families and Children Services because there was no relative committed to the child who was available for immediate placement differently from deprived children who did have a committed parent or guardian available for immediate placement did not violate the equal protection clause or Ga. Const. 1983, Art. I, Sec. I, Para. II. as the classes were not similarly situated and the laws were rationally related to the goal of minimizing government intervention while ensuring that children were reared in a familial environment. In the Interest of A.N., 281 Ga. 58, 636 S.E.2d 496 (2006) (decided under former O.C.G.A. § 15-11-58).

No application to legal custodians. — Affording the text of O.C.G.A. § 15-11-204 its plain and ordinary meaning, viewing the statute in the context in which the statute appears, and reading the statute in its most natural and reasonable way, the presumption set forth therein that reunification is detrimental to a child adjudicated as a dependent child applies to a parent and does not apply to the circumstance of the failure of a child's legal custodian to comply with a previously-ordered plan to reunite the family; thus, the juvenile court erred in applying that presumption to the child's aunt and uncle as the child's legal custodians. In the Interest of B. G., 345 Ga. App. 167, 812 S.E.2d 552 (2018).

Findings made without transcript reversed. — Because the juvenile court primarily based the court's decision that a parent's two children were deprived, awarding temporary custody of the children to the county, on evidence received at an unrecorded hearing, and a waiver requiring a transcript of that hearing was not in evidence, those findings were reversed, and the case was remanded. In the Interest of D.P., 284 Ga. App. 453, 644 S.E.2d 299 (2007) (decided under former O.C.G.A. § 15-11-58).

Hearing not precondition to commencement of termination proceeding. — Since the Department of Family and Children Services included plans for reunification in case plans prior to the date a citizen review panel recommended termination of parental rights, a hearing was not a precondition to the commencement of termination proceedings. In re K.H., 229 Ga. App. 307, 494 S.E.2d 69 (1997) (decided under former O.C.G.A. § 15-11-41).

Court had jurisdiction to enter termination of parental rights. — Juvenile court had jurisdiction to enter a termination of parental rights order because the juvenile court scheduled a timely hearing on the Department of Human Resource's motion for an extension, and the mother was served with notice of the hearing; the mother, however, failed to appear for the scheduled hearing. By failing to appear for a timely hearing of which the mother had notice, the mother waived the requirement of a hearing before the expiration of the earlier custody order. In the Interest of M.S.S., 308 Ga. App. 614, 708 S.E.2d 570 (2011) (decided under former O.C.G.A. § 15-11-58).

Notice of nonreunification. — Parent had notice that the Georgia Department of Family and Children Services was seeking nonreunification and had the opportunity to contest the issue; after a hearing the court continued the case, noting that a nonreunification case plan had been filed and the parent was contesting the issue of nonreunification, and the hearing was held on the later date with the parent and the parent's attorney present at the hearing. In the Interest of A. E., 314 Ga. App. 206, 723 S.E.2d 499 (2012) (decided under former O.C.G.A. § 15-11-58).

Reasonable efforts at reunification not required. — Reasonable efforts toward reunification of a father with his child were not required because the court made findings of aggravated circumstances including a finding that the father had sexually abused the child and the child's siblings. In the Interest of B.M., 252 Ga. App. 716, 556 S.E.2d 883 (2001) (decided under former O.C.G.A. § 15-11-58).

Clear and convincing evidence supported a juvenile court's judgment that reunification services were inappropriate for a mother with a history of drug and alcohol use, whose minor child had been taken from her home on three occasions because of the mother's inability to provide adequate food, clothing, and shelter for the child. In the Interest of J.P.V., 261 Ga. App. 194, 582 S.E.2d 170 (2003) (decided under former O.C.G.A. § 15-11-58).

Although former O.C.G.A. § 15-11-58(a) (see now O.C.G.A. §§ 15-11-2 and 15-11-134) required a juvenile court to make a finding of fact as to whether reasonable efforts at reunification were made prior to placement of the children in a county agency in a parental rights termination proceeding, such finding was not required because the children had already been found to be deprived by the mother. In the Interest of S.N.L., 275 Ga. App. 600, 621 S.E.2d 792 (2005) (decided under former O.C.G.A. § 15-11-58).

Termination of a parent's rights to a child was not barred by the parent's claim that a county department of family and children services established a nonreunification plan before contacting the parent and then denied the parent's requests for information; former O.C.G.A. § 15-11-58 did not impose upon termination proceedings the same procedures that applied to disposition orders and recommendations regarding reunification and did not obligate the department in every case to create a plan for reunification, and when the department afforded the parent an opportunity to participate in the case by mailing the initial case plan to the parent and explaining the need to legitimize the child, the parent failed to seize the opportunity or to comply timely with the instructions on legitimization. In the Interest of T.C., 282 Ga. App. 659, 639 S.E.2d 601 (2006) (decided under former O.C.G.A. § 15-11-58).

Juvenile court did not err in approving a nonreunification plan when convincing evidence showed reunification was not in the best interests of the children and the likelihood that it would only prolong their deprivation. In the Interest of U.B., 246 Ga. App. 328, 540 S.E.2d 278 (2000).

Evidence that the children's mother permitted and/or assisted her husband in making videotapes for distribution of the children being stripped and spanked was sufficient to show that reunification services between the children and their mother should not be provided under former O.C.G.A. § 15-11-58(h) (see now O.C.G.A. § 15-11-204); furthermore, a presumption against nonreunification existed because of the evidence of the mother's past egregious conduct, and there was

insufficient evidence to overcome the presumption favoring reunifications. In the Interest of J.P., 253 Ga. App. 732, 560 S.E.2d 318 (2002).

Reunification was not appropriate since evidence of the children's starvation, coupled with the mother's complete denial of responsibility for their emaciated condition, amply supported the juvenile court's findings that she physically neglected the children and that reunification would be detrimental to the children. In the Interest of R.N.R., 257 Ga. App. 93, 570 S.E.2d 388 (2002).

Evidence was sufficient to support a juvenile court's approval of nonreunification of the mother and her child under former O.C.G.A. § 15-11-58(h) (see now O.C.G.A. § 15-11-204) as the mother failed to rebut the presumption that reunification services not be provided due to her medically verifiable health deficiency when the mother provided evidence that she complied with her prenatal care, did fine during pregnancy even though she was not on her medication, and was a loving mother, but a psychiatrist testified that the mother was mentally ill, that the illness could cause the mother to hurt the child, and that the mother's mental condition was likely to continue. In the Interest of D.L.W., 264 Ga. App. 168, 590 S.E.2d 183 (2003) (decided under former O.C.G.A. § 15-11-58).

As the trial court found clear and convincing evidence of a medically verifiable condition creating the parent's inability to properly parent the children, this finding created a presumption that reunification services need not be provided. In the Interest of A.W., 264 Ga. App. 705, 592 S.E.2d 177 (2003) (decided under former O.C.G.A. § 15-11-58).

Evidence was sufficient to support the trial court's judgment that reunification efforts should be discontinued as to the mother as clear and convincing evidence showed that the mother had not, as required by the reunification plan, gone six consecutive months without testing positive for drugs and had refused to submit to two drug screenings; also, the mother had not rebutted the presumption that reunification efforts should be discontinued. In the Interest of J.B., 274 Ga. App. 564, 618 S.E.2d 187 (2005) (decided under former O.C.G.A. § 15-11-58).

Plan for nonreunification under former O.C.G.A. § 15-11-58(h) (see now O.C.G.A. § 15-11-204) was in the child's best interests since: (1) the grandmother relapsed after regaining custody and became so drunk that she passed out and left the four-year-old child unsupervised; (2) the incident resulted in the grandmother's father applying for a protection order; (3) the grandmother was dismissed from a substance abuse treatment program; (4) the grandmother pled guilty to driving under the influence and child endangerment two years earlier; and (5) the child had behavioral problems that resulted in hospitalization and that led a child services agency to seek therapeutic foster care before seeking permanent adoption. In the Interest of J.B., 274 Ga. App. 20, 619 S.E.2d 305 (2005) (decided under former O.C.G.A. § 15-11-58).

Trial court properly granted an agency's motion to end reunification services provided to the parents as the evidence indicated that the parents refused to cooperate with case plans and had completely denied responsibility for placing the children in a harmful situation. In the Interest of D.B., 277 Ga. App. 454, 627 S.E.2d 101 (2006) (decided under former O.C.G.A. § 15-11-58).

Rational trier of fact could have found clear and convincing evidence that the parent unjustifiably failed to comply with the reunification plan and that reasonable efforts to reunify the child with the parent would be detrimental to the child under former O.C.G.A. § 15-11-58(h) (see now O.C.G.A. § 15-11-204); the parent failed to complete parenting classes, failed to obtain stable housing and employment, failed to pay child support, failed to attend psychotherapy, and disappeared for months at a time without explanation and without visiting the child. In the Interest of C.A., 279 Ga. App. 747, 632 S.E.2d 698 (2006) (decided under former O.C.G.A. § 15-11-58).

In the termination of parental rights case, contrary to the mother's argument, the reunification plan complied with former O.C.G.A. § 15-11-58(c)(3) (see now

O.C.G.A. § 15-11-201); the plan required the mother, who was mentally retarded, to prove that the mother could be a fit parent, and the mother failed to show this. In the Interest of H.F.G., 281 Ga. App. 22, 635 S.E.2d 338 (2006) (decided under former O.C.G.A. § 15-11-58).

Order holding that reunification efforts on the part of a mother were not in the best interest of her two children was upheld on appeal pursuant to former O.C.G.A. § 15-11-58(h) (see now O.C.G.A. § 15-11-204) since the record established that the mother suffered from mental illness and was unable to care for her children. The mother failed to rebut the presumption that reunification services were inappropriate when she had unjustifiably failed to comply with a previously ordered plan. In the Interest of T.L., 285 Ga. App. 526, 646 S.E.2d 728 (2007) (decided under former O.C.G.A. § 15-11-58).

Although a parent made substantial progress on a reunification plan while incarcerated, an order extending temporary custody for an additional year in favor of the Department of Family and Children Services was upheld on appeal as sufficient evidence was presented that the parent was unable to: (1) establish stable housing; (2) complete a substance abuse assessment; and (3) demonstrate six months of clean drug screens; further, as the parent was living with the other parent who evidence showed to be an unrehabilitated drug user, the trial court was authorized to conclude that the child at issue would not be in a safe environment if returned to the parent. In the Interest of R.B., 285 Ga. App. 556, 647 S.E.2d 300 (2007) (decided under former O.C.G.A. § 15-11-58).

Juvenile court did not err in approving nonreunification with regard to a parent and two twin children as some evidence showed that the parent: unjustifiably failed to comply with the case plan goals to provide financial support for the children; failed to maintain stable housing and employment; failed to attend all scheduled psychological evaluations; exhibited paranoid and psychopathic personality tendencies to the extent that the parent's ability to care for the children was severely impaired; and was convicted of threatening a prior spouse and stalking that spouse and children and, thus, had engaged in actions which constituted egregious conduct toward those children. In the Interest of T.W., 288 Ga. App. 386, 654 S.E.2d 218 (2007) (decided under former O.C.G.A. § 15-11-58).

Trial court properly extended a department of family and child services' custody of a child when the child's mother, communicating with the child over the Internet while posing as an adult man, had pretended to have witnessed a sexually graphic event; the child was especially vulnerable to sexually inappropriate behavior; and the mother's conduct during visitation with the child, including her statements that the child would be a suspect if anything happened to the mother, that the child would never live with her father, and that the child was "acting like a whore," was also probative of whether she would act abusively toward her daughter if she were returned to her custody. The fact that the mother had substantially completed her reunification case plan did not mandate that the child be returned to her custody. In the Interest of Q.H., 291 Ga. App. 598, 662 S.E.2d 358 (2008) (decided under former O.C.G.A. § 15-11-58).

There was sufficient clear and convincing evidence presented to authorize the juvenile court to find that a mother's child was deprived and that the deprivation was likely to continue, and consequently, that reunification of the child with the mother would be detrimental to the child and was not in the child's best interest because, while the juvenile court took into consideration the previous termination of the mother's parental rights in determining whether the child was deprived, the juvenile court also heard substantial evidence showing that the mother's mental, emotional, and financial condition had not changed significantly since her parental rights to her children were terminated and that, despite the assistance of the Department of Family and Children Services and the loss of her four children, the mother still lacked the necessary skills, judgment, and resources to properly care for the child. In re R. B., 309 Ga. App. 407, 710 S.E.2d 611 (2011) (decided under former O.C.G.A. § 15-11-58).

Juvenile court did not err in terminating the reunification services and approving the non-reunification plan because clear and convincing evidence supported the juvenile court's conclusion that the child was deprived based on the mother's long-term substance abuse and that such deprivation was likely to continue and cause harm to the child. In the Interest of J. T., 322 Ga. App. 4, 743 S.E.2d 571 (2013) (decided under former O.C.G.A. § 15-11-58).

Reunification inappropriate when children had severe medical issues. — Trial court did not err in granting a motion filed by the Department of Family and Children Services for nonreunification because evidence supported the trial court's finding that the parents were not able to meet their children's medical needs, and the children's lives would be endangered if the appropriate level of care was not maintained; the parents' physical neglect of the children and their continuing inability to meet their children's extensive medical needs was sufficient for any rational trier of fact to find by clear and convincing evidence that reunification efforts would be detrimental to the children. In the Interest of A.M., 306 Ga. App. 358, 702 S.E.2d 686 (2010) (decided under former O.C.G.A. § 15-11-58).

Report recommending nonreunification met requirements of former O.C.G.A. § 15-11-58(b) (see now O.C.G.A. § 15-11-200), notwithstanding evidence which the mother contended showed that the contents of the report recommending nonreunification were determined prior to her meeting with caseworkers for the county Department of Family and Children Services. Although the court agreed with the mother that a report should not be finalized until after such a meeting had been conducted, it disagreed with the mother's apparent contention that nothing should be committed to writing prior to such meeting. In the Interest of T.R., 248 Ga. App. 310, 548 S.E.2d 621 (2001) (decided under former O.C.G.A. § 15-11-58).

Failure to provide child support resulted in nonreunification. — Because a presumption of non-unification arose after a parent failed to pay child support or comply with the reunification plan, reunification services were properly discontinued; but a placement order with a foster care agency was reversed as a grandparent presented uncontradicted evidence supporting a consideration for alternative placement. In the Interest of J.J., 287 Ga. App. 746, 652 S.E.2d 639 (2007) (decided under former O.C.G.A. § 15-11-58).

Discontinuing efforts for reunification not appropriate. — Evidence that the mother had substantially complied with the reunification plan and that, in the opinion of the psychologist retained by the Department of Family and Children Services, the psychologist did not understand why the department was seeking to end reunification efforts when the only way it was possible to determine if the mother would be able to effectively parent her eight year old child in the future was by reuniting the mother and child overcame the statutory presumption that reunification was not appropriate in cases when a child had been removed from the mother's home on at least two prior occasions and reunification services had been made available on those occasions. In the Interest of M.H., 251 Ga. App. 528, 554 S.E.2d 616 (2001) (decided under former O.C.G.A. § 15-11-58).

Finding of reunification efforts not required. — Because the children had not been placed in the custody of the Department of Family and Children Services, the trial court was not required to find that the agency had made reasonable reunification efforts. In the Interest of T.R., 284 Ga. App. 742, 644 S.E.2d 880 (2007) (decided under former O.C.G.A. § 15-11-58).

Parent's complicity in murder. — When a mother's boyfriend was charged with murdering one of her three children, and she was charged with complicity, and since there was no evidence she knew that the boyfriend abused her children, and none of the aggravated circumstances contained in former O.C.G.A. § 15-11-58(a)(4)(A)-(C) (see now O.C.G.A. § 15-11-203) had been shown, the trial court erred in excusing the state from making reasonable efforts toward reunifi-

cation. In the Interest of A.B., 263 Ga. App. 697, 589 S.E.2d 264 (2003) (decided under former O.C.G.A. § 15-11-58).

Reunification order insufficient to allow for meaningful appellate review. — Juvenile court's order that reunification was not in a child's best interests was vacated because the juvenile court found that reunification efforts would be detrimental to the child but did not specify which, if any, of the presumptions under former O.C.G.A. § 15-11-58(h) (see now O.C.G.A. § 15-11-204) supported the court's finding; therefore, it was impossible for the court of appeals to determine whether the order was supported by clear and convincing evidence. In re T.S., 310 Ga. App. 100, 712 S.E.2d 121 (2011) (decided under former O.C.G.A. § 15-11-58).

Part 11

Disposition

Law reviews. — For article, "An Outline of Juvenile Court Jurisdiction with Focus on Child Custody," see 10 Ga. St. B. J. 275 (1973). For article, "Third Party Stepparent Childcare," see 67 Mercer L. Rev. 383 (2016).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 24A-2701, pre-2000 Code Section 15-11-41, and pre-2014 Code Section 15-11-58, which were subsequently repealed but were succeeded by provisions in this part, are included in the annotations for this part. See the Editor's notes at the beginning of the chapter.

Jurisdiction. — Superior court properly declined jurisdiction in a custody action brought by grandparents because once a juvenile court took jurisdiction of a deprivation action concerning the child and, later, a termination action of parental rights, the court took jurisdiction of the entire case of the minor child including the issues of disposition and custody. Segars v. State, 309 Ga. App. 732, 710 S.E.2d 916 (2011) (decided under former O.C.G.A. § 15-11-58).

Foster children. — Former O.C.G.A. §§ 15-11-13 and 15-11-58 (see now O.C.G.A. §§ 15-11-2, 15-11-30, 15-11-134, and 15-11-200 et seq.), and O.C.G.A. §§ 20-2-690.1 and 49-5-12 were not too vague and amorphous to be enforced by the judiciary and impose specific duties on the state defendants; thus, the federal regulatory scheme embodied in the CSFR process did not relieve the state defendants of the defendants obligation to fulfill the defendants statutory duties to the foster children, nor did the former statute provide a legal excuse for the defendants failure to do so. Kenny A. v. Perdue, No. 1:02-cv-1686-MHS, 2004 U.S. Dist. LEXIS 27025 (N.D. Ga. Dec. 11, 2004) (decided under former O.C.G.A. § 15-11-58).

No equal protection violation. — Treating deprived children who were placed in the legal custody of the Department of Families and Children Services because there was no relative committed to the child who was available for immediate placement differently from deprived children who did have a committed parent or guardian available for immediate placement did not violate the equal protection clause or Ga. Const. 1983, Art. I, Sec. I, Para. II. as the classes were not similarly situated and the laws were rationally related to the goal of minimizing government intervention while ensuring that children were reared in a familial environment. In the Interest of A.N., 281 Ga. 58, 636 S.E.2d 496 (2006) (decided under former O.C.G.A. § 15-11-58).

Temporary custody and visitation rights. — Juvenile court had jurisdiction to modify an order granting temporary custody of a deprived child to the Department of Family and Children Services and to permit visitation by parents who filed a petition for visitation rights four months

after the custody order. In re K.B., 188 Ga. App. 199, 372 S.E.2d 476 (1988) (decided under former O.C.G.A. § 15-11-41).

Consolidated proceedings not appealable when party consented. — Having consented to the consolidation of nonreunification proceedings with termination proceedings, the mother could not challenge the procedure for the first time on appeal. In the Interest of A.S.O., 243 Ga. App. 1, 530 S.E.2d 261 (2000), cert denied, 531 U.S. 1176, 121 S. Ct. 1150, 148 L. Ed. 2d 1012 (2001) (decided under former O.C.G.A. § 15-11-41).

RESEARCH REFERENCES

Am. Jur. 2d. — 42 Am. Jur. 2d, Infants, § 50. 47 Am. Jur. 2d, Juvenile Courts and Delinquent and Dependent Children, §§ 56 et seq., 110 et seq.

C.J.S. — 43 C.J.S., Infants, § 72 et seq. 67A C.J.S., Parent and Child, §§ 38 et seq., 63 et seq., 73 et seq., 90 et seq.

U.L.A. — Uniform Juvenile Court Act (U.L.A.) § 36.

15-11-210. Disposition hearing.

(a) If not held in conjunction with an adjudication hearing, a disposition hearing shall be held and completed within 30 days after the conclusion of an adjudication hearing.

(b) The court may consider any evidence, including hearsay evidence, that the court finds to be relevant, reliable, and necessary to determine the needs of a child adjudicated as a dependent child and the most appropriate disposition.

(c) Before determining the appropriate disposition, the court shall receive in evidence:

(1) The social study report as provided for in Code Section 15-11-191, if applicable, and the child adjudicated as a dependent child's proposed written case plan. The social study report and case plan shall be filed with the court not less than 48 hours before the disposition hearing;

(2) Any study or evaluation made by a guardian ad litem appointed by the court;

(3) Any psychological, medical, developmental, or educational study or evaluation of the child adjudicated as a dependent child; and

(4) Other relevant and material evidence as may be offered, including, but not limited to, the willingness of the caregiver to provide legal permanency for the child adjudicated as a dependent child if reunification is unsuccessful.

(d) Prior to a disposition hearing, and upon request, the parties and their attorneys shall be afforded an opportunity to examine any written reports received by the court.

(e)(1) Portions of written reports received by the court which are not relied on by the court in reaching its decision, which if revealed would

be prejudicial to the interests of any party to the proceeding, or which reveal confidential sources, may be withheld in the court's discretion.

(2) Parties and their attorneys shall be given the opportunity to controvert written reports received by the court and to cross-examine individuals making such reports.

(f) At the conclusion of the disposition hearing, the court shall set the time and date for the first periodic review hearing and the permanency plan hearing.

History. — Code 1981, § 15-11-210, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242; Ga. L. 2014, p. 780, § 1-12/SB 364.

Cross references. — Dispositional hearings in Juvenile Court, Uniform Rules for the Juvenile Courts of Georgia, Rule 12.1.

Law reviews. — For article discussing due process in juvenile court procedures in California and Georgia, in light of In re Gault, 387 U.S. 1, 87 S. Ct. 1428, 18 L. Ed. 2d 527 (1967), see 8 Ga. St. B. J. 9 (1971). For article, "The Child as a Party in Interest in Custody Proceedings," see 10 Ga. St. B. J. 577 (1974). For article surveying Georgia cases in the area of juvenile court practice and procedure from June 1979 through May 1980, see 32 Mercer L. Rev. 113 (1980). For article, "Termination of Parental Rights: Recent Judicial and Legislative Trends," see 30 Emory L. J. 1065 (1981).

For note criticizing jurisdiction of juvenile justice system over runaways and advocating alternative legal approaches, see 24 Emory L. J. 1075 (1975).

JUDICIAL DECISIONS

Analysis

General Consideration
Separate Hearings
Procedure

General Consideration

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 24A-2201, pre-2000 Code Section 15-11-33, and pre-2014 Code Section 15-11-56, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Standard of proof on question of delinquency or termination. — An "any evidence" standard or "preponderance of the evidence" standard is inadequate in dealing with finding of deprivation of a child or termination of parental rights and would violate U.S. Const., amend. 14. In re Suggs, 249 Ga. 365, 291 S.E.2d 233 (1982) (decided under former O.C.G.A. § 15-11-33); In re J.K.D., 211 Ga. App. 776, 440 S.E.2d 524 (1994) (decided under former O.C.G.A. § 15-11-33).

Standard of proof on charges of criminal nature against juvenile is the same as that used in criminal proceedings against adults; proof must be beyond a reasonable doubt. M.W.W. v. State, 136 Ga. App. 472, 221 S.E.2d 669 (1975) (decided under former Code 1933, § 24A-2201); In re M.M., 235 Ga. App. 109, 508 S.E.2d 484 (1998) (decided under former Code 1933, § 24A-2201).

Termination of parental rights is a severe measure. If a third party sues the custodial parent to obtain custody of a child and to terminate the parent's custodial rights in the child, the parent is entitled to custody of the child unless the third party shows by "clear and convincing evidence" that the parent is unfit or otherwise not entitled to custody under O.C.G.A. §§ 19-7-1 and 19-7-4. Subsec-

General Consideration (Cont'd)

tion (b) of former O.C.G.A. § 15-11-33 (see now O.C.G.A. § 15-11-110 and 15-11-210) requires the court after a hearing to find "clear and convincing evidence" of "deprivation" before an order of deprivation may be entered. Heath v. McGuire, 167 Ga. App. 489, 306 S.E.2d 741 (1983) (decided under former O.C.G.A. § 15-11-33).

If deprivation forms the predicate upon which a third party seeks a temporary transfer of the child's legal custody, in order to support such a disposition the child must first be adjudicated to be a deprived child. By statute, that finding of deprivation must be made by "clear and convincing evidence." In re J.C.P., 167 Ga. App. 572, 307 S.E.2d 1 (1983) (decided under former O.C.G.A. § 15-11-33); In re J.T.M., 200 Ga. App. 636, 409 S.E.2d 256 (1991) (decided under former O.C.G.A. § 15-11-33) but see In re A.W., 240 Ga. App. 259, 523 S.E.2d 88 (1999) (decided under former O.C.G.A. § 15-11-33).

Standard of proof on termination or transfer of custody petition. — Regardless of whether the remedy sought is termination of parental rights or merely a transfer of temporary custody, clear and convincing evidence is required to support the finding of deprivation. In re R.R.M.R., 169 Ga. App. 373, 312 S.E.2d 832 (1983) (decided under former O.C.G.A. § 15-11-33).

Finding of parental unfitness is essential to support an adjudication of present deprivation when parental rights are terminated as well as the transfer of temporary or permanent custody to a third party. In re J.C.P., 167 Ga. App. 572, 307 S.E.2d 1 (1983), but see In re A.W., 240 Ga. App. 259, 523 S.E.2d 88 (1999) (decided under former O.C.G.A. § 15-11-33).

Delinquency found when delinquent acts corroborated by confession. — Child's confession out of court corroborated by evidence that the stolen items were found in the child's possession within a few hours of the theft constituted sufficient proof under both former Code 1933, §§ 24A-2201 and 24A-2202 (see now O.C.G.A. §§ 15-11-19 and § 15-11-28) to support a finding of delinquency. A.C.G. v. State, 131 Ga. App. 156, 205 S.E.2d 435 (1974) (decided under former Code 1933, § 24A-2201).

Application to termination of parental rights. — Former statute was applicable when proceeding was for termination of parental rights since that was also a custody controversy involving a deprived child. Powell v. Department of Human Resources, 147 Ga. App. 251, 248 S.E.2d 533 (1978), overruled on other grounds, Chancey v. Department of Human Resources, 156 Ga. App. 338, 274 S.E.2d 728 (1980) (decided under former Code 1933, § 24A-2201).

Evidence of deprivation. — Evidence was sufficient to permit the juvenile court to find clear and convincing evidence of the child's deprivation and that the child's mother's misconduct or inability to care for the child's needs resulted in abuse or neglect sufficient to render her unfit to retain custody. In re C.N., 231 Ga. App. 639, 500 S.E.2d 400 (1998) (decided under former O.C.G.A. § 15-11-33).

Evidence of unexplained bruises on a child's arms and back and fractures of the child's arms and legs while in the child's parents' and maternal grandmother's care was sufficient to support a deprivation order. In re J.V., 241 Ga. App. 621, 526 S.E.2d 386 (1999) (decided under former O.C.G.A. § 15-11-33).

Parents' choice in exposing their child to an inappropriate and dangerous living environment showed a lack of parental judgment and careless disregard for the child's health and safety that was sufficient to support a finding that the child was deprived. In the Interest of B.M.B., 241 Ga. App. 609, 527 S.E.2d 250 (1999) (decided under former O.C.G.A. § 15-11-33).

Termination based on parent's mental illness. — When a mother's parental rights were terminated to the mother's three-year-old daughter, sufficient evidence existed to support the judgment of termination because the evidence established that the mother was unable to provide adequately for the child due to mental illness, which was corroborated by evidence that the mother had four other children who were not in the mother's care or support; further, the mother had a long history of drug and alcohol abuse for

which the mother failed to obtain inpatient drug treatment, was unable to maintain stable housing, failed to parent any children successfully, and the foster parents planned to adopt the child. In the Interest of D.P., 287 Ga. App. 168, 651 S.E.2d 110 (2007) (decided under former O.C.G.A. § 15-11-56).

Sexual abuse as cause of deprivation. — Evidence supported the juvenile court's determination that a father deprived his child by committing sexual abuse against the child because a psychologist who interviewed the child testified that in the psychologist's opinion the child had a history of some kind of abuse, and another psychologist who performed a sexual trauma evaluation of the child testified that the child was difficult to manage and easily distracted, became anxious when asked any question regarding sex, exhibited abnormal anger and aggression as well as sexual behaviors common in sexually abused girls, and exhibited distorted sexual beliefs; the child's older sibling testified that the sibling had witnessed several instances of physical abuse by the father against the child. In the Interest of V. H., 308 Ga. App. 582, 708 S.E.2d 544 (2011) (decided under former O.C.G.A. § 15-11-56).

Types of evidence admissible. — Citizens review panel report was properly considered by a trial court in reaching the court's decision regarding a termination of parental rights petition since the court is permitted to consider all helpful information. In re M.L.P., 236 Ga. App. 504, 512 S.E.2d 652 (1999) (decided under former O.C.G.A. § 15-11-33).

Trial court did not err in admitting a home evaluation report into evidence in a hearing on a termination petition. In the Interest of R.G., 249 Ga. App. 91, 547 S.E.2d 729 (2001) (decided under former O.C.G.A. § 15-11-56).

Lesbian relationship of parent. — Juvenile court erred in entering a finding of deprivation against a mother based solely on a case manager's report which was largely supported by hearsay; further, because the only remaining basis for the court's ruling was the mother's lesbian relationship, a deprivation finding could not be sustained absent a finding that the children were deprived as a result. In the Interest of E.C., 271 Ga. App. 133, 609 S.E.2d 381 (2004) (decided under former O.C.G.A. § 15-11-56).

Custody by department only suspends parental right of custody. — Removal of custody of the child from the parents is a determination that, for whatever length of time custody is exercised by the department of family and children services, this right has been suspended, although not finally terminated. Rodgers v. Department of Human Resources, 157 Ga. App. 235, 276 S.E.2d 902 (1981) (decided under former Code 1933, § 24A-2201).

Discretion of trier of fact on probative value of evidence. — Probative value to be accorded any evidence is within the sound discretion of the trier of fact, and should not be disturbed in the absence of a manifest abuse of discretion. C.A.J. v. State, 127 Ga. App. 813, 195 S.E.2d 225 (1973) (decided under former Code 1933, § 24A-2201).

Limited restraining order appropriate disposition. — After a juvenile attacked a store detective, and subsequently displayed violent behavior and threatened another store employee, the court's conclusion that the juvenile was in need of treatment and rehabilitation, and the court's limited restraining order preventing the juvenile from entering any store owned by the company in Fulton County, except in the immediate presence of a parent or adult relative, was an appropriate disposition and justified by the evidence. In re J.M., 237 Ga. App. 298, 513 S.E.2d 742 (1999) (decided under former O.C.G.A. § 15-11-33).

Separate Hearings

Juvenile Code requires separate trials with each having different goals. — First or adjudicatory process in a delinquency case is a full scale fact-finding hearing to determine if the child committed the act with which the child is charged and whether that constitutes delinquency. D.C.A. v. State, 135 Ga. App. 234, 217 S.E.2d 470 (1975) (decided under former Code 1933, § 24A-2201); J.B. v. State, 139 Ga. App. 545, 228 S.E.2d

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712 (1976) (decided under former Code 1933, § 24A-2201).

Purpose of division of juvenile trials into two phases. — In dividing juvenile trials into two phases lawmakers intended to give the juvenile judge an opportunity to conduct the "functional equivalent" of a regular trial (the adjudicatory hearing) in a manner which would satisfy the required constitutional procedures concomitant with the usual legal rules, such as those dealing with admissibility of evidence, proof beyond a reasonable doubt, and similar requirements applicable to adults. Thereafter, at the dispositional phase, the judge was to explore all available additional avenues, including psychiatric and sociological studies, which would enable the judge to provide a solution for the youngster and the family aimed at making the child a secure law-abiding member of society. D.C.A. v. State, 135 Ga. App. 234, 217 S.E.2d 470 (1975) (decided under former Code 1933, § 24A-2201).

During adjudicatory phase, rules of evidence generally prevail. — In the second (dispositional) phase, the court hears virtually all evidence which is material and relevant to the issue of disposition. J.B. v. State, 139 Ga. App. 545, 228 S.E.2d 712 (1976) (decided under former Code 1933, § 24A-2201).

Dispositional hearing not necessary for termination due to deprivation. — If a petition for the termination of parental rights alleged only that the children were deprived, not delinquent, or unruly, it was not necessary for the juvenile judge to hold a dispositional hearing. In re J.C., 242 Ga. 737, 251 S.E.2d 299 (1978), appeal dismissed, 441 U.S. 929, 99 S. Ct. 2046, 60 L. Ed. 2d 657 (1979) (decided under former Code 1933, § 24A-2201).

Dispositional hearing not needed for disposition order. — Trial court may enter order of disposition without first holding dispositional hearing if there is an implicit finding that termination of the parental rights of both parties is authorized, leaving the court with only the alternatives provided in former Code 1933, § 24A-3204 (see now O.C.G.A. §§ 15-11-180 and 15-11-181). Moss v. Moss, 135 Ga. App. 401, 218 S.E.2d 93 (1975) (decided under former Code 1933, § 24A-2201).

Probative evidence admissible in disposition hearing. — Juvenile court can consider a juvenile's prior record in aggravation of disposition even though the prior record has not been presented to the juvenile prior to trial. O.C.G.A. § 17-10-2 (felony sentencing of adults) is not applicable to juvenile disposition hearings as the General Assembly has not made it so. To the contrary, subsection (a) of that section authorizes in dispositional hearings the receipt and consideration of all helpful information to the extent of its probative value, even though not otherwise competent evidence, in a hearing on criminal responsibility. C.P. v. State, 167 Ga. App. 374, 306 S.E.2d 688 (1983) (decided under former Code 1933, § 24A-2201).

Caseworker's testimony about a mother's missed visits with the child was allowable as information that might be helpful to the juvenile court in determining whether the mother's parental rights were to be terminated, even though the information might not otherwise have been competent evidence. In the Interest of A.K., 272 Ga. App. 429, 612 S.E.2d 581 (2005) (decided under former Code 1933, § 24A-2201).

Continuation of a dispositional hearing should have been allowed when the probation officer notified the court that the officer was not prepared to make a recommendation regarding disposition. In re M.D., 233 Ga. App. 261, 503 S.E.2d 888 (1998) (decided under former O.C.G.A. § 15-11-33).

Dispositional hearing was held, albeit briefly, when, at the conclusion of the trial, the court found that the juvenile had committed the offense charged and questioned the juvenile with regard to whether the juvenile had been in court before and whether the juvenile had ever been charged with similar conduct. In re B.J.G., 234 Ga. App. 285, 506 S.E.2d 449 (1998) (decided under former O.C.G.A. § 15-11-33).

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Access to confidential records. — Nonprofit advocacy corporation mandated under federal law to investigate incidents of abuse and neglect of individuals with mental illness should have been given reasonable access to confidential county and juvenile court records in connection with investigations relating to the corporation's filing of a deprivation petition. In re A.V.B., 222 Ga. App. 241, 474 S.E.2d 114 (1996) (decided under former O.C.G.A. § 15-11-33).

Courts may consider reports which contain hearsay in disposition phase. — Former statute required that in the hearing on a petition alleging deprivation the trial court shall first make the court's finding as to whether the children were deprived, and it was only after this decision had been made that the judge, in considering the disposition to be made of the children, could consider written reports which contain hearsay matter. In re J.C., 242 Ga. 737, 251 S.E.2d 299 (1978), appeal dismissed, 441 U.S. 929, 99 S. Ct. 2046, 60 L. Ed. 2d 657 (1979) (decided under former Code 1933 § 24A-2201).

Trial court did not err in considering reports filed by a court-appointed special advocate (CASA), and by allowing the CASA to make a statement at the end of the hearing. In the Interest of C.G.B., 242 Ga. App. 705, 531 S.E.2d 107 (2000) (decided under former O.C.G.A. § 15-11-33).

Assault victim's uncertified, unauthenticated medical reports admissible. — Court does not err in allowing uncertified and unauthenticated medical reports of an assault victim in evidence at the disposition hearing. C.P. v. State, 167 Ga. App. 374, 306 S.E.2d 688 (1983) (decided under former O.C.G.A. § 15-11-33).

Admission of hearsay evidence. — Trial court did not err in permitting the introduction of hearsay evidence for whatever weight and credit the court might give the evidence. In the Interest of A.T.H., 248 Ga. App. 570, 547 S.E.2d 299 (2001) (decided under former O.C.G.A. § 15-11-56).

Although a parent was deemed to have abandoned a claim raised on appeal regarding admissibility of evidence from a caseworker in the parental rights termination proceeding under former O.C.G.A. § 15-11-94 (see now O.C.G.A. §§ 15-11-310, 15-11-311, and 15-11-320) due to the parent's failure to have cited to any portions of the record in support of the parent's argument, pursuant to Ga. Ct. App. R. 25(c)(3), such evidentiary rulings would not have constituted reversible error because the remaining evidence introduced at the hearing, not considering the caseworker's report, was sufficient to support the findings and conclusions in the matter. There was no reversible error and, further, hearsay evidence was presumed to have been disregarded and other evidence properly considered under former O.C.G.A. § 15-11-56(a) (see now O.C.G.A. § 15-11-210). In the Interest of T.A.M., 280 Ga. App. 494, 634 S.E.2d 456 (2006) (decided under former O.C.G.A. § 15-11-56).

Juvenile court erred by terminating a grandparent's visitation rights previously granted by relying on the child's out-of-court statements and by failing to recite what standard the court was using to modify the previous visitation awarded to the grandparent. In re K. I. S., 294 Ga. App. 295, 669 S.E.2d 207 (2008) (decided under former O.C.G.A. § 15-11-56).

In a deprivation proceeding, it was error to admit a faxed copy of a document purportedly originating from the United States Department of Homeland Security that stated that an investigation had been initiated to determine whether the parent in question was subject to deportation. In the absence of any relevant witness testimony or documentary evidence properly certifying the record, the document consisted entirely of hearsay, which lacked probative value even in a dispositional hearing. In the Interest of A. R., 296 Ga. App. 62, 673 S.E.2d 586 (2009) (decided under former O.C.G.A. § 15-11-56).

State failed to meet the state's burden of showing that an allegedly abused child was "available to physically appear" at a deprivation hearing as required for hearsay testimony to be admissible under former O.C.G.A. § 24-3-16 (see now O.C.G.A. § 24-8-820). The juvenile court erred in relying on the hearsay testimony of a social worker and a DFCS case manager regarding what the child said. In the

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Interest A.T., 309 Ga. App. 822, 711 S.E.2d 382 (2011) (decided under former O.C.G.A. § 15-11-56).

In a visitation dispute, it was not error to deny a father's motion in limine to exclude hearsay in a custody evaluation because former O.C.G.A. § 15-11-56(a) (see now O.C.G.A. § 15-11-210) specifically allowed the trial court to receive such information. Gottschalk v. Gottschalk, 311 Ga. App. 304, 715 S.E.2d 715 (2011) (decided under former O.C.G.A. § 15-11-56).

Right to cross-examine afforded upon request. — Right to cross-examine adverse witnesses guaranteed by former Code 1933, § 24A-2002 (see now O.C.G.A. §§ 15-11-19 and 15-11-28) was afforded upon request according to former Code 1933, § 24A-2201 (see now O.C.G.A. §§ 15-11-110 and 15-11-210). A.C.G. v. State, 131 Ga. App. 156, 205 S.E.2d 435 (1974) (decided under former 1933, § 24A-2201).

Record must show clear and convincing evidence which authorizes finding. — Just as former statute did not require the court to include a specific statement as to the standard of proof of delinquency in the adjudication order, no such explicit finding was required as to the need for treatment or rehabilitation as long as the record showed that there was clear and convincing evidence which authorized the judge's implicit finding. A.C.G. v. State, 131 Ga. App. 156, 205 S.E.2d 435 (1974) (decided under former Code 1933, § 24A-2201).

Explicit statutory findings required by former Code 1933, § 24A-2201 (see now O.C.G.A. §§ 15-11-110 and 15-11-210) should be made in accordance with former Code 1933, § 81A-152 (see now O.C.G.A. § 9-11-52). Crook v. Georgia Dep't of Human Resources, 137 Ga. App 817, 224 S.E.2d 806 (1976) (decided under former Code 1933, § 24A-2201).

In ruling on deprivation petitions, findings of fact should be made in accordance with former Code 1933, § 81A-152 (see now O.C.G.A. § 9-11-52). W.R.G. v. State, 142 Ga. App. 81, 235 S.E.2d 43 (1977) (decided under former Code 1933, § 24A-2201); In re A.A.G., 143 Ga. App. 648, 239 S.E.2d 697 (1977) (decided under former Code 1933, § 24A-2201).

Exception when petition alleges only deprivation. — If the petition by the county department alleges only deprivation, it is unnecessary to make an explicit finding of deprivation. Moss v. Moss, 135 Ga. App. 401, 218 S.E.2d 93 (1975) (decided under former Code 1933, § 24A-2201).

Explicit finding for petition alleging multiple conditions. — Patent reason for explicit finding of deprivation in petition alleging multiple conditions is to indicate the necessity for and to authorize dispositions of the deprived child or children under the statute or statutes deemed applicable by the court. Moss v. Moss, 135 Ga. App. 401, 218 S.E.2d 93 (1975) (decided under former Code 1933, § 24A-2201).

Disposition made following finding of delinquency. — Decision that the child is in need of treatment or rehabilitation, based upon clear and convincing evidence, is made following a finding of delinquency. A.C.G. v. State, 131 Ga. App. 156, 205 S.E.2d 435 (1974) (decided under former Code 1933, § 24A-2201).

Dispositional hearings held in county of juvenile's residence. — Dispositional hearings must be held in the county of the juvenile's residence to meet state constitutional requirements. C.L.A. v. State, 137 Ga. App. 511, 224 S.E.2d 491 (1976) (decided under former Code 1933, § 24A-2201).

No need to repeat evidence presented during adjudicatory portion. — There is no error in refusing to have the dispositional phase include a repetition of the same evidence and witnesses previously presented during the adjudicatory portion. D.C.A. v. State, 135 Ga. App. 234, 217 S.E.2d 470 (1975) (decided under former Code 1933, § 24A-2201).

Order for transfer for further disposition is not final appealable judgment. — When, pursuant to former Code 1933, § 24A-2201 (see now O.C.G.A. §§ 15-11-5180 and 15-11-210), an order was entered adjudicating a juvenile guilty of an offense and, under the authority of former Code 1933, § 24A-1201 (see now

O.C.G.A. §§ 15-11-401 and 15-11-490) jurisdiction was transferred to the county of the residence for further disposition, that order was not a final appealable judgment. D.C.E. v. State, 130 Ga. App. 724, 204 S.E.2d 481 (1974) (decided under former Code 1933, § 24A-2201).

French-speaking parent's stipulation to certain facts presented in a deprivation petition was sufficient evidence to support a finding that the parent's children were deprived and the parent's argument that the parent did not "understand" the meaning or significance of the stipulation was properly rejected. In re M.O., 233 Ga. App. 125, 503 S.E.2d 362 (1998) (decided under former O.C.G.A. § 15-11-33).

Certified documents properly admitted. — In a deprivation proceeding, the trial court properly admitted documents from a parent's criminal case under former O.C.G.A. § 24-5-31 (see now O.C.G.A. § 24-10-1005). The court found that the documents were attached to a negotiated plea and had been certified. In the Interest of A. R., 296 Ga. App. 62, 673 S.E.2d 586 (2009) (decided under former O.C.G.A. § 15-11-56).

RESEARCH REFERENCES

Am. Jur. 2d. — 47 Am. Jur. 2d, Juvenile Courts and Delinquent and Dependent Children, §§ 91 et seq., 110 et seq.

C.J.S. — 43 C.J.S., Infants, § 199 et seq.

U.L.A. — Uniform Juvenile Court Act (U.L.A.) § 29.

ALR. — Applicability of rules of evidence in juvenile delinquency proceeding, 43 A.L.R.2d 1128.

Applicability of double jeopardy to juvenile court proceedings, 5 A.L.R.4th 234.

Defense of infancy in juvenile delinquency proceedings, 83 A.L.R.4th 1135.

Applicability of rules of evidence to juvenile transfer, waiver, or certification hearings, 37 A.L.R.5th 703.

15-11-211. Relative search by DFCS.

(a) A diligent search shall be initiated at the outset of a case under this article and shall be conducted throughout the duration of a case, when appropriate.

(b) A diligent search shall include at a minimum:

(1) Interviews with the child's parent during the course of an investigation, while child protective services are provided, and while such child is in care;

(2) Interviews with the child;

(3) Interviews with identified relatives throughout the case;

(4) Interviews with any other person who is likely to have information about the identity or location of the person being sought;

(5) Comprehensive searches of data bases available to DFCS including, but not limited to, searches of employment, residence, utilities, vehicle registration, child support enforcement, law enforcement, corrections records, and any other records likely to result in identifying and locating the person being sought;

(6) Appropriate inquiry during the course of hearings in the case; and

(7) Any other reasonable means that are likely to identify relatives or other persons who have demonstrated an ongoing commitment to the child.

(c) All adult relatives of the alleged dependent child identified in a diligent search required by this Code section and all parents of a sibling of such child, when such parent has legal custody of such sibling, subject to exceptions due to family or domestic violence, shall be provided with notice:

(1) Specifying that an alleged dependent child has been or is being removed from his or her parental custody;

(2) Explaining the options a relative has to participate in the care and placement of the alleged dependent child and any options that may be lost by failing to respond to the notice;

(3) Describing the process for becoming an approved foster family home and the additional services and supports available for children placed in approved foster homes; and

(4) Describing any financial assistance for which a relative may be eligible.

(d) The diligent search required by this Code section and the notification required by subsection (c) of this Code section shall be completed, documented in writing, and filed with the court within 30 days from the date on which the alleged dependent child was removed from his or her home and at each periodic review hearing required by Code Section 15-11-216.

(e) After the completion of the diligent search required by this Code section, DFCS shall have a continuing duty to search for relatives or other persons who have demonstrated an ongoing commitment to a child and with whom it may be appropriate to place the alleged dependent child until such relatives or persons are found or until such child is placed for adoption unless the court excuses DFCS from conducting a diligent search. If a relative entitled to notice under subsection (c) of this Code section fails, within six months from the date he or she receives the required notice, to demonstrate an interest in and willingness to provide a permanent home for a child, the court may excuse DFCS from considering such relative as a placement.

History. — Code 1981, § 15-11-211, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242; Ga. L. 2014, p. 780, § 1-13/SB 364; Ga. L. 2015, p. 552, § 14/SB 138; Ga. L. 2019, p. 456, § 2/SB 167; Ga. L. 2020, p. 493, § 15/SB 429.

The 2019 amendment, effective July 1, 2019, added "and at each periodic re-

view hearing required by Code Section 15-11-216" at the end of subsection (d) and added the second sentence in subsection (e).

The 2020 amendment, effective July 29, 2020, part of an Act to revise, modernize, and correct the Code, substituted "have demonstrated an ongoing" for "have an ongoing" in the middle of the first sentence of subsection (e).

Editor's notes. — Ga. L. 2019, p. 456, § 2/SB 167, amended subsection (e) of this Code section but inadvertently omitted the word "demonstrated" preceding "an ongoing commitment" in the first sentence.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 24A-2301, pre-2000 Code Section 15-11-34, and pre-2014 Code Section 15-11-55, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

No equal protection violation. — Treating deprived children who were placed in the legal custody of the Department of Families and Children Services because there was no relative committed to the child who was available for immediate placement differently from deprived children who did have a committed parent or guardian available for immediate placement did not violate the equal protection clause or Ga. Const. 1983, Art. I, Sec. I, Para. II. as the classes were not similarly situated and the laws were rationally related to the goal of minimizing government intervention while ensuring that children were reared in a familial environment. In the Interest of A.N., 281 Ga. 58, 636 S.E.2d 496 (2006) (decided under former O.C.G.A. § 15-11-55).

In a deprivation proceeding, the department of family and child services did not violate equal protection by requiring the parents to pay part of the costs for services mandated under their case plan. The department was not drawing a distinction between similarly situated parties in that a parent who could afford to contribute financially was not similarly situated to one who could not afford to do so; moreover, even if the parents were similarly situated to others who were not required to pay for a portion of services, the goals served by the contribution requirement of requiring parents to take responsibility for conduct that harmed their children and of increasing the likelihood of success for family reunification represented legitimate governmental purposes. In the Interest of P.N., 291 Ga. App. 512, 662 S.E.2d 287 (2008) (decided under former O.C.G.A. § 15-11-55).

Jurisdiction of adoption while deprivation proceeding pending. — Superior court has exclusive jurisdiction in adoption matters and had jurisdiction to entertain an adoption petition notwithstanding the pendency of deprivation proceedings in the juvenile court involving the same child. Edgar v. Shave, 205 Ga. App. 337, 422 S.E.2d 234 (1992) (decided under former O.C.G.A. § 15-11-34).

Authority of juvenile courts to transfer legal custody. — Juvenile court had exclusive original jurisdiction over deprivation proceedings, and the juvenile court had the authority to order the disposition best suited to the needs of the children including the transfer of temporary legal custody. In re A.L.L., 211 Ga. App. 767, 440 S.E.2d 517 (1994) (decided under former O.C.G.A. § 15-11-34).

Juvenile court erred in awarding custody of a child to the father even after finding that the child was not deprived because according to a plain reading of former O.C.G.A. § 15-11-55(a)(2) (see now O.C.G.A. §§ 15-11-211 and 15-11-212), the juvenile court was without authority to transfer custody of the child to the father and paternal grandmother; while under former O.C.G.A. § 15-11-28(c)(1) (see now O.C.G.A. § 15-11-11) the juvenile court had concurrent jurisdiction to hear and determine the issue of custody and support when the issue was transferred by proper order of the superior court, no such order existed in the record,

and instead, the juvenile court specifically found that the child was not deprived. In re T.S., 310 Ga. App. 100, 712 S.E.2d 121 (2011) (decided under former O.C.G.A. § 15-11-55).

No need to repeat evidence already presented during adjudicatory portion. — There is no error in refusing to have the dispositional phase include a repetition of the same evidence and witnesses previously presented during the adjudicatory portion. D.C.A. v. State, 135 Ga. App. 234, 217 S.E.2d 470 (1975) (decided under former Code 1933, § 24A-2301).

Sufficient evidence of deprivation. — Evidence was sufficient to permit the juvenile court to find clear and convincing evidence of the child's deprivation and that the child's parent's misconduct or inability to care for the child's needs resulted in abuse or neglect sufficient to render the parent unfit to retain custody. In re C.N., 231 Ga. App. 639, 500 S.E.2d 400 (1998) (decided under former O.C.G.A. § 15-11-34).

Since the evidence in the record showed that the child had been subjected to numerous medical examinations for sexual abuse at the mother's behest, in an apparent effort to frustrate or foreclose the father's right of visitation, and she persisted in having the child examined for possible sexual abuse, the juvenile court did not abuse the court's discretion in finding that: (1) such examinations were so numerous as to be psychologically harmful to the child; and (2) the circumstances under which future examinations might proceed were to be limited. In the Interest of M.E., 265 Ga. App. 412, 593 S.E.2d 924 (2004) (decided under former O.C.G.A. § 15-11-55).

Juvenile court's order finding a one-year-old child to be deprived was upheld on appeal as clear and convincing evidence existed that: (1) one parent suffered from a psychological disorder, which was not controlled by medication, and caused that parent to have delusions; and (2) the other parent, knowing the aforementioned condition of the first parent, left the child in that parent's care. In the Interest of M.D., 283 Ga. App. 805, 642 S.E.2d 863 (2007) (decided under former O.C.G.A. § 15-11-55).

Given the judicial notice taken by the juvenile judge who entered a prior deprivation finding against a parent's older two children, and the presumption of correctness that attached to those findings, as the pleadings and evidence from those proceedings were not included in the appellate record, sufficient evidence supported the court's deprivation finding involving the parent's youngest child. In the Interest of A.B., 285 Ga. App. 288, 645 S.E.2d 716 (2007) (decided under former O.C.G.A. § 15-11-55).

Adequate care from grandparent does not inhibit deprivation by parent. — Juvenile court properly focused on the subject parent's abandonment of the child in support of the court's deprivation finding and not on the adequate level of care given by the child's maternal grandparent when making a deprivation finding. Moreover, the state showed that the parent was incapable of caring for any child, let alone a premature infant with special medical needs. In the Interest of A.B., 289 Ga. App. 655, 658 S.E.2d 205 (2008) (decided under former O.C.G.A. § 15-11-55).

Abuse by stepparent resulted in deprivation by parent. — In a mother's appeal of a juvenile court's declaration that a child was deprived, the juvenile court did not abuse the court's discretion in making that conclusion based on the sexual abuse of the child by the stepfather because the record established by clear and convincing evidence that the mother did not fully appreciate all that had to be done to protect the child and the child was minimizing the abuse and masking the continuing emotional impact of the experience due to psychological pressure from the mother. In the Interest of A. P., 299 Ga. App. 886, 684 S.E.2d 22 (2009) (decided under former O.C.G.A. § 15-11-55).

Finding of parental unfitness is essential to support an adjudication of present deprivation since parental rights are terminated as well as the transfer of temporary or permanent custody to a third party. In re J.C.P., 167 Ga. App. 572, 307 S.E.2d 1 (1983), but see In re A.W., 240 Ga. App. 259, 523 S.E.2d 88 (1999) (decided under former O.C.G.A. § 15-11-34).

Circumstances in which custody may be lost. — Custody may be lost if a

child is found to be destitute or suffering, if the child is being reared under immoral influences, or if the child is found to be deprived and likely to be harmed thereby. In re M.M.A., 166 Ga. App. 620, 305 S.E.2d 139 (1983) (decided under former O.C.G.A. § 15-11-34).

Prima-facie right of custodial parent. — In a contest between the parents, the award of custody by a divorce court vests the custodial parent with a prima facie right. Ordinarily, the trial court should favor the parent having such a right. In re M.M.A., 166 Ga. App. 620, 305 S.E.2d 139 (1983) (decided under former O.C.G.A. § 15-11-34).

Overcoming prima-facie right. — In order to forfeit the custodial parent's prima-facie right to custody, the court must find either that the original custodian is no longer able or suited to retain custody or that conditions surrounding the child have so changed that modification of the original judgment would have the effect of promoting the child's welfare. It is a change for the worse in the conditions of the child's present home environment rather than any purported change for the better in the environment of the noncustodial parent that the law contemplates under this theory. In re M.M.A., 166 Ga. App. 620, 305 S.E.2d 139 (1983) (decided under former O.C.G.A. § 15-11-34).

Custody with department following finding of deprivation. — Record supported the juvenile court's judgment that a parent did not fulfill the terms of a case plan that was established by the Department of Family and Children's Services because the parent continued using cocaine and refused to attend substance abuse treatment; thus, the child was deprived and custody was properly placed in the department. In the Interest of J.L., 269 Ga. App. 226, 603 S.E.2d 742 (2004) (decided under former O.C.G.A. § 15-11-55).

Custody with department only suspends parental right of custody. — Removal of custody of the child from the parents is a determination that, for whatever length of time custody is exercised by the Department of Family and Children Services, this right has been suspended, although not finally terminated. Rodgers v. Department of Human Resources, 157 Ga. App. 235, 276 S.E.2d 902 (1981) (decided under former Code 1933, § 24A-2301).

Department relieved of responsibility after child removed from its custody. — Juvenile court ordered the Department of Human Services to exceed its authority when it simultaneously removed the child from the Department's custody and ordered it to continue to make visit's to the child's new home, as pursuant to former O.C.G.A. § 15-11-55(c), placement of the child with the paternal grandfather relived the Department of further responsibility for child. In the Interest of B. K., 326 Ga. App. 56, 755 S.E.2d 863 (2014) (decided under former O.C.G.A. § 15-22-55).

Actions by department not action of district attorney. — When the Department of Family and Children Services, acting as the legal custodian of a child, declines to permit a pretrial witness interview, that action is not the action of a party to the suit, i.e., the district attorney's office. Pendergrass v. State, 168 Ga. App. 190, 308 S.E.2d 585 (1983) (decided under former O.C.G.A. § 15-11-34).

Habeas relief when no showing of compliance with statute. — When the parents in their petition seeking return of their children, allege that there had been no hearing as required by former Code 1933, § 24A-1701 (see now O.C.G.A. § 15-11-39), and the record of prior juvenile court proceedings was silent as to whether such a hearing was ever set, continued, or held, and since the hearing requirement of former Code 1933, § 24A-1701 was mandatory, the defendant County Family and Children Services Department did not show compliance with the hearing requirement, and the parents stated claims for habeas relief which may be granted. Chaffins v. Lowndes County Dep't of Family & Children Servs., 243 Ga. 528, 255 S.E.2d 360 (1979) (decided under former Code 1933, § 24A-2301).

Study of individual need not contain approval of custody award. — While former O.C.G.A. § 15-11-34 (see now O.C.G.A. § 15-11-211) requires that

the court secure a study of the individual by the probation officer or other person or agency designated by the court, and that, having done so, the court found the individual to be qualified to receive and care for the child, that former statute did not condition the court's authority to transfer custody of the child to an individual on the approval of that individual by the person or agency conducting the study. In re R.R.M.R., 169 Ga. App. 373, 312 S.E.2d 832 (1983) (decided under former O.C.G.A. § 15-11-34).

Orders beyond court's authority. — Since the record contained no support for a finding that three children, ranging in age from nine to 13, suffered any deprivation as a result of their living conditions, it was beyond the court's authority to order that the children be "encouraged to communicate and have contact with neighbors," and it was none of the state's business whether the children were allowed to sleep outside at night, so long as that was what the children were happy doing and no ill effects could be attributed to it. In re D.H., 178 Ga. App. 119, 342 S.E.2d 367 (1986) (decided under former O.C.G.A. § 15-11-34).

Limited restraining order appropriate disposition. — Since a juvenile attacked a store detective, and subsequently displayed violent behavior and threatened another store employee, the court's conclusion that the juvenile was in need of treatment and rehabilitation, and the court's limited restraining order preventing the juvenile from entering any store owned by the company in Fulton County, except in the immediate presence of a parent or adult relative, was an appropriate disposition and justified by the evidence. In re J.M., 237 Ga. App. 298, 513 S.E.2d 742 (1999) (decided under former O.C.G.A. § 15-11-34).

Joint custody not permitted. — Juvenile court exceeded the court's authority when the court awarded joint legal and physical custody of a deprived child jointly with the Department of Human Resources (DHR) and unrelated third parties since the DHR objected to such arrangement. In re J.N.T., 212 Ga. App. 498, 441 S.E.2d 918 (1994) (decided under former O.C.G.A. § 15-11-34).

Consideration of parent's behavior at hearing. — Consideration by a juvenile court of a noncustodial parent's behavior in a hearing to determine the need for continuing the temporary suspension of custody does not deprive a noncustodial parent of due process. In re A.S., 185 Ga. App. 11, 363 S.E.2d 325 (1987) (decided under former O.C.G.A. § 15-11-34).

Court not required to follow recommended disposition. — In a deprivation proceeding, the trial court was authorized to find that a child's deprivation resulted from the mother's unfitness in failing to protect the child from sexual abuse and in refusing to believe the child's allegations against the child's father. Thus, the trial court was not required to follow a recommended disposition that the child be returned to the mother, who had stipulated to the petition in return for a recommendation by the Department of Family and Children Services and the child advocate that the child be returned to the mother. Finally, after refusing to return the child to the mother, the court did not err in not allowing the mother to withdraw the mother's stipulation to the allegations of the petition since there was no indication that the stipulation was conditional on the trial court's acceptance of the parties' proposed disposition or that the stipulation was obtained by fraud or mistake. In re R. J. M., 295 Ga. App. 886, 673 S.E.2d 527 (2009) (decided under former O.C.G.A. § 15-11-55).

Visitation rights of a parent of a child in custody of the Department of Family and Children Services are a residual "parental tie" which is not severed by the mere placement of the child in the temporary custody of the department, without a specific finding as to that right. In re K.B., 188 Ga. App. 199, 372 S.E.2d 476 (1988) (decided under former O.C.G.A. § 15-11-34).

Order requiring compulsory school attendance affirmed. — In re D.H., 178 Ga. App. 119, 342 S.E.2d 367 (1986) (decided under former O.C.G.A. § 15-11-34).

Reasonable efforts at reunification required. — Disposition portion of the Juvenile Court's order giving temporary legal custody of the child to relatives failed to comply with the requirements of

former O.C.G.A. § 15-11-58 (see now O.C.G.A. §§ 15-11-2, 15-11-134, and 15-11-201) because the order did not contain the necessary findings about reasonable efforts by any appropriate agencies to reunify a parent with the child and foreclosed any consideration of a plan to provide reunification services. In the Interest of J.W.K., 254 Ga. App. 661, 563 S.E.2d 514 (2002) (decided under former O.C.G.A. § 15-11-55).

Provision for transfer of child to mother not required. — Juvenile court was not required to include a provision for transfer of a child back to the child's mother after the child was found to be deprived under former O.C.G.A. § 15-11-55(a)(1) (see now O.C.G.A. § 15-11-212) as the child remained in the custody of the father, who lived in another state. In the Interest of K.J., 268 Ga. App. 843, 602 S.E.2d 861 (2004) (decided under former O.C.G.A. § 15-11-55).

Retransfer provision necessary. — Because an order finding that children adopted by their grandparent were deprived did not contain a provision under former O.C.G.A. § 15-11-55(a)(2) (see now O.C.G.A. § 15-11-212) stating the circumstances under which the children would be returned to the grandparent's care, the case was remanded for the trial court to enter such a provision. In the Interest of T.R., 284 Ga. App. 742, 644 S.E.2d 880 (2007) (decided under former O.C.G.A. § 15-11-55).

Insufficient evidence of deprivation. — Juvenile court's finding of deprivation was in error because there was no evidence presented at the hearing to support the court's finding. In the court's dispositional order, the juvenile court made no specific factual findings that the child was deprived as to the father, but merely listed reasons as to why the court was declining to transfer custody to the father and stated that the court found the child deprived as to the father due to the child's current needs and welfare, a finding which was not supported by any evidence. In the Interest of L. A., 322 Ga. App. 94, 744 S.E.2d 88 (2013) (decided under former O.C.G.A. § 15-11-55).

RESEARCH REFERENCES

Am. Jur. 2d. — 42 Am. Jur. 2d, Infants, § 50. 47 Am. Jur. 2d, Juvenile Courts and Delinquent and Dependent Children, §§ 7, 50 et seq., 56 et seq., 110.

C.J.S. — 43 C.J.S., Infants, § 226 et seq. 67A C.J.S., Parent and Child, §§ 63 et seq., 378 et seq.

U.L.A. — Uniform Juvenile Court Act (U.L.A.) § 30.

ALR. — Right of indigent parent to appointed counsel in proceeding for involuntary termination of parental rights, 80 A.L.R.3d 1141.

15-11-212. Disposition of dependent child.

(a) The court may make any of the following orders of disposition or a combination of those best suited to the protection and physical, emotional, mental, and moral welfare of a child adjudicated as a dependent child:

(1) Permit such child to remain with his or her parent, guardian, or legal custodian subject to conditions and limitations as the court prescribes, including supervision as directed by the court for the protection of such child;

(2) Grant or transfer temporary legal custody to any of these persons or entities:

(A) Any individual, including a biological parent, who, after study by the probation officer or other person or agency designated

by the court, is found by the court to be qualified to receive and care for such child, provided that priority for placement is given to an adult who is a relative or fictive kin;

(B) An agency or other private organization licensed or otherwise authorized by law to receive and provide care for such child;

(C) Any public agency authorized by law to receive and provide care for such child; provided, however, that for the purpose of this Code section, the term "public agency" shall not include DJJ or DBHDD; or

(D) An individual in another state with or without supervision by an appropriate officer pursuant to the requirements of Code Section 39-4-4, the Interstate Compact on the Placement of Children;

(3) Transfer jurisdiction over such child in accordance with the requirements of Code Section 39-4-4, the Interstate Compact on the Placement of Children;

(4) Order such child and his or her parent, guardian, or legal custodian to participate in counseling or in counsel and advice as determined by the court. Such counseling and counsel and advice may be provided by the court, court personnel, probation officers, professional counselors or social workers, psychologists, physicians, physician assistants, qualified volunteers, or appropriate public, private, or volunteer agencies as directed by the court and shall be designed to assist in deterring future conditions of dependency or other conduct or conditions which would be harmful to a child or society;

(5) Order the parent, guardian, or legal custodian of such child to participate in a court approved educational or counseling program designed to contribute to the ability of such parent, guardian, or legal custodian to provide proper parental care and supervision of such child, including, but not limited to, parenting classes;

(6) Order DFCS to implement and such child's parent, guardian, or legal custodian to cooperate with any plan approved by the court; or

(7) Order temporary child support for such child to be paid by that person or those persons determined to be legally obligated to support such child. In determining such temporary child support, the court shall apply the child support guidelines provided in Code Section 19-6-15 and the implementation and any review of the order shall be held as provided in Code Section 19-6-15. Where there is an existing order of a superior court or other court of competent jurisdiction, the court may order the child support obligor in the existing order to make payments to such child's caretaker on a temporary basis but

shall not otherwise modify the terms of the existing order. A copy of the juvenile court's order shall be filed in the clerk's office of the court that entered the existing order. Temporary child support orders entered pursuant to this paragraph shall be enforceable by the court's contempt powers so long as the court is entitled to exercise jurisdiction over the dependency case.

(b) The transfer of temporary legal custody may be subject to conditions and limitations the court may prescribe. Such conditions and limitations shall include a provision that the court shall approve or direct the return of the physical custody of a child adjudicated as a dependent child to his or her parent, guardian, or legal custodian either upon the occurrence of specified circumstances or at the direction of the court. The return of physical custody of a child adjudicated as a dependent child to his or her parent, guardian, or legal custodian may be made subject to conditions and limitations the court may prescribe, including, but not limited to, supervision for the protection of such child.

(c) A child adjudicated as a dependent child shall not be committed to or confined in an institution or other facility designed or operated for the benefit of delinquent children unless such child is also adjudicated to be a delinquent child and such child's detention is warranted under the requirements of Article 6 of this chapter.

(d) After transferring temporary legal custody of a child adjudicated as a dependent child to DFCS, the court may at any time conduct sua sponte a judicial review of the current placement plan being provided to such child. After its review, the court may order DFCS to comply with the current placement plan, order DFCS to devise a new placement plan, or make any other order relative to placement or custody outside DFCS as the court finds to be in the best interests of such child. Placement or a change of custody by the court outside DFCS shall relieve DFCS of further responsibility for such child except for any provision of services ordered by the court to ensure the continuation of reunification services to such child's family when appropriate.

(e) A court shall not be required to make an order of disposition regarding a child who is discharged from a facility in which such child was hospitalized or habilitated pursuant to Chapter 3, 4, or 7 of Title 37 unless such child is to be discharged into the physical custody of any person who had such custody when the court made its most recent adjudication that the child was a dependent child.

(f) If a child is adjudicated as a dependent child and the dependency is found to have been the result of substance abuse by his or her parent, guardian, or legal custodian and the court orders transfer of temporary legal custody of such child, the court shall be authorized to further

order that legal custody of such child may not be transferred back to his or her parent, guardian, or legal custodian unless such parent, guardian, or legal custodian:

(1) Undergoes substance abuse treatment and random substance abuse screenings and those screenings remain negative for a period of no less than 12 consecutive months; or

(2) Successfully completes programming through a family treatment court division.

(g) If the court finds that DFCS preventive or reunification efforts have not been reasonable but that further efforts could not permit a child adjudicated as a dependent child to safely remain at home, the court may nevertheless authorize or continue the removal of such child.

(h) When the case plan requires a concurrent permanency plan, the court shall review the reasonable efforts of DFCS to recruit, identify, and make a placement in a home in which a relative of a child adjudicated as a dependent child, foster parent, or other persons who have demonstrated an ongoing commitment to the child has agreed to provide a legally permanent home for such child in the event reunification efforts are not successful.

History. — Code 1981, § 15-11-212, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242; Ga. L. 2014, p. 780, § 1-14/SB 364; Ga. L. 2016, p. 134, § 1-3/HB 887; Ga. L. 2017, p. 585, § 1-4/SB 174.

Cross references. — Interstate Compact for Juveniles, T. 49, C. 4B.

Law reviews. — For article recommending more consistency in age requirements of laws pertaining to the welfare of minors, see 6 Ga. St. B. J. 189 (1969). For article discussing the uneasy sharing of powers and responsibilities between the superior and juvenile courts in their concurrent jurisdiction over juveniles aged 13 to 18 and suggesting reforms, see 23 Mercer L. Rev. 341 (1972). For article, "An Outline of Juvenile Court Jurisdiction with Focus on Child Custody," see 10 Ga. St. B. J. 275 (1973). For article, "Child Custody—Jurisdiction and Procedure," see 35 Emory L. J. 291 (1986). For article, "The Prosecuting Attorney in Georgia's Juvenile Courts," see 13 Ga. St. B. J. 27 (2008). For article on the 2017 amendment of this Code section, see 34 Ga. St. U.L. Rev. 115 (2017).

For comment on Stanton v. Stanton, 213 Ga. 545, 100 S.E.2d 289 (1957), holding that parents cannot by contract restrict the discretion of the court in awarding custody and provision regulating the religious upbringing of the child may be entirely disregarded by the court, see 20 Ga. B. J. 546 (1958). For comment on J.W.A. v. State, 233 Ga. 683, 212 S.E.2d 849 (1975), see 27 Mercer L. Rev. 335 (1975). For comment on Parham v. J.R., 442 U.S. 584 (1979) and Secretary of Pub. Welfare v. Institutionalized Juveniles, 442 U.S. 640 (1979), regarding juvenile commitment to state mental hospitals upon application of parents or guardians, see 29 Emory L. J. 517 (1980).

JUDICIAL DECISIONS

Analysis

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APPLICATION

General Consideration

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, §§ 24-2402, 24-2408, 24A-301, and 24A-2301, pre-2000 Code Sections 15-11-5, and 15-11-34, and pre-2014 Code Sections 15-11-28, and 15-11-55, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Additionally, many of the annotations found under this Code section were taken from cases decided prior to the adoption of the 1983 Constitution. See Ga. Const. 1983, Art. VI, Sec. III, Para. I and Ga. Const. 1983, Art. VI, Sec. IV, Para. I.

Deprivation proceeding not a custody dispute. — Because the pleadings established that the petition was a properly filed and factually supported deprivation petition, and due to the presence of unchallenged, valid allegations of deprivation, the deprivation proceeding was not a disguised custody matter; accordingly, the juvenile court properly exercised the court's jurisdiction over the proceeding. In the Interest of K.L.H., 281 Ga. App. 394, 636 S.E.2d 117 (2006) (decided under former O.C.G.A. § 15-11-28).

Proceeding for termination of parental rights is custody controversy involving deprived child. Moss v. Moss, 233 Ga. 688, 212 S.E.2d 853 (1975) (decided under former Code 1933, § 24A-301).

Actions in which one parent seeks termination of the parental rights of the other parent by means of a deprivation petition are not all prima facie custody cases and it is not required that all such actions must be filed in superior court. In re M.C.J., 271 Ga. 546, 523 S.E.2d 6 (1999), reversing In re W. W. W., 213 Ga. App. 732, 445 S.E.2d 832 (1994); In re M.A., 218 Ga. App. 433, 461 S.E.2d 600 (1995) (decided under former O.C.G.A. § 15-11-5); In re M.C.J., 236 Ga. App. 225, 511 S.E.2d 533 (1999) (decided under former O.C.G.A. § 15-11-5).

Pursuant to former O.C.G.A. § 15-11-28(a)(2)(C), the superior court did not have subject matter jurisdiction to terminate the husband's parental rights because the biological father's petition to legitimate a child who was born in wedlock was a petition to terminate the parental rights of the legal father; after the superior court determined that the biological father had not abandoned his opportunity interest, the issue became whether the superior court could grant the petition to legitimate the child, and to grant the legitimation petition required the superior court to first terminate the parental rights of the husband, who was the legal father. Brine v. Shipp, 291 Ga. 376, 729 S.E.2d 393 (2012) (decided under former O.C.G.A. § 15-11-28).

Custody dispute of orphaned children. — In a custody dispute involving children orphaned by the murder-suicide of their parents, a superior court did not err in denying an aunt's motion to dismiss for lack of jurisdiction because the superior court correctly held that, in the absence of an earlier-filed action in juvenile court or probate court, it was the first court to take jurisdiction and properly retained jurisdiction. Stone-Crosby v. Mickens-Cook, 318 Ga. App. 313, 733 S.E.2d 842 (2012) (decided under former O.C.G.A. § 15-11-28).

Superior court in habeas corpus action for child custody lacks authority to enter order terminating parental rights. Dein v. Mossman, 244 Ga. 866, 262 S.E.2d 83 (1979) (decided under former Code 1933, § 24A-301).

General requirements necessary to terminate parental rights. — Generally, the requirements necessary to terminate the parental rights of the mother are deprivation, probable continued deprivation, and that the child will probably suffer serious emotional harm. Beasley v. Jones, 149 Ga. App. 317, 254 S.E.2d 472 (1979) (decided under former Code 1933, § 24A-301).

Definition of "full age." — One becomes of "full age" on the day preceding the anniversary of one's birth, on the first

General Consideration (Cont'd)

moment of that day. Edmonds v. State, 154 Ga. App. 650, 269 S.E.2d 512 (1980) (decided under former Code 1933, § 24A-301).

Child turned 17 on the earliest moment of the day before juvenile's birthday. — Delinquency petition against a juvenile was properly transferred to the state court on the ground that the juvenile was arrested for possessing marijuana on the day before the juvenile's seventeenth birthday; pursuant to former O.C.G.A. §§ 15-11-2 and 15-11-28 (see now O.C.G.A. §§ 15-11-2, 15-11-10, 15-11-11, 15-11-212, and 15-11-560), the juvenile was deemed to have been 17 at the earliest moment of the day before the juvenile's birthday, which was the day the juvenile was arrested. In the Interest of A.P.S., 304 Ga. App. 513, 696 S.E.2d 483 (2010) (decided under former O.C.G.A. § 15-11-28).

Defendant claimed under 17 at the time offenses were committed. — Superior court had authority to try the defendant who claimed to be under 17 at the time the offenses were committed since the jury was instructed that the defendant should be found guilty only if the defendant committed the alleged acts after the defendant turned 17. Johnson v. State, 214 Ga. App. 319, 447 S.E.2d 663 (1994) (decided under former O.C.G.A. § 15-11-5).

Referral from superior court to juvenile court for special findings. — Since a custody case was referred to the juvenile court for only an investigation and report with the judgment of the superior court resting on these findings as well as testimony and other evidence before the superior court, the superior court's judgment was not void, but at most was voidable only if an appeal had been perfected. Jackson v. Gamble, 232 Ga. 149, 205 S.E.2d 256 (1974) (decided under former Code 1933, § 24A-301).

Custody case could not determine other civil issues. — Because the trial court relied upon documents other than the pleadings, a motion to dismiss should in fact have been treated as a motion for summary judgment; a juvenile court had no jurisdiction over claims of fraud, breach of contract, perjury, and defamation made by a former husband against his former wife, and thus, a custody case between parties which was litigated in juvenile court was not an adjudication of the husband's claim for purposes of res judicata. Litsky v. Schaub, 269 Ga. App. 254, 603 S.E.2d 754 (2004) (decided under former O.C.G.A. § 15-11-28).

Order addressing issue not raised was a nullity. — Since a written order issued by a juvenile court did not show deprivation of the child with regard to the child's father, and since all parties stipulated that the child was not deprived with regard to the child's father, the order was void to the extent the order directed removal of the child from the father's home; moreover, to the extent that a later contempt finding was based on the trial court's void order, it was a nullity; the trial court's direction as to removal of the child was not binding and the court's later contempt finding based on that order was improper. In re Tidwell, 279 Ga. App. 734, 632 S.E.2d 690 (2006) (decided under former O.C.G.A. § 15-11-28).

Termination of parental rights via divorce decree. — Under former O.C.G.A. § 15-11-28(a)(2)(C) (see now O.C.G.A. §§ 15-11-10, 15-11-11, and 15-11-212), except in connection with an adoption proceeding, a juvenile court was the sole court for an action involving any proceeding for the termination of parental rights. However, the parent affirmatively invoked the jurisdiction of the superior court for the purpose of obtaining the divorce, consented to the superior court's incorporation of the settlement agreement, and then failed to file a motion to set aside the judgment of divorce for four years; thus, the parent's acts and omissions estopped the parent from attacking the divorce judgment. Amerson v. Vandiver, 285 Ga. 49, 673 S.E.2d 850 (2009) (decided under former O.C.G.A. § 15-11-28).

Deprivation and termination of parental rights. — Juvenile court shall be sole court for initiating action for termination of legal parent-child relationship. Dein v. Mossman, 244 Ga. 866, 262 S.E.2d 83 (1979) (decided under former Code 1933, § 24A-301).

Juvenile court has exclusive jurisdiction to hear cases involving deprivation and termination of parental rights. Abrams v. Daffron, 155 Ga. App. 182, 270 S.E.2d 278 (1980) (decided under former Code 1933, § 24A-301).

Superior court has jurisdiction to consider termination of the rights of a putative father only "in connection with adoption proceedings." Alexander v. Guthrie, 216 Ga. App. 460, 454 S.E.2d 805 (1995) (decided under former O.C.G.A. § 15-11-5).

Superior court lacked subject matter jurisdiction to consider divorced mother's petition for termination of the father's parental rights. In re A.D.B., 232 Ga. App. 697, 503 S.E.2d 596 (1998) (decided under former O.C.G.A. § 15-11-5).

Juvenile court has exclusive original jurisdiction over actions involving termination of parental rights. The juvenile court properly exercised jurisdiction over a grandmother's petition to terminate a mother's parental rights because the grandmother already had custody of the children and the mother was facing allegations of having deprived her children. In the Interest of K.N.C., 264 Ga. App. 475, 590 S.E.2d 792 (2003) (decided under former O.C.G.A. § 15-11-28).

Matters relating to custody and visitation. — Superior and juvenile courts exercise concurrent jurisdiction over all matters relating to custody and visitation, except in those situations in which exclusive jurisdiction is vested in the superior court. In re D.N.M., 193 Ga. App. 812, 389 S.E.2d 336, cert. denied, 193 Ga. App. 910, 389 S.E.2d 336 (1989) (decided under former O.C.G.A. § 15-11-5).

Concurrent jurisdiction over custody issues. — Subsection (c) of this section is applicable only in those cases where the juvenile court and the superior court have concurrent jurisdiction and custody is the subject of controversy. Brooks v. Leyva, 147 Ga. App. 616, 249 S.E.2d 628 (1978) (decided under former Code 1933, § 24A-301).

No error to transfer case to juvenile court for investigation. — If a change of circumstances is alleged subsequent to a decree of divorce awarding custody of a minor child to one of the two parties, it is not error for the judge of the superior court to transfer the investigation thus called for to the juvenile court for investigation. Slate v. Coggins, 181 Ga. 17, 181 S.E. 145 (1935) (decided under former Code 1933, § 24-2402).

Decree of divorce in a case in which the custody of a minor child is involved, awarding the child to one party or the other, is final, except when a change of circumstances is shown; when such change is alleged, it is not error for the judge of the superior court to transfer the investigation thus called for to the juvenile court for investigation. Fortson v. Fortson, 197 Ga. 699, 30 S.E.2d 165 (1944) (decided under former Code 1933, § 24-2402).

Since there was evidence that the living conditions and conduct of children, subjects of a custody award in a divorce decree, were much worse than as shown upon a former trial, the judge did not err in transferring the investigation to the juvenile court for trial and determination. Fortson v. Fortson, 197 Ga. 699, 30 S.E.2d 165 (1944) (decided under former Code 1933, § 24-2402).

In custody litigation, the juvenile court errs in hearing a case in which there is no order transferring the case from the superior court. Further, if an order of a juvenile court fails to recite the jurisdictional facts (i.e., such facts as are necessary to give it jurisdiction of the person and subject matter), the judgment is void. Lockhart v. Stancil, 258 Ga. 634, 373 S.E.2d 355 (1988) (decided under former O.C.G.A. § 15-11-5); In re W.W.W., 213 Ga. App. 732, 445 S.E.2d 832 (1994), but see In re M.C.J., 271 Ga. 546, 523 S.E.2d 6 (1999) (decided under former O.C.G.A. § 15-11-5).

Juvenile court cannot modify superior court's custody determination. — Juvenile court, without proper transfer from superior court, is without authority to modify custody provisions of the final divorce decree in regard to the mother's visitation privileges. In re M.M.A., 174 Ga. App. 898, 332 S.E.2d 39 (1985) (decided under former O.C.G.A. § 15-11-5); Owen v. Owen, 183 Ga. App. 472, 359 S.E.2d 229 (1987) (decided under former O.C.G.A. § 15-11-5).

General Consideration (Cont'd)

No equal protection violation. — Treating deprived children who were placed in the legal custody of the Department of Families and Children Services because there was no relative committed to the child who was available for immediate placement differently from deprived children who did have a committed parent or guardian available for immediate placement did not violate the equal protection clause or Ga. Const. 1983, Art. I, Sec. I, Para. II. as the classes were not similarly situated and the laws were rationally related to the goal of minimizing government intervention while ensuring that children were reared in a familial environment. In the Interest of A.N., 281 Ga. 58, 636 S.E.2d 496 (2006) (decided under former O.C.G.A. § 15-11-55).

In a deprivation proceeding, the department of family and child services did not violate equal protection by requiring the parents to pay part of the costs for services mandated under their case plan. The department was not drawing a distinction between similarly situated parties in that a parent who could afford to contribute financially was not similarly situated to one who could not afford to do so; moreover, even if the parents were similarly situated to others who were not required to pay for a portion of services, the goals served by the contribution requirement of requiring parents to take responsibility for conduct that harmed their children and of increasing the likelihood of success for family reunification represented legitimate governmental purposes. In the Interest of P.N., 291 Ga. App. 512, 662 S.E.2d 287 (2008) (decided under former O.C.G.A. § 15-11-55).

Determination that deprivation proceeding was not custody dispute. — Because the pleadings established that a deprivation petition was properly filed and factually supported, and due to the presence of unchallenged, valid allegations of deprivation, the deprivation proceeding was not a disguised custody matter; accordingly, the juvenile court properly exercised the court's jurisdiction over the proceeding. In the Interest of K.L.H., 281 Ga. App. 394, 636 S.E.2d 117 (2006) (decided under former O.C.G.A. § 15-11-55).

Authority of juvenile courts to transfer legal custody. — Juvenile court had exclusive original jurisdiction over deprivation proceedings, and the juvenile court had the authority to order the disposition best suited to the needs of the children including the transfer of temporary legal custody. In re A.L.L., 211 Ga. App. 767, 440 S.E.2d 517 (1994) (decided under former O.C.G.A. § 15-11-34).

Juvenile court erred in awarding custody of a child to the father even after finding that the child was not deprived because according to a plain reading of former O.C.G.A. § 15-11-55(a)(2) (see now O.C.G.A. §§ 15-11-211 and 15-11-212), the juvenile court was without authority to transfer custody of the child to the father and paternal grandmother; while under former O.C.G.A. § 15-11-28(c)(1) (see now O.C.G.A. § 15-11-11) the juvenile court had concurrent jurisdiction to hear and determine the issue of custody and support when the issue was transferred by proper order of the superior court, no such order existed in the record, and instead, the juvenile court specifically found that the child was not deprived. In re T.S., 310 Ga. App. 100, 712 S.E.2d 121 (2011) (decided under former O.C.G.A. § 15-11-55).

No need to repeat evidence already presented during adjudicatory portion. — There is no error in refusing to have the dispositional phase include a repetition of the same evidence and witnesses previously presented during the adjudicatory portion. D.C.A. v. State, 135 Ga. App. 234, 217 S.E.2d 470 (1975) (decided under former Code 1933, § 24A-2301).

Standard of proof for finding deprivation. — If deprivation forms the predicate upon which a third party seeks a temporary transfer of the child's legal custody, in order to support such a disposition the child must first be adjudicated to be a deprived child. By statute, that finding of deprivation must be made by "clear and convincing evidence." In re J.C.P., 167 Ga. App. 572, 307 S.E.2d 1 (1983), but see In re A.W., 240 Ga. App. 259, 523 S.E.2d 88 (1999) (decided under

former O.C.G.A. § 15-11-34).

Juvenile courts are given wide discretion once deprivation is found to either terminate the rights of the parent or issue an order under former Code 1933, § 24A-2301 (see now O.C.G.A. § 15-11-212). Painter v. Barkley, 157 Ga. App. 69, 276 S.E.2d 850 (1981) (decided under former Code 1933, § 24A-2301).

When a trial court, upon finding a mother's children were deprived, left their custody with the mother upon certain conditions, this was not a protective order, despite the fact that this was what was prayed for at the hearing resulting in the order, but it was, rather, a deprivation order under former O.C.G.A. § 15-11-55(a)(1) (see now O.C.G.A. § 15-1-212), so, when the specified conditions were violated, the trial court was not limited to the remedies available in the protection order statute, but was authorized to remove the children from the mother's custody. In the Interest of S.Y., 264 Ga. App. 623, 591 S.E.2d 489 (2003) (decided under former O.C.G.A. § 15-11-55).

Physical and legal custody may not be divided. — Former O.C.G.A. § 15-11-34 (see now O.C.G.A. § 15-11-212) did not authorize the court to transfer "legal custody" of the child to one person or agency while awarding another person or agency the right to physical custody. In re R.R.M.R., 169 Ga. App. 373, 312 S.E.2d 832 (1983) (decided under former O.C.G.A. § 15-11-34).

Juvenile court erred in awarding legal custody of two children to the Department of Family and Children Services (DFACS) and then ordering that physical custody be given to the maternal grandparents as: (1) once legal custody of a deprived child had been granted to DFACS, the juvenile court could not dictate physical custody; (2) nothing in former O.C.G.A. § 15-11-55(a)(2) (see now O.C.G.A. § 15-11-211) allowed any redefinition of legal custody as defined in O.C.G.A. § 49-5-3(12); (3) using the rules of construction, former O.C.G.A. § 15-11-55(a)(2) (see now O.C.G.A. § 15-11-211) followed the statutory and legal precedent that the grant of legal custody to DFACS included the right to determine physical custody; and (4) the 2003 amendment to former O.C.G.A. § 15-11-55 (see now O.C.G.A. §§ 15-11-211 and 15-11-212) did not reject the statutory definition of legal custody. In the Interest of A.N., 281 Ga. 58, 636 S.E.2d 496 (2006) (decided under former O.C.G.A. § 15-11-55).

Finding of parental unfitness is essential to support an adjudication of present deprivation since parental rights are terminated as well as the transfer of temporary or permanent custody to a third party. In re J.C.P., 167 Ga. App. 572, 307 S.E.2d 1 (1983), but see In re A.W., 240 Ga. App. 259, 523 S.E.2d 88 (1999) (decided under former O.C.G.A. § 15-11-34).

Circumstances in which custody may be lost. — Custody may be lost if a child is found to be destitute or suffering, if the child is being reared under immoral influences, or if the child is found to be deprived and likely to be harmed thereby. In re M.M.A., 166 Ga. App. 620, 305 S.E.2d 139 (1983) (decided under former O.C.G.A. § 15-11-34).

Prima-facie right of custodial parent. — In a contest between the parents, the award of custody by a divorce court vests the custodial parent with a prima facie right. Ordinarily, the trial court should favor the parent having such a right. In re M.M.A., 166 Ga. App. 620, 305 S.E.2d 139 (1983) (decided under former O.C.G.A. § 15-11-34).

Overcoming prima-facie right. — In order to forfeit the custodial parent's prima-facie right to custody, the court must find either that the original custodian is no longer able or suited to retain custody or that conditions surrounding the child have so changed that modification of the original judgment would have the effect of promoting the child's welfare. It is a change for the worse in the conditions of the child's present home environment rather than any purported change for the better in the environment of the noncustodial parent that the law contemplates under this theory. In re M.M.A., 166 Ga. App. 620, 305 S.E.2d 139 (1983) (decided under former O.C.G.A. § 15-11-34).

Habeas relief when no showing of compliance with statute. — When the

General Consideration (Cont'd)

parents in their petition seeking return of their children, allege that there had been no hearing as required by former Code 1933, § 24A-1701 (see now O.C.G.A. § 15-11-39), and the record of prior juvenile court proceedings was silent as to whether such a hearing was ever set, continued, or held, and since the hearing requirement of former Code 1933, § 24A-1701 was mandatory, the defendant County Family and Children Services Department did not show compliance with the hearing requirement, and the parents stated claims for habeas relief which may be granted. Chaffins v. Lowndes County Dep't of Family & Children Servs., 243 Ga. 528, 255 S.E.2d 360 (1979) (decided under former Code 1933, § 24A-2301).

No habeas corpus if court enters orders. — Habeas corpus will not lie if the juvenile court, after notice and hearing, enters an order pursuant to former provisions an disposition of deprived children. Chaffins v. Lowndes County Dep't of Family & Children Servs., 243 Ga. 528, 255 S.E.2d 360 (1979) (decided under former Code 1933, § 24A-2301).

Temporary custody order does not deprive all parental rights. — An order of the juvenile court awarding custody of a child to a named individual pending further order of the court, not having awarded itself permanent custody of the child, does not deprive the parents of all parental rights or the right to notice in an adoption proceeding. Jackson v. Anglin, 193 Ga. 737, 19 S.E.2d 914 (1942) (decided under former Code 1933, Chs. 24-24 and Ga. L. 1941, p. 300).

Orders beyond court's authority. — Since the record contained no support for a finding that three children, ranging in age from nine to 13, suffered any deprivation as a result of their living conditions, it was beyond the court's authority to order that the children be "encouraged to communicate and have contact with neighbors," and it was none of the state's business whether the children were allowed to sleep outside at night, so long as that was what the children were happy doing and no ill effects could be attributed to it. In re D.H., 178 Ga. App. 119, 342 S.E.2d 367 (1986) (decided under former O.C.G.A. § 15-11-34).

Limited restraining order appropriate disposition. — Since a juvenile attacked a store detective, and subsequently displayed violent behavior and threatened another store employee, the court's conclusion that the juvenile was in need of treatment and rehabilitation, and the court's limited restraining order preventing the juvenile from entering any store owned by the company in Fulton County, except in the immediate presence of a parent or adult relative, was an appropriate disposition and justified by the evidence. In re J.M., 237 Ga. App. 298, 513 S.E.2d 742 (1999) (decided under former O.C.G.A. § 15-11-34).

Consideration of parent's behavior at hearing. — Consideration by a juvenile court of a noncustodial parent's behavior in a hearing to determine the need for continuing the temporary suspension of custody does not deprive a noncustodial parent of due process. In re A.S., 185 Ga. App. 11, 363 S.E.2d 325 (1987) (decided under former O.C.G.A. § 15-11-34).

Recommendations by juvenile court. — Juvenile court does not exceed the court's authority in a hearing to determine the need for continuing the temporary suspension of custody by making recommendations as to the placement, care, and supervision of a child. In re A.S., 185 Ga. App. 11, 363 S.E.2d 325 (1987) (decided under former O.C.G.A. § 15-11-34).

If a juvenile court's finding as to custody is in the nature of a recommendation to the superior court, the custody issue remains pending below and is not before the appellate court on appeal. In the Interest of M.E., 265 Ga. App. 412, 593 S.E.2d 924 (2004) (decided under former O.C.G.A. § 15-11-55).

Court not required to follow recommended disposition. — In a deprivation proceeding, the trial court was authorized to find that a child's deprivation resulted from the mother's unfitness in failing to protect the child from sexual abuse and in refusing to believe the child's allegations against the child's father. Thus, the trial court was not required to follow a recom-

mended disposition that the child be returned to the mother, who had stipulated to the petition in return for a recommendation by the Department of Family and Children Services and the child advocate that the child be returned to the mother. Finally, after refusing to return the child to the mother, the court did not err in not allowing the mother to withdraw the mother's stipulation to the allegations of the petition since there was no indication that the stipulation was conditional on the trial court's acceptance of the parties' proposed disposition or that the stipulation was obtained by fraud or mistake. In re R. J. M., 295 Ga. App. 886, 673 S.E.2d 527 (2009) (decided under former O.C.G.A. § 15-11-55).

Visitation rights of a parent of a child in custody of the Department of Family and Children Services are a residual "parental tie" which is not severed by the mere placement of the child in the temporary custody of the department, without a specific finding as to that right. In re K.B., 188 Ga. App. 199, 372 S.E.2d 476 (1988) (decided under former O.C.G.A. § 15-11-34).

Reasonable efforts at reunification required. — Disposition portion of the Juvenile Court's order giving temporary legal custody of the child to relatives failed to comply with the requirements of former O.C.G.A. § 15-11-58 (see now O.C.G.A. §§ 15-11-2, 15-11-134, and 15-11-201) because the order did not contain the necessary findings about reasonable efforts by any appropriate agencies to reunify a parent with the child and foreclosed any consideration of a plan to provide reunification services. In the Interest of J.W.K., 254 Ga. App. 661, 563 S.E.2d 514 (2002) (decided under former O.C.G.A. § 15-11-55).

Reunification order exceeded statutory authority. — Juvenile court exceeded the court's statutory authority in the court's order reuniting the children with their mother because the requirements that the Georgia Department of Human Services pay for the children's orthodontist treatment until completion, that it must do whatever it was that helped the mother and craft and fashion with the mother what was needed for the children, and that it give the mother all she wanted, needed or desired for the children, appeared to be unrelated to the statutory purpose of continuation of reunification services. In the Interest of A. M., 350 Ga. App. 333, 829 S.E.2d 422 (2019).

Retransfer provision necessary. — Because an order finding that children adopted by their grandparent were deprived did not contain a provision under former O.C.G.A. § 15-11-55(a)(2) (see now O.C.G.A. § 15-11-212) stating the circumstances under which the children would be returned to the grandparent's care, the case was remanded for the trial court to enter such a provision. In the Interest of T.R., 284 Ga. App. 742, 644 S.E.2d 880 (2007) (decided under former O.C.G.A. § 15-11-55).

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Determination that deprivation proceeding not custody dispute. — Juvenile court did not have jurisdiction of a deprivation proceeding brought against a mother brought by the child's temporary guardian in a transparent attempt to use the juvenile court to seek custody of the child. In re B.C.P., 229 Ga. App. 111, 493 S.E.2d 258 (1997) (decided under former O.C.G.A. § 15-11-5).

Specific custody controversies not within supreme court appellate jurisdiction. — Custody controversies involving delinquent children, unruly children, or deprived children are not cases "in the nature of habeas corpus" and are not within the appellate jurisdiction of the supreme court. Moss v. Moss, 233 Ga. 688, 212 S.E.2d 853 (1975) (decided under former Code 1933, § 24A-301).

Juvenile court does not lose jurisdiction if agency has custody. — That a "deprived child" may be in agency custody at the time of the hearing on termination of parental rights does not oust the juvenile court from jurisdiction to determine the ultimate issue. In re K.C.O., 142 Ga. App. 216, 235 S.E.2d 602 (1977) (decided under former O.C.G.A. § 15-11-5).

Petition to terminate the parental rights to a child previously adjudicated "deprived" and in agency custody is cognizable in the juvenile court. In re K.C.O.,

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142 Ga. App. 216, 235 S.E.2d 602 (1977) (decided under former O.C.G.A. § 15-11-5).

Juvenile court has jurisdiction despite indictment for noncapital felony. — Indictment of a juvenile for a noncapital felony in the superior court does not oust the juvenile court of the court's first obtained jurisdiction under the Georgia Constitution and statute law. J.W.A. v. State, 233 Ga. 683, 212 S.E.2d 849 (1975), commented on in 27 Mercer L. Rev. 335 (1975). (decided under former Code 1933, § 24A-301).

Juvenile court not divested of jurisdiction unless transfer proceeding held. — Since jurisdiction is first acquired by the juvenile court, a subsequent superior court indictment does not divest the juvenile court of the juvenile court's jurisdiction unless a proper transfer proceeding has been held. Hartley v. Clack, 239 Ga. 113, 236 S.E.2d 63 (1977) (decided under former Code 1933, § 24A-301).

Superior court referral of custody case retained juvenile court's jurisdiction. — Jurisdiction of divorce in superior court, and referral by the superior court to the juvenile court for custody determination, gave the juvenile court jurisdiction over the custody issue. Order by the superior court, in response to a party's motion for modification of custody, when the custody issue had not yet been resolved by the juvenile court, was void. Owen v. Owen, 195 Ga. App. 545, 394 S.E.2d 580 (1990) (decided under former O.C.G.A. § 15-11-5).

Juvenile court did not retain jurisdiction to hear grandparents' petition for permanent custody after determining that the mother's four children were deprived since the grandparents' complaint for permanent custody was not in the nature of a deprivation petition and did not allege that the grandparents should be granted permanent custody of the children on the basis that the children were deprived. In re C.C., 193 Ga. App. 120, 387 S.E.2d 46 (1989) (decided under former O.C.G.A. § 15-11-5).

Jurisdiction over children born in U.S. to Mexican citizens. — Juvenile court had jurisdiction to terminate the parental rights of Mexican citizens because, when the termination petition was filed, the children, who were born in the United States, were citizens of Georgia and thereby entitled to the protection of Georgia law, which specifically provides for the termination of parental rights. In the Interest of J.H., 244 Ga. App. 788, 536 S.E.2d 805 (2000) (decided under former O.C.G.A. § 15-11-28).

Transferral of custody habeas corpus case by superior court. — In a custody controversy in the nature of habeas corpus, the juvenile court has concurrent jurisdiction to decide the issue only if the case is transferred to the juvenile court by proper order of the superior court; and in such a transferred case, appellate jurisdiction is lodged in the supreme court of this state. In re J.R.T., 233 Ga. 204, 210 S.E.2d 684 (1974) (decided under former Code 1933, § 24A-301); Moss v. Moss, 233 Ga. 688, 212 S.E.2d 853 (1975) (decided under former Code 1933, § 24A-301).

Original and appellate jurisdiction in certain custody controversies. — Juvenile court has original jurisdiction in a custody controversy involving a delinquent child, an unruly child, or a deprived child and appellate jurisdiction in such cases is vested in the court of appeals. In re J.R.T., 233 Ga. 204, 210 S.E.2d 684 (1974) (decided under former Code 1933, § 24A-301); Moss v. Moss, 233 Ga. 688, 212 S.E.2d 853 (1975) (decided under former Code 1933, § 24A-301).

Jurisdiction over offenses committed when juvenile 16. — Juvenile court retained jurisdiction over the defendant for an offense the defendant committed when the defendant was 16 years old until the entry of the court's order transferring the case to the superior court. In re D.L., 228 Ga. App. 503, 492 S.E.2d 273 (1997) (decided under former O.C.G.A. § 15-11-5).

Lack of jurisdiction to award permanent custody. — Judgment was reversed because the juvenile court's authority to place a child in the custody of a "willing" and "qualified" relative was not authority to award permanent custody of the child as custody was determined by

discerning the best interests of the child and not the willingness or the qualifications of a person to take temporary custody of the child. Ertter v. Dunbar, 292 Ga. 103, 734 S.E.2d 403 (2012) (decided under former O.C.G.A. § 15-11-28).

Order which fails to recite jurisdictional grounds is void. — If the order of the juvenile court taking custody, control, and supervision of a minor child fails to show that it was by reason of one of the several grounds set out in the statute, such order is void for want of jurisdiction. Ferguson v. Hunt, 221 Ga. 728, 146 S.E.2d 756 (1966) (decided under former Code 1933, § 24-2402).

Jurisdiction of juvenile court, being civil in nature, extends only to those minors who are residents of the county. Giles v. State, 123 Ga. App. 700, 182 S.E.2d 140 (1971) (decided under former Code 1933, § 24-2402).

Jurisdiction to enter child support award. — Since a parent's children were found to be deprived and were placed temporarily with relatives, pursuant to former O.C.G.A. § 15-11-28(c)(2)(A) (see now O.C.G.A. §§ 15-11-10, 15-11-11, and 15-11-212), the trial court had jurisdiction to order the parent to pay temporary support. However, the court lacked jurisdiction to enter a final award of support under O.C.G.A. § 19-6-15 as no final order was entered disposing of the case. In the Interest of R.F., 295 Ga. App. 739, 673 S.E.2d 108 (2009) (decided under former O.C.G.A. § 15-11-28).

Granting of temporary custody of the mother's child to the mother's ex-boyfriend and his wife following their petition to have the boy adjudicated deprived was inappropriate because the juvenile court lacked jurisdiction over the proceeding under former O.C.G.A. § 15-11-28(a)(1)(C) (see now O.C.G.A. §§ 15-11-10, 15-11-11, and 15-11-212). The petition did not contain valid allegations of deprivation and nothing in the record demonstrated that present drug use on the part of the mother had a negative effect on the child rising to the level of present deprivation; the petition was an attempt to obtain custody of the child. In the Interest of C. L. C., 299 Ga. App. 729, 683 S.E.2d 690 (2009) (decided under former O.C.G.A. § 15-11-28); Mauldin v. Mauldin, 322 Ga. App. 507, 745 S.E.2d 754 (2013) (decided under former O.C.G.A. § 15-11-28).

Juvenile Code confers exclusive original jurisdiction to juvenile court over certain juvenile matters, and designates the juvenile court the sole court for initiating action concerning any child that is alleged to be deprived and for the termination of the legal parent-child relationship. Brooks v. Leyva, 147 Ga. App. 616, 249 S.E.2d 628 (1978) (decided under former Code 1933, § 24A-301).

Juvenile court does not have original jurisdiction over custody controversy. — It was not the intention of the General Assembly to give original jurisdiction of the custody of a child to a juvenile court when there is a dispute over the custody between the parents. Bartlett v. Bartlett, 99 Ga. App. 770, 109 S.E.2d 821 (1959) (decided under former Code 1933, § 24-2402).

Original and appellate jurisdiction in custody disputes between parents. — In a case of dispute over custody between parents, original jurisdiction exists exclusively in courts having jurisdiction of habeas corpus or divorce and alimony actions, in both of which the supreme court has exclusive jurisdiction on appeal. Bartlett v. Bartlett, 99 Ga. App. 770, 109 S.E.2d 821 (1959) (decided under former Code 1933, § 24-2402).

Noncapital juvenile cases. — Juvenile courts have exclusive original jurisdiction over noncapital juvenile cases. State v. Crankshaw, 243 Ga. 183, 253 S.E.2d 69 (1979) (decided under former Code 1933, § 24A-301).

Jurisdiction over deprivation cases is exclusive. — Subparagraph (a)(1)(C) of former O.C.G.A. § 15-11-5 (see now O.C.G.A. §§ 15-11-10, 15-11-11, and 15-11-212) clearly placed exclusive jurisdiction in the juvenile court as the sole court for initiating an action concerning any child who is alleged to be deprived. Williams v. Davenport, 159 Ga. App. 531, 284 S.E.2d 45 (1981) (decided under former O.C.G.A. § 15-11-5).

Juvenile court had exclusive original jurisdiction over deprivation proceedings, and the juvenile court had the authority to

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order the disposition best suited to the needs of the children, including the transfer of temporary legal custody. In re A.L.L., 211 Ga. App. 767, 440 S.E.2d 517 (1994) (decided under former O.C.G.A. § 15-11-5).

Because the action appealed from involved a deprivation proceeding, and the court's order reflected on the order's face that the order was addressing the alleged deprivation of the child at issue, the juvenile court clearly had subject matter jurisdiction over the deprivation petition. In the Interest of T. L., 269 Ga. App. 842, 605 S.E.2d 432 (2004) (decided under former O.C.G.A. § 15-11-28).

Absent evidence of a custody dispute, a deprivation proceeding was not a pretextual custody battle which divested the juvenile court of the juvenile court's exclusive jurisdiction. In the Interest of D.T., 284 Ga. App. 336, 643 S.E.2d 842 (2007) (decided under former O.C.G.A. § 15-11-28).

Exclusive jurisdiction for two years over children found deprived. — Juvenile Code vests exclusive jurisdiction in the juvenile court for at least two years over matters concerning children whom the juvenile court has duly found to be deprived. West v. Cobb County Dep't of Family & Children Servs., 243 Ga. 425, 254 S.E.2d 373 (1979) (decided under former Code 1933, § 24A-301).

Child was not deprived so as to confer jurisdiction since it was admitted that both grandparental homes were suitable as placements for the child. In re C.F., 199 Ga. App. 858, 406 S.E.2d 279 (1991) (decided under former O.C.G.A. § 15-11-5).

Exclusive original jurisdiction existed in juvenile court. — Because there was a bona fide allegation that a child was deprived, because the issue of permanent custody or modification of the divorce decree had not been transferred to the juvenile court, and because a mother's temporary custody had expired, the juvenile court had authority to exercise the court's exclusive original jurisdiction under former O.C.G.A. § 15-11-28(a)(1)(C) (see now O.C.G.A. §§ 15-11-10, 15-11-11, and 15-11-212); therefore, the habeas court erred in denying the father's petition for relief. Douglas v. Douglas, 285 Ga. 548, 678 S.E.2d 904 (2009) (decided under former O.C.G.A. § 15-11-28).

Juvenile court properly exercised jurisdiction over termination proceedings pursuant to former O.C.G.A. §§ 15-11-28 and 15-11-94 (see now O.C.G.A. §§ 15-11-10, 15-11-11, 15-11-212, 15-11-310, 15-11-311, and 15-11-320) as the petition was filed by the mother, who had already been awarded sole physical custody of the child and as the termination petition dealt specifically with factors relating to the father's inability to provide proper care and support for the child such that the father's parental rights should be terminated. In the Interest of A.R.K.L., 314 Ga. App. 847, 726 S.E.2d 77 (2012) (decided under former O.C.G.A. § 15-11-28).

Juvenile court did not retain jurisdiction. — Although a great aunt and great step-uncle argued that the trial court erred in exercising subject matter jurisdiction in a custody matter at a time when the juvenile court had exclusive original jurisdiction, there was no order of the superior court transferring the petition to the juvenile court, and the jurisdiction obtained during an original deprivation proceeding did not serve to retain such jurisdiction; therefore, the juvenile court did not retain jurisdiction. The complaint for permanent custody filed by the grandmother and the step-grandfather was not in the nature of a deprivation petition. Wiepert v. Stover, 298 Ga. App. 683, 680 S.E.2d 707 (2009), overruled on other grounds, Artson, LLC v. Hudson, 322 Ga. App. 859, 747 S.E.2d 68 (2013).

No transfer hearing required when concurrent jurisdiction. — Transfer hearing is not required when the offense is one over which the juvenile and superior courts have concurrent jurisdiction and the superior court first takes jurisdiction. Lewis v. State, 246 Ga. 101, 268 S.E.2d 915 (1980) (decided under former Code 1933, § 24A-301).

If either the juvenile court or the superior court properly could have exercised jurisdiction, no petition alleging delinquency was ever filed in the juvenile court, and the superior court first took

jurisdiction through indictment, jurisdiction properly vested in the superior court and no transfer hearing pursuant to former O.C.G.A. § 15-11-39 (see now O.C.G.A. §§ 15-11-561, 15-11-563, and 15-11-566) was required. Taylor v. State, 194 Ga. App. 871, 392 S.E.2d 57 (1990) (decided under former O.C.G.A. § 15-11-5).

Jurisdiction in temporary custody matters. — Trial court erred when the court prohibited the Department of Human Resources from placing children with their mother or allowing the children to visit with the mother unsupervised and by staying any decision of a juvenile court that would be contrary to the court's order because, although the trial court and the juvenile court had concurrent jurisdiction over the temporary custody of the children, the juvenile court in the contemporaneous deprivation proceeding had the authority to order the disposition best suited to the needs of the children, including the transfer of temporary legal custody, and the juvenile court had already exercised the court's jurisdiction over the temporary custody of the children in light of the deprivation action; although the trial court expressed the court's concern about the department's decision to recommend that the children be physically placed with the mother, the juvenile court was competent to oversee the department, and there was no good reason for the trial court to conclude that the trial court was in a better position to address the department's placement decisions than the juvenile court. Long v. Long, 303 Ga. App. 215, 692 S.E.2d 811 (2010) (decided under former O.C.G.A. § 15-11-28).

Juvenile court lacked jurisdiction since there was no order of the superior court transferring the issue of custody so as to meet the requirements of subsection (c) of former O.C.G.A. § 15-11-5 (see now O.C.G.A. § 15-11-212). In re C.F., 199 Ga. App. 858, 406 S.E.2d 279 (1991) (decided under former O.C.G.A. § 15-11-5).

Jurisdiction between courts. — Trial court erred when the court prohibited the Department of Human Resources from placing children with their mother or allowing the children to visit with the mother unsupervised and by staying any decision of a juvenile court that would be contrary to the court's order because, although the trial court and the juvenile court had concurrent jurisdiction over the temporary custody of the children, the juvenile court in the contemporaneous deprivation proceeding had the authority to order the disposition best suited to the needs of the children, including the transfer of temporary legal custody, and the juvenile court had already exercised the court's jurisdiction over the temporary custody of the children in light of the deprivation action; although the trial court expressed the court's concern about the department's decision to recommend that the children be physically placed with the mother, the juvenile court was competent to oversee the department, and there was no good reason for the trial court to conclude that the trial court was in a better position to address the department's placement decisions than the juvenile court. Long v. Long, 303 Ga. App. 215, 692 S.E.2d 811 (2010) (decided under former O.C.G.A. § 15-11-55).

Superior court without jurisdiction over habeas corpus petition. — If a juvenile court order entered pursuant to former provisions an disposition of deprived children after notice and hearing was still in effect, the superior court had no jurisdiction of the related habeas corpus petition. West v. Cobb County Dep't of Family & Children Servs., 243 Ga. 425, 254 S.E.2d 373 (1979) (decided under former Code 1933, § 24A-2301).

Adoption

Termination-of-rights petition which seeks adoption of child. — If a petition for termination of the rights of a putative father of an illegitimate child specifically states that it is in pursuance of the petitioners' prospective adoption of the child, the petition is "in connection with adoption proceedings" within the meaning of subparagraph (a)(2)(C) of former O.C.G.A. § 15-11-5 (see now O.C.G.A. §§ 15-11-10, 15-11-11, and 15-11-212). H.C.S. v. Grebel, 253 Ga. 404, 321 S.E.2d 321 (1984) (decided under former O.C.G.A. § 15-11-5); H.C.S. v. Grebel, 172 Ga. App. 819, 325 S.E.2d 925 (1984) (decided under former O.C.G.A. § 15-11-5).

Adoption (Cont'd)

Juvenile court lacked jurisdiction to consider a petition for termination of parental rights because the termination was sought "in connection with" an adoption proceeding. In re B.G.D., 224 Ga. App. 124, 479 S.E.2d 439 (1996) (decided under former O.C.G.A. § 15-11-5).

Termination action in which adoption will be pursued at a later date. — Under former O.C.G.A. § 15-11-28(a)(2)(C) (see now O.C.G.A. §§ 15-11-10, 15-11-11, and 15-11-212), the juvenile court had exclusive original jurisdiction over a child's grandparents' action seeking termination of the child's parents' parental rights. Although the grandparents planned to adopt the child, the grandparents intended to adopt the child under the laws of Florida, where the grandparents lived. In re J. S., 302 Ga. App. 342, 691 S.E.2d 250 (2010) (decided under former O.C.G.A. § 15-11-28).

Matters relating to adoption. — Fact that the natural mother of a child, who sought the termination of the natural father's parental rights, contemplated a possible adoption did not automatically render the proceeding one "in connection with" an adoption. In re D.L.N., 234 Ga. App. 123, 506 S.E.2d 403 (1998) (decided under former O.C.G.A. § 15-11-5).

Trial court did not err in concluding that the court had jurisdiction over an adoption and termination of parental rights proceeding as statutory law granted the trial court jurisdiction over adoption proceedings and other proceedings that were not granted exclusively to the juvenile courts; since the juvenile courts were granted exclusive jurisdiction over deprivation proceedings, those types of matters were to be heard by the juvenile courts, but the trial court had the authority to hear adoption and other matters, such as the adoptive parents' adoption petition filed to adopt the biological parents' minor child. Snyder v. Carter, 276 Ga. App. 426, 623 S.E.2d 241 (2005) (decided under former O.C.G.A. § 15-11-28).

Court lacked jurisdiction in adoption. — Georgia superior court erred by ordering a father's parental rights terminated and granting a couple's petition for adoption because the court lacked jurisdiction in the case since adoption had already commenced via a deprivation proceeding in a Georgia juvenile court; thus, the juvenile court should have presided over the termination proceeding. Alizota v. Stanfield, 319 Ga. App. 256, 734 S.E.2d 497 (2012) (decided under former O.C.G.A. § 15-11-28).

Jurisdiction of adoption while deprivation proceeding pending. — Superior court has exclusive jurisdiction in adoption matters and had jurisdiction to entertain an adoption petition notwithstanding the pendency of deprivation proceedings in the juvenile court involving the same child. Edgar v. Shave, 205 Ga. App. 337, 422 S.E.2d 234 (1992) (decided under former O.C.G.A. § 15-11-34).

Criminal Matters

Purpose of division of juvenile trials into two phases. — In dividing juvenile trials into two phases, lawmakers intended to give the juvenile judge an opportunity to conduct the "functional equivalent" of a regular trial (the adjudicatory hearing) in a manner which would satisfy the required constitutional procedures concomitant with the usual legal rules, such as those dealing with admissibility of evidence, proof beyond a reasonable doubt, and similar requirements applicable to adults. Thereafter, at the dispositional phase, the judge was to explore all available additional avenues, including psychiatric and sociological studies, which would enable the judge to provide a solution for the youngster and the family aimed at making the child a secure law-abiding member of society. D.C.A. v. State, 135 Ga. App. 234, 217 S.E.2d 470 (1975) (decided under former Code 1933, § 24A-2301).

Juvenile subject to criminal adjudication when case transferred to superior court. — Juvenile whose case is properly transferred to the superior court is subject to the criminal sanctions which may be imposed in that court. Thus, an adjudication of guilt of a juvenile in superior court is a criminal adjudication. Carrindine v. Ricketts, 236 Ga. 283, 223 S.E.2d 627 (1976) (decided under former Code 1933, § 24A-301).

Confinement implies juvenile in need of supervision, correction, and training. — Confinement necessarily deprives the parents of their prima facie prerogative of training and supervision, and implies that the juvenile is, within the terms of the juvenile law, one who is in need of supervision beyond the control of the parents and in need of correction and training which the parents cannot provide. Young v. State, 120 Ga. App. 605, 171 S.E.2d 756 (1969) (decided under former Code 1933, § 24A-301).

Violation of probation. — Although the violation of probation may constitute a "delinquent act" in and of itself, a violation of probation which occurs after the juvenile's 17th birthday will not authorize the initiation of a new delinquency petition against the juvenile. The juvenile court's jurisdiction would extend only to revoking the juvenile's probation for the juvenile's previous adjudication of delinquency. In re B.S.L., 200 Ga. App. 170, 407 S.E.2d 123 (1991) (decided under former O.C.G.A. § 15-11-5).

Application

Sufficient evidence of deprivation. — Evidence was sufficient to permit the juvenile court to find clear and convincing evidence of the child's deprivation and that the child's parent's misconduct or inability to care for the child's needs resulted in abuse or neglect sufficient to render the parent unfit to retain custody. In re C.N., 231 Ga. App. 639, 500 S.E.2d 400 (1998) (decided under former O.C.G.A. § 15-11-34).

Since the evidence in the record showed that the child had been subjected to numerous medical examinations for sexual abuse at the mother's behest, in an apparent effort to frustrate or foreclose the father's right of visitation, and she persisted in having the child examined for possible sexual abuse, the juvenile court did not abuse the court's discretion in finding that: (1) such examinations were so numerous as to be psychologically harmful to the child; and (2) the circumstances under which future examinations might proceed were to be limited. In the Interest of M.E., 265 Ga. App. 412, 593 S.E.2d 924 (2004) (decided under former O.C.G.A. § 15-11-55).

Juvenile court's order finding a one-year-old child to be deprived was upheld on appeal as clear and convincing evidence existed that: (1) one parent suffered from a psychological disorder, which was not controlled by medication, and caused that parent to have delusions; and (2) the other parent, knowing the aforementioned condition of the first parent, left the child in that parent's care. In the Interest of M.D., 283 Ga. App. 805, 642 S.E.2d 863 (2007) (decided under former O.C.G.A. § 15-11-55).

Given the judicial notice taken by the juvenile judge who entered a prior deprivation finding against a parent's older two children, and the presumption of correctness that attached to those findings, as the pleadings and evidence from those proceedings were not included in the appellate record, sufficient evidence supported the court's deprivation finding involving the parent's youngest child. In the Interest of A.B., 285 Ga. App. 288, 645 S.E.2d 716 (2007) (decided under former O.C.G.A. § 15-11-55).

Adequate care from grandparent does not inhibit deprivation by parent. — Juvenile court properly focused on the subject parent's abandonment of the child in support of the court's deprivation finding and not on the adequate level of care given by the child's maternal grandparent when making a deprivation finding. Moreover, the state showed that the parent was incapable of caring for any child, let alone a premature infant with special medical needs. In the Interest of A.B., 289 Ga. App. 655, 658 S.E.2d 205 (2008) (decided under former O.C.G.A. § 15-11-55).

Abuse by stepparent resulted in deprivation by parent. — In a mother's appeal of a juvenile court's declaration that a child was deprived, the juvenile court did not abuse the court's discretion in making that conclusion based on the sexual abuse of the child by the stepfather because the record established by clear and convincing evidence that the mother did not fully appreciate all that had to be done to protect the child and the child was minimizing the abuse and masking the

Application (Cont'd)

continuing emotional impact of the experience due to psychological pressure from the mother. In the Interest of A. P., 299 Ga. App. 886, 684 S.E.2d 22 (2009) (decided under former O.C.G.A. § 15-11-55).

Custody with department following finding of deprivation. — Record supported the juvenile court's judgment that a parent did not fulfill the terms of a case plan that was established by the Department of Family and Children's Services because the parent continued using cocaine and refused to attend substance abuse treatment; thus, the child was deprived and custody was properly placed in the department. In the Interest of J.L., 269 Ga. App. 226, 603 S.E.2d 742 (2004) (decided under former O.C.G.A. § 15-11-55).

Custody with department only suspends parental right of custody. — Removal of custody of the child from the parents is a determination that, for whatever length of time custody is exercised by the Department of Family and Children Services, this right has been suspended, although not finally terminated. Rodgers v. Department of Human Resources, 157 Ga. App. 235, 276 S.E.2d 902 (1981) (decided under former Code 1933, § 24A-2301).

Actions by department not action of district attorney. — When the Department of Family and Children Services, acting as the legal custodian of a child, declines to permit a pretrial witness interview, that action is not the action of a party to the suit, i.e., the district attorney's office. Pendergrass v. State, 168 Ga. App. 190, 308 S.E.2d 585 (1983) (decided under former O.C.G.A. § 15-11-34).

Order requiring compulsory school attendance affirmed. — In re D.H., 178 Ga. App. 119, 342 S.E.2d 367 (1986) (decided under former O.C.G.A. § 15-11-34).

Provision for transfer of child to mother not required. — Juvenile court was not required to include a provision for transfer of a child back to the child's mother after the child was found to be deprived under former O.C.G.A. § 15-11-55(a)(1) (see now O.C.G.A. § 15-11-212) as the child remained in the custody of the father, who lived in another state. In the Interest of K.J., 268 Ga. App. 843, 602 S.E.2d 861 (2004) (decided under former O.C.G.A. § 15-11-55).

Insufficient evidence of deprivation. — Juvenile court's finding of deprivation was in error because there was no evidence presented at the hearing to support the court's finding. In the court's dispositional order, the juvenile court made no specific factual findings that the child was deprived as to the father, but merely listed reasons as to why the court was declining to transfer custody to the father and stated that the court found the child deprived as to the father due to the child's current needs and welfare, a finding which was not supported by any evidence. In the Interest of L. A., 322 Ga. App. 94, 744 S.E.2d 88 (2013) (decided under former O.C.G.A. § 15-11-55).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, § 24A-301, pre-2000 Code Section 15-11-5 and pre-2014 Code Section 15-11-28, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

No conflict with jurisdictional grant over adoptions to superior courts. — Jurisdiction of superior courts over adoptions does not conflict with the general grant of "exclusive original jurisdiction over juvenile matters" to the juvenile courts. 1976 Op. Att'y Gen. No. U76-15 (decided under former Code 1933, § 24A-301).

Superior court may terminate parent-child relationship only with adoption. — Although both superior and juvenile courts have jurisdiction to terminate the parent-child relationship, the superior court may do so only in conjunction with an adoption proceeding which has been filed in that court; the juvenile court remains the sole court for initiating a

parental termination proceeding if there is no concomitant adoption proceeding in process. 1977 Op. Att'y Gen. No. U77-52 (decided under former Code 1933, § 24A-301).

Jurisdiction of superior courts not affected by interstate compact on juveniles. — No provision of the interstate compact on juveniles has any effect on the jurisdiction and authority of superior courts over matters of adoption. 1976 Op. Att'y Gen. No. U76-15 (decided under former Code 1933, § 24A-301).

Uniform Reciprocal Enforcement of Support Act proceedings. — Superior court may not transfer a Uniform Reciprocal Enforcement of Support Act, O.C.G.A. § 19-11-40 et seq., proceeding to a juvenile court. 1989 Op. Att'y Gen. No. U89-7 (decided under former O.C.G.A. § 15-11-5).

Paternity questions. — Since no provision would permit the transfer of paternity questions to a juvenile court, no case in which paternity is involved may be transferred by a superior court to a juvenile court. 1989 Op. Att'y Gen. No. U89-7 (decided under former O.C.G.A. § 15-11-5).

RESEARCH REFERENCES

Am. Jur. 2d. — 42 Am. Jur. 2d, Infants, §§ 27 et seq., 50.

47 Am. Jur. 2d, Juvenile Courts and Delinquent and Dependent Children, §§ 7, 39 et seq., 50 et seq., 66 et seq., 110 et seq.

C.J.S. — 43 C.J.S., Infants, §§ 18, 180 et seq., 373 et seq. 67A C.J.S., Parent and Child, §§ 63 et seq., 99 et seq., 122 et seq., 378 et seq.

U.L.A. — Uniform Juvenile Court Act (U.L.A.) §§ 3, 4, 30

ALR. — Constitutionality of statute as affected by discrimination in punishments for same offense based upon age, color, or sex, 3 A.L.R. 1614; 8 A.L.R. 854.

Jurisdiction of another court over child as affected by assumption of jurisdiction by juvenile court, 11 A.L.R. 147; 78 A.L.R. 317; 146 A.L.R. 1153.

What constitutes delinquency or incorrigibility, justifying commitment of infant, 45 A.L.R. 1533; 85 A.L.R. 1099.

Power of juvenile court to exercise continuing jurisdiction over infant delinquent or offender, 76 A.L.R. 657.

Enlistment or mustering of minors into military service, 137 A.L.R. 1467; 147 A.L.R. 1311; 148 A.L.R. 1388; 149 A.L.R. 1457; 150 A.L.R. 1420; 151 A.L.R. 1455; 151 A.L.R. 1456; 152 A.L.R. 1452; 153 A.L.R. 1420; 153 A.L.R. 1422; 154 A.L.R. 1448; 155 A.L.R. 1451; 155 A.L.R. 1452; 156 A.L.R. 1450; 157 A.L.R. 1449; 157 A.L.R. 1450; 158 A.L.R. 1450.

Marriage as affecting jurisdiction of juvenile court over delinquent or dependent, 14 A.L.R.2d 336.

Homicide by juvenile as within jurisdiction of a juvenile court, 48 A.L.R.2d 663.

Age of child at time of alleged offense or delinquency, or at time of legal proceedings, as criterion of jurisdiction of juvenile court, 89 A.L.R.2d 506.

Parent's involuntary confinement, for failure to care for child as result thereof, as evincing neglect, unfitness, or the like in dependency or divestiture proceeding, 79 A.L.R.3d 417.

Right of indigent parent to appointed counsel in proceeding for involuntary termination of parental rights, 80 A.L.R.3d 1141.

Authority of court to order juvenile delinquent incarcerated in adult penal institution, 95 A.L.R.3d 568.

Applicability of double jeopardy to juvenile court proceedings, 5 A.L.R.4th 234.

Jurisdiction or power of juvenile court to order parent of juvenile to make restitution for juvenile's offense, 66 A.L.R.4th 985.

15-11-213. Disposition orders; considerations.

Any order of disposition shall contain written findings of fact to support the disposition and case plan ordered. Before making an order of disposition, the court shall consider the following:

(1) Why the best interests and safety of a child adjudicated as a dependent child are served by the disposition and case plan ordered, including but not limited to:

(A) The interaction and interrelationship of such child with his or her parent, siblings, and any other person who may significantly affect the child's best interests;

(B) Such child's adjustment to his or her home, school, and community;

(C) The mental and physical health of all individuals involved;

(D) The wishes of such child as to his or her placement;

(E) The wishes of such child's parent, guardian, or legal custodian as to such child's custody;

(F) Whether there exists a relative of such child or other individual who, after study by DFCS, is found to be qualified to receive and care for such child; and

(G) The ability of a parent, guardian, or legal custodian of a child adjudicated as a dependent child to care for such child in the home so that no harm will result to such child;

(2) The availability of services recommended in the case plan;

(3) What alternative dispositions or services under the case plan were considered by the court and why such dispositions or services were not appropriate in the instant case;

(4) The appropriateness of the particular placement made or to be made by the placing agency; and

(5) Whether reasonable efforts were made to prevent or eliminate the necessity of a child adjudicated as a dependent child's removal and to reunify his or her family after removal from the custody of his or her family unless reasonable efforts were not required. The court's findings should include a brief description of what preventive and reunification efforts were made and why further efforts could not have prevented or eliminated the necessity of such removal.

History. — Code 1981, § 15-11-213, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

JUDICIAL DECISIONS

Juvenile court required to determine what is in child's best interest. — In a dependency case, sua sponte order dismissing the proceeding was vacated because the juvenile court failed to make proper resolution of the dependency petition as the juvenile court was required to determine what was in the child's best

interest. In the Interest of A. L. S., 350 Ga. App. 636, 829 S.E.2d 900 (2019).

15-11-214. Duration of disposition orders.

(a) An order of disposition in a dependency proceeding shall continue in force until the purposes of the order have been accomplished.

(b) The court may terminate an order of disposition of a child adjudicated as a dependent child on or without an application of a party if it appears to the court that the purposes of the order have been accomplished.

(c) When a child adjudicated as a dependent child reaches 18 years of age, all orders in connection with dependency proceedings affecting him or her then in force terminate and he or she shall be discharged from further obligation or control.

History. — Code 1981, § 15-11-214, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242; Ga. L. 2018, p. 927, § 1-4/HB 906.

The 2018 amendment, effective July 1, 2020, substituted the present provisions of subsection (c) for the former provisions, which read: "Unless a child remains in DFCS care or continues to receive services from DFCS, when a child adjudicated as a dependent child reaches 18 years of age, all orders affecting him or her then in force terminate and he or she shall be discharged from further obligation or control."

Cross references. — Age of legal majority, § 39-1-1.

JUDICIAL DECISIONS

Inconvenient forum. — In a child custody case in which the children had been removed from their Georgia mother's custody and had lived in Florida with their father for more than two years and most of the witnesses lived outside of Georgia, the juvenile court erred in dismissing the mother's petition for custody based on inconvenient forum without making specific findings demonstrating its consideration of all of the factors in O.C.G.A. § 19-9-67(b)(1) through (8). Further, the case should be stayed, not dismissed. In the Interest of A. L., 351 Ga. App. 824, 833 S.E.2d 296 (2019).

15-11-215. (For effective date, see note.) Notice of change in placement hearings; presumptions.

(a) Not less than five days in advance of any placement change, DFCS shall, in writing, notify the court, a child who is 14 years of age or older, the child's parent, guardian, or legal custodian, the person or agency with physical custody of the child, the child's attorney, the child's guardian ad litem, if any, and any other attorney of record of such change in the location of the child's placement while the child is in DFCS custody. The notice required by this subsection may include notice via email if the caregiver or other party who will receive the notification has agreed to receive notice via email.

(b) If a child's health or welfare may be endangered by any delay in changing his or her placement, the court and all attorneys of record shall be notified of such placement change within 24 hours of such change.

(c) A child adjudicated as a dependent child who is 14 years of age or older, his or her parent, guardian, or legal custodian, the person or agency with physical custody of the child, such child's attorney, such child's guardian ad litem, if any, and any attorney of record may request a hearing pertaining to such child's case plan or the permanency plan in order for the court to consider the change in the location of such child's placement and any changes to the case plan or permanency plan resulting from such child's change in placement location. The hearing shall be held within five days of receiving notice of a change in the location of such child's placement and prior to any such placement change, unless such child's health or welfare may be endangered by any delay in changing such child's placement.

(d) The Council of Juvenile Court Judges shall by rule provide for methods by which persons entitled to notice, including those not represented by counsel, may electronically file an objection to the placement change. Such rule shall provide for the use of a standard form that the objector may file electronically with the clerk of court and which upon filing shall be distributed electronically to all parties and others entitled to notice.

(e) At the hearing to consider a child adjudicated as a dependent child's case plan and permanency plan, the court shall consider the case plan and permanency plan recommendations made by DFCS, including a recommendation as to the location of the placement of such child, and shall make findings of fact upon which the court relied in determining to reject or accept the case plan or permanency plan and the recommendations made by DFCS, including the location of such child's placement. The court shall specifically consider any objections filed to the change of placement and shall consider evidence pertaining to such objections, including, but not limited to, evidence from the child and the foster parent, relative, or caregiver.

(f) If the court rejects DFCS recommendations, the court shall demonstrate that DFCS recommendations were considered and explain why it did not follow such recommendations. If the court rejects the DFCS case plan and permanency plan recommendations, including the change in the location of the placement of a child adjudicated as a dependent child, the court may order DFCS to devise a new case plan and permanency plan recommendation, including a new recommendation as to the location of such child within the resources of the department, or make any other order relative to placement or custody outside the department as the court finds to be in the best interests of

such child and consistent with the policy that children in DFCS custody should have stable placements.

(g) If the court finds that the child has been living in a stable home environment with his or her current caregivers for the past 12 months and that removal of the child from such caregivers would be detrimental to the child's emotional well-being, the court may presume that continuation of the child's placement with his or her current caregivers is in the child's best interests and shall enter a finding that a change of placement is a failure by DFCS to make reasonable efforts to finalize the permanency plan which is in effect at the time of the hearing.

(h) Placement or a change of legal custody by the court outside DFCS shall relieve DFCS of further responsibility for a child adjudicated as a dependent child except for any provision of services ordered by the court to ensure the continuation of reunification services to such child's family when appropriate.

(i) A placement change shall not include a temporary absence from the child's identified and ongoing foster care placement, including, but not limited to, visitation with a friend, sibling, relative, or other caretaker, including a preplacement visit to a possible foster or adoptive placement; hospitalization for medical, acute psychiatric episodes or diagnosis; respite care when the child is expected to return to his or her foster care placement; day or overnight camp; temporary travel with the foster family or child care institution personnel, church, school, or other persons or groups approved by DFCS; trial home visits with the court's permission, if required by subsection (b) of Code Section 15-11-212; and runaway episodes.

History. — Code 1981, § 15-11-215, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242; Ga. L. 2015, p. 552, § 15/SB 138; Ga. L. 2019, p. 456, § 3/SB 167; Ga. L. 2020, p. 241, § 2/SB 439.

Delayed effective date. — This Code section, as set out above, is effective January 1, 2021. For version of this Code section in effect until January 1, 2021, see the 2020 amendment note.

The 2019 amendment, effective July 1, 2019, added present subsection (f) and redesignated former subsections (f) and (g) as present subsections (g) and (h), respectively.

The 2020 amendment, effective January 1, 2021, in subsection (a), inserted ", in writing," in the first sentence and added the second sentence; added subsection (d); redesignated former subsections (d) through (h) as present subsections (e) through (i), respectively; added the second sentence to subsection (e); and substituted "preplacement" for "pre-placement" in the middle of subsection (i).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 24A-2301, pre-2000 Code Section 15-11-34, and pre-2014 Code Section 15-11-55, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the

annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Jurisdiction between courts. — Trial court erred when the court prohibited the Department of Human Resources from placing children with their mother or allowing the children to visit with the mother unsupervised and by staying any decision of a juvenile court that would be contrary to the court's order because, although the trial court and the juvenile court had concurrent jurisdiction over the temporary custody of the children, the juvenile court in the contemporaneous deprivation proceeding had the authority to order the disposition best suited to the needs of the children, including the transfer of temporary legal custody, and the juvenile court had already exercised the court's jurisdiction over the temporary custody of the children in light of the deprivation action; although the trial court expressed the court's concern about the department's decision to recommend that the children be physically placed with the mother, the juvenile court was competent to oversee the department, and there was no good reason for the trial court to conclude that the trial court was in a better position to address the department's placement decisions than the juvenile court. Long v. Long, 303 Ga. App. 215, 692 S.E.2d 811 (2010) (decided under former O.C.G.A. § 15-11-55).

No equal protection violation. — Treating deprived children who were placed in the legal custody of the Department of Families and Children Services because there was no relative committed to the child who was available for immediate placement differently from deprived children who did have a committed parent or guardian available for immediate placement did not violate the equal protection clause or Ga. Const. 1983, Art. I, Sec. I, Para. II. as the classes were not similarly situated and the laws were rationally related to the goal of minimizing government intervention while ensuring that children were reared in a familial environment. In the Interest of A.N., 281 Ga. 58, 636 S.E.2d 496 (2006) (decided under former O.C.G.A. § 15-11-55).

In a deprivation proceeding, the department of family and child services did not violate equal protection by requiring the parents to pay part of the costs for services mandated under their case plan. The department was not drawing a distinction between similarly situated parties in that a parent who could afford to contribute financially was not similarly situated to one who could not afford to do so; moreover, even if the parents were similarly situated to others who were not required to pay for a portion of services, the goals served by the contribution requirement of requiring parents to take responsibility for conduct that harmed their children and of increasing the likelihood of success for family reunification represented legitimate governmental purposes. In the Interest of P.N., 291 Ga. App. 512, 662 S.E.2d 287 (2008) (decided under former O.C.G.A. § 15-11-55).

Determination that deprivation proceeding was not custody dispute. — Because the pleadings established that a deprivation petition was properly filed and factually supported, and due to the presence of unchallenged, valid allegations of deprivation, the deprivation proceeding was not a disguised custody matter; accordingly, the juvenile court properly exercised the court's jurisdiction over the proceeding. In the Interest of K.L.H., 281 Ga. App. 394, 636 S.E.2d 117 (2006) (decided under former O.C.G.A. § 15-11-55).

Purpose of division of juvenile trials into two phases. — In dividing juvenile trials into two phases, lawmakers intended to give the juvenile judge an opportunity to conduct the "functional equivalent" of a regular trial (the adjudicatory hearing) in a manner which would satisfy the required constitutional procedures concomitant with the usual legal rules, such as those dealing with admissibility of evidence, proof beyond a reasonable doubt, and similar requirements applicable to adults. Thereafter, at the dispositional phase, the judge was to explore all available additional avenues, including psychiatric and sociological studies, which would enable the judge to provide a solution for the youngster and the family aimed at making the child a secure law-abiding member of society.

D.C.A. v. State, 135 Ga. App. 234, 217 S.E.2d 470 (1975) (decided under former Code 1933, § 24A-2301).

Jurisdiction of adoption while deprivation proceeding pending. — Superior court has exclusive jurisdiction in adoption matters and had jurisdiction to entertain an adoption petition notwithstanding the pendency of deprivation proceedings in the juvenile court involving the same child. Edgar v. Shave, 205 Ga. App. 337, 422 S.E.2d 234 (1992) (decided under former O.C.G.A. § 15-11-34).

Authority of juvenile courts to transfer legal custody. — Juvenile court had exclusive original jurisdiction over deprivation proceedings, and the juvenile court had the authority to order the disposition best suited to the needs of the children including the transfer of temporary legal custody. In re A.L.L., 211 Ga. App. 767, 440 S.E.2d 517 (1994) (decided under former O.C.G.A. § 15-11-34).

Juvenile court erred in awarding custody of a child to the father even after finding that the child was not deprived because according to a plain reading of former O.C.G.A. § 15-11-55(a)(2) (see now O.C.G.A. §§ 15-11-211 and 15-11-212), the juvenile court was without authority to transfer custody of the child to the father and paternal grandmother; while under former O.C.G.A. § 15-11-28(c)(1) (see now O.C.G.A. § 15-11-11) the juvenile court had concurrent jurisdiction to hear and determine the issue of custody and support when the issue was transferred by proper order of the superior court, no such order existed in the record, and instead, the juvenile court specifically found that the child was not deprived. In re T.S., 310 Ga. App. 100, 712 S.E.2d 121 (2011) (decided under former O.C.G.A. § 15-11-55).

No need to repeat evidence already presented during adjudicatory portion. — There is no error in refusing to have the dispositional phase include a repetition of the same evidence and witnesses previously presented during the adjudicatory portion. D.C.A. v. State, 135 Ga. App. 234, 217 S.E.2d 470 (1975) (decided under former Code 1933, § 24A-2301).

Notice of change in placement sufficient given previous discussions. — As the adoption of a permanency plan and placement of a child with the paternal grandparents had already been discussed at a hearing held at the child advocate's request, the advocate was not prejudiced by the department of family and children services' failure to provide the advocate with five days' notice of a change in the child's placement as required by former O.C.G.A. § 15-11-55(d) (see now O.C.G.A. § 15-11-215). In the Interest of N. W., 309 Ga. App. 617, 710 S.E.2d 832 (2011) (decided under former O.C.G.A. § 15-11-55).

Standard of proof for finding deprivation. — If deprivation forms the predicate upon which a third party seeks a temporary transfer of the child's legal custody, in order to support such a disposition the child must first be adjudicated to be a deprived child. By statute, that finding of deprivation must be made by "clear and convincing evidence." In re J.C.P., 167 Ga. App. 572, 307 S.E.2d 1 (1983), but see In re A.W., 240 Ga. App. 259, 523 S.E.2d 88 (1999) (decided under former O.C.G.A. § 15-11-34).

No habeas corpus if court enters orders. — Habeas corpus will not lie if the juvenile court, after notice and hearing, enters an order pursuant to former provisions an disposition of deprived children. Chaffins v. Lowndes County Dep't of Family & Children Servs., 243 Ga. 528, 255 S.E.2d 360 (1979) (decided under former Code 1933, § 24A-2301).

Consideration of parent's behavior at hearing. — Consideration by a juvenile court of a noncustodial parent's behavior in a hearing to determine the need for continuing the temporary suspension of custody does not deprive a noncustodial parent of due process. In re A.S., 185 Ga. App. 11, 363 S.E.2d 325 (1987) (decided under former O.C.G.A. § 15-11-34).

Recommendations by juvenile court. — Juvenile court does not exceed the court's authority in a hearing to determine the need for continuing the temporary suspension of custody by making recommendations as to the placement, care, and supervision of a child. In re A.S., 185 Ga. App. 11, 363 S.E.2d 325 (1987) (decided under former O.C.G.A. § 15-11-34).

If a juvenile court's finding as to custody

is in the nature of a recommendation to the superior court, the custody issue remains pending below and is not before the appellate court on appeal. In the Interest of M.E., 265 Ga. App. 412, 593 S.E.2d 924 (2004) (decided under former O.C.G.A. § 15-11-55).

RESEARCH REFERENCES

Am. Jur. 2d. — 42 Am. Jur. 2d, Infants, § 50. 47 Am. Jur. 2d, Juvenile Courts and Delinquent and Dependent Children, §§ 7, 50 et seq., 56 et seq., 110.

C.J.S. — 43 C.J.S., Infants, § 226 et seq. 67A C.J.S., Parent and Child, §§ 63 et seq., 378 et seq.

U.L.A. — Uniform Juvenile Court Act (U.L.A.) § 30.

ALR. — Right of indigent parent to appointed counsel in proceeding for involuntary termination of parental rights, 80 A.L.R.3d 1141.

15-11-216. Periodic review hearing; required evidence.

(a) All cases of children in DFCS custody shall be initially reviewed within 75 days following a child adjudicated as a dependent child's removal from his or her home and shall be conducted by the court. An additional periodic review shall be held within four months following the initial review and shall be conducted by the court or by judicial citizen review panels established by the court, as the court directs, meeting such standards and using such procedures as are established by court rule by the Supreme Court, with the advice and consent of the Council of Juvenile Court Judges. The court shall have the discretion to schedule any subsequent review hearings as necessary.

(b) At any periodic review hearing, the paramount concern shall be a child adjudicated as a dependent child's health and safety.

(c) At the initial 75 day periodic review, the court shall approve the completion of the relative search, schedule the subsequent four-month review to be conducted by the court or a judicial citizen review panel, and shall determine:

(1) Whether a child adjudicated as a dependent child continues to be a dependent child;

(2) Whether the existing case plan is still the best case plan for such child and his or her family and whether any changes need to be made to the case plan, including whether a concurrent case plan for nonreunification is appropriate;

(3) The extent of compliance with the case plan by all participants;

(4) The appropriateness of any recommended changes to such child's placement;

(5) Whether appropriate progress is being made on the permanency plan;

(6) Whether all legally required services are being provided to a child adjudicated as a dependent child, his or her foster parents if there are foster parents, and his or her parent, guardian, or legal custodian;

(7) Whether visitation is appropriate and, if so, approve and establish a reasonable visitation schedule consistent with the age and developmental needs of a child adjudicated as a dependent child;

(8) Whether, for a child adjudicated as a dependent child who is 14 years of age or older, the services needed to assist such child to make a transition from foster care to independent living are being provided; and

(9) Whether reasonable efforts continue to be made to prevent or eliminate the necessity of such child's removal from his or her home and to reunify the family after removal of a child adjudicated as a dependent child, unless reasonable efforts were not required.

(d) If at any review subsequent to the initial 75 day review the court finds that there is a lack of substantial progress towards completion of the case plan, the court shall order DFCS to develop a case plan for nonreunification or a concurrent case plan contemplating nonreunification.

(d.1) At each review hearing held with respect to a child who remains placed in a qualified residential treatment program, the department shall submit evidence documenting that:

(1) Ongoing assessment of the strengths and needs of the child continues to support the determination that the needs of the child cannot be met through placement in a foster family home;

(2) Placement in a qualified residential treatment program provides the most effective and appropriate level of care for the child in the least restrictive environment;

(3) Placement in a qualified residential treatment program is consistent with the short-term and long-term goals for the child, as specified in the permanency plan for the child;

(4) The specific treatment or service needs that will be met for the child in the placement and the length of time the child is expected to need the treatment or services; and

(5) The efforts made by the department to prepare the child to return home or to be placed with a fit and willing relative, a legal guardian, or an adoptive parent, or in a foster family home.

(e) At the time of each review of a child adjudicated as a dependent child in DFCS custody, DFCS shall notify the court whether and when it intends to proceed with the termination of parental rights.

History. — Code 1981, § 15-11-216, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242; Ga. L. 2014, p. 780, § 1-15/SB 364; Ga. L. 2019, p. 893, § 4/SB 225; Ga. L. 2020, p. 493, § 15/SB 429.

The 2019 amendment, effective May 7, 2019, added subsection (d.1).

The 2020 amendment, effective July 29, 2020, part of an Act to revise, modernize, and correct the Code, substituted "short-term and long-term" for "short- and long-term" in paragraph (d.1)(3).

15-11-217. Periodic review by judicial citizen review panel.

(a) In the event the periodic review of a case is conducted by a judicial citizen review panel, the panel shall transmit its report and that of DFCS, including its findings and recommendations together with DFCS proposed revised plan for reunification or other permanency plan, if necessary, to the court and the parent within five days after the review.

(b) DFCS shall provide the caregiver of a child adjudicated as a dependent child, his or her foster parents if there are foster parents, and any preadoptive parents or relatives providing care for such child with a copy of those portions of the report of the judicial citizen review panel that involve the recommended permanency goal and the recommended services to be provided to such child.

(c) Any party may request a hearing on the proposed revised plan in writing within five days after receiving a copy of the plan.

(d) If no hearing is requested or scheduled by the court on its own motion, the court shall review the proposed revised plan and enter a supplemental order incorporating the revised plan as part of its disposition in the case. In the event that a hearing is held, the court shall, after hearing evidence, enter a supplemental order incorporating all elements that the court finds essential in the proposed revised plan.

(e) Notwithstanding subsections (c) and (d) of this Code section, if the judicial citizen review panel finds that there is a lack of substantial progress towards completion of the case plan, the court shall schedule a hearing within 30 days of such finding to determine whether a case plan for nonreunification is appropriate.

(f) If the judicial citizen review panel determines that a parent of a child adjudicated as a dependent child has unjustifiably failed to comply with the ordered plan designed to reunite such child's family and that such failure is significant enough to warrant consideration of the parent's termination of parental rights, the panel may make a recommendation to DFCS and the attorney for such child that a petition for termination of parental rights should be prepared.

History. — Code 1981, § 15-11-217, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

15-11-218. Content of orders following periodic review hearings or reports by judicial citizen review panels.

(a) At the conclusion of a periodic review hearing, or upon review of a report by a judicial citizen review panel, the court shall issue written findings of fact that include:

(1) Why a child adjudicated as a dependent child continues to be a dependent child;

(2) Whether the existing case plan is still the best case plan for a child adjudicated as a dependent child and his or her family and whether any changes need to be made to the case plan including whether a concurrent case plan for nonreunification is appropriate;

(3) The extent of compliance with the case plan by all participants;

(4) The basis for any changes to the placement of a child adjudicated as a dependent child;

(5) Whether visitation is or continues to be appropriate;

(6) A description of progress being made on the permanency plan;

(7) Whether all legally required services are being provided to a child adjudicated as a dependent child, his or her foster parents if there are foster parents, and his or her parent, guardian, or legal custodian;

(8) Whether, for a child adjudicated as a dependent child who is 14 years of age or older, the services needed to assist such child to make a transition from foster care to independent living are being provided; and

(9) Whether reasonable efforts continue to be made to prevent or eliminate the necessity of the removal of a child adjudicated as a dependent child and to reunify his or her family after removal, unless reasonable efforts were not required.

(b) At the conclusion of a periodic review hearing, or upon review of a report by a judicial citizen review panel, the court shall order one of the following dispositions:

(1) Return a child adjudicated as a dependent child to his or her parent, guardian, or legal custodian's home with or without court imposed conditions;

(2) Allow a child adjudicated as a dependent child to continue in the current custodial placement because the current placement is appropriate for such child's needs;

(3) Allow a child adjudicated as a dependent child to continue in the current custodial placement although the current placement is no longer appropriate for such child's needs and direct DFCS to devise another plan which shall:

(A) Be submitted within ten days for court approval;

(B) Be furnished to all parties after court approval of the revised plan; and

(C) Be provided to the caregiver of a child adjudicated as a dependent child, his or her foster parents if there are foster parents, and any preadoptive parents or relative providing care for such child with a copy of those portions of the court approved revised plan that involve the permanency goal and the services to be provided to such child; or

(4) Make additional orders regarding the treatment plan or placement of a child adjudicated as a dependent child to protect such child's best interests if the court determines DFCS has failed in implementing any material provision of the case plan or abused its discretion in the placement or proposed placement of such child.

History. — Code 1981, § 15-11-218, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

15-11-219. Required findings for qualified residential treatment program admittance; assessment procedures; writing requirement.

(a) Before a child's placement in a qualified residential treatment program, but no later than 30 days following the start of such placement, a qualified individual shall:

(1) Assess the strengths and needs of the child using an age-appropriate, evidence based, validated, functional assessment tool;

(2) Determine whether the needs of the child can be met with family members or through placement in a foster family home or, if not, which DFCS approved authorized setting would provide the most effective and appropriate level of care for the child in the least restrictive environment and be consistent with the short-term and long-term goals for the child, as specified in the permanency plan for the child; and

(3) Develop a list of child-specific short-term and long-term mental and behavioral health goals.

(b) The qualified individual conducting the assessment shall work in conjunction with the family and permanency team for the child while conducting and making the assessment.

(c) If the qualified individual conducting the assessment determines the child should not be placed in a foster family home, the qualified individual shall specify in writing:

(1) The reasons why the needs of the child cannot be met by the family of the child or in a foster family home. A shortage or lack of foster family homes shall not be an acceptable reason for determining that the needs of the child cannot be met in a foster family home; and

(2) Why the recommended placement in a qualified residential treatment program is the setting that will provide the child with the most effective and appropriate level of care in the least restrictive environment and how that placement is consistent with the short-term and long-term goals for the child, as specified in the permanency plan for the child.

History. — Code 1981, § 15-11-219, enacted by Ga. L. 2019, p. 893, § 5/SB 225; Ga. L. 2020, p. 493, § 15/SB 429.

Effective date. — This Code section became effective May 7, 2019.

The 2020 amendment, effective July 29, 2020, part of an Act to revise, modernize, and correct the Code, substituted "evidence based" for "evidence-based" in paragraph (a)(1); and substituted "short-term and long-term" for "short- and long-term" in paragraphs (a)(2), (a)(3), and (c)(2).

15-11-220. Required findings after placement in qualified residential treatment program; documentation.

(a) Within 60 days of the start of a child's placement in a qualified residential treatment program, the court must:

(1) Consider the assessment required by Code Section 15-11-219 determination, and documentation made by the qualified individual in approving the placement;

(2) Determine whether the needs of the child can be met through placement in a foster family home or, if not, whether placement of the child in a qualified residential treatment program provides the most effective and appropriate level of care for the child in the least restrictive environment;

(3) Determine whether placement in a qualified residential treatment program is consistent with the short-term and long-term goals for the child, as specified in the permanency plan for the child;

(4) Determine whether it is in the best interest of the child to be placed in a qualified residential treatment program and whether, for that reason, it is not in the best interest of the child or the child's siblings to be placed together; and

(5) Approve or disapprove the qualified residential treatment program placement by entering written findings of fact on the record. Placement or a change of legal custody by the court outside DFCS shall relieve DFCS of further responsibility for a child adjudicated as a dependent child except for any provision of services ordered by the court to ensure the continuation of reunification services to such child's family when appropriate.

(b) Documentation of the determination and approval or disapproval of the placement in a qualified residential treatment program by the court shall be included in and made part of the case plan for the child.

History. — Code 1981, § 15-11-220, enacted by Ga. L. 2019, p. 893, § 5/SB 225; Ga. L. 2020, p. 493, § 15/SB 429.

Effective date. — This Code section became effective May 7, 2019.

The 2020 amendment, effective July 29, 2020, part of an Act to revise, modernize, and correct the Code, substituted "short-term and long-term" for "short- and long-term" in paragraph (a)(3).

Part 12

Permanency Plan

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under pre-2000 Code Section 15-11-58, which was subsequently repealed but was succeeded by provisions in this part, are included in the annotations for this part. See the Editor's notes at the beginning of the chapter.

Foster children. — Former O.C.G.A. §§ 15-11-13 and 15-11-58 (see now O.C.G.A. §§ 15-11-2, 15-11-30, 15-11-134, and 15-11-200 et seq.), and O.C.G.A. § 20-2-690.1, and 49-5-12 were not too vague and amorphous to be enforced by the judiciary and impose specific duties on the state defendants; thus, the federal regulatory scheme embodied in the CSFR process did not relieve the state defendants of the defendants obligation to fulfill the defendants statutory duties to the foster children, nor did the former statute provide a legal excuse for the defendants failure to do so. Kenny A. v. Perdue, No. 1:02-cv-1686-MHS, 2004 U.S. Dist. LEXIS 27025 (N.D. Ga. Dec. 11, 2004) (decided under former O.C.G.A. § 15-11-58).

15-11-230. Permanency plan hearing.

(a) The court shall hold a permanency plan hearing to determine the future permanent legal status of each child in DFCS custody.

(b) A permanency plan hearing, which considers in-state and out-of-state placement options for a child adjudicated as a dependent child, shall be held:

(1) No later than 30 days after DFCS has submitted a written report to the court which does not contain a plan for reunification services;

(2) For children under seven years of age at the time a petition is filed, no later than nine months after such child has entered foster care;

(3) For children seven years of age and older at the time a petition is filed, no later than 12 months after such child has entered foster care; or

(4) For a child in a sibling group whose members were removed from the home at the same time and in which one member of the sibling group was under seven years of age at the time a petition for dependency was filed, the permanency plan hearing shall be held no later than nine months after such child has entered foster care.

(c) After the initial permanency plan hearing has occurred, a permanency plan hearing shall be held not less frequently than every six months during the time a child adjudicated as a dependent child continues in DFCS custody or more frequently as deemed necessary by the court until the court determines that such child's permanency plan and goal have been achieved.

(d) A child adjudicated as a dependent child, his or her parent, guardian, or legal custodian, attorney, guardian ad litem, if any, foster parents if there are foster parents, any preadoptive parent or relatives providing care for such child, and other parties shall be given written notice of a permanency plan hearing at least five days in advance of such hearing and shall be advised that the permanency plan recommended by DFCS will be submitted to the court for consideration as the order of the court.

(e) The court shall consult with the child adjudicated as a dependent child, in an age-appropriate manner, regarding the proposed permanency plan for such child.

History. — Code 1981, § 15-11-230, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 24A-2701, pre-2000 Code Section 15-11-41, and pre-2014 Code Section 15-11-58, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Private cause of action. — Following factors were relevant in determining whether a private remedy was implicit in a statute not expressly providing one: first, was the plaintiff one of the class for whose special benefit the statute was enacted; second, was there any indication of legislative intent, explicit or implicit, either to create such a remedy or to deny one; third, was it consistent with the underlying purpose of the legislative scheme

to imply such a remedy for plaintiff? When foster children alleged that certain child services agencies and officials violated former O.C.G.A. § 15-11-58(c) and (o)(1) (see now O.C.G.A. §§ 15-11-201 and 15-11-230), then the former statute conferred upon the children a private cause of action. Kenny A. v. Perdue, 218 F.R.D. 277 (N.D. Ga. Aug. 18, 2003) (decided under former O.C.G.A. § 15-11-58).

15-11-231. Permanency plan report.

At least five days prior to the permanency plan hearing, DFCS shall submit for the court's consideration a report recommending a permanency plan for a child adjudicated as a dependent child. The report shall include documentation of the steps to be taken by DFCS to finalize the permanent placement for such child and shall include, but not be limited to:

(1) The name, address, and telephone number of such child's parent, guardian, or legal custodian;

(2) The date on which such child was removed from his or her home and the date on which such child was placed in foster care;

(3) The location and type of home or facility in which such child is currently held or placed and the location and type of home or facility in which such child will be placed;

(4) The basis for the decision to hold such child in protective custody or to place such child outside of his or her home;

(5) A statement as to the availability of a safe and appropriate placement with a fit and willing relative of such child or other persons who have demonstrated an ongoing commitment to a child or a statement as to why placement with the relative or other person is not safe or appropriate;

(6) If as a result of the placement such child has been or will be transferred from the school in which such child is or most recently was enrolled, documentation that a placement that would maintain such child in that school is unavailable, inappropriate, or that such child's transfer to another school would be in such child's best interests;

(7) A plan for ensuring the safety and appropriateness of the placement and a description of the services provided to meet the needs of such child and his or her family, including a discussion of services that have been investigated and considered and are not available or likely to become available within a reasonable time to meet the needs of such child or, if available, why such services are not safe or appropriate;

(8) The goal of the permanency plan which shall include:

(A) Whether and, if applicable, when such child shall be returned to his or her parent;

(B) Whether and, if applicable, when such child shall be referred for termination of parental rights and adoption;

(C) Whether and, if applicable, when such child shall be placed with a permanent guardian; or

(D) In the case in which DFCS has documented a compelling reason that none of the options identified in subparagraphs (A) through (C) of this paragraph would be in the best interests of the child who has attained the age of 16 years old, whether, and if applicable, when such child shall be placed in another planned permanent living arrangement;

(8.1) The documentation listed in paragraph (14) of subsection (b) of Code Section 15-11-201;

(9) If a child adjudicated as a dependent child is 14 years of age or older, a description of the programs and services that are or will be provided to assist such child in preparing for the transition from foster care to independent living. The description shall include all of the following:

(A) The anticipated age at which such child will be discharged from foster care;

(B) The anticipated amount of time available in which to prepare such child for the transition from foster care to independent living;

(C) The anticipated location and living situation of such child on discharge from foster care;

(D) A description of the assessment processes, tools, and methods that have been or will be used to determine the programs and services that are or will be provided to assist such child in preparing for the transition from foster care to independent living; and

(E) The rationale for each program or service that is or will be provided to assist such child in preparing for the transition from foster care to independent living, the time frames for delivering such programs or services, and the intended outcome of such programs or services;

(10) When the recommended permanency plan is referral for termination of parental rights and adoption or placement in another home, a description of specific recruitment efforts such as the use of state, regional, and national adoption exchanges, including electronic

exchange systems, to facilitate orderly and timely in-state and interstate placements; and

(11) For a child who remains placed in a qualified residential treatment program, documentation that:

(A) Ongoing assessment of the strengths and needs of the child continues to support the determination that the needs of the child cannot be met through placement in a foster family home;

(B) Placement in a qualified residential treatment program provides the most effective and appropriate level of care for the child in the least restrictive environment;

(C) Placement in a qualified residential treatment program is consistent with the short-term and long-term goals for the child, as specified in the permanency plan for the child;

(D) The specific treatment or service needs that will be met for the child in the placement and the length of time the child is expected to need the treatment or services; and

(E) The efforts made by the department to prepare the child to return home or to be placed with a fit and willing relative, a legal guardian, or an adoptive parent, or in a foster family home.

History. — Code 1981, § 15-11-231, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242; Ga. L. 2015, p. 540, § 1-7/HB 361; Ga. L. 2015, p. 552, § 16/SB 138; Ga. L. 2019, p. 893, § 6/SB 225; Ga. L. 2020, p. 493, § 15/SB 429.

The 2019 amendment, effective May 7, 2019, deleted "and" at the end of subparagraph (9)(E), substituted "; and" for a period at the end of paragraph (10), and added paragraph (11).

The 2020 amendment, effective July 29, 2020, part of an Act to revise, modernize, and correct the Code, substituted "short-term and long-term" for "short- and long-term" in subparagraph (11)(C).

15-11-232. Permanency plan hearing; findings.

(a) At the permanency plan hearing, the court shall make written findings of fact that include the following:

(1) Whether DFCS has made reasonable efforts to finalize the permanency plan which is in effect at the time of the hearing;

(2) The continuing necessity for and the safety and appropriateness of the placement;

(3) Compliance with the permanency plan by DFCS, parties, and any other service providers;

(4) Efforts to involve appropriate service providers in addition to DFCS staff in planning to meet the special needs of a child adjudicated as a dependent child and his or her parent, guardian, or legal custodian;

(5) Efforts to eliminate the causes for the placement of a child adjudicated as a dependent child outside of his or her home and toward returning such child safely to his or her home or obtaining a permanent placement for such child;

(6) The date by which it is likely that a child adjudicated as a dependent child will be returned to his or her home, placed for adoption, or placed with a permanent guardian or in some other alternative permanent placement;

(7) Whether, in the case of a child adjudicated as a dependent child placed out of state, the out-of-state placement continues to be appropriate and in the best interests of such child;

(8) In the case of a child adjudicated as a dependent child who is 14 years of age or older, the services needed to assist such child to make a transition from foster care to independent living;

(9) In the case of a child for whom another planned permanent living arrangement is the permanency plan:

(A) Whether DFCS has documented intensive, ongoing, and, as of the date of the hearing, unsuccessful efforts to return the child to the home or to secure a placement for the child with a fit and willing relative, a legal guardian, or an adoptive parent, including through efforts that utilize search technology, including social media, to find biological family members for the children;

(B) Whether DFCS has documented the steps it is taking to ensure that the child's foster family home or child care institution is following the reasonable and prudent parent standard and the child has regular, ongoing opportunities to engage in age or developmentally appropriate activities, including by consulting with the child in an age-appropriate manner about the opportunities of the child to participate in the activities; and

(C) After asking the child, what his or her desired permanency outcome is;

(10) If a child has attained the age of 14 years old, whether the permanency plan developed for the child, and any revision or addition to the plan, was developed in consultation with the child and, at the option of the child, with not more than two members of the permanency planning team who were selected by the child and who are not a foster parent of or caseworker for the child in accordance with subparagraph (A) of paragraph (15) of Code Section 15-11-201; and

(11) In the case of a child placed in a qualified residential treatment program:

(A) Whether DFCS has documented ongoing assessments of the strengths and needs of the child that continues to support the

determination that the needs of the child cannot be met through placement in a foster family home;

(B) Whether DFCS has documented that placement in a qualified residential treatment program provides the most effective and appropriate level of care for the child in the least restrictive environment;

(C) Whether DFCS has documented that the child's placement in a qualified residential treatment program is consistent with the short-term and long-term goals for the child, as specified in the permanency plan for the child;

(D) Whether DFCS has documented the specific treatment or service needs that will be met for the child in the placement and the length of time the child is expected to need the treatment or services; and

(E) Whether DFCS has documented their efforts to prepare the child to return home or to be placed with a fit and willing relative, a legal guardian, or an adoptive parent, or in a foster family home.

(b) The permanency plan incorporated in the court's order shall include:

(1) Whether and, if applicable, when a child adjudicated as a dependent child shall be returned to his or her parent;

(2) Whether and, if applicable, when a child adjudicated as a dependent child shall be referred for termination of parental rights and adoption;

(3) Whether and, if applicable, when a child adjudicated as a dependent child shall be placed with a permanent guardian; or

(4) In the case in which DFCS has documented a compelling reason that none of the options identified in paragraphs (1) through (3) of this subsection would be in the best interests of the child, whether, and if applicable, when such child shall be placed in another planned permanent living arrangement.

(c) If the court finds, as of the date of the hearing, that another planned permanent living arrangement is in the best interests of a child who has attained the age of 16 years old, the court shall make findings of fact explaining such determination and, in its order, provide compelling reasons why it is not or continues to not be in a child's best interests to be returned to his or her parent, referred for termination of parental rights and adoption, placed with a permanent guardian, or placed with a fit and willing relative.

(d) A supplemental order of the court adopting the permanency plan including all requirements of the permanency plan as provided in Code

Section 15-11-231 shall be entered following the permanency hearing and in no case later than 30 days after the court has determined that reunification efforts shall not be made by DFCS. The supplemental order shall include a requirement that the DFCS case manager and staff and, as appropriate, other representatives of a child adjudicated as a dependent child provide such child with assistance and support in developing a transition plan that is personalized at the direction of such child; includes specific options on housing, health insurance, education, local opportunities for mentors and continuing support services, and work force supports and employment services; and is as detailed as such child may elect in the 90 day period immediately prior to the date on which he or she will attain 18 years of age.

History. — Code 1981, § 15-11-232, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242; Ga. L. 2015, p. 540, § 1-8/HB 361; Ga. L. 2015, p. 552, § 17/SB 138; Ga. L. 2019, p. 893, § 7/SB 225; Ga. L. 2020, p. 493, § 15/SB 429.

The 2019 amendment, effective May 7, 2019, deleted "and" at the end of subparagraph (a)(9)(C), substituted "; and" for a period at the end of paragraph (a)(10), and added paragraph (a)(11).

The 2020 amendment, effective July 29, 2020, part of an Act to revise, modernize, and correct the Code, substituted "short-term and long-term" for "short- and long-term" in subparagraph (a)(11)(C).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under pre-2000 Code Section 15-11-41 and pre-2014 Code Section 15-11-2, which were subsequently repealed by were succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Statute of limitations. — Since the father's petition was filed within the two-year limitation required by former subsection (d) (now subsection (c) of former O.C.G.A. § 15-11-41 (see now O.C.G.A. § 15-11-232)), but the hearing was not held in the juvenile court until after the expiration of that period and the mother requested and received a further continuance, the mother's appearance and participation in the hearing without proper objection before or at trial constituted a waiver of such procedural defects. Page v. Shuff, 160 Ga. App. 866, 288 S.E.2d 582 (1982) (decided under former O.C.G.A. § 15-11-41).

Parent with schizophrenia. — Evidence supported the finding that a child was deprived within the meaning of former O.C.G.A. § 15-11-2(8) (see now O.C.G.A. §§ 15-11-2 and 15-11-107), and that termination of the mother's parental rights was in the child's best interest, pursuant to former O.C.G.A. § 15-11-94(a) (see now O.C.G.A. §§ 15-11-310 and 15-11-320), because the mother, who was homeless and suffering from schizophrenia, failed to maintain contact with the agency or visit with the child for more than one year, and the mother never accomplished court-ordered goals for reunification or demonstrated the ability to adequately care for the child. In the Interest of S.G., 271 Ga. App. 776, 611 S.E.2d 86 (2005) (decided under former O.C.G.A. § 15-11-2).

Child was deprived as defined in former O.C.G.A. § 15-11-2(8) (see now O.C.G.A. §§ 15-11-2 and 15-11-107) because the mother had borderline intellectual functioning and was at a high risk of engaging in physical child abuse, the child was a special needs child with developmental disorders and physical problems who was not being properly supervised in a dirty home where there was little food, the mother needed long-term intensive psychological treatment but failed to obtain

counseling and stopped taking her medications, and the mother failed to support the child or to comply with case plan goals. In the Interest of A.K., 272 Ga. App. 429, 612 S.E.2d 581 (2005) (decided under former O.C.G.A. § 15-11-2).

15-11-233. Termination of parental rights; exceptions.

(a) Except as provided in subsection (b) of this Code section, DFCS shall file a petition to terminate the parental rights of a parent of a child adjudicated as a dependent child or, if such a petition has been filed by another party, seek to be joined as a party to the petition, and, concurrently, to identify, recruit, process, and approve a qualified family for an adoption if:

(1) A child adjudicated as a dependent child has been in foster care under the responsibility of DFCS for 15 of the most recent 22 months;

(2) The court has made a determination that the parent has subjected his or her child to aggravated circumstances; or

(3) The court has made a determination that the parent of a child adjudicated as a dependent child has been convicted of:

(A) The murder of another child of such parent;

(B) Murder in the second degree of another child of such parent;

(C) Voluntary manslaughter of another child of such parent;

(D) Voluntary manslaughter of the other parent of such child;

(E) Aiding or abetting, attempting, conspiring, or soliciting to commit murder or voluntary manslaughter of another child of such parent;

(F) Aiding or abetting, attempting, conspiring, or soliciting to commit murder or voluntary manslaughter of the other parent of such child; or

(G) Committing felony assault that has resulted in serious bodily injury to such child or to another child of such parent.

(b) Termination of parental rights may not be in the best interests of a child adjudicated as a dependent child when:

(1) Such child is being cared for by his or her relative;

(2) The case plan documents a compelling reason for determining that filing such a petition would not be in the best interests of such child. Such compelling reasons may include, but not be limited to:

(A) A parent of such child is successfully participating in services that will make it possible for his or her child to safely return home;

(B) Another permanency plan is better suited to meet the health and safety needs of such child. Documentation that another permanent plan is better suited to meet the health and safety needs of such child may include documentation that:

(i) Such child is 14 years of age or older and objects to termination of parental rights. Prior to accepting a child's objection, the court shall personally question such child in chambers to determine whether the objection is a voluntary and knowing choice;

(ii) Such child is 16 years of age or older and specifically requests that emancipation be established as his or her permanent plan;

(iii) The parent of such child and such child have a significant bond, but such parent is unable to care for such child because of an emotional or physical disability and such child's caregiver has committed to raising such child to the age of majority and facilitating visitation with such disabled parent; or

(iv) Such child is in a residential treatment facility that provides services specifically designed to address his or her treatment needs and the court determines that his or her needs could not be served by a less restrictive placement;

(C) Such child is living with his or her relative who is unable or unwilling to adopt such child, but who is willing and capable of providing such child with a stable and permanent home environment and the removal of such child from the physical custody of his or her relative would be detrimental to such child's emotional well-being;

(D) The court or judicial citizen review panel, in a prior hearing or review, determined that while the case plan was to reunify the family, DFCS did not make reasonable efforts; or

(E) Such child is an unaccompanied refugee or there are international legal obligations or foreign policy reasons that would preclude terminating parental rights; or

(3) DFCS has not provided to the family of such child services deemed necessary for his or her safe return to his or her home, consistent with the specific time frames for the accomplishment of the case plan goals.

(c) The recommendation by DFCS that termination of parental rights is not in the best interests of a child shall be based on the present family circumstances of such child and shall not preclude a different recommendation at a later date if the family circumstances of a child adjudicated as a dependent child change.

History. — Code 1981, § 15-11-233, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242; Ga. L. 2014, p. 444, § 2-3/HB 271.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 24A-2701, pre-2000 Code Section 15-11-41, and pre-2014 Code Section 15-11-58, which were subsequently repealed but were succeeded by provisions in this article, are included in the annotations for this Code section. See the Editor's note at the beginning of the chapter.

In light of the reenactment of this chapter, effective January 1, 2014, the reader is advised to consult the annotations following Code Section 15-11-202, which may also be applicable to this Code section.

Custody by Department suspends parental right. — Removal of custody of the child from the parents is a determination that, for whatever length of time custody is exercised by the Department of Family and Children Services, this right has been suspended, although not finally terminated. Rodgers v. Department of Human Resources, 157 Ga. App. 235, 276 S.E.2d 902 (1981) (decided under former Code 1933, § 24A-2701).

No equal protection violation. — Treating deprived children who were placed in the legal custody of the Department of Families and Children Services because there was no relative committed to the child who was available for immediate placement differently from deprived children who did have a committed parent or guardian available for immediate placement did not violate the equal protection clause or Ga. Const. 1983, Art. I, Sec. I, Para. II. as the classes were not similarly situated and the laws were rationally related to the goal of minimizing government intervention while ensuring that children were reared in a familial environment. In the Interest of A.N., 281 Ga. 58, 636 S.E.2d 496 (2006) (decided under former O.C.G.A. § 15-11-58).

Extension of temporary custody proper. — Juvenile court did not err in granting a motion filed by a county department of family and children services (DFCS) to extend the department's temporary custody of a mother's children because any procedural defect in the commencement of the case was rendered moot when DFCS thereafter filed new deprivation petitions, new adjudicatory hearings were held on those petitions, and the juvenile court then entered orders granting those petitions and finding that the children continued to be deprived; although the record did not contain an original deprivation order entered by the juvenile court, the record reflected that DFCS subsequently filed new deprivation petitions while the children remained in the department's care, and the juvenile court conducted adjudicatory hearings on those new petitions and then entered orders finding that the children were deprived. In the Interest of Q.A., 306 Ga. App. 386, 702 S.E.2d 701 (2010) (decided under former O.C.G.A. § 15-11-58).

Juvenile court did not err in granting a motion filed by a county department of family and children services to extend the department's temporary custody of a mother's children because clear and convincing evidence supported the juvenile court's conclusion that a prior deprivation order needed to be extended in order to accomplish the order's purpose of ensuring the safety and well-being of the children while the mother completed her reunification plan and prepared for the transition of her children back into her home; there was testimony at the hearing on the extension motion reflecting that the mother had not completed her reunification case plan goals of obtaining stable employment, submitting to random drug screens, and attending scheduled visitations with her children. In the Interest of Q.A., 306 Ga. App. 386, 702 S.E.2d 701 (2010) (decided under former O.C.G.A. § 15-11-58).

Temporary custody and visitation rights. — Juvenile court had jurisdiction to modify an order granting temporary

custody of a deprived child to the Department of Family and Children Services and to permit visitation by parents who filed a petition for visitation rights four months after the custody order. In re K.B., 188 Ga. App. 199, 372 S.E.2d 476 (1988) (decided under former O.C.G.A. § 15-11-41).

Parent's burden of proof when seeking modification. — Trial court erred in requiring a father to prove by clear and convincing proof that changed circumstances warranted modification of an order placing the father's children with their maternal aunts; the father retained an interest in the children sufficient to support a right to petition for modification, and the father was only required to prove the motion by a preponderance of the evidence. In re J. N., 302 Ga. App. 631, 691 S.E.2d 396 (2010) (decided under former O.C.G.A. § 15-11-58).

Part 13

Permanent Guardianship

15-11-240. Appointment of permanent guardian; jurisdiction; findings.

(a) In addition to the jurisdiction to appoint guardians pursuant to Code Section 15-11-13, the juvenile court shall be vested with jurisdiction to appoint a permanent guardian for a child adjudicated as a dependent child in accordance with this article. Prior to the entry of such an order, the court shall:

(1) Find that reasonable efforts to reunify such child with his or her parents would be detrimental to such child or find that the living parents of such child have consented to the permanent guardianship;

(2) Find that termination of parental rights and adoption is not in the best interests of such child;

(3) Find that the proposed permanent guardian can provide a safe and permanent home for such child;

(4) Find that the appointment of a permanent guardian for such child is in the best interests of such child and that the individual chosen as such child's permanent guardian is the individual most appropriate to be such child's permanent guardian taking into consideration the best interests of the child; and

(5) If such child is 14 years of age or older, find that the appointment of a permanent guardian for such child is in the best interests of such child and that the individual chosen by such child as the child's permanent guardian is the individual most appropriate to be such child's permanent guardian taking into consideration the best interests of the child.

(b) The court may enter an order of support on behalf of a child against the parents of such child in accordance with paragraph (7) of subsection (a) of Code Section 15-11-212.

History. — Code 1981, § 15-11-240, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

Cross references. — Power of judge of probate court to appoint guardian for minor, § 29-2-14. Notice requirements relating to appointment of guardians for minors by judges of the probate court generally, § 29-2-17.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 24A-302, pre-2000 Code Section 15-11-6 and pre-2014 Code Section 15-11-30.1, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Jurisdiction of juvenile court in transferred custody proceeding. — In a custody proceeding transferred from the superior court, the juvenile court was authorized to issue an order restraining the future disclosure of information contained in the juvenile court's files and records and to punish for contempt any past unauthorized disclosure of that material. In re Burton, 271 Ga. 491, 521 S.E.2d 568 (1999) (decided under former O.C.G.A. § 15-11-6).

Georgia Supreme Court affirmed the transfer of a father's petition for custody from Gwinnett County, Georgia, to Douglas County, Georgia because the "complaint for custody" that the father filed in Gwinnett County fairly was read as a petition to modify, vacate, or revoke the permanent guardianship, a petition over which the Juvenile Court of Douglas County had exclusive jurisdiction under the circumstances. In the Interest of M. F., 298 Ga. 138, 780 S.E.2d 291 (2015).

Notice and hearing requirements of Juvenile Code mandatory. — Juvenile court committed reversible error in granting the children's paternal grandparents custody and guardianship of the children because the court failed to follow the statutory mandates outlined in the Juvenile Code as the mother did not consent to transfer of permanent guardianship and no guardianship petition was filed and provided to the mother with notice of proceedings. In the Interest of J. C., 350 Ga. App. 34, 827 S.E.2d 717 (2019).

Adoption, not guardianship, in child's best interest. — Evidence authorized a juvenile court's finding that the termination of a parent's parental rights and the award of the child's permanent custody to DFCS to place for adoption with the child's foster family were in the child's best interest; there was sufficient evidence to support the juvenile court's denial of the parent's request that the child's grandmother be appointed guardian. The grandmother had already been determined unsuitable. In the Interest of S. P., 336 Ga. App. 488, 784 S.E.2d 846 (2016).

Appointment of permanent guardian proper. — Trial court was authorized to conclude that the permanent guardian demonstrated by clear and convincing evidence that the appointment of a permanent guardian would be in the child's best interest as the mother had not completed her case plan, the child had experienced chronic neglect, and the mother lacked the necessary skills to meet the child's severe needs and ensure she received the essential services she was entitled to. In the Interest of K. G., 344 Ga. App. 674, 811 S.E.2d 451 (2018).

Award of permanent guardianship affirmed. — Award of permanent guardianship to the aunt was affirmed because the parent gave no reason to believe that any objection to taking judicial notice of the deprivation order would have had any merit, nor did the parent identify specific evidence that the parent would have brought forward to challenge the earlier deprivation order. In the Interest of L. B., 319 Ga. App. 173, 735 S.E.2d 162 (2012) (decided under former O.C.G.A. § 15-11-30.1).

Guardian's petition for permanent guardianship was properly granted as reasonable efforts to reunify the child with the mother would be detrimental to the child because the child was born with

Down Syndrome and a congenital heart defect, and had special needs; the mother made no efforts to obtain support or to prepare for the child's birth, even though the child would require services immediately; the mother was unable to get along with the child's service providers to the point that the providers did not want to continue providing services to the child; and the mother lacked the necessary skills to be able to meet the child's severe needs and the ability to ensure that the child received the services to which the child was entitled. In the Interest of K. G., 343 Ga. App. 345, 807 S.E.2d 70 (2017).

Guardianship of a child under O.C.G.A. § 15-11-240 was upheld based on evidence specifically showing, in light of the child's diagnosed disorders, continued uncertainty about the child's living situation and guardianship, and the mother's history of drug use and current lack of established, long-term stability and sobriety. In the Interest of J. W., 346 Ga. App. 443, 816 S.E.2d 409 (2018).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 24A-302 and pre-2000 Code Section 15-11-6, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Jurisdiction to appoint guardians for children. — Former statute implicitly recognized that courts other than juvenile courts had jurisdiction to appoint guardians for children. 1976 Op. Att'y Gen. No. U76-15 (decided under former Code 1933, § 24A-302).

Support proceedings. — Subsection (b) of former O.C.G.A. § 15-11-6 (see now O.C.G.A. § 15-11-15) authorized the superior court to transfer to the juvenile court support cases not involving a question of paternity as well as those support proceedings originating from a court-established support unit in the judicial circuit. 1989 Op. Att'y Gen. No. U89-7 (decided under former O.C.G.A. § 15-11-6).

Superior court may not transfer a Uniform Reciprocal Enforcement of Support Act proceeding to a juvenile court under subsection (b) of former O.C.G.A. § 15-11-6 (see now O.C.G.A. § 15-11-15). 1989 Op. Att'y Gen. No. U89-7 (decided under former O.C.G.A. § 15-11-6).

Paternity questions. — Since no provision under subsection (b) of former O.C.G.A. § 15-11-6 (see now O.C.G.A. § 15-11-15) would permit the transfer of paternity questions to a juvenile court, no case in which paternity was involved may be transferred under that statute by a superior court to a juvenile court. 1989 Op. Att'y Gen. No. U89-7 (decided under former O.C.G.A. § 15-11-6).

Permanent custody determination upon divorce decree. — When a superior court transfers the question of custody determination to a juvenile court pursuant to subsection (b) of former O.C.G.A. § 15-11-6 (see now O.C.G.A. § 15-11-15), the juvenile court may make only a temporary custody determination pending the outcome of the divorce action; but if the divorce decree is entered the juvenile court can then make a permanent custody determination. 1994 Op. Att'y Gen. No. U94-1 (decided under former O.C.G.A. § 15-11-6).

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Guardian and Ward, § 5 et seq. 42 Am. Jur. 2d, Infants, § 27 et seq. 47 Am. Jur. 2d, Juvenile Courts and Delinquent and Dependent Children, § 39 et seq.

C.J.S. — 43 C.J.S., Infants, § 180 et seq. 67A C.J.S., Parent and Child, § 366 et seq.

U.L.A. — Uniform Juvenile Court Act (U.L.A.) § 3.

ALR. — Parent's involuntary confinement, or failure to care for child as result

thereof, as evincing neglect, unfitness, or the like in dependency or divestiture proceeding, 79 A.L.R.3d 417.

15-11-241. Petition for permanent guardian.

The petition for the appointment of a permanent guardian pursuant to this part shall set forth:

(1) The facts upon which the court's jurisdiction is based;

(2) The name and date of birth of the child adjudicated as a dependent child;

(3) The name, address, and county of domicile of the petitioner and the petitioner's relationship to such child, if any, and, if different from the petitioner, the name, address, and county of domicile of the individual nominated by the petitioner to serve as guardian and that individual's relationship to such child, if any;

(4) A statement that:

(A) Reasonable efforts to reunify such child with his or her parents would be detrimental to such child;

(B) Termination of parental rights and adoption is not in the best interests of such child;

(C) The proposed guardian can provide a safe and permanent home for such child;

(D) The appointment of a permanent guardian for such child is in the best interests of such child and that the individual chosen as such child's guardian is the individual most appropriate to be such child's permanent guardian taking into consideration the best interests of the child; and

(E) If such child is 14 years of age or older, that the appointment of a permanent guardian for such child is in the best interests of the child and that the individual chosen by such child as the child's permanent guardian is the most appropriate individual to be such child's permanent guardian taking into consideration the best interests of the child;

(5) Whether such child was born out of wedlock and, if so, the name and address of the biological father, if known;

(6) Whether, to the petitioner's knowledge, there exists any notarized or witnessed document made by a parent of such child that deals with the guardianship of such child and the name and address of any designee named in the document;

(7) In addition to the petitioner and the nominated guardian and, if the parent of such child has not consented to the permanent guardianship, the names and addresses of the following relatives of such child whose parents' whereabouts are known:

(A) The adult siblings of such child; provided, however, that not more than three adult siblings need to be listed;

(B) If there is no adult sibling of such child, the grandparents of such child; provided, however, that not more than three grandparents need to be listed; or

(C) If there is no grandparent of such child, any three of the nearest adult relatives of such child determined according to Code Section 53-2-1;

(8) Whether a temporary guardian has been appointed for such child or a petition for the appointment of a temporary guardian has been filed or is being filed; and

(9) The reason for any omission in the petition for appointment of a permanent guardian for such child in the event full particulars are lacking.

History. — Code 1981, § 15-11-241, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

Cross references. — Discovery, T. 17, C. 16. Power of judge of probate court to appoint guardian for minor, § 29-2-14. Notice requirements relating to appointment of guardians for minors by judges of the probate court generally, § 29-2-17.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 24A-302, pre-2000 Code Section 15-11-6 and pre-2014 Code Section 15-11-30.1, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Jurisdiction of juvenile court in transferred custody proceeding. — In a custody proceeding transferred from the superior court, the juvenile court was authorized to issue an order restraining the future disclosure of information contained in the juvenile court's files and records and to punish for contempt any past unauthorized disclosure of that material. In re Burton, 271 Ga. 491, 521 S.E.2d 568 (1999) (decided under former O.C.G.A. § 15-11-6).

Notice and hearing requirements of Juvenile Code mandatory. — Juvenile court committed reversible error in granting the children's paternal grandparents custody and guardianship of the children because the court failed to follow the statutory mandates outlined in the Juvenile Code as the mother did not consent to the transfer of permanent guardianship and no guardianship petition was filed and provided to the mother with the notice of proceedings. In the Interest of J. C., 350 Ga. App. 34, 827 S.E.2d 717 (2019).

Award of permanent guardianship affirmed. — Award of permanent guardianship to the aunt was affirmed because the parent gave no reason to believe that any objection to taking judicial notice of the deprivation order would have had any merit, nor did the parent identify specific evidence that the parent would have brought forward to challenge the earlier

deprivation order. In the Interest of L. B., 319 Ga. App. 173, 735 S.E.2d 162 (2012) (decided under former O.C.G.A. § 15-11-30.1).

Petition lacked required information. — Because the mother did not consent to the guardianship, given the mandatory language of O.C.G.A. § 15-11-241, and the juvenile court's obligation to determine whether the grandmother was the individual most appropriate to be the child's permanent guardian, the trial court erred by granting the grandmother's petition because the court lacked the information required by § 15-11-241(7) and (9), including the names and addresses of relatives. In the Interest of N. J., 335 Ga. App. 477, 781 S.E.2d 585 (2016).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 24A-302 and pre-2000 Code Section 15-11-6, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Jurisdiction to appoint guardians for children. — Former statute implicitly recognized that courts other than juvenile courts had jurisdiction to appoint guardians for children. 1976 Op. Att'y Gen. No. U76-15 (decided under former Code 1933, § 24A-302).

Support proceedings. — Subsection (b) of former O.C.G.A. § 15-11-6 (see now O.C.G.A. § 15-11-15) authorized the superior court to transfer to the juvenile court support cases not involving a question of paternity as well as those support proceedings originating from a court-established support unit in the judicial circuit. 1989 Op. Att'y Gen. No. U89-7 (decided under former O.C.G.A. § 15-11-6).

Superior court may not transfer a Uniform Reciprocal Enforcement of Support Act proceeding to a juvenile court under subsection (b) of former O.C.G.A. § 15-11-6 (see now O.C.G.A. § 15-11-15). 1989 Op. Att'y Gen. No. U89-7 (decided under former O.C.G.A. § 15-11-6).

Paternity questions. — Since no provision under subsection (b) of former O.C.G.A. § 15-11-6 (see now O.C.G.A. § 15-11-15) would permit the transfer of paternity questions to a juvenile court, no case in which paternity was involved may be transferred under that statute by a superior court to a juvenile court. 1989 Op. Att'y Gen. No. U89-7 (decided under former O.C.G.A. § 15-11-6).

Permanent custody determination upon divorce decree. — When a superior court transfers the question of custody determination to a juvenile court pursuant to subsection (b) of former O.C.G.A. § 15-11-6 (see now O.C.G.A. § 15-11-15), the juvenile court may make only a temporary custody determination pending the outcome of the divorce action; but if the divorce decree is entered the juvenile court can then make a permanent custody determination. 1994 Op. Att'y Gen. No. U94-1 (decided under former O.C.G.A. § 15-11-6).

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Guardian and Ward, § 60 et seq. 42 Am. Jur. 2d, Infants, § 27 et seq. 47 Am. Jur. 2d, Juvenile Courts and Delinquent and Dependent Children, § 39 et seq.

C.J.S. — 39 C.J.S., Guardian and Ward, § 1 et seq. 43 C.J.S., Infants, § 180 et seq. 67A C.J.S., Parent and Child, § 366 et seq.

U.L.A. — Uniform Juvenile Court Act (U.L.A.) § 3.

ALR. — Parent's involuntary confinement, or failure to care for child as result thereof, as evincing neglect, unfitness, or the like in dependency or divestiture proceeding, 79 A.L.R.3d 417.

15-11-242. Effect of guardianship order.

(a) Permanent guardianship orders entered pursuant to Code Section 15-11-240 shall:

(1) Remain in effect until the child adjudicated as a dependent child reaches the age of 18 or becomes emancipated;

(2) Not be subject to review by the court except as provided in Code Section 15-11-244; and

(3) Establish a reasonable visitation schedule which allows the child adjudicated as a dependent child to maintain meaningful contact with his or her parents through personal visits, telephone calls, letters, or other forms of communication or specifically include any restriction on a parent's right to visitation.

(b) A permanent guardian shall have the rights and duties of a permanent guardian as provided in Code Sections 29-2-21, 29-2-22, and 29-2-23 and shall take the oath required of a guardian as provided in Code Section 29-2-24.

History. — Code 1981, § 15-11-242, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

Cross references. — Power of judge of probate court to appoint guardian for minor, § 29-2-14. Notice requirements relating to appointment of guardians for minors by judges of the probate court generally, § 29-2-17.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 24A-302, pre-2000 Code Section 15-11-6 and pre-2014 Code Section 15-11-30.1, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Jurisdiction of juvenile court in transferred custody proceeding. — In a custody proceeding transferred from the superior court, the juvenile court was authorized to issue an order restraining the future disclosure of information contained in the juvenile court's files and records and to punish for contempt any past unauthorized disclosure of that material. In re Burton, 271 Ga. 491, 521 S.E.2d 568 (1999) (decided under former O.C.G.A. § 15-11-6).

Award of permanent guardianship affirmed. — Award of permanent guardianship to the aunt was affirmed because the parent gave no reason to believe that any objection to taking judicial notice of the deprivation order would have had any merit, nor did the parent identify specific evidence that the parent would have brought forward to challenge the earlier deprivation order. In the Interest of L. B., 319 Ga. App. 173, 735 S.E.2d 162 (2012) (decided under former O.C.G.A. § 15-11-30.1).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 24A-302 and pre-2000 Code Section 15-11-6, which

were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Jurisdiction to appoint guardians for children. — Former statute implicitly recognized that courts other than juvenile courts had jurisdiction to appoint guardians for children. 1976 Op. Att'y Gen. No. U76-15 (decided under former Code 1933, § 24A-302).

Support proceedings. — Subsection (b) of former O.C.G.A. § 15-11-6 (see now O.C.G.A. § 15-11-15) authorized the superior court to transfer to the juvenile court support cases not involving a question of paternity as well as those support proceedings originating from a court-established support unit in the judicial circuit. 1989 Op. Att'y Gen. No. U89-7 (decided under former O.C.G.A. § 15-11-6).

Superior court may not transfer a Uniform Reciprocal Enforcement of Support Act proceeding to a juvenile court under subsection (b) of former O.C.G.A. § 15-11-6 (see now O.C.G.A. § 15-11-15). 1989 Op. Att'y Gen. No. U89-7 (decided under former O.C.G.A. § 15-11-6).

Paternity questions. — Since no provision under subsection (b) of former O.C.G.A. § 15-11-6 (see now O.C.G.A. § 15-11-15) would permit the transfer of paternity questions to a juvenile court, no case in which paternity was involved may be transferred under that statute by a superior court to a juvenile court. 1989 Op. Att'y Gen. No. U89-7 (decided under former O.C.G.A. § 15-11-6).

Permanent custody determination upon divorce decree. — When a superior court transfers the question of custody determination to a juvenile court pursuant to subsection (b) of former O.C.G.A. § 15-11-6 (see now O.C.G.A. § 15-11-15), the juvenile court may make only a temporary custody determination pending the outcome of the divorce action; but if the divorce decree is entered the juvenile court can then make a permanent custody determination. 1994 Op. Att'y Gen. No. U94-1 (decided under former O.C.G.A. § 15-11-6).

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Guardian and Ward, § 70 et seq. 42 Am. Jur. 2d, Infants, § 27 et seq. 47 Am. Jur. 2d, Juvenile Courts and Delinquent and Dependent Children, § 39 et seq.

C.J.S. — 39 C.J.S., Guardian and Ward, § 1 et seq. 43 C.J.S., Infants, § 180 et seq. 67A C.J.S., Parent and Child, § 366 et seq.

U.L.A. — Uniform Juvenile Court Act (U.L.A.) § 3.

ALR. — Parent's involuntary confinement, or failure to care for child as result thereof, as evincing neglect, unfitness, or the like in dependency or divestiture proceeding, 79 A.L.R.3d 417.

15-11-243. Notice and permanent guardianship hearing.

(a) Notice of a guardianship petition pursuant to this part shall be given to a parent of the child who was adjudicated as a dependent child and shall also be given in accordance with subsection (c) of Code Section 29-2-17 except that, if the parents have consented to the guardianship, notice of the petition shall not be required to be given to:

(1) The adult siblings of the child who was adjudicated as a dependent child;

(2) The grandparents of the child who was adjudicated as a dependent child; or

(3) The nearest adult relatives of the child who was adjudicated as a dependent child as determined in accordance with Code Section 53-2-1.

(b) The hearing shall be conducted in accordance with Code Section 29-2-18 to determine the best interests of the child who was adjudicated as a dependent child, and in reaching its determination the court shall consider Code Section 15-11-240.

History. — Code 1981, § 15-11-243, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242; Ga. L. 2015, p. 540, § 1-9/HB 361.

Cross references. — Power of judge of probate court to appoint guardian for minor, § 29-2-14. Notice requirements relating to appointment of guardians for minors by judges of the probate court generally, § 29-2-17.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 24A-302, pre-2000 Code Section 15-11-6 and pre-2014 Code Section 15-11-30.1, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Notice and hearing requirements of Juvenile Code mandatory. — Juvenile court committed reversible error in granting the children's paternal grandparents custody and guardianship of the children because the court failed to follow the statutory mandates outlined in the Juvenile Code as the mother did not consent to the transfer of permanent guardianship and no guardianship petition was filed and provided to the mother with the notice of proceedings. In the Interest of J. C., 350 Ga. App. 34, 827 S.E.2d 717 (2019).

Jurisdiction of juvenile court in transferred custody proceeding. — In a custody proceeding transferred from the superior court, the juvenile court was authorized to issue an order restraining the future disclosure of information contained in the juvenile court's files and records and to punish for contempt any past unauthorized disclosure of that material. In re Burton, 271 Ga. 491, 521 S.E.2d 568 (1999) (decided under former O.C.G.A. § 15-11-6).

Award of permanent guardianship affirmed. — Award of permanent guardianship to the aunt was affirmed because the parent gave no reason to believe that any objection to taking judicial notice of the deprivation order would have had any merit, nor did the parent identify specific evidence that the parent would have brought forward to challenge the earlier deprivation order. In the Interest of L. B., 319 Ga. App. 173, 735 S.E.2d 162 (2012) (decided under former O.C.G.A. § 15-11-30.1).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 24A-302 and pre-2000 Code Section 15-11-6, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Jurisdiction to appoint guardians for children. — Former statute implicitly recognized that courts other than juvenile courts had jurisdiction to appoint guardians for children. 1976 Op. Att'y Gen. No. U76-15 (decided under former Code 1933, § 24A-302).

Support proceedings. — Subsection (b) of former O.C.G.A. § 15-11-6 (see now O.C.G.A. § 15-11-15) authorized the superior court to transfer to the juvenile court

support cases not involving a question of paternity as well as those support proceedings originating from a court-established support unit in the judicial circuit. 1989 Op. Att'y Gen. No. U89-7 (decided under former O.C.G.A. § 15-11-6).

Superior court may not transfer a Uniform Reciprocal Enforcement of Support Act proceeding to a juvenile court under subsection (b) of former O.C.G.A. § 15-11-6 (see now O.C.G.A. § 15-11-15). 1989 Op. Att'y Gen. No. U89-7 (decided under former O.C.G.A. § 15-11-6).

Paternity questions. — Since no provision under subsection (b) of former O.C.G.A. § 15-11-6 (see now O.C.G.A. § 15-11-15) would permit the transfer of paternity questions to a juvenile court, no case in which paternity was involved may be transferred under that statute by a superior court to a juvenile court. 1989 Op. Att'y Gen. No. U89-7 (decided under former O.C.G.A. § 15-11-6).

Permanent custody determination upon divorce decree. — When a superior court transfers the question of custody determination to a juvenile court pursuant to subsection (b) of former O.C.G.A. § 15-11-6 (see now O.C.G.A. § 15-11-15), the juvenile court may make only a temporary custody determination pending the outcome of the divorce action; but if the divorce decree is entered the juvenile court can then make a permanent custody determination. 1994 Op. Att'y Gen. No. U94-1 (decided under former O.C.G.A. § 15-11-6).

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Guardian and Ward, § 52 et seq. 42 Am. Jur. 2d, Infants, § 27 et seq. 47 Am. Jur. 2d, Juvenile Courts and Delinquent and Dependent Children, § 39 et seq.

C.J.S. — 43 C.J.S., Infants, § 180 et seq. 67A C.J.S., Parent and Child, § 366 et seq.

U.L.A. — Uniform Juvenile Court Act (U.L.A.) § 3.

ALR. — Parent's involuntary confinement, or failure to care for child as result thereof, as evincing neglect, unfitness, or the like in dependency or divestiture proceeding, 79 A.L.R.3d 417.

15-11-244. Modification of permanent guardianship order.

(a) The court shall retain jurisdiction over a guardianship action under this part for the sole purpose of entering an order following the filing of a petition to modify, vacate, or revoke the guardianship and appoint a new guardian.

(b) The superior courts shall have concurrent jurisdiction for enforcement or modification of any child support or visitation order entered pursuant to Code Section 15-11-240.

(c) The guardianship shall be modified, vacated, or revoked based upon a finding, by clear and convincing evidence, that there has been a material change in the circumstances of the child who was adjudicated as a dependent child or the guardian and that such modification, vacation, or revocation of the guardianship order and the appointment of a new guardian is in the best interests of the child. Appointment of a new guardian shall be subject to the provisions of Code Sections 15-11-240 and 15-11-241.

History. — Code 1981, § 15-11-244, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

Cross references. — Power of judge of probate court to appoint guardian for minor, § 29-2-14. Notice requirements relating to appointment of guardians for minors by judges of the probate court generally, § 29-2-17.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 24A-302, pre-2000 Code Section 15-11-6 and pre-2014 Code Section 15-11-30.1, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Jurisdiction of juvenile court in transferred custody proceeding. — In a custody proceeding transferred from the superior court, the juvenile court was authorized to issue an order restraining the future disclosure of information contained in the juvenile court's files and records and to punish for contempt any past unauthorized disclosure of that material. In re Burton, 271 Ga. 491, 521 S.E.2d 568 (1999) (decided under former O.C.G.A. § 15-11-6).

Restoration of fitness to previously unfit parent. — Juvenile court erred when the court dismissed a father's petition because by alleging a restoration to fitness, the father alleged a material change in circumstances to change the permanent guardianship of the child and, therefore, stated a claim under O.C.G.A. § 15-11-244 upon which relief might properly be granted so long as the father proved that material change in circumstances clearly and convincingly and that custody was now in the child's best interest. In the Interest of M. F., 298 Ga. 138, 780 S.E.2d 291 (2015).

Restoration of fitness is material change of condition. — Georgia Supreme Court holds that it is not unreasonable to understand O.C.G.A. § 15-11-244(c) to include the restoration of fitness to a previously unfit parent as among the material changes in the circumstances of a child that would permit a modification, vacatur, or revocation of a permanent guardianship. In the Interest of M. F., 298 Ga. 138, 780 S.E.2d 291 (2015).

Award of permanent guardianship affirmed. — Award of permanent guardianship to the aunt was affirmed because the parent gave no reason to believe that any objection to taking judicial notice of the deprivation order would have had any merit, nor did the parent identify specific evidence that the parent would have brought forward to challenge the earlier deprivation order. In the Interest of L. B., 319 Ga. App. 173, 735 S.E.2d 162 (2012) (decided under former O.C.G.A. § 15-11-30.1).

Order of visitation improper. — Juvenile court erred by granting visitation to the guardians and ordering the father to undergo counseling because the juvenile court's order revoked the guardianship and, thus, left the juvenile court without authority or jurisdiction to place the complained of restraints upon the father's custodial rights. In the Interest of M. F., 345 Ga. App. 550, 813 S.E.2d 786 (2018).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 24A-302 and pre-2000 Code Section 15-11-6, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

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O.C.G.A. § 15-11-15) authorized the superior court to transfer to the juvenile court support cases not involving a question of paternity as well as those support proceedings originating from a court-established support unit in the judicial circuit. 1989 Op. Att'y Gen. No. U89-7 (decided under former O.C.G.A. § 15-11-6).

Superior court may not transfer a Uniform Reciprocal Enforcement of Support Act proceeding to a juvenile court under subsection (b) of former O.C.G.A. § 15-11-6 (see now O.C.G.A. § 15-11-15). 1989 Op. Att'y Gen. No. U89-7 (decided under former O.C.G.A. § 15-11-6).

Paternity questions. — Since no provision under subsection (b) of former O.C.G.A. § 15-11-6 (see now O.C.G.A. § 15-11-15) would permit the transfer of paternity questions to a juvenile court, no case in which paternity was involved may be transferred under that statute by a superior court to a juvenile court. 1989 Op. Att'y Gen. No. U89-7 (decided under former O.C.G.A. § 15-11-6).

Permanent custody determination upon divorce decree. — When a superior court transfers the question of custody determination to a juvenile court pursuant to subsection (b) of former O.C.G.A. § 15-11-6 (see now O.C.G.A. § 15-11-15), the juvenile court may make only a temporary custody determination pending the outcome of the divorce action; but if the divorce decree is entered the juvenile court can then make a permanent custody determination. 1994 Op. Att'y Gen. No. U94-1 (decided under former O.C.G.A. § 15-11-6).

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Guardian and Ward, § 74 et seq. 42 Am. Jur. 2d, Infants, § 27 et seq. 47 Am. Jur. 2d, Juvenile Courts and Delinquent and Dependent Children, § 39 et seq.

C.J.S. — 39 C.J.S., Guardian and Ward, § 41 et seq. 43 C.J.S., Infants, § 180 et seq. 67A C.J.S., Parent and Child, § 366 et seq.

U.L.A. — Uniform Juvenile Court Act (U.L.A.) § 3.

ALR. — Parent's involuntary confinement, or failure to care for child as result thereof, as evincing neglect, unfitness, or the like in dependency or divestiture proceeding, 79 A.L.R.3d 417.

ARTICLE 4

TERMINATION OF PARENTAL RIGHTS

Law reviews. — For article, "Toward a Parent-Inclusive Attorney-Client Privilege," see 53 Ga. L. Rev. 991 (2019).

PART 1

GENERAL PROVISIONS

15-11-260. Purpose of article.

(a) The purpose of this article is:

(1) To protect a child who has been adjudicated as a dependent child from his or her parent who is unwilling or unable to provide safety and care adequate to meet such child's physical, emotional, and mental health needs by providing a judicial process for the termination of all parental rights and responsibilities;

(2) To eliminate the need for a child who has been adjudicated as a dependent child to wait unreasonable periods of time for his or her parent to correct the conditions which prevent his or her return to the family;

(3) To ensure that the continuing needs of a child who has been alleged or adjudged to be a dependent child for proper physical, mental, and emotional growth and development are the decisive considerations in all proceedings;

(4) To ensure that the constitutional rights of all parties are recognized and enforced in all proceedings conducted pursuant to this article while ensuring that the fundamental needs of a child are not subjugated to the interests of others; and

(5) To encourage stability in the life of a child who has been adjudicated as a dependent child and has been removed from his or her home by ensuring that all proceedings are conducted expeditiously to avoid delays in resolving the status of the parent and in achieving permanency for such child.

(b) Nothing in this article shall be construed as affecting the rights of a parent who is not the subject of the proceedings.

History. — Code 1981, § 15-11-260, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

15-11-260.1. Exemption when governed by Indian Child Welfare Act.

A proceeding under this article shall not be subject to this article to the extent that it is governed by the Indian Child Welfare Act, P.L. 95-608, as amended, Chapter 21 of Title 25 of the United States Code. In those circumstances, compliance with such federal law shall be required.

History. — Code 1981, § 15-11-260.1, enacted by Ga. L. 2019, p. 893, § 8/SB 225.

Effective date. — This Code section became effective May 7, 2019.

U.S. Code. — The Indian Child Welfare Act, referred to in this Code section, is codified at 25 U.S.C. § 1901 et seq.

RESEARCH REFERENCES

ALR. — Who are "qualified expert witnesses" under Indian Child Welfare Act (ICWA), 25 U.S.C.A. § 1912(e), (f) and state ICWA statutes, requiring certain testimony by such witnesses before foster care placement or termination of parental rights may be ordered, 38 A.L.R.7th Art. 1.

Am. Jur. 2d. — 41 Am. Jur. 2d, Indians; Native Americans, § 99 et seq.

C.J.S. — 42 C.J.S., Indians, § 138 et

seq.

15-11-261. Scope, effect, and duration of order terminating parental rights.

(a) An order terminating the parental rights of a parent shall be without limit as to duration and shall divest the parent and his or her child of all legal rights, powers, privileges, immunities, duties, and obligations with respect to each other, except:

(1) The right of such child to receive child support from his or her parent until a final order of adoption is entered;

(2) The right of such child to inherit from and through his or her parent. The right of inheritance of such child shall be terminated only by a final order of adoption; and

(3) The right of such child to pursue any civil action against his or her parent.

(b) When an order terminating the parent and child relationship has been issued, the parent whose right has been terminated shall not thereafter be entitled to notice of proceedings for the adoption of his or her child by another, nor has the parent any right to object to the adoption or otherwise to participate in such proceedings.

(c) The relationship between a child and his or her siblings shall not be severed until that relationship is terminated by final order of adoption.

(d) A relative whose relationship to a child is derived through the parent whose parental rights are terminated shall be considered to be a relative of such child for purposes of placement of, and permanency plan for, such child until such relationship is terminated by final order of adoption.

History. — Code 1981, § 15-11-261, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

Law reviews. — For survey article on wills, trusts, guardianships, and fiduciary administration, see 59 Mercer L. Rev. 447 (2007).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under Ga. L. 1971, pp. 709, 748, former Code 1933, § 24A-3203, and pre-2000 Code Section 15-11-80, and former O.C.G.A. § 15-11-53 which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Application of changed statutory provisions on appeal. — There are no vested rights that would be impaired by applying on appeal the new law of termination of parental rights to a case, even

though the old law was in effect at the time of the trial; and, moreover, the retrial of the case under the provisions concerning termination of parental rights might have a salutary effect. In re L.L.B., 256 Ga. 768, 353 S.E.2d 507 (1987) (decided under former O.C.G.A. § 15-11-80).

Petition need not state effect of order. — Parent was presumed to be cognizant of former statutory provisions, which establishes the legal effect of the order. The petition need not clearly state the effect of an order for termination of parental rights. Moss v. Moss, 135 Ga. App. 401, 218 S.E.2d 93 (1975) (decided under former Ga. L. 1971, pp. 709, 748).

Former statute was clear statement that right of inheritance in case of intestacy ceased both as to the parent from the child and as to the child from the parent. Spence v. Levi, 133 Ga. App. 581, 211 S.E.2d 622 (1974) (decided under former Code 1933, § 24A-3203).

Conclusive presumption of dependency created by O.C.G.A. § 34-9-13 is not defeated by the termination of parental rights. Menard v. Fairchild, 254 Ga. 275, 328 S.E.2d 721 (1985) (decided under former O.C.G.A. § 15-11-53).

Support considered obligation. — Child support is an obligation under former O.C.G.A. § 15-11-80 (see now O.C.G.A. § 15-11-261) such that a parent whose rights have been terminated was not subject to a subsequent judicial proceeding under O.C.G.A. § 19-11-1 to provide reimbursal payments of government dispensed child assistance benefits. Department of Human Resources v. Ammons, 206 Ga. App. 805, 426 S.E.2d 901 (1992) (decided under former O.C.G.A. § 15-11-80).

15-11-262. Right to attorney and appointment of guardian ad litem.

(a) A child and any other party to a proceeding under this article shall have the right to an attorney at all stages of the proceedings under this article.

(b) The court shall appoint an attorney for a child in a termination of parental rights proceeding. The appointment shall be made as soon as practicable to ensure adequate representation of such child and, in any event, before the first court hearing that may substantially affect the interests of such child.

(c) A child's attorney owes to a child the duties imposed by the law of this state in an attorney-client relationship.

(d) The court shall appoint a guardian ad litem for a child in a termination proceeding; provided, however, that such guardian ad litem may be the same person as the child's attorney unless or until there is a conflict of interest between the attorney's duty to such child as such child's attorney and the attorney's considered opinion of such child's best interests as guardian ad litem.

(e) The court shall appoint a CASA to serve as guardian ad litem whenever possible, and a CASA may be appointed in addition to an attorney who is serving as a guardian ad litem.

(f) The role of a guardian ad litem in a termination of parental rights proceeding shall be the same role as provided for in all dependency proceedings under Article 3 of this chapter.

(g) If an attorney or guardian ad litem has been appointed to represent a child in a prior proceeding under this chapter, the court, when possible, shall appoint the same attorney to represent such child in any subsequent proceeding.

(h) An attorney appointed to represent a child in a termination proceeding shall continue the representation in any subsequent appeals unless excused by the court.

(i) Unless authorized by the court, neither a child or a representative of a child may waive the right to any attorney in a termination proceeding.

(j) A party other than a child shall be informed of his or her right to an attorney prior to the adjudication hearing and prior to any other hearing at which a party could be subjected to the loss of residual parental rights. A party other than a child shall be given an opportunity to:

(1) Obtain and employ an attorney of the party's own choice;

(2) To obtain a court appointed attorney if the court determines that the party is an indigent person; or

(3) Waive the right to an attorney.

History. — Code 1981, § 15-11-262, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242; Ga. L. 2014, p. 780, § 1-16/SB 364.

Cross references. — Cases in which public defender representation required; timing of representation; juvenile divisions; contracts with local governments, O.C.G.A. § 17-12-23.

Law reviews. — For article, "A Child's Right to Legal Representation in Georgia Abuse and Neglect Proceedings," see 10 Ga. St. B. J. 12 (2004). For article addressing formal advisory opinion on attorney serving as guardian ad litem and legal counsel in a termination of parental rights proceeding, see 15 (No. 7) Ga. St. B. J. 88 (2010).

For comment, "Seen But Not Heard: Advocating for the Legal Representation of a Child's Expressed Wish in Protection Proceedings and Recommendations for New Standards in Georgia," see 48 Emory L. J. 1431 (1999).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under pre-2000 Code Section 15-11-85, and pre-2014 Code Section 15-11-98, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Judgment vacated because no attorney appointed. — In any case involving termination of parental rights in which no attorney was appointed by the trial court to represent the interests of the child, the judgment must be vacated and the case remanded to the juvenile court for retrial. In re J.D.H., 188 Ga. App. 466, 373 S.E.2d 279 (1988) (decided under former O.C.G.A. § 15-11-85).

When, in a termination of parental rights proceeding, indigent counsel appeared with the child's mother, but was unsure if the mother qualified for the counsel's services, it was error for the trial court to dismiss the indigent counsel and

require the mother to proceed without an attorney without determining if the mother was indigent at the time of the hearing because the entire legislative scheme written into the pertinent provision of the Juvenile Code was intended to provide an indigent parent with effective representation at all stages of any proceeding involving the termination of parental rights under former O.C.G.A. § 15-11-98(b) (see now O.C.G.A. § 15-11-262). In the Interest of A.M.A., 270 Ga. App. 769, 607 S.E.2d 916 (2004) (decided under former O.C.G.A. § 15-11-98).

Court is not required to appoint an attorney in adoption proceedings since the adoption statutes did not require the appointing of an attorney for the child. Arrington v. Hand, 193 Ga. App. 457, 388 S.E.2d 52 (1989) (decided under former O.C.G.A. § 15-11-85).

Appointing counsel for child. — It was not error, in a termination of parental rights proceeding, for the trial court not to appoint counsel for the child, under former O.C.G.A. § 15-11-98(a) (see now O.C.G.A. § 15-11-262), in addition to the child's guardian ad litem, as the trial court specifically found that the guardian ad litem discharged those duties as the child's counsel. In the Interest of A.M.A., 270 Ga. App. 769, 607 S.E.2d 916 (2004) (decided under former O.C.G.A. § 15-11-98).

Denial of continuance to obtain counsel. — In a termination of parental rights case when the trial court denied one parent's motion for a continuance to obtain counsel because the parent had already been given six weeks' notice of the hearing and instructions on how to apply for appointed counsel, reversal was not required; even if the trial court erred in not continuing the hearing, the parent did not show what, if any, harm the parent suffered from the absence of counsel. In the Interest of J.A.S., 287 Ga. App. 125, 650 S.E.2d 788 (2007), overruled on other grounds, In re J.M.B., 296 Ga. App. 786, 676 S.E.2d 9 (2009) (decided under former O.C.G.A. § 15-11-98).

Dual appointment not improper. — In a termination of parental rights case, there was no merit to a mother's argument that it was error to appoint the same person as the children's attorney and as their guardian ad litem (GAL) because the attorney's obligation to advocate for the children's desire to be returned to the mother conflicted with the requirement that the GAL advocate in the best interests of the children. Such a dual appointment had been expressly approved by the legislature in enacting former O.C.G.A. § 15-11-98(a) (see now O.C.G.A. § 15-11-262) and involved no conflict of interest because the fundamental duty of both a GAL and an attorney was to act in the best interests of the party represented; furthermore, as the mother's argument was an implicit admission that being returned to her was not in the children's best interests, even if a separate attorney had been appointed to represent the expressed desires of the children, the trial court would have been obligated by law to terminate the mother's parental rights. In the Interest of A.P., 291 Ga. App. 690, 662 S.E.2d 739 (2008), cert. dismissed, 2008 Ga. LEXIS 777 (Ga. 2008) (decided under former O.C.G.A. § 15-11-98).

Children adequately represented. — Termination of the mother's parental rights was proper because the mother's contention that the children's interests were not adequately represented before the juvenile court since the children were not represented by an attorney was without merit. The children were represented by an appointed guardian ad litem, which was specifically provided for by the legislature in former O.C.G.A. § 15-11-98(a) (see now O.C.G.A. § 15-11-262). In the Interest of R. J., 308 Ga. App. 702, 708 S.E.2d 626 (2011) (decided under former O.C.G.A. § 15-11-98).

Putative father entitled to counsel. — Putative father clearly fell within the general definition of a "party" for the purposes of the paternity hearing mandated by former O.C.G.A. § 15-11-83 (see now O.C.G.A. §§ 15-11-281, 15-11-282, and 15-11-283) and was therefore entitled to appointed counsel. Wilkins v. Georgia Dep't of Human Resources, 255 Ga. 230, 337 S.E.2d 20 (1985) (decided under former law).

No error in failure to advise mother of right to appointed counsel. — Bio-

logical mother's contention that the mother was unaware of the option to request counsel as an indigent failed as the adoption statutes did not require the appointing of an attorney for the mother and, thus, the trial court did not err in failing to advise the biological mother as to any rights to be appointed an attorney. Steele v. Steele, 346 Ga. App. 196, 816 S.E.2d 327 (2018).

Right to counsel not waived. — In a proceeding for termination of parental rights, an indigent parent did not waive the right to appointed counsel in a knowing, intelligent, and voluntary manner simply because the parent failed to request counsel prior to the hearing as directed by the court. The court's denial of the parent's request for counsel was reversible error. In re J. M. B., 296 Ga. App. 786, 676 S.E.2d 9 (2009) (decided under former O.C.G.A. § 15-11-98).

Right to appeal. — In a child custody action, if the court appointed a guardian ad litem to represent the minor, the minor was in effect made a party to the action and had standing through the guardian ad litem to appeal. Miller v. Rieser, 213 Ga. App. 683, 446 S.E.2d 233 (1994) (decided under former O.C.G.A. § 15-11-85).

Cited in Dell v. Dell, 324 Ga. App. 297, 748 S.E.2d 703 (2013).

ADVISORY OPINIONS OF THE STATE BAR

Editor's notes. — In light of the similarity of the statutory provisions, advisory opinions under former Code Section 15-11-98, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section.

Conflict between child and attorney who is guardian ad litem. — When it becomes clear that there is an irreconcilable conflict between the child's wishes and the attorney's considered opinion of the child's best interests in a parental termination procedure, the attorney must withdraw from his or her role as the child's guardian ad litem. Adv. Op. No. 10-2 (January 9, 2012).

Withdrawal when irreconcilable conflict between child and guardian ad litem. — When it becomes clear that there is an irreconcilable conflict between the child's wishes and the attorney's considered opinion of the child's best interests, the attorney must withdraw from his or her role as the child's guardian ad litem. Adv. Op. No. 16-2 (June 4, 2016).

Withdrawal as guardian when conflict between child's wishes and best interest. — When an attorney has been appointed to serve both as legal counsel and as guardian ad litem for a child under O.C.G.A. § 15-11-262 in a termination of parental rights case, if the attorney finds that the child's wishes and best interests are in conflict, the attorney must seek removal as guardian ad litem, considering Ga. St. Bar R. 4-102(d):1.6. (confidentiality) in the process of the removal. In re Formal Advisory Opinion No. 16-2, 302 Ga. 736, 808 S.E.2d 735 (2017).

RESEARCH REFERENCES

ALR. — Court appointment of attorney to represent, without compensation, indigent in civil action, 52 A.L.R.4th 1063.

Right of indigent parent to appointed counsel in proceeding for involuntary termination of parental rights, 92 A.L.R.5th 379.

15-11-263. Physical and mental examinations.

(a) Upon motion of any party or the court, the court may require a physical or mental evaluation of a child adjudicated as a dependent child or his or her parent, stepparent, guardian, or legal custodian.

(b) The cost of any ordered evaluation shall be paid by the moving party unless apportioned by the court, in its discretion, to any other party or parties.

History. — Code 1981, § 15-11-263, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under pre-2014 Code Section 15-11-100, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Mental evaluation left to court's discretion. — Under the language of former O.C.G.A. §§ 15-11-12 and 15-11-100 (see now O.C.G.A. §§ 15-11-27, 15-11-101, 15-11-263, and 15-11-590), authorizing the juvenile court to order psychological examinations, the decision to order a mental evaluation was left to the juvenile court's discretion. In the Interest of S.K., 248 Ga. App. 122, 545 S.E.2d 674 (2001) (decided under former O.C.G.A. § 15-11-100).

RESEARCH REFERENCES

ALR. — Parents' mental illness or mental deficiency as ground for termination of parental rights — General considerations, 113 A.L.R.5th 349.

15-11-264. Discovery.

(a) In all cases under this article, any party shall, upon written request to the party having actual custody, control, or possession of the material to be produced, have full access to the following for inspection, copying, or photographing:

(1) The names and telephone numbers of each witness likely to be called to testify at the hearing by another party;

(2) A copy of any formal written statement made by the child adjudicated as a dependent child or any witness that relates to the subject matter concerning the testimony of the witness that a party intends to call as a witness at the hearing;

(3) Except as otherwise provided in subsection (b) of this Code section, any scientific or other report which is intended to be introduced at any hearing or that pertains to physical evidence which is intended to be introduced;

(4) Any drug screen concerning the child adjudicated as a dependent child or his or her parent, guardian, or legal custodian;

(5) Any case plan concerning the child adjudicated as a dependent child or his or her parent, guardian, or legal custodian;

(6) Any visitation schedule related to the child who is adjudicated as a dependent child;

(7) Photographs and any physical evidence which are intended to be introduced at any hearing;

(8) Copies of the police incident report regarding an occurrence which forms part or all of the basis of the petition; and

(9) Any other relevant evidence not requiring consent or a court order under subsection (b) of this Code section.

(b) Upon presentation of a court order or written consent from the appropriate person or persons permitting access to the party having actual custody, control, or possession of the material to be produced, any party shall have access to the following for inspection, copying, or photographing:

(1) Any psychological, developmental, physical, mental or emotional health, or other assessments of the child adjudicated as a dependent child or the family, parent, guardian, or legal custodian of such child;

(2) Any school record concerning the child adjudicated as a dependent child;

(3) Any medical record concerning the child adjudicated as a dependent child;

(4) Transcriptions, recordings, and summaries of any oral statement of the child adjudicated as a dependent child or of any witness, except child abuse reports that are confidential pursuant to Code Section 19-7-5 and work product of counsel;

(5) Any family team meeting report or multidisciplinary team meeting report concerning the child adjudicated as a dependent child or his or her parent, guardian, or legal custodian;

(6) Supplemental police reports, if any, regarding an occurrence which forms part of all of the basis of the petition; and

(7) Immigration records concerning the child adjudicated as a dependent child.

(c) If a party requests disclosure of information pursuant to subsection (a) or (b) of this Code section, it shall be the duty of such party to promptly make the following available for inspection, copying, or photographing to every other party:

(1) The names and last known addresses and telephone numbers of each witness to the occurrence which forms the basis of the party's defense or claim;

(2) Any scientific or other report which is intended to be introduced at the hearing or that pertains to physical evidence which is intended to be introduced;

(3) Photographs and any physical evidence which are intended to be introduced at the hearing; and

(4) A copy of any written statement made by any witness that relates to the subject matter concerning the testimony of the witness that the party intends to call as a witness.

(d) A request for discovery or reciprocal discovery shall be complied with promptly and not later than five days after the request is received or 72 hours prior to any hearing except when later compliance is made necessary by the timing of the request. If the request for discovery is made fewer than 48 hours prior to an adjudicatory hearing, the discovery response shall be produced in a timely manner. If, subsequent to providing a discovery response in compliance with this Code section, the existence of additional evidence is found, it shall be promptly provided to the party making the discovery request.

(e) If a request for discovery or consent for release is refused, application may be made to the court for a written order granting discovery. Motions for discovery shall certify that a request for discovery or consent was made and was unsuccessful despite good faith efforts made by the requesting party. An order granting discovery shall require reciprocal discovery. Notwithstanding the provisions of subsection (a) or (b) of this Code section, the court may deny, in whole or in part, or otherwise limit or set conditions concerning the discovery response upon a sufficient showing by a person or entity to whom a request for discovery is made that disclosure of the information would:

(1) Jeopardize the safety of a party, witness, or confidential informant;

(2) Create a substantial threat of physical or economic harm to a witness or other person;

(3) Endanger the existence of physical evidence;

(4) Disclose privileged information; or

(5) Impede the criminal prosecution of a minor who is being prosecuted as an adult or the prosecution of an adult charged with an offense arising from the same transaction or occurrence.

(f) No deposition shall be taken of a child adjudicated as a dependent child unless the court orders the deposition, under such conditions as the court may order, on the ground that the deposition would further the purposes of this part.

(g) If at any time during the course of the proceedings it is brought to the attention of the court that a person or entity has failed to comply with an order issued pursuant to this Code section, the court may grant a continuance, prohibit the party from introducing in evidence the information not disclosed, or enter such other order as the court deems just under the circumstances.

(h) Nothing contained in this Code section shall prohibit the court from ordering the disclosure of any information that the court deems necessary for proper adjudication.

(i) Any material or information furnished to a party pursuant to this Code section shall remain in the exclusive custody of the party and shall only be used during the pendency of the case and shall be subject to such other terms and conditions as the court may provide.

History. — Code 1981, § 15-11-264, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

Cross references. — Discovery, T. 17, C. 16.

Law reviews. — For article, "The Prosecuting Attorney in Georgia's Juvenile Courts," see 13 Ga. St. B. J. 27 (2008).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under pre-2014 Code Section 15-11-75, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

No Brady violation shown. — In a juvenile proceeding wherein the juvenile was adjudicated delinquent as a result of a battery against a schoolmate on a school bus, the trial court did not err in allegedly failing to enforce the discovery provisions of former O.C.G.A. § 15-11-75(a)(7) (see now O.C.G.A. § 15-11-541) and in allegedly failing to remedy a Brady violation because the videotape at issue was not in the custody and control of the State of Georgia; the juvenile could have obtained the evidence had the juvenile simply subpoenaed the video prior to trial and, significantly, the unrebutted evidence of record established that the videotape lacked any exculpatory or evidentiary value since the videotape was blank. In the Interest of E.J., 283 Ga. App. 648, 642 S.E.2d 179 (2007) (decided under former O.C.G.A. § 15-11-75).

No pretrial discovery mandated. — Neither the U.S. Const., amend. 14 nor the state Constitution mandates pretrial discovery in proceedings to terminate parental rights. Ray v. Department of Human Resources, 155 Ga. App. 81, 270 S.E.2d 303 (1980) (decided under former law).

Discovery of relevant evidence granted. — Because termination of parental rights is more civil in nature than criminal, it generally is the legislative intent to grant discovery of evidence relevant to an issue in controversy, except when otherwise barred. Ray v. Department of Human Resources, 155 Ga. App. 81, 270 S.E.2d 303 (1980) (decided under former law).

15-11-265. Suspension of right of voluntary surrender of parental rights.

Once a petition to terminate parental rights has been filed, the parent of a child adjudicated as a dependent child shall thereafter be without authority to affect the custody of his or her child except such parent may:

(1) Consent to a judgment terminating his or her parental rights; and

(2) Execute an act of surrender in favor of:

(A) A third party if all of the parties to the petition to terminate parental rights agree; or

(B) The department.

History. — Code 1981, § 15-11-265, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242; Ga. L. 2014, p. 780, § 1-17/SB 364.

Part 2

Venue for Petition to Terminate Parental Rights

15-11-270. Venue.

(a) A proceeding under this article shall be commenced:

(1) In the county that has jurisdiction over related dependency proceedings;

(2) In the county in which a child legally resides;

(3) In the county in which a child is present when the termination proceeding is commenced if such child is present without his or her parent, guardian, or legal custodian; or

(4) In the county where the acts underlying the petition to terminate parental rights are alleged to have occurred.

(b) For the convenience of the parties, the court may transfer proceedings to the county in which the parent of a child adjudicated as a dependent child legally resides. If a proceeding is transferred, certified copies of all legal and social documents and records pertaining to the proceeding on file with the clerk of court shall accompany the transfer.

History. — Code 1981, § 15-11-270, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242; Ga. L. 2014, p. 780, § 1-18/SB 364.

Law reviews. — For article discussing venue problems in juvenile court practice and suggesting solutions, see 23 Mercer L.

Rev. 341 (1972). For article, "An Outline of Juvenile Court Jurisdiction with Focus on Child Custody," see 10 Ga. St. B. J. 275 (1973).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 24A-1101, pre-2000 Code Section 15-11-15 and former O.C.G.A. § 15-11-15, pre-2014 Code Section 15-11-29, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

County of parent's residence. — Revision of Ga. Const. 1976, Art. VI, Sec. XIV, Para. VI (see now Ga. Const. 1983, Art. VI, Sec. II, Para. VI), providing that venue in juvenile court cases may be determined by the provisions of the Juvenile Court Code of Georgia, removed any constitutional impediment to applying former O.C.G.A. § 15-11-29 (see now O.C.G.A. §§ 15-11-17, 15-11-270, and 15-11-401) to parental termination proceedings when the parent resides in a different county from that in which an allegedly deprived child is found. In re R.A.S., 249 Ga. 236, 290 S.E.2d 34 (1982) (decided under former O.C.G.A. § 15-11-15).

Action to terminate parental rights on ground of deprivation need not be brought in county of parents' residence. In re S.H., 163 Ga. App. 419, 294 S.E.2d 621 (1982) (decided under former Code 1933, § 24A-1101).

County of child's foster home. — Proceeding to terminate parental rights may be commenced in the county in which the child resides in a foster home. Cain v. Department of Human Resources, 166 Ga. App. 801, 305 S.E.2d 492 (1983) (decided under former O.C.G.A. § 15-11-15).

Because the child was placed into the Department of Family and Children Service's legal custody, a rebuttable presumption arose that the child obtained a Jones County legal residence for the purposes of determining venue; thus, by alleging that the child was in the department's custody, and by setting forth the department's address in Jones County, the department's petition provided sufficient information to establish that the child's residence was in Jones County, making venue therein, proper. In the Interest of A.J.M., 277 Ga. App. 646, 627 S.E.2d 399 (2006) (decided under former O.C.G.A. § 15-11-29).

County where parent resides. — For cases holding that venue for termination proceedings lies in the county where the parent resides, decided under prior constitutional provisions, see Quire v. Clayton County Dep't of Family & Children Servs., 242 Ga. 85, 249 S.E.2d 538 (1978), and Williams v. Department of Human Resources, 150 Ga. App. 610, 258 S.E.2d 288 (1979) (decided under former Code 1933, § 24A-1101).

Determining legal residence. — In determining where a juvenile resides for purposes of venue, it is generally the legal residence that controls. In re A.M.C., 213 Ga. App. 897, 446 S.E.2d 760 (1994) (decided under former O.C.G.A. § 15-11-15).

Since the requirements for venue in a county were met, the fact that the childrens' mother was in the process of moving to another state when the county department of family and children services obtained custody of her children was insufficient to rebut the presumption that the children resided in the county. In re K.M.L., 237 Ga. App. 662, 516 S.E.2d 363 (1999) (decided under former O.C.G.A. § 15-11-15).

Waiver of objection to venue. — By a parent's actions and inactions, the parent waived the parent's right to object to the venue of termination proceedings. In the Interest of H.D.M., 241 Ga. App. 805, 527 S.E.2d 633 (2000) (decided under former O.C.G.A. § 15-11-15).

In a deprivation proceeding, the court erred in basing venue on the childrens' brief visit to the county where the deprivation petitions were filed because the children were residing and attending school in another county at the time. In re B.G., 238 Ga. App. 227, 518 S.E.2d 451 (1999) (decided under former O.C.G.A. § 15-11-15).

Because a child was born in Lee County

and had lived with the child's mother and maternal grandparents in Lee County for ten out of the 16 months of the child's life when a petition alleging deprivation was filed under former O.C.G.A. § 15-11-29(a) (see now O.C.G.A. §§ 15-11-270 and 15-11-401), Lee County was the proper venue for the action. In the Interest of C.R., 292 Ga. App. 346, 665 S.E.2d 39 (2008) (decided under former O.C.G.A. § 15-11-29).

Service on mother in county of residence sufficient. — Service of process on the mother in the county of this state in which the mother of an illegitimate child resides is sufficient to give the county juvenile court jurisdiction over both the mother and the child regardless of whether there was a "detention" of the child and in spite of the fact that a welfare worker obtained possession of the child outside of the state. Sanchez v. Walker County Dep't of Family & Children Servs., 138 Ga. App. 49, 225 S.E.2d 441, rev'd on other grounds, 237 Ga. 406, 229 S.E.2d 66 (1976) (decided under former Code 1933, § 24A-1101).

Venue exists despite absence of child. — If a particular county is the residence of the child and of the child's mother, venue properly exists there for temporary custody actions even if the child was not personally present within the boundaries of that county on the date of the filing of the petition to the court for temporary custody. Sanchez v. Walker County Dep't of Family & Children Servs., 138 Ga. App. 49, 225 S.E.2d 441, rev'd on other grounds, 237 Ga. 406, 229 S.E.2d 66 (1976) (decided under former Code 1933, § 24A-1101).

Venue in county of child's residence and where child born. — Requirements for proving that venue was properly in Cobb County were met because a mother was residing in Cobb County when her child was born and when the underlying proceeding alleging deprivation commenced and that the child remained in the custody of Cobb County Department of Family and Children Services through the time the juvenile court entered the court's deprivation and non-reunification order. In re R. B., 309 Ga. App. 407, 710 S.E.2d 611 (2011) (decided under former O.C.G.A. § 15-11-29).

Challenge to court's jurisdiction unsuccessful. — Although former Code 1933, § 79-404 (see now O.C.G.A. § 19-2-4) provided that the domicile of an illegitimate child shall be that of his or her mother, yet, where the plea to the jurisdiction alleged "this court has accepted jurisdiction and custody of the minor child … and is holding said child subject to the order of this court," which clearly showed that the child was before the court, and there was no allegation showing the domicile of the mother, who was present in court, or any other reason why the juvenile court did not have jurisdiction, it was not error to overrule the plea. Springstead v. Cook, 215 Ga. 154, 109 S.E.2d 508 (1959) (decided under Ga. L. 1953, Nov.-Dec. Sess., p. 87, § 3).

Child was residing in Cobb County when an underlying proceeding alleging deprivation commenced and had remained in the custody of Cobb County Department of Family and Children Services through the time a termination of parental rights order was entered; accordingly, requirements for venue in Cobb County were met. In re R. J. D. B., 305 Ga. App. 888, 700 S.E.2d 898 (2010) (decided under former O.C.G.A. § 15-11-29).

There was sufficient evidence that venue was proper in Douglas County, Georgia, in a deprivation proceeding, as the Douglas County Department of Family and Children Services (DFCS) had been involved with the family for some time; the subject child's parent lived in a shelter in Douglas County in May and June of 2010, and at the time the deprivation petition was filed the child was in the custody of the Douglas County DFCS, where the child remained through the entry of the deprivation order. In the Interest of D. S., 316 Ga. App. 296, 728 S.E.2d 890 (2012) (decided under former O.C.G.A. § 15-11-29).

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Guardian and Ward, § 31 et seq. 42 Am. Jur. 2d, Infants, § 27 et seq. 47 Am. Jur. 2d, Juvenile Courts and Delinquent and Dependent Children, § 39 et seq.

C.J.S. — 43 C.J.S., Infants, § 180 et seq.

U.L.A. — Uniform Juvenile Court Act (U.L.A.) § 11.

PART 3

PETITION AND SUMMONS

15-11-280. Petition; style; contents; putative fathers.

(a) A petition to terminate parental rights and all subsequent court documents in such proceeding shall be entitled "In the interest of _____, a child.", except upon appeal, in which event the anonymity of a child shall be preserved by use of appropriate initials. The petition shall be in writing.

(b) The petition to terminate parental rights shall be made, verified, and endorsed by the court as provided in Article 3 of this chapter for a petition alleging dependency.

(c) A petition to terminate parental rights shall:

(1) State clearly that an order for termination of parental rights is requested and that the effect of the order will conform to Code Section 15-11-261;

(2) State the statutory ground, as provided in Code Section 15-11-310, on which the petition is based; and

(3) Set forth plainly and with particularity:

(A) The facts which bring a child within the jurisdiction of the court, with a statement that it is in the best interests of such child and the public that the proceeding be brought;

(B) The name, age, date of birth, and residence address of the child named in the petition;

(C) The name and residence address of the parent, guardian, or legal custodian of such child; or, if the parent, guardian, or legal custodian of the child named in the petition to terminate parental rights does not reside or cannot be found within the state or if such place of residence address is unknown, the name of any known adult relative of such child residing within the county or, if there is none, the known adult relative of such child residing nearest to the location of the court;

(D) Whether the child named in the petition is in protective custody and, if so, the place of his or her foster care and the time such child was taken into protective custody; and

(E) Whether any of the information required by this paragraph is unknown.

(d) When a petition to terminate parental rights seeks termination of the rights of a biological father who is not the legal father and who has not surrendered his rights to his child, the petition shall include a certificate from the putative father registry disclosing the name, address, and social security number of any registrant acknowledging paternity of the child named in the petition or indicating the possibility of paternity of a child of the child's mother for a period beginning no more than two years immediately preceding such child's date of birth. The certificate shall document a search of the registry on or before the date of the filing of the petition and shall include a statement that the registry is current as to filings of registrants as of the date of the petition.

(e) A copy of a voluntary surrender or written consent, if any, previously executed by a parent of the child named in the petition to terminate parental rights shall be attached to the petition.

History. — Code 1981, § 15-11-280, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242; Ga. L. 2014, p. 780, § 1-19/SB 364.

Law reviews. — For article discussing due process in juvenile court procedures in California and Georgia, in light of In re Gault, 387 U.S. 1, 87 S. Ct. 1428, 18 L. Ed. 2d 527 (1967), see 8 Ga. St. B. J. 9 (1971). For article, "Child Custody—Jurisdiction and Procedure," see 35 Emory L. J. 291 (1986).

For comment on grandparents' visitation rights in Georgia, see 29 Emory L. J. 1083 (1980).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 24A-1603, pre-2000 Code Section 15-11-25, pre-2014 Code Section 15-11-38.1, pre-2000 Code Section 15-11-82, and pre-2014 Code Section 15-11-95, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Juvenile petition must satisfy "due process." — Although a juvenile petition does not have to be drafted with the exactitude of a criminal accusation, the petition must satisfy "due process." T.L.T. v. State, 133 Ga. App. 895, 212 S.E.2d 650 (1975) (decided under former Code 1933, § 24A-1603).

Since the state's petition failed to set forth in ordinary and concise language the facts demonstrating the nature of the parent's alleged failure to provide proper parental care or control, the parent lacked sufficient information to enable the parent to prepare a defense, and this amounted to a denial of due process. In re D.R.C., 191 Ga. App. 278, 381 S.E.2d 426 (1989) (decided under former O.C.G.A. § 15-11-25).

To meet constitutional requirement of due process the language of a juvenile petition must pass two tests: (1) the petition must contain sufficient factual details

to inform the juvenile of the nature of the offense; and (2) the petition must provide data adequate to enable the accused to prepare a defense. T.L.T. v. State, 133 Ga. App. 895, 212 S.E.2d 650 (1975) (decided under former Code 1933, § 24A-1603).

Allege with particularity. — Due process requires that the petition alleging delinquency must set forth with specificity the alleged violation of law either in the language of the particular section, or so plainly that the nature of the offense charged may be easily understood by the child and the child's parents or guardian. D.P. v. State, 129 Ga. App. 680, 200 S.E.2d 499 (1973) (decided under former Code 1933, § 24A-1603).

Petition filed alleging delinquency, deprivation, or unruliness must set forth alleged misconduct with particularity. A.C.G. v. State, 131 Ga. App. 156, 205 S.E.2d 435 (1974) (decided under former Code 1933, § 24A-1603).

Insufficient notice to juvenile of alleged offense. — If a juvenile is brought to trial on a petition alleging delinquency based on a violation of former Code 1933, § 26-1601 (see now O.C.G.A. § 16-7-1) but was adjudicated delinquent for violating former Code 1933, § 26-1806 (see now O.C.G.A. § 16-8-7), there was insufficient notice to the juvenile of the offense alleged to be the basis of the juvenile's delinquency and the trial court must be reversed. D.P. v. State, 129 Ga. App. 680, 200 S.E.2d 499 (1973) (decided under former Code 1933, § 24A-1603).

Statement of custody irrelevant if jurisdiction otherwise exists. — If jurisdiction otherwise existed, such as if the action was brought in the county of the residence of both mother and son, then the requirement in paragraph (4) of former Code 1933, § 24A-1603 had no relevancy to the right of the trial court to handle the case. Sanchez v. Walker County Dep't of Family & Children Servs., 138 Ga. App. 49, 225 S.E.2d 441, rev'd on other grounds, 237 Ga. 406, 229 S.E.2d 66 (1976) (decided under former Code 1933, § 24A-1603).

Assumption of jurisdiction linked to authorized petition. — An order for detention clearly did not meet the requirements of a petition filed pursuant to former Code 1933, § 24A-1603 (see now O.C.G.A. §§ 15-11-152, 15-11-280, 15-11-390, 15-11-420, 15-11-422, and 15-11-522) to commence proceedings under former Code 1933, § 24A-1601 (see now O.C.G.A. § 15-11-420), and the assumption of jurisdiction by the juvenile court is linked to the authorized petition. Hartley v. Clack, 239 Ga. 113, 236 S.E.2d 63 (1977) (decided under former Code 1933, § 24A-1603).

In a hearing on parental custody in a divorce action, the trial court erred in awarding custody of the parties' minor children to the Department of Family and Children Services based upon findings that the children were deprived and the parents unfit because the mother had no notice that the superior court judge might award custody of the children to a third party based upon standards of deprivation. Watkins v. Watkins, 266 Ga. 269, 466 S.E.2d 860 (1996) (decided under former O.C.G.A. § 15-11-25).

Preparation and verification. — Because counsel for the Department of Children & Family Services stated to the court that counsel prepared the termination petition, that the petition was reviewed, verified, and then signed by counsel the next day, this was sufficient to comply with the requirements of former O.C.G.A. § 15-11-25 (see now O.C.G.A. §§ 15-11-152, 15-11-280, 15-11-390, 15-11-422, and 15-11-522). In re A.K.M., 235 Ga. App. 853, 510 S.E.2d 611 (1998) (decided under former O.C.G.A. § 15-11-25).

Service by correctional officer upon incarcerated father. — Personal service of a summons and a petition of deprivation by a correctional officer upon an incarcerated father was sufficient as the service procedures in the Civil Practice Act, O.C.G.A. § 9-11-1 et seq., were not adopted nor were binding on the juvenile court, and the correctional officer was acting under the direction of the court for the purposes of former O.C.G.A. § 15-11-39.1(c) (see now O.C.G.A. §§ 15-11-161, 15-11-282, 15-11-400, 15-11-424, and 15-11-531). In the Interest of A.J.M., 277 Ga. App. 646, 627 S.E.2d 399 (2006) (decided under former O.C.G.A. § 15-11-38.1).

Standing. — Child's great aunt and uncle had standing to bring a petition to terminate the parental rights of the child's father and mother. In re J.J., 225 Ga. App. 682, 484 S.E.2d 681 (1997) (decided under former O.C.G.A. § 15-11-82).

Compliance shown. — Because orders entered by the juvenile court before the Department of Human Resources (DHR) filed its termination petition related to that petition, specifically declaring the child to be deprived and that the child had been in the temporary legal custody of the DHR for over 14 months with no indication that the conditions of deprivation will be alleviated in the future, the court either substantially complied with or satisfied by implication the endorsement requirements showing that the filing of the petition was in the best interest of the public and the child. In the Interest of V.D.S., 284 Ga. App. 582, 644 S.E.2d 422 (2007), cert. denied, 2007 Ga. LEXIS 635 (Ga. 2007) (decided under former O.C.G.A. § 15-11-95).

Parent notified of consequences of termination order. — Terms which sufficiently apprised father of the consequences of an order terminating parental rights complied with subsection (c) of former O.C.G.A. § 15-11-82 (see now O.C.G.A. § 15-11-280). In re A.M.S., 208 Ga. App. 328, 430 S.E.2d 626 (1993), cert. denied, 510 U.S. 1128, 114 S. Ct. 1095, 127 L. Ed. 2d 409 (1994) (decided under former O.C.G.A. § 15-11-82).

State's petition failed to comply with subsection (c) of former O.C.G.A. § 15-11-82 (see now O.C.G.A. § 15-11-280) since the petition contained the first sentence of former O.C.G.A. § 15-11-80 (see now O.C.G.A. § 15-11-261) almost verbatim but did not provide any notice of the effects of the second sentence of that section. In re D.R.C., 191 Ga. App. 278, 381 S.E.2d 426 (1989) (decided under former O.C.G.A. § 15-11-82).

Juvenile court lacked jurisdiction over the mother and the subject matter of the termination of her parental rights because no original petition was filed and personally served. In re C.I.W., 229 Ga. App. 481, 494 S.E.2d 291 (1997) (decided under former O.C.G.A. § 15-11-82).

RESEARCH REFERENCES

Am. Jur. 2d. — 47 Am. Jur. 2d, Juvenile Courts and Delinquent and Dependent Children, § 75 et seq.

C.J.S. — 43 C.J.S., Infants, § 191 et seq.

U.L.A. — Uniform Juvenile Court Act (U.L.A.) § 21.

15-11-281. Issuance of summons.

(a) The court shall direct the issuance of a summons to the mother, legal father or biological father, guardian, legal custodian, attorney, and guardian ad litem, if any, of the child named in the petition to terminate parental rights and any other persons who appear to the court to be proper or necessary parties to the proceeding, requiring them to appear before the court at the time fixed to answer the allegations of the petition. A copy of such petition shall accompany the summons unless the summons is served by publication, in which case the published summons shall indicate the general nature of the allegations and where a copy of such petition can be obtained.

(b) The court shall direct notice and a copy of the petition be provided to the child named in the petition if the child is 14 years of age or older.

(c) The summons shall include the notice of effect of a termination judgment as set forth in Code Section 15-11-284 and shall state that a party is entitled to an attorney in the proceedings and that the court will appoint an attorney if the party is an indigent person.

(d) The court may endorse upon the summons an order directing the parent, guardian, or legal custodian of the child named in the petition to appear personally at the hearing or directing the person having the physical custody or control of such child to bring such child to the hearing.

(e) A party other than the child named in the petition may waive service of summons by written stipulation or by voluntary appearance at the hearing.

History. — Code 1981, § 15-11-281, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

Cross references. — Amendment to Juvenile Court petition, Uniform Rules for the Juvenile Courts of Georgia, Rule 6.6. Continuance of adjudicatory hearing in Juvenile Court, Uniform Rules for the Juvenile Courts of Georgia, Rule 11.3.

Law reviews. — For article discussing due process in juvenile court procedures in California and Georgia, in light of In re Gault, 387 U.S. 1, 87 S. Ct. 1428, 18 L. Ed. 2d 527 (1967), see 8 Ga. St. B. J. 9 (1971).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 24A-1701, pre-2000 Code Section 15-11-26, pre-2014 Code Section 15-11-39, pre-2000 Code Section 15-11-83, and pre-2014 Code Section 15-11-96, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Service of process by correctional officer on incarcerated parent. — Personal service of a summons and a petition of deprivation, by a correctional officer upon an incarcerated parent, was sufficient as the service procedures in the Civil Practice Act, O.C.G.A. § 9-11-1 et seq., were not adopted nor were binding on the juvenile court, and the correctional officer was acting under the direction of the court for the purposes of former O.C.G.A. § 15-11-39.1(c) (see now O.C.G.A. §§ 15-11-161, 15-11-282, 15-11-400, 15-11-424, and 15-11-531). In the Interest of A.J.M., 277 Ga. App. 646, 627 S.E.2d 399 (2006) (decided under former O.C.G.A. § 15-11-39).

Waiver of notice. — In a juvenile delinquency case, although neither defendants nor their parents were served with copies of the petitions and hearing summonses as required by former O.C.G.A. § 15-11-39 (see now O.C.G.A. §§ 15-11-162, 15-11-281, 15-11-423, 15-11-425, and 15-11-532), the defendants and their parents appeared at the hearings with their attorneys without objecting to lack of notice; thus, the defendants and their parents waived the notice issue. In the Interest of T.K.L., 277 Ga. App. 461, 627 S.E.2d 98 (2006) (decided under former O.C.G.A. § 15-11-39).

Waiver of procedural requirements. — Time limits on setting juvenile hearings are mandatory, but procedural requirements can be waived. J.T.G. v. State, 141 Ga. App. 184, 233 S.E.2d 40 (1977) (decided under former O.C.G.A. § 15-11-26). Cox v. Department of Human Resources, 148 Ga. App. 338, 250 S.E.2d 728 (1978), overruled on other grounds, 156 Ga. App. 338, 274 S.E.2d 728 (1980) (decided under former O.C.G.A. § 15-11-26).

Implied waiver of service on behalf of child. — If a child is present at a

juvenile court hearing with the child's parent and counsel, the child's parent impliedly may waive service of a summons on a child's behalf by voluntary appearance at a hearing without objection to lack of service. Fulton County Detention Center v. Robertson, 249 Ga. 864, 295 S.E.2d 101 (1982) (decided under former O.C.G.A. § 15-11-26).

Parent's right to appeal delinquency adjudication. — As parties to their child's delinquency action pursuant to former O.C.G.A. § 15-11-39(b) (see now O.C.G.A. §§ 15-11-160, 15-11-423, and 15-11-530), the child's parents had the right to appeal the juvenile court's judgment and to participate in the appellate process. In the Interest of J.L.B., 280 Ga. App. 556, 634 S.E.2d 514 (2006) (decided under former O.C.G.A. § 15-11-39).

Proceeding null when no waiver of rights nor proper service. — If, in a juvenile court proceeding, there was neither waiver of the right of a mother, nor proper service upon the parties and if the hearing is not taken under oath, or waived by any of the parties, the proceeding is an absolute nullity. McBurrough v. Dep't of Human Resources, 150 Ga. App. 130, 257 S.E.2d 35 (1979) (decided under former Code 1933, § 24A-1701).

Constitutionality. — Former O.C.G.A. § 15-11-96 (see now O.C.G.A. §§ 15-11-281, 15-11-282, and 15-11-283) was not unconstitutional because the statute required the biological father to exercise his interest in the child by filing a petition to legitimate. In the Interest of D.B., 243 Ga. App. 473, 533 S.E.2d 737 (2000) (decided under former O.C.G.A. § 15-11-96).

Requiring fathers of children born out of wedlock to legitimate their children in order to preserve their parental rights does not violate equal protection because unwed fathers and unwed mothers are not similarly situated. In the Interest of V.M.T., 243 Ga. App. 732, 534 S.E.2d 452 (2000) (decided under former O.C.G.A. § 15-11-96).

Construction with former provisions. — Because former O.C.G.A. § 15-11-96(c) (see now O.C.G.A. §§ 15-11-281 and 15-11-282) related specifically to service in termination-of-parental-rights proceedings, the trial court's reliance on the service provisions of former O.C.G.A. § 15-11-39.1 (see now O.C.G.A. §§ 15-11-161, 15-11-282, 15-11-400, 15-11-424, and 15-11-531), a statute dealing with service in juvenile court proceedings generally, was misplaced; moreover, for purposes of statutory interpretation, a specific statute prevailed over a general statute, absent any indication of a contrary legislative intent. In the Interest of C.S., 282 Ga. 7, 644 S.E.2d 812 (2007) (decided under former O.C.G.A. § 15-11-96).

Putative father entitled to counsel. — Putative father clearly fell within the general definition of a "party" for the purposes of the paternity hearing mandated by former O.C.G.A. § 15-11-83 (see now O.C.G.A. §§ 15-11-281, 15-11-282, and 15-11-283) and was therefore entitled to appointed counsel. Wilkins v. Georgia Dep't of Human Resources, 255 Ga. 230, 337 S.E.2d 20 (1985) (decided under former law).

Content of summons served upon father did not have to require him to appear in court on any fixed date in order to answer allegations in a petition to terminate his parental rights. In re W.R.S., 213 Ga. App. 616, 445 S.E.2d 367 (1994) (decided under former O.C.G.A. § 15-11-83).

Failure to give notice not error. — Failure to give notice to a father pursuant to subsections (e) and (g) of former O.C.G.A. § 15-11-83 (see now O.C.G.A. §§ 15-11-281 and 15-11-282) was not error since such notice requirements related only to the availability of the abbreviated termination procedures contained therein and did not affect the jurisdiction of the court to consider a termination proceeding; the absence of an attempt by the father to legitimate the children did not contribute to the judgment terminating the father's parental rights. In re C.M.S., 218 Ga. App. 487, 462 S.E.2d 398 (1995) (decided under former O.C.G.A. § 15-11-83); In re J.K., 239 Ga. App. 142, 520 S.E.2d 19 (1999) (decided under former O.C.G.A. § 15-11-83); In the Interest of L.S., 244 Ga. App. 626, 536 S.E.2d 533 (2000) (decided under former O.C.G.A. § 15-11-83).

15-11-282. Service of summons.

(a) If a party to be served with a summons is within this state and can be found, the summons shall be served upon him or her personally as soon as possible and at least 30 days before the termination of parental rights hearing.

(b) If a party to be served is within this state and cannot be found but his or her address is known or can be ascertained with due diligence, the summons shall be served upon such party at least 30 days before the termination of parental rights hearing by mailing him or her a copy by registered or certified mail or statutory overnight delivery, return receipt requested.

(c) If a party to be served is outside this state but his or her address is known or can be ascertained with due diligence, service of the summons shall be made at least 30 days before the termination of parental rights hearing either by delivering a copy to such party personally or by mailing a copy to him or her by registered or certified mail or statutory overnight delivery, return receipt requested.

(d) If, after due diligence, a party to be served with a summons cannot be found and such party's address cannot be ascertained, whether he or she is within or outside this state, the court may order service of the summons upon him or her by publication. The termination of parental rights hearing shall not be earlier than 31 days after the date of the last publication.

(e)(1) Service by publication shall be made once a week for four consecutive weeks in the legal organ of the county where the petition to terminate parental rights has been filed and of the county of the biological father's last known address. Service shall be deemed complete upon the date of the last publication.

(2) When served by publication, the notice shall contain the names of the parties, except that the anonymity of a child shall be preserved by the use of appropriate initials, and the date the petition to terminate parental rights was filed. The notice shall indicate the general nature of the allegations and where a copy of the petition to terminate parental rights can be obtained and require the party to be served by publication to appear before the court at the time fixed to answer the allegations of the petition to terminate parental rights.

(3) The petition to terminate parental rights shall be available to the party whose rights are sought to be terminated free of charge from the court during business hours or, upon request, shall be mailed to such party.

(4) Within 15 days after the filing of the order of service by publication, the clerk of court shall mail a copy of the notice, a copy

of the order of service by publication, and a copy of the petition to terminate parental rights to the absent party's last known address.

(f) Service of the summons may be made by any suitable person under the direction of the court.

(g) The court may authorize the payment from county funds of the costs of service and of necessary travel expenses incurred by persons summoned or otherwise required to appear at the hearing.

History. — Code 1981, § 15-11-282, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242; Ga. L. 2014, p. 780, § 1-20/SB 364; Ga. L. 2014, p. 866, § 15/SB 340.

Cross references. — Amendment to Juvenile Court petition, Uniform Rules for the Juvenile Courts of Georgia, Rule 6.6.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, §§ 24-2406 and 24A-1702, pre-2000 Code Section 15-11-27, pre-2014 Code Section 15-11-39.1, pre-2000 Code Section 15-11-83, and pre-2014 Code Section 15-11-96, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

There was no equal protection violation in framework of this former Code section since similarly situated residents and nonresidents were accorded equal treatment and it was only in cases when laws were applied differently to different persons under the same or similar circumstances that the equal protection of the law was denied. In re M.A.C., 244 Ga. 645, 261 S.E.2d 590 (1979) (decided under former Code 1933, § 24A-1702).

When service by publication sufficient in adoption proceeding. — Service by publication was sufficient to bestow jurisdiction over putative fathers of children whose natural mothers wish to give the children up for adoption. In re J.B., 140 Ga. App. 668, 231 S.E.2d 821 (1976) (decided under former Code 1933, § 24A-1702).

Service of summons and termination petition was ineffective since, even though the summons was left at the mother's residence, there was no evidence that the summons was left with a statutorily appropriate person, and service of the petition the day before the hearing was not timely. In re D.R.W., 229 Ga. App. 571, 494 S.E.2d 379 (1997) (decided under former O.C.G.A. § 15-11-27).

Order terminating an out-of-state incarcerated parent's parental rights was reversed as: (1) service of the termination petition and summons upon the parent via certified mail was insufficient under both O.C.G.A. § 9-11-4 and former O.C.G.A. § 15-11-96(c) (see now O.C.G.A. §§ 15-11-281 and 15-11-282); (2) a correctional officer who personally delivered the documents to the parent did not amount to sufficient and lawful personal service as the officer lacked the inherent authority to perfect service under O.C.G.A. § 9-11-4(c) and no court order existed to grant the authority; and (3) the trial court's reliance on the service provisions of former O.C.G.A. § 15-11-39.1 (see now O.C.G.A. §§ 15-11-161, 15-11-282, 15-11-400, 15-11-424, and 15-11-531), a statute dealing with service in juvenile court proceedings generally, was misplaced. In the Interest of C.S., 282 Ga. 7, 644 S.E.2d 812 (2007) (decided under former O.C.G.A. § 15-11-39.1).

Service by publication in termination proceeding. — Juvenile court may order service of process by publication in a termination proceeding if, after reasonable effort, a party cannot be found and the party's address cannot be ascertained. In re M.J.B., 238 Ga. App. 833, 520 S.E.2d

497 (1999) (decided under former O.C.G.A. § 15-11-39.1).

Juvenile court erred in terminating the parent's parental rights after the parent failed to appear at the termination hearing because the parent was denied due process based on service of process by publication as the parent was not properly served because there was nothing in the record showing that the petitioner requested to serve the parent by publication or filed an affidavit or sworn testimony in support of such service; and there was nothing in the record indicating that the trial court, prior to service by publication, concluded that the petitioner exercised due diligence in attempting to personally serve the parent, or that the trial court issued an order permitting service by publication. In the Interest of A. H., P. H., & J. H., 339 Ga. App. 882, 795 S.E.2d 188 (2016).

Juvenile court erred in terminating the mother's parental rights because the record failed to demonstrate that the summons was served by publication upon order of the court, after having been presented with evidence of due diligence by the Georgia Department of Human Services, Division of Family and Children Services and upon motion by the Department. In the Interest of R. C., 343 Ga. App. 682, 808 S.E.2d 39 (2017).

Service by publication in deprivation proceeding. — Juvenile court erred in granting service by publication of the paternal grandparents' petition alleging that the mother's children were deprived because the grandparents failed to exercise reasonable diligence to find the mother, the juvenile court concluded that the mother could not be found with due diligence within the State of Georgia without any competent evidence to support that finding, and the juvenile court failed to place any burden on the grandparents to determine what notice the grandparents had given to the mother of the grandparents' deprivation petition and simply relied on evidence about the father's efforts to contact her; the grandparents did not file a written motion for service by publication and supporting affidavit as required by O.C.G.A. § 9-11-4(f)(1)(A), the grandparents had some means of communicating with the mother because the father had the mother's telephone number and was able to notify the mother by phone of the 72-hour hearing, the grandparents could have contacted the mother's relatives to ascertain the mother's whereabouts, and the grandparents could have attempted to serve the mother personally or by registered or certified mail at the mother's prior address. Taylor v. Padgett, 300 Ga. App. 314, 684 S.E.2d 434 (2009) (decided under former O.C.G.A. § 15-11-39.1).

Service by correctional officer on incarcerated parent. — Personal service of a summons and a petition of deprivation, by a correctional officer upon an incarcerated parent, was sufficient as the service procedures in the Civil Practice Act, O.C.G.A. § 9-11-1 et seq., were not adopted nor were binding on the juvenile court, and the correctional officer was acting under the direction of the court for the purposes of former O.C.G.A. § 15-11-39.1(c) (see now O.C.G.A. §§ 15-11-161, 15-11-282, 15-11-400, 15-11-424, and 15-11-531). In the Interest of A.J.M., 277 Ga. App. 646, 627 S.E.2d 399 (2006) (decided under former O.C.G.A. § 15-11-39.1).

Service not perfected on incarcerated person. — Deprivation order had to be vacated and the case remanded because service of the deprivation petition on the parent in question, who was incarcerated, was not perfected in accordance with former O.C.G.A. § 15-11-39.1(a) (see now O.C.G.A. §§ 15-11-161, 15-11-282, 15-11-400, 15-11-424, and 15-11-531). The parent had not waived personal service and personal service was not waived simply by actual notice having been achieved. In the Interest of A. R., 296 Ga. App. 62, 673 S.E.2d 586 (2009) (decided under former O.C.G.A. § 15-11-39.1).

Requirement of "reasonable effort" to find party. — Former statute required a showing by the department that a "reasonable effort" had been made to find a putative father or ascertain his address. In re J.B., 140 Ga. App. 668, 231 S.E.2d 821 (1976) (decided under former O.C.G.A. § 15-11-39.1).

Permissibility of publication notice dependent upon investigation. — Whether publication notice is permissible

necessarily depends upon an investigation of whether the whereabouts of putative fathers were unknown and whether the fathers could be found with reasonable diligence. In re J.B., 140 Ga. App. 668, 231 S.E.2d 821 (1976) (decided under former O.C.G.A. § 15-11-39.1).

If there was no service of process and notice as required by the former provisions and there was no valid waiver of notice of the pending charge by service of process or otherwise, the entire hearing is a nullity. In re W.M.F., 180 Ga. App. 397, 349 S.E.2d 265 (1986) (decided under former O.C.G.A. § 15-11-39.1).

Waiver of right to notice. — If neither the juvenile nor the juvenile's mother were represented by counsel at the dispositional hearing, neither party knew the nature of the charge filed against the minor, and neither party knew of the serious consequences which may result in the case of an adverse adjudication of the petition filed against the juvenile, it is highly unlikely that the parties understood the significance of waiving the parties right to prior notice of the pending charge. In re W.M.F., 180 Ga. App. 397, 349 S.E.2d 265 (1986) (decided under former O.C.G.A. § 15-11-39.1).

Timeliness of petition. — Juvenile was entitled to a copy of the delinquency petition filed against the juvenile, and pursuant to former O.C.G.A. § 15-11-39.1 (see now O.C.G.A. §§ 15-11-161, 15-11-282, 15-11-400, 15-11-424, and 15-11-531), the juvenile had a right to receive the petition at least 24 hours prior to the adjudicatory hearing; however, the juvenile waived any objection the juvenile had on the grounds of improper service since the juvenile received the petition right before the hearing as the juvenile did not make an objection or request a continuance on the basis that the juvenile was unprepared. In the Interest of E.S., 262 Ga. App. 768, 586 S.E.2d 691 (2003) (decided under former O.C.G.A. § 15-11-39.1).

Permitting state's mid-trial amendment of petition to change the charge against the juvenile from a misdemeanor to a felony was error since the amendment was done without notice and provision of a continuance to allow additional time for preparation of a defense. In re D.W, 232 Ga. App. 777, 503 S.E.2d 647 (1998) (decided under former O.C.G.A. § 15-11-39.1).

Reliance on section by trial court misplaced. — Because former O.C.G.A. § 15-11-96(c) (see now O.C.G.A. §§ 15-11-281 and 15-11-282) related specifically to service in termination-of-parental-rights proceedings, the trial court's reliance on the service provisions of former O.C.G.A. § 15-11-39.1 (see now §§ 15-11-161, 15-11-282, 15-11-400, 15-11-424, and 15-11-531), a statute dealing with service in juvenile court proceedings generally, was misplaced; moreover, for purposes of statutory interpretation, a specific statute prevailed over a general statute, absent any indication of a contrary legislative intent. In the Interest of C.S., 282 Ga. 7, 644 S.E.2d 812 (2007) (decided under former O.C.G.A. § 15-11-39.1).

Constitutionality. — Former O.C.G.A. § 15-11-96 (see now O.C.G.A. §§ 15-11-281, 15-11-282, and 15-11-283) was not unconstitutional because the statute required the biological father to exercise his interest in the child by filing a petition to legitimate. In the Interest of D.B., 243 Ga. App. 473, 533 S.E.2d 737 (2000) (decided under former O.C.G.A. § 15-11-96).

Requiring fathers of children born out of wedlock to legitimate their children in order to preserve their parental rights does not violate equal protection because unwed fathers and unwed mothers are not similarly situated. In the Interest of V.M.T., 243 Ga. App. 732, 534 S.E.2d 452 (2000) (decided under former O.C.G.A. § 15-11-96).

Construction with former provisions. — Because former O.C.G.A. § 15-11-96(c) (see now O.C.G.A. §§ 15-11-281 and 15-11-282) related specifically to service in termination-of-parental-rights proceedings, the trial court's reliance on the service provisions of former O.C.G.A. § 15-11-39.1 (see now O.C.G.A. §§ 15-11-161, 15-11-282, 15-11-400, 15-11-424, and 15-11-531), a statute dealing with service in juvenile court proceedings generally, was mis-

placed; moreover, for purposes of statutory interpretation, a specific statute prevailed over a general statute, absent any indication of a contrary legislative intent. In the Interest of C.S., 282 Ga. 7, 644 S.E.2d 812 (2007) (decided under former O.C.G.A. § 15-11-96).

Failure to file petition to legitimate. — If the biological father received notice of a proceeding to terminate parental rights and failed to file a petition to legitimate the children, termination of his parental rights was authorized under former O.C.G.A. § 15-11-83 (see now O.C.G.A. § 15-11-96). In re D.B.G., 226 Ga. App. 29, 485 S.E.2d 575 (1997) (decided under former O.C.G.A. § 15-11-83).

Court correctly terminated a father's parental rights after he was personally served with a copy of the petition, which contained a notice that he would lose all rights unless he filed a petition to legitimate within 30 days, and he never filed such a petition. In re E.D.T., 233 Ga. App. 774, 505 S.E.2d 516 (1998) (decided under former O.C.G.A. § 15-11-83); In the Interest of D.M., 244 Ga. App. 361, 535 S.E.2d 7 (2000) (decided under former O.C.G.A. § 15-11-96).

Since the biological father of a child was notified nine months before a termination hearing that he had 30 days in which to file a petition to legitimate the child, and was further informed eleven days before the hearing that the paternity tests showed the child was his, but did not inform the court that he had received the paternity test results and wished more time in which to file a petition to legitimate, the court did not err in determining that his rights should be terminated. In re A.K.M., 235 Ga. App. 853, 510 S.E.2d 611 (1998) (decided under former O.C.G.A. § 15-11-83).

Biological father who fails to seek to legitimate his child following receipt of proper notice of termination proceedings may not thereafter object to the termination of his parental rights. In the Interest of A.W., 242 Ga. App. 26, 528 S.E.2d 819 (2000) (decided under former O.C.G.A. § 15-11-96).

Since the putative biological father failed to file a legitimation petition, despite having received two notices of his need to legitimate and having been given a continuance from the termination hearing so that he could comply with former O.C.G.A. § 15-11-96(h) (see now O.C.G.A. § 15-11-283), the juvenile court did not err in determining that his parental rights should be terminated. In the Interest of D.B., 243 Ga. App. 473, 533 S.E.2d 737 (2000) (decided under former O.C.G.A. § 15-11-96).

Under former O.C.G.A. § 15-11-96(h) (see now O.C.G.A. § 15-11-283), a petition to terminate parental rights must notify a biological father who is not the legal father that he must file, within 30 days of receipt of notice, a petition to legitimate his child; O.C.G.A. § 19-7-22 regulates a petition for the legitimation of a child, notice to the mother, a court order, the order's effect, and the intervention by the father. In the Interest of D.W., 264 Ga. App. 833, 592 S.E.2d 679 (2003) (decided under former O.C.G.A. § 15-11-96).

If a biological father fails to file a legitimation petition within 30 days of a petition under former O.C.G.A. § 15-11-96(h) (see now O.C.G.A. § 15-11-283), he loses all rights to the child and will not be entitled to object to the termination of his parental rights; if no legitimation petition is timely filed, or if it is denied or dismissed, the trial court shall enter an order terminating the father's rights under former O.C.G.A. § 15-11-96(i) (see now O.C.G.A. § 15-11-283). In the Interest of D.W., 264 Ga. App. 833, 592 S.E.2d 679 (2003) (decided under former O.C.G.A. § 15-11-96).

Order terminating a biological parent's parental rights was upheld on appeal as the parent failed to file for legitimation of the affected children within 30 days of being notified of the termination petition, despite repeatedly being notified to do so, and despite the appointment of an attorney in the termination proceedings. In the Interest of S.M.G., 284 Ga. App. 64, 643 S.E.2d 296 (2007) (decided under former O.C.G.A. § 15-11-96).

Because a father failed to give written notice to the juvenile court that a legitimation petition was filed, as required by former O.C.G.A. § 15-11-96(h) (see now O.C.G.A. § 15-11-28), within 30 days of receiving notification of a termination pro-

ceeding, the juvenile court properly entered an order terminating the father's parental rights, and the father was thus denied the right to object. In the Interest of S.M.R., 286 Ga. App. 139, 648 S.E.2d 697 (2007) (decided under former O.C.G.A. § 15-11-96).

Trial court properly terminated a parent's parental rights to a child as a result of the parent failing to timely file a notice of the petition to legitimate the child with the juvenile court within 30 days. In the Interest of M.D., 293 Ga. App. 700, 667 S.E.2d 693 (2008) (decided under former O.C.G.A. § 15-11-96).

Because a father of a 7-year-old autistic child had not even attempted to legitimate his child, despite numerous warnings from the juvenile court, the father lacked standing to challenge the termination of his parental rights. Therefore, the father's argument that the juvenile court erred in denying his motion for a continuance was moot. In the Interest of T. B. R., 304 Ga. App. 773, 697 S.E.2d 878 (2010) (decided under former O.C.G.A. § 15-11-96).

Content of summons served upon father did not have to require him to appear in court on any fixed date in order to answer allegations in a petition to terminate his parental rights. In re W.R.S., 213 Ga. App. 616, 445 S.E.2d 367 (1994) (decided under former O.C.G.A. § 15-11-83).

Service of summons and petition. — Subsection (c) of former O.C.G.A. § 15-11-83 (see now O.C.G.A. § 15-11-282) required only that a copy of the summons and petition be served on the parent at least 30 days before the time set for hearing on the petition. In re C.M., 194 Ga. App. 503, 391 S.E.2d 26 (1990) (decided under former O.C.G.A. § 15-11-83).

Service of a summons and termination petition was ineffective when, even though the summons was left at the mother's residence, there was no evidence the documentation was left with a statutorily appropriate person, and service of the petition the day before the hearing was not timely. In re D.R.W., 229 Ga. App. 571, 494 S.E.2d 379 (1997) (decided under former O.C.G.A. § 15-11-83).

Service of process on the mother was insufficient since there was no evidence that she was served personally with the summons and petition or by leaving a copy at her dwelling house or usual place of abode with a person of suitable age and discretion then residing therein, and the fact that she may have had actual notice of the termination proceeding would not cure the defective service. In the Interest of S.S., 246 Ga. App. 248, 540 S.E.2d 238 (2000) (decided under former O.C.G.A. § 15-11-96).

Within the context of a parental rights termination proceeding, a juvenile court had the discretion to determine whether to grant an extension of time for a putative father to serve the legitimation petition on the mother, pursuant to former O.C.G.A. § 15-11-96(i) (see now O.C.G.A. §§ 15-11-283), and O.C.G.A. § 19-7-22(b), and Georgia case law that allowed application of the procedural rules set out in the Civil Practice Act, including O.C.G.A. § 9-11-4(c) relating to service and extensions thereto; accordingly, the juvenile court's refusal to hear the legitimation petition was error, as was the decision to terminate the putative father's parental rights under O.C.G.A. § 15-11-94 without first determining whether he had standing under the legitimation action. In the Interest of A.H., 279 Ga. App. 77, 630 S.E.2d 587 (2006) (decided under former O.C.G.A. § 15-11-96).

An order terminating an out-of-state incarcerated parent's parental rights was reversed as: (1) service of the termination petition and summons upon the parent via certified mail was insufficient under both O.C.G.A. § 9-11-4 and former O.C.G.A. § 15-11-96(c) (see now O.C.G.A. §§ 15-11-281 and 15-11-282); (2) a correctional officer who personally delivered the documents to the parent did not amount to sufficient and lawful personal service as the officer lacked the inherent authority to perfect service under O.C.G.A. § 9-11-4(c) and no court order existed to grant the authority; and (3) the trial court's reliance on the service provisions of O.C.G.A. § 15-11-39.1, a statute dealing with service in juvenile court proceedings generally, was misplaced. In the Interest of C.S., 282 Ga. 7, 644 S.E.2d 812 (2007) (decided under former O.C.G.A. § 15-11-96).

Failure to give notice not error. — Failure to give notice to a father pursuant to subsections (e) and (g) of former O.C.G.A. § 15-11-83 (see now O.C.G.A. §§ 15-11-281 and 15-11-282) was not error since such notice requirements related only to the availability of the abbreviated termination procedures contained therein and did not affect the jurisdiction of the court to consider a termination proceeding; the absence of an attempt by the father to legitimate the children did not contribute to the judgment terminating the father's parental rights. In re C.M.S., 218 Ga. App. 487, 462 S.E.2d 398 (1995) (decided under former O.C.G.A. § 15-11-83); In re J.K., 239 Ga. App. 142, 520 S.E.2d 19 (1999) (decided under former O.C.G.A. § 15-11-83); In the Interest of L.S., 244 Ga. App. 626, 536 S.E.2d 533 (2000) (decided under former O.C.G.A. § 15-11-83).

Waiver of issue of service of process. — By failing to raise the issue at a termination hearing, mother waived the issue of insufficiency of process or service of process. In re S.J.M., 225 Ga. App. 703, 484 S.E.2d 764 (1997) (decided under former O.C.G.A. § 15-11-83).

Termination of parental rights mandatory. — In the absence of standing to object to the termination of parental rights for an untimely filed legitimation petition, entry of an order terminating parental rights was mandatory under former O.C.G.A. § 15-11-96(i) (see now O.C.G.A. § 15-11-283); the word "shall" as used in those provisions could be construed otherwise. In the Interest of D.W., 264 Ga. App. 833, 592 S.E.2d 679 (2003) (decided under former O.C.G.A. § 15-11-96).

RESEARCH REFERENCES

Am. Jur. 2d. — 47 Am. Jur. 2d, Juvenile Courts and Delinquent and Dependent Children, §§ 72, 73.

C.J.S. — 43 C.J.S., Infants, § 195 et seq.

U.L.A. — Uniform Juvenile Court Act (U.L.A.) § 23.

15-11-283. Notice to father.

(a) Unless he has surrendered all parental rights to his child, a summons shall be served in the same manner as set forth in Code Section 15-11-282 on the biological father:

(1) Whose paternity has been previously established in a judicial proceeding to which the father was a party;

(2) Whose identity is known to the petitioner or the petitioner's attorney;

(3) Who is a registrant on the putative father registry and has acknowledged paternity of the child named in the petition brought pursuant to this article;

(4) Who is a registrant on the putative father registry who has indicated possible paternity of the child named in the petition brought pursuant to this article that was born to such child's mother during a period beginning no more than two years immediately preceding such child's date of birth; or

(5) Who, if the court finds from the evidence including but not limited to the affidavit of the mother of a child named in the petition

brought pursuant to this article, has performed any of the following acts:

(A) Lived with such child;

(B) Contributed to such child's support;

(C) Made any attempt to legitimate such child; or

(D) Provided support or medical care for such mother either during her pregnancy or during her hospitalization for the birth of such child.

(b) The notice shall advise the biological father who is not the legal father that he may lose all rights to the child named in a petition brought pursuant to this article and will not be entitled to object to the termination of his rights to such child unless, within 30 days of receipt of notice, he files:

(1) A petition to legitimate such child; and

(2) Notice of the filing of the petition to legitimate with the court in which the termination of parental rights proceeding is pending.

(c) If the identity of the biological father whose rights are sought to be terminated is not known to the petitioner or the petitioner's attorney and the biological father would not be entitled to notice in accordance with subsection (a) of this Code section, then it shall be rebuttably presumed that he is not entitled to notice of the proceedings. The court shall be authorized to require the mother to execute an affidavit supporting the presumption or show cause before the court if she refuses. Absent evidence rebutting the presumption, no further inquiry or notice shall be required by the court, and the court may enter an order terminating the rights of the biological father.

(d) The court may enter an order terminating all the parental rights of a biological father, including any right to object thereafter to such proceedings:

(1) Who fails to file a timely petition to legitimate the child named in a petition brought pursuant to this article and notice in accordance with subsection (b) of this Code section;

(2) Whose petition to legitimate is subsequently dismissed for failure to prosecute; or

(3) Whose petition to legitimate does not result in a court order finding that he is the legal father of the child named in a petition brought pursuant to this article.

History. — Code 1981, § 15-11-283, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242; Ga. L. 2014, p. 780, § 1-21/SB 364.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under pre-2000 Code Section 15-11-83, and pre-2014 Code Section 15-11-96, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Constitutionality. — Former O.C.G.A. § 15-11-96 (see now O.C.G.A. §§ 15-11-281, 15-11-282, and 15-11-283) was not unconstitutional because the statute required the biological father to exercise his interest in the child by filing a petition to legitimate. In the Interest of D.B., 243 Ga. App. 473, 533 S.E.2d 737 (2000) (decided under former O.C.G.A. § 15-11-96).

Requiring fathers of children born out of wedlock to legitimate their children in order to preserve their parental rights does not violate equal protection because unwed fathers and unwed mothers are not similarly situated. In the Interest of V.M.T., 243 Ga. App. 732, 534 S.E.2d 452 (2000) (decided under former O.C.G.A. § 15-11-96).

Standing. — Parent who filed a legitimation petition more than 30 days after a termination of parental rights petition was filed lacked standing to challenge the termination. In the Interest of S.H., 251 Ga. App. 555, 553 S.E.2d 849 (2001) (decided under former O.C.G.A. § 15-11-96).

Father was not entitled to a new trial on a termination of rights petition filed by the Department of Family and Children Services as the father failed to legitimate the child at issue and, hence, lacked standing to challenge the termination of parental rights order. In the Interest of J.L.E., 281 Ga. App. 805, 637 S.E.2d 446 (2006) (decided under former O.C.G.A. § 15-11-96).

Given a biological father's failure to legitimate the child at issue, the father lacked standing to challenge the juvenile court's termination of parental rights order. In the Interest of L.S.T., 286 Ga. App. 638, 649 S.E.2d 841 (2007) (decided under former O.C.G.A. § 15-11-96).

Putative father had standing to appeal the termination of the putative father's parental rights even though the putative father had never filed a petition to legitimate the child; because the putative father never received notice under former O.C.G.A. § 15-11-96(e) (see now O.C.G.A. § 15-11-283) that the putative father had 30 days to file a petition to legitimate a child, former § 15-11-96(i) did not apply. In the Interest of K.E.A., 292 Ga. App. 239, 663 S.E.2d 822 (2008), overruled on other grounds, In re J.M.B., 296 Ga. App. 786, 676 S.E.2d 9 (2009) (decided under former O.C.G.A. § 15-11-96).

Juvenile court did not err in denying a father's legitimation petition based on his failure to support the child or his mother or send the child cards or letters while incarcerated. Because the father failed to legitimate the child, he lacked standing to challenge the termination of his parental rights under former O.C.G.A. § 15-11-96(i)(3) (see now O.C.G.A. § 15-11-283). In re J. S., 302 Ga. App. 342, 691 S.E.2d 250 (2010) (decided under former O.C.G.A. § 15-11-96).

Termination hearing seeks above all else welfare of child with due regard for the rights of the parents. Harvey v. Fulton County Dep't of Family & Children Servs., 147 Ga. App. 824, 250 S.E.2d 563 (1978) (decided under former law); Childers v. Clayton County Dep't of Family & Children Servs., 147 Ga. App. 825, 250 S.E.2d 564 (1978) (decided under former law); Kilgore v. Department of Human Resources, 151 Ga. App. 19, 258 S.E.2d 680 (1979) (decided under former law).

Court's discretion not controlled, absent abuse. — In determining how the interest of the child is best served, the juvenile court is vested with broad discretion which will not be controlled in the

absence of manifest abuse. Harvey v. Fulton County Dep't of Family & Children Servs., 147 Ga. App. 824, 250 S.E.2d 563 (1978) (decided under former law); Childers v. Clayton County Dep't of Family & Children Servs., 147 Ga. App. 825, 250 S.E.2d 564 (1978) (decided under former law).

Failure to file petition to legitimate. — If the biological father received notice of a proceeding to terminate parental rights and failed to file a petition to legitimate the children, termination of his parental rights was authorized under former O.C.G.A. § 15-11-83 (see now O.C.G.A. § 15-11-96). In re D.B.G., 226 Ga. App. 29, 485 S.E.2d 575 (1997) (decided under former O.C.G.A. § 15-11-83).

Court correctly terminated a father's parental rights after he was personally served with a copy of the petition, which contained a notice that he would lose all rights unless he filed a petition to legitimate within 30 days, and he never filed such a petition. In re E.D.T., 233 Ga. App. 774, 505 S.E.2d 516 (1998) (decided under former O.C.G.A. § 15-11-83); In the Interest of D.M., 244 Ga. App. 361, 535 S.E.2d 7 (2000) (decided under former O.C.G.A. § 15-11-96).

Since the biological father of a child was notified nine months before a termination hearing that he had 30 days in which to file a petition to legitimate the child, and was further informed eleven days before the hearing that the paternity tests showed the child was his, but did not inform the court that he had received the paternity test results and wished more time in which to file a petition to legitimate, the court did not err in determining that his rights should be terminated. In re A.K.M., 235 Ga. App. 853, 510 S.E.2d 611 (1998) (decided under former O.C.G.A. § 15-11-83).

Biological father who fails to seek to legitimate his child following receipt of proper notice of termination proceedings may not thereafter object to the termination of his parental rights. In the Interest of A.W., 242 Ga. App. 26, 528 S.E.2d 819 (2000) (decided under former O.C.G.A. § 15-11-96).

Since the putative biological father failed to file a legitimation petition, despite having received two notices of his need to legitimate and having been given a continuance from the termination hearing so that he could comply with former O.C.G.A. § 15-11-96(h) (see now O.C.G.A. § 15-11-283), the juvenile court did not err in determining that his parental rights should be terminated. In the Interest of D.B., 243 Ga. App. 473, 533 S.E.2d 737 (2000) (decided under former O.C.G.A. § 15-11-96).

Under former O.C.G.A. § 15-11-96(h) (see now O.C.G.A. § 15-11-283), a petition to terminate parental rights must notify a biological father who is not the legal father that he must file, within 30 days of receipt of notice, a petition to legitimate his child; O.C.G.A. § 19-7-22 regulates a petition for the legitimation of a child, notice to the mother, a court order, the order's effect, and the intervention by the father. In the Interest of D.W., 264 Ga. App. 833, 592 S.E.2d 679 (2003) (decided under former O.C.G.A. § 15-11-96).

If a biological father fails to file a legitimation petition within 30 days of a petition under former O.C.G.A. § 15-11-96(h) (see now O.C.G.A. § 15-11-283), he loses all rights to the child and will not be entitled to object to the termination of his parental rights; if no legitimation petition is timely filed, or if it is denied or dismissed, the trial court shall enter an order terminating the father's rights under former O.C.G.A. § 15-11-96(i) (see now O.C.G.A. § 15-11-283). In the Interest of D.W., 264 Ga. App. 833, 592 S.E.2d 679 (2003) (decided under former O.C.G.A. § 15-11-96).

Order terminating a biological parent's parental rights was upheld on appeal as the parent failed to file for legitimation of the affected children within 30 days of being notified of the termination petition, despite repeatedly being notified to do so, and despite the appointment of an attorney in the termination proceedings. In the Interest of S.M.G., 284 Ga. App. 64, 643 S.E.2d 296 (2007) (decided under former O.C.G.A. § 15-11-96).

Because a father failed to give written notice to the juvenile court that a legitimation petition was filed, as required by former O.C.G.A. § 15-11-96(h) (see now O.C.G.A. § 15-11-28), within 30 days of

receiving notification of a termination proceeding, the juvenile court properly entered an order terminating the father's parental rights, and the father was thus denied the right to object. In the Interest of S.M.R., 286 Ga. App. 139, 648 S.E.2d 697 (2007) (decided under former O.C.G.A. § 15-11-96).

Trial court properly terminated a parent's parental rights to a child as a result of the parent failing to timely file a notice of the petition to legitimate the child with the juvenile court within 30 days. In the Interest of M.D., 293 Ga. App. 700, 667 S.E.2d 693 (2008) (decided under former O.C.G.A. § 15-11-96).

Because a father of a 7-year-old autistic child had not even attempted to legitimate his child, despite numerous warnings from the juvenile court, the father lacked standing to challenge the termination of his parental rights. Therefore, the father's argument that the juvenile court erred in denying his motion for a continuance was moot. In the Interest of T. B. R., 304 Ga. App. 773, 697 S.E.2d 878 (2010) (decided under former O.C.G.A. § 15-11-96).

15-11-284. Notice of effect of termination judgment.

The notice required to be given to the mother, the biological father, and legal father of the child shall state:

"NOTICE OF EFFECT OF TERMINATION JUDGMENT

Georgia law provides that you can permanently lose your rights as a parent. A petition to terminate parental rights has been filed requesting the court to terminate your parental rights to your child. A copy of the petition to terminate parental rights is attached to this notice. A court hearing of your case has been scheduled for the _____ day of _____, _____, at (time of day), at the _____ Court of _____ County.

If you fail to appear, the court can terminate your rights in your absence.

If the court at the trial finds that the facts set out in the petition to terminate parental rights are true and that termination of your rights will serve the best interests of your child, the court can enter a judgment ending your rights to your child.

If the judgment terminates your parental rights, you will no longer have any rights to your child. This means that you will not have the right to visit, contact, or have custody of your child or make any decisions affecting your child or your child's earnings or property. Your child will be legally freed to be adopted by someone else.

Even if your parental rights are terminated:

(1) You will still be responsible for providing financial support (child support payments) for your child's care unless and until your child is adopted; and

(2) Your child can still inherit from you unless and until your child is adopted.

This is a very serious matter. You should contact an attorney immediately so that you can be prepared for the court hearing. You have the right to hire an attorney and to have him or her represent you. If you cannot afford to hire an attorney, the court will appoint an attorney if the court finds that you are an indigent person. Whether or not you decide to hire an attorney, you have the right to attend the hearing of your case, to call witnesses on your behalf, and to question those witnesses brought against you.

If you have any questions concerning this notice, you may call the telephone number of the clerk's office which is _____."

History. — Code 1981, § 15-11-284, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

15-11-285. Sanctions for failure to obey summons.

(a) If any person named in and properly served with a summons shall without reasonable cause fail to appear or, when directed in the summons, to bring the child named in the petition pursuant to this article before the court, then the court may issue a rule nisi against the person, directing the person to appear before the court to show cause why he or she should not be held in contempt of court.

(b) If a summons cannot be served or if the person to whom the summons is directed fails to obey it, the court may issue an order to take the child named in the petition pursuant to this article into protective custody.

History. — Code 1981, § 15-11-285, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

Part 4

Hearings

15-11-300. (For effective date, see note.) Notice of hearings to specified parties; required findings.

(a) In advance of each hearing to terminate parental rights, DFCS shall give written notice of the date, time, place, and purpose of the hearing to the caregiver of the child at issue, the foster parents of such child, if any, any preadoptive parent, or any relative providing care for such child, including the right to be heard. The written notice shall be delivered to the recipient at least 72 hours before the review or hearing by United States mail, e-mail, or hand delivery.

(b) This Code section shall not be construed to require a caregiver, foster parent, preadoptive parent, or relative caring for the child at issue to be made a party to the hearing solely on the basis of such notice and right to be heard.

(c) (For effective date, see note.) At any termination of parental rights hearing, the court shall make specific findings of fact in writing regarding participation by the caregiver of a child, the foster parent of a child, any preadoptive parent, or any relative providing care for a child. Such findings of fact shall include:

(1) Whether the caregiver was provided notice of the hearing, including the method, and whether the caregiver expressed an interest in being heard at the hearing; and

(2) If the caregiver is present, specific information regarding the caregiver's views, including, but not limited to, concerning the child's well-being, health, and safety; any changes the caregiver believes are necessary to advance the child's well-being, health, and safety; and the timeliness, necessity, and quality of services being provided to the child and caregiver; and a summary of documentation presented by the caregiver regarding the child's well-being, health, and safety, including, but not limited to, reports from physicians, counselors, psychologists, and teachers.

History. — Code 1981, § 15-11-300, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242; Ga. L. 2020, p. 241, § 3/SB 439.

Delayed effective date. — Subsection (c), as set out above, becomes effective January 1, 2021. Until January 1, 2021, there is no subsection (c).

The 2020 amendment, effective January 1, 2021, added subsection (c).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under pre-2014 Code Section 15-11-104, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Statutory construction. — Because former O.C.G.A. § 15-11-96(c) (see now O.C.G.A. §§ 15-11-281 and 15-11-282) related specifically to service in termination of parental rights proceedings, the trial court's reliance on the service provisions of former O.C.G.A. § 15-11-39.1 (see now O.C.G.A. §§ 15-11-161, 15-11-282, 15-11-400, 15-11-424, and 15-11-531), a statute dealing with service in juvenile court proceedings generally, was misplaced; moreover, for purposes of statutory interpretation, a specific statute prevailed over a general statute, absent any indication of a contrary legislative intent. In the Interest of C.S., 282 Ga. 7, 644 S.E.2d 812 (2007) (decided under former O.C.G.A. § 15-11-104).

15-11-301. Expedited hearings; orders.

(a) If no just cause has been shown for delay, all hearings contemplated by this article shall be conducted within 90 days of the date a petition to terminate parental rights is filed.

(b) If no just cause for delay has been shown by written finding of fact by the court, an order of disposition shall be issued by the juvenile court no later than 30 days after the conclusion of the hearing on the petition to terminate parental rights.

(c) All hearings contemplated by this article shall be recorded by stenographic notes or by electronic, mechanical, or other appropriate means capable of accurately capturing a full and complete record of all words spoken during the hearings. If no just cause for delay has been shown, the court reporter shall provide a transcript of the hearings no later than 30 days after a notice of appeal is filed.

(d) This Code section shall not affect the right to request a rehearing or the right to appeal the juvenile court's order.

(e) Failure to comply with the time requirements of this Code section shall not be grounds to invalidate an otherwise proper order terminating parental rights unless the court determines that such delay resulted in substantial prejudice to a party.

History. — Code 1981, § 15-11-301, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under pre-2014 Code Section 15-11-106, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Just cause for delay. — Although a hearing in a mother's parental rights termination proceeding was not held for two years, such was justified based on a finding that there was just cause for delay as one of the fathers of the five children involved in the termination proceeding was difficult to serve; service by publication was too costly for the county agency, many attempts to effect personal service were unsuccessfully made, and the mother deliberately hindered the agency's efforts to obtain service on the father. In the Interest of A.A., 274 Ga. App. 791, 618 S.E.2d 723 (2005) (decided under former O.C.G.A. § 15-11-106).

Cited in In the Interest of S. P., 336 Ga. App. 488, 784 S.E.2d 846 (2016).

15-11-302. Confidentiality of testimony of parties.

The record of the testimony of the parties adduced in any proceeding under this article shall not be admissible in any civil, criminal, or any other cause or proceedings in any court against a person named as

respondent for any purpose whatsoever, except in subsequent dependency or termination proceedings involving the same child or dependency or termination proceedings involving the same respondent.

History. — Code 1981, § 15-11-302, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

15-11-303. Standard of proof.

In all proceedings under this article, the standard of proof to be adduced to terminate parental rights shall be by clear and convincing evidence.

History. — Code 1981, § 15-11-303, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under pre-2000 Code Section 15-11-86, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Standard of review for the termination of parental rights is whether, after viewing the evidence in a light most favorable to the parent, a rational trier of fact could have found by clear and convincing evidence that the biological parent's rights should have been lost. State v. O'Neill, 209 Vt. 599, 209 A.3d 1213 (2019) (decided under former O.C.G.A. § 15-11-86).

Cited in In the Interest of S. P., 336 Ga. App. 488, 784 S.E.2d 846 (2016).

15-11-304. Applicability of Title 24; privileges.

Except as provided in this Code section, hearings to terminate parental rights shall be conducted in accordance with Title 24. Testimony or other evidence relevant to determining whether a statutory ground for termination of parental rights exists may not be excluded on any ground of privilege, except in the case of:

(1) Communications between a party and his or her attorney; and

(2) Confessions or communications between a priest, rabbi, or duly ordained minister or similar functionary and his or her confidential communicant.

History. — Code 1981, § 15-11-304, enacted by Ga. L. 2014, p. 780, § 1-22/SB 364.

PART 5

GROUNDS FOR TERMINATION OF PARENTAL RIGHTS

15-11-310. Grounds for determining termination of parental rights.

(a) In considering the termination of parental rights, the court shall first determine whether one of the following statutory grounds for termination of parental rights has been met:

(1) The parent has given written consent to termination which has been acknowledged by the court or has voluntarily surrendered his or her child for adoption;

(2) The parent has subjected his or her child to aggravated circumstances;

(3) The parent has wantonly and willfully failed to comply for a period of 12 months or longer with a decree to support his or her child that has been entered by a court of competent jurisdiction of this or any other state;

(4) A child is abandoned by his or her parent; or

(5) A child is a dependent child due to lack of proper parental care or control by his or her parent, reasonable efforts to remedy the circumstances have been unsuccessful or were not required, such cause of dependency is likely to continue or will not likely be remedied in the reasonably foreseeable future, and:

(A) Returning such child to his or her parent is likely to cause serious physical, mental, moral, or emotional harm to such child or threaten the physical safety or well-being of such child; or

(B) Continuation of the parent and child relationship will cause or is likely to cause serious physical, mental, moral, or emotional harm to such child.

(b) If any of the statutory grounds for termination has been met, the court shall then consider whether termination is in a child's best interests after considering the following factors:

(1) Such child's sense of attachments, including his or her sense of security and familiarity, and the continuity of affection for such child;

(2) Such child's wishes and long-term goals;

(3) Such child's need for permanence, including his or her need for stability and continuity of relationships with a parent, siblings, and other relatives;

(4) Any benefit to such child of being integrated into a stable and permanent home and the likely effect of delaying such integration into such stable and permanent home environment;

(5) The detrimental impact of the lack of a stable and permanent home environment on such child's safety, well-being, or physical, mental, or emotional health;

(6) Such child's future physical, mental, moral, or emotional well-being; and

(7) Any other factors, including the factors set forth in Code Section 15-11-26, considered by the court to be relevant and proper to its determination.

(c) If the court determines that a parent has subjected his or her child to aggravated circumstances because such parent has committed the murder of the other parent of such child, the court shall presume that termination of parental rights is in the best interests of the child.

History. — Code 1981, § 15-11-310, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242; Ga. L. 2018, p. 935, § 3/SB 131.

The 2018 amendment, effective July 1, 2018, substituted the present provisions of paragraph (a)(5) for the former provisions, which read: "A child is a dependent child due to lack of proper parental care or control by his or her parent, reasonable efforts to remedy the circumstances have been unsuccessful or were not required, such cause of dependency is likely to continue or will not likely be remedied, and the continued dependency will cause or is likely to cause serious physical, mental, emotional, or moral harm to such child."; deleted "and" at the end of paragraph (b)(3); added paragraphs (b)(4) through (b)(6); and redesignated former paragraph (b)(4) as present paragraph (b)(7).

JUDICIAL DECISIONS

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General Consideration

Editor's notes. — In light of the similarity of the statutory provisions, decisions under pre-2000 Code Sections 15-11-51 and 15-11-81, and pre-2014 Code Section 15-11-94, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Former O.C.G.A. § 15-11-70 not applicable. — Provisions of former O.C.G.A. § 15-11-41 (see now O.C.G.A. §§ 15-11-443 and 15-11-607) as to orders of disposition and recommendations regarding unification were not applicable in proceedings under former O.C.G.A.

§ 15-11-81 (see now O.C.G.A. §§ 15-11-310, 15-11-311, and 15-11-320). In re V.S., 230 Ga. App. 26, 495 S.E.2d 142 (1998) (decided under former O.C.G.A. § 15-11-81).

Primary consideration in proceeding to terminate parental rights was welfare of child. In re Creech, 139 Ga. App. 210, 228 S.E.2d 198 (1976); Avera v. Rainwater, 150 Ga. App. 39, 256 S.E.2d 648 (1979) (decided under former law).

Parental misconduct or incapability must be shown. — For the termination of parental rights, there must be a showing of parental unfitness caused either by intentional or unintentional misconduct resulting in abuse or neglect of the child, or by what is tantamount to a physical or mental incapability to care for the child. Howard v. Department of Human Resources, 157 Ga. App. 306, 277 S.E.2d 301 (1981) (decided under former law).

Petition to terminate own rights not authorized. — Statutory authority of the juvenile court to entertain petitions to terminate parental rights does not extend to petitions by parents seeking judicial imprimatur of their own voluntary abandonment of parental responsibility. In re K.L.S., 180 Ga. App. 688, 350 S.E.2d 50 (1986) (decided under former law).

Responsibility cannot be terminated by contract. — Father could not voluntarily abandon his parental responsibility by contract. Diegel v. Diegel, 261 Ga. App. 660, 583 S.E.2d 520 (2003) (decided under former O.C.G.A. § 15-11-94).

Agency custody does not oust judicial jurisdiction. — That a "deprived child" may be in agency custody at the time of the hearing on termination of parental rights does not oust the juvenile court from jurisdiction to determine the ultimate issue of custody. In re K.C.O., 142 Ga. App. 216, 235 S.E.2d 602 (1977) (decided under former law).

Exercise of custody by county department suspends, but does not terminate, parental rights. — Removal of custody of the child from the parents is a determination that, for whatever length of time custody is exercised by the department of family and children services, this right has been suspended, although not finally terminated. Rodgers v. Department of Human Resources, 157 Ga. App. 235, 276 S.E.2d 902 (1981) (decided under former law).

Time limitation in subparagraph (b)(4)(C) of former O.C.G.A. § 15-11-81 (see now O.C.G.A. § 15-11-310(a)(3)) is designed to give the parent whose rights are subject to termination sufficient time and opportunity to demonstrate his or her ability to comply with the terms of the court's order. In re B.L., 196 Ga. App. 807, 397 S.E.2d 156 (1990) (decided under former O.C.G.A. § 15-11-81).

Legitimation rights of putative father must first be determined. — Within the context of a parental rights termination proceeding, a juvenile court had the discretion to determine whether to grant an extension of time for a putative father to serve his legitimation petition on the mother, pursuant to O.C.G.A. § 19-7-22(b) former O.C.G.A. § 15-11-96(i) (see now O.C.G.A. § 15-11-283), and Georgia case law that allowed application of the procedural rules set out in the Civil Practice Act, including O.C.G.A. § 9-11-4(c) relating to service and extensions thereto; accordingly, the juvenile court's refusal to hear the legitimation petition was error as was the decision to terminate the putative father's parental rights under former O.C.G.A. § 15-11-94 (see now O.C.G.A. §§ 15-11-310 and 15-11-320) without first determining whether he had standing or not under the legitimation action. In the Interest of A.H., 279 Ga. App. 77, 630 S.E.2d 587 (2006) (decided under former O.C.G.A. § 15-11-94).

Biological father who fails to seek to legitimate his child following receipt of proper notice of termination proceedings may not thereafter object to the termination of his parental rights. In the Interest of A.W., 242 Ga. App. 26, 528 S.E.2d 819 (2000) (decided under former O.C.G.A. § 15-11-94).

Father lacked standing to challenge termination order. — Given a biological father's failure to legitimate the child at issue, the father lacked standing to challenge the juvenile court's termination of parental rights order. In the Interest of L.S.T., 286 Ga. App. 638, 649 S.E.2d

General Consideration (Cont'd)

841 (2007) (decided under former O.C.G.A. § 15-11-94).

Determination whether needs met by temporary custody. — Although sufficient evidence was presented to authorize termination of parental rights, the case was remanded to the trial court to determine if the child's needs could be met by temporary custody to some agency or individual as opposed to a complete severance of all parental rights. Jones v. Department of Human Resources, 168 Ga. App. 915, 310 S.E.2d 753 (1983) (decided under former O.C.G.A. § 15-11-81).

In a hearing on parental custody in a divorce action, the trial court erred in awarding custody of the parties' minor children to the Department of Family and Children Services based upon findings that the children were deprived and the parents unfit because the mother had no notice that the superior court judge might award custody of the children to a third party based upon standards of deprivation. Watkins v. Watkins, 266 Ga. 269, 466 S.E.2d 860 (1996) (decided under former O.C.G.A. § 15-11-81).

Termination petition was not a disguised adoption matter. — Contrary to a father's contention, the termination petition filed by the child's mother was not actually a disguised adoption matter that could be properly heard only in superior court. The stepfather's mere expression of a desire to adopt the child at some time in the future was not sufficient for the court to conclude that the petition was filed in connection with an adoption proceeding; there was no evidence that an adoption petition was pending at the time that the petition was filed; and the petition, which stated that the father failed to provide for the support of the child and failed to have any contact with the child, alleged grounds sufficient for termination. In the Interest of A.R.K.L., 314 Ga. App. 847, 726 S.E.2d 77 (2012) (decided under former O.C.G.A. § 15-11-94).

Consent to termination not procured by duress. — Mother's written consent pursuant to former O.C.G.A. § 15-11-94(b)(1) (see now O.C.G.A. § 15-11-310) to termination of her parental rights to her child, who was suspected of having autism, was not procured by fraud or duress, although it was later determined that the child did not have autism. The pressure the mother felt to try to keep one of her children did not constitute legal duress. In re A.B., 311 Ga. App. 629, 716 S.E.2d 755 (2011) (decided under former O.C.G.A. § 15-11-94).

Criteria for Termination

Criteria justifying termination. — Affirmative evidence of moral unfitness, physical abuse, abandonment, refusal to support, or similar misconduct by a parent or the likelihood of substantial threat to a child's physical, mental, moral, or emotional well-being justifiably warrants the termination of a parent's right to a child. Elrod v. Hall County Dep't of Family & Children Servs., 136 Ga. App. 251, 220 S.E.2d 726 (1975) (decided under former law).

Thread running through parental right termination cases manifests moral unfitness, physical abuse, and abandonment. Patty v. Department of Human Resources, 154 Ga. App. 455, 269 S.E.2d 30 (1980) (decided under former law).

Court in arriving at the court's decision in terminating parental rights should use, among other criteria, moral unfitness, physical abuse, and abandonment by a parent. Gardner v. Lenon, 154 Ga. App. 748, 270 S.E.2d 36 (1980) (decided under former law).

Custody may be lost if a child is found to be destitute or suffering, if the child is being reared under immoral influences, or if the child is found to be deprived and likely to be harmed thereby. In re M.M.A., 166 Ga. App. 620, 305 S.E.2d 139 (1983) (decided under former law).

Parental rights may be terminated when the child is deprived and the court finds that the conditions and causes of the deprivation are likely to continue or will not be remedied and that by reason thereof the child is suffering or will probably suffer serious physical, mental, moral, or emotional harm. The last two statutorily required findings are necessary only in cases of termination of parental rights. In re J.C.P., 167 Ga. App. 572, 307 S.E.2d 1 (1983), but see In re A.W.,

240 Ga. App. 259, 523 S.E.2d 88 (1999) (decided under former law).

Determining the propriety of termination of parental rights is a two-step process. First, the court shall determine if there exists clear and convincing evidence of parental misconduct or inability; secondly, if such evidence exists, the court then considers whether termination of parental rights is in the best interest of the child, given the physical, mental, emotional, and moral condition and needs of the child, including the need for a stable home. In re G.L.H., 209 Ga. App. 146, 433 S.E.2d 357 (1993) (decided under former O.C.G.A. § 15-11-81); In re B.C., 235 Ga. App. 152, 508 S.E.2d 774 (1998) (decided under former O.C.G.A. § 15-11-81).

Juvenile court employed a two-prong analysis for determining whether parental rights should be terminated under former O.C.G.A. § 15-11-94 (see now O.C.G.A. §§ 15-10-310 and 15-10-320) first, the court determined whether there was clear and convincing evidence of parental misconduct or that the parent was unable to care for and control the child; and, second, the court determined whether termination was in the best interest of the child. In the Interest of A.M., 259 Ga. App. 537, 578 S.E.2d 226 (2003) (decided under former O.C.G.A. § 15-11-94).

Detailed findings for termination. — Termination of parental rights was allowed when the trial judge made detailed findings regarding the criteria to meet the two-step test, specifically, the court found that within the 18 months preceding the court's order, the defendant made no attempt to contact or communicate with the child, and the child was readily adoptable. In re H.M.T., 203 Ga. App. 247, 416 S.E.2d 567 (1992) (decided under former O.C.G.A. § 15-11-81).

Considerations for the court. — Under former O.C.G.A. § 15-11-94(b)(4)(C)(ii)-(iii) (see now O.C.G.A. § 15-11-310), in cases when the child was not in the custody of the parent who was the subject of the termination of parental rights proceedings and in determining whether the child was without proper parental care and control, the court should consider, without being limited to, whether the parent without justifiable cause failed significantly for a period of one year or longer prior to the filing of the petition for termination of parental rights: (1) to provide for the care and support of the child as required by law or judicial decree; and (2) to comply with a court ordered plan designed to reunite the child with the parent or parents. In the Interest of J.J., 259 Ga. App. 159, 575 S.E.2d 921 (2003) (decided under former O.C.G.A. § 15-11-94).

Court's failure to make clear court's basis for termination decision. — Termination of the mother's parental rights had to be vacated because it was unclear whether the juvenile court intended to rely on dependency or abandonment to support the court's decision to terminate the mother's parental rights given that the juvenile court appeared to have addressed the two concepts interchangeably. In the Interest of J. A. B., 336 Ga. App. 367, 785 S.E.2d 43 (2016).

Termination of rights in child's best interest based on case manager's testimony. — Termination of the mother's parental rights was in the child's best interests because the case manager testified that the child was thriving in foster care and bonded with the foster parents, that the mother was unstable, the mother continued to use cocaine, and that continued contact with the mother would be harmful to the child. In the Interest of C. A. B., 351 Ga. App. 666, 832 S.E.2d 645 (2019).

Egregious conduct was one factor in termination proceedings. — Egregious conduct or evidence of past egregious conduct of a parent toward the parent's child or another child of a physically, emotionally, or sexually cruel or abusive nature was one factor a court may consider in determining whether the child was without proper parental care and control under former O.C.G.A. § 15-11-94(b)(4)(B)(iv) (see now O.C.G.A. § 15-11-318). In the Interest of J.P., 253 Ga. App. 732, 560 S.E.2d 318 (2002) (decided under former O.C.G.A. § 15-11-94).

Because a mother's children had been found to be deprived, as defined in former O.C.G.A. § 15-11-2(8) (see now O.C.G.A. § 15-11-107), because her persistent fail-

Criteria for Termination (Cont'd)

ure to adequately supervise the children supported a finding that the deprivation was likely to continue, and because continued deprivation was likely to seriously harm the children, the mother's parental rights were properly terminated. In the Interest of T. A. H., 310 Ga. App. 93, 712 S.E.2d 115 (2011) (decided under former O.C.G.A. § 15-11-94).

Abandonment by parent. — Termination of the mother's parental rights based on abandonment was proper because O.C.G.A. § 15-11-310 did not require the juvenile court to make a finding that the child would suffer harm if the child remained in foster care in order for parental rights to be terminated; and the mother waived the mother's right to challenge the juvenile court's finding on appeal as the mother failed to enumerate as error and challenge on appeal the juvenile court's determination that the evidence supported a finding of abandonment by the mother as a statutory ground for terminating the mother's parental rights. In the Interest of I. H. H., 345 Ga. App. 808, 815 S.E.2d 133 (2018).

Juvenile court's determination that the father abandoned the child was supported by clear and convincing evidence including evidence that the father had no contact with the child for nearly three years, the father had been incarcerated and admitted to having a drug problem, and the father had a violent temper and perpetrated acts of violence against the mother in and out of the child's presence. In the Interest of C. S., 354 Ga. App. 133, 840 S.E.2d 475 (2020).

Proof of abandonment. — Record supported a finding of abandonment as the evidence showed that the father paid no child support, as required by the Department of Children and Family Services (DFCS) case plan, had not seen the child for over a year leading up to the termination proceedings, failed to legitimate the child, moved to Florida (and later Tennessee) without notifying DFCS, and failed to attend the vast majority of scheduled visits with the child arranged by DFCS. In the Interest of B. D. O., 343 Ga. App. 587, 807 S.E.2d 507 (2017).

Termination not justified. — Evidence was insufficient to terminate the mother's parental rights and grant an adoption petition of the maternal grandparents because any continued dependency experienced by the child was not shown to likely cause the child serious physical, mental, emotional, or moral harm as the mother was progressing with stabilization, the child had a stable lifestyle with the care of maternal grandparents and extended family, and the mother and child maintained a positive, healthy bond. Hewlett v. Hewlett, 349 Ga. App. 267, 825 S.E.2d 622 (2019).

Evidence

Present situation must be considered prior to termination. — Juvenile court erred in terminating the mother's parental rights after the child was beaten by the mother's husband so severely that she had to be placed on life support since the Department of Family and Children Services failed to show by clear and convincing evidence that the mother was presently unfit and that the deprivation would continue unless her parental rights were terminated; there was no evidence that the child had been deprived while in her mother's care prior to the mother's marriage and as the husband had been removed from the child and the mother's life, the primary cause of the child's deprivation had been remedied. In addition, the mother acted entirely on her own to improve her abilities to care for her child so that a similar situation did not recur. In the Interest of V.E.H., 262 Ga. App. 192, 585 S.E.2d 154 (2003) (decided under former O.C.G.A. § 15-11-81).

Evidence requirements showing parental misconduct or inability. — Under former O.C.G.A. § 15-11-94(a) and (b)(4)(A) (see now O.C.G.A. § 15-11-310), construing the evidence most favorably to the findings of the court, the question on appeal of a termination of parental rights was whether a rational trier of fact could have found clear and convincing evidence: (1) of parental misconduct or inability; and (2) that terminating parental rights was in the best interest of the child. Parental misconduct or inability was shown by evidence: (1) that the child was de-

prived; (2) lack of parental care caused the deprivation; (3) such was likely to continue; and (4) the continued deprivation was likely to cause serious harm to the child. In the Interest of M.L., 259 Ga. App. 534, 578 S.E.2d 190 (2003) (decided under former O.C.G.A. § 15-11-94).

Inability to properly rear children. — Same factors that show a parent's inability to properly rear her children also may provide proof that termination of parental rights would be in the children's best interests. In re S.J.C., 234 Ga. App. 491, 507 S.E.2d 226 (1998) (decided under former O.C.G.A. § 15-11-81).

Same factors showing parental misconduct used for termination. — Same factors that show parental misconduct or inability can support a juvenile court's finding that termination of parental rights is in the children's best interests. In the Interest of N.L., 260 Ga. App. 830, 581 S.E.2d 643 (2003) (decided under former O.C.G.A. § 15-11-94).

Evidence of dependency supported termination. — There was sufficient evidence that the children were dependent at the time of the termination hearing due to a lack of proper parental care and control, including evidence of repeated instances of inadequate food, clothing, and shelter, inadequate supervision, the mother's resistance towards acquiring recommended therapy for a child, and injuries sustained by the children. In the Interest of D. M. et al., 339 Ga. App. 46, 793 S.E.2d 422 (2016).

In a case terminating the mother's parental rights, the child was currently dependent at the time of the hearing because the mother failed to maintain visitation with the child from May 2015 to March 2016, with only sporadic visitation prior to May 2015; the mother failed to provide child support, refused to provide proof of income, and was currently living in a two-bedroom home with four other individuals, none of whom had been screened by the Department of Family and Children Services or ever met the child; and the mother suffered from serious mental health issues, which the mother denied, even though the mother was taking some medication and receiving some counseling. In the Interest of R. S. T., 345 Ga. App. 300, 812 S.E.2d 614 (2018).

Same evidence showing parental misconduct used for termination. — Same evidence showing parental misconduct or inability may establish the requirement to show that termination of parental rights is in a child's best interest. In the Interest of A.B., 274 Ga. App. 230, 617 S.E.2d 189 (2005) (decided under former O.C.G.A. § 15-11-94).

Evidence sufficient to support termination. — Order terminating the mother's parental rights was supported by evidence that any strides the mother made pertaining to the case plan were temporary, the mother only made two child support payments, the mother failed to secure stable housing, and the mother returned the children 12 hours after regaining custody and suggested the children live with the foster parents. In the Interest of C. J. V., 333 Ga. App. 844, 777 S.E.2d 692 (2015).

Failure to pay child support supported termination. — Clear and convincing evidence was presented to support termination of the father's parental rights on the basis of failure to comply for a period of 12 months with a decree to support the child, including evidence that the father was ordered to pay support of $45 per week and the father failed to provide any support for the child through the date of the final hearing. In the Interest of E. M., 347 Ga. App. 351, 819 S.E.2d 505 (2018).

Evidence supported termination based on aggravating circumstances. — There was clear and convincing evidence to support the juvenile court's termination of the parent's parental rights for subjecting the children to aggravating circumstances including evidence that the parent had a history of abusing the children. In the Interest of C. A. B., 347 Ga. App. 474, 819 S.E.2d 916 (2018).

Actions of Parents

Improper to terminate rights of illegal alien. — When a father, an illegal alien, cooperated with the court and the Department of Family and Children Services (DFCS), participated in mediation, was trying to obtain legal residency,

Actions of Parents (Cont'd)

worked full time, paid child support, consistently visited his daughter, and had a positive relationship with her, the juvenile court erred in terminating his parental rights on grounds that he might someday be deported and the child be sent to Mexico or returned to the care of DFCS. In the Interest of M.M., 263 Ga. App. 353, 587 S.E.2d 825 (2003) (decided under former O.C.G.A. § 15-11-94).

Termination appropriate when children living in filth. — To determine the best interests of the children, the juvenile court may consider the same factors that supported its finding of parental inability; hence, when the children were raised in filth and the mother did nothing to demonstrate that she could maintain a stable, sanitary home, the juvenile court did not err in terminating the mother's parental rights. In the Interest of A.B., 251 Ga. App. 827, 555 S.E.2d 159 (2001) (decided under former O.C.G.A. § 15-11-94).

Children living in squalor. — An order terminating parental rights is amply supported by evidence, inter alia, that the parents failed to provide a stable home environment, the children were generally filthy, they resided in a house with human and animal waste in the living area, the family did not use proper hygiene and they had a strong, offensive odor, the parents provided no routine health care for the children, and the children did not have adequate clothing for cold weather. Cain v. Department of Human Resources, 166 Ga. App. 801, 305 S.E.2d 492 (1983) (decided under former O.C.G.A. § 15-11-94).

Evidence of the mother's lack of motivation in the past and her present very squalid living conditions, which the homemaker testified showed very little improvement, formed a valid basis for the court's decision to terminate the mother's parental rights. In re L.A., 166 Ga. App. 857, 305 S.E.2d 636 (1983) (decided under former O.C.G.A. § 15-11-94).

Parents' children were deprived within the meaning of subsection (b) of former O.C.G.A. § 15-11-81 (see now O.C.G.A. § 15-11-310) and, thus, termination of parental rights was appropriate when the children continued to live in deplorable conditions even after a case plan was developed and there was no reason to expect that the conditions would improve. In re K.L., 234 Ga. App. 719, 507 S.E.2d 542 (1998) (decided under former O.C.G.A. § 15-11-81).

Termination of parents' parental rights was supported by sufficient evidence which showed that after the children were placed in foster care due to unsanitary living conditions and abandonment, the parents continued to live in squalor and did not comply with the court's reunification plan. In the Interest of H.H., 257 Ga. App. 173, 570 S.E.2d 623 (2002) (decided under former O.C.G.A. § 15-11-94).

Termination of parental rights for killing other parent. — Mere fact that one parent kills another does not in and of itself cause the forfeiture of the killer's parental rights as a matter of law. In re H.L.T., 164 Ga. App. 517, 298 S.E.2d 33 (1982) (decided under former law).

Requisite malice necessarily shown by a finding of guilty to the murder of one's spouse, as opposed to voluntary manslaughter, is sufficient to imply a moral unfitness such as to terminate the parental relationship, an unfitness which is likely to continue with resultant harm to the innocent child. Heath v. McGuire, 167 Ga. App. 489, 306 S.E.2d 741 (1983) (decided under former law).

Father's parental rights were terminated after he pled guilty to the murder of the children's mother and her companion in the children's hearing, had repeatedly neglected the physical and emotional needs of the children, had a history of violent and abusive behavior toward the children and their mother, and the murders had a demonstrable negative effect on his relationship with the children. In re J.L.M., 204 Ga. App. 46, 418 S.E.2d 415 (1992) (decided under former O.C.G.A. § 15-11-81).

Termination of parental rights for father's murder of the mother of the child while on bond for aggravated assault based on his having shot a friend of the mother was proper. In re A.M.S., 208 Ga. App. 328, 430 S.E.2d 626 (1993), cert. denied, 510 U.S. 1128, 114 S. Ct. 1095, 127

L. Ed. 2d 409 (1994) (decided under former O.C.G.A. § 15-11-81).

When the biological father was serving a lengthy prison sentence for the murder of the mother of his children, termination of his parental rights was warranted. In re C.M.S., 218 Ga. App. 487, 462 S.E.2d 398 (1995) (decided under former O.C.G.A. § 15-11-81).

Despite the fact that a father had not yet been tried, his parental rights were properly terminated for moral unfitness because the father admitted that the father fatally shot the wife in front of the child and that he left his child, who had cerebral palsy and was unable to care for himself, alone with the child's mother's body. In the Interest of J.R., 274 Ga. App. 653, 618 S.E.2d 688 (2005) (decided under former O.C.G.A. § 15-11-94).

Parent threatening harm to other parent. — Evidence that a father had emotionally abused and neglected a child by repeatedly beating and threatening to kill the child's mother in the child's presence, along with evidence that the father also repeatedly beat his first wife, was relevant to whether the cause of the child's deprivation was likely to continue under former O.C.G.A. § 15-11-94 (see now O.C.G.A. §§ 15-11-310 and 15-11-311) and was admissible under former O.C.G.A. § 24-2-2 (see now O.C.G.A. § 24-4-405). Davis v. Rathel, 273 Ga. App. 183, 614 S.E.2d 823 (2005) (decided under former O.C.G.A. § 15-11-94).

Parent convicted of conspiracy to murder spouse. — In a proceeding to terminate a mother's parental rights, after the mother had been convicted of conspiracy in the murder of her husband, the juvenile court committed harmful error in distinguishing the mother from the person who did the killing and concluding that the mother's role in the conspiracy did not support a finding of parental unfitness. In re J.M.R., 218 Ga. App. 490, 462 S.E.2d 173 (1995) (decided under former O.C.G.A. § 15-11-81).

Failure to protect child from others. — Evidence supported termination of a mother's parental rights, since her two-year old child was discovered by police in a filthy motel room with the mother's third husband, and the child was without clothes, was crying profusely, and exhibited multiple bruises and cigarette burns on the child's body. In re B.R.S., 198 Ga. App. 561, 402 S.E.2d 281 (1991) (decided under former O.C.G.A. § 15-11-81).

Termination of mother's parental rights was warranted by evidence that she permitted her child to spend the night with a neighbor who was suspected of sexually abusing the child. In re B.J., 220 Ga. App. 144, 469 S.E.2d 313 (1996) (decided under former O.C.G.A. § 15-11-81).

When a mother's boyfriend was charged with murdering one of her three children, she was charged with complicity, and the state took custody of the child at issue within days of the child's birth and apparently made no plans for the reunification of mother and child, the record lacked clear and convincing evidence of the existence of the factors set out in former O.C.G.A. § 15-11-94 (b)(4)(A)(ii)-(iv) (see now O.C.G.A. § 15-11-310); therefore, the juvenile court erred in finding the child was "deprived" and that the deprivation was ongoing due to maternal inability to properly care for and protect the child. In the Interest of A.B., 263 Ga. App. 697, 589 S.E.2d 264 (2003) (decided under former O.C.G.A. § 15-11-94).

For purposes of the termination of parental rights, the evidence was sufficient to support a trial court's finding that a lack of proper parental care by a mother caused her children's deprivation including that: (1) the mother did not protect her daughter from her husband after the first incident of sexual abuse; (2) the mother continued to have contact with her husband after an order prohibited her from doing so, which violated the reunification plan; (3) the mother was slow to recognize the threat to the child; (4) the mother did not provide any support for the children while they were in the family services department's care; and (5) the mother failed to maintain any contact with the trial court, her attorney, or the family services department for 18 months. In the Interest of J.H., 267 Ga. App. 541, 600 S.E.2d 650 (2004) (decided under former O.C.G.A. § 15-11-94).

Failure to protect child from other parent. — Judgment of termination of a mother's parental rights was sustained by

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clear and convincing evidence when, in the period following the placement of the children in foster care, the mother made no progress toward establishing a stable home and removing herself for her children's sake from financial and domestic dependence upon the father of one of the children, who was determined to have sexually abused the other; and, moreover, she offered no plan or course of endeavor suggesting she could in any manner establish a home for the children away from that person and away from her mother's house in which it was found by the trial court to have a history of child molestation. In re S.G., 182 Ga. App. 95, 354 S.E.2d 640 (1987) (decided under former O.C.G.A. § 15-11-81).

Evidence showing that the father did not protect the child from the physical and emotional abuse of the mother even though he knew she was prone to violence and had harmed the child in the past warranted termination of his parental rights. In re M.C.A.B., 207 Ga. App. 325, 427 S.E.2d 824 (1993) (decided under former O.C.G.A. § 15-11-81).

When a father's almost total lack of involvement in his child's welfare left the child vulnerable to the neglect and abuse her mother inflicted upon her, his lack of proper care and control was the cause of her deprivation. In re D.N.M., 235 Ga. App. 712, 510 S.E.2d 366 (1998) (decided under former O.C.G.A. § 15-11-81).

Termination of a mother's parental rights was affirmed; evidence that the mother failed to take steps to prevent the father's abuse of the children, as well as the mother's active assistance in spanking them with belts on at least one occasion, counseled in favor of a finding that the deprivation was likely to continue. In the Interest of N.S.E., 287 Ga. App. 186, 651 S.E.2d 123 (2007) (decided under former O.C.G.A. § 15-11-94).

Although the parental rights of the other parent had also been terminated based on the other parent's criminal history, mental illness, prior poor parenting, anger management issues, lack of income and employment, and alcohol abuse, the parent expressed no intention of altering the relationship with the other parent in light of the other parent's parental unfitness and the parent's statement that that the parent would use the other parent as a caregiver; thus, termination of the parent's rights was necessary to protect the best interests of the child, whose primary caregiver would be the other parent. In the Interest of A.D.M., 288 Ga. App. 757, 655 S.E.2d 336 (2007), cert. denied, 2008 Ga. LEXIS 402 (Ga. 2008) (decided under former O.C.G.A. § 15-11-94).

Parent's solicitation of someone to murder child. — Partial denial of a father's motion for a continuance in proceedings to terminate the father's parental rights was not an abuse of discretion as the father did not object to the trial court's proposal and the decision to allow a mother to testify without delay, and the father failed to show that additional time would have benefitted him; the termination of the father's parental rights was based on: (1) a divorce decree permanently prohibiting the father from all contact with his child; and (2) the father's conviction of soliciting someone to murder his child. In the Interest of M.H.W., 275 Ga. App. 586, 621 S.E.2d 779 (2005) (decided under former O.C.G.A. § 15-11-94).

Parent threatening to kill children. — In a parental rights termination case, the father argued unsuccessfully that there was no competent evidence that the children would suffer harm if the father was permitted to maintain the father's parental rights under former O.C.G.A. § 15-11-94(b)(4)(A)(iv) (see now O.C.G.A. § 15-11-311); the father's incarceration was to continue for years, and the father had held the children hostage and threatened to kill them. In the Interest of B.D., 281 Ga. App. 725, 637 S.E.2d 123 (2006) (decided under former O.C.G.A. § 15-11-94).

Exposing children to domestic violence. — It was clear that the juvenile court had not erred in finding that the children's best interests were served by terminating the mother's parental rights when the mother's exposure of her children to incidents of domestic violence demonstrated an indifference to their safety and particularly disturbing were the unexplained injuries one of the chil-

dren suffered, both the serious burns to the child's mouth and what appeared to have been sexual abuse, while in the care of the mother. In the Interest of N.L., 260 Ga. App. 830, 581 S.E.2d 643 (2003) (decided under former O.C.G.A. § 15-11-94).

Domestic violence in home justified termination of parental rights. — Mother's parental rights were properly terminated given an environment of unrelenting domestic violence and drug abuse and her failure to stabilize the home according to a prior court-ordered plan. In re S.M.S., 207 Ga. App. 248, 427 S.E.2d 598 (1993) (decided under former O.C.G.A. § 15-11-81).

Refusal to allow child to attend school. — There was sufficient evidence of present unfitness, under former O.C.G.A. § 15-11-94(b)(4)(A) (see now O.C.G.A. § 15-11-310), to support termination of a mother's parental rights because each time the child was returned to the mother, the pattern of deprivation continued in which the mother refused to allow the child to attend school due to the child's mild to moderate eczema, two doctors testified that eczema would not interfere with the child's ability to attend school, and the mother refused to obtain psychiatric counseling or to take medication in order to regain custody. In the Interest of R.H.L., 272 Ga. App. 10, 611 S.E.2d 700 (2005) (decided under former O.C.G.A. § 15-11-94).

Wanton and willful failure to comply with support order not shown. — See In re H.B., 174 Ga. App. 435, 330 S.E.2d 173 (1985) (decided under former O.C.G.A. § 15-11-81).

Trial court erred by basing the court's finding of dependency of a child on time during which the father had not been served and in terminating the father's rights for non-support during a time when he had not been served; the father had paid $1,020 in support, curing contempt, and had completed most of his parenting classes. In the Interest of T. S., 351 Ga. App. 297, 830 S.E.2d 789 (2019).

Financial inability to support authorized termination. — When the evidence supported the trial court's finding that a parent did not have the financial means to support her children and had, despite court orders requiring her to do so, failed to pay child support sufficient to provide for even the bare necessities, that she had consistently failed to comply with court-ordered reunification plans, i.e. maintain stable employment or adequate housing, visit the children regularly, or to attend counseling consistently, the court properly concluded that such failure established grounds for termination. In re M.L.P., 236 Ga. App. 504, 512 S.E.2d 652 (1999) (decided under former O.C.G.A. § 15-11-81).

Failure to support. — When the father admitted that he had failed to pay child support for over a year and offered no satisfactory explanation for his failure to provide financial support for his children, and the father was an admitted unrehabilitated alcohol abuser who lived in a two-bedroom trailer with his girlfriend and her two children by a former relationship, termination of the father's parental rights was justified. In re C.G.A., 204 Ga. App. 174, 418 S.E.2d 779 (1992) (decided under former O.C.G.A. § 15-11-81).

Trial court did not err by considering a mother's failure to provide the children with monetary support as one of the grounds for termination, notwithstanding her assertion that a court had never issued an order requiring such support, as a parent has a statutory duty to support her children with or without a court order. In the Interest of R.W., 248 Ga. App. 522, 546 S.E.2d 882 (2001) (decided under former O.C.G.A. § 15-11-94).

Father's failure to support his child, even in the absence of an order directing the father to pay a specific amount for the child's support, was compelling evidence that the father was not an able parent under former O.C.G.A. § 15-11-94(b)(4)(B)(v) (see now O.C.G.A. § 15-11-311). In the Interest of S.E.L., 251 Ga. App. 728, 555 S.E.2d 115 (2001) (decided under former O.C.G.A. § 15-11-94).

Trial court's determination that the children's deprivation for purposes of former O.C.G.A. § 15-11-94 (see now O.C.G.A. § 15-11-311) resulted from the lack of proper parental care or control was supported by evidence that the mother did not pay any child support for her five

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children during the two years preceding the termination hearing, leaving the Department of Children and Families to support her children; the mother had a statutory duty under O.C.G.A. § 19-7-2 to support her children, with or without a court order. In the Interest of J.J., 259 Ga. App. 159, 575 S.E.2d 921 (2003) (decided under former O.C.G.A. § 15-11-94).

Father's parental rights were properly terminated because evidence that the children would be in danger if reunited with him and that he had repeatedly failed to pay child support or to comply with case plan goals clearly and convincingly supported the juvenile court's determination that the deprivation was likely to continue and to cause the children serious harm. In the Interest of B.L., 278 Ga. App. 388, 629 S.E.2d 89 (2006) (decided under former O.C.G.A. § 15-11-94).

Termination of a parent's parental rights was affirmed pursuant to former O.C.G.A. § 15-11-94 (see now O.C.G.A. § 15-11-311) as the totality of the evidence supported a finding that the parent had not voluntarily fulfilled the parent's support obligations to the parent's child; the evidence showed that the only child support the parent paid had been that which was garnished from the parent's wages, and even with such an arrangement the parent somehow fell behind in the payments. In the Interest of K.D., 285 Ga. App. 673, 647 S.E.2d 360 (2007) (decided under former O.C.G.A. § 15-11-94).

Parent's parental rights to a child were properly terminated because the cause of the child's dependency was likely to continue and not likely to be remedied, satisfying O.C.G.A. § 15-11-310(a)(5); the parent's psychological issues, incarcerations, and refusal to follow the parent's case plan had worsened, not improved. In the Interest of S. P., 336 Ga. App. 488, 784 S.E.2d 846 (2016) (decided prior to 2018 amendment of paragraph (a)(5)).

Termination of the mother's parental rights was proper because the mother wantonly and willfully failed to comply for a period of 12 months or longer with the court's child support decree as the mother did not present evidence supporting the mother's uncorroborated testimony that the mother paid $600 in child support. In the Interest of C. A. B., 351 Ga. App. 666, 832 S.E.2d 645 (2019).

Parent's inability to find work insufficient for termination. — While a young mother failed to obtain employment while her child was in foster care, she applied for numerous jobs without success and completed an eight-month program to become a medical assistant; the trial court failed to address whether her lack of employment was "without justifiable cause," as required by former O.C.G.A. § 15-11-94(b)(4)(C). In the Interest of D. P., 326 Ga. App. 101, 756 S.E.2d 207 (2014) (decided under former O.C.G.A. § 15-11-94).

Physical abuse of caseworker by parent. — Termination order was supported by clear and convincing evidence of "parental misconduct or inability," since the mother had been uncooperative with and physically abusive to caseworkers, had failed to comply with a court-ordered plan requiring her to pay child support and to attend parenting classes, and had made little effort either to create a stable home environment or to remain employed. In re S.L., 189 Ga. App. 361, 375 S.E.2d 484 (1988) (decided under former O.C.G.A. § 15-11-81).

Termination when parent had drinking problem and incarceration history. — Termination of the father's parental rights was in the child's best interest as the father never indicated the father wanted custody, with one exception the father failed to communicate with the child, the father had a drinking problem, and the father had a criminal history including incarceration for violence. In the Interest of E. M., 347 Ga. App. 351, 819 S.E.2d 505 (2018).

Termination for incarceration and failure to support not justified. — Findings in support of the court's order terminating the father's parental rights were not supported by the evidence as nothing in the record supported the finding that the father wantonly and willfully failed to comply with a child support order for 12 months when the order had been in place for nine months and there was no evidence that the father's failure to pay

while incarcerated was willful. In addition, despite evidence of the father's criminal history, there was no clear and convincing evidence that the father had a history of repeated incarceration after the child's birth and had been given custody of the child when the child was five months old. In the Interest of M. R. B., 350 Ga. App. 595, 829 S.E.2d 848 (2019).

Sexual Abuse

Sexual abuse sufficient for termination of parental rights. — Finding that the father had sexually molested his youngest daughter in the presence of his eldest child along with expert testimony that the father was not responding to therapy provided clear and convincing evidence that the children were deprived due to parental misconduct and that the cause of that deprivation was likely to continue, warranting termination of the father's parental rights. In re R.E., 207 Ga. App. 178, 427 S.E.2d 512 (1993) (decided under former O.C.G.A. § 15-11-81).

Sexual abuse was properly considered as to its detrimental effect on the parent's relationship with the parent's children, regardless of whether the conviction was "final". In re J.E.L., 223 Ga. App. 269, 477 S.E.2d 412 (1996) (decided under former O.C.G.A. § 15-11-81).

There was clear and convincing evidence to support a finding by the juvenile court of parental misconduct or inability pursuant to former O.C.G.A. § 15-11-94(b)(4)(A) (see now O.C.G.A. § 15-11-310) based upon the statutory factors; the juvenile court found that the father had molested one of the children and that the mother had failed to protect the children from the father; there was also evidence that the father had abused more than one child. In the Interest of A.B., 283 Ga. App. 131, 640 S.E.2d 702 (2006) (decided under former O.C.G.A. § 15-11-94).

Appeals court found that the evidence supported the juvenile court's finding that a parent's six children were deprived, and that the unexplained abuse was the result of the parent's inability to protect the children as the evidence showed that: (1) one child suffered unexplained sexual abuse while in the parent's care, and sustained a head injury while allegedly in the parent's aunt's care; and (2) another child was molested while the parent was asleep. In the Interest of S.Y., 284 Ga. App. 218, 644 S.E.2d 145 (2007) (decided under former O.C.G.A. § 15-11-94).

Sexual abuse of half-sister and grandmother. — Termination of parental rights was appropriate when the court's findings that the child's deprivation would continue and that termination of the father's rights would be in the best interest of the child were supported by evidence that the father sexually molested the child's half-sister as well as his own grandmother, and that he failed to address his moral and psychological problems. State v. O'Neill, 209 Vt. 599, 209 A.3d 1213 (2019) (decided under former O.C.G.A. § 15-11-81).

Sexual abuse of children with special needs. — Trial court properly terminated the parental rights of parents to their two daughters pursuant to former O.C.G.A. § 15-11-94 (see now O.C.G.A. §§ 15-11-310 and 15-11-311). Since the parents failed to support their enumerated errors with specific reference to the record or transcript as required by Ga. Ct. App. R. 27(c)(3)(i), the appellate court did not need to search for or consider those enumerations, but, out of an abundance of caution, the appellate court reviewed the record and determined that the termination was proper as the juvenile court heard evidence that the father had sexually abused one daughter, and that the other daughter had also been exposed to sexual activity while in the parents' custody, and there was also evidence that both children had special needs that the parents were not able to meet. In the Interest of K.M., 260 Ga. App. 635, 580 S.E.2d 636 (2003) (decided under former O.C.G.A. § 15-11-94).

Parent allowing sexual abuse by another. — Even though the mother contended that she was willing to take steps to be a proper parent, the evidence was sufficient to support the trial court's finding that the children's deprivation was likely to continue for purposes of terminating the mother's parental rights since: (1) the mother continued to allow the abuser into her home after she learned

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that he had fathered her older, minor daughter's child and had at least some contact with him after she learned that he had sexual relations with another daughter; (2) the mother failed to appreciate that such relations were inappropriate and could be harmful to the children; and (3) the mother failed to comply with the Department of Families and Children Services' requirements that she get a job to help support the children, and get counseling to help meet her children's emotional and psychological needs. In the Interest of A.M., 259 Ga. App. 537, 578 S.E.2d 226 (2003) (decided under former O.C.G.A. § 15-11-94).

Juvenile court properly considered a mother's past conduct in determining that the deprivation of five children would likely continue, including her passivity with regard to her husband sexually abusing the children and the mother doing nothing; therefore, the termination of the mother's parental rights was upheld on appeal. In the Interest of J.B.M., 284 Ga. App. 480, 644 S.E.2d 317 (2007) (decided under former O.C.G.A. § 15-11-94).

Sexual molestation by parent justified termination. — Because the evidence indicated that the father had molested the children, clear and convincing evidence supported the trial court's findings that the pattern of deprivation was likely to continue and that such deprivation was likely to cause serious physical, mental, emotional, or moral harm to the children pursuant to former O.C.G.A. § 15-11-94(b)(4)(A)(iv) (see now O.C.G.A. 15-11-310); the evidence showed that the children had suffered emotional and sexual harm during the time that their father was responsible for their care, and this caused their emotional distress and behavioral problems. In the Interest of I.M.G., 276 Ga. App. 598, 624 S.E.2d 236 (2005) (decided under former O.C.G.A. § 15-11-94).

Alleged sexual abuse and denial. — History of alleged sexual abuse taken together with a current denial of any alleged abuse, failure to complete a sexual offender treatment program, failure to pay child support, and failure to complete the goals set forth by the state clearly established present conduct from which a factfinder could infer that the parents were not equipped to support the child in the future. In the Interest of J.B., 248 Ga. App. 64, 545 S.E.2d 609 (2001) (decided under former O.C.G.A. § 15-11-94).

Imprisoned parent for sexual abuse of child. — There was clear and convincing evidence of parental misconduct or inability to parent justifying termination of the father's parental rights; the father did not dispute that there was sufficient evidence showing the child was deprived and, even if challenged, the child's deprivation was established by the juvenile court's unappealed order finding the child deprived as the father pled guilty and was imprisoned for molesting the child, the father had absolutely no contact with the child from the time the child was removed from the home, and the father provided only minimal financial support before being incarcerated. In the Interest of C.B., 258 Ga. App. 143, 574 S.E.2d 339 (2002), overruled on other grounds, In re J.M.B., 296 Ga. App. 786, 676 S.E.2d 9 (2009) (decided under former O.C.G.A. § 15-11-94).

Parent seeking medical exams for sexual abuse. — When the evidence in the record showed that the child had been subjected to numerous medical examinations for sexual abuse at the mother's behest, in an apparent effort to frustrate or foreclose the father's right of visitation, and she persisted in having the child examined for possible sexual abuse, the juvenile court properly found that said conduct was egregious and was properly considered by the juvenile court in reaching the court's deprivation finding. In the Interest of M.E., 265 Ga. App. 412, 593 S.E.2d 924 (2004) (decided under former O.C.G.A. § 15-11-94).

Imprisonment

Imprisonment alone does not always compel a termination of parental rights but when the parent has not visited regularly with the children or established a parental bond, has failed to contact the department of family and children services or refrain from criminal activity as required by the case plan, and

has no present prospects for employment, income, or a stable home, those circumstances combine with the fact of incarceration to support a finding of parental unfitness sufficient to terminate a parent's rights. In re R.L.H., 188 Ga. App. 596, 373 S.E.2d 666 (1988) (decided under former O.C.G.A. § 15-11-81).

Although imprisonment alone does not always compel a termination of parental rights, imprisonment will support such a ruling when adequate aggravating circumstances are shown to exist. In re S.K.L., 199 Ga. App. 731, 405 S.E.2d 903 (1991) (decided under former O.C.G.A. § 15-11-81); In re L.F., 203 Ga. App. 522, 417 S.E.2d 344, cert. denied, 203 Ga. App. 906, 417 S.E.2d 344 (1992) (decided under former O.C.G.A. § 15-11-81).

When an incarcerated parent has a criminal history of repetitive incarcerations for the commission of criminal offenses or parole violations, this constitutes an additional factor which may be considered in determining whether the child presently is without the proper parental care and control of the offending parent, and that such is likely to continue. In re L.F., 203 Ga. App. 522, 417 S.E.2d 344, cert. denied, 203 Ga. App. 906, 417 S.E.2d 344 (1992) (decided under former O.C.G.A. § 15-11-81); In re A.M.N., 234 Ga. App. 365, 506 S.E.2d 693 (1998) (decided under former O.C.G.A. § 15-11-81).

Imprisoned parents. — Defendant's convictions and incarcerations had a demonstrable negative effect on the quality of the parent-child relationship sufficiently explicit to support termination. In re K.M.H., 209 Ga. App. 194, 433 S.E.2d 117 (1993) (decided under former O.C.G.A. § 15-11-81).

Evidence showing a total lack of effort by the father to contact or provide parental support over the entire life of his two-year-old child and that the father was incarcerated for, among other things, enticing a child for indecent purposes was sufficient to support the court's conclusion that termination was in the child's best interest. In re S.B.H., 216 Ga. App. 861, 456 S.E.2d 620 (1995) (decided under former O.C.G.A. § 15-11-81).

Father's failure to comply with department of family and children services plan, requiring him to maintain contact with his children, was properly considered by the trial court even though the father was incarcerated; his incarceration did not prevent him from writing to or calling the children. In re R.J.P., 222 Ga. App. 771, 476 S.E.2d 268 (1996) (decided under former O.C.G.A. § 15-11-81).

Evidence supported termination of parental rights since the parent was serving a 20-year prison sentence, had not maintained contact with the child, and had provided no significant financial support. In the Interest of S.H., 251 Ga. App. 555, 553 S.E.2d 849 (2001) (decided under former O.C.G.A. § 15-11-94).

Trial court properly terminated a parent's parental rights to the child pursuant to former O.C.G.A. § 15-11-94 (see now O.C.G.A. §§ 15-11-310 and 15-11-311); there was sufficient evidence to establish that the child's deprivation was caused by a lack of proper parental care or control based on the parent's incarceration, that the pattern of deprivation was likely to continue, that continued deprivation would likely cause the child harm, and that the termination of parental rights was in the best interests of the child. In the Interest of B.L.H., 259 Ga. App. 482, 578 S.E.2d 143 (2003) (decided under former O.C.G.A. § 15-11-94).

When the father confessed to a premeditated rape and attendant crimes, staged highly publicized hunger strikes in the community where the child resided and was without the possibility of parole, the court properly terminated the father's parental rights despite the father's visitation, calling, and child support payments prior to incarceration. In the Interest of M.H.S., 261 Ga. App. 686, 583 S.E.2d 471 (2003) (decided under former O.C.G.A. § 15-11-94).

Trial court properly terminated a father's parental rights to his children; there was sufficient evidence that the father had committed parental misconduct pursuant to former O.C.G.A. § 15-11-94 (see now O.C.G.A. §§ 15-11-310 and 15-11-311), based on the fact that the father was in prison on a felony drug charge and had failed to communicate with the children, and that the termination of rights was in the best interests of

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the children. In the Interest of K.W., 262 Ga. App. 744, 586 S.E.2d 423 (2003) (decided under former O.C.G.A. § 15-11-94).

Trial court properly terminated a putative father's parental rights to a child because the termination of the putative father's parental rights was in the best interest of the child as the putative father was serving a prison sentence; had been convicted of multiple criminal offenses, particularly selling cocaine; and the child spent all but two days of the child's life in foster care, was doing well, and bonded with the foster parents, who wanted to adopt the child. In the Interest of A.L.S.S., 264 Ga. App. 318, 590 S.E.2d 763 (2003) (decided under former O.C.G.A. § 15-11-94).

Evidence supported a trial court's findings terminating a parent's parental rights when the parent was serving a 10-year prison sentence for kidnapping and robbery, had failed to complete any of the goals of the case plans, did not make an effort to actually communicate directly with the child after removal from the grandparent's custody, did not support the child financially, and failed to comply with the case plan. In the Interest of D.M.W., 266 Ga. App. 456, 597 S.E.2d 531 (2004) (decided under former O.C.G.A. § 15-11-94).

Termination of a father's parental rights was proper because the evidence showed, inter alia, that the father was unable to forego criminal activity and stay out of prison so that he could provide a stable home for his child; the lack of structure, even for the short periods of time that the child was visiting with the father, had a noticeable negative effect on the child's behavior. In the Interest of T.B., 274 Ga. App. 147, 616 S.E.2d 896 (2005) (decided under former O.C.G.A. § 15-11-94).

Termination of a father's parental rights, pursuant to former O.C.G.A. § 15-11-94 (see now O.C.G.A. §§ 15-11-310 and 15-11-311), was error because there were no aggravating circumstances and the father, although incarcerated, made an effort during the incarceration to complete a case plan not designed for the father, including writing over 40 letters to the children, attempting to arrange for the children to visit him in prison, and completing treatment programs. In the Interest of J.D.F., 277 Ga. App. 424, 626 S.E.2d 616 (2006) (decided under former O.C.G.A. § 15-11-94).

In a termination of parental rights proceeding under former O.C.G.A. § 15-11-94 (see now O.C.G.A. §§ 15-11-310 and 15-11-311), the evidence was sufficient to show that continued deprivation of the parent's child was likely; at the time that the parent would be released from prison, the child would have been in foster care for about 75 percent of the child's life, and the evidence also showed that the parent had failed to support the parent's child which demonstrated that the parent was not an able parent. In the Interest of T.G.Y., 279 Ga. App. 449, 631 S.E.2d 467 (2006) (decided under former O.C.G.A. § 15-11-94).

Father's parental rights were terminated with clear and convincing evidence that termination was in the children's best interest under former O.C.G.A. § 15-11-94(a) (see now O.C.G.A. §§ 15-11-310 and 15-11-311); the children had been exposed to drug use and violence, the father was to remain in prison for the foreseeable future, and there was no evidence that, upon release, the father, who had held the children hostage and had threatened to kill the children, would be able to provide the children a safe, stable home. In the Interest of B.D., 281 Ga. App. 725, 637 S.E.2d 123 (2006) (decided under former O.C.G.A. § 15-11-94).

Parent's rights to a child were properly terminated because evidence of the parent's neglect of other children, substance abuse, and failure to support the child permitted a rational trier of fact to find by clear and convincing evidence that the child's deprivation was likely to continue under former O.C.G.A. § 9-11-94(b)(4)(A)(iii); the parent's failure to support the child while in prison and the lack of a relationship between the parent and the child could be considered as aggravating circumstances which showed that the parent's incarceration had a negative effect on the child. In the Interest of T.C., 282 Ga. App. 659, 639 S.E.2d 601 (2006)

(decided under former O.C.G.A. § 15-11-94).

Termination of a mother's parental rights was upheld on appeal since the evidence showed that the mother had never bonded with the child, was repeatedly incarcerated, and never attempted to contact the child's caregiver, the mother's aunt, to whom guardianship had been granted; the juvenile court's determination that the child was deprived and that such deprivation was likely to continue based on the mother's continuous criminal activity was supported by the evidence. In the Interest of S.R.M., 283 Ga. App. 463, 641 S.E.2d 666 (2007) (decided under former O.C.G.A. § 15-11-94).

Parental rights were properly terminated based on clear and convincing evidence of parental misconduct or inability under former O.C.G.A. § 15-11-94(a) (see now O.C.G.A. §§ 15-11-310 and 15-11-311) because while the subject child was in the agency's custody, the parent was unemployed, was released from prison, and then arrested on new charges and incarcerated again, no child support was paid, and the parent only complied with a case plan to the extent of legitimating the child. In the Interest of A.J., 288 Ga. App. 579, 654 S.E.2d 465 (2007) (decided under former O.C.G.A. § 15-11-94).

Evidence was insufficient to establish that the children's dependent state was likely to continue or unlikely to be remedied in the foreseeable future as the Division of Family and Children Services offered no competent proof of the father's crimes or how long he would actually be incarcerated and the record did not contain any evidence indicating that the father had a history of repeated incarcerations. In the Interest of E. G. L. B., 342 Ga. App. 839, 805 S.E.2d 285 (2017).

Parents' history of incarcerations for repeated criminal offenses, failure to comply with reunification plans while incarcerated, and a determination that it was likely that such criminal history would continue upon release from incarceration supported a finding that the deprivation of their children was likely to continue under former O.C.G.A. § 15-11-94(b)(4)(A)(iii) (see now O.C.G.A. § 15-11-310). In the Interest of M.C.L., 251 Ga. App. 132, 553 S.E.2d 647 (2001) (decided under former O.C.G.A. § 15-11-94).

Mother's repeated incarceration and termination of rights to other children. — Mother's repeated incarcerations were an aggravating circumstance that was properly considered in deciding whether her child's deprivation was likely to continue, and evidence that the mother had four other children who were not in her care indicated that she was unable to care for the child in this case; the trial court's termination of the mother's parental rights was proper. In the Interest of A.C., 272 Ga. App. 165, 611 S.E.2d 766 (2005) (decided under former O.C.G.A. § 15-11-94).

Termination appropriate when mother pled guilty to deprivation. — Termination of parental rights was in the best interests of the children since the mother had severe mental problems, abused alcohol, did not comply with treatment programs, was hospitalized in psychiatric institutions often, and pled guilty to deprivation. In the Interest of A.L.E., 248 Ga. App. 213, 546 S.E.2d 319 (2001) (decided under former O.C.G.A. § 15-11-94).

Consideration of prison sentence proper. — Because the father's parental rights were terminated, the trial court did not err in considering the father's felony conviction and 15-year sentence in determining whether the children were without proper parental care and control pursuant to former O.C.G.A. § 15-11-94(b) (see now O.C.G.A. §§ 15-11-310 and 15-11-311); this was a proper factor since aggravating factors existed. In the Interest of I.M.G., 276 Ga. App. 598, 624 S.E.2d 236 (2005) (decided under former O.C.G.A. § 15-11-94).

Imprisonment delays opportunity to bond with child. — Pursuant to former O.C.G.A. § 15-11-94(b)(4)(B)(iii) (see now O.C.G.A. § 15-11-311), a juvenile court was authorized to find by clear and convincing evidence that a mother's imprisonment had a negative effect on the parent-child relationship in that the imprisonment further delayed the mother's overdue efforts to form a meaningful parent-child relationship. In the Interest

Imprisonment (Cont'd)

of A.R.A.S., 278 Ga. App. 608, 629 S.E.2d 822 (2006) (decided under former O.C.G.A. § 15-11-94).

When the father was almost continuously incarcerated since the birth of his first child and the children had no contact with him while he was incarcerated, termination of his parental rights was appropriate. In re D.A.P., 234 Ga. App. 257, 506 S.E.2d 438 (1998) (decided under former O.C.G.A. § 15-11-81).

Repetitive incarcerations. — Parental misconduct was shown when the father was incarcerated as a habitual felon, and during periods of freedom he had shown little interest in or capacity for adequately caring for his child. In re B.C., 235 Ga. App. 152, 508 S.E.2d 774 (1998) (decided under former O.C.G.A. § 15-11-81).

Child's petition for termination of rights of incarcerated parent. — Trial court's denial of a child's petition for termination of the parental rights of the childs mother was vacated since the court had limited the court's finding to a deprivation arising solely from the mother's incarceration without considering present evidence of parental misconduct or inability. In re J.E.E., 228 Ga. App. 831, 493 S.E.2d 34 (1997) (decided under former O.C.G.A. § 15-11-81).

Termination of rights in child's best interest. — Evidence that the child's current foster care served the child's interests by providing a sense of permanence and well-being and of the father's history of substance abuse, abandonment of the child, and failure to comply with key elements of the case plan supported a finding that termination of the father's parental rights was in the child's best interest. In the Interest of B. D. O., 343 Ga. App. 587, 807 S.E.2d 507 (2017).

Children

Children need stability. — When a child's behavior improved after being placed in state custody, but she continued to need regular counseling and a stable, consistent home environment, there was no error in the juvenile court's implicit conclusions that continued deprivation would seriously harm the child and that termination of parental rights was in her best interest. In re D.N.M., 235 Ga. App. 712, 510 S.E.2d 366 (1998) (decided under former O.C.G.A. § 15-11-81).

Termination of a mother's parental rights was in 12-year-old child's best interest because the child had been in foster care periodically and needed a stable home, the child was well-adjusted with the foster parents, the child's performance at school was vastly improved, the child rarely missed school, and the child wanted to stay with the foster family and go to school. In the Interest of R.H.L., 272 Ga. App. 10, 611 S.E.2d 700 (2005) (decided under former O.C.G.A. § 15-11-94).

Evidence of a mother's repeated failures to remain drug free and to take the steps necessary to reunite with her child was sufficient to prove that her children's continued deprivation would cause the children serious physical, mental, emotional, or moral harm, and it was well settled that the children needed permanence of home and emotional stability or they were likely to suffer serious emotional problems. In the Interest of A.B., 274 Ga. App. 230, 617 S.E.2d 189 (2005) (decided under former O.C.G.A. § 15-11-94).

Clear and convincing evidence supported a trial court's determination that a mother's child was deprived, pursuant to former O.C.G.A. § 15-11-2(8)(A) (see now O.C.G.A. § 15-11-107), due to lack of proper parental care, that such deprivation was likely to continue or not be remedied due to the mother's failure to take responsibility for the child and to work at succeeding at the goals of her case plan, and that such deprivation would cause serious harm to the child, who needed a stable family environment; accordingly, termination of the mother's parental rights was proper, pursuant to former O.C.G.A. § 15-11-94(a) (see now O.C.G.A. §§ 15-11-310 and 15-11-311). In the Interest of B.S., 274 Ga. App. 647, 618 S.E.2d 695 (2005) (decided under former O.C.G.A. § 15-11-94).

Evidence was sufficient to support the juvenile court's determination pursuant to former O.C.G.A. § 15-11-94(a) (see now O.C.G.A. §§ 15-11-310 and 15-11-311) that, there being clear and convincing

evidence of parental misconduct or inability, termination of the mother's parental rights was in the best interest of the child, considering the child's physical, mental, emotional, and moral needs, and the child's need for a secure and stable home. In the Interest of B.J.F., 276 Ga. App. 437, 623 S.E.2d 547 (2005) (decided under former O.C.G.A. § 15-11-94).

In a termination of parental rights case involving a mother who had mental health and substance abuse issues, continued deprivation was likely to cause harm to the child under former O.C.G.A. § 15-11-94(b)(4)(A)(iv) (see now O.C.G.A. § 15-11-310) as a psychologist testified that the child needed a stable environment or the child was likely to act out. In the Interest of D.A.B., 281 Ga. App. 702, 637 S.E.2d 102 (2006) (decided under former O.C.G.A. § 15-11-94).

Children with special needs. — When employing the two-step test before terminating a parent's rights, a juvenile court order that a child was deprived, pursuant to former O.C.G.A. § 15-11-2(8)(A) (see now O.C.G.A. § 15-11-107), which was not appealed, was binding on a mother and satisfied the first factor of the test under former O.C.G.A. § 15-11-94 (see now O.C.G.A. § 15-11-310); the juvenile court determined that due in part to a medical problem, the child had special needs and the mother lacked the ability to provide for the physical, mental, emotional, and moral conditions and needs of the child. In the Interest of J.T.W., 270 Ga. App. 26, 606 S.E.2d 59 (2004) (decided under former O.C.G.A. § 15-11-94).

"Continued deprivation was likely to cause serious physical, mental, emotional or moral harm to the child" factor for the termination of mother's parental rights was satisfied as: (1) the child required a stable routine with constant monitoring of the child's physical symptoms to maintain the child's emotional and physical health; and (2) a psychologist testified that the mother would be unable, given her limited cognitive abilities, to provide the care the child needed. In the Interest of K.N., 272 Ga. App. 45, 611 S.E.2d 713 (2005) (decided under former O.C.G.A. § 15-11-94).

Best interest of the child factor for the termination of a mother's parental rights was satisfied because the mother failed to establish a parental bond with the child, failed to comply with her case plan, limited cognitive abilities and personality disorder impaired her ability to attend to the child's many special needs, child's visits with his parents were disturbing to the child, and the child was doing well in the custody of the Department of Family and Children's Services and would benefit by staying with the capable and caring foster parents. In the Interest of K.N., 272 Ga. App. 45, 611 S.E.2d 713 (2005) (decided under former O.C.G.A. § 15-11-94).

Deprivation was likely to cause serious physical, mental, emotional, or moral harm to a child because the child had severe developmental delays when the child entered foster care and made tremendous improvements in a structured one-on-one learning environment; the mother failed to complete a reunification plan and her parenting skills were severely impaired by recurring psychological problems; the mother failed to obtain housing or employment; to improve her parenting skills specific to her child's special needs; to continue psychological counseling, to support the child; or to maintain any parental relationship with the child. In the Interest of A.K., 272 Ga. App. 429, 612 S.E.2d 581 (2005) (decided under former O.C.G.A. § 15-11-94).

There was sufficient clear and convincing evidence to support a juvenile court's termination of a father's parental rights over his two children, each of whom was severely handicapped, as the father's limited cognitive abilities made it difficult for him to be the sole parent, he was unable to properly care for the children and to maintain a clean home, they had been deemed deprived, and termination was in their best interests; also, they had bonded with their foster families and did not have much of a bond with their father. In the Interest of M.W., 275 Ga. App. 849, 622 S.E.2d 68 (2005) (decided under former O.C.G.A. § 15-11-94).

Juvenile court's termination of a parent's parental rights was affirmed as sufficient evidence supported a finding that the children were likely to suffer serious harm if the parent's parental rights were

Children (Cont'd)

not terminated since: (1) the children needed a very structured environment, without which it was likely that the children would lack basic social functioning; (2) the parent was mentally, emotionally, and financially unable to manage her own life without the substantial assistance of her parents; (3) the parent was either unwilling or unable to develop necessary parenting skills; (4) the children were in a stable foster home with nurturing foster parents where their special needs were met; (5) there was no parental bond between the biological parent and the children; and (6) the foster parent was interested in adopting the children. In the Interest of K.L., 280 Ga. App. 773, 634 S.E.2d 870 (2006) (decided under former O.C.G.A. § 15-11-94).

Father's incarceration history, the father's failure to support the child, and the father's lack of interest in the child showed that the father could not be relied on to meet the needs of the child, who had special needs; termination of the father's parental rights, therefore, was in the child's best interest under former O.C.G.A. § 15-11-94(a) (see now O.C.G.A. §§ 15-11-310 and 15-11-311). In the Interest of E.K., 280 Ga. App. 818, 635 S.E.2d 214 (2006) (decided under former O.C.G.A. § 15-11-94).

Termination of a mother's parental rights was upheld on appeal since the mother stipulated to depriving the child, had a mental disability which prevented the mother from giving the child the proper care in light of the child's special needs, including failing to provide the child with prescription medication, and the mother continued a relationship with a boyfriend who had sexually abused the child; the reviewing court found clear and convincing evidence established that it was in the best interests of the child to terminate the mother's parental rights. In the Interest of B.S., 283 Ga. App. 724, 642 S.E.2d 408 (2007) (decided under former O.C.G.A. § 15-11-94).

There was sufficient evidence to support the termination of a mother's parental rights since the evidence showed that the mother lacked the intellectual and emotional capacity to care for her two children, particularly the younger child, who had special needs as the result of injuries inflicted by his father; the mother was in denial about the younger child's condition and about the injuries that had been inflicted upon the child, had not refrained from using physical discipline on the children, had not paid child support, had not created a meaningful bond with the children and the children had thrived in foster care. In the Interest of R.S., 287 Ga. App. 228, 651 S.E.2d 156 (2007) (decided under former O.C.G.A. § 15-11-94).

It was proper to terminate a father's parental rights to a special needs child since the father had failed to comply with case plan goals or to acknowledge or address his mental health problems, there was ample evidence of his low intellectual functioning and its negative impact on his parenting skills, doctors had testified that the child would not be safe with the father and the father would not be able to parent a special needs child, and the father had failed to maintain a parental bond with the child in a meaningful way. In the Interest of B.W., 287 Ga. App. 54, 651 S.E.2d 332 (2007) (decided under former O.C.G.A. § 15-11-94).

It was proper to terminate a mother's parental rights to a special needs child since the mother had not supported the child, had been repeatedly incarcerated, had not seen the child in three years or attempted to maintain contact with the child, had not completed a drug treatment program, had not remained drug free for more than eight or nine months, and had failed to comply with any of her case plan goals; considering the special needs of the child, the harmful effects of prolonged foster care, and the evidence of the mother's drug abuse and failure to comply with case plan goals, the trial court was authorized to conclude that terminating the mother's parental rights was in the best interest of the child. In the Interest of B.W., 287 Ga. App. 54, 651 S.E.2d 332 (2007) (decided under former O.C.G.A. § 15-11-94).

Child with special needs and parent with limited intellectual abilities. — Child was deprived, for purposes of terminating a mother's parental rights,

because the mother had borderline intellectual functioning and was at high risk of engaging in physical child abuse of her special needs child; the child was not being properly supervised, the home was dirty, and there was little food, the mother needed long-term intensive psychological treatment but failed to obtain counseling and stopped taking her medications, and the mother failed to support the child or to comply with case plan goals. In the Interest of A.K., 272 Ga. App. 429, 612 S.E.2d 581 (2005) (decided under former O.C.G.A. § 15-11-94).

Children developing behavioral problems after visiting with parent. — In an action to terminate parental rights brought under former O.C.G.A. § 15-11-81, evidence that the mother's seven year old child was often out of control and physically violent at school, that the school could never contact the mother to discuss the child's problems, that the mother refused consent for recommended treatment for the child, that the child's behavior improved markedly after custody was obtained by the department of children and family services, and that the child's behavior would deteriorate after visits from the mother, was clear and convincing evidence that deprivation of the child was likely to continue and justified termination of the mother's parental rights; the juvenile court was not required to reunite the mother and the child to obtain evidence of current or future deprivation. In the Interest of C.M., 251 Ga. App. 374, 554 S.E.2d 510 (2001) (decided under former O.C.G.A. § 15-11-94).

Termination of a mother's parental rights was in the best interest of the children as the children showed signs of distress after the mother's visits and as the children were thriving in the care of a foster parent who was willing to care for the children indefinitely. In the Interest of C.T.M., 273 Ga. App. 168, 614 S.E.2d 812 (2005) (decided under former O.C.G.A. § 15-11-94).

Termination of a mother's parental rights was proper because the mother failed to achieve many of the goals of the reunification plan and because the children developed behavioral problems after the mother's visits. In the Interest of M.H.W., 277 Ga. App. 318, 626 S.E.2d 515 (2006) (decided under former O.C.G.A. § 15-11-94).

Foster care. — Juvenile court could consider the adverse effects of prolonged foster care in determining that the children's continued deprivation was likely to cause serious physical, mental, emotional, or moral harm under former O.C.G.A. § 15-11-94(b)(4)(A)(iv) (see now O.C.G.A. § 15-11-310). In the Interest of M.C.L., 251 Ga. App. 132, 553 S.E.2d 647 (2001) (decided under former O.C.G.A. § 15-11-94).

Evidence was sufficient to support the trial court's finding that the deprivation was likely to cause physical, mental, emotional, or moral harm to the children in a termination of parental rights proceeding since: (1) the children became upset when the mother made promises and representations that she did not keep, including promises that she would visit or that they could come home with her; (2) one child became upset when her mother urged her to lie about the abuser's sexual abuse; and (3) the juvenile court considered that the children needed a stable home situation, and that prolonged foster care was detrimental. In the Interest of A.M., 259 Ga. App. 537, 578 S.E.2d 226 (2003) (decided under former O.C.G.A. § 15-11-94).

Child in foster care for extensive time. — Termination of a parent's parental rights was affirmed as the children had been in the care of their foster parents since they were three months old and had not seen the parent in over 27 months; the parent's caseworker opined that the children were still deprived due to neglect. In the Interest of S.B., 287 Ga. App. 203, 651 S.E.2d 140 (2007) (decided under former O.C.G.A. § 15-11-94).

Living conditions and economic circumstances of foster family. — Evidence concerning the living conditions and economic circumstances of the child's foster parents who had expressed an interest in adopting the child was not relevant to the first portion of the test under former O.C.G.A. § 15-11-81 (see now O.C.G.A. §§ 15-11-310 and 15-11-311), the determination of whether there was clear and convincing evidence showing

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parental misconduct or inability; however, such evidence was relevant to the second part of the statutory test, a determination of whether termination of the parental rights of the natural parents was in the best interest of the child, since it showed the merits of an alternative placement available to the child. In re J.M.G., 214 Ga. App. 738, 448 S.E.2d 785 (1994) (decided under former O.C.G.A. § 15-11-81).

Deprivation

Deprivation of love and nurture, is equally as serious as mental or physical disability. In re Levi, 131 Ga. App. 348, 206 S.E.2d 82 (1974) (decided under former law); Elrod v. Hall County Dep't of Family & Children Servs., 136 Ga. App. 251, 220 S.E.2d 726 (1975) (decided under former law).

Moral unfitness possible factor in proving deprivation. — When the issue is termination of parental rights (without adoption by others), moral unfitness may be a factor in proving that a child is deprived and will suffer serious physical, mental, moral, or emotional harm. Johnson v. Edison, 235 Ga. 820, 221 S.E.2d 813 (1976) (decided under former law).

Failure to identify specific findings that support conclusion that cause of dependency was likely to continue. — While the juvenile court's order reflected diligent and careful consideration and referred to the children's past dependency, the order did not identify specific factual findings that authorized the trial judge to conclude that the cause of the children's dependency was likely to continue and, thus, it was insufficient to enable appellate review. In the Interest of D. W., 340 Ga. App. 508, 798 S.E.2d 49 (2017).

Deprivation alone insufficient to authorize termination. — Clear and convincing evidence of the child's deprivation at the parent's hand, standing alone, will not authorize the termination of parental rights. There must also be clear and convincing evidence that the child's deprivation is likely to continue or will not likely be remedied; and that the continued deprivation will cause or is likely to cause serious physical, mental, emotional, or moral harm to the child. In re M.H.F., 201 Ga. App. 56, 410 S.E.2d 167 (1991) (decided under former O.C.G.A. § 15-11-81).

No right to be present at deprivation hearing. — Father was not denied due process on the ground that he was not present at the deprivation hearings in which the trial court declared the father's three children to be deprived because deprivation proceedings and parental rights termination proceedings are separate and distinct, and a termination proceeding is not the proper time to assert error in the deprivation proceedings; further, the father failed to show that he was harmed as a result of any alleged violation of due process since there was overwhelming evidence supporting the termination of the father's parental rights. In the Interest of M.S., 279 Ga. App. 254, 630 S.E.2d 856 (2006), overruled on other grounds, In re J.M.B., 296 Ga. App. 786, 676 S.E.2d 9 (2009) (decided under former O.C.G.A. § 15-11-94).

Dispositional hearing unnecessary when only deprivation alleged. — When a petition for the termination of parental rights alleged only that the children were deprived, not delinquent or unruly, it was not necessary for the juvenile judge to hold a dispositional hearing. In re J.C., 242 Ga. 737, 251 S.E.2d 299 (1978), appeal dismissed, 441 U.S. 929, 99 S. Ct. 2046, 60 L. Ed. 2d 657 (1979) (decided under former law).

Continued likelihood of deprivation. — Four elements necessary to a finding of "parental misconduct or inability" as set forth in former subparagraph (b)(4)(A) of O.C.G.A. § 15-11-94 (see now O.C.G.A. § 15-11-310) were met when: the child was deprived because of the mother's lack of stable employment or housing; the mother's prior drinking, criminal behavior, physical abuse, neglect, and repeated failure to comply with court-ordered plans authorized a finding that the deprivation resulted from her lack of care or control; the nature and severity of the child's emotional and neurological problems, were such to cause serious harm, and given the evidence of the mother's past behavior and the length of time that had elapsed with no improvement in the situation, the child's need for

stability and constant supervision, and the mother's apparent inability to understand the child's problems or provide adequate care or supervision, the juvenile court had clear and convincing evidence that the conditions of deprivation were likely to continue. In re J.C.J., 207 Ga. App. 599, 428 S.E.2d 643 (1993) (decided under former O.C.G.A. § 15-11-81).

Order terminating a parent's parental rights to the parent's three children was upheld on appeal as clear and convincing evidence was presented that the parent: (1) was bound by an order of deprivation entered against the parent based on a failure to appeal the order; (2) never fully complied with the case plan, nor had any intention of doing so in the future; and (3) had a history of poor relationship choices such that when this evidence was combined with other evidence supporting termination, the juvenile court was authorized to find that any deprivation was likely to continue. In the Interest of A.C., 280 Ga. App. 212, 633 S.E.2d 609 (2006) (decided under former O.C.G.A. § 15-11-81).

In a second termination of parental rights proceeding against a mother, clear and convincing evidence existed as to a continued deprivation finding, given the mother's ongoing failure to comply with multiple requirements of a case plan, specifically failing to: (1) voluntarily pay any child support; (2) take the necessary steps to prepare financially for the children; (3) obtain a GED; (4) secure new employment; and (4) line up child care. Furthermore, the fact that the mother's husband had an extensive criminal history reflecting substance abuse issues, particularly when considered in conjunction with a DUI incident involving the husband and the mother's current probation sentence for a drug-related offense, constituted evidence in favor of a finding of likely continued deprivation. In the Interest of T.J., 281 Ga. App. 308, 636 S.E.2d 54 (2006) (decided under former O.C.G.A. § 15-11-94).

Termination of a parent's rights was proper as there was sufficient evidence that continued deprivation was likely to cause harm to the children since child one had suffered 10 separate bone fractures, and the parent failed to offer a reasonable explanation for those injuries. In the Interest of K.J.M., 282 Ga. App. 72, 637 S.E.2d 810 (2006) (decided under former O.C.G.A. § 15-11-94).

Evidence showed that continued deprivation would likely cause two children harm in light of the children's bonds formed with the foster parents, the lack of bonds formed with the parent, the "unemotional" state of child one upon arriving in foster care, and child two's reaction to the parent's failed visits. In the Interest of C.M., 282 Ga. App. 502, 639 S.E.2d 323 (2006) (decided under former O.C.G.A. § 15-11-94).

Juvenile court properly terminated a parent's rights; given the parent's history of unemployment, unstable housing arrangements, inability to stay in regular contact with social services or the children, and failure to complete substance abuse treatment. The juvenile court was authorized to find that the cause of the children's deprivation would likely continue. In the Interest of K.M., 284 Ga. App. 442, 644 S.E.2d 193 (2007) (decided under former O.C.G.A. § 15-11-94).

In a case terminating the mother's parental rights, the dependency was likely to continue as the mother's housing could not be considered stable because, at the time of the hearing, the mother had only very recently moved into a boyfriend's mother's home and refused to provide any information about their relationship or their intentions; the mother refused to provide proof of the mother's income or the mother's job, which the mother had only very recently obtained; and the mother continued to be aggressive with the case workers for Department of Family and Children Services, the mother refused to complete all portions of the required psychological evaluation, and the mother refused to provide answers to various questions at the hearing. In the Interest of R. S. T., 345 Ga. App. 300, 812 S.E.2d 614 (2018).

Deprivation continuing from parental drug abuse. — Juvenile court's findings supported the conclusion that the children were dependent at the time of the termination of parental rights hearing due to a lack of proper parental care and

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control because the parent's continuing substance abuse was evidenced by the parent's prior positive drug screen and several refused screenings (which the Division of Family and Children Services treated as positive), and because the parent was unable to pay even a symbolic amount of child support or to provide stable housing. In the Interest of A. S., 339 Ga. App. 875, 794 S.E.2d 672 (2016).

Finding of dependency does not necessarily mean harm. — Georgia Court of Appeals has long said that a finding that dependency is likely to continue does not necessarily justify a finding of harm, although dependency could support a finding of harm in particular circumstances; rather, in determining whether harm to the child exists, Georgia law requires a juvenile court to consider both the relationship between the parent and child at the time of the termination hearing and what might happen if the child were returned to the parent. In the Interest of L. P., J. P., & P. P., 339 Ga. App. 651, 794 S.E.2d 252 (2016).

Judgments terminating the parents' rights to three children under O.C.G.A. § 15-11-310 were affirmed based on the mother's re-incarceration and continued pattern of drug use, the parents' failure to consistently visit the children and the behavior problems and mood shifts that occurred with the children after any visit. In the Interest of L. P., J. P., & P. P., 339 Ga. App. 651, 794 S.E.2d 252 (2016).

While there was sufficient evidence that the children were dependent due to lack of proper parental care and control, including evidence of inadequate food, clothing, shelter, and supervision, the juvenile court failed to provide specific findings that the dependency was likely to cause serious physical, mental, emotional, or moral harm. In the Interest of D. M. et al., 339 Ga. App. 46, 793 S.E.2d 422 (2016).

Deprivation likely to continue. — Given the testimony of the psychologists and the social worker about the effect on the children of their parents' condition and behavior, the parents' continued incarceration and years of probation, their past behavior, and the likelihood of any significant and meaningful change, a rational trier of fact could have found by clear and convincing evidence that the deprivation was likely to continue or would not likely be remedied. In re A.M.N., 234 Ga. App. 365, 506 S.E.2d 693 (1998) (decided under former O.C.G.A. § 15-11-81).

Evidence of physical abuse, inability to provide a safe, sanitary home, and failure to comply with reunification plans authorized the juvenile court to determine that a child was deprived and that her deprivation was likely to continue, and was sufficient to provide clear and convincing evidentiary support that her continued deprivation would cause or was likely to cause her serious physical, mental, emotional, and moral harm. In re K.R.C., 235 Ga. App. 354, 510 S.E.2d 547 (1998) (decided under former O.C.G.A. § 15-11-81).

When the mother admitted that she could not care for her child and that it would be some time in the future before she could do so, and when neither she nor the father complied with a case plan set up for them, there was sufficient clear and convincing evidence from which the trial court could conclude deprivation was likely to continue. In re J.O.L., 235 Ga. App. 856, 510 S.E.2d 613 (1998) (decided under former O.C.G.A. § 15-11-81).

Termination of parental rights was affirmed because there was ample evidence, including the family's history of instability, the fact that the children lived in filth for their entire lives, their developmental and emotional problems, and evidence of malnourishment and poor hygiene to support the juvenile court's finding that the deprivation of the children would continue in the future and that termination was in the children's best interest. In the Interest of T.D.B., 266 Ga. App. 434, 597 S.E.2d 537 (2004) (decided under former O.C.G.A. § 15-11-94).

Although there was evidence of the father's efforts to improve himself, evidence that the father never accepted responsibility for the children's neglect or the abuse of their mother and utterly failed to demonstrate an ability to cope with the children's medical needs or provide any financial support supported the juvenile court's determination that the deprivation was

likely to continue or would not likely be remedied. In the Interest of J.P., 268 Ga. App. 32, 601 S.E.2d 409 (2004) (decided under former O.C.G.A. § 15-11-94).

Because a father failed to maintain a familial bond with his child, stopped visiting the child, and generally ignored the case plan requirements for reunification, clear and convincing evidence showed that, under former O.C.G.A. § 15-11-94(b)(4)(A) (see now O.C.G.A. § 15-11-310), the child would likely suffer serious harm from continued deprivation. In the Interest of C.A.W., 272 Ga. App. 4, 611 S.E.2d 154 (2005) (decided under former O.C.G.A. § 15-11-94).

Evidence supported the finding that the children's deprivation was likely to continue because the mother abandoned the children and failed to maintain meaningful or consistent contact with either the Department of Family and Children Services or the children for over a year, she made no effort to support the children financially, made no effort to comply with the reunification plan, and she surrendered her parental rights in the children. In the Interest of M.E.M., 272 Ga. App. 451, 612 S.E.2d 612 (2005) (decided under former O.C.G.A. § 15-11-94).

Evidence that a parent failed to take advantage of offers to help the parent find housing, secure employment, and obtain treatment; missed many scheduled visits with the parent's children; and left the state, which prevented the parent from seeing them, supported the trial court's finding that the deprivation was likely to continue. In the Interest of J.H., 278 Ga. App. 32, 628 S.E.2d 140 (2006) (decided under former O.C.G.A. § 15-11-94).

In a termination of parental rights case, clear and convincing evidence supported the finding that the deprivation was likely to continue pursuant to former O.C.G.A. § 15-11-94(b)(4)(A) (see now O.C.G.A. § 15-11-310); the father showed an inability to keep the children away from the mother despite a court order requiring the father to do so, the father had a long period of noncompliance with the case plan, and the father did not pay child support until ordered to do so. In the Interest of M.R., 282 Ga. App. 91, 637 S.E.2d 743 (2006), cert. denied, 2007 Ga. LEXIS 56 (Ga. 2007) (decided under former O.C.G.A. § 15-11-94).

Termination of a parent's rights was proper as there was sufficient evidence that the cause of the deprivation was likely to continue as: (1) child one suffered multiple bone fractures in at least two separate incidents, but the parent could not provide a plausible explanation for child one's injuries; (2) the parent never identified the source of the problem, so the abuse was unremedied; (3) the parent failed to find stable employment and did not provide financial support for the two children; and (4) the parent failed to complete either the domestic violence counseling or the additional anger management counseling recommended as part of the reunification plan, and failed to take measures to remedy the problems that more than likely contributed to child one's injuries. In the Interest of K.J.M., 282 Ga. App. 72, 637 S.E.2d 810 (2006) (decided under former O.C.G.A. § 15-11-94).

Evidence showed that two children's deprivation was likely to continue given the parent's failure to comply with the case plan for more than one year prior to the termination proceeding. In the Interest of C.M., 282 Ga. App. 502, 639 S.E.2d 323 (2006) (decided under former O.C.G.A. § 15-11-94).

In a termination of parental rights proceeding, the evidence showed that the child's deprivation was likely to continue under former O.C.G.A. §§ 15-11-2 and 15-11-94 (see now §§ 15-11-2, 15-11-107, 15-11-310, 15-11-311, 15-11-320, 15-11-381, and 15-11-471), as the mother's sobriety was recent, her compliance with the drug treatment was mandatory to avoid jail, she failed to adequately support the child, her testimony in the termination hearing was evasive, she relinquished and lost custody of her two other children, she made no efforts whatsoever to contact or visit the child until the child was nine months old, and she was willing to reconcile with the father, who was also addicted to methamphetamine and had not completed any type of drug treatment. In the Interest of Z. P., 314 Ga. App. 347, 724 S.E.2d 48 (2012) (decided under former O.C.G.A. § 15-11-94).

In a termination of parental rights pro-

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ceeding, clear and convincing evidence showed the cause of the deprivation of a father's children would likely continue, under former O.C.G.A. § 15-11-94(b)(4)(A)(iii) (see now O.C.G.A. § 15-11-310), because the father did not: (1) complete the father's case plan after getting a job and buying a car; (2) visit the children for five months before the termination hearing; or (3) support the children while the children were in foster care. In the Interest of E.G., 315 Ga. App. 35, 726 S.E.2d 510 (2012) (decided under former O.C.G.A. § 15-11-94).

Juvenile court's finding that continued deprivation was likely to cause serious physical, mental, emotional, or moral harm to the children was supported by the record because the mother repeatedly failed to comply with the requirements of her case plan to reunite with her children. In the Interest of A. R., 315 Ga. App. 357, 726 S.E.2d 800 (2012) (decided under former O.C.G.A. § 15-11-94).

Evidence supported a finding that a mother's deprivation of her children was caused by a lack of proper parental care as the mother failed to sever contact with the father, that she defended the father, and that she diverted resources to the father instead of paying child support or securing appropriate housing. This deprivation was likely to continue. In the Interest of K.L.M., 316 Ga. App. 246, 729 S.E.2d 452 (2012) (decided under former O.C.G.A. § 15-11-94).

Exposure of children to domestic violence. — Termination of a father's parental rights to two minor sons was upheld on appeal because the father had a long history of domestic violence against the mother, regularly threatened her that he would make her watch him kill the children and then he would kill her, and he never established a parental bond or financially supported the children significantly; additional considerations included the father stabbing a male friend of the mother and the children seeing the man bleed on their kitchen floor, photographs found by the mother that appeared to have been close-up shots of one of the children's rectum, which the father explained were taken by a police officer investigating sexual abuse, and expert testimony concluding unanimously that further contact between the father and the children would cause serious harm to the children, who were emotionally fragile. In the Interest of G.W.R., 270 Ga. App. 194, 606 S.E.2d 281 (2004) (decided under former O.C.G.A. § 15-11-94).

Past deprivation considered to determine likelihood of continuation. — As a general rule, while past deprivation is not sufficient for termination without a showing of present deprivation, the past conduct of the parent is properly considered by the court in determining whether such conditions of deprivation are likely to continue. In re L.F., 203 Ga. App. 522, 417 S.E.2d 344, cert. denied, 203 Ga. App. 906, 417 S.E.2d 344 (1992) (decided under former O.C.G.A. § 15-11-81); In re A.M.N., 234 Ga. App. 365, 506 S.E.2d 693 (1998) (decided under former O.C.G.A. § 15-11-81).

Although past deprivation is not sufficient for termination without a showing of present deprivation, a juvenile court can consider a parent's past conduct in determining whether such conditions of deprivation are likely to continue. In the Interest of N.L., 260 Ga. App. 830, 581 S.E.2d 643 (2003) (decided under former O.C.G.A. § 15-11-94).

Mother's past conduct indicated deprivation likely to continue. — Based on the mother's past conduct as a recidivist, the juvenile court was authorized to find the deprivation of the children would not likely be remedied in the future and that it was in their best interest that her parental rights be terminated. In the Interest of C.N.S., 248 Ga. App. 84, 545 S.E.2d 633 (2001) (decided under former O.C.G.A. § 15-11-94).

Medical and psychological conditions of parent causing deprivation. — Clear and convincing evidence supported the order terminating a parent's rights to two minor children as the children's deprivation was due primarily to the parent's mental illness and failure to take prescribed medication to address that illness, and during more than 30 months the parent was given to work on a reunification case plan, the mother failed

to comply with the requirements of the plan. In the Interest of O. B., 337 Ga. App. 401, 787 S.E.2d 344 (2016).

Sufficient evidence that continued deprivation likely to cause harm. — Evidence supported the termination of a mother's parental rights as continued deprivation was likely to cause serious physical, mental, emotional, or moral harm to the children in light of the children's distress before and during contact with the grandmother, the person the mother put forward as a surrogate parent; also, the children clung to their foster mother after visits with the grandmother. In the Interest of C.T.M., 273 Ga. App. 168, 614 S.E.2d 812 (2005) (decided under former O.C.G.A. § 15-11-94).

Because the Department presented sufficient evidence of a father's neglect of two children, lack of any meaningful parental bond, repeated incarceration, and failure to pay child support, the juvenile court, when coupled with the father's acknowledgment that the children thrived in the current placement, was authorized to find that sufficient evidence was presented to support a finding that deprivation of the two children by the father was likely to continue and that termination of the father's parental rights was in the childrens' best interest; furthermore, a claim that the father lacked knowledge of, and was not directed to pay child support, was irrelevant in light of the directive found in O.C.G.A. § 19-7-2 that a parent had a statutory duty to pay child support with or without a court order. In the Interest of T.C., 281 Ga. App. 137, 635 S.E.2d 395 (2006) (decided under former O.C.G.A. § 15-11-94).

Given evidence of a parent's drug addiction, lack of successful treatment and follow-up care, unstable living situation, failure to pay child support, and lack of a close bond with the child at issue, clear and convincing evidence supported a termination of that parent's parental rights based on the child's deprivation, and that the deprivation would likely continue; moreover, pretermitting whether sufficient evidence supported a finding that the parent suffered from a mental illness, this finding was not necessary to support termination of parental rights. In the Interest of D.D.B., 282 Ga. App. 416, 638 S.E.2d 843 (2006) (decided under former O.C.G.A. § 15-11-94).

In a termination of parental rights case, there was sufficient evidence that continued deprivation was likely to seriously harm the children. The deprivation involved, among other things, the mother repeatedly relapsing into drug abuse and her repeated incarceration for crimes and violations of probation, and there was testimony about the children's need for permanency. In the Interest of C.L., 315 Ga. App. 607, 727 S.E.2d 163 (2012) (decided under former O.C.G.A. § 15-11-94).

Deprivation likely to cause harm to children. — Evidence of the father's past neglect of the children's medical, physical, and emotional needs and the testimony of their foster mother which revealed that current contact with the father was upsetting and disruptive to the children, supported a conclusion that continued deprivation was likely to cause serious physical, mental, emotional, or moral harm to the children. In the Interest of J.P., 268 Ga. App. 32, 601 S.E.2d 409 (2004) (decided under former O.C.G.A. § 15-11-94).

Evidence of deprivation sufficient. — Evidence was sufficient to show both deprivation and that the deprivation resulted from the mother's conduct. In the Interest of S.B., 242 Ga. App. 184, 528 S.E.2d 278 (2000) (decided under former O.C.G.A. § 15-11-94).

Evidence supported the finding that the children's deprivation was caused by the mother because the mother abandoned the children and left them with her mother and her mother's husband, who had been charged with sex crimes, she failed to maintain meaningful or consistent contact with either the Department of Family and Children Services or the children for over a year and made no effort to support the children financially, the mother made no effort to comply with the reunification plan, and she surrendered her parental rights in the children. In the Interest of M.E.M., 272 Ga. App. 451, 612 S.E.2d 612 (2005) (decided under former O.C.G.A. § 15-11-94).

Evidence supported the termination of a mother's parental rights as the mother

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was bound by a juvenile court's order finding that the children were deprived as a result of neglect, including inadequate housing and the mother's substance abuse; the mother did not appeal the juvenile court's finding. In the Interest of C.T.M., 273 Ga. App. 168, 614 S.E.2d 812 (2005) (decided under former O.C.G.A. § 15-11-94).

Termination of a parent's rights was proper as there was sufficient evidence that the children would be deprived if returned to their parent's custody given the parent's lack of employment, the parent's inability to financially support the children, their failure to receive further anger management counseling, and failure to complete domestic violence counseling; also, child one's unexplained injuries were evidence of deprivation. In the Interest of K.J.M., 282 Ga. App. 72, 637 S.E.2d 810 (2006) (decided under former O.C.G.A. § 15-11-94).

Evidence showed that two children were deprived for purposes of the termination of a parent's rights as: (1) the children had been found to be deprived and were not in the parent's custody, and the parent failed to maintain a parental bond as the parent did not visit the children once in nine months, failed to give the children birthday presents, and did not contact the foster parents; (2) the parent failed to complete the case plan, although the parent completed parenting classes and a substance abuse evaluation, the parent moved at least nine times in two years and did not maintain regular contact with a child services agency; and (3) the parent paid $60 of $900 owed in child support and failed to support the children. In the Interest of C.M., 282 Ga. App. 502, 639 S.E.2d 323 (2006) (decided under former O.C.G.A. § 15-11-94).

Lack of evidence that deprivation likely to continue. — Lack of evidence that the cause of a child's deprivation was likely to continue or that the child's continued deprivation was likely to cause physical, mental, emotional, or moral harm to the child, as required under former O.C.G.A. § 15-11-94(b)(4)(A) (see now O.C.G.A. § 15-11-310), required that the trial court's order terminating the parental rights of the child's father be reversed. In the Interest of B.F., 253 Ga. App. 887, 560 S.E.2d 738 (2002) (decided under former O.C.G.A. § 15-11-94).

Juvenile court erred in terminating the mother's parental rights as the cause of the child's deprivation was unlikely to continue because the court ignored the mother's present and well-documented commitment to sobriety; the mother earned a high-school diploma, enrolled in college, completed a drug-rehabilitation program, and attended a 15-week parenting class; the mother never missed a scheduled supervised visit with the child; and the mother's cohabitation with a boyfriend was an insufficient basis for terminating the mother's parental rights as the boyfriend helped the mother maintain a stable home and there was no evidence that the boyfriend's potential drug use would negatively affect the child. In the Interest of J. V. J., 329 Ga. App. 421, 765 S.E.2d 389 (2014) (decided under former O.C.G.A. § 15-11-94).

Trial court erred in terminating the mother's parental rights to the oldest child as the clear and convincing evidence did not show that the mother was presently unfit and that the child's deprivation was likely to continue and cause substantial harm because the mother had maintained stable housing with the youngest child and that child's father; the mother had sources of income; and the mother met or substantially completed most of the other case plan goals by completing parenting classes, attending counseling sessions, attending the majority of the scheduled visitations with the child, interacting well with the child during visitation, and meeting with the caseworkers. In the Interest of T. M., 329 Ga. App. 719, 766 S.E.2d 101 (2014) (decided under former O.C.G.A. § 15-11-94).

Although a mother was disabled from multiple sclerosis and other problems, took several medications, lived on limited means, was in a contentious relationship with the putative father, had accumulated trash around her home, and had never lived with her four-year-old child, the evidence did not clearly and convincingly show that she was presently unfit and

that the deprivation was likely to continue and cause serious harm because the father had moved out and she had cleaned up the home. In the Interest of S. R. R., 330 Ga. App. 817, 769 S.E.2d 562 (2015) (decided under former O.C.G.A. 15-11-94).

Juvenile court erred in terminating the mother's parental rights as to five of the eight children because the record was devoid of any evidence showing that the dependency was likely to continue or that continued dependency would cause harm to the children. In the Interest of A. B., 346 Ga. App. 2, 815 S.E.2d 561 (2018).

Evidence insufficient to show that deprivation likely to cause harm. — Termination of the mother's parental rights was improper as a failure to terminate the mother's rights would not cause or was not likely to cause the children serious physical, mental, emotional, or moral harm because the children would not be harmed seriously were the children to remain in foster care, by virtue of either their relationship with their mother or the impermanency of that situation; the mother had positive visits with the children; the children were happy to see their mother; the children were not performing poorly in school or displaying significant age-inappropriate behavioral problems; and the lack of specific evidence regarding potential harm mandated reversal as the mother and children were bonded and emotionally close. In the Interest of E. M. D., 339 Ga. App. 189, 793 S.E.2d 489 (2016).

Evidence did not clearly and convincingly support terminating the mother's parental rights because the mother had adequate housing, stable income, clean drug screens, completed a substance abuse treatment program, underwent a mental health assessment, started counseling and treatment, and had completed an anger management program, and the record did not show that reasonable efforts to remedy the circumstances of dependency were unsuccessful. In the Interest of B. R. J., 344 Ga. App. 465, 810 S.E.2d 630 (2018).

Termination of the mother's parental rights was improper because, although the trial court was authorized to find that the mother's housing was not stable and that the dependency was likely to continue and would not likely be remedied, the evidence was insufficient to show that continued dependency would cause or was likely to cause the children serious physical, mental, emotional, or moral harm as the trial court did not assess the extent to which instability and impermanency were currently causing specific harms to the children, and whether, as a result of the dependency, the children would be harmed by remaining in foster care indefinitely; and there was no finding regarding how continuing the status quo would harm the children. In the Interest of A. F., 346 Ga. App. 538, 816 S.E.2d 496 (2018).

Lack of proper parental care by mother caused deprivation. — Children's deprivation was caused by a lack of proper parental care by the mother since the mother: (1) did not pay child support; (2) failed to comply with the reunification goals: (3) did not resolve the criminal charges against her; (4) did not maintain contact with her children; and (5) did not establish a stable home. In the Interest of J.J., 259 Ga. App. 159, 575 S.E.2d 921 (2003) (decided under former O.C.G.A. § 15-11-94).

Mental retardation of parent. — Insufficient evidence supported the termination of a parent's rights because the record showed that while the parent had mental retardation, the parent functioned well despite the mental disability and had the skills necessary to provide for and raise a family, including two children, in Arkansas; thus, there was a lack of evidence that the deprivation was to continue. In the Interest of O. B., 337 Ga. App. 401, 787 S.E.2d 344 (2016).

Mother's history of child neglect was clearly relevant to the consideration of whether deprivation was likely to continue when, aware of her past failings, she continued to ignore her responsibility to financially support her children. In re M.L.P., 236 Ga. App. 504, 512 S.E.2d 652 (1999) (decided under former O.C.G.A. § 15-11-81).

Indication of future deprivation. — While past acts of deprivation are stronger proof and more convincing evidence upon which to decide the issue, there is no reason why a determination of depriva-

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tion may not be made on proof that the conditions under which the child would be raised in the parent's home strongly indicate that deprivation will occur in the future. Roberts v. State, 141 Ga. App. 268, 233 S.E.2d 224 (1977) (decided under prior law); Jones v. Department of Human Resources, 155 Ga. App. 371, 271 S.E.2d 27 (1980) (decided under prior law).

In a termination of parental rights case, the evidence was sufficient to support the finding that the deprivation was likely to continue. The mother was arrested and jailed following the birth of her older child and violated her probation at least twice; furthermore, even if she left her first rehabilitation program for legitimate reasons, she left it without permission, relapsed into drug abuse, and failed to notify the Department of Family and Children Services of her whereabouts. In the Interest of C.L., 315 Ga. App. 607, 727 S.E.2d 163 (2012) (decided under former O.C.G.A. § 15-11-94).

Insufficient evidence that continued deprivation likely to cause harm. — Termination of the mother's parental rights was improper because, although the evidence supported the finding that the children's dependency was likely to continue and would not likely be remedied, the state did not sufficiently establish that the children were likely to suffer harm under the status quo as there was no evidence that their continued relationship with their mother was harmful; and the juvenile court's generalized findings that the children would experience doubt, uncertainty and hesitancy in life, and that foster care would not provide the kind of stability they needed, and would put them at risk of delinquency, other anti-social behavior, and "foster care drift" did not show how each child would be harmed by the status quo. In the Interest of A. S., 339 Ga. App. 875, 794 S.E.2d 672 (2016).

15-11-311. Determination of whether child is without proper parental care and control.

(a) In determining whether a child is without proper parental care and control, the court shall consider, without being limited to, the following:

(1) A medically verified deficiency of such child's parent's physical, mental, or emotional health that is of such duration or nature so as to render such parent unable to provide adequately for his or her child;

(2) Excessive use of or history of chronic unrehabilitated substance abuse with the effect of rendering a parent of such child incapable of providing adequately for the physical, mental, emotional, or moral condition and needs of his or her child;

(3) A felony conviction and imprisonment of a parent of such child for an offense which has a demonstrably negative effect on the quality of the parent-child relationship including, but not limited to, any of the following:

(A) Murder of another child of such parent;

(B) Voluntary manslaughter of another child of such parent;

(C) Voluntary manslaughter of the other parent of his or her child;

(D) Aiding or abetting, attempting, conspiring, or soliciting to commit murder or voluntary manslaughter of another child of such parent;

(E) Aiding or abetting, attempting, conspiring, or soliciting to commit murder or voluntary manslaughter of the other parent of his or her child; or

(F) Committing felony assault that results in serious bodily injury to his or her child or another child of such parent;

(4) Egregious conduct or evidence of past egregious conduct of a physically, emotionally, or sexually cruel or abusive nature by such parent toward his or her child or toward another child of such parent;

(5) Physical, mental, or emotional neglect of his or her child or evidence of past physical, mental, or emotional neglect by the parent of such child or another child of such parent; and

(6) Serious bodily injury or death of a sibling of his or her child under circumstances which constitute substantial evidence that such injury or death resulted from parental neglect or abuse.

(b) In determining whether a child who is not in the custody and care of his or her parent is without proper parental care and control, the court shall also consider, without being limited to, whether such parent, without justifiable cause, has failed significantly for a period of six months prior to the date of the termination hearing:

(1) To develop and maintain a parental bond with his or her child in a meaningful, supportive manner;

(2) To provide for the care and support of his or her child as required by law or judicial decree; and

(3) To comply with a court ordered plan designed to reunite such parent with his or her child.

(c) A parent's reliance on prayer or other religious nonmedical means for healing in lieu of medical care, in the exercise of religious beliefs, shall not be the sole basis for determining a parent to be unwilling or unable to provide safety and care adequate to meet his or her child's physical, emotional, and mental health needs as provided in paragraph (1) of subsection (a) of this Code section or as depriving such child of proper parental care or control for purposes of this Code section and Code Section 15-11-310.

History. — Code 1981, § 15-11-311, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

JUDICIAL DECISIONS

Analysis

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General Consideration

Editor's notes. — In light of the similarity of the statutory provisions, decisions under pre-2000 Code Sections 15-11-51 and 15-11-81, and pre-2014 Code Section 15-11-94, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

In light of the reenactment of this chapter, effective January 1, 2014, the reader is advised to consult the annotations following Code Section 15-11-310, which may also be applicable to this Code section.

Actions of Parents

Watching pornography with child and alcoholism of parent. — When the record was replete with references to a mother's problems with chronic alcohol abuse, and to her problematic relationship with the father of three of her children, who abused both her and the children, and since there was "egregious conduct" toward the children in having them watch pornography with her, this evidence, some of which was of recent origin, coupled with her failure to comply with safety plans, was clear and convincing evidence of parental misconduct or inability. In re B.D., 236 Ga. App. 119, 511 S.E.2d 229 (1999) (decided under former O.C.G.A. § 15-11-81).

Alcohol abuse by parent. — Trial court's determination to terminate a father's parental rights was supported by clear and convincing evidence pursuant to former O.C.G.A. § 15-11-94(b)(4)-(C)(ii)-(iii) (see now O.C.G.A. § 15-11-311) since he had a history of alcohol and drug abuse, admitted that he needed financial help to support his children, had not offered any support during the period that the children were in temporary custody as required by O.C.G.A. § 19-7-2, and failed to achieve any of the goals of the agency's case plan for him. In the Interest of D.L., 268 Ga. App. 360, 601 S.E.2d 714 (2004) (decided under former O.C.G.A. § 15-11-94).

Termination of a father's parental rights was supported by evidence, inter alia, that the child was not properly cared for and developmentally delayed, that the father had been convicted several times for alcohol related driving offenses, and that the father was eventually incarcerated for, among other convictions, vehicular homicide; the father presented no evidence that he had taken steps to control his alcohol problem, or to otherwise provide the highly structured, consistent, nurturing environment which the child required, and there was no evidence that the father provided any support for the child. In the Interest of M.L.S., 273 Ga. App. 554, 615 S.E.2d 615 (2005) (decided under former O.C.G.A. § 15-11-94).

Alcoholism as factor in terminating parental rights. — Termination of the father's parental rights was in the best interest of the child in light of the father's chronic alcoholism, refusal to rehabilitate, history of public brawling and overall unstable lifestyle. In re C.K.M., 207 Ga. App. 221, 427 S.E.2d 585 (1993) (decided under former O.C.G.A. § 15-11-94).

Trial court properly terminated a mother's parental rights when the mother abused drugs and alcohol, had been repeatedly incarcerated, failed to support or visit the child, did not feed the child well or attend to his safety and hygiene when he was with her, had twice absconded with the child over state lines, once while she was intoxicated, had failed to meet case plan goals, and her rights to five other children had been terminated. In the Interest of J.F., 283 Ga. App. 759, 642 S.E.2d 434 (2007) (decided under former

O.C.G.A. § 15-11-94).

"Horrific" physical abuse of child. — Evidence that parents "horrifically" physically abused their child and emotionally neglected both children, that the children had been adjudicated as deprived and that such deprivation was likely to continue, and that termination of the parents' rights was in the children's best interests, supported a termination decision under former O.C.G.A. § 15-11-94(b)(4)(B)(iv)-(vi) (see now O.C.G.A. § 15-11-311); the parents had also failed to complete their reunification case plans successfully, had not appealed the determination that the children were deprived, and further, the children were placed in a foster care home that was suitable for adoption and indicated that the children had no desire to return to the parents. In the Interest of J.I., 269 Ga. App. 764, 605 S.E.2d 397 (2004) (decided under former O.C.G.A. § 15-11-94).

Parent showering with children. — Juvenile court's finding that the children were dependent due to sexual touching during showers with their father was supported by testimony of one child's classmate and mother who testified that the child told the classmate about the showers, a detective who conducted a forensic interview and testified the children had been coached, and the children's aunt who testified to the parents' argument about the father showering with one of the children. In the Interest of H. B., 346 Ga. App. 163, 816 S.E.2d 313 (2018).

Near accidental drowning of child in bathtub. — Termination of the father's parental rights was upheld when the evidence showed that he left the children in the unsupervised care of the mentally unstable mother whose parental rights had been terminated, and that he had left the children unsupervised in the bathtub, causing near drowning of one child. In re D.C., 176 Ga. App. 30, 335 S.E.2d 148 (1985) (decided under former law).

Termination for shaking of children. — Biological father's parental rights to his twin children were properly terminated because clear and convincing evidence existed that the father caused various injuries to the children by shaking them on at least two occasions when they were only two months old, and the father pled guilty to two counts of cruelty to children. In the Interest of C.A., 278 Ga. App. 93, 628 S.E.2d 151 (2006) (decided under former O.C.G.A. § 15-11-94).

Parent purchasing items instead of supporting child. — When a father admitted that he did not pay child support for his children while they were in foster care, stating that, instead, he purchased items the children needed, the trial court's findings that he did not provide for the children's care and support as required by law, under former O.C.G.A. § 15-11-94(b)(4)(C)(ii) (see now O.C.G.A. § 15-11-311), were supported by clear and convincing evidence. In the Interest of C.M., 275 Ga. App. 719, 621 S.E.2d 815 (2005) (decided under former O.C.G.A. § 15-11-94).

Failure to communicate with child. — During the year before the filing of a termination petition, a mother did not visit, send cards or letters, or make any telephone calls to the child, constituting clear and convincing evidence under former O.C.G.A. § 15-11-94(b)(4)(C)(i) (see now O.C.G.A. § 15-11-311), that the mother significantly failed without justifiable cause to develop and maintain a parental bond with the child in a meaningful, supportive manner. In the Interest of A.R.A.S., 278 Ga. App. 608, 629 S.E.2d 822 (2006) (decided under former O.C.G.A. § 15-11-94).

Parental deprivation not shown by citizenship, license status, or verifiability of income. — Trial court erred in terminating a parent's rights and allowing the maternal aunt to adopt a two-year-old child because the parent had completed the parent's reunification plan and there was no deprivation or any factors in O.C.G.A. § 19-8-10(a) or (b); the trial court relied on improper factors such as the parent's non-citizen status, the parent's lack of a driver's license, and the verifiability of the parent's income. Alizota v. Stanfield, 329 Ga. App. 550, 765 S.E.2d 707 (2014).

Medical and Psychological Factors

Medical care for children. — Father's failure to obtain training in the use of an apnea monitor and cardiopulmonary

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resuscitation skills for his child's medical care supported termination of the father's parental rights as did the father's assertion that he would cure the child's asthma by having the child drink from a coconut and then burying the coconut. In the Interest of S.E.L., 251 Ga. App. 728, 555 S.E.2d 115 (2001) (decided under former O.C.G.A. § 15-11-94).

Child born with fetal alcohol syndrome. — Trial court properly terminated a father's parental rights to his daughter pursuant to former O.C.G.A. § 15-11-94(b) (see now O.C.G.A. §§ 15-11-310 and 15-11-311); the child was deprived, as the father had made no attempts to help care for the child, who was born with fetal alcohol syndrome, and the adoption of the child by the mother's relatives pursuant to O.C.G.A § 19-8-10 was in the best interest of the child. Rokowski v. Gilbert, 275 Ga. App. 305, 620 S.E.2d 509 (2005) (decided under former O.C.G.A. § 15-11-94).

Child with fetal alcohol syndrome and child with ringworm. — Mother was bound by prior court orders that her children were deprived as a result of the children being without proper parental care and supervision under former O.C.G.A. § 15-11-94(b)(4)(C)(i) to (iii) (see now O.C.G.A. § 15-11-311). Additionally, (1) the mother failed to fully comply with an alcohol treatment program; (2) the mother's alcohol abuse had caused fetal alcohol syndrome in one child, and another had severe incurable ringworm; (3) the mother did not visit or financially support the children; and (4) the mother had mental-health deficiencies that rendered her incapable of providing adequately for the children. In the Interest of M.L., 259 Ga. App. 534, 578 S.E.2d 190 (2003) (decided under former O.C.G.A. § 15-11-94).

Children with multiple broken bones. — Clear and convincing evidence supported a trial court's termination of a father's parental rights since the father pled guilty to cruelty to children by breaking his son's arm, the son showed evidence of unrelated multiple rib fractures, and the father had earlier lost parental rights to the daughter due to numerous bone fractures suffered in the parents' care. In the Interest of B.W., 254 Ga. App. 63, 561 S.E.2d 199 (2002) (decided under former O.C.G.A. § 15-11-94).

Parental drug abuse. — Termination of the mother's parental rights was upheld when the juvenile court properly considered the mother's admitted history of substance abuse and its effect on her ability to be a parent, and the record demonstrated that the mother made little or no effort to develop a parental relationship with the child, to provide the child with financial support, or to comply with her case plan goals. In the Interest of S.L.B., 265 Ga. App. 684, 595 S.E.2d 370 (2004) (decided under former O.C.G.A. § 15-11-94).

Termination of the mother's parental rights was supported by evidence that her rights to all six of her prior children had been terminated because, in essence, she did not care about having them at the time, and by the mother's acknowledgement of her long history of crack addiction, her failure to complete a drug rehabilitation program either before or after the child's birth, her failure to attend classes on addiction during her incarceration after the child's birth, and her use of cocaine while she was pregnant with the child. In the Interest of B.S., 265 Ga. App. 795, 595 S.E.2d 607 (2004) (decided under former O.C.G.A. § 15-11-94).

There was sufficient evidence, including drug abuse and the failure to seek treatment, to support a finding of parental misconduct or inability as contemplated by former O.C.G.A. § 15-11-94 (see now O.C.G.A. §§ 15-11-310, 15-11-311, and 15-11-320), for the termination of a mother's parental rights. In the Interest of H.D.T., 273 Ga. App. 863, 616 S.E.2d 196 (2005) (decided under former O.C.G.A. § 15-11-94).

Trial court properly terminated a mother's parental rights to her children pursuant to former O.C.G.A. § 15-11-94 (see now O.C.G.A. §§ 15-11-310, 15-11-311, and 15-11-320) as the mother had deprived the children by failing to care for them, the deprivation was likely to continue in light of the mother's drug abuse

and depression, and the termination was in the best interest of the children as the children were thriving in the care of their grandmother. In the Interest of P.L.S.D., 275 Ga. App. 49, 619 S.E.2d 755 (2005) (decided under former O.C.G.A. § 15-11-94).

There was sufficient evidence that continued deprivation caused by the mother was likely to cause serious physical, mental, emotional, or moral harm to the children, pursuant to former O.C.G.A. § 15-11-94(b)(4)(A) (see now O.C.G.A. § 15-11-310, because the mother had a demonstrated history of irresponsible and neglectful conduct toward her children and an established pattern of joblessness and instability as well as drug abuse; her ongoing drug abuse and multiple drug addictions, and her failure to complete the essential elements of her case plan would negatively impact the children's well-being. In the Interest of L.W., 276 Ga. App. 197, 622 S.E.2d 860 (2005) (decided under former O.C.G.A. § 15-11-94).

Sufficient evidence supported an order terminating a mother's parental rights as the mother had used drugs since age 13, had threatened the child, had only attended three or four recommended Narcotics Anonymous meetings that year, been diagnosed with amphetamine mood disorder and dependence, and tested positive for drug use on the date of the termination hearing. In the Interest of K.A.P., 277 Ga. App. 794, 627 S.E.2d 857 (2006) (decided under former O.C.G.A. § 15-11-94).

Termination of a father's parental rights was supported by evidence of the adverse impact on the child of the mother's continuous drug abuse, the father's neglect of the father's other children, and by the two years the father waited before filing a petition to legitimate the child; the termination of a mother's parental rights was supported by evidence of the mother's egregious drug abuse, the repeated removal of the children from the mother's care, and the mother's failure to comply with her case plan goals. In the Interest of T.L., 279 Ga. App. 7, 630 S.E.2d 154 (2006) (decided under former O.C.G.A. § 15-11-94).

Since neither parent appealed deprivation orders, they were bound by their findings for purposes of a later termination hearing; the termination order was supported by sufficient evidence including, the failure of the parents to stop abusing drugs, to achieve stable housing, to support the children, and to maintain contact with the children. In the Interest of C. P., 279 Ga. App. 25, 630 S.E.2d 165 (2006) (decided under former O.C.G.A. § 15-11-94).

Clear and convincing evidence supported a juvenile court's termination of a mother's parental rights over two children pursuant to former O.C.G.A. § 15-11-94(b)(4)(B) and (C) (see now O.C.G.A. § 15-11-311) as the mother had a chronic history of drug use, the mother did not have a parental bond with the children and did not support the children, there was no satisfactory completion of the conditions of the mother's reunification plan, the mother was incapable of providing adequate care to the children, and custody in the paternal grandparents was in the children's best interests; the juvenile's court reliance on any non-compliance with a reunification plan that had not been in effect for one year or was not court-ordered was error, but it was harmless when there were other substantial factors to support the termination decision. In the Interest of D.J., 279 Ga. App. 355, 631 S.E.2d 427 (2006) (decided under former O.C.G.A. § 15-11-94).

Trial court's decision to terminate a mother's parental rights pursuant to former O.C.G.A. § 15-11-94(b)(4)(A) (see now O.C.G.A. § 15-11-310) was supported by sufficient evidence; a rational trier of fact could have concluded that the mother's chronic drug abuse had rendered the mother incapable of providing for the needs of the children; this lack of proper parental care or control was the cause of the children's deprivation; the cause of the deprivation was likely to continue as evidenced by the mother's inability to maintain a stable home or employment; and the continued deprivation was likely to cause serious harm to the children. In the Interest of C.G., 279 Ga. App. 730, 632 S.E.2d 472 (2006) (decided under former O.C.G.A. § 15-11-94).

In the parental rights termination case,

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clear and convincing evidence demonstrated parental misconduct under former O.C.G.A. § 15-11-94 (see now O.C.G.A. §§ 15-11-310 and 15-11-311); the child was deprived, the mother caused the deprivation by using methamphetamine during the mother's pregnancy, and the mother's continued drug use demonstrated a likely continuation of the deprivation that was likely to seriously harm the child. In the Interest of L.L., 280 Ga. App. 804, 635 S.E.2d 216 (2006) (decided under former O.C.G.A. § 15-11-94).

Mother's repeated drug use, resistance to inpatient, long-term mental health and drug treatment, and failure to maintain stable housing or employment, in addition to the bond the child developed with the foster family, established that termination of the mother's parental rights was in the child's best interest under former O.C.G.A. § 15-11-94(a) (see now O.C.G.A. § 15-11-310). In the Interest of H.E.M.O., 281 Ga. App. 281, 636 S.E.2d 47 (2006) (decided under former O.C.G.A. § 15-11-94).

Order terminating a parent's parental rights was upheld on appeal as clear and convincing evidence was presented that such was warranted given the parent's serious drug addiction, failure to maintain a steady job and appropriate home, and sporadic visitation and lack of bond with the children; as a result, termination was in the childrens' best interest. In the Interest of T.J., 281 Ga. App. 673, 637 S.E.2d 75 (2006) (decided under former O.C.G.A. § 15-11-94).

In a termination of parental rights case, the cause of the child's deprivation was likely to continue under former O.C.G.A. § 15-11-94(b)(4)(A)(iii) (see now O.C.G.A. § 15-11-310) as the mother had been unable to stop the mother's use of controlled substances or to consistently take medication as prescribed. In the Interest of D.A.B., 281 Ga. App. 702, 637 S.E.2d 102 (2006) (decided under former O.C.G.A. § 15-11-94).

Termination of a mother's parental rights was affirmed as the child's deprivation was likely to continue since the mother had relapsed from an earlier drug program, the mother had tested positive for drugs shortly before the hearing, all of the mother's drug screens had been positive, and the mother had not completed the mother's most recent drug program; further, the mother did not meet the goals of the mother's reunification plan and failed to visit the child. In the Interest of M.N.R., 282 Ga. App. 46, 637 S.E.2d 777 (2006) (decided under former O.C.G.A. § 15-11-94).

Order terminating a parent's parental rights was upheld on appeal, given evidence of: (1) a previous deprivation finding, which the parent did not appeal; (2) the parent's continued addiction to crack cocaine; (3) the parent's failure to pay child support and have sufficient contact with the two children; and (4) the parent's continued unfitness, which supported the court's finding that the deprivation was likely to continue. In the Interest of K.W., 283 Ga. App. 398, 641 S.E.2d 598 (2007) (decided under former O.C.G.A. § 15-11-94).

Clear and convincing evidence supported termination of a mother's parental rights. The conditions of her children's deprivation were likely to continue as the mother had a history dating back to 1991 which required an agency's intervention, and the mother admitted that she was a drug addict. The father's history of chronic, unrehabilitated drug abuse and incarcerations also supported termination of his parental rights. In the Interest of S.S.G.A., 285 Ga. App. 276, 645 S.E.2d 724 (2007) (decided under former O.C.G.A. § 15-11-94).

Juvenile court properly terminated a parent's parental rights, concluding that any deprivation the affected children suffered was likely to continue, as clear and convincing evidence was presented that the parent had a substantial drug problem, which went untreated, and rendered the parent unfit to care for the children. In the Interest of M.A., 287 Ga. App. 719, 652 S.E.2d 613 (2007) (decided under former O.C.G.A. § 15-11-94).

Trial court did not err by finding, pursuant to former O.C.G.A. §§ 15-11-2 and 15-11-94 (see now O.C.G.A. §§ 15-11-107, 15-11-310, 15-11-311, 15-11-381, and

15-11-471), that the child was deprived at the time of the termination hearing and that the mother was the cause of the deprivation as the evidence showed that the mother had a 12-year history of drug addiction, that she repeatedly used methamphetamine while pregnant with the child, that the mother's two other children were not in her custody, that she had multiple felony drug convictions, that she was in jail after the child's birth, that she failed to financially support the child until four weeks before the termination hearing, that she had lived in five separate residences since giving birth to the child, and that she made no attempt whatsoever to visit the child until one month prior to the termination hearing. In the Interest of Z. P., 314 Ga. App. 347, 724 S.E.2d 48 (2012) (decided under former O.C.G.A. § 15-11-94).

Termination of the mother's parental rights was supported by clear and convincing evidence because, inter alia, the mother was likely to subject the children to generalized neglect; the mother exhibited major depressive disorder and generalized anxiety disorder which likely would damage the children; the mother failed to complete individual counseling sessions, failed to complete drug treatment, failed to have consistent housing, and failed to provide clean drug screens during the plan; and the mother continued a dependent relationship with the father, who was alleged to have sexually abused the older child. In the Interest of A. M. B., 324 Ga. App. 394, 750 S.E.2d 709 (2013) (decided under former O.C.G.A. § 15-11-94).

In a termination of parental rights case, there was evidence to support the juvenile court's finding that the children's dependency was likely to continue and would not likely be remedied because the parent was unable to remain drug free; the parent failed and refused drug screenings; and the parent failed to complete substance abuse counseling following the parent's positive drug screen. In the Interest of A. S., 339 Ga. App. 875, 794 S.E.2d 672 (2016).

Impact of foster care. — Termination of the mother's parental rights was improper because, although the record supported a finding that the child would suffer serious harm if the child were returned to the mother, the record did not support a finding that remaining in foster care would likely cause serious harm to the child as a bonding and attachment expert and the case worker testified about the strong and positive relationship the child had with the foster parents; the expert did not opine that the instability and impermanency of foster care were currently causing any specific harm to the child; and there was no other evidence presented that the child suffered any emotional stress or sadness from the instability and impermanency associated with foster care. In the Interest of R. S. T., 345 Ga. App. 300, 812 S.E.2d 614 (2018).

Parental dependency on prescription drugs. — Trial court's findings were sufficient to support a termination of a mother's parental rights when the mother did not financially support the children, even when funds were available to the mother to do so, the mother failed to develop a bond with the children, the mother was dependent on prescription medication to the extent that the mother was physically unable to care for the children, the mother was unwilling to undergo mental health treatment, which experts believed was vital to stabilize the mother and enable the mother to parent the children, and repeatedly and continually failed to obey court orders or cooperate in the case plan. In the Interest of J.K., 278 Ga. App. 564, 629 S.E.2d 529 (2006), overruled on other grounds, In the Interest of J.E., 309 Ga. App. 51, 711 S.E.2d 5 (Ga. Ct. App. 2011) (decided under former O.C.G.A. § 15-11-94).

Mother's repeated inability to overcome drug addiction, with its consequent incarceration and loss of employment supported a finding that termination of parental rights was in the best interests of the child. In re D.T., 221 Ga. App. 328, 471 S.E.2d 281 (1996) (decided under former O.C.G.A. § 15-11-94).

Termination of a mother's parental rights was supported by clear and convincing evidence because the mother failed to comply with a reunification plan by failing to successfully complete a drug treatment program, failing to provide stable housing, and failing to obtain stable

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employment. Additionally, the mother failed to show a strong familial bond with the children or that the termination of her parental rights was not in the best interests of the children. In the Interest of S.S., 259 Ga. App. 126, 576 S.E.2d 99 (2003) (decided under former O.C.G.A. § 15-11-94).

Parent taking medication and receiving counseling. — In a case terminating the mother's parental rights, the child was currently dependent at the time of the hearing because the mother failed to maintain visitation with the child from May 2015 to March 2016, with only sporadic visitation prior to May 2015; the mother failed to provide child support, refused to provide proof of income, and was currently living in a two-bedroom home with four other individuals, none of whom had been screened by the Department of Family and Children Services or ever met the child; and the mother suffered from serious mental health issues, which the mother denied, even though the mother was taking some medication and receiving some counseling. In the Interest of R. S. T., 345 Ga. App. 300, 812 S.E.2d 614 (2018).

Evidence of parent's psychological problems sufficient. — Termination of a mother's parental rights was warranted because she suffered from a dependent disability disorder and because her brother, a convicted child molester, lived in her home. In re D.I.W., 215 Ga. App. 644, 451 S.E.2d 804 (1994) (decided under former O.C.G.A. § 15-11-81).

Evidence supported the court's findings concerning the likelihood of the mother's mental condition continuing and of her failure to comply with reunification plan goals so that termination of parental rights was in the child's best interest. In the Interest of C.K., 242 Ga. App. 269, 529 S.E.2d 395 (2000) (decided under former O.C.G.A. § 15-11-94).

Clear and convincing evidence supported the termination of the mother's parental rights to the mother's children as the mother's lack of parental care and control was the cause of the children's deprivation. The mother suffered from a psychological disorder that affected her ability to provide adequate care for the children, tested positive for marijuana, was convicted of theft by conversion, was incarcerated on a probation violation, and had failed to develop and maintain a parental bond with the children in a meaningful and supportive manner; such factors all bore upon the trial court's determination as to whether the children were without proper parental care and control under former O.C.G.A. § 15-11-94(b)(4) (see now O.C.G.A. § 15-11-311). In re R.A.R., 259 Ga. App. 680, 577 S.E.2d 872 (2003) (decided under former O.C.G.A. § 15-11-94).

Juvenile court did not err in considering the mother's testimony in determining whether her child was deprived, even though the juvenile court had previously found her mentally incompetent, as the juvenile court was authorized to consider any testimony, including that of the allegedly impaired parent, in determining the central issue of whether the parent was able to adequately provide for the child's needs; also, consideration of the mother's testimony supported the findings of the psychologist who testified that the mother's multiple mental disorders interfered with her ability to adequately care for her child. In the Interest of B.B., 268 Ga. App. 603, 602 S.E.2d 330 (2004) (decided under former O.C.G.A. § 15-11-94).

Evidence supported the finding that a child was deprived within the meaning of former O.C.G.A. § 15-11-2(8) (see now O.C.G.A. § 15-11-107), and that termination of the mother's parental rights was in the child's best interest, pursuant to former O.C.G.A. § 15-11-94(a) (see now O.C.G.A. §§ 15-11-310 and 15-11-320), because the mother, who was homeless and suffering from schizophrenia, failed to maintain contact with the agency or visit with the child for more than one year, and she never accomplished court ordered goals for reunification or demonstrated the ability to adequately care for the child. In the Interest of S.G., 271 Ga. App. 776, 611 S.E.2d 86 (2005) (decided under former O.C.G.A. § 15-11-94).

Lack of proper parental care or control as cause of deprivation factor for termi-

nating a mother's parental rights was satisfied because the mother attended only 38 of 79 scheduled visits and failed to develop any kind of basic relationship with the child; failed to comply with her case plan because she moved, lost her job, failed to complete therapy, and failed to obtain medical treatment; failed to contribute to the child's support; and she had a low IQ, limited cognitive abilities, and a dependent personality disorder, all of which impaired her ability to parent the child. In the Interest of K.N., 272 Ga. App. 45, 611 S.E.2d 713 (2005) (decided under former O.C.G.A. § 15-11-94).

Because a trial court expressly found, pursuant to former O.C.G.A. § 15-11-94(a) (see now O.C.G.A. §§ 15-11-310 and 15-11-320), that a mother's five children were deprived, that the cause was a lack of proper parental care and control, that the cause of deprivation was not likely to be remedied, and that the continued deprivation would cause serious physical, mental, emotional, or moral harm to the children, a decision to terminate the mother's parental rights was supported by the clear and convincing evidence in that she was found incapable of parenting and she had mental health issues which she was not taking care of; there was no requirement that specific findings had to be separately made as to each child, and the trial court made adequate findings to support the determination which were applicable to all of the children, and to the mother's treatment of them. In the Interest of A.A., 274 Ga. App. 791, 618 S.E.2d 723 (2005) (decided under former O.C.G.A. § 15-11-94).

Evidence of a mother's obsessive-compulsive disorder and depression, evidence that these disorders interfered with the mother's ability to provide for the children, along with the mother's sporadic attendance at therapy, and failure to consistently take prescribed medication sufficiently supported the termination of the mother's parental rights. In the Interest of S.W.J.P.D., 279 Ga. App. 226, 630 S.E.2d 824 (2006) (decided under former O.C.G.A. § 15-11-94).

Parent's parental rights were properly terminated under former O.C.G.A. § 15-11-94 (see now O.C.G.A. §§ 15-11-310 and 15-11-311) because the record showed that the parent was diagnosed with a mental condition that prevented the parent from caring adequately for the parent's child, that the parent failed to attend the counseling sessions required in the parent's case plan, and the parent did not take medication for the parent's mental illness as prescribed. This evidence supported the trial court's conclusion that: the child was deprived; the deprivation was attributable to a lack of proper parental care; the deprivation was likely to continue; and the deprivation was likely to seriously harm the child. In the Interest of T.A., 279 Ga. App. 377, 631 S.E.2d 399 (2006) (decided under former O.C.G.A. § 15-11-94).

Based on the mother's mental illness, the mother's recurring use of illegal drugs, the mother's failure to consistently take prescribed medication, and the debilitating effect of the mother's failure to properly medicate, the juvenile court was entitled to conclude lack of parental care and control under former O.C.G.A. § 15-11-94 (see now O.C.G.A. § 15-11-311) in a termination of parental rights case. In the Interest of D.A.B., 281 Ga. App. 702, 637 S.E.2d 102 (2006) (decided under former O.C.G.A. § 15-11-94).

Termination of a parent's parental rights order was supported by clear and convincing evidence consisting of: (1) prior deprivation orders which were never appealed; (2) the parent's medically verifiable mental illness which prevented the parent from adequately parenting the child; (3) the parent's failure to comply with the case plan goals, failure to maintain employment and stable housing, and failure to develop adequate parental skills; and (4) the fact that the child had been in foster care and was thriving therein; moreover, the aforementioned amounted to clear and convincing evidence of parental misconduct or inability for the court to determine that termination was in the children's best interests. In the Interest of E.G., 284 Ga. App. 524, 644 S.E.2d 339 (2007) (decided under former O.C.G.A. § 15-11-94).

Parent's parental rights to the parent's child were properly terminated because the cause of the child's dependency was

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likely to continue and not likely to be remedied, satisfying O.C.G.A. § 15-11-310(a)(5); the parent's psychological issues, incarcerations, and refusal to follow the parent's case plan had worsened, not improved. In the Interest of S. P., 336 Ga. App. 488, 784 S.E.2d 846 (2016).

Parent with Munchausen Syndrome by Proxy. — Clear and convincing evidence was presented that the deprivation caused by the mother was likely to continue and that the termination of her parental rights was in the best interests of her two children since there was evidence: (1) that the mother suffered from Munchausen Syndrome by Proxy; (2) that the children had been admitted to hospital emergency rooms by the mother on numerous occasions, but that neither had any serious medical problems since being separated from the mother; and (3) that on one occasion while the older child was in the hospital, the mother injected a mixture of feces and urine into his intravenous tube. In re C.M., 236 Ga. App. 874, 513 S.E.2d 773 (1999) (decided under former O.C.G.A. § 15-11-81).

Medical and psychological conditions of parent. — Trial court's order terminating a mother's parental rights was not error since there was evidence of physical and sexual abuse, testimony concerning the mother's mental and emotional problems (including drinking and drug addiction), and the mother had a history of suicide attempts and had been diagnosed as having an antisocial personality. In re J.I.H., 191 Ga. App. 848, 383 S.E.2d 349 (1989) (decided under former O.C.G.A. § 15-11-81).

There was sufficient evidence showing a likelihood of future deprivation of the parent's children to authorize termination of parental rights as evidence showed the parent's medical condition prevented the parent from adequately caring for the children; the parent had cerebral palsy and suffered from seizures, and a psychologist testified that the parent had moderate mental retardation and functioned at a second to third grade level. In the Interest of A.W., 264 Ga. App. 705, 592 S.E.2d 177 (2003) (decided under former O.C.G.A. § 15-11-94).

Clear and convincing evidence supported the order terminating a parent's rights to two minor children as the children's deprivation was due primarily to the parent's mental illness and failure to take prescribed medication to address that illness, and during more than 30 months the parent was given to work on a reunification case plan, the parent failed to comply with the requirements of the plan. In the Interest of O. B., 337 Ga. App. 401, 787 S.E.2d 344 (2016).

Mother with untreated depression. — Juvenile court did not err in terminating a mother's parental rights pursuant to former O.C.G.A. § 15-11-94 (see now O.C.G.A. §§ 15-11-310 and 15-11-311) because any rational trier of fact could have found by clear and convincing evidence that the mother suffered from a medically verifiable deficiency such as to render her unable to provide adequately for the needs of the children; a psychological evaluation showed that the mother was diagnosed with depression, and the clinician who counseled the mother for depression testified that the mother's ability to function in society was compromised by her low IQ, her depression, and her failure to take her medication. In the Interest of A. R., 315 Ga. App. 357, 726 S.E.2d 800 (2012) (decided under former O.C.G.A. § 15-11-94).

Parent with mental or emotional deficiencies. — Trial court's detailed and comprehensive findings that: both parents experienced medically verifiable mental or emotional deficiencies chronically affecting the parents' provisionary ability; both parents carried felony convictions and imprisonment; and both parents had failed to conduct significant visitational or reunificatory efforts warranted termination of their parental rights in the best interest of the child. In re M.M., 207 Ga. App. 722, 429 S.E.2d 132 (1993) (decided under former O.C.G.A. § 15-11-81).

Although a psychologist who testified in a mother's parental rights termination proceeding did not explicitly conclude that she could not parent her three minor children, the psychologist's testimony that she was mentally retarded and illiterate, that she would have trouble with basic

activities of daily living, that she would have a difficult time being a sufficient parent, and that if she had custody of the children, the county agency had to stay actively involved in order to monitor the mother's decision-making, together with other evidence of her parental misconduct and inability, supported the termination under former O.C.G.A. § 15-11-94(b)(4)-(B)(i) (see now O.C.G.A. § 15-11-311). In the Interest of S.N.L., 275 Ga. App. 600, 621 S.E.2d 792 (2005) (decided under former O.C.G.A. § 15-11-94).

Juvenile court did not err in terminating a parent's parental rights, finding that the child's deprivation was likely to continue or to harm the child, and in determining that termination was in the child's best interest, based on clear and convincing evidence that: (1) the parent was unable to provide for the child's basic needs; (2) the parent's mental health issues would not be resolved in the immediate future, if ever; and (3) the parent failed to make any significant progress towards reunification since the child's birth. Moreover, the same evidence also supported the court's finding that the deprivation was likely to continue and the child would likely suffer serious harm from the continued deprivation such that termination was in the child's best interest. In the Interest of D.L.T., 283 Ga. App. 223, 641 S.E.2d 236 (2007) (decided under former O.C.G.A. § 15-11-94).

Parent with psychological impairment. — There was sufficient evidence that the cause of a child's deprivation was likely to continue when the mother failed to consistently seek mental health treatment or to take her medication, could not care for her four older children, and had no bond with the child and did not regularly visit or support the child; although the mother showed progress in securing housing, taking her medication, and seeing a therapist, she did so only after the termination petition was filed, and at the time of the hearing she was still living with a relative and spending time at a motel, and she admitted that she took her medication only when she had the medication available. In the Interest of H.M., 287 Ga. App. 418, 651 S.E.2d 527 (2007) (decided under former O.C.G.A. § 15-11-94).

Termination order was upheld on appeal because the juvenile court was presented with clear and convincing proof sufficient to support the termination of parental rights: (1) the parent's mental health problems were unlikely to be remedied, resulting in a lack of proper parental care or control and the likelihood that the parent would not be able to provide a stable home; and (2) the parent failed to protect the children from harm in the past. In the Interest of H.K., 288 Ga. App. 831, 655 S.E.2d 698 (2007) (decided under former O.C.G.A. § 15-11-94).

Parent with mental illness. — In a case wherein a mother's parental rights were terminated to the mother's three-year-old daughter, sufficient evidence existed to support the judgment of termination because the evidence established that the mother was unable to provide adequately for the child due to mental illness, which was corroborated by evidence that the mother had four other children who were not in the mother's care or support; further, the mother had a long history of drug and alcohol abuse of which the mother failed to obtain inpatient drug treatment, was unable to maintain stable housing, failed to parent any children successfully, and the foster parents planned to adopt the child. In the Interest of D.P., 287 Ga. App. 168, 651 S.E.2d 110 (2007) (decided under former O.C.G.A. § 15-11-94).

Parent with longstanding mental problems. — Because a mother did not appeal a juvenile court's finding of deprivation of her child, pursuant to former O.C.G.A. § 15-11-94(b)(4)(A)(i) (see now O.C.G.A. § 15-11-310), and the juvenile court also found that she suffered from serious and longstanding mental problems that prevented her from caring for the child, despite her expressed desire to do so, termination of her parental rights was supported by the evidence; there was evidence that the child was deprived, that deprivation was attributable to a lack of proper parental care, that the deprivation was likely to continue, and that it was likely to cause serious mental, emotional, and moral harm to him. In the Interest of D.L., 270 Ga. App. 847, 608 S.E.2d 311 (2004) (decided under former O.C.G.A. § 15-11-94).

Medical and Psychological Factors (Cont'd)

Presence of grandmother in home was irrelevant to question of whether mentally retarded mother's parental rights should be terminated. Wasson v. Cox, 176 Ga. App. 684, 337 S.E.2d 445 (1985) (decided under former law).

Lack of mental ability authorizes termination. — Laws authorizing the termination of parental rights may sever children who are "deprived," within the meaning of the law, from parents whose only deficiency is lack of mental ability to give necessary care to the children. Jones v. Department of Human Resources, 155 Ga. App. 371, 271 S.E.2d 27 (1980) (decided under former law).

Mental disability that renders a parent incapable of caring for the child is a valid legal basis for termination of parental rights. In re B.J.H., 194 Ga. App. 282, 390 S.E.2d 427 (1990) (decided under former O.C.G.A. § 15-11-81).

Parents with limited mental capacity. — Juvenile court's termination of a mother's parental rights over three minor children, pursuant to former O.C.G.A. § 15-11-94(a) (see now O.C.G.A. §§ 15-11-310 and 15-11-311), was supported by clear and convincing evidence, as they had been declared deprived due to her parental neglect, she had failed to meet the goals of her reunification plan, which included providing stable housing, financial security, and completing various therapies, and her mental limitations would have made it difficult for her to parent. In the Interest of S.N.L., 275 Ga. App. 600, 621 S.E.2d 792 (2005) (decided under former O.C.G.A. § 15-11-94).

Testimony that a mother was unable to provide a stable home for a child given the mother's limited mental capacity and history of being easily led and exploited by others, that the child was doing well in foster care, and that the foster parents wanted to adopt the child, was clear and convincing evidence supporting the termination of the mother's parental rights under O.C.G.A. § 15-11-94(b)(4). In the Interest of B.R., 277 Ga. App. 833, 627 S.E.2d 879 (2006) (decided under former O.C.G.A. § 15-11-94).

Mother's argument in the termination of parental rights case, that there was no specific harm to the child under O.C.G.A. § 15-11-94(b)(4)(A)(iv), failed; it was found that the mother was mentally incapable of caring for the child, and there was evidence that the child was specifically harmed in that the child had been in foster care for three years, had serious anger problems, and was developmentally delayed. In the Interest of H.F.G., 281 Ga. App. 22, 635 S.E.2d 338 (2006) (decided under former O.C.G.A. § 15-11-94).

Although the mother's friends were allegedly willing to assist the mother in raising the child, sufficient evidence in the termination of parental rights case established that the cause of the deprivation was likely to continue under former O.C.G.A. § 15-11-94(b)(4)(A)(iii) (see now O.C.G.A. § 15-11-310); the mother lacked the mental capacity to care for the child without constant assistance. In the Interest of H.F.G., 281 Ga. App. 22, 635 S.E.2d 338 (2006) (decided under former O.C.G.A. § 15-11-94).

Mental retardation of parent. — Sufficient evidence supported the trial court's order terminating the parental rights of a mother who suffered from some degree of mental retardation, including evidence that the child, who was an asthmatic, was not receiving the medication and care the child required from the mother; the mother failed to learn proper parenting skills despite the resources offered to her; the mother never secured a stable home or stable employment; the mother's shortcomings and failures provided clear and convincing evidence that the child's deprivation would likely continue; and the child had developed a strong bond with the foster parents and was developing nicely. In the Interest of C.R.G., 272 Ga. App. 161, 611 S.E.2d 784 (2005) (decided under former O.C.G.A. § 15-11-94).

Insufficient evidence supported the termination of a parent's rights because the record showed that while the parent had mental retardation, the parent functioned well despite the mental disability and had the skills necessary to provide for and raise a family, including two children, in Arkansas; thus, there was a lack of evi-

dence that the deprivation was to continue. In the Interest of O. B., 337 Ga. App. 401, 787 S.E.2d 344 (2016).

Mislabeling of mother's mental health problem. — Even if the trial court mislabeled a mother's diagnosis as schizophrenia rather than schizoaffective disorder, such error likely did not affect the court's decision to terminate her parental rights as the evidence showed that the mother had significant mental health problems characterized by delusions and hallucinations and did not consistently follow treatment. In the Interest of H.M., 287 Ga. App. 418, 651 S.E.2d 527 (2007) (decided under former O.C.G.A. § 15-11-94).

Medical condition of parent justified termination. — Father did not contest the trial court's findings that his asthma, emphysema, and bronchitis rendered him unable to provide adequately for the needs of his children, under former O.C.G.A. § 15-11-94(b)(4)(B)(i) (see now O.C.G.A. § 15-11-311), and the record supported this basis for termination of his parental rights by clear and convincing evidence. In the Interest of C.M., 275 Ga. App. 719, 621 S.E.2d 815 (2005) (decided under former O.C.G.A. § 15-11-94).

Parent's disability justified termination. — Juvenile court did not err in terminating a father's parental rights, given clear and convincing evidence of the father's disability and incapacity suffered therefrom, failure to maintain a stable home, and lack of proper parental care or control caused the child's continued deprivation such that termination was in the child's best interests; moreover, even though there was some argument that if given an additional, unspecified period of time the father might be capable of parenting the child, the juvenile court was authorized to find from the evidence that continued deprivation was likely to cause serious physical, mental, emotional, or moral harm to that child. In the Interest of D.R., 281 Ga. App. 762, 637 S.E.2d 154 (2006) (decided under former O.C.G.A. § 15-11-94).

Medical and psychological conditions of parent. — Factor, "cause of the deprivation was likely to continue" was satisfied because the mother failed to comply with her case plan by failing to obtain counseling for her own medical and physical needs; the mother was in denial about her own physical health; and a psychologist testified that the mother had limited cognitive abilities and a dependent personality disorder that was difficult to treat. In the Interest of K.N., 272 Ga. App. 45, 611 S.E.2d 713 (2005) (decided under former O.C.G.A. § 15-11-94).

Mother's medical condition. — Rational trier of fact could find by clear and convincing evidence that a mother's parental rights should be terminated, under former O.C.G.A. § 15-11-94(b)(4)(A) (see now O.C.G.A. § 15-11-310), because the mother failed to comply with three case plans by missing appointments and being dishonest, did not seek treatment for the mother's Huntington's disease, despite obvious symptoms, and had four car accidents in three months due to the mother's disease. In the Interest of M.T.H., 279 Ga. App. 662, 632 S.E.2d 441 (2006) (decided under former O.C.G.A. § 15-11-94).

Mother's emotional instability and educational deprivation of children. — Evidence of the mother's emotional instability and the educational deprivation of the children authorized the juvenile court under former O.C.G.A. § 15-11-94(a) (see now O.C.G.A. §§ 15-11-310 and 15-11-311) to find that the lack of proper parental care was the cause of the deprivation, and that the termination of the mother's parental rights was in the children's best interests. In the Interest of K.S., 258 Ga. App. 24, 572 S.E.2d 710 (2002) (decided under former O.C.G.A. § 15-11-94).

Child needs permanence and stability which parent could not provide. — Trial court dismissed the appeal of a mother challenging the termination of parental rights because the judgment was supported by sufficient evidence showing that though the mother had not bonded with the child, the mother was unwilling to make the necessary changes to parent the child, which caused the child's stay in foster care when the child needed permanence and stability. In the Interest of M. M. M. T., 327 Ga. App. 572, 760 S.E.2d 188 (2014) (decided under former O.C.G.A. § 15-11-94).

Deprivation

Parent's lack of parental care or control caused deprivation. — Affirmance of the juvenile court's order terminating a parent's parental rights was ordered as the parent failed to comply with the case plan outlined, and the parent's failure to obtain stable housing, continued financial instability, and prolonged unwillingness to address mental health issues showed that the parent's lack of parental care or control caused the children's deprivation; hence, the parent's motion for a new trial was properly denied. In the Interest of J.M.N., 285 Ga. App. 203, 645 S.E.2d 685 (2007) (decided under former O.C.G.A. § 15-11-94).

Court upheld an order terminating a parent's parental rights which was supported by sufficient evidence that the children at issue lacked proper parental care and that the cause of the deprivation was likely to continue, based on that parent's admitted drug use, failure to pay child support, failure to establish a bond with the children, and consent to a non-reunification plan, satisfying former O.C.G.A. § 15-11-94(b)(4)(A)(ii) and (iii) (see now O.C.G.A. § 15-11-310). In the Interest of H.C., 285 Ga. App. 631, 647 S.E.2d 333 (2007) (decided under former O.C.G.A. § 15-11-94).

Deprivation continuing from parental drug abuse. — Juvenile court's findings supported the conclusion that the children were dependent at the time of the termination of parental rights hearing due to a lack of proper parental care and control because the parent's continuing substance abuse was evidenced by the parent's prior positive drug screen and several refused screenings (which the Division of Family and Children Services treated as positive); and because the parent was unable to pay even a symbolic amount of child support or to provide stable housing. In the Interest of A. S., 339 Ga. App. 875, 794 S.E.2d 672 (2016).

Lack of proper parental care by mother caused deprivation. — Children's deprivation was caused by a lack of proper parental care by the mother since the mother: (1) did not pay child support; (2) failed to comply with the reunification goals: (3) did not resolve the criminal charges against her; (4) did not maintain contact with her children; and (5) did not establish a stable home. In the Interest of J.J., 259 Ga. App. 159, 575 S.E.2d 921 (2003) (decided under former O.C.G.A. § 15-11-94).

Parental deprivation not shown. — Juvenile court's finding of deprivation was reversed because the record lacked clear and convincing evidence to support the court's finding that the child was deprived as there was no evidence that the child was harmed during acts of domestic violence between the parents, both parties testified that they had no present intention to reunite, the father had passed several drug screens, and the father was in the process of completing a substance abuse program. In the Interest of G. R. B., 330 Ga. App. 693, 769 S.E.2d 119 (2015).

Termination improper when deprivation unlikely to continue. — Trial court erred in terminating the mother's parental rights to the oldest child as the clear and convincing evidence did not show that the mother was presently unfit and that the child's deprivation was likely to continue and cause substantial harm because the mother had maintained stable housing with the youngest child and that child's father; the mother had sources of income; and the mother met or substantially completed most of the other case plan goals by completing parenting classes, attending counseling sessions, attending the majority of the scheduled visitations with the child, interacting well with the child during visitation, and meeting with the caseworkers. In the Interest of T. M., 329 Ga. App. 719, 766 S.E.2d 101 (2014) (decided under former O.C.G.A. § 15-11-94).

Insufficient evidence that continued deprivation likely to cause harm. — Termination of the mother's parental rights was improper because, although the evidence supported the finding that the children's dependency was likely to continue and would not likely be remedied, the state did not sufficiently establish that the children were likely to suffer harm under the status quo as there was no evidence that their continued relationship with their mother was harmful; and the juvenile court's generalized findings

that the children would experience doubt, uncertainty and hesitancy in life, and that foster care would not provide the kind of stability they needed, and would put them at risk of delinquency, other anti-social behavior, and "foster care drift" did not show how each child would be harmed by the status quo. In the Interest of A. S., 339 Ga. App. 875, 794 S.E.2d 672 (2016).

Part 6

Disposition

15-11-320. (For effective date, see note.) Termination of parental rights; findings; standard of proof.

(a) When the court finds that any ground set out in Code Section 15-11-310 is proved by clear and convincing evidence and that termination of parental rights is in a child's best interests, it shall order the termination of the parent's rights.

(b) The court's order shall:

(1) (For effective date, see note.) Contain written findings on which the order is based, including the factual basis for a determination that grounds for termination of parental rights exist and that termination is in the best interests of the child, including the findings required by subsection (c) of Code Section 15-11-300;

(2) Be conclusive and binding on all parties from the date of entry;

(3) Grant custody of the child at issue in accordance with Code Section 15-11-321; and

(4) Inform the parent whose rights have been terminated of his or her right to use the services of the Georgia Adoption Reunion Registry; however, failure to include such information shall not affect the validity of the judgment.

(c) If the court does not order the termination of parental rights but the court finds that there is clear and convincing evidence that a child is a dependent child, the court may enter a disposition order in accordance with the provisions of Article 3 of this chapter.

(d) The court shall transmit a copy of every final order terminating the parental rights of a parent to the State Adoption Unit of the department within 15 days of the filing of such order.

History. — Code 1981, § 15-11-320, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242; Ga. L. 2018, p. 19, § 1-2/HB 159; Ga. L. 2020, p. 241, § 4/SB 439.

Delayed effective date. — Paragraph (b)(1), as set out above, becomes effective January 1, 2021. For version of paragraph (b)(1) in effect until January 1, 2021, see the 2020 amendment note.

The 2018 amendment, effective September 1, 2018, substituted "State Adoption Unit" for "Office of Adoptions" in subsection (d).

The 2020 amendment, effective Janu-

ary 1, 2021, added ", including the findings required by subsection (c) of Code Section 15-11-300" at the end of paragraph (b)(1).

Cross references. — Time limitations upon orders of disposition — commitment to Division of Youth Services, Uniform Rules for the Juvenile Courts of Georgia, Rule 15.2.

Law reviews. — For annual survey of law of domestic relations, see 38 Mercer L. Rev. 179 (1986). For annual survey on law of domestic relations, see 42 Mercer L. Rev. 201 (1990). For article on the 2018 amendment of this Code section, see 35 Ga. St. U.L. Rev. 77 (2018).

JUDICIAL DECISIONS

Analysis

General Consideration
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General Consideration

Editor's notes. — In light of the similarity of the statutory provisions, decisions under pre-2000 Code Sections 15-11-51, 15-11-54, 15-11-81, and 15-11-90, and pre-2014 Code Sections 15-11-94 and 15-11-103, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Placement with relative of putative father. — Evidence supported termination of a father's parental rights since the child was deprived; the court properly refused to consider placing the child with either the father's parents or his sister after terminating the father's parental rights. In the Interest of M.D.B., 262 Ga. App. 796, 586 S.E.2d 700 (2003) decided under former O.C.G.A. § 15-11-103).

Equal protection and due process. — By not raising the issue below, a parent in a termination of parental rights case waived the parent's arguments that the trial court violated equal protection and due process by not determining whether the parent's mental health concerns affected the parent's ability to complete the specific goals in the parent's case plan; moreover, there was uncontradicted evidence that despite the parent's mental health problems, the parent understood the case plan, appreciated the plan's requirements, and could have completed the plan, but did not do so, and the parent testified that the parent was able both physically and mentally to care for the child. In the Interest of H.M., 287 Ga. App. 418, 651 S.E.2d 527 (2007) (decided under former O.C.G.A. § 15-11-94).

O.C.G.A. § 15-11-70 not applicable. — Provisions of former O.C.G.A. § 15-11-41 (see now O.C.G.A. §§ 15-11-443 and 15-11-607) as to orders of disposition and recommendations regarding unification were not applicable in proceedings under former O.C.G.A. § 15-11-81 (see now O.C.G.A. §§ 15-11-310, 15-11-311, and 15-11-320). In re V.S., 230 Ga. App. 26, 495 S.E.2d 142 (1998) (decided under former O.C.G.A. § 15-11-81).

Primary consideration in proceeding to terminate parental rights was welfare of child. In re Creech, 139 Ga. App. 210, 228 S.E.2d 198 (1976); Avera v. Rainwater, 150 Ga. App. 39, 256 S.E.2d

648 (1979) (decided under former law).

Parental misconduct or incapability must be shown. — For the termination of parental rights, there must be a showing of parental unfitness caused either by intentional or unintentional misconduct resulting in abuse or neglect of the child, or by what is tantamount to a physical or mental incapability to care for the child. Howard v. Department of Human Resources, 157 Ga. App. 306, 277 S.E.2d 301 (1981) (decided under former law).

Petition to terminate own rights not authorized. — Statutory authority of the juvenile court to entertain petitions to terminate parental rights does not extend to petitions by parents seeking judicial imprimatur of their own voluntary abandonment of parental responsibility. In re K.L.S., 180 Ga. App. 688, 350 S.E.2d 50 (1986) (decided under former law).

Responsibility cannot be terminated by contract. — Father could not voluntarily abandon his parental responsibility by contract. Diegel v. Diegel, 261 Ga. App. 660, 583 S.E.2d 520 (2003) (decided under former O.C.G.A. § 15-11-94).

Agency custody does not oust judicial jurisdiction. — That a "deprived child" may be in agency custody at the time of the hearing on termination of parental rights does not oust the juvenile court from jurisdiction to determine the ultimate issue of custody. In re K.C.O., 142 Ga. App. 216, 235 S.E.2d 602 (1977) (decided under former law).

Exercise of custody by county department suspends, but does not terminate, parental rights. — Removal of custody of the child from the parents is a determination that, for whatever length of time custody is exercised by the department of family and children services, this right has been suspended, although not finally terminated. Rodgers v. Department of Human Resources, 157 Ga. App. 235, 276 S.E.2d 902 (1981) (decided under former law).

Venue for foster child in residential county. — Proceeding to terminate parental rights may be commenced in the county in which the child resides in a foster home. Cain v. Department of Human Resources, 166 Ga. App. 801, 305 S.E.2d 492 (1983) (decided under former law).

Legitimation rights of putative father must first be determined. — Within the context of a parental rights termination proceeding, a juvenile court had the discretion to determine whether to grant an extension of time for a putative father to serve his legitimation petition on the mother, pursuant to O.C.G.A. § 19-7-22(b), former O.C.G.A. § 15-11-96(i) (see now O.C.G.A. § 15-11-283), and Georgia case law that allowed application of the procedural rules set out in the Civil Practice Act, including O.C.G.A. § 9-11-4(c) relating to service and extensions thereto; accordingly, the juvenile court's refusal to hear the legitimation petition was error as was the decision to terminate the putative father's parental rights under former O.C.G.A. § 15-11-94 (see now O.C.G.A. §§ 15-11-310 and 15-11-320) without first determining whether he had standing or not under the legitimation action. In the Interest of A.H., 279 Ga. App. 77, 630 S.E.2d 587 (2006) (decided under former O.C.G.A. § 15-11-94).

Biological father who fails to seek to legitimate his child following receipt of proper notice of termination proceedings may not thereafter object to the termination of his parental rights. In the Interest of A.W., 242 Ga. App. 26, 528 S.E.2d 819 (2000) (decided under former O.C.G.A. § 15-11-94).

Father lacked standing to challenge termination order. — Given a biological father's failure to legitimate the child at issue, the father lacked standing to challenge the juvenile court's termination of parental rights order. In the Interest of L.S.T., 286 Ga. App. 638, 649 S.E.2d 841 (2007) (decided under former O.C.G.A. § 15-11-94).

Withdrawal of consent not allowed. — After voluntarily consenting to a termination of parental rights, a parent could not change the parent's mind because such consent was undertaken in writing, in open court, and upon the advice of counsel; further, no statutory authority existed allowing a parent to withdraw the voluntary consent to the termination of parental rights. In the Interest of T.C.D.,

General Consideration (Cont'd)

281 Ga. App. 517, 636 S.E.2d 704 (2006) (decided under former O.C.G.A. § 15-11-94).

Right to counsel. — Parent, who was represented by counsel during the course of a termination of parental rights proceeding, could not prove that the parent was denied counsel during the proceeding because, beyond the parent's claim that the parent was denied counsel, the parent failed to show what arguments the parent would have advanced, what evidence the parent would have produced in the parent's favor, or how the parent would have been successful had the parent been represented by counsel; moreover, in light of the overwhelming evidence supporting the termination of the parent's parental rights, there was nothing in the record that would support a finding of harm. In the Interest of M.S., 279 Ga. App. 254, 630 S.E.2d 856 (2006), overruled on other grounds, In re J.M.B., 296 Ga. App. 786, 676 S.E.2d 9 (2009) (decided under former O.C.G.A. § 15-11-94).

Juvenile court did not abuse the court's discretion denying a father's motion for a continuance of a termination hearing on the basis that the father's attorney did not have sufficient time to prepare for the termination hearing because the father delayed requesting court-appointed counsel and waited until the day before the hearing to ask for a continuance. In the Interest of A.R.K.L., 314 Ga. App. 847, 726 S.E.2d 77 (2012) (decided under former O.C.G.A. § 15-11-94).

No ineffective counsel. — Parent did not receive ineffective assistance of counsel in a termination of parental rights proceeding as: (1) the counsel's failure to call an employer of the parent as a witness was reasonable since the employer had been disbarred for child molestation; (2) in the absence of a showing how the attorney's actions in conducting discovery compromised the parent's representation, there was no error in the juvenile court's finding that the parent had adequate access to counsel; and (3) claims as to counsel's failure to properly follow up on the issue of relative placement and to argue for a continuance were without merit. In the Interest of C.M., 282 Ga. App. 502, 639 S.E.2d 323 (2006) (decided under former O.C.G.A. § 15-11-94).

Denial of continuance not abuse of discretion. — Given that the procedural history of a termination of parental rights action was one of continuing delay and postponement because a parent failed to show: (1) that a continuance of the hearing was an entitlement; (2) what arguments and evidence would have been advanced; or (3) that the outcome of the proceeding would have been different if the parent or counsel had been present, the juvenile court's denial of a continuance of a termination hearing was not an abuse of discretion. In the Interest of R.L.J., 285 Ga. App. 887, 648 S.E.2d 189 (2007), overruled on other grounds, In re J.M.B., 296 Ga. App. 786, 676 S.E.2d 9 (2009) (decided under former O.C.G.A. § 15-11-94).

Determination whether needs met by temporary custody. — Although sufficient evidence was presented to authorize termination of parental rights, the case was remanded to the trial court to determine if the child's needs could be met by temporary custody to some agency or individual as opposed to a complete severance of all parental rights. Jones v. Department of Human Resources, 168 Ga. App. 915, 310 S.E.2d 753 (1983) (decided under former O.C.G.A. § 15-11-81).

In a hearing on parental custody in a divorce action, the trial court erred in awarding custody of the parties' minor children to the Department of Family and Children Services based upon findings that the children were deprived and the parents unfit because the mother had no notice that the superior court judge might award custody of the children to a third party based upon standards of deprivation. Watkins v. Watkins, 266 Ga. 269, 466 S.E.2d 860 (1996) (decided under former O.C.G.A. § 15-11-81).

Agency required to make thorough search for relative placement. — Juvenile court erred in failing to require the child services agency to make a thorough search for a suitable relative placement for a child whose mother's parental rights were terminated. In the Interest of A.K., 272 Ga. App. 429, 612 S.E.2d 581 (2005)

(decided under former O.C.G.A. § 15-11-94).

Juvenile court did not err in failing to place two children with a relative as a child services agency investigated placement with a parent's sibling (who did not want the children), the grandparents (who were financially unstable and had a history of child abuse), and a great-grandparent (who was on disability and in poor health); on the other hand, the children had formed a bond with their foster parents, who were raising the children as their own. In the Interest of C.M., 282 Ga. App. 502, 639 S.E.2d 323 (2006) (decided under former O.C.G.A. § 15-11-94).

Jurisdiction properly exercised. — Juvenile court properly exercised jurisdiction over termination proceedings pursuant to former O.C.G.A. §§ 15-11-28 and 15-11-94 (see now O.C.G.A. §§ 15-11-10 and 15-11-320) as the petition was filed by the mother, who had already been awarded sole physical custody of the child and as the termination petition dealt specifically with factors relating to the father's inability to provide proper care and support for the child such that the father's parental rights should be terminated. In the Interest of A.R.K.L., 314 Ga. App. 847, 726 S.E.2d 77 (2012) (decided under former O.C.G.A. § 15-11-94).

Termination petition was not a disguised adoption matter. — Contrary to a father's contention, the termination petition filed by the child's mother was not actually a disguised adoption matter that could be properly heard only in superior court. The stepfather's mere expression of a desire to adopt the child at some time in the future was not sufficient for the court to conclude that the petition was filed in connection with an adoption proceeding; there was no evidence that an adoption petition was pending at the time that the petition was filed; and the petition, which stated that the father failed to provide for the support of the child and failed to have any contact with the child, alleged grounds sufficient for termination. In the Interest of A.R.K.L., 314 Ga. App. 847, 726 S.E.2d 77 (2012) (decided under former O.C.G.A. § 15-11-94).

Order deficient. — Superior court's order in termination of parental rights action was deficient because it did not include specific findings of fact showing that the mother abandoned the child, and it did not include specific factual findings showing that the mother failed to provide care and support for the child without justifiable cause. Moreover, the superior court's conclusion that adoption was in the child's best interest also lacked particularity. Dell v. Dell, 324 Ga. App. 297, 748 S.E.2d 703 (2013) (decided under former O.C.G.A. § 15-11-94).

Criteria for Termination

Criteria justifying termination. — Affirmative evidence of moral unfitness, physical abuse, abandonment, refusal to support, or similar misconduct by a parent or the likelihood of substantial threat to a child's physical, mental, moral, or emotional well-being justifiably warrants the termination of a parent's right to a child. Elrod v. Hall County Dep't of Family & Children Servs., 136 Ga. App. 251, 220 S.E.2d 726 (1975) (decided under former law).

Thread running through parental right termination cases manifests moral unfitness, physical abuse, and abandonment. Patty v. Department of Human Resources, 154 Ga. App. 455, 269 S.E.2d 30 (1980) (decided under former law).

Court in arriving at the court's decision in terminating parental rights should use, among other criteria, moral unfitness, physical abuse, and abandonment by a parent. Gardner v. Lenon, 154 Ga. App. 748, 270 S.E.2d 36 (1980) (decided under former law).

Custody may be lost if a child is found to be destitute or suffering, if the child is being reared under immoral influences, or if the child is found to be deprived and likely to be harmed thereby. In re M.M.A., 166 Ga. App. 620, 305 S.E.2d 139 (1983) (decided under former law).

Parental rights may be terminated when the child is deprived and the court finds that the conditions and causes of the deprivation are likely to continue or will not be remedied and that by reason thereof the child is suffering or will probably suffer serious physical, mental, moral, or emotional harm. The last two statutorily required findings are neces-

Criteria for Termination (Cont'd)

sary only in cases of termination of parental rights. In re J.C.P., 167 Ga. App. 572, 307 S.E.2d 1 (1983), but see In re A.W., 240 Ga. App. 259, 523 S.E.2d 88 (1999) (decided under former law).

Determining the propriety of termination of parental rights is a two-step process. First, the court shall determine if there exists clear and convincing evidence of parental misconduct or inability; secondly, if such evidence exists, the court then considers whether termination of parental rights is in the best interest of the child, given the physical, mental, emotional, and moral condition and needs of the child, including the need for a stable home. In re G.L.H., 209 Ga. App. 146, 433 S.E.2d 357 (1993) (decided under former O.C.G.A. § 15-11-81); In re B.C., 235 Ga. App. 152, 508 S.E.2d 774 (1998) (decided under former O.C.G.A. § 15-11-81).

Juvenile court employed a two-prong analysis for determining whether parental rights should be terminated under former O.C.G.A. § 15-11-94 (see now O.C.G.A. §§ 15-10-310 and 15-10-320) first, the court determined whether there was clear and convincing evidence of parental misconduct or that the parent was unable to care for and control the child; and, second, the court determined whether termination was in the best interest of the child. In the Interest of A.M., 259 Ga. App. 537, 578 S.E.2d 226 (2003) (decided under former O.C.G.A. § 15-11-94).

Detailed findings for termination. — Termination of parental rights was allowed when the trial judge made detailed findings regarding the criteria to meet the two-step test, specifically, the court found that within the 18 months preceding the court's order, the defendant made no attempt to contact or communicate with the child, and the child was readily adoptable. In re H.M.T., 203 Ga. App. 247, 416 S.E.2d 567 (1992) (decided under former O.C.G.A. § 15-11-81).

Considerations for the court. — Under former O.C.G.A. § 15-11-94(b)(4)-(C)(ii)-(iii) (see now O.C.G.A. § 15-11-310), in cases when the child was not in the custody of the parent who was the subject of the termination of parental rights proceedings and in determining whether the child was without proper parental care and control, the court should consider, without being limited to, whether the parent without justifiable cause failed significantly for a period of one year or longer prior to the filing of the petition for termination of parental rights: (1) to provide for the care and support of the child as required by law or judicial decree; and (2) to comply with a court ordered plan designed to reunite the child with the parent or parents. In the Interest of J.J., 259 Ga. App. 159, 575 S.E.2d 921 (2003) (decided under former O.C.G.A. § 15-11-94).

Egregious conduct was one factor in termination proceedings. — Egregious conduct or evidence of past egregious conduct of a parent toward the parent's child or another child of a physically, emotionally, or sexually cruel or abusive nature was one factor a court may consider in determining whether the child was without proper parental care and control under former O.C.G.A. § 15-11-94(b)(4)(B)(iv) (see now O.C.G.A. § 15-11-318). In the Interest of J.P., 253 Ga. App. 732, 560 S.E.2d 318 (2002) (decided under former O.C.G.A. § 15-11-94).

Because a mother's children had been found to be deprived, as defined in former O.C.G.A. § 15-11-2(8) (see now O.C.G.A. § 15-11-107), because her persistent failure to adequately supervise the children supported a finding that the deprivation was likely to continue, and because continued deprivation was likely to seriously harm the children, the mother's parental rights were properly terminated. In the Interest of T. A. H., 310 Ga. App. 93, 712 S.E.2d 115 (2011) (decided under former O.C.G.A. § 15-11-94).

Findings

Required explicit statutory findings should be made in accordance with Ga. L. 1970, p. 170, § 1 (see now O.C.G.A. § 9-11-52). Crook v. Georgia Dep't of Human Resources, 137 Ga. App. 817, 224 S.E.2d 806 (1976) (decided under former law).

Juvenile courts were given wide discretion, once deprivation was

found, either to terminate the rights of the parent or issue an order under former O.C.G.A. § 15-11-34. Painter v. Barkley, 157 Ga. App. 69, 276 S.E.2d 850 (1981) (decided under former law).

Explicit findings of fact as well as conclusions of law are required to be made in juvenile court cases which seek a termination of parental rights. Avera v. Rainwater, 147 Ga. App. 505, 249 S.E.2d 340 (1978) (decided under former law).

Trial court erred in failing to make explicit findings of fact regarding parental inability or misconduct and in failing to draw explicit conclusions of law and, thus, the court erred in terminating the mother's parental rights in her three children. In the Interest of S.W.J.P.D., 275 Ga. App. 272, 620 S.E.2d 497 (2005) (decided under former O.C.G.A. § 15-11-94).

Final order terminating the mother's parental rights did not include findings of fact and conclusions of law as required. The order was deficient because the order did not address any of the criteria for termination of parental rights, the order did not include specific findings of fact showing that the mother abandoned the child, and the order did not include specific factual findings showing that the mother failed to provide care and support for the child without justifiable cause. Dell v. Dell, 324 Ga. App. 297, 748 S.E.2d 703 (2013).

Finding under former statute was not required to be explicit but could be implicit from the disposition made in the order and the evidence adduced at the hearing. Moss v. Moss, 135 Ga. App. 401, 218 S.E.2d 93 (1975) (decided under former Code 1933, § 24A-3201).

Judgment must show compliance with statutory criteria. — Judgment having such a final, ultimate, and significant result as that of severing the rights of a parent to a child must conclusively show compliance with the statutory criteria prescribed as a condition precedent for such termination; a dry recitation that certain legal requirements have been met is insufficient to satisfy the requirement of the law; the judgment must set forth sufficiently explicit findings. McCary v. Department of Human Resources, 151 Ga. App. 181, 259 S.E.2d 181 (1979) (decided under former law).

Superior court's order was deficient because the order did not address any of the criteria for termination of parental rights pursuant to OCGA § 15-11-94, it did not include specific findings of fact showing that the mother abandoned the child, and the order did not include specific factual findings showing that the mother failed to provide care and support for the child without justifiable cause. Moreover, the superior court's conclusion that adoption was in the child's best interest also lacked particularity and, therefore, the mother was entitled to an order vacating the grant of the stepmother's petition for adoption. Dell v. Dell, 324 Ga. App. 297, 748 S.E.2d 703 (2013) (decided under former law).

Denial of maternal grandmother's petition for custody proper. — In a termination of parental rights proceeding, a juvenile court did not err by denying the maternal grandmother's petition for custody of the child because the grandmother had never seen the child and called the state only once about the child. In the Interest of S.R.C.J., 317 Ga. App. 699, 732 S.E.2d 547 (2012) (decided under former O.C.G.A. § 15-11-94).

Dry recitation that certain legal requirements are met is insufficient to satisfy the requirements of the law with regard to termination of parental rights. In re H.T., 198 Ga. App. 463, 402 S.E.2d 83 (1991) (decided under former O.C.G.A. § 15-11-81).

Order terminating parental rights must contain explicit findings supporting conclusions that: (1) the child is deprived; (2) the conditions and causes of the deprivation are likely to continue or will not be remedied; and (3) by reason thereof the child is suffering or will probably suffer serious physical, mental, moral, or emotional harm. Griffith v. Georgia Dep't of Human Resources, 159 Ga. App. 649, 284 S.E.2d 666 (1981) (decided under former law).

Explicit findings required for termination. — Under former O.C.G.A. § 15-11-94(b)(4)(A) (see now O.C.G.A. § 15-11-310), a finding of parental misconduct or inability required clear and convincing evidence of the following four factors: (1) that the child was deprived; (2)

Findings (Cont'd)

that the cause of the deprivation was a lack of proper parental care or control; (3) that the cause of the deprivation was likely to continue or was not likely to be remedied; and (4) that the continued deprivation was likely to cause physical, mental, emotional, or moral harm to the child. In the Interest of A.M., 259 Ga. App. 537, 578 S.E.2d 226 (2003) (decided under former O.C.G.A. § 15-11-94).

Termination decision supported by "parental misconduct" findings. — Once a juvenile court made explicit findings as to the existence of "parental misconduct," as defined in former O.C.G.A. § 15-11-94(b) (see now O.C.G.A. §§ 15-11-310 and 15-11-311), the court did not have to make further factual findings to support the court's decision to terminate parental rights. In re G.K.J., 187 Ga. App. 443, 370 S.E.2d 490 (1988) (decided under former O.C.G.A. § 15-11-81).

Explicit finding of deprivation or abandonment required. — Explicit conclusions of law conforming to statutory requirements are required in termination of parental rights cases. Accordingly, an appellate court may not supply by implication a finding of deprivation or abandonment. Williams v. Department of Human Resources, 148 Ga. App. 219, 251 S.E.2d 134 (1978) (decided under former law).

Explicit finding of deprivation is necessary and the appellate court will not supply by implication such a finding. Roberts v. State, 139 Ga. App. 353, 228 S.E.2d 376 (1976), later appeal, 141 Ga. App. 268, 233 S.E.2d 224 (1977) (decided under former law).

Termination proper when explicit finding of deprivation. — When there was a prior hearing in which the children were determined to be "deprived" and, in the termination hearing, the judge made explicit findings of fact concerning events since the original hearing and concluded that "the conditions and causes of the deprivation are likely to continue and will not be remedied and that by reason thereof, the children are suffering and will probably suffer serious physical, mental, moral, or emotional harm," an order of termination was proper. Wynn v. Department of Human Resources, 149 Ga. App. 559, 254 S.E.2d 883 (1979) (decided under former law).

In a termination of parental rights case, there was clear and convincing evidence that the children were deprived as required under former O.C.G.A. § 15-11-94(b)(4)(A) (see now O.C.G.A. § 15-11-310); the juvenile court entered three unappealed orders finding that the children were deprived, and the father was bound by the orders. In the Interest of M.R., 282 Ga. App. 91, 637 S.E.2d 743 (2006), cert. denied, 2007 Ga. LEXIS 56 (Ga. 2007) (decided under former O.C.G.A. § 15-11-94).

Parental rights are terminated only when there is profoundly detrimental, egregious, parental conduct underlying the statutorily mandated determination of deprivation and probable continued deprivation. Madray v. Department of Human Resources, 146 Ga. App. 762, 247 S.E.2d 579 (1978) (decided under former law); Shover v. Department of Human Resources, 155 Ga. App. 38, 270 S.E.2d 462 (1980) (decided under former law).

Termination authorized for conclusion of deprivation. — When the findings of fact supported by the evidence authorized the conclusion of law that the children were deprived and that the conditions that caused the deprivation are likely to continue, the termination of parental rights was authorized. Roberson v. Department of Human Resources, 148 Ga. App. 626, 252 S.E.2d 57 (1979) (decided under former law).

Order need not recite words "in the best interest of the child." — While former O.C.G.A. § 15-11-94(a) (see now O.C.G.A. §§ 15-11-310 and 15-11-320) mandated the juvenile court consider "the best interest of the child" before ruling on a petition to terminate a parent's rights in the child, the subsection contained no explicit statutory requirement that an order recite the words "in the best interest of the child" before the order was correct under the law. In re T.M.H., 197 Ga. App. 416, 398 S.E.2d 766 (1990) (decided under former O.C.G.A. § 15-11-81).

Trial court's findings were sufficiently explicit to support termina-

tion. In re G.T.T., 199 Ga. App. 706, 405 S.E.2d 750 (1991) (decided under former O.C.G.A. § 15-11-81).

Parent could challenge findings when changed circumstances. — When a parent's inability that supported an initial finding of deprivation, the parent's absence due to incarceration, no longer existed at the time of the hearing on the termination petition, the parent's failure to appeal earlier deprivation orders did not preclude the parent from challenging the juvenile court's finding that the children were deprived at the time of the hearing on the termination petition. In the Interest of R.C.M., 284 Ga. App. 791, 645 S.E.2d 363 (2007) (decided under former O.C.G.A. § 15-11-94).

Unreasoned expansion of evidence not favored. — Former Code 1933, § 24A-101 counseled against any unreasoned expansion of the type of evidence which will suffice to show deprivation, and probable continued deprivation, causing or likely to cause serious harm to a child because of the Code's expressed preference for preservation of the family unit. Leyva v. Brooks, 145 Ga. App. 619, 244 S.E.2d 119 (1978) (decided under former law).

Due regard for rights of parents in termination hearing. — Termination hearing seeks above all else the welfare of the child, with due regard for the rights of the natural and adoptive parents. In re Levi, 131 Ga. App. 348, 206 S.E.2d 82 (1974) (decided under former law); Gardner v. Lenon, 154 Ga. App. 748, 270 S.E.2d 36 (1980) (decided under former law).

Court must relate welfare of child to parental misconduct and not to the vagaries or vicissitudes that beset every family on its journey through the thickets of life. Shover v. Department of Human Resources, 155 Ga. App. 38, 270 S.E.2d 462 (1980) (decided under former law).

It is not proper to consider the question of the termination of parental rights based solely upon a "welfare of the child" test, without some required showing of parental unfitness, caused either by intentional or unintentional misconduct resulting in the abuse or neglect of the child, or by what is tantamount to physical or mental incapability to care for the child. Ray v. Department of Human Resources, 155 Ga. App. 81, 270 S.E.2d 303 (1980) (decided under former law); Chancey v. Department of Human Resources, 156 Ga. App. 338, 274 S.E.2d 728 (1980) (decided under former law); Brown v. Department of Human Resources, 157 Ga. App. 106, 276 S.E.2d 155 (1981) (decided under former law).

It is not proper to consider the question of termination of parental rights based solely upon a "welfare of the child" test, without some required showing of parental unfitness, caused either by intentional or unintentional misconduct resulting in the abuse or neglect of the child, or by what is tantamount to physical or mental incapability to care for the child. Griffith v. Georgia Dep't of Human Resources, 159 Ga. App. 649, 284 S.E.2d 666 (1981) (decided under former law); Dale v. Hall County Dep't of Family & Children Servs., 159 Ga. App. 654, 284 S.E.2d 669 (1981) (decided under former law).

Factors showing misconduct may be used to support finding of best interest. — Same factors which show the existence of parental misconduct or inability can also be used to support a finding that the termination of parental rights would be in the child's best interests. In re M.L.P., 236 Ga. App. 504, 512 S.E.2d 652 (1999) (decided under former O.C.G.A. § 15-11-81).

Authority to conduct best interests analysis. — Trial court erroneously found that the court had no discretion to consider whether the parties' agreement, voluntarily terminating the father's parental rights under O.C.G.A. § 19-7-1 as part of the divorce settlement, was in the best interests of the child; the trial court, which had authority under O.C.G.A. § 19-9-5(b) to reject a custody agreement as being against the child's best interests and which had authority under former O.C.G.A. § 15-11-94(a) (see now O.C.G.A. §§ 15-11-310 and 15-11-320) to ascertain whether a voluntary termination was in the child's best interests, was to reject the agreement if it was not in the child's best interests. Taylor v. Taylor, 280 Ga. 88, 623 S.E.2d 477 (2005) (decided under former O.C.G.A. § 15-11-94).

Findings (Cont'd)

Order of department compliance. — Although a prior order of the court which allegedly required the department to monitor the father's parenting skills was not made a part of the record, when there was evidence which established that the department complied with the order and the father failed to cooperate, the trial court properly concluded that the court's order had not been violated or that if the order had been violated, the violation was not relevant to the court's decision on the merits. In re C.G.A., 204 Ga. App. 174, 418 S.E.2d 779 (1992) (decided under former O.C.G.A. § 15-11-81).

Evidence

Present situation must be considered prior to termination. — Juvenile court erred in terminating the mother's parental rights after the child was beaten by the mother's husband so severely that she had to be placed on life support since the Department of Family and Children Services failed to show by clear and convincing evidence that the mother was presently unfit and that the deprivation would continue unless her parental rights were terminated; there was no evidence that the child had been deprived while in her mother's care prior to the mother's marriage and as the husband had been removed from the child and the mother's life, the primary cause of the child's deprivation had been remedied. In addition, the mother acted entirely on her own to improve her abilities to care for her child so that a similar situation did not recur. In the Interest of V.E.H., 262 Ga. App. 192, 585 S.E.2d 154 (2003) (decided under former O.C.G.A. § 15-11-81).

Evidence requirements showing parental misconduct or inability. — Under former O.C.G.A. § 15-11-94(a) and (b)(4)(A) (see now O.C.G.A. § 15-11-310), construing the evidence most favorably to the findings of the court, the question on appeal of a termination of parental rights was whether a rational trier of fact could have found clear and convincing evidence: (1) of parental misconduct or inability; and (2) that terminating parental rights was in the best interest of the child. Parental misconduct or inability was shown by evidence: (1) that the child was deprived; (2) lack of parental care caused the deprivation; (3) such was likely to continue; and (4) the continued deprivation was likely to cause serious harm to the child. In the Interest of M.L., 259 Ga. App. 534, 578 S.E.2d 190 (2003) (decided under former O.C.G.A. § 15-11-94).

Two-step analysis. — Termination of parental rights case involves a two-step analysis, first, there must be a finding of parental misconduct or inability, which requires clear and convincing evidence that: (1) the child is deprived; (2) the lack of proper parental care or control is the cause of the deprivation; (3) the cause of the deprivation is likely to continue; and (4) continued deprivation is likely to cause serious physical, mental, emotional, or moral harm to the child. If these four factors exist, then the court must determine whether termination of parental rights is in the best interest of the child, considering the child's physical, mental, emotional, and moral condition and needs, including the need for a secure, stable home. In the Interest of N.L., 260 Ga. App. 830, 581 S.E.2d 643 (2003) (decided under former O.C.G.A. § 15-11-94).

Testimony of child might be best testimony as to mother-child relationship in an action to sever parental rights. Harper v. Department of Human Resources, 159 Ga. App. 758, 285 S.E.2d 220 (1981) (decided under former law).

Inability to properly rear children. — Same factors that show a parent's inability to properly rear her children also may provide proof that termination of parental rights would be in the children's best interests. In re S.J.C., 234 Ga. App. 491, 507 S.E.2d 226 (1998) (decided under former O.C.G.A. § 15-11-81).

Same factors showing parental misconduct used for termination. — Same factors that show parental misconduct or inability can support a juvenile court's finding that termination of parental rights is in the children's best interests. In the Interest of N.L., 260 Ga. App. 830, 581 S.E.2d 643 (2003) (decided under former O.C.G.A. § 15-11-94).

Same evidence showing parental misconduct used for termination. — Same

evidence showing parental misconduct or inability may establish the requirement to show that termination of parental rights is in a child's best interest. In the Interest of A.B., 274 Ga. App. 230, 617 S.E.2d 189 (2005) (decided under former O.C.G.A. § 15-11-94).

Information not obtainable from parent's attorney. — Child's paternal grandparents were not entitled to subpoena the attorney who had represented the child's mother in several DUI cases in order to obtain information concerning her "alcohol problem," since the information sought could have been obtained through other sources. In re N.S.M., 183 Ga. App. 398, 359 S.E.2d 185 (1987) (decided under former O.C.G.A. § 15-11-81).

Reversal not required by hearsay evidence. — Consideration of hearsay evidence contained in reports received from various doctors, teachers, and other diagnostic specialists did not require reversal of a juvenile judge's decision on the termination of parental rights, since there was ample evidence to support the judge's finding of continued deprivation even without reliance on the hearsay records. In re J.T.S., 185 Ga. App. 772, 365 S.E.2d 550 (1988) (decided under former O.C.G.A. § 15-11-81).

Criminal acts of mental and physical abuse. — Clear and convincing evidence of parental misconduct or inability, including criminal acts of mental and physical child abuse were present. In re R.E.C., 187 Ga. App. 35, 369 S.E.2d 323 (1988) (decided under former O.C.G.A. § 15-11-81).

Factors showing parental inability used for termination. — Court may look at the same factors which show parental inability to care for a child to support a finding that termination of parental rights would be in the child's best interest, and since those factors, combined with the mother's uncertainty as to when she would be able to care for the child, were factored into the child's need for a permanent home and emotional stability, there was sufficient clear and convincing evidence that termination was in the best interest of the child. In re J.O.L., 235 Ga. App. 856, 510 S.E.2d 613 (1998) (decided under former O.C.G.A. § 15-11-81).

Staleness of evidence. — When the evidence of parental misconduct was stale and there was an absence of clear and convincing evidence that the deprivation was likely to continue, termination of parental rights was inappropriate. In re R.U., 223 Ga. App. 440, 477 S.E.2d 864 (1996) (decided under former O.C.G.A. § 15-11-81).

Evidence of parent's character is admissible in a termination of parental rights proceeding as the proceeding inherently involves character issues, specifically the parent's ability to provide proper parental care and control; while most civil cases require the factfinder to determine the truth only with regard to the discrete transactions in issue, termination cases require the factfinder to predict a parent's future conduct and ability to parent. Davis v. Rathel, 273 Ga. App. 183, 614 S.E.2d 823 (2005) (decided under former O.C.G.A. § 15-11-94).

Evidence of father's past behavior. — Based on the father's past behavior, the length of time his problems have persisted, and his own admissions, the juvenile court did not err in terminating his parental rights. In the Interest of D.L.D., 248 Ga. App. 149, 546 S.E.2d 11 (2001) (decided under former O.C.G.A. § 15-11-94).

Focus on past actions of parent. — Juvenile court properly focused on evidence of the mother's past physical, mental, and emotional neglect of her other children in terminating her parental rights. In the Interest of Z.B., 252 Ga. App. 335, 556 S.E.2d 234 (2001) (decided under former O.C.G.A. § 15-11-94).

More weight given to past behavior than positive promises. — Termination of a mother's parental rights was upheld since the evidence showed that, despite the mother's claim that she had changed while in prison and that she would be divorcing her husband who was prone to mistreat their children, the children had already suffered serious second-degree burning. In re T.M.R., 208 Ga. App. 499, 430 S.E.2d 865 (1993) (decided under former O.C.G.A. § 15-11-81).

Despite recent efforts made by the mother to comply with some of the case plan goals, the trial court was entitled to

Evidence (Cont'd)

place more weight on negative past facts than positive promises as to the future and to find that the deprivation was likely to continue in light of the mother's past conduct; clear and convincing evidence established that the deprivation was likely to continue since the facts showed that the mother failed to complete the agency's reunification plan, failed to complete drug treatment, had repeated incarcerations, and failed to support the children, as required by O.C.G.A. § 19-7-2 and former O.C.G.A. § 15-11-94(b)(4)(C)(ii) (see now O.C.G.A. § 15-11-311). In the Interest of A.H., 278 Ga. App. 192, 628 S.E.2d 626 (2006) (decided under former O.C.G.A. § 15-11-94).

Evidence supported the termination of a parent's parental rights: the parent's recent stable housing and income and the parent's unsubstantiated claims of drug rehabilitation were outweighed by the parent's four-year abandonment of the children; the parent's recent drug use; the parent's failure to control a seizure disorder; and the parent's failure to maintain a bond with the children. In the Interest of R.C.M., 284 Ga. App. 791, 645 S.E.2d 363 (2007) (decided under former O.C.G.A. § 15-11-94).

Past history given more weight than future promises. — During the 32-month period that the child was in foster care, because a mother: (1) failed to maintain a job, failed to provide adequate financial support for the child, failed to consult with a psychiatrist, failed to obtain a driver's license, and failed to secure stable, adequate housing; (2) gave birth to two more children and was struggling to support them on her own; and (3) failed to achieve many of the goals set out in her reunification plan, including missing approximately half of her scheduled visits with the child, clear and convincing evidence was presented to support termination of her parental rights; further, despite her efforts to obtain her GED and an offer of employment that she planned to accept following the termination hearing, such effort was not conclusive of parental fitness in light of her history of neglect. In the Interest of J.G.-S., 279 Ga. App. 102, 630 S.E.2d 615 (2006) (decided under former O.C.G.A. § 15-11-94).

Discounting promises for future. — In light of a parent's continued lack of housing or employment, repeated failure to comply with the case plan, and continued mental instability coupled with a failure to complete mandated mental health and substance abuse treatment, clear and convincing evidence supported the juvenile court's order terminating that parent's parental rights; moreover, in making this determination, the juvenile court was authorized to consider the parent's past conduct and to discount promises to obtain stable housing and employment in the future. In the Interest of D.P.E., 282 Ga. App. 529, 639 S.E.2d 535 (2006) (decided under former O.C.G.A. § 15-11-94).

Evidence must pertain to present circumstances. — When the evidence of the mother's purported parental unfitness considered by the trial court consisted of episodes which occurred in the past and since there was no clear and convincing evidence of her current unfitness, even though the mother's life had been marked by a recurring pattern of drug abuse, crime, and incarceration, because there was no compelling evidence presented which would clearly convince a rational trier of fact that the child's past deprivation would continue so as to authorize the total termination of the mother's parental rights, the trial court's order totally terminating the mother's parental rights was reversed. In re N.F.R., 179 Ga. App. 346, 346 S.E.2d 121 (1986) (decided under former O.C.G.A. § 15-11-81).

Terminated caseworker's unavailability affected parental termination. — Summary of terminated caseworker's files was hearsay evidence and should not have been introduced into evidence; without summary, the state lacked clear and convincing evidence to show that parental rights should be terminated. In the Interest of A.A., 252 Ga. App. 167, 555 S.E.2d 827 (2001) (decided under former O.C.G.A. § 15-11-94).

Calling father as adverse witness. — Juvenile court did not err in a parental rights termination proceeding pursuant to former O.C.G.A. § 15-11-94 (see now O.C.G.A. § 15-11-320) when the court al-

lowed paternal grandparents who petitioned for permanent custody of their grandchildren to call the father as an adverse witness, subject to cross-examination pursuant to former O.C.G.A. § 24-9-81 (see now O.C.G.A. § 24-6-611), as there was no due process violation of the father's rights pursuant to U.S. Const., amend. 14 and Ga. Const. 1983, Art. I, Sec. I, Para. I. In the Interest of D.J., 279 Ga. App. 355, 631 S.E.2d 427 (2006) (decided under former O.C.G.A. § 15-11-94).

Witness credibility decision, supported by evidence, undisturbed. — Under the provisions of the Juvenile Code, the judge sits as the trier of fact. Decisions as to the credibility of witnesses rest solely with the judge, and if there is any evidence to support the judge's findings, those findings will not be disturbed. Powell v. Department of Human Resources, 147 Ga. App. 251, 248 S.E.2d 533 (1978), overruled on other grounds, Chancey v. Department of Human Resources, 156 Ga. App. 338, 274 S.E.2d 728 (1980) (decided under former law).

Unwilling parent could be cross-examined. — Former O.C.G.A. § 24-9-81 (see now O.C.G.A. § 24-6-611) applied to termination proceedings, which were civil, not criminal, in nature; therefore, a parent had no right to refuse to be called as a witness for cross-examination by the Department of Family and Children Services. In the Interest of A.R.A.S., 278 Ga. App. 608, 629 S.E.2d 822 (2006) (decided under former O.C.G.A. § 15-11-94).

Evidence of treatment of newborn properly excluded. — In light of the parent's history and failure to make adequate progress under the parent's case plan as to child one and child two, it was not an abuse of discretion to refuse to admit subsequent evidence of the conditions surrounding a third newly-born child as those conditions did not change the parent's treatment of and lack of bonding with child one and two. In the Interest of C.M., 282 Ga. App. 502, 639 S.E.2d 323 (2006) (decided under former O.C.G.A. § 15-11-94).

Citizen review panel reports contain hearsay that cannot be considered in determining whether clear and convincing evidence supports the termination of a parent's rights. In the Interest of N.G., 257 Ga. App. 57, 570 S.E.2d 367 (2002) (decided under former O.C.G.A. § 15-11-94).

To find abandonment, there must be sufficient evidence of actual desertion, accompanied by intention to sever entirely, so far as possible to do so, the parental relation, throw off all obligations growing out of the relationship, and forego all parental duties and claims. Thrasher v. Glynn County Dep't of Family & Children Servs., 162 Ga. App. 702, 293 S.E.2d 6 (1982), but see In re A.W., 240 Ga. App. 259, 523 S.E.2d 88 (1999) (decided under former O.C.G.A. § 15-11-81).

Clear and Convincing Standard

Evidentiary standard for termination of parental rights is compelling facts to establish the necessary lack of proper parental care or control. Brown v. Department of Human Resources, 157 Ga. App. 106, 276 S.E.2d 155 (1981) (decided under former law).

Clear and convincing evidence of the elements set out in former O.C.G.A. § 15-11-81 (see now O.C.G.A. §§ 15-11-310 and 15-11-311) as to deprivation was required to authorize the termination of parental rights. In re L.A., 166 Ga. App. 857, 305 S.E.2d 636 (1983) (decided under former law); In re S.G.T., 175 Ga. App. 475, 333 S.E.2d 445 (1985) (decided under former law).

Third party must show "clear, convincing" evidence. — As between a natural parent and a third party (grandparent), the parent can be deprived of custody only if one of the conditions specified in O.C.G.A. §§ 19-7-1 and 19-7-4, or one of the other legal grounds, is found to exist by clear and convincing evidence. Brant v. Bazemore, 159 Ga. App. 659, 284 S.E.2d 674 (1981) (decided under former law).

When a third party sued the custodial parent to obtain custody of a child and to terminate the parent's custodial rights in the child, the parent is entitled to custody of the child unless the third party shows by "clear and convincing evidence" that the parent is unfit or otherwise not entitled to custody under O.C.G.A. §§ 19-7-1

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and 19-7-4. Former O.C.G.A. § 15-11-33(b) (see now O.C.G.A. § 15-11-600) required the court after a hearing to find "clear and convincing evidence" of "deprivation" before an order of termination could be entered. Heath v. McGuire, 167 Ga. App. 489, 306 S.E.2d 741 (1983) (decided under former law).

Clear and convincing evidence found of compelling facts authorizing termination of parental rights. — See White v. Department of Human Resources, 167 Ga. App. 731, 307 S.E.2d 686 (1983) (decided under former law); In re K.E.B., 193 Ga. App. 382, 388 S.E.2d 1 (1989) (decided under former O.C.G.A. § 15-11-81); In re C.M., 194 Ga. App. 503, 391 S.E.2d 26 (1990) (decided under former O.C.G.A. § 15-11-81); In re S.T., 201 Ga. App. 37, 410 S.E.2d 312 (1991) (decided under former O.C.G.A. § 15-11-81); In re M.R., 213 Ga. App. 460, 444 S.E.2d 866 (1994), overruled on other grounds, In re C.S.W., 231 Ga. App. 444, 498 S.E.2d 813 (1998) (decided under former O.C.G.A. § 15-11-81); In re K.S.W., 233 Ga. App. 144, 503 S.E.2d 376 (1998) (decided under former O.C.G.A. § 15-11-81); In re R.M., 232 Ga. App. 727, 503 S.E.2d 635 (1998) (decided under former O.C.G.A. § 15-11-81); In the Interest of J.H., 244 Ga. App. 788, 536 S.E.2d 805 (2000) (decided under former O.C.G.A. § 15-11-81).

Clear and convincing evidence supported termination of father's parental rights. — In a termination of parental rights proceeding, clear and convincing evidence showed the deprivation suffered by a father's children was likely to cause serious harm, under former O.C.G.A. § 15-11-94(b)(4)(A)(iv) (see now O.C.G.A. § 15-11-310), because: (1) the father had no bond with the children,; and (2) a child's removal from foster care would be emotionally devastating. In the Interest of E.G., 315 Ga. App. 35, 726 S.E.2d 510 (2012) (decided under former O.C.G.A. § 15-11-94).

Clear and convincing evidence supported termination of mother's parental rights. — Order terminating a mother's parental rights was supported by clear and convincing evidence based on the mother's past conduct, present incarceration, lack of parental bond, and failure to support her child, deprivation was likely to continue, and termination was in the child's best interests. In the Interest of P.A.T.L., 264 Ga. App. 901, 592 S.E.2d 536 (2003) (decided under former O.C.G.A. § 15-11-81).

As a mother's children had been in foster care for three years, and during that time period she did not complete her case plan by finding stable housing and employment, clear and convincing evidence supported the juvenile court's finding that termination of her parental rights under former O.C.G.A. § 15-11-94(a) (see now O.C.G.A. §§ 15-11-310 and 15-11-320) was in the children's best interest. In the Interest of C.T.M., 278 Ga. App. 297, 628 S.E.2d 713 (2006) (decided under former O.C.G.A. § 15-11-94).

County Department of Family and Children Services presented clear and convincing evidence that the cause of a child's deprivation by his mother was likely to continue as the juvenile court properly considered: (1) the mother's past conduct in making this determination; and (2) that despite assistance from the Department, the mother maintained a relationship with a man who abused her, failed to pay child support, failed to maintain stable housing or employment, refused to cooperate with the Department's counselor, and was unable to care for the child or the child's siblings. In the Interest of S.R.B., 273 Ga. App. 39, 614 S.E.2d 150 (2005) (decided under former O.C.G.A. § 15-11-94).

When mother's triplets were removed at three months of age in 2001, the mother made some efforts to address drug problems, but showed no prospect of providing support or a stable home for the children, and the mother continued to use drugs after a treatment program, and failed to complete numerous terms of a parent reunification plan, clear and convincing evidence supported termination of the mother's parental rights. In the Interest of J.A.R.S., 262 Ga. App. 237, 585 S.E.2d 184 (2003) (decided under former O.C.G.A. § 15-11-94).

Juvenile court did not err in terminating the mother's parental rights in her two children as clear and convincing evidence supported findings that the mother was unable to properly parent them because their deprivation was likely to continue or would likely not be remedied, since the evidence showed that she had spent some time in jail, was currently in jail for five years, and had trouble maintaining stable employment and housing even when she was not in jail. In the Interest of C.B.H., 262 Ga. App. 833, 586 S.E.2d 678 (2003) (decided under former O.C.G.A. § 15-11-94).

Evidence supported the termination of a mother's parental rights as the lack of care or control was likely to continue in light of the mother's history of neglect, including her consideration of placing the children with their grandmother, who had abused the mother as a child; further, the mother's failure to meet any of the reunification goals and her relapse into criminal behavior while she was failing to meet the goals of her case plans supported this finding. In the Interest of C.T.M., 273 Ga. App. 168, 614 S.E.2d 812 (2005) (decided under former O.C.G.A. § 15-11-94).

Juvenile court did not err in terminating a mother's parental rights pursuant to former O.C.G.A. § 15-11-94 (see now O.C.G.A. §§ 15-11-310, 15-11-311, and 15-11-320) because clear and convincing evidence supported the court's finding that the children were deprived under O.C.G.A. § 15-11-2(8)(A) (see now O.C.G.A. § 15-11-107); the mother failed to complete counseling for her depression and parenting aide counseling, and the mother failed to exercise scheduled visits with the children. In the Interest of A. R., 315 Ga. App. 357, 726 S.E.2d 800 (2012) (decided under former O.C.G.A. § 15-11-94).

Clear and convincing evidence supported termination of parental rights of mother and father. — See In re J.T.S., 185 Ga. App. 772, 365 S.E.2d 550 (1988) (decided under former O.C.G.A. § 15-11-81); In re K.G.L., 198 Ga. App. 891, 403 S.E.2d 464 (1991) (decided under former O.C.G.A. § 15-11-81); In re F.C., 239 Ga. App. 545, 521 S.E.2d 470 (1999) (decided under former O.C.G.A. § 15-11-81); In re C.J.B., 239 Ga. App. 755, 521 S.E.2d 891 (1999) (decided under former O.C.G.A. § 15-11-81); In re J.V., 241 Ga. App. 621, 526 S.E.2d 386 (1999) (decided under former O.C.G.A. § 15-11-81).

Clear and convincing evidence supported termination. — State presented clear and convincing evidence of parental misconduct or inability former O.C.G.A. § 15-11-94(b)(4)(A)(i)-(iv) (see now O.C.G.A. § 15-11-310) when: (1) the parents did not appeal the deprivation order, so it was undisputed that the children were deprived; and (2) the parents did not accomplish the goals of the reunification plan as the parents failed to: maintain stable employment, maintain stable and sanitary housing, successfully complete the required psychological counseling, learn and apply budgeting and home management skills, and make regular child support payments. The record supported findings that the cause of the children's deprivation was unlikely to be remedied and that the continued deprivation was likely to cause physical, mental, emotional, or moral harm to the children. In the Interest of M.E.S., 263 Ga. App. 132, 587 S.E.2d 282 (2003).

Clear and convincing evidence supported an order terminating the parent's parental rights, specifically that: (1) the parent exhibited a willingness to put a drug addiction before the needs to the child; (2) the parent failed to establish a strong parental bond with the child; and (3) the child exhibited a strong risk of developing behavioral and attachment problems if not adopted. Moreover, the aforementioned evidence supported a finding that the child's deprivation was likely to continue and that termination was in the child's best interest. In the Interest of E.J., 284 Ga. App. 814, 644 S.E.2d 906 (2007) (decided under former O.C.G.A. § 15-11-94).

Order terminating a parent's parental rights was supported by clear and convincing evidence as: (1) an order finding the child deprived was not appealed; (2) a determination that the child was without proper care and control was binding against the parent; (3) the parent failed to complete the reunification case plans; and

Clear and Convincing Standard (Cont'd)

(4) adoption proceedings were in place. In the Interest of I.G., 285 Ga. App. 162, 645 S.E.2d 649 (2007) (decided under former O.C.G.A. § 15-11-81).

Because the juvenile court was presented with sufficient evidence to satisfy by clear and convincing proof that termination of a biological mother's parental rights was properly based on the child's deprivation, and that the deprivation was likely to continue due to the mother's criminal past, a lack of a bond with the child, and a failure to provide the child with a stable lifestyle, the termination was upheld on appeal. Moreover, sufficient evidence was presented that the child was doing well in foster care, could not tolerate being abandoned again, and that the current foster parent had been identified as an adoptive resource. In the Interest of M.J.G., 288 Ga. App. 754, 655 S.E.2d 333 (2007) (decided under former O.C.G.A. § 15-11-94).

Given clear and convincing evidence of a parent's drug abuse, failure to comply with case plan goals both before and during periods of incarceration, lack of a parental bond with the child, and failure to provide financial support, the juvenile court properly terminated that parent's parental rights and found that the child's deprivation was likely to continue and would result in serious physical, mental, emotional, or moral harm. In the Interest of R.D.B., 289 Ga. App. 76, 656 S.E.2d 203 (2007) (decided under former O.C.G.A. § 15-11-94).

Despite a natural parent's alleged recent life changes, due to the parent's instability, lengthy history of drug abuse, failure to establish a bond and financially support the children at issue, and the childrens' history in foster care, the juvenile court's finding that the deprivation was likely to continue, and that such deprivation was likely to harm the children, was supported by clear and convincing evidence. In the Interest of A.H., 289 Ga. App. 121, 656 S.E.2d 254 (2008) (decided under former O.C.G.A. § 15-11-94).

In a termination of parental rights proceeding, clear and convincing evidence showed the children were presently deprived, under former O.C.G.A. §§ 15-11-2(8)(A) and 15-11-94(b)(4)(A)(i) (see now O.C.G.A. §§ 15-11-107 and 15-11-310), because the children's father said the father could not care for the children at the time of the termination hearing and had no stable housing. In the Interest of E.G., 315 Ga. App. 35, 726 S.E.2d 510 (2012) (decided under former O.C.G.A. § 15-11-94).

Clear and convincing standard inapplicable to alternative dispositions. — "Clear and convincing" evidence standard which applies to child dispositions that result in the most severe method of disposition, the complete termination of parental rights, does not apply to alternate dispositions; a thorough investigation of all such possible alternatives is expected before recourse to complete termination of parental rights is sought. In re P.F.J., 174 Ga. App. 47, 329 S.E.2d 194 (1985) (decided under former law).

Actions of Parents

Improper to terminate rights of illegal alien. — When a father, an illegal alien, cooperated with the court and the Department of Family and Children Services (DFCS), participated in mediation, was trying to obtain legal residency, worked full time, paid child support, consistently visited his daughter, and had a positive relationship with her, the juvenile court erred in terminating his parental rights on grounds that he might someday be deported and the child be sent to Mexico or returned to the care of DFCS. In the Interest of M.M., 263 Ga. App. 353, 587 S.E.2d 825 (2003) (decided under former O.C.G.A. § 15-11-94).

Termination appropriate when children living in filth. — To determine the best interests of the children, the juvenile court may consider the same factors that supported its finding of parental inability; hence, when the children were raised in filth and the mother did nothing to demonstrate that she could maintain a stable, sanitary home, the juvenile court did not err in terminating the mother's parental rights. In the Interest of A.B., 251 Ga. App. 827, 555 S.E.2d 159 (2001)

(decided under former O.C.G.A. § 15-11-94).

Contest between parents. — In a contest between the parents, the award of custody by a divorce court vests the custodial parent with a prima-facie right. Ordinarily, the trial court should favor the parent having such a right. In re M.M.A., 166 Ga. App. 620, 305 S.E.2d 139 (1983) (decided under former O.C.G.A. § 15-11-81).

In order to forfeit the custodial parent's prima-facie right to custody, the court must find either that the original custodian is no longer able or suited to retain custody or that the conditions surrounding the child have so changed that modification of the original judgment would have the effect of promoting the child's welfare. It is a change for the worse in the conditions of the child's present home environment rather than any purported change for the better in the environment of the noncustodial parent that the law contemplates under this theory. In re M.M.A., 166 Ga. App. 620, 305 S.E.2d 139 (1983) (decided under former O.C.G.A. § 15-11-81).

Substance abuse by both parents. — Judgments terminating the parental rights of a mother and father to their three children pursuant to O.C.G.A. § 15-11-310 were affirmed because of their excessive use of and history of chronic substance abuse, which caused their inability to maintain consistency in employment and the children to be dependent, their failure to comply with the court ordered plan designed to reunite the family, no due process violations occurred, and the children had bonded well with their foster families.

Children

Children need stability. — When a child's behavior improved after being placed in state custody, but she continued to need regular counseling and a stable, consistent home environment, there was no error in the juvenile court's implicit conclusions that continued deprivation would seriously harm the child and that termination of parental rights was in her best interest. In re D.N.M., 235 Ga. App. 712, 510 S.E.2d 366 (1998) (decided under former O.C.G.A. § 15-11-81).

Termination of a mother's parental rights was in 12-year-old child's best interest because the child had been in foster care periodically and needed a stable home, the child was well-adjusted with the foster parents, the child's performance at school was vastly improved, the child rarely missed school, and the child wanted to stay with the foster family and go to school. In the Interest of R.H.L., 272 Ga. App. 10, 611 S.E.2d 700 (2005) (decided under former O.C.G.A. § 15-11-94).

Evidence of a mother's repeated failures to remain drug free and to take the steps necessary to reunite with her child was sufficient to prove that her children's continued deprivation would cause the children serious physical, mental, emotional, or moral harm, and it was well settled that the children needed permanence of home and emotional stability or they were likely to suffer serious emotional problems. In the Interest of A.B., 274 Ga. App. 230, 617 S.E.2d 189 (2005) (decided under former O.C.G.A. § 15-11-94).

Clear and convincing evidence supported a trial court's determination that a mother's child was deprived, pursuant to former O.C.G.A. § 15-11-2(8)(A) (see now O.C.G.A. § 15-11-107), due to lack of proper parental care, that such deprivation was likely to continue or not be remedied due to the mother's failure to take responsibility for the child and to work at succeeding at the goals of her case plan, and that such deprivation would cause serious harm to the child, who needed a stable family environment; accordingly, termination of the mother's parental rights was proper, pursuant to former O.C.G.A. § 15-11-94(a) (see now §§ 15-11-310 and 15-11-311). In the Interest of B.S., 274 Ga. App. 647, 618 S.E.2d 695 (2005) (decided under former O.C.G.A. § 15-11-94).

Evidence was sufficient to support the juvenile court's determination pursuant to former O.C.G.A. § 15-11-94(a) (see now O.C.G.A. §§ 15-11-310 and 15-11-311) that, there being clear and convincing evidence of parental misconduct or inability, termination of the mother's parental rights was in the best interest of the child,

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considering the child's physical, mental, emotional, and moral needs, and the child's need for a secure and stable home. In the Interest of B.J.F., 276 Ga. App. 437, 623 S.E.2d 547 (2005) (decided under former O.C.G.A. § 15-11-94).

In a termination of parental rights case involving a mother who had mental health and substance abuse issues, continued deprivation was likely to cause harm to the child under former O.C.G.A. § 15-11-94(b)(4)(A)(iv) (see now O.C.G.A. § 15-11-310) as a psychologist testified that the child needed a stable environment or the child was likely to act out. In the Interest of D.A.B., 281 Ga. App. 702, 637 S.E.2d 102 (2006) (decided under former O.C.G.A. § 15-11-94).

Children with special needs. — When employing the two-step test before terminating a parent's rights, a juvenile court order that a child was deprived, pursuant to former O.C.G.A. § 15-11-2(8)(A) (see now O.C.G.A. § 15-11-107), which was not appealed, was binding on a mother and satisfied the first factor of the test under former O.C.G.A. § 15-11-94 (see now O.C.G.A. § 15-11-310); the juvenile court determined that due in part to a medical problem, the child had special needs and the mother lacked the ability to provide for the physical, mental, emotional, and moral conditions and needs of the child. In the Interest of J.T.W., 270 Ga. App. 26, 606 S.E.2d 59 (2004) (decided under former O.C.G.A. § 15-11-94).

"Continued deprivation was likely to cause serious physical, mental, emotional or moral harm to the child" factor for the termination of mother's parental rights was satisfied as: (1) the child required a stable routine with constant monitoring of the child's physical symptoms to maintain the child's emotional and physical health; and (2) a psychologist testified that the mother would be unable, given her limited cognitive abilities, to provide the care the child needed. In the Interest of K.N., 272 Ga. App. 45, 611 S.E.2d 713 (2005) (decided under former O.C.G.A. § 15-11-94).

Best interest of the child factor for the termination of a mother's parental rights was satisfied because the mother failed to establish a parental bond with the child, failed to comply with her case plan, limited cognitive abilities and personality disorder impaired her ability to attend to the child's many special needs, child's visits with his parents were disturbing to the child, and the child was doing well in the custody of the Department of Family and Children's Services and would benefit by staying with the capable and caring foster parents. In the Interest of K.N., 272 Ga. App. 45, 611 S.E.2d 713 (2005) (decided under former O.C.G.A. § 15-11-94).

Deprivation was likely to cause serious physical, mental, emotional, or moral harm to a child because the child had severe developmental delays when the child entered foster care and made tremendous improvements in a structured one-on-one learning environment; the mother failed to complete a reunification plan and her parenting skills were severely impaired by recurring psychological problems; the mother failed to obtain housing or employment; to improve her parenting skills specific to her child's special needs; to continue psychological counseling, to support the child; or to maintain any parental relationship with the child. In the Interest of A.K., 272 Ga. App. 429, 612 S.E.2d 581 (2005) (decided under former O.C.G.A. § 15-11-94).

There was sufficient clear and convincing evidence to support a juvenile court's termination of a father's parental rights over his two children, each of whom was severely handicapped, as the father's limited cognitive abilities made it difficult for him to be the sole parent, he was unable to properly care for the children and to maintain a clean home, they had been deemed deprived, and termination was in their best interests; also, they had bonded with their foster families and did not have much of a bond with their father. In the Interest of M.W., 275 Ga. App. 849, 622 S.E.2d 68 (2005) (decided under former O.C.G.A. § 15-11-94).

Juvenile court's termination of a parent's parental rights was affirmed as sufficient evidence supported a finding that the children were likely to suffer serious harm if the parent's parental rights were not terminated since: (1) the children

needed a very structured environment, without which it was likely that the children would lack basic social functioning; (2) the parent was mentally, emotionally, and financially unable to manage her own life without the substantial assistance of her parents; (3) the parent was either unwilling or unable to develop necessary parenting skills; (4) the children were in a stable foster home with nurturing foster parents where their special needs were met; (5) there was no parental bond between the biological parent and the children; and (6) the foster parent was interested in adopting the children. In the Interest of K.L., 280 Ga. App. 773, 634 S.E.2d 870 (2006) (decided under former O.C.G.A. § 15-11-94).

Father's incarceration history, the father's failure to support the child, and the father's lack of interest in the child showed that the father could not be relied on to meet the needs of the child, who had special needs; termination of the father's parental rights, therefore, was in the child's best interest under former O.C.G.A. § 15-11-94(a) (see now O.C.G.A. §§ 15-11-310 and 15-11-311). In the Interest of E.K., 280 Ga. App. 818, 635 S.E.2d 214 (2006) (decided under former O.C.G.A. § 15-11-94).

Termination of a mother's parental rights was upheld on appeal since the mother stipulated to depriving the child, had a mental disability which prevented the mother from giving the child the proper care in light of the child's special needs, including failing to provide the child with prescription medication, and the mother continued a relationship with a boyfriend who had sexually abused the child; the reviewing court found clear and convincing evidence established that it was in the best interests of the child to terminate the mother's parental rights. In the Interest of B.S., 283 Ga. App. 724, 642 S.E.2d 408 (2007) (decided under former O.C.G.A. § 15-11-94).

There was sufficient evidence to support the termination of a mother's parental rights since the evidence showed that the mother lacked the intellectual and emotional capacity to care for her two children, particularly the younger child, who had special needs as the result of injuries inflicted by his father; the mother was in denial about the younger child's condition and about the injuries that had been inflicted upon the child, had not refrained from using physical discipline on the children, had not paid child support, had not created a meaningful bond with the children and the children had thrived in foster care. In the Interest of R.S., 287 Ga. App. 228, 651 S.E.2d 156 (2007) (decided under former O.C.G.A. § 15-11-94).

It was proper to terminate a father's parental rights to a special needs child since the father had failed to comply with case plan goals or to acknowledge or address his mental health problems, there was ample evidence of his low intellectual functioning and its negative impact on his parenting skills, doctors had testified that the child would not be safe with the father and the father would not be able to parent a special needs child, and the father had failed to maintain a parental bond with the child in a meaningful way. In the Interest of B.W., 287 Ga. App. 54, 651 S.E.2d 332 (2007) (decided under former O.C.G.A. § 15-11-94).

It was proper to terminate a mother's parental rights to a special needs child since the mother had not supported the child, had been repeatedly incarcerated, had not seen the child in three years or attempted to maintain contact with the child, had not completed a drug treatment program, had not remained drug free for more than eight or nine months, and had failed to comply with any of her case plan goals; considering the special needs of the child, the harmful effects of prolonged foster care, and the evidence of the mother's drug abuse and failure to comply with case plan goals, the trial court was authorized to conclude that terminating the mother's parental rights was in the best interest of the child. In the Interest of B.W., 287 Ga. App. 54, 651 S.E.2d 332 (2007) (decided under former O.C.G.A. § 15-11-94).

Evidence of emotional difficulties of child insufficient. — Evidence in an action to sever parental rights that the child has emotional difficulties, fantasies, and nightmares about living with his mother may not alone deprive the mother of parental rights. Harper v. Department

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of Human Resources, 159 Ga. App. 758, 285 S.E.2d 220 (1981) (decided under former law).

Foster care. — Juvenile court could consider the adverse effects of prolonged foster care in determining that the children's continued deprivation was likely to cause serious physical, mental, emotional, or moral harm under former O.C.G.A. § 15-11-94(b)(4)(A)(iv) (see now O.C.G.A. § 15-11-310). In the Interest of M.C.L., 251 Ga. App. 132, 553 S.E.2d 647 (2001) (decided under former O.C.G.A. § 15-11-94).

Evidence was sufficient to support the trial court's finding that the deprivation was likely to cause physical, mental, emotional, or moral harm to the children in a termination of parental rights proceeding since: (1) the children became upset when the mother made promises and representations that she did not keep, including promises that she would visit or that they could come home with her; (2) one child became upset when her mother urged her to lie about the abuser's sexual abuse; and (3) the juvenile court considered that the children needed a stable home situation, and that prolonged foster care was detrimental. In the Interest of A.M., 259 Ga. App. 537, 578 S.E.2d 226 (2003) (decided under former O.C.G.A. § 15-11-94).

Child in foster care for extensive time. — Termination of a parent's parental rights was affirmed as the children had been in the care of their foster parents since they were three months old and had not seen the parent in over 27 months; the parent's caseworker opined that the children were still deprived due to neglect. In the Interest of S.B., 287 Ga. App. 203, 651 S.E.2d 140 (2007) (decided under former O.C.G.A. § 15-11-94).

Failure to communicate with children and foster parents. — Evidence showed that a parent's lack of care and control was the cause of two children's deprivation for purposes of the termination of a parent's rights as: (1) the parent's history of erratic visitation and unstable housing and employment was the cause of the instability, lack of bonding, and lack of child support that two children would face if reunited with the parent; (2) the parent failed to take advantage of regular visitation opportunities, did not establish stable housing, did not maintain stable employment, and provided inadequate child support; and (3) the parent did not maintain communication with the children's foster parents about the children or the parent's availability for visitation. In the Interest of C.M., 282 Ga. App. 502, 639 S.E.2d 323 (2006) (decided under former O.C.G.A. § 15-11-94).

Living conditions and economic circumstances of foster family. — Evidence concerning the living conditions and economic circumstances of the child's foster parents who had expressed an interest in adopting the child was not relevant to the first portion of the test under former O.C.G.A. § 15-11-81 (see now O.C.G.A. §§ 15-11-310 and 15-11-311), the determination of whether there was clear and convincing evidence showing parental misconduct or inability; however, such evidence was relevant to the second part of the statutory test, a determination of whether termination of the parental rights of the natural parents was in the best interest of the child, since it showed the merits of an alternative placement available to the child. In re J.M.G., 214 Ga. App. 738, 448 S.E.2d 785 (1994) (decided under former O.C.G.A. § 15-11-81).

Detrimental effects of prolonged stay in foster care considered. — Adoptability of the children is never a basis for the determination of unfitness of the parents inasmuch as the finding of unfitness must rest upon its own merit. The court is nevertheless authorized to consider the severe detrimental effects of a prolonged stay in foster care under the ephemeral hope of change but without the real prospect of parental improvement that would justify such a prolonged stay in foster care. In re G.M.N., 183 Ga. App. 458, 359 S.E.2d 217 (1987) (decided under former O.C.G.A. § 15-11-81).

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Evidence held sufficient to justify termination of parental rights. — In re J.L.Y., 184 Ga. App. 254, 361 S.E.2d 246 (1987) (decided under former O.C.G.A. § 15-11-81); In re B.M., 184 Ga. App. 291,

361 S.E.2d 269 (1987) (decided under former O.C.G.A. § 15-11-81); In re S.B., 188 Ga. App. 364, 373 S.E.2d 46 (1988) (decided under former O.C.G.A. § 15-11-81); In re J.A.B., 189 Ga. App. 79, 374 S.E.2d 839 (1988) (decided under former O.C.G.A. § 15-11-81); In re J.M.K., 189 Ga. App. 140, 375 S.E.2d 131 (1988) (decided under former O.C.G.A. § 15-11-81); In re C.J.S., 195 Ga. App. 741, 395 S.E.2d 35 (1990) (decided under former O.C.G.A. § 15-11-81); In re J.R., 202 Ga. App. 418, 414 S.E.2d 540 (1992) (decided under former O.C.G.A. § 15-11-81); In re C.D.P., 211 Ga. App. 42, 438 S.E.2d 155 (1993) (decided under former O.C.G.A. § 15-11-81).

Parent's parental rights were properly terminated when the parent failed to appeal an order finding that the parent's three minor children were deprived, steadfastly refused to cooperate with the Department of Family and Children Services with respect to a reunification plan, and completely failed to provide for the children's education. In the Interest of N.Q., 260 Ga. App. 118, 578 S.E.2d 920 (2003) (decided under former O.C.G.A. § 15-11-94).

Evidence held sufficient to justify termination of parental rights. — Termination of parental rights was in the children's best interest because the children were in need of stability and permanence in their lives, their mother could not provide either, and the children had developed close bonds with their foster parents, who wished to adopt them. In the Interest of M.E.M., 272 Ga. App. 451, 612 S.E.2d 612 (2005) (decided under former O.C.G.A. § 15-11-94).

Termination of parental rights was proper based upon evidence of the mother's failure to contest a prior deprivation finding, continued drug use, lack of parental care or control, failure to obtain suitable housing, inability to maintain stable employment, failure to cooperate with the case plan, and failure to seek or maintain counseling or drug abuse treatments; the court was authorized to find that the children's continued deprivation would have a detrimental effect on them in light of the evidence that the children had improved due to the stability they realized while in foster care. In the Interest of D.D., 273 Ga. App. 839, 616 S.E.2d 179 (2005) (decided under former O.C.G.A. § 15-11-81).

Evidence supported the termination of the mother's parental rights pursuant to former O.C.G.A. § 15-11-94(b)(4) (see now O.C.G.A. §§ 15-11-310 and 15-11-311) because the mother showed no justifiable cause for her failure, over a two-year period, to meet the goals of her case plan, provide support for her child, or visit him for over one year, evidence of domestic violence in the child's presence and the mother's failure to comply with the requirements of the reunification plan authorized the juvenile court to find that the child's continued deprivation would be detrimental, and termination of parental rights was in the best interests of the child. In the Interest of M.M., 276 Ga. App. 211, 622 S.E.2d 892 (2005) (decided under former O.C.G.A. § 15-11-81).

Since a parent did not dispute that the parent's child was deprived and never appealed any of the orders finding that the child was deprived, a trial court's order terminating parental rights was supported by sufficient evidence which included evidence that the parent failed to provide the department with information as to the parent's whereabouts, failed to achieve financial stability, and physically, financially, and emotionally neglected the child; further, the trial court was authorized to infer from the evidence of past conduct that the improvements in the parent's situation were insufficient to justify maintaining the child in limbo in hopes that the parent could, at some point, provide an adequate home for the child. In the Interest of C.J., 279 Ga. App. 213, 630 S.E.2d 836 (2006) (decided under former O.C.G.A. § 15-11-81).

Juvenile court was authorized to terminate a parent's parental rights based on: (1) an unappealed prior deprivation order; (2) the reasonable likelihood that the parent would be incapable of providing a stable home environment in the foreseeable future; and (3) the fact that the children had been in foster care for over five years and in need of some semblance of permanency; moreover, the conflicting testimony did not preclude the juvenile court from finding that no reasonable like-

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lihood existed that the parent would ever be capable of providing a stable home. In the Interest of D.E., 282 Ga. App. 519, 639 S.E.2d 526 (2006) (decided under former O.C.G.A. § 15-11-81).

Order terminating a parent's parental rights was upheld on appeal, and was held to be in the child's best interests, given evidence of the parent's history of incarcerations, substance abuse, and inability to care for any of the parent's six children, as well as the bond the child developed with the foster family and their desire to adopt; moreover, because the parent did not challenge the deprivation order, no challenge to the sufficiency of the evidence showing that reasonable reunification efforts were made could be raised. In the Interest of R.D.B., 282 Ga. App. 628, 639 S.E.2d 565 (2006) (decided under former O.C.G.A. § 15-11-81).

Juvenile court's order terminating a parent's parental rights was upheld on appeal as supported by sufficient evidence that the two children involved were deprived and that such deprivation was likely to continue given the parent's past untreated drug abuse, failure to pay child support, continued unemployment, failure to maintain stable housing, and failure to maintain a parental bond with the children. In the Interest of M.A.S., 284 Ga. App. 102, 643 S.E.2d 370 (2007) (decided under former O.C.G.A. § 15-11-81).

Evidence was sufficient to support termination of a parent's parental rights after the trial court found that the parent neglected and failed to supervise the children; the parent had made little or no progress on the parent's case plan, tested positive for drugs, did not complete required classes, failed to visit the children during at least one six-week period, spent time in prison, failed to maintain stable housing and employment, and the children were thriving with foster parents who wished to adopt the children. In the Interest of M.D.L., 285 Ga. App. 357, 646 S.E.2d 331 (2007) (decided under former O.C.G.A. § 15-11-81).

Termination of a parent's parental rights was proper in light of the parent's: (1) failure to provide stable and adequate housing; (2) drug use; (3) lack of stable employment; (4) ongoing difficulty with anger; (5) failure to pay child support; (6) historical reluctance to work with the department of family and children services; (7) frequent failure to appear for supervised visitation; and (8) failure to bond with the children when the parent did appear, as well as the behavioral and emotional problems of the children. In the Interest of A.D.M., 288 Ga. App. 757, 655 S.E.2d 336 (2007), cert. denied, 2008 Ga. LEXIS 402 (Ga. 2008) (decided under former O.C.G.A. § 15-11-81).

Juvenile court's order terminating a parent's parental rights was upheld on appeal as supported by sufficient evidence including: (1) a prior unappealed finding that the children were deprived; (2) the parent's history of drug use and mental issues; (3) the parent's failure to pay child support; (4) the lack of a significant parental bond with the children; and (5) the parent's unemployment. In the Interest of K.A.B., 285 Ga. App. 537, 646 S.E.2d 736 (2007) (decided under former O.C.G.A. § 15-11-81).

Juvenile court properly ordered a mother's termination of her parental rights to her child because clear and convincing evidence showed that the child's continued deprivation was likely to cause the child serious harm based on the mother's failure to show an end to her drug abuse, her failure to provide for the child, the absence of a bond between the mother and the child, the child's bond with her foster parents, and the foster parents' wish to adopt. In the Interest of S.R.C.J., 317 Ga. App. 699, 732 S.E.2d 547 (2012) (decided under former O.C.G.A. § 15-11-81).

Termination of the mother's parental rights was upheld because the evidence showed that the mother had committed repeated criminal acts resulting in the mother's incarceration, the mother had a history of acting violently toward those close to the mother, and the mother failed to attend drug and alcohol assessment, maintain a stable home, or make any child support payments. In the Interest of D. T. A., 318 Ga. App. 182, 733 S.E.2d 466 (2012) (decided under former O.C.G.A. § 15-11-81).

Termination of the father's parental rights was supported by evidence that the father was not capable of caring for the child without assistance and the father's niece was not deemed an appropriate placement for the child due to inconsistent drug test results and unstable financial status. In addition, the mother continued to reside with the father, making the father's residence an unsafe place for the child to live. In the Interest of T.G., 318 Ga. App. 191, 733 S.E.2d 777 (2012) (decided under former O.C.G.A. § 15-11-81).

Trial court's order terminating parental rights was supported by evidence that the parents temporarily stopped using drugs but were again using illegal drugs by the time of the termination hearing, they were attempting to circumvent drug testing, and they had not undergone drug treatment even though failure to do so was a basis for deprivation finding. In the Interest of B. W., 325 Ga. App. 899, 756 S.E.2d 25 (2014) (decided under former O.C.G.A. § 15-11-94).

Termination of parental rights proper. — Juvenile court's termination of a parent's parental rights over the parent's child was proper pursuant to former O.C.G.A. § 15-11-94 (see now O.C.G.A. §§ 15-11-310, 15-11-311, and 15-11-320) since the parent's lack of proper parental care or control amounted to deprivation of the child under former O.C.G.A. § 15-11-2 (see now O.C.G.A. §§ 15-11-2, 15-11-107, 15-11-381, and 15-11-471), the parent failed to establish a bond with the child or substantially complete any of the goals of the parent's reunification plan, and the parent did not provide support to the child under O.C.G.A. § 19-7-2; further, the deprivation was deemed likely to continue and likely result in harm to the child, and the child's best interest was served by termination of the parent's rights as the child had formed a bond with the foster parent. In the Interest of J.D., 280 Ga. App. 861, 635 S.E.2d 226 (2006) (decided under former O.C.G.A. § 15-11-94).

Termination of parental rights appropriate. — Evidence was sufficient to support the termination of a parent's parental rights on the ground of parental misconduct or inability under former O.C.G.A. § 15-11-94(a)(2) (see now O.C.G.A. §§ 15-11-310 and 15-11-320) because, despite years of intervention, the parent failed to manage the parent's anger and control the parent's substance abuse, the parent abused the spouse, abused and neglected the parent's children, and made little effort to support the children or to attempt to meet the goals of the case plan; the children had been doing well in the care of their foster parents and their foster parents all expressed interest in adoption. In the Interest of M.S., 279 Ga. App. 254, 630 S.E.2d 856 (2006), overruled on other grounds, In re J.M.B., 296 Ga. App. 786, 676 S.E.2d 9 (2009) (decided under former O.C.G.A. § 15-11-94).

Termination of a parent's parental rights was proper in light of the parent's: (1) continued psychological and emotional instability; (2) multiple incarcerations; (3) alcohol abuse; (4) lengthy history with the department of family and children services, including the termination of rights to three other children; (5) lack of material improvement; and (6) lack of concern about the seven children, as well as the emotional and behavioral problems from which all of the children suffered. In the Interest of A.D.M., 288 Ga. App. 757, 655 S.E.2d 336 (2007), cert. denied, 2008 Ga. LEXIS 402 (Ga. 2008) (decided under former O.C.G.A. § 15-11-94).

Evidence sufficient for termination of both parents' parental rights. — See In re C.D.P., 238 Ga. App. 393, 519 S.E.2d 37 (1999) (decided under former O.C.G.A. § 15-11-81); In re J.H., 240 Ga. App. 309, 523 S.E.2d 374 (1999) (decided under former O.C.G.A. § 15-11-81); In the Interest of J.W.H., 245 Ga. App. 468, 538 S.E.2d 112 (2000) (decided under former O.C.G.A. § 15-11-94); In the Interest of J.L.K., 245 Ga. App. 860, 539 S.E.2d 507 (2000) (decided under former O.C.G.A. § 15-11-94); In the Interest of R.G., 249 Ga. App. 91, 547 S.E.2d 729 (2001) (decided under former O.C.G.A. § 15-11-94). In the Interest of K.C., 249 Ga. App. 680, 549 S.E.2d 737 (2001) (decided under former O.C.G.A. § 15-11-94); In the Interest of B.B., 268 Ga. App. 858, 603 S.E.2d 333 (2004) (decided under former O.C.G.A. § 15-11-94).

Since a rational trier of fact could have found that misconduct or inability by the

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mother and father existed and that termination of parental rights was in the best interest of the children, the trial court did not err in terminating the parents' rights to their children under former O.C.G.A. § 15-11-94 (see now O.C.G.A. §§ 15-11-310, 15-11-311, and 15-11-320). The evidence was sufficient to show that the children's deprivation was likely to continue since the mother failed to complete her case plan and the father, who was incarcerated, had a history of domestic violence and had failed to receive the domestic violence counseling required by the case plan. In the Interest of C.S., 279 Ga. App. 831, 632 S.E.2d 665 (2006), reversed on other grounds, 282 Ga. 7, 644 S.E.2d 812 (2007) (decided under former O.C.G.A. § 15-11-94).

Trial court's order terminating the parental rights of both parents was supported by sufficient evidence that: (1) the parents failed significantly to comply with a reunification plan without justification; (2) the child's deprived status was caused by the parents' lack of proper care and control, and that deprivation was likely to continue; and (3) the child needed permanence and stability, which was amply being provided by the foster family. In the Interest of C.N.I., 280 Ga. App. 305, 633 S.E.2d 660 (2006) (decided under former O.C.G.A. § 15-11-94).

Trial court properly terminated parental rights when: the parents' failure to comply with a case plan, their housing and financial instability, and their unwillingness to face their substance abuse showed that their lack of parental care or control caused the children's deprivation; the mother's fragile mental health and unstable financial situation and the father's inability to obtain steady employment or stable housing, delay in addressing his drug problems, and untruthfulness in altering pay records indicated that the lack of care or control was likely to continue; and the record supported findings that continued deprivation would cause serious harm to the children and that termination was in their best interests. In the Interest of T.W.O., 283 Ga. App. 771, 643 S.E.2d 255 (2007) (decided under former O.C.G.A. § 15-11-94).

Orders terminating the parental rights of both parents were upheld on appeal as supported by: (1) deprivation findings that were not appealed; (2) the parents' unwillingness to address their mental health issues and substance abuse problems; (3) the long history of deficiencies in the supervision of their children; and (4) their failure to comply with the case plan. In the Interest of Am.T., 284 Ga. App. 847, 644 S.E.2d 923 (2007) (decided under former O.C.G.A. § 15-11-94).

Parents' rights to their four children were properly terminated since: the parents had not appealed from a previous finding of deprivation, and the conditions upon which the earlier finding was based still existed; the parents had not received drug treatment or submitted to drug screens, had little or no contact with the children, had paid inadequate child support, and had failed to complete case plan goals; the father had been repeatedly incarcerated; the mother was unemployed at the time of the hearing and the father had held his current job for only two days; and the parents lived in housing that they could not afford and that was too small for four children. In the Interest of R.N.H., 286 Ga. App. 737, 650 S.E.2d 397 (2007) (decided under former O.C.G.A. § 15-11-94).

It was proper to terminate both parents' rights to a child when neither parent interacted with the child at visits, paid the required child support, remained drug-free for six months, maintained stable housing, or completed recommended treatment resulting from psychological evaluations; further, the mother had never shown any evidence of employment and had completed parenting classes only just before the termination petition was filed, and the father had never completed the classes. In the Interest of J.A.S., 287 Ga. App. 125, 650 S.E.2d 788 (2007), overruled on other grounds, In re J.M.B., 296 Ga. App. 786, 676 S.E.2d 9 (2009) (decided under former O.C.G.A. § 15-11-94).

As neither parent sufficiently complied with their reunification plans, maintained stable residences for six months, completed drug screens, satisfied their child

support obligations, or maintained a job for six months, and both were unfit to care for the child, the child was deprived, and this deprivation was likely to continue, clear and convincing evidence supported terminating their parental rights. In the Interest of D.O.R., 287 Ga. App. 659, 653 S.E.2d 314 (2007) (decided under former O.C.G.A. § 15-11-94).

Father's parental rights were properly terminated pursuant to former O.C.G.A. § 15-11-94 (see now O.C.G.A. §§ 15-11-310, 15-11-311, and 15-11-320) because a rational trier of fact could have found that termination was in the child's best interest since there was evidence of the father's past parental misconduct, including his inability to provide emotional and financial support for the child; his history of violence; his lack of interest in the well-being of the child; and his failure to attempt to contact the child, despite knowledge of the mother's serious drug addiction, for over four years. In the Interest of T. B., 267 Ga. App. 484, 600 S.E.2d 432 (2004) (decided under former O.C.G.A. § 15-11-94).

Evidence sufficient to authorize termination of father's parental rights. — See Turner v. Wright, 217 Ga. App. 368, 457 S.E.2d 575 (1995) (decided under former O.C.G.A. § 15-11-81); In re A.M.V., 222 Ga. App. 528, 474 S.E.2d 723 (1996) (decided under former O.C.G.A. § 15-11-81); In re E.N.H., 216 Ga. App. 209, 453 S.E.2d 778 (1995) (decided under former O.C.G.A. § 15-11-81); In re T.B.R., 224 Ga. App. 470, 480 S.E.2d 901 (1997) (decided under former O.C.G.A. § 15-11-81); In re D.B.G., 226 Ga. App. 29, 485 S.E.2d 575 (1997) (decided under former O.C.G.A. § 15-11-81); In re S.N.N., 230 Ga. App. 109, 495 S.E.2d 602 (1998) (decided under former O.C.G.A. § 15-11-81); In re R.D.S.P., 230 Ga. App. 205, 495 S.E.2d 867 (1998) (decided under former O.C.G.A. § 15-11-81); In re R.M.M, 232 Ga. App. 553, 502 S.E.2d 480 (1998) (decided under former O.C.G.A. § 15-11-81); In re N.J.W., 233 Ga. App. 130, 503 S.E.2d 366 (1998) (decided under former O.C.G.A. § 15-11-81); In re F.G., 233 Ga. App. 153, 503 S.E.2d 387 (1998) (decided under former O.C.G.A. § 15-11-81); In re C.J.V., 236 Ga. App. 770, 513 S.E.2d 513 (1999) (decided under former O.C.G.A. § 15-11-81); In re J.C., 237 Ga. App. 533, 515 S.E.2d 847 (1999) (decided under former O.C.G.A. § 15-11-81); In re S.B., 237 Ga. App. 692, 515 S.E.2d 209 (1999) (decided under former O.C.G.A. § 15-11-81); In re A.N.M., 238 Ga. App. 21, 517 S.E.2d 548 (1999) (decided under former O.C.G.A. § 15-11-81); In re D.L.T., 238 Ga. App. 491, 519 S.E.2d 257 (1999) (decided under former O.C.G.A. § 15-11-81); In re J.K., 239 Ga. App. 142, 520 S.E.2d 19 (1999) (decided under former O.C.G.A. § 15-11-81); In re T.L.H., 240 Ga. App. 201, 523 S.E.2d 50 (1999) (decided under former O.C.G.A. § 15-11-81); In re R.H., 240 Ga. App. 551, 524 S.E.2d 257 (1999) (decided under former O.C.G.A. § 15-11-81); In the Interest of H.D.M., 241 Ga. App. 805, 527 S.E.2d 633 (2000) (decided under former O.C.G.A. § 15-11-94); In the Interest of L.H., 242 Ga. App. 659, 530 S.E.2d 753 (2000) (decided under former O.C.G.A. § 15-11-94); In the Interest of C.P., 242 Ga. App. 698, 531 S.E.2d 117 (2000) (decided under former O.C.G.A. § 15-11-94); In the Interest of M.C.J., 242 Ga. App. 852, 531 S.E.2d 404 (2000) (decided under former O.C.G.A. § 15-11-94); In the Interest of R.D., 243 Ga. App. 44, 532 S.E.2d 146 (2000) (decided under former O.C.G.A. § 15-11-94); In the Interest of M.C., 243 Ga. App. 707, 534 S.E.2d 442 (2000) (decided under former O.C.G.A. § 15-11-94); In the Interest of S.H.P., 243 Ga. App. 720, 534 S.E.2d 161 (2000) (decided under former O.C.G.A. § 15-11-94); In the Interest of L.S., 244 Ga. App. 626, 536 S.E.2d 533 (2000) (decided under former O.C.G.A. § 15-11-94); In the Interest of C.T., 247 Ga. App. 522, 544 S.E.2d 203 (2001) (decided under former O.C.G.A. § 15-11-94); In the Interest of D.S., 247 Ga. App. 569, 545 S.E.2d 1 (2001) (decided under former O.C.G.A. § 15-11-94); In the Interest of J.L.H., 247 Ga. App. 602, 544 S.E.2d 520 (2001) (decided under former O.C.G.A. § 15-11-94); In the Interest of J.J.W., 247 Ga. App. 804, 545 S.E.2d 21 (2001) (decided under former O.C.G.A. § 15-11-94); In the Interest of D.T.C., 248 Ga. App. 788, 548 S.E.2d 11 (2001) (decided under former O.C.G.A. § 15-11-94); In the Interest of H.L.W., 249 Ga. App.

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600, 547 S.E.2d 799 (2001) (decided under former O.C.G.A. § 15-11-94); In the Interest of M.D.B., 262 Ga. App. 796, 586 S.E.2d 700 (2003) (decided under former O.C.G.A. § 15-11-94).

Termination of father's parental rights was justified based on his failure to provide support and communicate with the children, even though the petition was filed less than one year since his last support payment. In re K.A.C., 229 Ga. App. 254, 493 S.E.2d 645 (1997) (decided under former O.C.G.A. § 15-11-81).

Termination of a father's parental rights was authorized when the father had sexually abused his children, was unable to maintain housing and employment outside of a sheltered environment, did not complete an ordered psychosexual evaluation or regular, random drug screening, interfered with his children's treatment for psychological disorders, and indicated no intention to change his current living arrangements. In the Interest of C.F., 251 Ga. App. 708, 555 S.E.2d 81 (2001) (decided under former O.C.G.A. § 15-11-94).

Evidence that the father made little effort, even when he was not incarcerated, to establish a meaningful relationship with the child, visited the child only twice, offered no financial support, and had not taken any steps to establish a stable home was sufficient to support termination of the father's parental rights. In the Interest of D.W., 265 Ga. App. 782, 595 S.E.2d 616 (2004) (decided under former O.C.G.A. § 15-11-94).

Evidence of the father's continuing failure to attend the children's medical appointments, his refusal to work on his case plan, his refusal to obtain recommended treatment for substance abuse, his failure to maintain stable housing, and conclusions drawn by a psychologist who evaluated the father, all supported the juvenile court's finding that the father's lack of proper parental care or control caused the deprivation which led to the termination of his parental rights as to his two children. In the Interest of J.P., 268 Ga. App. 32, 601 S.E.2d 409 (2004) (decided under former O.C.G.A. § 15-11-94).

Testimony that the children had bonded with their foster family, who had provided a nurturing, stable environment for the children and who desired to adopt the children, in conjunction with evidence of the father's lack of financial and proper medical support authorized the conclusion that termination of the father's parental rights was in the children's best interest. In the Interest of J.P., 268 Ga. App. 32, 601 S.E.2d 409 (2004) (decided under former O.C.G.A. § 15-11-94).

Termination of a father's parental rights was affirmed despite the father's allegation that his confrontation rights were violated when he had to cross-examine a mother over the telephone. In the Interest of M.H.W., 275 Ga. App. 586, 621 S.E.2d 779 (2005) (decided under former O.C.G.A. § 15-11-94).

Termination of a father's parental rights was justified by evidence that the father used and sold drugs, abused the children and their mother, was paranoid, delusional, schizoid, and narcissistic, and that the children were fearful of being reunited with the father. In the Interest of C.L.C., 277 Ga. App. 297, 626 S.E.2d 531 (2006) (decided under former O.C.G.A. § 15-11-94).

Evidence supported the termination of a father's parental rights when the father failed to complete his case plan, including the requirements that he undergo regular drug screens and maintain stable housing and employment, and had not maintained a meaningful parental bond with the child; a continued deprivation was likely to seriously harm the child, who had bonded with her foster family, and these factors supported a finding that termination was in the child's best interest. In the Interest of M.C., 287 Ga. App. 766, 653 S.E.2d 120 (2007) (decided under former O.C.G.A. § 15-11-94).

Termination of father's parental rights appropriate. — Evidence was sufficient to support the termination of a father's parental rights because: (1) the father had committed egregious acts toward the child and had physically, mentally, and emotionally neglected the child through a pattern of physical violence and threats towards the child's mother in the child's presence; (2) the father's imprison-

ment for that abuse had a demonstrable negative effect on the parent-child relationship; (3) the father had failed for a period of one year or longer to maintain a parental bond with the child; (4) the child's deprivation was likely to continue; (5) the father's parental misconduct was and would continue to be harmful to the child; and (6) it was in the child's best interest to terminate the father's parental rights. Davis v. Rathel, 273 Ga. App. 183, 614 S.E.2d 823 (2005) (decided under former O.C.G.A. § 15-11-94).

Trial court's decision to terminate a putative father's parental rights in his child, and a father's parental rights in his two children, pursuant to former O.C.G.A. § 15-11-94(b)(4)(A) and (B) (see now O.C.G.A. §§ 15-11-310 and 15-11-311), was supported by clear and convincing evidence, based on the conclusive finding that the children were deprived, that they would likely continue to be deprived, that such deprivation would likely cause serious physical, mental, emotional, or moral harm to the children, and that termination was in the children's best interest; the fathers had each been incarcerated, failed to complete the case plan goals, had a past history of non-support and/or domestic violence, demonstrated a lack of parental care and control, and the children had been doing well in foster care. In the Interest of T.A.M., 280 Ga. App. 494, 634 S.E.2d 456 (2006) (decided under former O.C.G.A. § 15-11-94).

Father's parental rights properly terminated. — Father's failure for three years to take the steps necessary to be reunited with a four-year-old daughter provided clear and convincing evidence that the deprivation was likely to continue, and the evidence was sufficient to establish that the termination of the father's parental rights was in the best interest of the child in light of the fact that at the time of the termination hearing, the child had spent three of the four years of life in foster care and the clear and convincing evidence showed the father's failure to establish a suitable home and a stable income, become drug free, or comply with reunification plan goals. In the Interest of J.A., 286 Ga. App. 704, 649 S.E.2d 882 (2007) (decided under former O.C.G.A. § 15-11-94).

Evidence sufficient for termination of mother's parental rights. — See In re D.S., 176 Ga. App. 482, 336 S.E.2d 358 (1985); In re B.G., 180 Ga. App. 502, 349 S.E.2d 509 (1986); In re A.T., 187 Ga. App. 299, 370 S.E.2d 48 (1988); In re S.M., 188 Ga. App. 495, 373 S.E.2d 280 (1988); In re A.O.S., 189 Ga. App. 860, 377 S.E.2d 870 (1989); In re K.P.E., 196 Ga. App. 759, 397 S.E.2d 39 (1990); In re B.L., 196 Ga. App. 807, 397 S.E.2d 156 (1990); In re D.R.C., 198 Ga. App. 348, 401 S.E.2d 754 (1991); In re G.T.T., 199 Ga. App. 706, 405 S.E.2d 750 (1991); In re J.M.C., 201 Ga. App. 173, 410 S.E.2d 368 (1991); In re J.R., 201 Ga. App. 199, 410 S.E.2d 458 (1991); In re S.L.B., 214 Ga. App. 802, 449 S.E.2d 334 (1994); In re J.D.D., 215 Ga. App. 68, 449 S.E.2d 655 (1994); In re J.M.W., 216 Ga. App. 166, 453 S.E.2d 764 (1995); In re W.J.G., 216 Ga. App. 168, 453 S.E.2d 768 (1995); In re A.Q.W., 217 Ga. App. 13, 456 S.E.2d 284 (1995); In re M.J.T., 217 Ga. App. 356, 457 S.E.2d 265 (1995); In re L.S.F., 217 Ga. App. 478, 458 S.E.2d 370 (1995); In re A.M.B., 219 Ga. App. 133, 464 S.E.2d 253 (1995); In re L.M., 219 Ga. App. 746, 466 S.E.2d 887 (1995); In re J.M.D., 221 Ga. App. 556, 472 S.E.2d 123 (1996); In re R.L.M., 221 Ga. App. 343, 471 S.E.2d 245 (1996); In re N.C., 228 Ga. App. 875, 492 S.E.2d 895 (1997); In re H.L.W., 229 Ga. App. 264, 493 S.E.2d 637 (1997); In re K.H., 229 Ga. App. 307, 494 S.E.2d 69 (1997); In re R.N., 224 Ga. App. 202, 480 S.E.2d 243 (1997); In re T.B.R., 224 Ga. App. 470, 480 S.E.2d 901 (1997); In re E.C., 225 Ga. App. 12, 482 S.E.2d 522 (1997); In re V.S., 230 Ga. App. 26, 495 S.E.2d 142 (1998); In re J.B.A., 230 Ga. App. 181, 495 S.E.2d 636 (1998); In re C.D.C., 230 Ga. App. 237, 495 S.E.2d 872 (1998); In re A.C., 230 Ga. App. 395, 496 S.E.2d 752 (1998); In re C.W.S., 231 Ga. App. 444, 498 S.E.2d 813 (1998); In re C.W.D., 232 Ga. App. 200, 501 S.E.2d 232 (1998); In re J.M.B., 231 Ga. App. 875, 501 S.E.2d 259 (1998); In re C.L.R., 232 Ga. App. 134, 501 S.E.2d 296 (1998); In re J.B.A., 232 Ga. App. 345, 501 S.E.2d 862 (1998); In re J.S., 232 Ga. App. 876, 502 S.E.2d 788 (1998); In re K.W., 233 Ga. App. 140, 503 S.E.2d 394 (1998); In re C.J.V., 236 Ga. App. 770, 513 S.E.2d 513

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(1999); In re I.G., 236 Ga. App. 642, 513 S.E.2d 53 (1998); In re M.N.H., 237 Ga. App. 471, 517 S.E.2d 344 (1999), overruled in part by State v. Herendeen, 279 Ga. 323, 613 S.E.2d 647 (2005); In re S.B., 237 Ga. App. 692, 515 S.E.2d 209 (1999); In re K.D.S., 237 Ga. App. 865, 517 S.E.2d 102 (1999); In re A.N.M., 238 Ga. App. 21, 517 S.E.2d 548 (1999); In re C.N.H., 238 Ga. App. 50, 517 S.E.2d 589 (1999); In re S.C.M.H., 238 Ga. App. 159, 517 S.E.2d 598 (1999); In re C.D.A., 238 Ga. App. 400, 519 S.E.2d 31 (1999); In re I.S., 238 Ga. App. 304, 520 S.E.2d 470 (1999); In re J.K., 239 Ga. App. 142, 520 S.E.2d 19 (1999); In re N.B., 239 Ga. App. 336, 521 S.E.2d 47 (1999); In re W.M, 239 Ga. App. 319, 521 S.E.2d 230 (1999); In re B.M.L., 239 Ga. App. 511, 521 S.E.2d 448 (1999); In re A.S.H., 239 Ga. App. 565, 521 S.E.2d 604 (1999); In re B.L.S., 239 Ga. App. 771, 521 S.E.2d 906 (1999); In re A.W., 240 Ga. App. 259, 523 S.E.2d 88 (1999); In re J.M.S.M., 240 Ga. App. 294, 523 S.E.2d 357 (1999); In re J.L.T., 241 Ga. App. 464, 524 S.E.2d 740 (1999); In re A.M.L., 242 Ga. App. 121, 527 S.E.2d 614 (2000); In the Interest of T.M.S., 242 Ga. App. 442, 529 S.E.2d 892 (2000); In the Interest of C.G.B., 242 Ga. App. 705, 531 S.E.2d 107 (2000); In the Interest of D.B., 242 Ga. App. 763, 531 S.E.2d 172 (2000); In the Interest of A.S.O., 243 Ga. App. 1, 530 S.E.2d 261 (2000), cert denied, 531 U.S. 1176, 121 S. Ct. 1150, 148 L. Ed. 2d 1012 (2001); In the Interest of L.S.D., 243 Ga. App. 626, 534 S.E.2d 109 (2000); In the Interest of A.D., 243 Ga. App. 727, 534 S.E.2d 457 (2000); In the Interest of V.M.T., 243 Ga. App. 732, 534 S.E.2d 452 (2000); In the Interest of D.H., 243 Ga. App. 778, 534 S.E.2d 466 (2000); In the Interest of S.T., 244 Ga. App. 119, 534 S.E.2d 869 (2000); In the Interest of M.D., 244 Ga. App. 156, 534 S.E.2d 889 (2000); In the Interest of J.M.M., 244 Ga. App. 171, 534 S.E.2d 892 (2000); In the Interest of A.L.B., 245 Ga. App. 776, 538 S.E.2d 557 (2000); In the Interest of C.R., 245 Ga. App. 697, 538 S.E.2d 776 (2000); In the Interest of F.C., 248 Ga. App. 675, 549 S.E.2d 125 (2001), overruled on other grounds, Miller v. State, 285 Ga. 285, 676 S.E.2d 173 (2009); In the Interest of A.M.W., 249 Ga. App. 22, 547 S.E.2d 401 (2001); In the Interest of J.M.D., 249 Ga. App. 457, 548 S.E.2d 454 (2001); In the Interest of T.F., 250 Ga. App. 96, 550 S.E.2d 473 (2001); In the Interest of D.N.B., 258 Ga. App. 481, 574 S.E.2d 574 (2002); In the Interest of A.M., 259 Ga. App. 537, 578 S.E.2d 226 (2003); In the Interest of D.B.P., 262 Ga. App. 1, 584 S.E.2d 256 (2003) (decided under former O.C.G.A. § 15-11-81).

Evidence justified termination of the mother's parental rights since the record was replete with circumstantial evidence which clearly and convincingly established that the child was emotionally harmed and would likely be so harmed in the future by the mother. In re E.P.N., 193 Ga. App. 742, 388 S.E.2d 903 (1989) (decided under former O.C.G.A. § 15-11-81).

Nature of and circumstances surrounding mother's convictions on 14 counts of enticing a child for indecent purposes, child molestation, aggravated sodomy, and incest per se established the requisite aggravating circumstances to justify termination of her parental rights when her convictions pertained to her two minor female children, when there was a recurring pattern of such conduct directed toward them from which it was reasonably inferred that the cause of the deprivation was likely to continue. In re S.H., 204 Ga. App. 135, 418 S.E.2d 454 (1992) (decided under former O.C.G.A. § 15-11-81).

Mother's likelihood of continued inability to parent warranted termination of her parental rights given her emotional problems, inability to hold a job and pattern of behavior in chasing dangerous companions. In re B.P., 207 Ga. App. 242, 427 S.E.2d 593 (1993) (decided under former O.C.G.A. § 15-11-81).

When the mother, without justifiable cause, failed significantly for a period of one year or longer prior to the filing of the termination petition to comply with the reunification plan and failed to provide for the support of the child as required by the plan, and since the court was authorized to find a mental inability on the part of the mother to care for the child, the court did not err in terminating the mother's rights

based on the paramount importance of the welfare of the child. In re A.S.M., 214 Ga. App. 668, 448 S.E.2d 703 (1994) (decided under former O.C.G.A. § 15-11-81).

Evidence was sufficient to permit the juvenile court to find clear and convincing evidence of child's deprivation and that the child's mother's misconduct or inability to care for the child's needs resulted in abuse or neglect sufficient to render her unfit to retain custody. In re C.N., 231 Ga. App. 639, 500 S.E.2d 400 (1998) (decided under former O.C.G.A. § 15-11-81).

Evidence supported termination of the biological mother's parental rights since there was no question that the children were deprived, the mother's inability to care for the children was the cause of their deprivation, the deprivation was likely to continue, the children were likely to be harmed by the continued deprivation, and the termination of the mother's parental rights would be in the best interests of the children. In re S.J.C., 234 Ga. App. 491, 507 S.E.2d 226 (1998) (decided under former O.C.G.A. § 15-11-81).

When children were initially taken from the mother's home because she held no job, could not provide stable living conditions, and failed to provide them with appropriate medical care and schooling, the court was entitled to infer from the fact that the mother had done nothing in six years to make changes in her life, that the deprivation was likely to continue, and termination of parental rights was justified. Parker v. Kennon, 235 Ga. App. 272, 509 S.E.2d 152 (1998) (decided under former O.C.G.A. § 15-11-81).

When the juvenile court recognized that there was positive evidence showing that a mother was attempting to address her crack cocaine addiction and that she interacted well in supervised visits with her child, but that other evidence showing mental retardation, severe deficits in adaptive functioning, and a long history of chronic abuse of crack cocaine, rendered her unable to parent the child independently, the finding that the child was deprived and that the lack of proper parental care and control was the cause of a deprivation which was likely to continue, causing serious physical, mental, emotional, or moral harm to the child was justified, and supported termination of the mother's parental rights in the child's best interests. In re L.H., 236 Ga. App. 132, 511 S.E.2d 253 (1999), overruled in part by State v. Herendeen, 279 Ga. 323, 613 S.E.2d 647 (2005) (decided under former O.C.G.A. § 15-11-81).

Juvenile court's order terminating a mother's parental rights was upheld as sufficient evidence was presented supporting the termination, including that: (1) the mother failed to substantially comply with the case plan requirements for a year or more; (2) it was likely that continued deprivation would be damaging to the well-being of the child; (3) the mother never provided proof of regular drug treatment or regular employment, she failed to maintain stable housing, and eviction warrants were taken out against her for non-payment of rent; (4) the mother failed to provide adequate proof that she received mental health treatment; and (5) the mother did not regularly visit the child or provide any financial support. In the Interest of A.M., 275 Ga. App. 630, 621 S.E.2d 567 (2005) (decided under former O.C.G.A. § 15-11-81).

Evidence was sufficient for termination of parental rights since the mother had multiple arrests for driving under the influence, was unable to establish a safe and stable living environment for her children, and was unable to maintain consistent employment. In the Interest of N.M.H., 252 Ga. App. 353, 556 S.E.2d 454 (2001) (decided under former O.C.G.A. § 15-11-94).

Juvenile court properly terminated mother's parental rights in the face of clear and convincing evidence that the mother could not properly care for the child and that termination was in the best interest of the child given the mother's history of drug abuse, infliction of "boo boo's", and locking of the child in a closed up automobile in the middle of July. In the Interest of T.W., 255 Ga. App. 674, 565 S.E.2d 925 (2002) (decided under former O.C.G.A. § 15-11-94).

Clear and convincing evidence supported the termination of appellant mother's parental rights as to her two youngest daughters because: (1) the mother did not appeal deprivation orders of the juvenile

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court; (2) the mother failed to comply with the reunification plan; (3) for nine years the mother failed to meet the reunification goals regarding her five older children; (4) the children's deprivation was likely to continue and have a detrimental effect on them; and (5) the foster parents, who were one of the daughter's paternal grandparents, were ready to adopt both girls. In the Interest of N.G., 257 Ga. App. 57, 570 S.E.2d 367 (2002) (decided under former O.C.G.A. § 15-11-94).

Finding existence of factors of parental inability and that lack of proper parental care or control caused the deprivation of the children was supported by clear and convincing evidence. The mother committed past egregious conduct toward her children of a physically or abusive nature and the mother had a mental deficiency of such a nature that she was unable to adequately provide for the children. In the Interest of D.B., 257 Ga. App. 497, 572 S.E.2d 9 (2002) (decided under former O.C.G.A. § 15-11-94).

Evidence authorized the juvenile court to terminate the mother's parental rights to her daughter since the mother had a history of criminal behavior and drug addiction, and demonstrated an inability or unwillingness to meet the case plan goals for reunification with the daughter. In the Interest of B.N.S., 259 Ga. App. 622, 578 S.E.2d 242 (2003) (decided under former O.C.G.A. § 15-11-94).

Mother's parental rights were properly terminated under former O.C.G.A. § 15-11-94(a) (see now O.C.G.A. §§ 15-11-310 and 15-11-320) since: (1) the mother failed to appeal the deprivation order, and could not challenge the finding that the child was deprived; (2) the mother had a serious mental illness that made her unfit to parent under former O.C.G.A. § 15-11-94(b)(4)(B)(i) (see now O.C.G.A. § 15-11-311), and the juvenile court could conclude that the child's deprivation was caused by lack of proper parental care or control; (3) the cause of the deprivation was likely to continue and was likely to cause serious harm to the child in light of the mother's failure to consistently treat her mental condition; and (4) the termination of the mother's parental rights was in the best interests of the child, considering the factors that supported the finding of parental inability, that the child had been in the same home since birth, and that the child's foster home wished to adopt the child. In the Interest of D.D.B., 263 Ga. App. 325, 587 S.E.2d 822 (2003) (decided under former O.C.G.A. § 15-11-94).

Termination of the mother's parental rights was upheld since the mother insisted that she would allow the child to visit a home in which violence was prevalent, failed to maintain a home for herself, failed to attend regular visitations or financially support the child, and failed to meet the goals of the many reunification plans presented to her; it was also determined that termination was in the best interest of the child. In the Interest of G.B., 263 Ga. App. 577, 588 S.E.2d 779 (2003) (decided under former O.C.G.A. § 15-11-94).

Trial court's termination of a mother's parental rights was supported by clear and convincing evidence pursuant to former O.C.G.A. § 15-11-94(a) (see now O.C.G.A. §§ 15-11-310 and 15-11-320) since she failed to comply with the conditions of a prior deprivation order, the trial court found that returning the child to the mother would likely cause harm to the child, and it was in the best interest of the child to terminate the mother's rights since: the mother had not bonded with the child; had a drug abuse problem that the mother had only stopped a few months prior to the termination hearing; the mother had not held down a job as required; the mother had not made the required child support payments; and the mother's visitation was very infrequent. In the Interest of A.S.R.H., 265 Ga. App. 30, 593 S.E.2d 59 (2004) (decided under former O.C.G.A. § 15-11-94).

Juvenile court involved in termination proceeding erred in finding that the mother was incapable of forming an emotional bond with her two minor children as the evidence in the record did not support such a conclusion, but the error in making that finding was harmless and the termination of the mother's parental

rights in her two children was still warranted since a number of other findings that she did not even challenge were supported by the record and warranted the termination of her parental rights. In the Interest of M.T.C., 267 Ga. App. 160, 598 S.E.2d 879 (2004) (decided under former O.C.G.A. § 15-11-94).

Viewed in a light most favorable to the juvenile court's ruling, evidence authorized the juvenile court to find that a mother continued to be a drug abuser; that her felony convictions, imprisonment, and resultant separation from her children had a demonstrably negative effect on the quality of her relationship with them; that the children's sibling died under circumstances evidencing parental neglect or abuse; that the mother failed to comply with the family reunification case plan; and that the cause of her children's deprivation, therefore, had not been remedied; consequently, there was no merit in her claim that termination of her parental rights was unwarranted. In the Interest of M.T.M., 267 Ga. App. 492, 600 S.E.2d 430 (2004) (decided under former O.C.G.A. § 15-11-94).

Juvenile court's decision to terminate the mother's parental rights was supported by sufficient evidence and, therefore, was not overturned on appeal; the evidence showed that the children were deprived, which was a finding that the mother did not contest, and that because the mother had failed to fulfill the conditions of the mother's reunification plan for two years, that the termination was in the best interest of the mother's two children. In the Interest of T.G., 269 Ga. App. 278, 603 S.E.2d 764 (2004) (decided under former O.C.G.A. § 15-11-94).

Sufficient evidence supported a decision to terminate a mother's parental rights because: (1) the children were deprived due to the mother's physical, mental, or emotional neglect; (2) the mother exposed the children to egregious living conditions, was unable to maintain a stable home for them, did not provide them proper nutrition and medical care, and subjected them to episodes of domestic violence and drug abuse by her boyfriend; (3) the mother failed to address the mental health needs of herself and the children; (4) after the children were placed in the custody of the Department of Family and Children Services, the mother failed to comply with the reunification case plans goals; (5) even though the mother completed an initial mental health evaluation, she failed to follow through with the recommended treatment; (6) there was expert testimony concerning the mother's emotional instability; and (7) there was also evidence of the mother's refusal to accept responsibility for her problems or behavior, the mother's placing her needs in front of those of the children, the mother's anger over the recommendation that the children sleep separately despite reports that one had molested the other, the mother's inability to effectively discipline the children or to learn discipline techniques, the mother's deference to her boyfriend's decisions for the children's medical care, even when not in the best interest of the children, and the mother's refusal to seek proper treatment for one child who was diagnosed with severe attention deficit hyperactivity disorder and oppositional defiant disorder. In the Interest of H.Y., 270 Ga. App. 497, 606 S.E.2d 679 (2004) (decided under former O.C.G.A. § 15-11-94).

Sufficient evidence supported a termination order because the mother, inter alia, failed to pay child support, failed to complete anger management and parenting classes, tested negative at only one of 21 drug screens, showed mental issues at the termination hearing itself, was diagnosed with bipolar and other mental disorders but failed to receive any treatment, failed to appear on time or at all for 11 scheduled visitations, and had six other visitations terminated early due to her behavior, including one involving an assault on a supervisor, and because, among other things, the father refused to sign the case plan, saw the children only once after the deprivation hearing, never paid any child support, was ordered to have no contact with another child as a result of a guilty plea for child sexual molestation, and was in jail for probation violation. Since neither of the trial court's two orders finding that both children were deprived were appealed, the parents were bound by their factual findings for purposes of the termination proceeding. In

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the Interest of M.K.H., 270 Ga. App. 564, 607 S.E.2d 202 (2004) (decided under former O.C.G.A. § 15-11-94).

Evidence was sufficient to support termination of a mother's parental rights as: (1) the child was previously found to be deprived; (2) the mother's lack of parental care caused the deprivation as she was diagnosed with amphetamine abuse and psychological problems, the child's siblings were permanently removed from her, and she pled guilty to cruelty to children, as to those children; (3) the deprivation's cause was likely to continue, given the mother's lack of stable employment and housing, her failure to pay child support, her non-attendance at visitation, pending criminal charges, and mental illness; (4) continued deprivation would seriously harm the child, given these facts and the fact that the child was removed from the mother at two days of age and was doing well in foster care; and (5) termination was in the child's best interest, given the facts previously found. In the Interest of A.M.A., 270 Ga. App. 769, 607 S.E.2d 916 (2004) (decided under former O.C.G.A. § 15-11-94).

There was no error in the termination of parental rights because, given the mother's inability to successfully complete a drug treatment program and her failure to fulfill the other provisions in her case plan, the misconduct or inability was likely to continue and unlikely to be remedied; under former O.C.G.A. § 15-11-94 (see now O.C.G.A. §§ 15-11-310, 15-11-311, and 15-11-320), the children were adjudicated deprived primarily due to the mother's drug problems and her neglect of them, she remained a high school dropout who was financially dependent upon her boyfriend, and she was unemployed. In the Interest of L.W., 276 Ga. App. 197, 622 S.E.2d 860 (2005) (decided under former O.C.G.A. § 15-11-94).

Termination order under former O.C.G.A. § 15-11-94 (see now O.C.G.A. §§ 15-11-310, 15-11-311, and 15-11-320) was supported by sufficient evidence, including the mother's failure to obtain stable, legal income or stable housing, although the mother had almost two years to meet these goals of the reunification case plan, the mother's acknowledgement that the mother was entirely dependent upon a boyfriend, the mother's failure to address marital instability and follow a psychologist's recommendations, and the mother's concession that the children were deprived due to medical neglect and other factors; based on this, and other evidence, the trial court found that the mother's lack of parental care was the cause of the deprivation. The same facts supported the finding that the children were deprived, that the deprivation was likely to continue, and the continued deprivation would likely have caused the children serious harm. In the Interest of K.A.S., 279 Ga. App. 643, 632 S.E.2d 433 (2006) (decided under former O.C.G.A. § 15-11-94).

Trial court properly held that termination of a mother's parental rights was in her 20-month-old child's best interest. The mother had been incarcerated for most of her child's life, missed several visits with the child before the incarceration, lacked stability, and had a lengthy history with the department of family and child services involving her older children; there was evidence that the mother suffered significantly from substance abuse and would have difficulty changing her behavior; and the child's foster parents wished to adopt the child. In the Interest of T.B., 288 Ga. App. 794, 655 S.E.2d 680 (2007) (decided under former O.C.G.A. § 15-11-94).

Termination of mother's parental rights appropriate. — Termination of a mother's parental rights was proper when the juvenile court determined by clear and convincing evidence that: (1) a mother's deprivation of her children would likely continue because she had quit her job, failed to secure other stable employment, moved several times because she could not afford housing, was arrested, and had jeopardized her probation by drinking again; and (2) termination was in the best interest of the children because their grandmother, who had custody of them, was providing a stable home environment and because contact with the mother was detrimental to the children. In the Inter-

est of K.N.C., 264 Ga. App. 475, 590 S.E.2d 792 (2003) (decided under former O.C.G.A. § 15-11-94).

Juvenile court properly terminated a mother's parental rights as the mother was bound by the deprivation, temporary custody, and non-reunification orders, which were not appealed; considering the mother's alcohol abuse, frequent incarceration, and failure to change substantially her lifestyle, the evidence supported the findings that the children were deprived due to lack of proper parental control or inability, that the deprivation was likely to continue, and that the continued deprivation would cause serious harm to the children. In the Interest of K.M.C., 273 Ga. App. 276, 614 S.E.2d 896 (2005) (decided under former O.C.G.A. § 15-11-94).

Evidence allowed a finding that a mother's children were deprived at the time of the termination order as the mother continued to reside in the same unsanitary house that the Department of Children and Families found unsuitable for the children, and she continued to have a relationship with the father; thus, the conditions upon which the trial court's deprivation findings were based still existed at the time of the termination hearing. In the Interest of K.L.M., 316 Ga. App. 246, 729 S.E.2d 452 (2012) (decided under former O.C.G.A. § 15-11-94).

Parental rights of mother properly terminated. — Trial court did not err in terminating the parental rights of the mother in the minor child as the mother conceded the child was deprived and that her conduct caused that deprivation; in addition, clear and convincing evidence showed the existence of the remaining factors necessary to terminate parental rights as the evidence showed that because of her past conduct the deprivation was likely to continue and that the continued deprivation would likely cause serious harm to the minor child. In the Interest of D.E., 269 Ga. App. 753, 605 S.E.2d 394 (2004) (decided under former O.C.G.A. § 15-11-94).

Mother's parental rights in her children were properly terminated, because: (1) she did not appeal a prior finding that the children were deprived; (2) the deprivation was caused by a lack of parental care due to the mother's imprisonment, which had a demonstrable negative effect on the parent-child relationship pursuant to former O.C.G.A. § 15-11-94(b)(4)(B)(iii) (see now O.C.G.A. § 15-1-311), excessive drug use, making her unable to provide for the children pursuant to former O.C.G.A. § 15-11-94(b)(4)(B)(ii) (see now O.C.G.A. § 15-11-311), and her failure to comply with a court-ordered plan to reunite her with the children pursuant to former O.C.G.A. § 15-11-94(b)(4)(C)(iii) (see now O.C.G.A. § 15-11-311); (3) clear and convincing evidence showed the deprivation was likely to continue, as the mother was highly likely to continue abusing drugs and did not achieve financial or residential stability; (4) the deprivation was likely to harm the children due to the mother's repeated failure to remain drug free and her failure to take steps to reunite with the children, causing a lack of a permanent home for the children and emotional instability; and (5) termination of parental rights was in the children's best interests, considering their mental, emotional, and moral condition and their need for a secure and stable home. In the Interest of A.B., 274 Ga. App. 230, 617 S.E.2d 189 (2005) (decided under former O.C.G.A. § 15-11-94).

Termination in best interests of children. — Mother's current living situation which could not accommodate all three children coupled with her longstanding inability or refusal to comply with reunification plans or bond with her children supported a finding that termination was in the best interests of the children. In the Interest of D.M.H., 242 Ga. App. 47, 528 S.E.2d 816 (2000) (decided under former O.C.G.A. § 15-11-94).

Although the mother appeared to have made some progress, sufficient evidence was presented to support the trial court's findings that the children's deprivation was likely to continue, that the continued deprivation would be likely to cause serious physical, mental, emotional, or moral harm to the children, and that termination of the mother's rights was in the best interests of the children. In the Interest of J.S.G., 242 Ga. App. 387, 529 S.E.2d 141 (2000) (decided under former O.C.G.A.

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§ 15-11-94). In the Interest of B.I.F., 264 Ga. App. 777, 592 S.E.2d 441 (2003) (decided under former O.C.G.A. § 15-11-94).

Termination of a parent's rights was in the best interests of the children since: (1) child one suffered multiple bone fractures by the age of four months, and the parent could not reasonably explain those injuries; (2) the children had been placed in foster care and had bonded with their foster parents; (3) child two cried uncontrollably when placed in the parent's care during scheduled visitation, but did not do so when with others; and (4) the parent was unemployed and had never paid any of the required child support. In the Interest of K.J.M., 282 Ga. App. 72, 637 S.E.2d 810 (2006) (decided under former O.C.G.A. § 15-11-94).

Termination of a parent's parental rights was in two children's best interests as: (1) the foster parents of the children had fully incorporated the children into their families, treated the children as their own, and desired to adopt the children; (2) each child's foster parents regularly communicated with the other child's foster parents and facilitated visits between the children; (3) in contrast, the biological parent failed to regularly visit the children and went for months without seeing the children or communicating with the foster parents; (4) the parent failed to give birthday presents to the children and missed a Christmas visit; and (5) despite the mandates of the parent's case plan, the parent failed to provide financial support, to obtain stable housing, or to obtain stable employment. In the Interest of C.M., 282 Ga. App. 502, 639 S.E.2d 323 (2006) (decided under former O.C.G.A. § 15-11-94).

Termination of parental rights was in the best interests of three children as the children were in need of supervision, treatment, and rehabilitation; the children were and would continue to suffer from deprivation; and a continued relationship with the parents would cause further harm. The record also supported the conclusion that the mother would not protect the children from the father in the future. In the Interest of A.B., 283 Ga. App. 131, 640 S.E.2d 702 (2006) (decided under former O.C.G.A. § 15-11-94).

Based on the evidence of a mother's prior drug problems, her failure to support or develop any bond or contact with the child, her willingness to reconcile with the father, and the foster parents' desire to adopt the child, the trial court did not manifestly abuse the court's discretion by finding that termination was in the child's best interest. In the Interest of Z. P., 314 Ga. App. 347, 724 S.E.2d 48 (2012) (decided under former O.C.G.A. § 15-11-94).

Placement with grandparent inappropriate following parental rights termination. — Based on a mother's housing and employment instability, failure to comply with a reunification plan, and lack of bonding with her child, the mother's parental rights were properly terminated under former O.C.G.A. § 15-11-94(a) (see now O.C.G.A. §§ 15-11-310 and 15-11-320); the trial court did not abuse the court's discretion when the court refused to award custody to the grandmother under former O.C.G.A. § 15-11-103(a)(1) based on the court's conclusion that such a placement was not in the child's best interests. In the Interest of J.W.M., 273 Ga. App. 20, 614 S.E.2d 163 (2005) (decided under former O.C.G.A. § 15-11-94).

Medical and psychological conditions of parent. — Clear and convincing evidence supported the order terminating a parent's rights to two minor children as the children's deprivation was due primarily to the parent's mental illness and failure to take prescribed medication to address that illness, and during more than 30 months the parent was given to work on a reunification case plan, the parent failed to comply with the requirements of the plan. In the Interest of O. B., 337 Ga. App. 401, 787 S.E.2d 344 (2016).

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Limited education is not basis for termination. — Termination of parental rights was reversed for both the mother and father because failure to complete school cannot be the primary reason to terminate parental rights, nor are delays

in meeting some goals of a court-ordered reunification plan alone sufficient. In the Interest of T.B., 242 Ga. App. 564, 529 S.E.2d 620, 529 S.W.2d 620 (2000) (decided under former O.C.G.A. § 15-11-94).

Limited education and poor conditions insufficient for termination. — When the mother has only a ninth-grade education, lives in a trailer without water or toilet facilities in the rear of her mother's yard, has no steady job, and has a husband in prison, parental rights may not be severed absent a showing of misconduct or physical or mental disability of the mother. Harper v. Department of Human Resources, 159 Ga. App. 758, 285 S.E.2d 220 (1981) (decided under former law).

Status as teenager insufficient for termination of parental rights. — While the evidence showed only that at the time of the hearing the mother was 16 years old, unemployed, without prospects for future employment, and without any stable living arrangements, this was insufficient as a matter of law to authorize the termination of her parental rights. Chancey v. Department of Human Resources, 156 Ga. App. 338, 274 S.E.2d 728 (1980) (decided under former law).

Imprisonment insufficient for termination. — Even though mother was incarcerated "on arrest for possession of cocaine and intent to solicit prostitution," denial of termination of parental rights was authorized based on the lack of evidence that the child was deprived due to parental unfitness or that the deprivation was likely to continue. In re R.A., 226 Ga. App. 18, 486 S.E.2d 363 (1997) (decided under former O.C.G.A. § 15-11-81).

Order terminating a mother's parental rights was reversed, despite the fact that the juvenile court correctly found clear and convincing evidence that the child was deprived due to the mother's incarceration, as no clear and convincing evidence was presented against the mother that the cause of the deprivation was likely to continue and would not be remedied, the child was only 20 months old at the time of the termination hearing, and no other evidence was presented against the mother as to the issue of unfitness. In the Interest of J.A.W., 281 Ga. App. 545, 636 S.E.2d 725 (2006) (decided under former O.C.G.A. § 15-11-94).

Although the father had not communicated with the child or provided support for a period of time given the fact that the father had been incarcerated, the court did not conclude that the father had abandoned the child within the meaning of the law nor did the court made specific factual findings or conclusions of law concerning the issue of justifiable cause; thus, the court did not address any of the criteria for termination pursuant to former O.C.G.A. § 15-11-94 (see now O.C.G.A. §§ 15-11-310, 15-11-311, and 15-11-320). Ray v. Hann, 323 Ga. App. 45, 746 S.E.2d 600 (2013) (decided under former O.C.G.A. § 15-11-94).

Petition for adoption inappropriate when both parties equally able to meet child's needs. — Because the evidence showed that the child's needs could be equally met in either the mother's or the grandparent's home, the trial court abused the court's discretion in terminating the mother's parental rights under former O.C.G.A. § 15-11-94 (see now O.C.G.A. §§ 15-11-310, 15-11-311, and 15-11-320) and O.C.G.A. 19-8-10 and granting the grandmother's and the step-grandfather's petition for adoption under O.C.G.A. § 19-8-2. McCollum v. Jones, 274 Ga. App. 815, 619 S.E.2d 313 (2005) (decided under former O.C.G.A. § 15-11-94).

Parent recovering from drug abuse. — Department of children and family services failed to prove by clear and convincing evidence that a mother was unfit and that her children's deprivation would continue unless her parental rights were terminated since: (1) the mother completed an eight-week intensive drug treatment program; (2) subsequent drug screening tests introduced into evidence revealed that she was drug-free; and (3) though not required to do so by the reunification plan, the mother joined Narcotics Anonymous and attended meetings twice a week. In the Interest of L.J.L., 247 Ga. App. 477, 543 S.E.2d 818 (2001) (decided under former O.C.G.A. § 15-11-94).

Juvenile court erred in determining that clear and convincing evidence existed to support the termination of a mother's

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parental rights because there was insufficient evidence supporting the finding that the children's deprivation was likely to continue as the mother had undergone treatment and was told not to have contact with the children; there was no evidence admitted that a failure to maintain a bond existed or to support the finding of excessive or chronic unrehabilitated drug abuse. In the Interest of C. G., 324 Ga. App. 110, 749 S.E.2d 411 (2013) (decided under former O.C.G.A. § 15-11-94).

Evidence of parent's psychological problems insufficient. — Trial court erred in finding child deprived and in ordering continued custody of the child in the Department of Family and Children Services because there was no competent evidence supporting the finding that the mother suffered from a mental impairment; the social worker's testimony that the mother's obstetrician thought the mother had cuts on her wrist that might have been self-inflicted, and that the obstetrician was concerned because the mother was crying and depressed after her child was taken away, there were no psychological evaluations or reports from treating physicians in the record, or medical reports indicating any mental impairment or how said mental impairment might limit the mother's parental abilities. In the Interest of K.S., 271 Ga. App. 891, 611 S.E.2d 150 (2005) (decided under former O.C.G.A. § 15-11-94).

Isolated incident of leaving child alone insufficient. — When the only evidence of actual neglect by the natural mother is an isolated incident where she left the child alone for approximately 45 minutes, while such behavior is reprehensible, this incident is not so compelling as to clearly convince a rational trier of fact that the child's past deprivation will continue so as to authorize the total termination of parental rights. In re S.M., 169 Ga. App. 364, 312 S.E.2d 829 (1983) (decided under former law).

No intercession simply because child's lot substandard. — Seldom does the state wield so awesome a power as when the state permanently cuts the family ties between parent and child. While the state may not sit blindly idle as a child suffers unconscionable hardship, neither may the state blithely intercede simply because the child's lot is substandard. Shover v. Department of Human Resources, 155 Ga. App. 38, 270 S.E.2d 462 (1980) (decided under former law).

Poverty alone insufficient grounds for termination. — It was error to terminate a mother's parental rights as it was not shown that the children's deprivation was likely to continue; the mother met virtually all of her case plan goals except for paying child support and her shortcomings with regard to her case plan stemmed largely from her poverty, which alone was not a basis for termination. In the Interest of C.T., 286 Ga. App. 186, 648 S.E.2d 708 (2007) (decided under former O.C.G.A. § 15-11-94).

Parent's medical condition insufficient for termination. — Termination of parental rights was not justified since there was less than "clear and convincing" evidence that parental unfitness, which included severe abuse by the mother, would not be remedied, and there was no competent evidence showing that the father's physical disability would likely impair his ability to care for the child. In re K.E.B., 190 Ga. App. 121, 378 S.E.2d 171 (1989) (decided under former O.C.G.A. § 15-11-94).

Cohabiting with divorced, drinking spouse insufficient. — Mother's resumption of a cohabitation arrangement with her former spouse who had developed a drinking problem did not support termination of her parental rights as an unfit parent since the evidence indicated the mother was, inter alia, gainfully employed. In re A.D., 208 Ga. App. 438, 430 S.E.2d 809 (1993) (decided under former O.C.G.A. § 15-11-94).

Child wanted to live with parent. — Although a parent's past was far from exemplary, the evidence presented did not clearly and convincingly establish that the child's deprivation would continue and not likely be remedied to support termination of parental rights. The child informed the court that the child wanted to live with the parent, and since the parent's release from prison, the parent's drug screens

were negative. In the Interest of K.D.E., 288 Ga. App. 520, 654 S.E.2d 651 (2007) (decided under former O.C.G.A. § 15-11-94).

No intercession because mother deemed failure by society. — Mother's failure fully to live up to societal norms for productivity, morality, cleanliness, and responsibility does not summarily rob her of the right to raise her own offspring, nor does it end the child's right to be raised by the child's own mother. R.C.N. v. State, 141 Ga. App. 490, 233 S.E.2d 866 (1977) (decided under former law); Patty v. Department of Human Resources, 154 Ga. App. 455, 269 S.E.2d 30 (1980) (decided under former law); Shover v. Department of Human Resources, 155 Ga. App. 38, 270 S.E.2d 462 (1980) (decided under former law).

Termination unauthorized absent finding of child suffering. — Even though "the child is a deprived child and that the conditions and causes of deprivation are likely to continue," absent a finding "that by reason thereof the child is suffering or will probably suffer serious physical, mental, moral, or emotional harm," termination of parental rights is not authorized. Patty v. Department of Human Resources, 151 Ga. App. 555, 260 S.E.2d 551 (1979) (decided under former law).

No evidence of present parental misconduct or inability. — When the mother had been sober and drug free for two years, took all available rehabilitation and parenting classes during a recent incarceration, was presently employed, was current on child support, and took advantage of all opportunities to communicate with her child, the juvenile court properly found no evidence of present parental misconduct or inability. In re J.E.E., 235 Ga. App. 247, 509 S.E.2d 147 (1998) (decided under former O.C.G.A. § 15-11-81).

Based on the brief and insubstantial testimony given by the parole officer and the caseworker, there was no clear and convincing evidence of parental misconduct or inability. Absent such evidence, the juvenile court erred in taking the drastic action of terminating the mother's parental rights. In the Interest of A.G.I., 246 Ga. App. 85, 539 S.E.2d 584 (2000) (decided under former O.C.G.A. § 15-11-94).

No clear and convincing evidence justifying termination. — Termination of parental rights was erroneous in the absence of clear and convincing evidence that the cause of the child's deprivation with respect to the mother was likely to continue or would not be remedied, or that the child was likely to suffer serious physical, mental, moral, or emotional harm caused by the father. In re K.J., 226 Ga. App. 303, 486 S.E.2d 899 (1997) (decided under former O.C.G.A. § 15-11-94).

Because the state failed to show by clear and convincing evidence that a child's deprivation was likely to continue or that the child would be harmed by a continuing relationship with the father, as the evidence showed that the father: (1) substantially complied with the case plan; (2) was cooperative with the case workers; and (3) was diligent in establishing and maintaining a strong bond with the child, the order terminating the father's parental rights was reversed. In the Interest of S.M.W., 287 Ga. App. 288, 651 S.E.2d 211 (2007) (decided under former O.C.G.A. § 15-11-94).

No clear and convincing evidence of parental misconduct. — When the primary allegation of parental misconduct was failure to comply with a case reunification plan, and when the evidence was undisputed that the parent had complied with four of the plan's five goals, and when the only unmet goal was completing high school, and when the parent quit high school to marry and get a job to provide a home for the child, there was by no means clear and convincing evidence of parental misconduct by the mother. In the Interest of T.B., 242 Ga. App. 564, 529 S.E.2d 620, 529 S.W.2d 620 (2000) (decided under former O.C.G.A. § 15-11-94).

In a termination of parental rights matter, the record failed to present clear and convincing evidence that the children's deprivation was likely to continue as both parents made significant progress on their case plans, and it was clear that the children were emotionally attached to the parents; the record showed that the father completed everything required in the case

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plan except with regard to child support, and the mother "was wonderful with the children" during supervised visits. In the Interest of A.F., 283 Ga. App. 509, 642 S.E.2d 148 (2007) (decided under former O.C.G.A. § 15-11-94).

Clear and convincing evidence of a parent's misconduct or inability sufficient to justify a termination of that parent's parental rights under former O.C.G.A. § 15-11-94 (see now O.C.G.A. §§ 15-11-310, 15-11-311, and 15-11-320) was lacking; no evidence was presented that any continued deprivation of the child would cause the child physical, mental, emotional, or moral harm, and termination of the parent's parental rights was not shown to be in the child's best interest; thus, the trial court properly denied a petition to terminate parental rights. In the Interest of K.C.R., 283 Ga. App. 593, 642 S.E.2d 214 (2007) (decided under former O.C.G.A. § 15-11-94).

Insufficient evidence for termination of parental rights. — As insufficient evidence was presented of a parent's parental misconduct or inability, a reunification plan was never implemented, and the parent made efforts to establish a stable home, despite shortcomings in the efforts to pay child support and in pursuing visitation, clear and convincing evidence did not support terminating the parent's parental rights; moreover, sufficient evidence was presented to negate the juvenile court's finding that the parent was unfit. In the Interest of T.E.T., 282 Ga. App. 269, 638 S.E.2d 412 (2006) (decided under former O.C.G.A. § 15-11-94).

Insufficient findings to support termination. — Although the trial court was allowed to consider a father's criminal history in determining whether his parental rights should be terminated and the appellate court found that any rational trier of fact could have found by clear and convincing evidence that the cause of a child's deprivation was likely to continue, the appellate court could not affirm the trial court's judgment that the father's failure to provide care for the child was likely to harm the child because the trial court failed to support the court's judgment with explicit factual findings. In the Interest of R.S., 255 Ga. App. 756, 566 S.E.2d 461 (2002) (decided under former O.C.G.A. § 15-11-94).

Insufficient evidence of deprivation. — Evidence that the cause of two children's deprivation was likely to continue for purposes of terminating the mother's parental rights was problematic since: (1) although the mother had not had contact with the children, she was ordered not to have contact; (2) the children were not deprived while in the mother's care prior to her marriage to her husband, who sexually abused the daughter, and the husband was no longer in contact with the mother or the children; (3) the mother failed to pay child support breaching a legal duty; (4) the mother lived with her fiancé which raised questions, but no home study was performed; and (5) the daughter was troubled, but her condition was not caused by the mother. In the Interest of J.H., 267 Ga. App. 541, 600 S.E.2d 650 (2004) (decided under former O.C.G.A. § 15-11-94).

Juvenile court erred in terminating a mother's parental rights with respect to the mother's child because, concerning whether continued deprivation would cause or would be likely to cause serious physical, mental, emotional, or moral harm to the child, the evidence was insufficient. In the Interest of J. J. S., 321 Ga. App. 86, 741 S.E.2d 207 (2013) (decided under former O.C.G.A. § 15-11-94).

Termination of the mother's parental rights was reversed because the record did not support a finding that the deprivation was likely to continue since the mother had secured employment and housing, had attended a parenting class, completed a psychological evaluation, consistently visited the children, and started making child support payments. In the Interest of C. J. V., 323 Ga. App. 283, 746 S.E.2d 783 (2013) (decided under former O.C.G.A. § 15-11-94).

Insufficient evidence that continued deprivation likely to cause harm. — Juvenile court's finding that the deprivation of a mother's children was likely to continue did not state any specific facts that led to the conclusion that there was a

likelihood of serious harm from continued deprivation; thus, the matter was remanded for appropriate findings and conclusions. In the Interest of K.L.M., 316 Ga. App. 246, 729 S.E.2d 452 (2012) (decided under former O.C.G.A. § 15-11-94).

Detrimental and egregious parental conduct not demonstrated. — Although evidence showed poverty and instability in the mother's living arrangements, the evidence did not demonstrate the profoundly detrimental and egregious parental conduct which led to the termination of rights in previous cases. R.C.N. v. State, 141 Ga. App. 490, 233 S.E.2d 866 (1977) (decided under former law).

While the lifestyle and income-producing ability of the mother who lived in a trailer with a friend's family and did babysitting and housework were not exemplary, they could not be said to be so profoundly detrimental or egregious as to warrant the permanent termination of her parental rights to her child. Shover v. Department of Human Resources, 155 Ga. App. 38, 270 S.E.2d 462 (1980) (decided under former law).

Deprivation unlikely to cause serious harm to child. — Trial court erred in entering judgment terminating the mother's parental rights to her child even though there was evidence concerning the mother's past behavior, the mother's inability to provide a home or support for the child, and the mother's failure to comply with significant portions of the mother's case plan for reunification showing by clear and convincing evidence that the causes of the child's deprivation were likely to continue; insufficient evidence was presented to show that continued deprivation was likely to cause serious physical, mental, emotional, or moral harm to the child, thus, termination of the mother's parental rights was improper. In the Interest of J.H., 258 Ga. App. 211, 573 S.E.2d 481 (2002) (decided under former O.C.G.A. § 15-11-94).

Evidence insufficient to authorize termination of mother's parental rights. — See In the Interest of A.W., 249 Ga. App. 278, 547 S.E.2d 797 (2001) (decided under former O.C.G.A. § 15-11-94); In the Interest of D.F., 251 Ga. App. 859, 555 S.E.2d 225 (2001) (decided under former O.C.G.A. § 15-11-94); In the Interest of J.M., 251 Ga. App. 380, 554 S.E.2d 533 (2001) (decided under former O.C.G.A. § 15-11-94).

Hearsay. — Based upon the juvenile court's express reliance upon hearsay in an exhibit to support the court's conclusion that a parent suffered from schizophrenia to such a degree that the parent was unable to provide for the needs of the parent's child, termination of parental rights was inappropriate. In the Interest of C. A., 316 Ga. App. 185, 728 S.E.2d 816 (2012) (decided under former O.C.G.A. § 15-11-94).

Termination of mother's parental rights inappropriate. — Mother's parental rights could not be terminated in the absence of clear and convincing evidence that the mother's mental disorder, which was identified as the cause of her child's deprivation, was likely to continue or not be remedied. In re C.G., 235 Ga. App. 23, 508 S.E.2d 246 (1998) (decided under former O.C.G.A. § 15-11-81).

Decision terminating mother's parental rights was reversed after it was shown that her circumstances had changed significantly because she was no longer in jail, was working full-time, had undergone drug counseling, had established a home, and her daughter had a strong emotional attachment to her. In re K.M., 240 Ga. App. 677, 523 S.E.2d 640 (1999) (decided under former O.C.G.A. § 15-11-81).

When the department of family and children services failed to present clear and convincing evidence that mother's children were likely to suffer serious physical, mental, emotional, or moral harm if parental rights were not terminated, evidence was insufficient to warrant termination of mother's parental rights. Trial judge's decision could not rest on dry recitation that certain legal requirements were met to satisfy requirements of the law. In the Interest of J.M., 251 Ga. App. 380, 554 S.E.2d 533 (2001) (decided under former O.C.G.A. § 15-11-94).

Evidence before the trial court did not establish by clear and convincing evidence that the mother's neglect of her child was likely to continue and termination was inappropriate since: the mother had been

Insufficient Evidence for Termination (Cont'd)

unaware of the child's location despite her best efforts to locate the child, a previous finding of deprivation did not mean that there would be continued deprivation, there was no case plan for reunification, and the child was living with grandparents and would not suffer without permanent placement. In the Interest of B.F., 257 Ga. App. 76, 570 S.E.2d 385 (2002) (decided under former O.C.G.A. § 15-11-94).

Although a mother had difficulty establishing a stable home environment and she had poor judgment in selecting a partner, there was insufficient evidence that continued exposure to the mother or continued deprivation of the child would cause the child serious physical, mental, or moral harm, and a decision to terminate the mother's parental rights was not supported pursuant to former O.C.G.A. § 15-11-94(b)(4)(A)(iv) (see now O.C.G.A. § 15-11-310); at the time of the termination hearing, the mother was in a good marriage, lived in a home with her in-laws, had obtained a job, and seemed to understand the importance of a stable life. In the Interest of J.T.W., 270 Ga. App. 26, 606 S.E.2d 59 (2004) (decided under former O.C.G.A. § 15-11-94).

Termination of a mother's parental rights was improper because, although the evidence showed that the children were deprived and that the mother's lack of proper parental care caused the deprivation, in that the mother had been diagnosed with antisocial personality disorder and mild mental retardation but neglected to take the medication prescribed to treat her condition, resulting in the mother's inability to maintain employment and a stable, safe home environment, there was insufficient evidence to support the juvenile court's conclusion that the continued deprivation was likely to cause serious harm to the children. In the Interest of J.S.B., 277 Ga. App. 660, 627 S.E.2d 402 (2006) (decided under former O.C.G.A. § 15-11-94).

Mother was entitled to reversal of the order terminating the mother's parental rights because the mother's circumstances at the time of the termination hearing were significantly different from those which caused the child to be removed from the mother's custody; among other things, the mother established stable housing near a child care center that could provide specialized care for the child, had obtained a driver's license, was a college student, had exercised unsupervised visitation, had attended most of the child's medical appointments, had completed anger and violence counseling, had completed parenting classes, and knew how to care for the medically fragile child. In the Interest of M. T. F., 318 Ga. App. 135, 733 S.E.2d 432 (2012) (decided under former O.C.G.A. § 15-11-94).

Evidence was insufficient to support the juvenile court's order terminating the mother's parental rights to the child because it was undisputed that the mother had completed most of the mother's case plan goals by the time the termination petition was filed. The mother had submitted to two psychological evaluations, attended a parenting class, and worked steadily toward achieving stable housing, and the specific requirement that she participate with the recommendations of a developmental disability organization was not added to her case plan until two months before the petition was filed and the mother was participating, to some extent, with the organization. In the Interest of D. J., 320 Ga. App. 247, 739 S.E.2d 730 (2013) (decided under former O.C.G.A. § 15-11-94).

Termination of the mother's parental rights was improper as a failure to terminate the mother's rights would not cause or was not likely to cause the children serious physical, mental, emotional, or moral harm because the children would not be harmed seriously were the children to remain in foster care, by virtue of either their relationship with their mother or the impermanency of that situation; the mother had positive visits with the children; the children were happy to see their mother; the children were not performing poorly in school or displaying significant age-inappropriate behavioral problems; and the lack of specific evidence regarding potential harm mandated reversal as the mother and children were bonded and

emotionally close. In the Interest of E. M. D., 339 Ga. App. 189, 793 S.E.2d 489 (2016).

Termination of the mother's parental rights was improper because, although the evidence supported the finding that the children's dependency was likely to continue and would not likely be remedied, the state did not sufficiently establish that the children were likely to suffer harm under the status quo as there was no evidence that their continued relationship with their mother was harmful; and the juvenile court's generalized findings that the children would experience doubt, uncertainty and hesitancy in life, and that foster care would not provide the kind of stability they needed, and would put them at risk of delinquency, other anti-social behavior, and "foster care drift" did not show how each child would be harmed by the status quo. In the Interest of A. S., 339 Ga. App. 875, 794 S.E.2d 672 (2016).

Evidence insufficient for termination of father's parental rights. — See In the Interest of V.S., 249 Ga. App. 502, 548 S.E.2d 490 (2001) (decided under former O.C.G.A. § 15-11-94).

Father was entitled to have the order terminating the father's parental rights reversed because the testimony indicated that the father had maintained a bond with the children, and the father was making progress on the father's case plan, completing parental and anger management classes, addressing the father's substance abuse issue, maintaining suitable employment for a long period of time, and maintaining suitable housing. In the Interest of C. S., 319 Ga. App. 138, 735 S.E.2d 140 (2012) (decided under former O.C.G.A. § 15-11-94).

Termination of father's parental rights inappropriate. — Termination of the parental rights regarding two children with two separate fathers was inappropriate because it was undisputed that neither father ever abused either child. In re D.C.N.K., 232 Ga. App. 85, 501 S.E.2d 268 (1998) (decided under former O.C.G.A. § 15-11-81).

Juvenile court erred in terminating father's parental rights in the daughter when the juvenile court failed to make the required legal conclusion regarding whether the daughter's continued deprivation would cause serious physical, mental, emotional, or moral harm to her, as well as supporting findings of fact; thus, a remand was necessary for an appropriate ruling. In the Interest of M.D.F., 263 Ga. App. 50, 587 S.E.2d 199 (2003) (decided under former O.C.G.A. § 15-11-94).

Reliance on citizen's review panel insufficient. — Record showing heavy reliance on the recommendations of a citizen's review panel and on the mother's past unfitness did not present sufficient competent evidence for termination of her parental rights. In re M.L.P., 231 Ga. App. 223, 498 S.E.2d 786 (1998) (decided under former O.C.G.A. § 15-11-81).

Parent with mental retardation. — Insufficient evidence supported the termination of a parent's rights because the record showed that while the parent had mental retardation, the parent functioned well despite the mental disability and had the skills necessary to provide for and raise a family, including two children, in Arkansas; thus, there was a lack of evidence that the deprivation was to continue. In the Interest of O. B., 337 Ga. App. 401, 787 S.E.2d 344 (2016).

Deprivation

Parent's lack of parental care or control caused deprivation. — Affirmance of the juvenile court's order terminating a parent's parental rights was ordered as the parent failed to comply with the case plan outlined, and the parent's failure to obtain stable housing, continued financial instability, and prolonged unwillingness to address mental health issues showed that the parent's lack of parental care or control caused the children's deprivation; hence, the parent's motion for a new trial was properly denied. In the Interest of J.M.N., 285 Ga. App. 203, 645 S.E.2d 685 (2007) (decided under former O.C.G.A. § 15-11-94).

Court upheld an order terminating a parent's parental rights which was supported by sufficient evidence that the children at issue lacked proper parental care and that the cause of the deprivation was likely to continue, based on that parent's admitted drug use, failure to pay child support, failure to establish a bond with

Deprivation (Cont'd)

the children, and consent to a non-reunification plan, satisfying former O.C.G.A. § 15-11-94(b)(4)(A)(ii) and (iii) (see now O.C.G.A. § 15-11-310). In the Interest of H.C., 285 Ga. App. 631, 647 S.E.2d 333 (2007) (decided under former O.C.G.A. § 15-11-94).

Deprivation continuing from parental drug abuse. — Juvenile court's findings supported the conclusion that the children were dependent at the time of the termination of parental rights hearing due to a lack of proper parental care and control because the parent's continuing substance abuse was evidenced by the parent's prior positive drug screen and several refused screenings (which the Division of Family and Children Services treated as positive); and because the parent was unable to pay even a symbolic amount of child support or to provide stable housing. In the Interest of A. S., 339 Ga. App. 875, 794 S.E.2d 672 (2016).

Evidence of deprivation sufficient. — Evidence was sufficient to show both deprivation and that the deprivation resulted from the mother's conduct. In the Interest of S.B., 242 Ga. App. 184, 528 S.E.2d 278 (2000) (decided under former O.C.G.A. § 15-11-94).

Evidence supported the finding that the children's deprivation was caused by the mother because the mother abandoned the children and left them with her mother and her mother's husband, who had been charged with sex crimes, she failed to maintain meaningful or consistent contact with either the Department of Family and Children Services or the children for over a year and made no effort to support the children financially, the mother made no effort to comply with the reunification plan, and she surrendered her parental rights in the children. In the Interest of M.E.M., 272 Ga. App. 451, 612 S.E.2d 612 (2005) (decided under former O.C.G.A. § 15-11-94).

Evidence supported the termination of a mother's parental rights as the mother was bound by a juvenile court's order finding that the children were deprived as a result of neglect, including inadequate housing and the mother's substance abuse; the mother did not appeal the juvenile court's finding. In the Interest of C.T.M., 273 Ga. App. 168, 614 S.E.2d 812 (2005) (decided under former O.C.G.A. § 15-11-94).

Termination of a parent's rights was proper as there was sufficient evidence that the children would be deprived if returned to their parent's custody given the parent's lack of employment, the parent's inability to financially support the children, their failure to receive further anger management counseling, and failure to complete domestic violence counseling; also, child one's unexplained injuries were evidence of deprivation. In the Interest of K.J.M., 282 Ga. App. 72, 637 S.E.2d 810 (2006) (decided under former O.C.G.A. § 15-11-94).

Evidence showed that two children were deprived for purposes of the termination of a parent's rights as: (1) the children had been found to be deprived and were not in the parent's custody, and the parent failed to maintain a parental bond as the parent did not visit the children once in nine months, failed to give the children birthday presents, and did not contact the foster parents; (2) the parent failed to complete the case plan, although the parent completed parenting classes and a substance abuse evaluation, the parent moved at least nine times in two years and did not maintain regular contact with a child services agency; and (3) the parent paid $60 of $900 owed in child support and failed to support the children. In the Interest of C.M., 282 Ga. App. 502, 639 S.E.2d 323 (2006) (decided under former O.C.G.A. § 15-11-94).

Reunification

Reunification plan not required. — Department of Family and Children Services was not obligated in every case to create a plan for reunification, nor was the juvenile court required to reunite a child with the child's parent in order to obtain current evidence of deprivation or neglect; when the parental rights were at issue as to a parent who did not have custody of the child, the court must determine whether the child was without proper parental care and control by considering the criteria established by former

O.C.G.A. § 15-11-94(b)(4)(C) (see now O.C.G.A. § 15-11-311). In the Interest of T. B., 267 Ga. App. 484, 600 S.E.2d 432 (2004) (decided under former O.C.G.A. § 15-11-94).

Because the parental rights to a mother's other four children had previously been terminated around the time the mother's infant child was born, the juvenile court did not err in approving a non-reunification plan involving that infant child pursuant to former O.C.G.A. § 15-11-58(a)(4)(C) (see now O.C.G.A. §§ 15-11-310 and 15-11-320); further, a presumption of non-reunification arose based on the mother's medically verified mental deficiency. In the Interest of J.P., 280 Ga. App. 100, 633 S.E.2d 442 (2006) (decided under former O.C.G.A. § 15-11-94).

Reunification not appropriate. — Juvenile court did not err in terminating the reunification services and approving the non-reunification plan because clear and convincing evidence supported the juvenile court's conclusion that the child was deprived based on the mother's long-term substance abuse and that such deprivation was likely to continue and cause harm to the child. In the Interest of J. T., 322 Ga. App. 4, 743 S.E.2d 571 (2013) (decided under former O.C.G.A. § 15-11-94).

15-11-321. Custody of child following termination proceedings or surrender of parental rights.

(a) When a court enters an order terminating the parental rights of a parent or accepts a parent's voluntary surrender of parental rights, or a petition for termination of parental rights is withdrawn because a parent has executed an act of surrender in favor of the department, a placement may be made only if the court finds that such placement is in the best interests of the child and in accordance with such child's court approved permanency plan created pursuant to Code Sections 15-11-231 and 15-11-232. In determining which placement is in a child's best interests, the court shall enter findings of fact reflecting its consideration of the following:

(1) Such child's need for a placement that offers the greatest degree of legal permanence and security;

(2) The least disruptive placement for such child;

(3) Such child's sense of attachment and need for continuity of relationships;

(4) The value of biological and familial connections; and

(5) Any other factors the court deems relevant to its determination.

(b) A guardian or legal custodian shall submit to the jurisdiction of the court for purposes of placement.

(c) A placement effected under the provisions of this Code section shall be conditioned upon the person who is given custody or who is granted an adoption of a child whose parents have had their parental rights terminated or surrendered agreeing to abide by the terms and conditions of the order of the court.

(d) In addition to its rights as a legal custodian, the department has the authority to consent to the adoption of a child whose parents have had their parental rights terminated or surrendered.

History. — Code 1981, § 15-11-321, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242; Ga. L. 2016, p. 134, § 1-4/HB 887; Ga. L. 2019, p. 456, § 4/SB 167.

The 2019 amendment, effective July 1, 2019, deleted the former second sentence of subsection (a), which read: "In determining which placement is in a child's best interests, the court shall initially attempt to place the child with an adult who is a relative or fictive kin, if such individual is willing and found by the court to be qualified to receive and care for such child."

Cross references. — Time limitations upon orders of disposition — commitment to Division of Youth Services, Uniform Rules for the Juvenile Courts of Georgia, Rule 15.2.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under pre-2000 Code Sections 15-11-54 and 15-11-90, and pre-2014 Code Section 15-11-103, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Jurisdiction to award custody to Department Human Resources. — Juvenile court had jurisdiction to award custody of a child to the Department of Human Resources and properly entered the court's order of disposition awarding permanent custody to the Department because the mother and father had no rights to surrender to the great-grandparents when the termination order reflected the juvenile court's intent to record a previously unrecorded action actually taken or judgment actually rendered; the juvenile court rendered a judgment terminating the child's parental rights at the conclusion of the hearing on September 3, 2008, and although the court's oral ruling was not memorialized in a written order until September 9, 2008, and not filed until September 17, 2008, such order clearly stated that the order was nunc pro tunc to September 3, 2008, the date of the termination hearing. In re D.C.H., 300 Ga. App. 827, 686 S.E.2d 434 (2009) (decided under former O.C.G.A. § 15-11-103).

Superior court properly declined jurisdiction in a custody action brought by grandparents because, once a juvenile court took jurisdiction of a deprivation action concerning the child and, later, a termination action of parental rights, the court took jurisdiction of the entire case of the minor child including the issues of disposition and custody under former O.C.G.A. §§ 15-11-58 and 15-11-103 (see now O.C.G.A. §§ 15-11-2, 15-11-134, 15-11-201 et seq., and 15-11-320 et seq.). Segars v. State, 309 Ga. App. 732, 710 S.E.2d 916 (2011) (decided under former O.C.G.A. § 15-11-103).

In determining whether or not there is a parent having parental rights, the court will look not only to the biological or "legal" father and mother, but also at third persons who stand in loco parentis, whom the court has equated with parents, and when there is a person standing in loco parentis who has taken a voluntarily relinquished child into its family and cared for the child, it is not the legislative intent that the child be automatically removed from that home and placed with a state or county agency just because there is no biological or "legal" father or mother with parental rights. In re M.A.F., 254 Ga. 748, 334 S.E.2d 668 (1985) (decided under former O.C.G.A. § 15-11-54).

Failure to consider statutory factors. — Juvenile court's order placing the child with the intervenors had to be vacated because the juvenile court did not apply the proper statute, O.C.G.A. § 15-11-321, or fully consider the five factors therein. In the

Interest of A. H., 348 Ga. App. 817, 824 S.E.2d 688 (Feb. 26, 2019).

Court should seek to place custody first with the Department of Human Resources, then with a licensed child-placing agency, then in a foster home, and lastly in some other undesignated receiver. Department of Human Resources v. Ledbetter, 153 Ga. App. 416, 265 S.E.2d 337 (1980) (decided under former O.C.G.A. § 15-11-54).

Placement with relative of putative father. — Trial court was not required to place a child with the putative father's mother or uncle, who testified that they would be willing to accept custody during the termination hearing since: (1) although the putative father's mother and uncle knew of the child's birth and subsequent removal from her mother's custody, neither one contacted DFACS or took any action to seek custody or to support the child prior to the termination hearing; and (2) the putative father was never married to the child's mother, and he provided no evidence that he was in fact her biological father. In re S.B., 237 Ga. App. 692, 515 S.E.2d 209 (1999) (decided under former O.C.G.A. § 15-11-90).

Evidence supported termination of a father's parental rights since the child was deprived; the court properly refused to consider placing the child with either the father's parents or his sister after terminating the father's parental rights. In the Interest of M.D.B., 262 Ga. App. 796, 586 S.E.2d 700 (2003) (decided under former O.C.G.A. § 15-11-103).

Juvenile court erred in denying an aunt and an uncle's motion to intervene in a termination of parental rights proceeding on the ground that the putative father had not legitimated the child as under former O.C.G.A. § 15-11-103(a)(1) (see now O.C.G.A. § 15-11-321), the juvenile court had to attempt to place the child first with a family member; if the aunt and uncle were family members, they had to be considered as a possible placement for the child. In the Interest of J.M.T., 275 Ga. App. 526, 621 S.E.2d 535 (2005) (decided under former O.C.G.A. § 15-11-103).

Court cannot invest itself with authority to choose an adopting family, relying upon the provisions dealing with "other suitable measures for the care and welfare of the child." Department of Human Resources v. Ledbetter, 153 Ga. App. 416, 265 S.E.2d 337 (1980) (decided under former O.C.G.A. § 15-11-54).

Consent of placement agency necessary for adoption. — Former statute, which provided for the placing of children with an agency upon termination of parental rights, also mandated that consent of the agency was necessary for adoption. Drummond v. Fulton County Dep't of Family & Children Servs., 237 Ga. 449, 228 S.E.2d 839 (1976), cert. denied, 432 U.S. 905, 97 S. Ct. 2949, 53 L. Ed. 2d 1077 (1977) (decided under former O.C.G.A. § 15-11-54).

Placement of child with foster family. — It was not an abuse of discretion to find that relative placement was not in the best interest of a child as: (1) the child had been in the foster parents' care for over 10 months, had bonded with the foster parents, and referred to them as "mommy" and "daddy"; (2) an aunt and uncle had not bonded with the child in 12 supervised visits; (3) the foster parents wanted to adopt the child; and (4) the child's strong bond with a sibling was accorded less weight than other factors militating for the child's placement with the foster family. In the Interest of S.V., 281 Ga. App. 331, 636 S.E.2d 80 (2006) (decided under former O.C.G.A. § 15-11-103).

Trial court terminated parents' rights to four dependent children based on the parents' failure to comply with their case plan. As the children were thriving in foster care, and no relatives could be found who were suitable custodians, the trial court did not abuse the court's discretion or violate former O.C.G.A. § 15-11-103(a)(1) (see now O.C.G.A. § 15-11-321) by not placing the children with family members. In the Interest of A.G., 293 Ga. App. 493, 667 S.E.2d 662 (2008) (decided under former O.C.G.A. § 15-11-103).

Although former O.C.G.A. § 15-11-103(a)(1) (see now O.C.G.A. § 15-11-321) encouraged relative placement, it was not an absolute requirement. Because the child's established bond with a foster family authorized the juvenile court finding that the child's best interest

was served by remaining with the foster family over being placed with a relative, the juvenile court did not abuse the court's discretion in the court's determination of the child's best interest. In the Interest of C.B., 300 Ga. App. 278, 684 S.E.2d 401 (2009) (decided under former O.C.G.A. § 15-11-103).

No preference for placement with family member. — Former O.C.G.A. § 15-11-103(a) (see now O.C.G.A. § 15-11-321) did not require a trial court to give preference to family members in making a placement of a child following termination of parental rights. In the Interest of B.R.W., 242 Ga. App. 232, 530 S.E.2d 5 (2000) (decided under former O.C.G.A. § 15-11-103).

Permanent custody of a child was properly granted to a county department of family and children services, rather than to the maternal grandmother, since: (1) the grandmother exhibited distorted and delusional thoughts and symptoms associated with schizophrenia; (2) on at least one occasion, the child's mother had physically assaulted the grandmother; (3) the child's mother had accused the grandfather of raping her, and the grandmother said that the grandfather had taken and failed a polygraph test in connection with the alleged rape; and (4) the mother had a history of violent and aggressive behavior and would have access to the child if the child were placed in the grandmother's home, and the grandmother lacked the ability to protect the child from the mother. In the Interest of L.M.J., 247 Ga. App. 756, 545 S.E.2d 127 (2001) (decided under former O.C.G.A. § 15-11-103).

Nothing in former O.C.G.A. § 15-11-103 (see now O.C.G.A. §§ 15-11-320, 15-11-321, and 15-11-322) requires a trial court to give a preference to family members in making a placement of a child following termination of parental rights, and a placement should be made under the terms of former subsection (a) only if such a placement was in the best interests of the child. In the Interest of S.K., 248 Ga. App. 122, 545 S.E.2d 674 (2001) (decided under former O.C.G.A. § 15-11-103).

Court improperly failed to consider placement of child with relative. — Juvenile court erred in placing a child in the department's permanent custody for purposes of adoption without considering placement of the child with a relative, notwithstanding that the father did not specifically identify any relatives to be considered, since he testified that he believed a suitable relative placement could be found and there was no evidence that the department investigated any relatives as possible suitable placement. In the Interest of J.J.W., 247 Ga. App. 804, 545 S.E.2d 21 (2001) (decided under former O.C.G.A. § 15-11-103).

According to the clear dictates of former O.C.G.A. § 15-11-103 (see now O.C.G.A. § 15-11-321), it was incumbent upon the court and the department of human resources to conduct a thorough search for a suitable family member with whom to place the child. In the Interest of Z.B., 252 Ga. App. 335, 556 S.E.2d 234 (2001) (decided under former O.C.G.A. § 15-11-103).

Although the juvenile court did not err in finding that placement of a child with a putative father's mother would not have been in the child's best interest, further investigation was needed to establish whether the father's father was, in fact, a blood relative to the child; if so, it would be necessary to consider placing the child with the grandfather. In the Interest of S.H., 251 Ga. App. 555, 553 S.E.2d 849 (2001) (decided under former O.C.G.A. § 15-11-103).

Trial court erred in failing to consider an appropriate relative placement for a putative father's minor child upon the trial court's determination to terminate the father's parental rights as the trial court and the county agency had a duty under former O.C.G.A. § 15-11-103(a)(1) (see now O.C.G.A. § 15-11-321) to conduct a thorough search for a suitable family member. In the Interest of T.A.M., 280 Ga. App. 494, 634 S.E.2d 456 (2006) (decided under former O.C.G.A. § 15-11-103).

Not in best interest to return children to paternal grandmother. — Termination of the mother's parental rights was in the children's best interests and it was not in their best interest to return them to the custody of their paternal grandmother. In the Interest of S.K., 248

Ga. App. 122, 545 S.E.2d 674 (2001) (decided under former O.C.G.A. § 15-11-103).

Juvenile court did not abuse the court's discretion in rejecting a child's paternal grandmother as a suitable home for placement of a child after termination of the parents' parental rights since the best interests of the child would not have been served by placement with the grandmother. The grandmother did not request placement of the child with her, did not attempt to bond with the child while the child was in foster care, was of advanced age and limited financial resources, and had not noticed bruising on the then two month old child the day before the child was removed for abuse. Furthermore, the child's guardian ad litem presented evidence that removing the child from the foster home would be damaging as that was the only family the child knew, the child had bonded with that family, and the foster parents planned to adopt the child. In the Interest of S.S., 267 Ga. App. 601, 600 S.E.2d 679 (2004) (decided under former O.C.G.A. § 15-11-103).

Grandparent not appropriate placement. — A 7-year-old autistic child's grandmother was not a suitable placement for the child because the grandmother's husband had a stroke, causing significant medical problems, which required constant care by the grandmother. In the Interest of T. B. R., 304 Ga. App. 773, 697 S.E.2d 878 (2010) (decided under former O.C.G.A. § 15-11-103).

Trial court did not abuse the court's discretion in refusing to place the children with the grandparents as there was concern about such placement since the grandmother knew the half-sibling was being neglected but did not attempt to protect the child and a counselor testified that the half-sibling was aggressive toward or withdrawn from the grandmother and displayed disruptive behaviors in the child's foster home following visits with the grandmother. In the Interest of D. L. T., 323 Ga. App. 719, 747 S.E.2d 880 (2013).

Search for other family members. — After the court allowed a grandmother to participate fully in the hearing and to present evidence of her own fitness, she can not argue on appeal that DFCS should have conducted a broader search for other family members because she has not shown how she has the right to raise this issue on appeal since she is neither the parent nor the guardian of the child on whose behalf such search is to be conducted. In the Interest of B.R.W., 242 Ga. App. 232, 530 S.E.2d 5 (2000) (decided under former O.C.G.A. § 15-11-103).

In the termination of parental rights case, the appellate court rejected the mother's contention that the juvenile court committed reversible error in finding that the Georgia Department of Family and Children's Services had made a thorough search under former O.C.G.A. § 15-11-103(a)(1) (see now O.C.G.A. § 15-11-321) for a suitable relative with whom to place the child; the thorough search requirement imposed against the Department had been deleted from the statute, and there was evidence that the juvenile court attempted to place the child with a relative. In the Interest of L.L., 280 Ga. App. 804, 635 S.E.2d 216 (2006) (decided under former O.C.G.A. § 15-11-103).

Sufficient compliance with Code section. — Although the search was conducted approximately two years before the termination hearing, evidence existed showing that the department complied with the dictate of former O.C.G.A. § 15-11-103(a)(1) (see now O.C.G.A. § 15-11-321) in attempting to find relatives to place the child with. In the Interest of G.B., 263 Ga. App. 577, 588 S.E.2d 779 (2003) (decided under former O.C.G.A. § 15-11-103).

As the evidence showed that the Department of Family and Children Services evaluated the maternal grandmother for placement, but that authorities did not approve her home for placement, and that the mother failed to provide any relatives' names to the court for placement, the Department did not fail to make a thorough and exhaustive search for a suitable family member with whom the child could be placed. In the Interest of A.M., 275 Ga. App. 630, 621 S.E.2d 567 (2005) (decided under former O.C.G.A. § 15-11-103).

Juvenile court did not violate the mandate of former O.C.G.A. § 15-11-103(a)(1)

(see now O.C.G.A. § 15-11-321) by failing to search for a suitable family member for placement after deciding to terminate a mother's parental rights as the record showed that the relatives suggested by the mother and reported to the court were investigated and one was not approved and two others failed to respond. In the Interest of D.D., 273 Ga. App. 839, 616 S.E.2d 179 (2005) (decided under former O.C.G.A. § 15-11-103).

Evidence showed that a trial court complied with the requirement of former O.C.G.A. § 15-11-103(a)(1) (see now O.C.G.A. § 15-11-321) by placing the children with their maternal grandfather and step-grandmother who planned to adopt the children. In the Interest of A.H., 278 Ga. App. 192, 628 S.E.2d 626 (2006) (decided under former O.C.G.A. § 15-11-103).

Juvenile court's finding that a child services agency had made reasonable efforts to find suitable relative placement for a child, without success, was supported by evidence that an aunt and uncle had not obtained a larger living space until shortly before the termination of parental rights hearing and a child services representative's testimony that in 12 supervised visits, the aunt and uncle had not bonded with the child. In the Interest of S.V., 281 Ga. App. 331, 636 S.E.2d 80 (2006) (decided under former O.C.G.A. § 15-11-103).

Juvenile court did not err in failing to place two children with a relative as a child services agency investigated placement with a parent's sibling (who did not want the children), the grandparents (who were financially unstable and had a history of child abuse), and a great-grandparent (who was on disability and in poor health); on the other hand, the children had formed a bond with their foster parents, who were raising the children as their own. In the Interest of C.M., 282 Ga. App. 502, 639 S.E.2d 323 (2006) (decided under former O.C.G.A. § 15-11-103).

Post-termination placement with the foster parents was upheld on appeal, given sufficient evidence that the child's grandparent made little effort to connect with the child; had previously refused to take custody; had health problems; lacked complete knowledge of the child's special needs; and failed to fully disclose the family's financial circumstances during a home study. Moreover, the foster parents had custody of the child for the child's entire life; the child bonded with them and viewed them as parents; the child would likely suffer trauma if removed from their home, and progressed developmentally in their care. In the Interest of R.D.B., 289 Ga. App. 76, 656 S.E.2d 203 (2007) (decided under former O.C.G.A. § 15-11-103).

After terminating couple's parental rights, department of family and children services did not fail to make reasonable efforts to find a relative placement under former O.C.G.A. § 15-11-103 (see now O.C.G.A. § 15-11-321); there was evidence that removing children from their foster home would be emotionally harmful to them and that a couple related to the father was unsuitable, and the mother's lack of cooperation precluded the department's compliance with the Interstate Compact on the Placement of Children, which required her birth certificate for out-of-state placement. In the Interest of A.A., 290 Ga. App. 818, 660 S.E.2d 868 (2008) (decided under former O.C.G.A. § 15-11-103).

Discretion of court. — After hearing evidence regarding the option of placing the child with the paternal grandmother, the court did not err in finding that it was in the best interest of the child to be permanently placed with the foster mother. In re C.L.R., 232 Ga. App. 134, 501 S.E.2d 296 (1998) (decided under former O.C.G.A. § 15-11-90).

Trial court did not abuse the court's discretion in failing to place a child with a family member upon termination of the mother's parental rights as the child would remain in a safe and stable foster home upon termination of the mother's parental rights and the foster mother intended to adopt the child. In the Interest of A.L.S.S., 264 Ga. App. 318, 590 S.E.2d 763 (2003) (decided under former O.C.G.A. § 15-11-103).

Juvenile court did not abuse the court's discretion in declining to place the two children with relatives after the juvenile

court terminated the mother's parental rights; the only relatives available, the maternal grandparents and a brother, admitted that they could not adequately care for the children and, thus, placement with them was not in the best interests of the children. In the Interest of C.B.H., 262 Ga. App. 833, 586 S.E.2d 678 (2003) (decided under former O.C.G.A. § 15-11-103).

Denial of placement with maternal great aunt not error. — Upon the termination of a parent's parental rights, the juvenile court's order rejecting placement of the two children at issue with a relative was upheld on appeal as: (1) that relative had previously relinquished custody of the older child; (2) sufficient evidence was presented that the children were in separate stable foster-care placements; (3) the respective foster parents expressed a willingness to adopt the children; and (4) the guardian ad litem agreed that placement with the foster families was in the best interest of both children. In the Interest of K.W., 283 Ga. App. 398, 641 S.E.2d 598 (2007) (decided under former O.C.G.A. § 15-11-103).

Denial of placement with aunt. — In light of a maternal aunt's lack of a bond with a parent's children and the foster parents' strong bond with the children, the juvenile court was authorized to decline placing the children with the aunt, and did not abuse the court's discretion under former O.C.G.A. § 15-11-103(a)(1) (see now O.C.G.A. § 15-11-321). In the Interest of N.S.E., 287 Ga. App. 186, 651 S.E.2d 123 (2007) (decided under former O.C.G.A. § 15-11-103).

Finding that no able or willing relative was available was not error. — In a termination of parental rights case, trial court did not err in finding under former O.C.G.A. § 15-11-103 (see now O.C.G.A. § 15-11-321) that placement of children with a relative was not an option, having heard evidence that no relatives were willing or able to assume custody; moreover, the parent had waived appellate review of the issue by failing to raise the issue below. In the Interest of A.D.I., 291 Ga. App. 190, 661 S.E.2d 606 (2008) (decided under former O.C.G.A. § 15-11-103).

Placement with relative not in child's best interests. — In a termination of parental rights case, the trial court did not err in finding that placement with a relative was not in the best interests of the child; a search by the department of family and children services did not reveal any interested relatives, and neither parent timely provided the names and addresses of additional relatives for consideration. In the Interest of B.W., 287 Ga. App. 54, 651 S.E.2d 332 (2007) (decided under former O.C.G.A. § 15-11-103).

Evidence supported the juvenile court's decision to terminate parental rights and to award permanent custody of a child to the Department of Human Resources, rather than the child's maternal great-grandparents, given the child's long-term placement with foster parents and the child's developing "crucial attachments" to them; finding that the child had resided in the foster parents' home for 18 of her 22 months of life and was attached to the foster parents, who were the only primary caregivers of which the child had any memory, the juvenile court concluded that placement with the Department was the most appropriate for and in the best interest of the child. In re D.C.H., 300 Ga. App. 827, 686 S.E.2d 434 (2009) (decided under former O.C.G.A. § 15-11-103).

Home study issue not ripe for review. — In a termination of parental rights case, a mother's contention that a county department of family and children services (DFCS) violated former O.C.G.A. § 15-11-103(a)(1) (see now O.C.G.A. § 15-11-321) by failing to include in the record evidence that the department conducted a home study of the child's paternal grandmother was not ripe for review. The trial court awarded permanent custody to the DFCS for the purpose of adoption and expressly noted that the issue of whether the grandmother could serve as the permanent adoption placement would be addressed in later proceedings. In the Interest of U.G., 291 Ga. App. 404, 662 S.E.2d 190 (2008) (decided under former O.C.G.A. § 15-11-103).

15-11-322. Continuing court review when child not adopted.

If a petition seeking the adoption of a child whose parents have had their parental rights terminated or surrendered is not filed within six months after the date of the disposition order, the court shall then, and at least every six months thereafter so long as such child remains unadopted, review the circumstances of such child to determine what efforts have been made to assure that such child will be adopted. The court shall:

(1) Make written findings regarding whether reasonable efforts have been made to move such child to permanency;

(2) Evaluate whether, in light of any change in circumstances, the permanency plan for such child remains appropriate; and

(3) Enter such orders as it deems necessary to further adoption or if appropriate, other permanency options, including, but not limited to, another placement.

History. — Code 1981, § 15-11-322, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242; Ga. L. 2014, p. 780, § 1-23/SB 364.

Cross references. — Time limitations upon orders of disposition — commitment to Division of Youth Services, Uniform Rules for the Juvenile Courts of Georgia, Rule 15.2.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under pre-2000 Code Sections 15-11-54 and 15-11-90, and pre-2014 Code Section 15-11-103, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Court cannot invest itself with authority to choose an adopting family, relying upon the provisions dealing with "other suitable measures for the care and welfare of the child." Department of Human Resources v. Ledbetter, 153 Ga. App. 416, 265 S.E.2d 337 (1980) (decided under former O.C.G.A. § 15-11-54).

Consent of placement agency necessary for adoption. — Former statute, which provided for the placing of children with an agency upon termination of parental rights, also mandated that consent of the agency was necessary for adoption. Drummond v. Fulton County Dep't of Family & Children Servs., 237 Ga. 449, 228 S.E.2d 839 (1976), cert. denied, 432 U.S. 905, 97 S. Ct. 2949, 53 L. Ed. 2d 1077 (1977) (decided under former O.C.G.A. § 15-11-54).

15-11-323. Reinstatement of parental rights; standard of proof.

(a) A child who has not been adopted after the passage of at least three years from the date the court terminated parental rights or the parent voluntarily surrendered parental rights to DFCS and for whom the court has determined that adoption is no longer the permanent plan may petition the court to reinstate parental rights pursuant to the modification of orders procedure prescribed by Code Section 15-11-32.

Such child may file the petition to reinstate parental rights prior to the expiration of such three-year period if the department or licensed child-placing agency that is responsible for the custody and supervision of such child and such child stipulate that such child is no longer likely to be adopted. A child 14 years of age or older shall sign the petition in the absence of a showing of good cause as to why such child could not do so.

(b) If it appears that the best interests of a child may be promoted by reinstatement of parental rights, the court shall order that a hearing be held and shall cause notice to be served by United States mail to DFCS, the attorney of record, guardian ad litem, if any, and foster parents, if any, of the child whose parental rights were terminated or surrendered and the child's former parent whose parental rights were terminated or surrendered. The former parent and foster parents, if any, shall have a right to be heard at the hearing to reinstate parental rights but shall not be parties at such hearing, and such hearing may be conducted in their absence. A child's motion shall be dismissed if his or her former parent cannot be located or if such parent objects to the reinstatement.

(c) The court shall grant the petition if it finds by clear and convincing evidence that a child is no longer likely to be adopted and that reinstatement of parental rights is in the child's best interests. In determining whether reinstatement is in the child's best interests the court shall consider, but not be limited to, the following:

(1) Whether a parent whose rights are to be reinstated is a fit parent and has remedied his or her deficits as provided in the record of the prior termination proceedings and prior termination order;

(2) The age and maturity of a child and the ability of such child to express his or her preference;

(3) Whether the reinstatement of parental rights will present a risk to a child's health, welfare, or safety; and

(4) Other material changes in circumstances, if any, that may have occurred which warrant the granting of the petition.

(d) If the court grants the petition to reinstate parental rights, a review hearing shall be scheduled within six months. During such period, the court may order that a child be immediately placed in the custody of his or her parent or, if the court determines that a transition period is necessary and such child is in DFCS custody at the time of the order, order DFCS to provide transition services to the family as appropriate.

(e) An order granted under this Code section reinstates a parent's rights to his or her child. Such reinstatement shall be a recognition that the situation of the parent and his or her child has changed since the

time of the termination of parental rights and reunification is now appropriate.

(f) This Code section is intended to be retroactive and applied to any child who is under the jurisdiction of the court at the time of the hearing regardless of the date parental rights were terminated.

History. — Code 1981, § 15-11-323, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

15-11-324. (Effective January 1, 2021) Testimony and evidence from foster parents, caregivers, and others.

(a) After the court has granted a termination of parental rights, and during the dispositional phase of such case contemplated in Code Section 15-11-321 and in any post-dispositional review under Code Section 15-11-322, the court shall in making its disposition consider the testimony of and evidence provided by any foster parent, caregiver, relative, or other individual in whose physical custody the child has resided for at least 12 months during a period ending not more than 90 days preceding the filing of the petition, provided that such individual expresses a desire and willingness to adopt the child.

(b) Such testimony and evidence may include evidence regarding the level of attachment and bonding between the child and caregiver; the child's health, safety, and well-being; and such other evidence that the court may consider relevant to its disposition of the case. The court may, in its discretion, limit the scope of such evidence as it may deem relevant and material to the dispositional issues at hand.

History. — Code 1981, § 15-11-324, enacted by Ga. L. 2020, p. 241, § 5/SB 439.

Effective date. — This Code section becomes effective January 1, 2021.

ARTICLE 4A

EXTENDED CARE YOUTH SERVICES

Effective date. — This article became effective July 1, 2020.

Cross references. — Children and Youth Act, § 49-5-1 et seq. Postsecondary Education Grants for Foster Children and Adopted Children, § 20-3-600 et seq.

15-11-340. Criteria for receiving services; development of transition plan; termination.

(a) A child may receive extended care youth services from DFCS. In order to receive such services, he or she must be between 18 and 21 years of age, sign a voluntary placement agreement with DFCS, and

meet objective eligibility criteria established by DFCS, which shall include one or more of the following requirements:

(1) Be completing secondary education or a program leading to an equivalent credential;

(2) Be enrolled in an institution which provides postsecondary or vocational education;

(3) Be a participant in a program or activity designed to promote or remove barriers to employment;

(4) Be employed for at least 120 hours per month;

(5) Be employed for 80 hours per month, provided that he or she is also engaged in one of the activities described in paragraphs (1) through (3) of this subsection or can only work 80 hours per month due to a medical condition; or

(6) Be incapable of doing any of the activities described in paragraphs (1) through (5) of this subsection due to a medical condition.

(b) When a child is receiving extended care youth services from DFCS, a DFCS case manager and staff, other representatives of such child and, as appropriate, such child shall develop a transition plan that is personalized at the direction of such child, including an option to execute a durable power of attorney for health care, health care proxy, or other similar document recognized by law with respect to health care and specific options on housing, health insurance, education, local opportunities for mentors and continuing support services, and workforce supports and employment services, and is as detailed as such child may elect. Such transition plan shall be completed within 30 days of the child agreeing to such services and shall be updated as required by this article.

(c) A child may terminate a voluntary placement agreement and stop receiving extended care youth services at any time.

(d) Every 12 months, a DFCS case manager shall determine if a child is still eligible for extended care youth services. If DFCS determines that a child is no longer eligible for extended care youth services, DFCS may terminate the voluntary placement agreement with such child and stop providing extended care youth services. DFCS shall provide written or electronic notice to such child regarding such termination and to the court that approved such services.

(e) A child who is within 12 months of becoming 21 years of age shall not be permitted to sign a voluntary placement agreement with DFCS for extended care youth services.

History. — Code 1981, § 15-11-340, enacted by Ga. L. 2018, p. 927, § 1-5/HB 906; Ga. L. 2020, p. 191, § 3/HB 912.

The 2020 amendment, effective July 1, 2020, substituted "12 months" for "60 days" in the first sentence of subsection (d).

15-11-341. Written report to court; review hearing and findings.

(a) No later than 120 days after a voluntary placement agreement is signed by a child, DFCS shall file with the court a written report which shall contain the following:

(1) The child's name, date of birth, race, gender, and current address;

(2) Facts to support a finding that the child meets the eligibility criteria for extended care youth services and an explanation as to why it is in the child's best interests to receive extended care youth services;

(3) A copy of the signed voluntary placement agreement;

(4) A plan for such child to transition to independent living or another planned permanent adult living arrangement which is appropriate for the age and independence of the child using a form adopted by DFCS;

(5) Any information the child wants the court to consider; and

(6) Any other information DFCS wants the court to consider.

(b) Within 30 days of the filing of the written report required by this Code section, the court shall hold a review hearing and make written findings of fact for the purpose of determining whether extended care youth services are in the best interests of such child. The court shall issue an order with regard to the child having extended care youth services if it has determined that such services are in the best interests of the child and, as appropriate, approve or reject the plan for transition to independent living or another planned permanent adult living arrangement submitted by DFCS.

History. — Code 1981, § 15-11-341, enacted by Ga. L. 2018, p. 927, § 1-5/HB 906.

15-11-342. Determination of dates; periodic review hearings; role of DFCS in hearing and transition planning.

(a) When a child is receiving services under this article, the date such child is considered to have entered foster care shall be 60 days after such child signed the voluntary placement agreement.

(b)(1) No later than 12 months after a child is considered to have entered foster care, the court shall hold a hearing and make findings of fact for the purpose of determining whether:

(A) The services and supports provided by DFCS under the child's voluntary placement agreement are developmentally appropriate;

(B) DFCS has made reasonable efforts to finalize the child's plan for transition to independent living or another planned permanent adult living arrangement; and

(C) The child is making progress toward achieving independence.

(2) The court shall issue an order adopting or rejecting any updated transition plan for such child.

(c) So long as a child is eligible for and remains in extended care youth services, the court shall conduct periodic review hearings and make written findings of fact in accordance with subsection (b) of this Code section no later than 12 months following the previous hearing. Such periodic review hearings shall continue so long as such child is eligible for and remains in extended care youth services.

(d) Five days prior to any hearing conducted under this Code section, DFCS shall submit a report for the court's consideration, on a form adopted by DFCS, recommending a plan for transition to independent living or another permanent planned adult living arrangement and include the child's name, address, and telephone number, the date he or she entered extended care youth services, and the placement and services being provided for such child.

(e) Within the 90 day period prior to a child no longer receiving extended care youth services from DFCS, a DFCS case manager and staff, and other representatives of such child and, as appropriate, such child shall develop a final transition plan that is personalized at the direction of such child, including an option to execute a durable power of attorney for health care, health care proxy, or other similar document recognized by law with respect to health care and specific options on housing, health insurance, education, local opportunities for mentors and continuing support services, and workforce supports and employment services, and is as detailed as such child may elect.

History. — Code 1981, § 15-11-342, enacted by Ga. L. 2018, p. 927, § 1-5/HB 906.

ARTICLE 5
CHILD IN NEED OF SERVICES

PART 1
GENERAL PROVISIONS

15-11-380. Purpose of article.

The purpose of this article is:

(1) To acknowledge that certain behaviors or conditions occurring within a family or school environment indicate that a child is experiencing serious difficulties and is in need of services and corrective action in order to protect such child from the irreversibility of certain choices and to protect the integrity of such child's family;

(2) To make family members aware of their contributions to their family's problems and to encourage family members to accept the responsibility to participate in any program of care ordered by the court;

(3) To provide a child with a program of treatment, care, guidance, counseling, structure, supervision, and rehabilitation that he or she needs to assist him or her in becoming a responsible and productive member of society; and

(4) To ensure the cooperation and coordination of all agencies having responsibility to supply services to any member of a family referred to the court.

History. — Code 1981, § 15-11-380, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

15-11-381. Definitions.

As used in this article, the term:

(1) "Comprehensive services plan" means an interagency treatment, habilitation, support, or supervision plan developed collaboratively by state or local agency representatives, parties, and other interested persons following a court's finding that a child is incompetent to proceed.

(2) "Habilitation" means the process by which a child is helped to acquire and maintain those life skills which will enable him or her to cope more effectively with the demands of his or her own person and of his or her environment and to raise the level of his or her physical, mental, social, and vocational abilities.

(3) "Plan manager" means a person who is under the supervision of the court and is appointed by the court to convene a meeting of all relevant parties for the purpose of developing a comprehensive services plan.

(4) "Runaway" means a child who without just cause and without the consent of his or her parent, guardian, or legal custodian is absent from his or her home or place of abode for at least 24 hours.

(5) "Status offense" means an act prohibited by law which would not be an offense if committed by an adult.

(6) "Truant" means having ten or more days of unexcused absences from school in the current academic year.

History. — Code 1981, § 15-11-381, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under pre-2000 Code Section 24A-401, and pre-2014 Code Section 15-11-2, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

In light of the reenactment of this chapter, effective January 1, 2014, the reader is advised to consult the annotations following Code Section 15-11-2, for annotations which may also be applicable to this Code section.

Desert defined. — "Desert," in its most common verb form, is defined as "to withdraw from or leave usually without intent to return;" accordingly, in order for a child to "desert" the child's home within the meaning of former O.C.G.A. § 15-11-2(12)(D) (see now O.C.G.A. §§ 15-11-2, 15-11-381, and 15-11-471), the child must leave the home without an intent to return to the home. Thus, when the defendant, a juvenile, left home for nearly two days but then returned voluntarily, the defendant's delinquency adjudication for being an unruly child had to be reversed. In the Interest of D.B., 284 Ga. App. 445, 644 S.E.2d 305 (2007) (decided under former O.C.G.A. § 15-11-2).

Unruliness based on running away. — Defendant, a juvenile, was properly found unruly based on running away when the defendant went to a grandparent's house without the parent's permission and did not return of the defendant's own volition. In the Interest of B.B., 298 Ga. App. 432, 680 S.E.2d 497 (2009) (decided under former O.C.G.A. § 15-11-2).

One becomes of full age on day preceding anniversary of one's birth, on the first moment of that day. Edmonds v. State, 154 Ga. App. 650, 269 S.E.2d 512 (1980) (decided under former Code 1933, § 24A-401).

Age of child at time of arrest. — Delinquency petition against a juvenile was properly transferred to the state court on the ground that the juvenile was arrested for possessing marijuana on the day before the juvenile's seventeenth birthday; pursuant to former O.C.G.A. §§ 15-11-2 and 15-11-28 (see now O.C.G.A. §§ 15-11-2 and 15-11-10), the juvenile was deemed to have been 17 at the earliest moment of the day before the juvenile's birthday, which was the day the juvenile was arrested. In the Interest of A.P.S., 304 Ga. App. 513, 696 S.E.2d 483 (2010) (decided under former O.C.G.A. § 15-11-2).

Former O.C.G.A. § 15-11-2 was inapplicable to an unborn fetus who was

facing almost certain death because of complications in pregnancy. Jefferson v. Griffin Spalding County Hosp. Auth., 247 Ga. 86, 274 S.E.2d 457 (1981) (decided under former O.C.G.A. § 15-11-2).

Statement of 17-year old admissible as not child. — Fact that the defendant was 17 did not affect the admissibility of the defendant's statement. The defendant was not a "child" under former O.C.G.A. § 15-11-2. Robertson v. State, 297 Ga. App. 228, 676 S.E.2d 871 (2009), cert. denied, No. S09C1300, 2009 Ga. LEXIS 406 (Ga. 2009) (decided under former O.C.G.A. § 15-11-2).

Sufficient evidence was present to find child truant and unruly, as well as in need of supervision, since the evidence showed a large number of unexcused absences and the mother never applied for the services of a homebound teacher for the child as required by the school. In re A.D.F., 176 Ga. App. 5, 335 S.E.2d 144 (1985) (decided under former O.C.G.A. § 15-11-2).

Determination of in need of supervision. — Since the corroboration rule, which requires independent corroborative evidence to support testimony of accomplice, does not apply to misdemeanors, a juvenile proceeding was reconsidered, as an erroneous finding about the juvenile's alleged crime may have affected the court's finding concerning whether the juvenile was in need of correction and supervision. J.B.L. v. State, 144 Ga. App. 223, 241 S.E.2d 40 (1977) (decided under former Code 1933, § 24A-401).

No exclusive original jurisdiction over certain youthful offenders. — Ga. L. 1971, p. 709, § 1 does not vest exclusive original jurisdiction in the juvenile court over the following class of youthful offenders: persons between the ages of 17 and 21 years, who have committed noncapital felonies, and who are under the supervision of or are on probation to a juvenile court for acts of delinquency committed before reaching the age of 17 years. State v. Crankshaw, 243 Ga. 183, 253 S.E.2d 69 (1979) (decided under former Code 1933, § 24A-401).

Former Code 1933, § 24A-401 was intended merely as a device for extending jurisdiction of juvenile courts to take actions against persons between the age of 17 and 21 years authorized under Ga. L. 1971, p. 709, § 1. State v. Crankshaw, 243 Ga. 183, 253 S.E.2d 69 (1979) (decided under former Code 1933, § 24A-401).

Noncapital felonies committed by persons over 17 years. — Former statute should not be construed as giving the juvenile courts jurisdiction over noncapital felonies committed by persons after those people have reached the age of 17 years. State v. Crankshaw, 243 Ga. 183, 253 S.E.2d 69 (1979) (decided under former Code 1933, § 24A-401).

Evidence from forensic pediatrician and clinical psychologist. — There was no merit to a father's argument that the trial court erred in admitting certain evidence in finding that three children were deprived and in authorizing the grant of a motion for nonreunification with the father. Although the father claimed that certain documents contained hearsay, it was presumed that the trial court in a nonjury trial would select only legal evidence; the father had not shown that the opinions of a forensic pediatrician and a clinical psychologist who were qualified as experts should have been excluded; the father had not made any argument as to how he was prejudiced by evidence apparently introduced against the mother; and an indictment for one child's injuries was properly admitted as the father's custody status was an issue in the case. In the Interest of A.R., 295 Ga. App. 22, 670 S.E.2d 858 (2008) (decided under former O.C.G.A. § 15-11-2).

Psychological testimony on developmental delay. — Evidence was sufficient to show that three children were deprived and to authorize the grant of a motion for nonreunification with their father. There was evidence that one child was seriously and intentionally injured while in either the sole or joint care of the father; the psychologist who evaluated the children, as well as their foster parent, testified as to numerous ways the children were developmentally delayed when initially taken into protective custody; and the father cited no evidence that he had made any attempt to maintain a parental bond with any of his children, met any of

the other goals of the reunification plans, or otherwise provided for the needs of his children. In the Interest of A.R., 295 Ga. App. 22, 670 S.E.2d 858 (2008) (decided under former O.C.G.A. § 15-11-2).

Part 2

Informal Procedures

15-11-390. Filing of complaint.

(a) A complaint alleging a child is a child in need of services may be made by any person, including a law enforcement officer, who has knowledge of the facts alleged or is informed and believes that such facts are true. A prosecuting attorney may file a complaint alleging a child is in need of services or intervene in such matter to represent the interest of the state as parens patriae.

(b) The complaint shall set forth plainly and with particularity:

(1) The name, date of birth, and residence address of the child alleged to be a child in need of services;

(2) The facts alleging why the court has jurisdiction of the complaint;

(3) The reasons why the complaint is in the best interests of the child and the public;

(4) The names and residence addresses of the parent, guardian, or legal custodian, any other family members, or any other individuals living within such child's home;

(5) The name of any public institution or agency having the responsibility or ability to supply services alleged to be needed by such child; and

(6) Whether any of the matters required by this subsection are unknown.

(c) When a school official is filing a complaint alleging a child is a child in need of services, information shall be included which shows that:

(1) The legally liable school district has sought to resolve the expressed problem through available educational approaches; and

(2) The school district has sought to engage the parent, guardian, or legal custodian of such child in solving the problem but such person has been unwilling or unable to do so, that the problem remains, and that court intervention is needed.

(d) When a school official is filing a complaint alleging a child is a child in need of services involving a child who is eligible or suspected to

be eligible for services under the federal Individuals with Disabilities Education Act or Section 504 of the federal Rehabilitation Act of 1973, information shall be included which demonstrates that the legally liable school district:

(1) Has determined that such child is eligible or suspected to be eligible under the federal Individuals with Disabilities Education Act or Section 504 of the federal Rehabilitation Act of 1973; and

(2) Has reviewed for appropriateness such child's current Individualized Education Program (IEP) and placement and has made modifications where appropriate.

(e) The juvenile court intake officer shall be responsible for receiving complaints alleging that a child is a child in need of services.

History. — Code 1981, § 15-11-390, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242; Ga. L. 2014, p. 780, § 1-24/SB 364; Ga. L. 2015, p. 540, § 2-1/HB 361.

Cross references. — Definition of grandparent and securing of rights, § 19-7-3.

U.S. Code. — The Individuals with Disabilities Education Act, referred to in this Code section, is codified at 20 U.S.C. § 1400 et seq.

Section 504 of the federal Rehabilitation Act of 1973, referred to in this Code section, is codified at 29 U.S.C. § 794.

Law reviews. — For article discussing due process in juvenile court procedures in California and Georgia, in light of In re Gault, 387 U.S. 1, 87 S. Ct. 1428, 18 L. Ed. 2d 527 (1967), see 8 Ga. St. B. J. 9 (1971). For article, "Child Custody—Jurisdiction and Procedure," see 35 Emory L. J. 291 (1986). For article, "See No Evil, Speak No Evil: Georgia Supreme Court Narrows Requirements for Mandatory Reporters in May v. State," see 66 Mercer L. Rev. 837 (2015).

For note criticizing jurisdiction of juvenile justice system over runaways and advocating alternative legal approaches, see 24 Emory L. J. 1075 (1975).

For comment on grandparents' visitation rights in Georgia, see 29 Emory L. J. 1083 (1980).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under pre-2000 Code Section 15-11-24, former Code 1933, § 24A-1603, pre-2000 Code Section 15-11-25 and pre-2014 Code Section 15-11-38.1, which were subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Construction with former provisions. — Nonprofit advocacy organization was authorized to file a deprivation petition which was separate and distinct from the initial deprivation adjudication since there is no statutory requirement that a petition for modification must be filed under former O.C.G.A. § 15-11-42 (see now O.C.G.A. § 15-11-312), instead of a deprivation petition under former O.C.G.A. § 15-11-24 (see now O.C.G.A. §§ 15-11-150, 15-11-390, and 15-11-420). In re A.V.B., 222 Ga. App. 241, 474 S.E.2d 114 (1996) (decided under former O.C.G.A. § 15-11-24).

Great aunt and uncle. — Child's great aunt and uncle had standing to bring a petition to terminate the parental rights of the child's father and mother. In re J.J., 225 Ga. App. 682, 484 S.E.2d 681 (1997) (decided under former O.C.G.A. § 15-11-24).

Juvenile petition must satisfy "due process." — Although a juvenile petition does not have to be drafted with the exac-

titude of a criminal accusation, the petition must satisfy "due process." T.L.T. v. State, 133 Ga. App. 895, 212 S.E.2d 650 (1975) (decided under former Code 1933, § 24A-1603).

Since the state's petition failed to set forth in ordinary and concise language the facts demonstrating the nature of the parent's alleged failure to provide proper parental care or control, the parent lacked sufficient information to enable the parent to prepare a defense, and this amounted to a denial of due process. In re D.R.C., 191 Ga. App. 278, 381 S.E.2d 426 (1989) (decided under former O.C.G.A. § 15-11-25).

To meet constitutional requirement of due process the language of a juvenile petition must pass two tests: (1) the petition must contain sufficient factual details to inform the juvenile of the nature of the offense; and (2) the petition must provide data adequate to enable the accused to prepare a defense. T.L.T. v. State, 133 Ga. App. 895, 212 S.E.2d 650 (1975) (decided under former Code 1933, § 24A-1603).

Allege with particularity. — Due process requires that the petition alleging delinquency must set forth with specificity the alleged violation of law either in the language of the particular section, or so plainly that the nature of the offense charged may be easily understood by the child and the child's parents or guardian. D.P. v. State, 129 Ga. App. 680, 200 S.E.2d 499 (1973) (decided under former Code 1933, § 24A-1603).

Petition filed alleging delinquency, deprivation, or unruliness must set forth alleged misconduct with particularity. A.C.G. v. State, 131 Ga. App. 156, 205 S.E.2d 435 (1974) (decided under former Code 1933, § 24A-1603).

Insufficient notice to juvenile of alleged offense. — If a juvenile is brought to trial on a petition alleging delinquency based on a violation of former Code 1933, § 26-1601 (see now O.C.G.A. § 16-7-1) but was adjudicated delinquent for violating former Code 1933, § 26-1806 (see now O.C.G.A. § 16-8-7), there was insufficient notice to the juvenile of the offense alleged to be the basis of the juvenile's delinquency and the trial court must be reversed. D.P. v. State, 129 Ga. App. 680, 200 S.E.2d 499 (1973) (decided under former Code 1933, § 24A-1603).

Statement of custody irrelevant if jurisdiction otherwise exists. — If jurisdiction otherwise existed, such as if the action was brought in the county of the residence of both mother and son, then the requirement in paragraph (4) of former Code 1933, § 24A-1603 had no relevancy to the right of the trial court to handle the case. Sanchez v. Walker County Dep't of Family & Children Servs., 138 Ga. App. 49, 225 S.E.2d 441, rev'd on other grounds, 237 Ga. 406, 229 S.E.2d 66 (1976) (decided under former Code 1933, § 24A-1603).

Assumption of jurisdiction linked to authorized petition. — An order for detention clearly did not meet the requirements of a petition filed pursuant to former Code 1933, § 24A-1603 (see now O.C.G.A. §§ 15-11-152, 15-11-280, 15-11-390, 15-11-420, 15-11-422, and 15-11-522) to commence proceedings under former Code 1933, § 24A-1601 (see now O.C.G.A. § 15-11-420), and the assumption of jurisdiction by the juvenile court is linked to the authorized petition. Hartley v. Clack, 239 Ga. 113, 236 S.E.2d 63 (1977) (decided under former Code 1933, § 24A-1603).

In a hearing on parental custody in a divorce action, the trial court erred in awarding custody of the parties' minor children to the Department of Family and Children Services based upon findings that the children were deprived and the parents unfit because the mother had no notice that the superior court judge might award custody of the children to a third party based upon standards of deprivation. Watkins v. Watkins, 266 Ga. 269, 466 S.E.2d 860 (1996) (decided under former O.C.G.A. § 15-11-25).

Preparation and verification. — Because counsel for the Department of Children & Family Services stated to the court that counsel prepared the termination petition, that the petition was reviewed, verified, and then signed by counsel the next day, this was sufficient to comply with the requirements of former O.C.G.A. § 15-11-25 (see now O.C.G.A. §§ 15-11-152, 15-11-280, 15-11-390, 15-11-422, and 15-11-522). In re A.K.M.,

235 Ga. App. 853, 510 S.E.2d 611 (1998) (decided under former O.C.G.A. § 15-11-25).

Service by correctional officer upon incarcerated father. — Personal service of a summons and a petition of deprivation by a correctional officer upon an incarcerated father was sufficient as the service procedures in the Civil Practice Act, O.C.G.A. § 9-11-1 et seq., were not adopted nor were binding on the juvenile court, and the correctional officer was acting under the direction of the court for the purposes of former O.C.G.A. § 15-11-39.1(c) (see now O.C.G.A. §§ 15-11-161, 15-11-282, 15-11-400, 15-11-424, and 15-11-531). In the Interest of A.J.M., 277 Ga. App. 646, 627 S.E.2d 399 (2006) (decided under former O.C.G.A. § 15-11-38.1).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, § 24-2403, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

School official not liable for investigative referral of deprivation. — School official would not be held liable in a legal action founded upon the official's good faith referral of a child neglect, abuse, or abandonment situation to a county department of family and children services for investigation. 1963-65 Op. Att'y Gen. p. 746 (decided under former Code 1933, § 24-2403).

RESEARCH REFERENCES

Am. Jur. 2d. — 47 Am. Jur. 2d, Juvenile Courts and Delinquent and Dependent Children, § 75 et seq.

C.J.S. — 43 C.J.S., Infants, §§ 184 et seq., 191 et seq.

U.L.A. — Uniform Juvenile Court Act (U.L.A.) § 20.

PART 3

FORMAL COURT PROCEDURES

15-11-400. Child in need of services; time limitations for continued custody or temporary custody hearings.

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

(1) Twenty-four hours, excluding weekends and holidays, after such child is taken into temporary custody if he or she is being held in a secure residential facility or nonsecure residential facility; or

(2) Seventy-two hours, excluding weekends and holidays, after such child is placed in foster care.

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

(1) The petition for a child in need of services shall be filed:

(A) Within 30 days of the filing of the complaint with the juvenile court; or

(B) Within 30 days of such child's release from temporary custody;

(2) Summons shall be served at least 72 hours before the adjudication hearing;

(3) An adjudication hearing shall be scheduled to be held no later than 60 days after the filing of the petition for a child in need of services; and

(4) If not held in conjunction with an adjudication hearing, a disposition hearing shall be held and completed within 30 days after the conclusion of an adjudication hearing.

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

(1) The petition for a child in need of services shall be filed within five days of the continued custody hearing;

(2) Summons shall be served at least 72 hours before an adjudication hearing;

(3) An adjudication hearing shall be scheduled to be held no later than ten days after the filing of the petition for a child in need of services; and

(4) If not held in conjunction with an adjudication hearing, a disposition hearing shall be held and completed within 30 days after the conclusion of an adjudication hearing.

History. — Code 1981, § 15-11-400, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242; Ga. L. 2014, p. 780, § 1-25/SB 364.

Cross references. — Amendment to Juvenile Court petition, Uniform Rules for the Juvenile Courts of Georgia, Rule 6.6. Continuance of adjudicatory hearing in Juvenile Court, Uniform Rules for the Juvenile Courts of Georgia, Rule 11.3.

Law reviews. — For article discussing due process in juvenile court procedures in California and Georgia, in light of In re Gault, 387 U.S. 1, 87 S. Ct. 1428, 18 L. Ed. 2d 527 (1967), see 8 Ga. St. B. J. 9 (1971). For article, "The Child as a Party in Interest in Custody Proceedings," see 10 Ga. St. B. J. 577 (1974). For article surveying Georgia cases in the area of juvenile court practice and procedure from June 1979 through May 1980, see 32 Mercer L. Rev. 113 (1980). For article, "Termination of Parental Rights: Recent Judicial and Legislative Trends," see 30 Emory L. J. 1065 (1981). For article, "Georgia's Juvenile Code: New Law for the New Year," see 19 Ga. St. B. J. 13 (Dec. 2013).

For note criticizing jurisdiction of juvenile justice system over runaways and advocating alternative legal approaches, see 24 Emory L. J. 1075 (1975). For note on the 1994 amendment of this Code section, see 11 Ga. St. U.L. Rev. 81 (1994).

JUDICIAL DECISIONS

Analysis

General Consideration
Waiver of Time Limit
Adjudicatory Hearings
Dispositional Hearings
Appeals

General Consideration

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, §§ 24-2406, 24A-1403, 24A-1701, 24A-1702, and 24A-2201, pre-2000 Code Sections 15-11-20, 15-11-26, 15-11-27, and 15-11-33, pre-2014 Code Sections 15-11-39, 15-11-39.1, 15-11-48, and 15-11-65, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

There was no equal protection violation in framework of this former Code section since similarly situated residents and nonresidents were accorded equal treatment and it was only in cases when laws were applied differently to different persons under the same or similar circumstances that the equal protection of the law was denied. In re M.A.C., 244 Ga. 645, 261 S.E.2d 590 (1979) (decided under former Code 1933, § 24A-1702).

Time limits set forth in the former statute were jurisdictional and the adjudicatory hearing must be set for a time not later than that prescribed by statute. J.T.G. v. State, 141 Ga. App. 184, 233 S.E.2d 40 (1977) (decided under former Code 1933, § 24A-1701).

Time limits established by the General Assembly in the Juvenile Code are jurisdictional and must be strictly adhered to. Crews v. Brantley County Dep't of Family & Children Servs., 146 Ga. App. 408, 246 S.E.2d 426 (1978) (decided under former Code 1933, § 24A-1701).

Language of former statute was mandatory and the time for the hearing must be set for a time not later than ten days after the petition was filed. J.B.H. v. State, 139 Ga. App. 199, 228 S.E.2d 189 (1976) (decided under former Code 1933, § 24A-1701); Crews v. Brantley County Dep't of Family & Children Servs., 146 Ga. App. 408, 246 S.E.2d 426 (1978) (decided under former Code 1933, § 24A-1701); Irvin v. Department of Human Resources, 159 Ga. App. 101, 282 S.E.2d 664 (1981) (decided under former Code 1933, § 24A-1701).

Language of former subsection (a) of this section was mandatory and the adjudicatory hearing must be set for a time not later than that prescribed. Sanchez v. Walker County Dep't of Family & Children Servs., 237 Ga. 406, 229 S.E.2d 66 (1976) (decided under former Code 1933, § 24A-1701).

Goal sought to be accomplished by the ten-day hearing requirement for detained children was the same goal for the 60-day hearing requirement for non-detained children and, thus, the latter requirement was mandatory, rather than directory. In re R.D.F., 266 Ga. 294, 466 S.E.2d 572 (1996) (decided under former O.C.G.A. § 15-11-26).

Time limits for speedy trial must be strictly adhered to. — If a legislative body has defined the right to speedy trial in terms of days, then the time limits must be strictly complied with. J.B.H. v. State, 139 Ga. App. 199, 228 S.E.2d 189 (1976) (decided under former Code 1933, § 24A-1701).

Trial court erred in setting the date for a hearing twelve days, rather than ten days, from the date of the filing of a petition charging a juvenile with the commission of the delinquent act of burglary. In re M.D.C., 214 Ga. App. 59, 447 S.E.2d 143 (1994) (decided under former O.C.G.A. § 15-11-26).

Provision of former O.C.G.A. § 15-11-26 (see now O.C.G.A. §§ 15-11-181, 15-11-400, 15-11-421, 15-11-441, and 15-11-582) that the time for a hearing

shall not be later than ten days after filing of the petition if the child was in custody was the equivalent of a speedy trial demand which did not require a specific demand by the child. However, the statute's protection could be waived if not properly raised and, furthermore, the trial court had discretion to grant a continuance of a hearing properly set for a date within ten days from the filing of the petition. In re M.D.C., 214 Ga. App. 59, 447 S.E.2d 143 (1994) (decided under former O.C.G.A. § 15-11-26).

Former O.C.G.A. § 15-11-26 (see now O.C.G.A. § 15-11-181, 15-11-400, 15-11-421, 15-11-441, and 15-11-582) did not constitute a speedy trial demand and, therefore, the failure to comply with the former statute's provisions resulted in dismissal of the petition without prejudice. In re R.D.F., 266 Ga. 294, 466 S.E.2d 572 (1996) (decided under former O.C.G.A. § 15-11-26).

Construction with other law. — Because a juvenile's allegations that the state failed to comply with the procedural requirements under former O.C.G.A. § 15-11-49(c)(1) and (e) (see now O.C.G.A. §§ 15-11-102, 15-11-145, 15-11-151, 15-11-472, and 15-11-521) should have been raised in the superior court, and had no bearing on the validity of the delinquency petitions or the substantive charges against the juvenile in juvenile court, the court properly denied the presentation of evidence regarding the delinquency and substantive issues. In the Interest of K.C., 290 Ga. App. 416, 659 S.E.2d 821 (2008) (decided under former O.C.G.A. § 15-11-39).

Hearing requirement applicable when child in detention when petition filed. — Ten-day hearing requirement was applicable when a child was "in detention" on the date the petition was filed in court. Sanchez v. Walker County Dep't of Family & Children Servs., 237 Ga. 406, 229 S.E.2d 66 (1976) (decided under former Code 1933, § 24A-1701).

Continuance requested by parent did not violate time limit. — When a hearing on a deprivation petition was held within ten days of the petition's filing, but the case was continued for eight days because the mother's counsel had a scheduling conflict, there was no violation of former O.C.G.A. § 15-11-39(a)'s (see now O.C.G.A. §§ 15-11-181 15-11-400, 15-11-421, 15-11-441, and 15-11-582) ten-day time limit. In the Interest of C.R., 292 Ga. App. 346, 665 S.E.2d 39 (2008) (decided under former O.C.G.A. § 15-11-39).

Failure to follow mandated procedures warrants dismissal without prejudice of a petition alleging deprivation of a child. Another petition can be filed without delay if there is reason to believe the child is being neglected or abused. Sanchez v. Walker County Dep't of Family & Children Servs., 140 Ga. App. 175, 230 S.E.2d 139 (1976) (decided under former Code 1933, § 24A-1701).

Motion to dismiss necessary if no provision for automatic dismissal. — If there is no provision in the statute for automatic dismissal, there should be a motion to dismiss directed to the trial judge and it should appear that the delay is not due to the actions of the defendant. E.S. v. State, 134 Ga. App. 724, 215 S.E.2d 732 (1975) (decided under former Code 1933, § 24A-1701).

Violation of ten-day mandate does not deprive jurisdiction. — Violation of the statutory mandate to set the hearing date not later than ten days after filing of the petition if the child is in detention would not deprive the court of jurisdiction that would otherwise exist. Sanchez v. Walker County Dep't of Family & Children Servs., 138 Ga. App. 49, 225 S.E.2d 441, rev'd on other grounds, 237 Ga. 406, 229 S.E.2d 66 (1976) (decided under former Code 1933, § 24A-1701).

Legislature intended incarceration be limited according to calendar days. — General Assembly intended that a juvenile who is incarcerated after the court has had a preliminary detention hearing should have the juvenile's incarceration limited and the juvenile's fate determined according to calendar days, not "working days." J.B.H. v. State, 139 Ga. App. 199, 228 S.E.2d 189 (1976), overruled on other grounds, In re R.D.F., 266 Ga. 294, 466 S.E.2d 572 (1996) (decided under former O.C.G.A. § 15-11-26).

No habeas corpus if compliance with statutory requirements. — Ha-

General Consideration (Cont'd)

beas corpus will not lie if the juvenile court, after notice and hearing, enters an order pursuant to former Code 1933, § 24-2409 (see now O.C.G.A. §§ 15-11-211, 15-11-212, and 15-11-215). Chaffins v. Lowndes County Dep't of Family & Children Servs., 243 Ga. 528, 255 S.E.2d 360 (1979) (decided under former Code 1933, § 24A-1701).

Effect of failure to show compliance with hearing requirement. — If the parents, in their petition seeking return of their children, allege that there has been no hearing as required by statute, and the record of prior juvenile court proceedings is silent as to whether such a hearing was ever set, continued, or held, and since the hearing requirement was mandatory, the defendant County Family and Children Services Department did not show compliance with the hearing requirement, and the parents stated claims for habeas relief which may be granted. Chaffins v. Lowndes County Dep't of Family & Children Servs., 243 Ga. 528, 255 S.E.2d 360 (1979) (decided under former Code 1933, § 24A-1701).

Permitting state's mid-trial amendment of petition to change the charge against the juvenile from a misdemeanor to a felony was error since the amendment was done without notice and provision of a continuance to allow additional time for preparation of a defense. In re D.W, 232 Ga. App. 777, 503 S.E.2d 647 (1998) (decided under former O.C.G.A. § 15-11-26).

Illegal detention. — If a petition was not presented within 72 hours of a detention hearing as required by former O.C.G.A. § 15-11-21(e) (see now O.C.G.A. §§ 15-11-145, 15-11-400, 15-11-413, 15-11-414, and 15-11-472), the state cannot thus illegally detain the child and then render such a jurisdictional defect harmless by setting the adjudication hearing within 13 days (72 hours plus 10 days) of the detention hearing under subsection (a) of former O.C.G.A. § 15-11-26 (see now O.C.G.A. §§ 15-11-181, 15-11-400, 15-11-421, 15-11-441, and 15-11-582). In re B.A.P., 180 Ga. App. 433, 349 S.E.2d 218 (1986) (decided under former O.C.G.A. § 15-11-26).

When service by publication sufficient in adoption proceeding. — Service by publication was sufficient to bestow jurisdiction over putative fathers of children whose natural mothers wish to give the children up for adoption. In re J.B., 140 Ga. App. 668, 231 S.E.2d 821 (1976) (decided under former Code 1933, § 24A-1702).

Service of summons and termination petition was ineffective since, even though the summons was left at the mother's residence, there was no evidence that the summons was left with a statutorily appropriate person, and service of the petition the day before the hearing was not timely. In re D.R.W., 229 Ga. App. 571, 494 S.E.2d 379 (1997) (decided under former O.C.G.A. § 15-11-27).

Order terminating an out-of-state incarcerated parent's parental rights was reversed as: (1) service of the termination petition and summons upon the parent via certified mail was insufficient under both O.C.G.A. §§ 9-11-4 and former O.C.G.A. § 15-11-96(c) (see now O.C.G.A. §§ 15-11-281 and 15-11-282); (2) a correctional officer who personally delivered the documents to the parent did not amount to sufficient and lawful personal service as the officer lacked the inherent authority to perfect service under O.C.G.A. § 9-11-4(c) and no court order existed to grant the authority; and (3) the trial court's reliance on the service provisions of former O.C.G.A. § 15-11-39.1 (see now §§ 15-11-161, 15-11-282, 15-11-400, 15-11-424, and 15-11-531), a statute dealing with service in juvenile court proceedings generally, was misplaced. In the Interest of C.S., 282 Ga. 7, 644 S.E.2d 812 (2007) (decided under former O.C.G.A. § 15-11-39.1).

Service by publication in termination proceeding. — Juvenile court may order service of process by publication in a termination proceeding if, after reasonable effort, a party cannot be found and the party's address cannot be ascertained. In re M.J.B., 238 Ga. App. 833, 520 S.E.2d 497 (1999) (decided under former O.C.G.A. § 15-11-39.1).

Service by publication in deprivation proceeding. — Juvenile court erred in granting service by publication of the

paternal grandparents' petition alleging that the mother's children were deprived because the grandparents failed to exercise reasonable diligence to find the mother, the juvenile court concluded that the mother could not be found with due diligence within the State of Georgia without any competent evidence to support that finding, and the juvenile court failed to place any burden on the grandparents to determine what notice the grandparents had given to the mother of the grandparents' deprivation petition and simply relied on evidence about the father's efforts to contact her; the grandparents did not file a written motion for service by publication and supporting affidavit as required by O.C.G.A. § 9-11-4(f)(1)(A), the grandparents had some means of communicating with the mother because the father had the mother's telephone number and was able to notify the mother by phone of the 72-hour hearing, the grandparents could have contacted the mother's relatives to ascertain the mother's whereabouts, and the grandparents could have attempted to serve the mother personally or by registered or certified mail at the mother's prior address. Taylor v. Padgett, 300 Ga. App. 314, 684 S.E.2d 434 (2009) (decided under former O.C.G.A. § 15-11-39.1).

Service by correctional officer on incarcerated parent. — Personal service of a summons and a petition of deprivation, by a correctional officer upon an incarcerated parent, was sufficient as the service procedures in the Civil Practice Act, O.C.G.A. § 9-11-1 et seq., were not adopted nor were binding on the juvenile court, and the correctional officer was acting under the direction of the court for the purposes of former O.C.G.A. § 15-11-39.1(c) (see now O.C.G.A. §§ 15-11-161, 15-11-282, 15-11-400, 15-11-424, and 15-11-531). In the Interest of A.J.M., 277 Ga. App. 646, 627 S.E.2d 399 (2006) (decided under former O.C.G.A. § 15-11-39.1).

Service not perfected on incarcerated person. — Deprivation order had to be vacated and the case remanded because service of the deprivation petition on the parent in question, who was incarcerated, was not perfected in accordance with former O.C.G.A. § 15-11-39.1(a) (see now O.C.G.A. §§ 15-11-161, 15-11-282, 15-11-400, 15-11-424, and 15-11-531). The parent had not waived personal service and personal service was not waived simply by actual notice having been achieved. In the Interest of A. R., 296 Ga. App. 62, 673 S.E.2d 586 (2009) (decided under former O.C.G.A. § 15-11-39.1).

Requirement of "reasonable effort" to find party. — Former statute required a showing by the department that a "reasonable effort" had been made to find a putative father or ascertain his address. In re J.B., 140 Ga. App. 668, 231 S.E.2d 821 (1976) (decided under former O.C.G.A. § 15-11-39.1).

Permissibility of publication notice dependent upon investigation. — Whether publication notice is permissible necessarily depends upon an investigation of whether the whereabouts of putative fathers were unknown and whether the fathers could be found with reasonable diligence. In re J.B., 140 Ga. App. 668, 231 S.E.2d 821 (1976) (decided under former O.C.G.A. § 15-11-39.1).

If there was no service of process and notice as required by the former provisions and there was no valid waiver of notice of the pending charge by service of process or otherwise, the entire hearing is a nullity. In re W.M.F., 180 Ga. App. 397, 349 S.E.2d 265 (1986) (decided under former O.C.G.A. § 15-11-39.1).

Timeliness of petition. — Juvenile was entitled to a copy of the delinquency petition filed against the juvenile, and pursuant to former O.C.G.A. § 15-11-39.1 (see now O.C.G.A. §§ 15-11-161, 15-11-282, 15-11-400, 15-11-424, and 15-11-531), the juvenile had a right to receive the petition at least 24 hours prior to the adjudicatory hearing; however, the juvenile waived any objection the juvenile had on the grounds of improper service since the juvenile received the petition right before the hearing as the juvenile did not make an objection or request a continuance on the basis that the juvenile was unprepared. In the Interest of E.S., 262 Ga. App. 768, 586 S.E.2d 691 (2003) (decided under former O.C.G.A. § 15-11-39.1).

Permitting state's mid-trial amendment of petition to change the charge

General Consideration (Cont'd)

against the juvenile from a misdemeanor to a felony was error since the amendment was done without notice and provision of a continuance to allow additional time for preparation of a defense. In re D.W, 232 Ga. App. 777, 503 S.E.2d 647 (1998) (decided under former O.C.G.A. § 15-11-39.1).

Reliance on section by trial court misplaced. — Because former O.C.G.A. § 15-11-96(c) (see now O.C.G.A. §§ 15-11-281 and 15-11-282) related specifically to service in termination-of-parental-rights proceedings, the trial court's reliance on the service provisions of former O.C.G.A. § 15-11-39.1 (see now §§ 15-11-161, 15-11-282, 15-11-400, 15-11-424, and 15-11-531), a statute dealing with service in juvenile court proceedings generally, was misplaced; moreover, for purposes of statutory interpretation, a specific statute prevailed over a general statute, absent any indication of a contrary legislative intent. In the Interest of C.S., 282 Ga. 7, 644 S.E.2d 812 (2007) (decided under former O.C.G.A. § 15-11-39.1).

Applicability. — Contrary to the defendant's claims, neither former O.C.G.A. § 15-11-67 (see now O.C.G.A. § 15-11-442) nor former O.C.G.A. § 15-11-48(e) (see now O.C.G.A. §§ 15-11-135, 15-11-400, and 15-11-412) applied to the defendant's case because both provisions applied when the child was found "unruly," and the defendant was adjudicated delinquent, not unruly. In the Interest of B. Q. L. E., 297 Ga. App. 273, 676 S.E.2d 742, cert. denied, No. S09C1197, 2009 Ga. LEXIS 787 (Ga. 2009) (decided under former O.C.G.A. § 15-11-48).

Suspect may first be booked if rights are observed. — There was no violation of former O.C.G.A. § 15-11-20 (see now O.C.G.A. §§ 15-11-155, 15-11-400, 15-11-412, and 15-11-504) because a juvenile suspect was first taken to a police station for booking purposes, if the juvenile was advised of the juvenile's rights under that section to be questioned elsewhere; the juvenile signed a waiver of these rights on an "advice to juveniles" form and was detained at a youth development center. Marshall v. State, 248 Ga. 227, 282 S.E.2d 301 (1981) (decided under former Code 1933, § 24A-1403).

Confession admissible if juvenile taken before county police. — Juvenile defendant's confession was admissible despite the fact that the juvenile was not taken before an impartial juvenile intake officer but a member of the county police department since the defendant's mother was present during the juvenile's interrogation and it was not alleged that the officer failed to perform any duty imposed upon the officer. Worthy v. State, 253 Ga. 661, 324 S.E.2d 431 (1985) (decided under former O.C.G.A. § 15-11-20).

All detention facilities not supervised and controlled by juvenile courts. — Juvenile courts are not granted the power and authority to supervise and control all the various detention facilities. Jones v. State, 134 Ga. App. 611, 215 S.E.2d 483 (1975) (decided under former Code 1933, § 24A-1403).

No guarantee of all bed space desired by courts. — Subsection (a) of former section contemplated otherwise than that the Department of Human Resources guarantee all bed space desired by the juvenile courts. Jones v. State, 134 Ga. App. 611, 215 S.E.2d 483 (1975) (decided under former Code 1933, § 24A-1403).

Confinement designation not exercise of court's jurisdiction. — Juvenile court's order for detention was merely an order pursuant to the former statute; designating the place of confinement was not an exercise of jurisdiction by that court. Hartley v. Clack, 239 Ga. 113, 236 S.E.2d 63 (1977) (decided under former Code 1933, § 24A-1403).

Foster relationship gives rise to no state-created rights. — Children are placed in foster homes as an alternative to institutional care for what is clearly designed as a transitional phase in the child's life. Therefore, in the eyes of the state, which creates the foster relationship, the relationship is considered temporary at the outset and gives rise to no state-created rights in the foster parents. Drummond v. Fulton County Dep't of Family & Children's Servs., 563 F.2d 1200 (5th Cir. 1977), cert. denied, 437 U.S. 910,

98 S. Ct. 3103, 57 L. Ed. 2d 1141 (1978) (decided under former Code 1933, § 24A-1403).

Limited restraining order appropriate disposition. — After a juvenile attacked a store detective, and subsequently displayed violent behavior and threatened another store employee, the court's conclusion that the juvenile was in need of treatment and rehabilitation, and the court's limited restraining order preventing the juvenile from entering any store owned by the company in Fulton County, except in the immediate presence of a parent or adult relative, was an appropriate disposition and justified by the evidence. In re J.M., 237 Ga. App. 298, 513 S.E.2d 742 (1999) (decided under former O.C.G.A. § 15-11-33).

Purpose of division of juvenile trials into two phases. — In dividing juvenile trials into two phases lawmakers intended to give the juvenile judge an opportunity to conduct the "functional equivalent" of a regular trial (the adjudicatory hearing) in a manner which would satisfy the required constitutional procedures concomitant with the usual legal rules, such as those dealing with admissibility of evidence, proof beyond a reasonable doubt, and similar requirements applicable to adults. Thereafter, at the dispositional phase, the judge was to explore all available additional avenues, including psychiatric and sociological studies, which would enable the judge to provide a solution for the youngster and the family aimed at making the child a secure law-abiding member of society. D.C.A. v. State, 135 Ga. App. 234, 217 S.E.2d 470 (1975) (decided under former Code 1933, § 24A-2201).

During adjudicatory phase, rules of evidence generally prevail. In the second (dispositional) phase, the court hears virtually all evidence which is material and relevant to the issue of disposition. J.B. v. State, 139 Ga. App. 545, 228 S.E.2d 712 (1976) (decided under former Code 1933, § 24A-2201).

Access to confidential records. — Nonprofit advocacy corporation mandated under federal law to investigate incidents of abuse and neglect of individuals with mental illness should have been given reasonable access to confidential county and juvenile court records in connection with investigations relating to the corporation's filing of a deprivation petition. In re A.V.B., 222 Ga. App. 241, 474 S.E.2d 114 (1996) (decided under former O.C.G.A. § 15-11-33).

Right to cross-examine afforded upon request. — Right to cross-examine adverse witnesses guaranteed by former Code 1933, § 24A-2002 (see now O.C.G.A. §§ 15-11-19 and 15-11-28) was afforded upon request according to former Code 1933, § 24A-2201 (see now O.C.G.A. §§ 15-11-400, 5-11-440, 15-11-581, 15-11-582, and 15-11-600). A.C.G. v. State, 131 Ga. App. 156, 205 S.E.2d 435 (1974) (decided under former Code 1933, § 24A-2201).

Exception if petition alleged only deprivation. — If the petition by the county department alleged only deprivation, it was unnecessary to make an explicit finding of deprivation. Moss v. Moss, 135 Ga. App. 401, 218 S.E.2d 93 (1975) (decided under former Code 1933, § 24A-2201).

Explicit finding for petition alleging multiple conditions. — Patent reason for explicit finding of deprivation in petition alleging multiple conditions was to indicate the necessity for and to authorize dispositions of the deprived child or children under the statute or statutes deemed applicable by the court. Moss v. Moss, 135 Ga. App. 401, 218 S.E.2d 93 (1975) (decided under former Code 1933, § 24A-2201).

Disposition made following finding of delinquency. — Decision that the child is in need of treatment or rehabilitation, based upon clear and convincing evidence, is made following a finding of delinquency. A.C.G. v. State, 131 Ga. App. 156, 205 S.E.2d 435 (1974) (decided under former Code 1933, § 24A-2201).

French-speaking parent's stipulation to certain facts presented in a deprivation petition was sufficient evidence to support a finding that the parent's children were deprived and the parent's argument that the parent did not "understand" the meaning or significance of the stipulation was properly rejected. In re M.O., 233 Ga. App. 125, 503 S.E.2d 362

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(1998) (decided under former O.C.G.A. § 15-11-478).

Waiver of Time Limit

Waiver of procedural requirements. — Time limits on setting juvenile hearings are mandatory, but procedural requirements can be waived. J.T.G. v. State, 141 Ga. App. 184, 233 S.E.2d 40 (1977) (decided under former O.C.G.A. § 15-11-26); Cox v. Department of Human Resources, 148 Ga. App. 338, 250 S.E.2d 728 (1978), overruled on other grounds, 156 Ga. App. 338, 274 S.E.2d 728 (1980) (decided under former O.C.G.A. § 15-11-26).

With regard to a juvenile's adjudication of delinquency for acts which, if committed by an adult, would have constituted the offense of child molestation, the juvenile court did not err by denying the juvenile's motion to dismiss, which was based on an extended pre-trial detention as the juvenile and defense counsel agreed to a continuance and acquiesced in a hearing date delaying the adjudication for at least 48 days following the filing of the delinquency petition, which caused the juvenile to waive the right to complain that the adjudication hearing date was not set to occur in compliance with former O.C.G.A. § 15-11-39 (see now O.C.G.A. §§ 15-11-181, 15-11-400, 15-11-421, 15-11-441, and 15-11-582). However, the adjudication was reversed and the case was remanded to the juvenile court since the juvenile court erroneously applied a clear and convincing standard of proof and the standard of proof on charges of a criminal nature was the same as that used in criminal proceedings against adults, namely proof beyond a reasonable doubt. In the Interest of A.S., 293 Ga. App. 710, 667 S.E.2d 701 (2008) (decided under former O.C.G.A. § 15-11-39).

Juvenile waived the right under former O.C.G.A. § 15-11-39(a) (see now O.C.G.A. §§ 15-11-181, 15-11-400, 15-11-421, 15-11-441, and 15-11-582) to have an adjudicatory hearing within 10 days of the delinquency petition being filed by failing to object to the date proposed for the adjudicatory hearing, which was one month after the filing of the petition. In re A. T., 302 Ga. App. 713, 691 S.E.2d 642 (2010), overruled in part by Worthen v. State, 304 Ga. 862, 823 S.E.2d 291 (2019) (decided under former O.C.G.A. § 15-11-39).

Trial court did not err in denying the defendant's motion to dismiss for failure to comply with former O.C.G.A. § 15-11-39(a) (see now O.C.G.A. §§ 15-11-181, 15-11-400, 15-11-421, 15-11-441, and 15-11-582) because the defendant's parent, the defendant's representative, and an attorney acknowledged that the parent did not object when, at the arraignment hearing, it was announced that the adjudicatory hearing would be set outside of the 60-day window; the parent also did not object within the statutorily prescribed 60-day-time period, and the motion to dismiss was filed outside of the 60-day requirement. In the Interest of I.M.W., 313 Ga. App. 624, 722 S.E.2d 586 (2012) (decided under former O.C.G.A. § 15-11-39).

Hearing time limit can be waived. — If the party does not enter an objection during the course of the trial the party will not be heard to complain on appeal and if a hearing is set within the statutory time limit, the court may in the court's discretion grant a continuance. Sanchez v. Walker County Dep't of Family & Children Servs., 237 Ga. 406, 229 S.E.2d 66 (1976) (decided under former Code § 24A-1701); In re J.B., 183 Ga. App. 229, 358 S.E.2d 620, cert. denied, 183 Ga. App. 906, 358 S.E.2d 620 (1987) (decided under former O.C.G.A. § 15-11-26).

Juvenile was entitled to a copy of the delinquency petition filed against the juvenile, and pursuant to former O.C.G.A. § 15-11-39.1 (see now O.C.G.A. §§ 15-11-161, 15-11-282, 15-11-400, 15-11-424, and 15-11-531), the juvenile had a right to receive the petition at least 24 hours prior to the adjudicatory hearing; however, the juvenile waived any objection based on the grounds of improper service since the juvenile received notice right before the hearing as the juvenile did not make an objection or request a continuance on the basis that the juvenile was unprepared. In the Interest of E.S., 262 Ga. App. 768, 586 S.E.2d 691 (2003)

(decided under former O.C.G.A. § 15-11-39).

Delay negotiated by defendant waives time limit. — If the statute does not require dismissal as a matter of law regardless of the reason for the delay, it is clear that a delay negotiated and obtained by the defendant personally would constitute a waiver of the 60-day requirement. E.S. v. State, 134 Ga. App. 724, 215 S.E.2d 732 (1975) (decided under former Code 1933, § 24A-1701).

Proceeding null when no waiver of rights nor proper service. — If, in a juvenile court proceeding, there was neither waiver of the right of a mother, nor proper service upon the parties and if the hearing is not taken under oath, or waived by any of the parties, the proceeding is an absolute nullity. McBurrough v. Dep't of Human Resources, 150 Ga. App. 130, 257 S.E.2d 35 (1979) (decided under former Code 1933, § 24A-1701).

Waiver of right to notice. — If neither the juvenile nor the juvenile's mother were represented by counsel at the dispositional hearing, neither party knew the nature of the charge filed against the minor, and neither party knew of the serious consequences which may result in the case of an adverse adjudication of the petition filed against the juvenile, it is highly unlikely that the parties understood the significance of waiving the parties right to prior notice of the pending charge. In re W.M.F., 180 Ga. App. 397, 349 S.E.2d 265 (1986) (decided under former O.C.G.A. § 15-11-39.1).

Adjudicatory Hearings

Time limits satisfied by hearing adjudicatory in nature. — When a juvenile and the juvenile's parents were summoned to appear at a hearing to defend against charges and to show cause why the juvenile should not be dealt with according to law, were instructed to remain in attendance at the hearing until final adjudication of the petition, were informed of the possibility of a continuance, and were told that the state would seek transfer to the superior court, the hearing was adjudicatory in nature and satisfied the requirements of former O.C.G.A. § 15-11-26. In re L.A.E., 265 Ga. 698, 462 S.E.2d 148 (1995) (decided under former O.C.G.A. § 15-11-26).

Arraignment during adjudicatory hearing. — In the absence of a transcript, a juvenile failed to establish that former O.C.G.A. § 15-11-26 (see now O.C.G.A. §§ 15-11-181, 15-11-400, 15-11-421, 15-11-441, and 15-11-582) was violated since a hearing was timely scheduled and held, an arraignment was conducted at the beginning, the juvenile requested legal counsel and was found eligible to receive counsel, and a continuance was granted so counsel could be secured; conducting an arraignment was not inconsistent with an adjudicatory hearing. In re R.D.F., 266 Ga. 294, 466 S.E.2d 572 (1996), reversing In re R.D.F., 216 Ga. App. 563, 455 S.E.2d 77 (1995) (decided under former O.C.G.A. § 15-11-26).

Arraignment hearing scheduled within the 60-day time period is not sufficient to satisfy the requirement that an adjudicatory hearing must be set within that period. In re R.O.B., 216 Ga. App. 181, 453 S.E.2d 776 (1995) (decided under former O.C.G.A. § 15-11-26).

Time for adjudicatory hearing is not mandatory. — Former O.C.G.A. § 15-11-26 (see now O.C.G.A. §§ 15-11-181, 15-11-400, 15-11-421, 15-11-441 and 15-11-582) required that an adjudicatory hearing date be set within ten days after a filing of a petition charging a minor with commission of delinquent acts, but does not require that a hearing be actually held within ten days after the filing of the petition. P.L.A. v. State, 172 Ga. App. 820, 324 S.E.2d 781 (1984) (decided under former O.C.G.A. § 15-11-26); Johnson v. State, 183 Ga. App. 168, 358 S.E.2d 313 (1987) (decided under former O.C.G.A. § 15-11-26); In re L.T.W., 211 Ga. App. 441, 439 S.E.2d 716 (1993) (decided under former O.C.G.A. § 15-11-26); In re B.W.S., 265 Ga. 567, 458 S.E.2d 847 (1995) (decided under former O.C.G.A. § 15-11-26).

Ten-day hearing rule was not absolute, and a continuance could be granted in the sound discretion of the trial court. Johnson v. State, 183 Ga. App. 168, 358 S.E.2d 313 (1987) (decided under former O.C.G.A. § 15-11-26).

Adjudicatory hearing timely. — Juvenile court did not err in denying the

Adjudicatory Hearings (Cont'd)

defendant juvenile's motion to dismiss a petition because the adjudicatory hearing was set and held within ten days of the filing of the petition pursuant to former O.C.G.A. § 15-11-39(a) (see now O.C.G.A. §§ 15-11-181, 15-11-400, 15-11-421, 15-11-441, and 15-11-582), although the hearing was then continued, which was an action that was within the juvenile court's discretion. In the Interest of C.H., 306 Ga. App. 834, 703 S.E.2d 407 (2010) (decided under former O.C.G.A. § 15-11-39).

Adjudication hearing required after an initial hearing. — By restraining the child at an initial hearing, the juvenile court implicitly found probable cause, pursuant to former O.C.G.A. § 15-11-46.1 (see now O.C.G.A. §§ 15-11-415 and 15-11-503). The juvenile court therefore erred in later deciding that a 10-day adjudication hearing was actually a detention hearing and in resetting the 10-day adjudication hearing. In the Interest of K.L., 303 Ga. App. 679, 694 S.E.2d 372 (2010) (decided under former O.C.G.A. § 15-11-39).

Dispositional Hearings

Dispositional hearing not necessary for termination due to deprivation. — If a petition for the termination of parental rights alleged only that the children were deprived, not delinquent or unruly, it was not necessary for the juvenile judge to hold a dispositional hearing. In re J.C., 242 Ga. 737, 251 S.E.2d 299 (1978), appeal dismissed, 441 U.S. 929, 99 S. Ct. 2046, 60 L. Ed. 2d 657 (1979) (decided under former Code 1933, § 24A-2201).

Dispositional hearing not needed for disposition order. — Trial court may enter order of disposition without first holding dispositional hearing if there is an implicit finding that termination of the parental rights of both parties is authorized, leaving the court with only the alternatives provided in former Code 1933, § 24A-3204 (see now O.C.G.A. §§ 15-11-180 and 15-11-181). Moss v. Moss, 135 Ga. App. 401, 218 S.E.2d 93 (1975) (decided under former Code 1933, § 24A-2201).

Probative evidence admissible in disposition hearing. — Juvenile court can consider a juvenile's prior record in aggravation of disposition even though the record has not been presented to the juvenile prior to trial. O.C.G.A. § 17-10-2 (felony sentencing of adults) is not applicable to juvenile disposition hearings as the General Assembly has not made it so. To the contrary, subsection (a) of that section authorizes in dispositional hearings the receipt and consideration of all helpful information to the extent of its probative value, even though not otherwise competent evidence, in a hearing on criminal responsibility. C.P. v. State, 167 Ga. App. 374, 306 S.E.2d 688 (1983) (decided under former O.C.G.A. § 15-11-33).

Continuation of a dispositional hearing should have been allowed when the probation officer notified the court that the officer was not prepared to make a recommendation regarding disposition. In re M.D., 233 Ga. App. 261, 503 S.E.2d 888 (1998) (decided under former O.C.G.A. § 15-11-33).

Dispositional hearing was held, albeit briefly, since, at the conclusion of the trial, the court found that the juvenile had committed the offense charged and questioned the juvenile with regard to whether the juvenile had been in court before and whether the juvenile had ever been charged with similar conduct. In re B.J.G., 234 Ga. App. 285, 506 S.E.2d 449 (1998) (decided under former O.C.G.A. § 15-11-33).

Timing of dispositional hearing. — When a juvenile court, having concluded the adjudicatory hearing and having found a juvenile defendant guilty of contempt, proceeded immediately to a dispositional hearing at which the defendant had the opportunity to be heard and to give evidence, the defendant waived any assertion of error by not objecting to this proceeding. In the Interest of P.W., 289 Ga. App. 323, 657 S.E.2d 270 (2008) (decided under former O.C.G.A. § 15-11-65).

Dispositional hearings held in county of juvenile's residence. — Dispositional hearings must be held in the county of the juvenile's residence to meet

state constitutional requirements. C.L.A. v. State, 137 Ga. App. 511, 224 S.E.2d 491 (1976) (decided under former Code 1933, § 24A-2201).

No need to repeat evidence presented during adjudicatory portion. — There was no error in refusing to have the dispositional phase include a repetition of the same evidence and witnesses previously presented during the adjudicatory portion. D.C.A. v. State, 135 Ga. App. 234, 217 S.E.2d 470 (1975) (decided under former Code 1933, § 24A-2201).

Appeals

Parent's right to appeal delinquency adjudication. — As parties to their child's delinquency action pursuant to former O.C.G.A. § 15-11-39(b) (see now O.C.G.A. §§ 15-11-160, 15-11-423, and 15-11-530), the child's parents had the right to appeal the juvenile court's judgment and to participate in the appellate process. In the Interest of J.L.B., 280 Ga. App. 556, 634 S.E.2d 514 (2006) (decided under former O.C.G.A. § 15-11-39).

Allegation of failure to comply with time requirements not appealable. — If the defendant, prior to a hearing to determine the defendant's delinquency, appealed from the juvenile court's denial of the defendant's motion to dismiss based solely upon an alleged failure to comply with the time requirements of subsection (a) of former O.C.G.A. § 15-11-26 (see now O.C.G.A. §§ 15-11-181, 15-11-400, 15-11-421, 15-11-441, and 15-11-582), the Court of Appeals dismissed the appeal since a motion under that Code section cannot be analogized to the denial of a O.C.G.A. § 17-7-170 motion and did not involve a question of speedy trial rights which would be directly appealable. In re M.O.B., 190 Ga. App. 474, 378 S.E.2d 898 (1989) (decided under former O.C.G.A. § 15-11-26).

Order for transfer for further disposition is not final appealable judgment. — When, pursuant to former Code 1933, § 24A-2201 (see now O.C.G.A. §§ 15-11-400, 15-11-440, 15-11-478, 15-11-581, 15-11-582, and 15-11-600), an order was entered adjudicating a juvenile guilty of an offense and, under the authority of former Code 1933, § 24A-1201 (see now O.C.G.A. §§ 15-11-401 and 15-11-490) jurisdiction was transferred to the county of the residence for further disposition, that order was not a final judgment appealable under former Code 1933, § 6-701 (see now O.C.G.A. §§ 5-6-34 and 5-6-35). D.C.E. v. State, 130 Ga. App. 724, 204 S.E.2d 481 (1974) (decided under former Code 1933, § 24A-2201).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, § 24A-1403, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Juvenile intake officer to locate appropriate juvenile facility. — Juvenile intake officer should make all reasonable efforts to locate an appropriate juvenile facility for the detention of an allegedly delinquent child before determining that such a facility was "not available" for purposes of the former statute. 1978 Op. Att'y Gen. No. U78-13 (decided under former Code 1933, § 24A-1403).

RESEARCH REFERENCES

Am. Jur. 2d. — 47 Am. Jur. 2d, Juvenile Courts and Delinquent and Dependent Children, §§ 47 et seq., 53 et seq., 66 et seq., 110 et seq.

C.J.S. — 43 C.J.S., Infants, §§ 140 et seq., 195 et seq., 226 et seq., 239.

U.L.A. — Uniform Juvenile Court Act (U.L.A.) §§ 16, 22, 23, 29.

ALR. — What constitutes delinquency or incorrigibility, justifying commitment of infant, 45 A.L.R. 1533; 85 A.L.R. 1099.

Omission of signature of issuing officer

on civil process or summons as affecting jurisdiction of the person, 37 A.L.R.2d 928.

Applicability of rules of evidence in juvenile delinquency proceeding, 43 A.L.R.2d 1128.

Authority of court to order juvenile delinquent incarcerated in adult penal institution, 95 A.L.R.3d 568.

Applicability of double jeopardy to juvenile court proceedings, 5 A.L.R.4th 234.

Truancy as indicative of delinquency or incorrigibility, justifying commitment of infant or juvenile, 5 A.L.R.4th 1211.

Foster parent's right to immunity from foster child's negligence claims, 55 A.L.R.4th 778.

Defense of infancy in juvenile delinquency proceedings, 83 A.L.R.4th 1135.

Applicability of rules of evidence to juvenile transfer, waiver, or certification hearings, 37 A.L.R.5th 703.

15-11-401. Child in need of services; venue.

(a) A proceeding under this article may be commenced in the county in which the act complained of took place or in the county in which the child alleged to be a child in need of services legally resides.

(b) If a proceeding is commenced in the county in which the act complained of took place, the court shall transfer the case to the county in which the child alleged to be a child in need of services legally resides for further proceedings.

(c) When a proceeding is transferred, certified copies of all legal and social documents and records on file with the clerk of court pertaining to the proceeding shall accompany such transfer.

History. — Code 1981, § 15-11-401, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

Cross references. — Venue for criminal actions generally, Ga. Const. 1983, Art. VI, Sec. II, Para. VI and § 17-2-2. Intrastate transfer of cases among Juvenile Courts, Uniform Rules for the Juvenile Courts of Georgia, Rule 5.3.

Law reviews. — For article discussing venue problems in juvenile court practice and suggesting solutions, see 23 Mercer L. Rev. 341 (1972). For article, "An Outline of Juvenile Court Jurisdiction with Focus on Child Custody," see 10 Ga. St. B. J. 275 (1973).

JUDICIAL DECISIONS

Editor's notes. — Many of the following annotations should be examined in light of the amendment to Ga. Const. 1976, Art. VI, Sec. XIV, Para. VI (see now Ga. Const. 1983, Art. VI, Sec. II, Para. VI) which took effect November 1, 1981.

In light of the similarity of the statutory provisions, decisions under former Code 1933, §§ 24A-1101, 24A-1201, pre-2000 Code Sections 15-11-15 and 15-11-16 and pre-2014 Code Sections 15-11-29 and 15-11-30, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

County of parent's residence. — Revision of Ga. Const. 1976, Art. VI, Sec. XIV, Para. VI (see now Ga. Const. 1983, Art. VI, Sec. II, Para. VI), providing that venue in juvenile court cases may be determined by the provisions of the Juvenile Court Code of Georgia, removed any constitutional impediment to applying former O.C.G.A. § 15-11-29 (see now O.C.G.A. §§ 15-11-17, 15-11-270, and 15-11-401) to parental termination proceedings when

the parent resides in a different county from that in which an allegedly deprived child is found. In re R.A.S., 249 Ga. 236, 290 S.E.2d 34 (1982) (decided under former O.C.G.A. § 15-11-15).

Action to terminate parental rights on ground of deprivation need not be brought in county of parents' residence. In re S.H., 163 Ga. App. 419, 294 S.E.2d 621 (1982) (decided under former Code 1933, § 24A-1101).

Determining legal residence. — Juvenile proceeding for delinquency or unruly conduct may be tried either in the county where the child resides or in the county where the unruly or delinquent conduct occurred. In re A.M.C., 213 Ga. App. 897, 446 S.E.2d 760 (1994) (decided under former O.C.G.A. § 15-11-15).

In determining where a juvenile resides for purposes of venue, it is generally the legal residence that controls. In re A.M.C., 213 Ga. App. 897, 446 S.E.2d 760 (1994) (decided under former O.C.G.A. § 15-11-15).

In a proceeding against a juvenile for the status offense of unruliness, the juvenile's legal residence for purposes of venue was in the county of the Department of Family & Children Services having custody over the juvenile, even though the place of the offense and the juvenile's family residence were in other counties. In re A.M.C., 213 Ga. App. 897, 446 S.E.2d 760 (1994) (decided under former O.C.G.A. § 15-11-15).

Adjudication proceeding is actually nothing more than pretrial hearing held in the county where the child was apprehended and in the custody of local authorities for committing the alleged unruly acts or delinquent behavior. M.E.B. v. State, 230 Ga. 154, 195 S.E.2d 891 (1973) (decided under former Code 1933, § 24A-1101).

Venue lies in county where juvenile committed criminal act. — Although some of the proceedings in juvenile court are of a criminal character, not all are. For those that are, delinquency, unruliness and juvenile traffic offenses, the venue provisions of the Juvenile Code and the state constitution, that venue lies in the county in which the act was committed, are in accord. Quire v. Clayton County Dep't of Family & Children Servs., 242 Ga. 85, 249 S.E.2d 538 (1978) (decided under former Code 1933, § 24A-1101).

Dispositional hearings conducted in county where defendant resides. — It was at the dispositional hearings provided for in former Code 1933, § 24A-2201 (see now O.C.G.A. §§ 15-11-101 and 15-11-210) that the actual "case" was tried, thereby comporting with the constitutional mandate that civil cases shall be tried in the county where the defendant resided. M.E.B. v. State, 230 Ga. 154, 195 S.E.2d 891 (1973) (decided under former Code 1933, § 24A-1101).

In a deprivation proceeding, the court erred in basing venue on the childrens' brief visit to the county where the deprivation petitions were filed because the children were residing and attending school in another county at the time. In re B.G., 238 Ga. App. 227, 518 S.E.2d 451 (1999) (decided under former O.C.G.A. § 15-11-15).

Because a child was born in Lee County and had lived with the child's mother and maternal grandparents in Lee County for ten out of the 16 months of the child's life when a petition alleging deprivation was filed under former O.C.G.A. § 15-11-29(a) (see now O.C.G.A. §§ 15-11-270 and 15-11-401), Lee County was the proper venue for the action. In the Interest of C.R., 292 Ga. App. 346, 665 S.E.2d 39 (2008) (decided under former O.C.G.A. § 15-11-29).

Service on mother in county of residence sufficient. — Service of process on the mother in the county of this state in which the mother of an illegitimate child resides is sufficient to give the county juvenile court jurisdiction over both the mother and the child regardless of whether there was a "detention" of the child and in spite of the fact that a welfare worker obtained possession of the child outside of the state. Sanchez v. Walker County Dep't of Family & Children Servs., 138 Ga. App. 49, 225 S.E.2d 441, rev'd on other grounds, 237 Ga. 406, 229 S.E.2d 66 (1976) (decided under former Code 1933, § 24A-1101).

Venue exists despite absence of child. — If a particular county is the

residence of the child and of the child's mother, venue properly exists there for temporary custody actions even if the child was not personally present within the boundaries of that county on the date of the filing of the petition to the court for temporary custody. Sanchez v. Walker County Dep't of Family & Children Servs., 138 Ga. App. 49, 225 S.E.2d 441, rev'd on other grounds, 237 Ga. 406, 229 S.E.2d 66 (1976) (decided under former Code 1933, § 24A-1101).

Venue in county of child's residence and where child born. — Requirements for proving that venue was properly in Cobb County were met because a mother was residing in Cobb County when her child was born and when the underlying proceeding alleging deprivation commenced and that the child remained in the custody of Cobb County Department of Family and Children Services through the time the juvenile court entered the court's deprivation and non-reunification order. In re R. B., 309 Ga. App. 407, 710 S.E.2d 611 (2011) (decided under former O.C.G.A. § 15-11-29).

Challenge to court's jurisdiction unsuccessful. — Although former Code 1933, § 79-404 (see now O.C.G.A. § 19-2-4) provided that the domicile of an illegitimate child shall be that of his or her mother, yet, where the plea to the jurisdiction alleged "this court has accepted jurisdiction and custody of the minor child … and is holding said child subject to the order of this court," which clearly showed that the child was before the court, and there was no allegation showing the domicile of the mother, who was present in court, or any other reason why the juvenile court did not have jurisdiction, it was not error to overrule the plea. Springstead v. Cook, 215 Ga. 154, 109 S.E.2d 508 (1959) (decided under Ga. L. 1953, Nov.-Dec. Sess., p. 87, § 3).

Child was residing in Cobb County when an underlying proceeding alleging deprivation commenced and had remained in the custody of Cobb County Department of Family and Children Services through the time a termination of parental rights order was entered; accordingly, requirements for venue in Cobb County were met. In re R. J. D. B., 305 Ga. App. 888, 700 S.E.2d 898 (2010) (decided under former O.C.G.A. § 15-11-29).

There was sufficient evidence that venue was proper in Douglas County, Georgia, in a deprivation proceeding, as the Douglas County Department of Family and Children Services (DFCS) had been involved with the family for some time; the subject child's parent lived in a shelter in Douglas County in May and June of 2010, and at the time the deprivation petition was filed the child was in the custody of the Douglas County DFCS, where the child remained through the entry of the deprivation order. In the Interest of D. S., 316 Ga. App. 296, 728 S.E.2d 890 (2012) (decided under former O.C.G.A. § 15-11-29).

Transfer provisions were not violative of Constitution. — Ga. L. 1971, p. 709, § 1, by providing that after adjudication of delinquency in a court of another county the proceeding shall be transferred to the county of the child's residence for disposition, is not violative of the Georgia Constitution. M.E.B. v. State, 230 Ga. 154, 195 S.E.2d 891 (1973) (decided under former Code 1933, § 24A-1201).

Failure to transfer prior to notice of appeal. — If it is undisputed that a child was a "nonresident child" as defined in former paragraph (a)(2) of O.C.G.A. § 15-11-30 at the time of the delinquent act and at the time of the adjudication of delinquency, in that the child then resided in Spalding County, Georgia, the juvenile court of Henry County erred in failing to transfer the case to the county of the child's residence for disposition prior to the filing of the child's notice of appeal in accordance with former subsection (b) of that section. In re R.W., 186 Ga. App. 885, 368 S.E.2d 824 (1988) (decided under former O.C.G.A. § 15-11-16).

Dispositional hearings held in county where defendant resides constitutional. — It was at the dispositional hearings provided for in former Code 1933, § 24A-2201 (see now O.C.G.A. §§ 15-11-110 and 15-11-210) that the actual "case" was tried, thereby comporting with the constitutional mandate that civil cases shall be tried in the county where the defendant resided. M.E.B. v. State, 230 Ga. 154, 195 S.E.2d 891 (1973) (de-

cided under former Code 1933, § 24A-1201).

Authority to grant new trials. — Juvenile courts are courts of record; therefore, juvenile courts are authorized to grant new trials. In re T.A.W., 265 Ga. 106, 454 S.E.2d 134 (1995) (decided under former O.C.G.A. § 15-11-16).

No jurisdiction for acts punishable by loss of life or confinement for life. — Juvenile court did not have exclusive jurisdiction over delinquent acts for which a child (under 17 years old) may be punished by loss of life or confinement for life in the penitentiary. Nevertheless, the statutory safeguards provided were applicable to both criminal and juvenile cases. Jackson v. State, 146 Ga. App. 375, 246 S.E.2d 407 (1978) (decided under former Code 1933, § 24A-1402).

Incriminating statements obtained in violation of the Juvenile Code are not rendered per se inadmissible; rather, the issue to be considered is whether there was a knowing and intelligent waiver by the appellant of the appellant's constitutional rights in making the incriminating statements. Lattimore v. State, 265 Ga. 102, 454 S.E.2d 474 (1995) (decided under former O.C.G.A. § 15-11-19); Barber v. State, 267 Ga. 521, 481 S.E.2d 813 (1997) (decided under former O.C.G.A. § 15-11-19); Skidmore v. State, 226 Ga. App. 130, 485 S.E.2d 540 (1997) (decided under former O.C.G.A. § 15-11-19); Gilliam v. State, 268 Ga. 690, 492 S.E.2d 185 (1997) (decided under former O.C.G.A. § 15-11-19); Simon v. State, 269 Ga. 208, 497 S.E.2d 231 (1998) (decided under former O.C.G.A. § 15-11-19); Hanifa v. State, 269 Ga. 797, 505 S.E.2d 731 (1998) (decided under former O.C.G.A. § 15-11-19); Attaway v. State, 244 Ga. App. 5, 534 S.E.2d 580 (2000) (decided under former O.C.G.A. § 15-11-19).

Evidence not inadmissible because of technical violations. — Since no injury appeared to have resulted, technical violations of former O.C.G.A. § 15-11-19 (see now O.C.G.A. §§ 15-11-133, 15-11-410, 15-11-411, 15-11-412, 15-11-501, and 15-11-502) would not render infirm evidence obtained as a result of such violations. In re J.D.M., 187 Ga. App. 285, 369 S.E.2d 920 (1988) (decided under former O.C.G.A. § 15-11-19).

Guardian cooperating with police. — By notifying the defendant's guardian of the defendant's arrest and the grounds therefor, the police complied with subsection (c) of former O.C.G.A. § 15-11-19 (see now O.C.G.A. § 15-11-501). That the guardian cooperated with the police in the police investigation of the defendant's involvement in the crime did not require a finding that the statement was not voluntarily made. Burnham v. State, 265 Ga. 129, 453 S.E.2d 449 (1995), overruled on other grounds, Stinski v. State, 281 Ga. 783, 642 S.E.2d 1 (2007) (decided under former O.C.G.A. § 15-11-19).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, § 24A-1201, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Failure to comply prejudices constitutional rights of child. — Failure to comply with the transfer provisions of former subsection (b) of Ga. L. 1971, p. 709, § 1 would prejudice the rights of the child under the venue provisions of the Georgia Constitution to have a dispositional hearing in the county of the child's residence. 1979 Op. Att'y Gen. No. U79-4 (decided under former Code 1933, § 24A-1201).

Transfer after delinquency or unruliness adjudication. — Once a child has been adjudicated delinquent or unruly in juvenile court, the child would have to be transferred to the juvenile court in the county of the child's residence. 1979 Op. Att'y Gen. No. U79-4 (decided under former Code 1933, § 24A-1201).

RESEARCH REFERENCES

Am. Jur. 2d. — 42 Am. Jur. 2d, Infants, § 27 et seq. 47 Am. Jur. 2d, Juvenile Courts and Delinquent and Dependent Children, § 39 et seq.

C.J.S. — 43 C.J.S., Infants, § 12 et seq.

U.L.A. — Uniform Juvenile Court Act (U.L.A.) §§ 11, 12.

ALR. — Right of indigent parent to appointed counsel in proceeding for involuntary termination of parental rights, 92 A.L.R.5th 379.

15-11-402. Right to attorney and appointment of guardian ad litem.

(a) The court shall appoint an attorney for a child alleged to be a child in need of services.

(b) The court may appoint a guardian ad litem for a child alleged to be a child in need of services at the request of such child's attorney or upon the court's own motion if it determines that a guardian ad litem is necessary to assist the court in determining the best interests of such child; provided, however, that such guardian ad litem may be the same person as the child's attorney unless or until there is a conflict of interest between the attorney's duty to such child as such child's attorney and the attorney's considered opinion of such child's best interests as guardian ad litem.

(c) The role of a guardian ad litem in a proceeding for a child in need of services shall be the same role as provided for in all dependency proceedings under Article 3 of this chapter.

(d) If an attorney or a guardian ad litem has previously been appointed for a child in a dependency or delinquency proceeding, the court, when possible, shall appoint the same attorney or guardian ad litem for a child alleged to be a child in need of services.

(e) An attorney appointed to represent a child in a proceeding for a child in need of services shall continue representation in any subsequent appeals unless excused by the court.

(f) A child alleged to be a child in need of services shall be informed of his or her right to an attorney at or prior to the first court proceeding for a child in need of services. A child alleged to be a child in need of services shall be given an opportunity to:

(1) Obtain and employ an attorney of his or her own choice; or

(2) To obtain a court appointed attorney if the court determines that such child is an indigent person.

History. — Code 1981, § 15-11-402, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242; Ga. L. 2014, p. 780, § 1-26/SB 364.

JUDICIAL DECISIONS

Analysis

General Consideration
Waiver

General Consideration

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 24A-2001, pre-2000 Code Section 15-11-30 and pre-2014 Code Section 15-11-6, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Due process requires notice of right to counsel. — Due process clause of U.S. Const., amend. 14, requires that in respect of proceedings to determine delinquency which may result in commitment to an institution in which the juvenile's freedom is curtailed, the child and the child's parents must be notified of the child's right to be represented by counsel retained by the parents, or if the parents are unable to afford counsel, that counsel will be appointed to represent the child. Freeman v. Wilcox, 119 Ga. App. 325, 167 S.E.2d 163 (1969), disapproved in Riley v. State, 237 Ga. 124, 226 S.E.2d 922 (1976), to the extent that no automatic exclusionary rule should be applied to incriminating statements made by a juvenile whose parents were not separately advised of the right to counsel (decided under former Code 1933, § 24A-2001).

Right to counsel at delinquency hearing. — General Assembly intended that in a juvenile court a child is of right entitled to counsel at a hearing which covers a determination by the court concerning the existence of delinquency by reason of the violation of probation conditions. K.E.S. v. State, 134 Ga. App. 843, 216 S.E.2d 670 (1975) (decided under former Code 1933, § 24A-2001).

No right to counsel before judicial citizens review panel. — Former O.C.G.A. § 15-11-6(b) (see now O.C.G.A. §§ 15-11-103, 15-11-402, and 15-11-475) did not apply to reviews by a judicial citizens review panel as the proceedings mentioned in former § 15-11-6(b) were proceedings before the juvenile court; the citizen's review panel's findings of fact and recommendations are not legal evidence as the panel were not a court of record and the panel's actions were not necessarily in compliance with regard to legal due process considerations. In the Interest of K.M.C., 273 Ga. App. 276, 614 S.E.2d 896 (2005) (decided under former O.C.G.A. § 15-11-6).

Parent entitled to representation at all stages of deprivation proceeding. — Under former O.C.G.A. § 15-11-6(b), a parent was entitled to representation at all stages of the proceedings alleging deprivation. In the Interest of A. R., 296 Ga. App. 62, 673 S.E.2d 586 (2009) (decided under former O.C.G.A. § 15-11-6).

Parent entitled to effective representation. — Mother was entitled to effective representation in termination hearing. In re A.H.P., 232 Ga. App. 330, 500 S.E.2d 418 (1998) (decided under former O.C.G.A. § 15-11-30).

Right applies to informal detention hearing and other stages. — Accused juvenile was entitled to counsel at an "informal detention hearing" required by Ga. L. 1971, p. 709, § 1 (see now O.C.G.A. § 15-11-60), or at any of the other stages of any proceedings alleging delinquency, unruliness, and deprivation. A.C.G. v. State, 131 Ga. App. 156, 205 S.E.2d 435 (1974) (decided under former Code 1933, § 24A-2001).

Juvenile entitled to principles necessary for fair trial. — Juvenile charged with "delinquency" is entitled by right to have the court apply those common-law

General Consideration (Cont'd)

jurisprudential principles which experience and reason have shown are necessary to give the accused the essence of a fair trial. T.L.T. v. State, 133 Ga. App. 895, 212 S.E.2d 650 (1975) (decided under former Code 1933, § 24A-2001).

Ingredients of fair trial. — To give one accused in a juvenile proceeding a fair trial, the trial must include such ingredients as the presumption of innocence, the requirement that if the conviction is based entirely upon circumstantial evidence then the proved facts shall exclude every other reasonable hypothesis save that of guilt, and the necessity of producing independent corroborative evidence to that of an accomplice for a finding of guilt when based upon the latter's testimony. T.L.T. v. State, 133 Ga. App. 895, 212 S.E.2d 650 (1975) (decided under former Code 1933, § 24A-2001).

Cannot reverse delinquency adjudication unless deprivation of counsel harmful. — Although an accused is entitled to counsel at the stage known as "a detention hearing", there is no authority for reversing an adjudication of delinquency after a fair trial with legal representation because of lack of counsel at the detention hearing, unless it appears that deprivation of counsel at that stage resulted in harm to the juvenile. T.K. v. State, 126 Ga. App. 269, 190 S.E.2d 588 (1972) (decided under former Code 1933, § 24A-2001).

Juvenile Code recognizes that a parent is a "party" to proceedings involving the parent's child. Sanchez v. Walker County Dep't of Family & Children Servs., 237 Ga. 406, 229 S.E.2d 66 (1976) (decided under former Code 1933, § 24A-2001).

Physical presence of parent cannot be equated with meaningful representation. K.E.S. v. State, 134 Ga. App. 843, 216 S.E.2d 670 (1975) (decided under former Code 1933, § 24A-2001).

Indigent putative father's performance of the duties of a parent does not control the determination of whether he is entitled to appointed representation; the crucial inquiry is whether the putative father was a "party" to any of the proceedings within the meaning of the former statute. Wilkins v. Georgia Dep't of Human Resources, 255 Ga. 230, 337 S.E.2d 20 (1985) (decided under former O.C.G.A. § 15-11-30).

Former Code section did not imply that foster parents may have certain rights. Drummond v. Fulton County Dep't of Family & Children Servs., 237 Ga. 449, 228 S.E.2d 839 (1976), cert. denied, 432 U.S. 905, 97 S. Ct. 2949, 53 L. Ed. 2d 1077 (1977) (decided under former Code 1933, § 24A-2001).

Parent's right to representation not violated. — Mother's right to appointed counsel was not violated since, after being notified of such right, she did not request counsel until shortly before the termination hearing and did not identify any proceeding at which she appeared unrepresented. In re A.M.R., 230 Ga. App. 133, 495 S.E.2d 615 (1998) (decided under former O.C.G.A. § 15-11-30).

Juvenile court did not err by refusing to dismiss the proceedings to terminate a mother's parental rights for the failure of the mother to be represented by counsel at the judicial citizens review panel as the proceedings mentioned in former O.C.G.A. § 15-11-6(b) (see now O.C.G.A. §§ 15-11-103, 15-11-402, and 15-11-475) were proceedings before the juvenile court and were not reviews by the panel; further, any error was harmless as the juvenile court did not rely on the panel's recommendations in terminating the mother's parental rights. In the Interest of K.M.C., 273 Ga. App. 276, 614 S.E.2d 896 (2005) (decided under former O.C.G.A. § 15-11-6).

Parent, who was represented by counsel during the course of a termination of parental rights proceeding, could not prove that the parent was denied counsel during the proceeding because, beyond the claim that the parent was denied counsel, the parent failed to show what arguments the parent would have advanced, what evidence the parent would have produced in the parent's favor, or how the parent would have been successful had the parent been represented by counsel; moreover, in light of the overwhelming evidence supporting the termination of the parent's parental rights, there was noth-

ing in the record that would support a finding of harm. In the Interest of M.S., 279 Ga. App. 254, 630 S.E.2d 856 (2006), overruled on other grounds, In re J.M.B., 296 Ga. App. 786, 676 S.E.2d 9 (2009) (decided under former O.C.G.A. § 15-11-6).

Indigent parent entitled to paupered transcript for use in appeal. — Indigent parent, whose parental rights have been terminated by an order of the juvenile court on a petition filed by an agency of the state, is entitled to a paupered transcript of the proceeding in the juvenile court for use in appealing the decision of that court. Nix v. Department of Human Resources, 236 Ga. 794, 225 S.E.2d 306 (1976) (decided under former Code 1933, § 24A-2001).

Trial court committed reversible error in failing to determine whether appointed counsel was required for parent. — Fact that there was sufficient evidence to support the termination of a parent's rights did not relieve the trial court of the court's obligation to determine whether counsel should have been appointed for the parent under former O.C.G.A. § 15-11-6(b) (see now O.C.G.A. §§ 15-11-103, 15-11-402, and 15-11-475). The trial court's limited inquiry as to whether the parent waived the right to counsel, and the court's failure to ascertain the parent's financial status was reversible error. In the Interest of P. D. W., 296 Ga. App. 189, 674 S.E.2d 338 (2009) (decided under former O.C.G.A. § 15-11-6).

Waiver

Right to counsel may be waived unless child is not represented by the child's parents, guardian, or custodian. A.C.G. v. State, 131 Ga. App. 156, 205 S.E.2d 435 (1974) (decided under former Code 1933, § 24A-2001).

Determination of voluntary and knowing waiver of right. — Question of a voluntary and knowing waiver of a juvenile's right to counsel depends on the totality of the circumstances and the state has a heavy burden in showing that the juvenile did understand and waive the juvenile's right to counsel. Crawford v. State, 240 Ga. 321, 240 S.E.2d 824 (1977) (decided under former Code 1933, § 24A-2001).

Trial court apparently determined that, given the court's finding that the mother was not competent, the mother was unable to show a knowing and voluntary waiver of her right to appointed counsel at the child deprivation hearing; thus, the trial court did not err in refusing to allow her to proceed pro se. Additionally, the mother failed to establish that she was harmed by her counsel's representation; thus, without harm, the mother's alleged error presented no basis for reversal. In the Interest of B.B., 267 Ga. App. 360, 599 S.E.2d 304 (2004) (decided under former O.C.G.A. § 15-11-6).

Factors considered in determining proper waiver. — Several of the factors to be considered among the totality of the circumstances in determining whether the juvenile's waiver of counsel is made knowingly and voluntarily are: (1) age of the accused; (2) education of the accused; (3) knowledge of the accused as to both the substance of the charge and the nature of the accused's rights to consult with an attorney and remain silent; (4) whether the accused was held incommunicado or allowed to consult with relatives, friends, or an attorney; (5) whether the accused was interrogated before or after formal charges were filed; (6) methods used in interrogations; (7) length of interrogations; (8) whether vel non the accused refused to voluntarily give statements on prior occasions; and (9) whether the accused repudiated an extra-judicial statement at a later date. Crawford v. State, 240 Ga. 321, 240 S.E.2d 824 (1977) (decided under former 1933, § 24A-2001).

Juvenile court proceeding null if no waiver. — If in a juvenile court proceeding, there was neither waiver of right of a mother, nor proper service upon the parties and since the hearing was not taken under oath, or waived by any of the parties, the proceeding was an absolute nullity. McBurrough v. Dep't of Human Resources, 150 Ga. App. 130, 257 S.E.2d 35 (1979) (decided under former Code 1933 § 24A-2001).

Mother who waives child's rights must be unbiased mother, free of interests conflicting with the needs of her

Waiver (Cont'd)

daughter whom she undertakes to represent; an ally, not an adversary. K.E.S. v. State, 134 Ga. App. 843, 216 S.E.2d 670 (1975) (decided under former Code 1933 § 24A-2001).

Right to counsel waived. — Trial judge's determination that a 15-year-old girl knowingly and voluntarily waived her right to counsel in a murder case was not clearly erroneous since she was interrogated before formal charges were filed, was not held incommunicado, and there was no evidence that coercive or deceptive interrogation techniques were employed. J.E.W. v. State, 256 Ga. 464, 349 S.E.2d 713 (1986) (decided under former O.C.G.A. §§ 15-11-6 and 15-11-30).

Right to counsel not waived. — In a proceeding for termination of parental rights, an indigent parent did not waive the right to appointed counsel in a knowing, intelligent, and voluntary manner simply because the parent failed to request counsel prior to the hearing as directed by the court. The court's denial of the parent's request for counsel was reversible error. In re J. M. B., 296 Ga. App. 786, 676 S.E.2d 9 (2009) (decided under former O.C.G.A. § 15-11-6).

Error in proceeding without counsel harmless. — As a juvenile court in a mother's parental rights termination proceeding failed to make inquiry as to whether the mother was indigent and whether she was waiving the right to counsel pursuant to O.C.G.A. § 15-11-6(b), the judgment terminating her parental rights over her three children could not stand. Moreover, the record demonstrated many instances of harm caused by the mother's lack of counsel. In the Interest of P. D. W., 296 Ga. App. 189, 674 S.E.2d 338 (2009) (decided under former O.C.G.A. § 15-11-6).

Juvenile did not make a knowing and intelligent decision to proceed without counsel where the referee did not warn her or her mother of the danger of proceeding without counsel or of the consequences of an affirmative finding or admission of the charge enumerated in the petition; the juvenile appellant and her mother did not stand before the court with open eyes, knowing the danger and consequences of proceeding without the benefit of legal representation. In re W.M.F., 180 Ga. App. 397, 349 S.E.2d 265 (1986) (decided under former O.C.G.A. § 15-10-30).

RESEARCH REFERENCES

Am. Jur. 2d. — 47 Am. Jur. 2d, Juvenile Courts and Delinquent and Dependent Children, § 78 et seq.

C.J.S. — 43 C.J.S., Infants, §§ 172 et seq., 181.

U.L.A. — Uniform Juvenile Court Act (U.L.A.) § 26.

ALR. — Right to an appointment of counsel in juvenile court proceedings, 60 A.L.R.2d 691; 25 A.L.R.4th 1072.

Right of juvenile court defendant to be represented during court proceedings by parent, 11 A.L.R.4th 719.

Validity and efficacy of minor's waiver of right to counsel — modern cases, 25 A.L.R.4th 1072.

15-11-403. Continuance of a hearing in child in need of services proceedings.

A continuance shall be granted only upon a showing of good cause and only for that period of time shown to be necessary by the moving party at the hearing on such motion. Whenever any continuance is granted, the facts which require the continuance shall be entered into the court record.

History. — Code 1981, § 15-11-403, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

15-11-404. Case plan for a child alleged or found to be a child in need of services.

If a child is alleged or adjudicated to be a child in need of services and is placed in foster care, the child shall be required to have a case plan. In addition to the case plan requirements of Code Section 15-11-201, a case plan shall include:

(1) A description of such child's strengths and needs;

(2) A description of such child's specific parental strengths and needs;

(3) A description of other personal, family, or environmental problems that may contribute to such child's behaviors;

(4) A description of the safety, physical, and mental health needs of such child;

(5) Identification of the least restrictive placement to safeguard such child's best interests and protect the community;

(6) An assessment of the availability of community resources to address such child's and his or her family's needs;

(7) An assessment of the availability of court diversion services; and

(8) An assessment of the availability of other preventive measures.

History. — Code 1981, § 15-11-404, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

15-11-405. Termination of proceedings relating to a runaway child.

Any proceeding or other processes or actions alleging for the first time that a child is a runaway shall be terminated or dismissed upon the request of such child's parent, guardian, or legal custodian or a prosecuting attorney.

History. — Code 1981, § 15-11-405, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242; Ga. L. 2015, p. 540, § 2-2/HB 361.

RESEARCH REFERENCES

Am. Jur. 2d. — 47 Am. Jur. 2d, Juvenile Courts and Delinquent and Dependent Children, § 66 et seq.

PART 4

PREADJUDICATION CUSTODY AND RELEASE OF CHILDREN

15-11-410. Taking a child into temporary custody.

(a) A child may be taken into temporary custody under this article:

(1) Pursuant to a court order; or

(2) By a law enforcement officer when there are reasonable grounds to believe that a child has run away from his or her parent, guardian, or legal custodian or the circumstances are such as to endanger a child's health or welfare unless immediate action is taken.

(b) Before entering an order authorizing temporary custody, the court shall consider the results of a detention assessment and determine whether continuation in the home is contrary to a child's welfare and whether there are available services that would prevent the need for custody. The court shall make such determination on a case-by-case basis and shall make written findings of fact referencing any and all evidence relied upon in reaching its decision.

(c) A person taking a child into temporary custody shall deliver such child, with all reasonable speed and without first taking such child elsewhere, to a medical facility if he or she is believed to suffer from a serious physical condition or illness which requires prompt treatment and, upon delivery, shall promptly contact a juvenile court intake officer.

(d) As soon as a juvenile court intake officer is notified that a child has been taken into temporary custody, such juvenile court intake officer shall administer a detention assessment and determine if such child should be released, remain in temporary custody, or be brought before the court.

History. — Code 1981, § 15-11-410, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242; Ga. L. 2014, p. 780, § 1-27/SB 364.

Cross references. — Exercise of power of arrest generally, § 17-4-1 et seq. Authority of peace officer to assume temporary custody of child absent from school without lawful authority or excuse, § 20-2-698 et seq. Amendment to Juvenile Court petition, Uniform Rules for the Juvenile Courts of Georgia, Rule 6.6. Continuance of adjudicatory hearing in Juvenile Court, Uniform Rules for the Juvenile Courts of Georgia, Rule 11.3.

Law reviews. — For article discussing due process in juvenile court procedures

in California and Georgia, in light of In re Gault, 387 U.S. 1, 87 S. Ct. 1428, 18 L. Ed. 2d 527 (1967), see 8 Ga. St. B. J. 9 (1971). For article, "The Prosecuting Attorney in Georgia's Juvenile Courts," see 13 Ga. St. B. J. 27 (2008).

For note criticizing jurisdiction of juvenile justice system over runaways and advocating alternative legal approaches, see 24 Emory L. J. 1075 (1975).

For comment, "School Bullies — They Aren't Just Students: Examining School Interrogations and the Miranda Warning," see 59 Mercer L. Rev. 731 (2008).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 24A-1402, pre-2000 Code Section 15-11-19, and pre-2014 Code Section 15-11-47, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Procedural requirements are applicable when child is taken into custody or temporarily detained, regardless of whether it is for alleged delinquency, unruliness, or deprivation. Sanchez v. Walker County Dep't of Family & Children Servs., 237 Ga. 406, 229 S.E.2d 66 (1976) (decided under former Code 1933, § 24A-1402).

Failure to follow mandated procedures warrants dismissal without prejudice of a petition alleging deprivation of a child. Another petition can be filed without delay if there is reason to believe the child is being neglected or abused. Sanchez v. Walker County Dep't of Family & Children Servs., 140 Ga. App. 175, 230 S.E.2d 139 (1976) (decided under former Code 1933, § 24A-1402).

Failure to follow procedures did not warrant dismissal. — Even though taking a juvenile to police headquarters before releasing the juvenile to the juvenile's parents was a violation of subsection (a) of former O.C.G.A. § 15-11-19 (see now O.C.G.A. §§ 15-11-133 and 15-11-502), dismissal of the delinquency petition was not required because the violation did not cause injury or prejudice to the juvenile. In re C.W., 227 Ga. App. 763, 490 S.E.2d 442 (1997) (decided under former O.C.G.A. § 15-11-19).

Former statute directed person taking child into custody to follow one of specified courses, "without first taking the child elsewhere," such as to the police station. M.K.H. v. State, 135 Ga. App. 565, 218 S.E.2d 284 (1975) (decided under former Code 1933, § 24A-1402).

When failure to bring juvenile promptly before court not prejudicial. — Any deviation from former O.C.G.A. § 15-11-19 (see now O.C.G.A. §§ 15-11-133, 15-11-410, 15-11-411, 15-11-412, 15-11-501, 15-11-502, and 15-11-507) resulting from a police officer taking a juvenile to the scene of a crime for show-up identification following the juvenile's arrest but prior to taking the juvenile before the juvenile court was minimal and not prejudicial error. M.A.K. v. State, 171 Ga. App. 151, 318 S.E.2d 828 (1984) (decided under former O.C.G.A. § 15-11-19).

Failure of the state police to take a defendant promptly before a judicial officer does not make the defendant's conviction constitutionally infirm unless the defendant's defense was prejudiced thereby. Paxton v. Jarvis, 735 F.2d 1306 (11th Cir.), cert. denied, 469 U.S. 935, 105 S. Ct. 335, 83 L. Ed. 2d 271 (1984) (decided under former O.C.G.A. § 15-11-19); Barnes v. State, 178 Ga. App. 205, 342 S.E.2d 388 (1986) (decided under former O.C.G.A. § 15-11-19).

Juvenile may first be booked if rights are observed. — There was no violation of former Code 1933, § 24A-1402) (see now O.C.G.A. §§ 15-11-133, 15-11-410, 15-11-411, 15-11-412, 15-11-501, 15-11-502, and 15-11-507) because a juvenile suspect was first taken to a police station for booking purposes, if the juvenile was advised of the juvenile's rights under that section to be questioned elsewhere; the juvenile signed a waiver of these rights on an "advice to juveniles" form and was de-

tained at a youth development center. Marshall v. State, 248 Ga. 227, 282 S.E.2d 301 (1981) (decided under former Code 1933, § 24A-1402).

Juvenile court intake officers act in a judicial capacity; therefore, law enforcement officers, who perform an executive function, are per se disqualified from acting as intake officers. Brown v. Scott, 266 Ga. 44, 464 S.E.2d 607 (1995) (decided under former O.C.G.A. § 15-11-19).

Juvenile court intake officer is a public officer for purposes of a quo warranto proceeding. Brown v. Scott, 266 Ga. 44, 464 S.E.2d 607 (1995) (decided under former O.C.G.A. § 15-11-19).

Failure to comply with notice and hearing requirements of the Juvenile Code, after an allegedly deprived child has been taken from the parent's custody, prejudices or injures the rights of the parent, primarily the right to possession of the child under former Code 1933, §§ 74-106, 74-108, and 74-203 (see now O.C.G.A. §§ 19-7-1, 19-7-25, and 19-9-2). Sanchez v. Walker County Dep't of Family & Children Servs., 237 Ga. 406, 229 S.E.2d 66 (1976) (decided under former Code 1933, § 24A-1402).

Time limits are jurisdictional and must be adhered to. — Time limits established by the General Assembly in the Juvenile Code are jurisdictional and must be strictly adhered to. A failure to comply with the time periods requires dismissal. R.A.S. v. State, 156 Ga. App. 366, 274 S.E.2d 752 (1980), overruled on other grounds, In re R.D.F., 66 Ga. 294, 466 S.E.2d 572 (1996) (decided under former Code 1933, § 24A-1402).

No jurisdiction for acts punishable by loss of life or confinement for life. — Juvenile court did not have exclusive jurisdiction over delinquent acts for which a child (under 17 years old) may be punished by loss of life or confinement for life in the penitentiary. Nevertheless, the statutory safeguards provided were applicable to both criminal and juvenile cases. Jackson v. State, 146 Ga. App. 375, 246 S.E.2d 407 (1978) (decided under former Code 1933, § 24A-1402).

Incriminating statements obtained in violation of the Juvenile Code are not rendered per se inadmissible; rather, the issue to be considered is whether there was a knowing and intelligent waiver by the appellant of the appellant's constitutional rights in making the incriminating statements. Lattimore v. State, 265 Ga. 102, 454 S.E.2d 474 (1995) (decided under former O.C.G.A. § 15-11-19); Barber v. State, 267 Ga. 521, 481 S.E.2d 813 (1997) (decided under former O.C.G.A. § 15-11-19); Skidmore v. State, 226 Ga. App. 130, 485 S.E.2d 540 (1997) (decided under former O.C.G.A. § 15-11-19); Gilliam v. State, 268 Ga. 690, 492 S.E.2d 185 (1997) (decided under former O.C.G.A. § 15-11-19); Simon v. State, 269 Ga. 208, 497 S.E.2d 231 (1998) (decided under former O.C.G.A. § 15-11-19); Hanifa v. State, 269 Ga. 797, 505 S.E.2d 731 (1998) (decided under former O.C.G.A. § 15-11-19); Attaway v. State, 244 Ga. App. 5, 534 S.E.2d 580 (2000) (decided under former O.C.G.A. § 15-11-19).

Evidence not inadmissible because of technical violations. — Since no injury appeared to have resulted, technical violations of former O.C.G.A. § 15-11-19 (see now O.C.G.A. §§ 15-11-133, 15-11-410, 15-11-411, 15-11-412, 15-11-501, and 15-11-502) would not render infirm evidence obtained as a result of such violations. In re J.D.M., 187 Ga. App. 285, 369 S.E.2d 920 (1988) (decided under former O.C.G.A. § 15-11-19).

Guardian cooperating with police. — By notifying the defendant's guardian of the defendant's arrest and the grounds therefor, the police complied with subsection (c) of former O.C.G.A. § 15-11-19 (see now O.C.G.A. § 15-11-501). That the guardian cooperated with the police in the police investigation of the defendant's involvement in the crime did not require a finding that the statement was not voluntarily made. Burnham v. State, 265 Ga. 129, 453 S.E.2d 449 (1995), overruled on other grounds, Stinski v. State, 281 Ga. 783, 642 S.E.2d 1 (2007) (decided under former O.C.G.A. § 15-11-19).

Rule as to confessions of juveniles should be same as that for confessions of adults because law enforcement officers cannot be certain when officers question a juvenile what kind of case may develop, and the statutory safeguards are applica-

ble to both criminal and juvenile cases. Crawford v. State, 240 Ga. 321, 240 S.E.2d 824 (1977) (decided under former Code 1933, § 24A-1402); Jackson v. State, 146 Ga. App. 375, 246 S.E.2d 407 (1978) (decided under former Code 1933, § 24A-1402).

Confession inadmissible if failure to comply with safeguards. — Failure to comply with the statutory safeguards renders a confession of a juvenile inadmissible in evidence. Bussey v. State, 144 Ga. App. 875, 243 S.E.2d 99 (1978) (decided under former Code 1933, § 24A-1402).

Failure to comply with the statutory safeguards renders confession of a juvenile inadmissible even in a criminal case where a juvenile is tried as an adult. Manning v. State, 162 Ga. App. 494, 292 S.E.2d 95 (1982) (decided under former O.C.G.A. § 15-11-19).

Confession obtained illegally inadmissible in delinquency hearing. — Confession obtained from a juvenile in violation of the statute was inadmissible in a hearing to determine the delinquency of a juvenile. J.J. v. State, 135 Ga. App. 660, 218 S.E.2d 668 (1975) (decided under former Code 1933, § 24A-1402).

Confession admissible after juvenile opted not to have parent present. — Because the undisputed evidence established that a juvenile defendant was informed of the right to have a parent present during an interview with police in which a custodial statement was obtained, but did not invoke that right, there was no error in allowing the juvenile defendant's statement into evidence. Green v. State, 282 Ga. 672, 653 S.E.2d 23 (2007) (decided under former O.C.G.A. § 15-11-47).

Confession admissible if parent present and rights protected. — Juvenile defendant's confession was admissible despite the fact that the defendant was not taken before an impartial juvenile intake officer but a member of the county police department since the defendant's mother was present during the juvenile's interrogation and it was not alleged that the officer failed to perform any duty imposed upon the officer. Worthy v. State, 253 Ga. 661, 324 S.E.2d 431 (1985) (decided under former O.C.G.A. § 15-11-19).

Issue of whether officer to whom juvenile was taken and to whom the juvenile made a confession was a "juvenile court intake officer" did not affect the admissibility of the statement since Miranda warnings were given and the juvenile's mother was present. Houser v. State, 173 Ga. App. 378, 326 S.E.2d 513 (1985) (decided under former O.C.G.A. § 15-11-19).

Language of former O.C.G.A. § 15-11-19 (see now O.C.G.A. §§ 15-11-133, 15-11-501, and 15-11-502) requiring the bringing of a child before juvenile authorities was directory and did not serve to render inadmissible a juvenile's confession if the juvenile's rights were otherwise protected, such as if the juvenile's father was present and was continually apprised of the questioning. W.G.C. v. State, 173 Ga. App. 528, 327 S.E.2d 522 (1985) (decided under former O.C.G.A. § 15-11-19).

Confession admissible despite technical violation. — Police officer's failure to bring juvenile initially to juvenile court did not render the 14-year old's confession inadmissible since the confession was obtained only after the juvenile waived the juvenile's rights knowingly and voluntarily, and with the knowledge and consent of both the juvenile's mother and legal guardian. In re J.D.G., 207 Ga. App. 698, 429 S.E.2d 118 (1993) (decided under former O.C.G.A. § 15-11-19).

Since the defendant's statement was knowingly and intelligently given before officers had an opportunity to take the juvenile anywhere, former O.C.G.A. § 15-11-19 (see now O.C.G.A. § 15-11-133, 15-11-501, and 15-11-502) was neither implicated nor violated. McKoon v. State, 266 Ga. 149, 465 S.E.2d 272 (1996) (decided under former O.C.G.A. § 15-11-19).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under pre-2000 Code Section 15-11-19, which was subsequently repealed but was

succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Juvenile court intake officers. — Officers of the juvenile division of the sheriff's department may not also serve as juvenile court intake officers for purposes of compliance with former statutory provisions. 1983 Op. Att'y Gen. No. U83-66 (decided under former O.C.G.A. § 15-11-19).

RESEARCH REFERENCES

Am. Jur. 2d. — 42 Am. Jur. 2d, Infants, § 12 et seq. 47 Am. Jur. 2d, Juvenile Courts and Delinquent and Dependent Children, §§ 7, 66 et seq.

C.J.S. — 43 C.J.S., Infants, §§ 67 et seq., 140 et seq., 156, 239.

U.L.A. — Uniform Juvenile Court Act (U.L.A.) §§ 13, 15, 22.

ALR. — Constitutionality of statute which for reformatory purposes deprives parent of custody or control of child, 60 A.L.R. 1342.

Applicability of double jeopardy to juvenile court proceedings, 5 A.L.R.4th 234.

Truancy as indicative of delinquency or incorrigibility, justifying commitment of infant or juvenile, 5 A.L.R.4th 1211.

15-11-411. Temporary custody; time limitations.

(a) A person taking a child into temporary custody pursuant to Code Section 15-11-410 shall not exercise custody over such child except for a period of 12 hours.

(b) Immediately after a child is taken into custody, every effort shall be made to contact such child's parents, guardian, or legal custodian.

(c) If a parent, guardian, or legal custodian has not assumed custody of his or her child at the end of the 12 hour period described in subsection (a) of this Code section, the court shall be notified and shall place such child in the least restrictive placement consistent with such child's needs for protection or control. In making its determination of placement, the court should consider the following placement options:

(1) In the custody of such child's parents, guardian, or legal custodian upon such person's promise to bring such child before the court when requested by the court;

(2) Before placing the child in the custody of DFCS, whether the child may be placed with a relative or fictive kin upon such person's promise to bring such child before the court when requested by the court;

(3) In the custody of DFCS which shall promptly arrange for foster care of such child;

(4) In a secure residential facility or nonsecure residential facility in accordance with Code Section 15-11-412; or

(5) In any other court-approved placement that is not a secure residential facility or nonsecure residential facility.

History. — Code 1981, § 15-11-411, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242; Ga. L. 2014, p. 780, § 1-28/SB 364; Ga. L. 2019, p. 67, § 7/HB 472.

The 2019 amendment, effective April 18, 2019, added paragraph (c)(2) and redesignated former paragraphs (c)(2) through (c)(4) as present paragraphs (c)(3) through (c)(5), respectively.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2013, "is" was inserted in subsection (b).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 24A-1402, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Time limits are jurisdictional and must be adhered to. — Time limits established by the General Assembly in the Juvenile Code are jurisdictional and must be strictly adhered to. A failure to comply with the time periods requires dismissal. R.A.S. v. State, 156 Ga. App. 366, 274 S.E.2d 752 (1980), overruled on other grounds, In re R.D.F., 66 Ga. 294, 466 S.E.2d 572 (1996) (decided under former Code 1933, § 24A-1402).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under pre-2000 Code Section 15-11-19, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Juvenile court intake officers. — Officers of the juvenile division of the sheriff's department may not also serve as juvenile court intake officers for purposes of compliance with former statutory provisions. 1983 Op. Att'y Gen. No. U83-66 (decided under former O.C.G.A. § 15-11-19).

RESEARCH REFERENCES

Am. Jur. 2d. — 47 Am. Jur. 2d, Juvenile Courts and Delinquent and Dependent Children, § 66 et seq.

C.J.S. — 43 C.J.S., Infants, §§ 140 et seq., 239.

U.L.A. — Uniform Juvenile Court Act (U.L.A.) § 15.

15-11-412. Temporary detention; place of custody.

(a) A child alleged to be a child in need of services may be held in a secure residential facility or nonsecure residential facility until a continued custody hearing is held, provided that a detention assessment has been administered and such child is not held in a secure residential facility or nonsecure residential facility for more than 24 hours and any of the following apply:

(1) It is alleged that such child is a runaway;

(2) It is alleged that such child is habitually disobedient of the reasonable and lawful commands of his or her parent, guardian, or legal custodian and is ungovernable; or

(3) Such child has previously failed to appear at a scheduled hearing.

(b) A child alleged to be a child in need of services placed in a secure residential facility or nonsecure residential facility pursuant to subsection (a) of this Code section may be appointed an attorney prior to the continued custody hearing.

(c) In no case shall a child alleged to be or adjudicated as a child in need of services in custody be detained in a jail, adult lock-up, or other adult detention facility.

History. — Code 1981, § 15-11-412, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

Law reviews. — For note criticizing jurisdiction of juvenile justice system over runaways and advocating alternative legal approaches, see 24 Emory L. J. 1075 (1975).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 24A-1403, pre-2000 Code Section 15-11-20, and pre-2014 Code Section 15-11-48, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Applicability. — Contrary to the defendant's claims, neither former O.C.G.A. § 15-11-67 (see now O.C.G.A. § 15-11-442) nor former O.C.G.A. § 15-11-48(e) (see now O.C.G.A. §§ 15-11-135, 15-11-400, and 15-11-412) applied to the defendant's case because both provisions applied when the child was found "unruly," and the defendant was adjudicated delinquent, not unruly. In the Interest of B. Q. L. E., 297 Ga. App. 273, 676 S.E.2d 742, cert. denied, No. S09C1197, 2009 Ga. LEXIS 787 (Ga. 2009) (decided under former O.C.G.A. § 15-11-48).

Suspect may first be booked if rights are observed. — There was no violation of former O.C.G.A. § 15-11-20 (see now O.C.G.A. §§ 15-11-155, 15-11-400, 15-11-412, and 15-11-504) because a juvenile suspect was first taken to a police station for booking purposes, if the juvenile was advised of the juvenile's rights under that section to be questioned elsewhere; the juvenile signed a waiver of these rights on an "advice to juveniles" form and was detained at a youth development center. Marshall v. State, 248 Ga. 227, 282 S.E.2d 301 (1981) (decided under former Code 1933, § 24A-1403).

Confession admissible if juvenile taken before county police. — Juvenile defendant's confession was admissible despite the fact that the juvenile was not taken before an impartial juvenile intake officer but a member of the county police department since the defendant's mother was present during the juvenile's interrogation and it was not alleged that the officer failed to perform any duty imposed upon the officer. Worthy v. State, 253 Ga. 661, 324 S.E.2d 431 (1985) (decided under former O.C.G.A. § 15-11-20).

All detention facilities not supervised and controlled by juvenile courts. — Juvenile courts are not granted the power and authority to supervise and control all the various detention facilities. Jones v. State, 134 Ga. App. 611, 215 S.E.2d 483 (1975) (decided under former Code 1933, § 24A-1403).

No guarantee of all bed space desired by courts. — Subsection (a) of former section contemplated otherwise than that the Department of Human Resources guarantee all bed space desired by the juvenile courts. Jones v. State, 134 Ga. App. 611, 215 S.E.2d 483 (1975) (decided under former Code 1933, § 24A-1403).

Confinement designation not exercise of court's jurisdiction. — Juvenile court's order for detention was merely an order pursuant to the former statute; designating the place of confinement was not an exercise of jurisdiction by that court. Hartley v. Clack, 239 Ga. 113, 236 S.E.2d 63 (1977) (decided under former Code 1933, § 24A-1403).

Foster relationship gives rise to no state-created rights. — Children are placed in foster homes as an alternative to institutional care for what is clearly designed as a transitional phase in the child's life. Therefore, in the eyes of the state, which creates the foster relationship, the relationship is considered temporary at the outset and gives rise to no state-created rights in the foster parents. Drummond v. Fulton County Dep't of Family & Children's Servs., 563 F.2d 1200 (5th Cir. 1977), cert. denied, 437 U.S. 910, 98 S. Ct. 3103, 57 L. Ed. 2d 1141 (1978) (decided under former Code 1933, § 24A-1403).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, § 24A-1403, and pre-2000 Code Section 15-11-19, which were subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Juvenile intake officer to locate appropriate juvenile facility. — Juvenile intake officer should make all reasonable efforts to locate an appropriate juvenile facility for the detention of an allegedly delinquent child before determining that such a facility was "not available" for purposes of the former statute. 1978 Op. Att'y Gen. No. U78-13 (decided under former Code 1933, § 24A-1403).

Juvenile court intake officers. — Officers of the juvenile division of the sheriff's department may not also serve as juvenile court intake officers for purposes of compliance with former statutory provisions. 1983 Op. Att'y Gen. No. U83-66 (decided under former O.C.G.A. § 15-11-19).

RESEARCH REFERENCES

Am. Jur. 2d. — 47 Am. Jur. 2d, Juvenile Courts and Delinquent and Dependent Children, §§ 47 et seq., 53 et seq., 66 et seq.

C.J.S. — 43 C.J.S., Infants, §§ 67 et seq., 156.

43 C.J.S., Infants, §§ 140 et seq., 226 et seq., 239.

U.L.A. — Uniform Juvenile Court Act (U.L.A.) §§ 15, 16.

ALR. — What constitutes delinquency or incorrigibility, justifying commitment of infant, 45 A.L.R. 1533; 85 A.L.R. 1099.

Authority of court to order juvenile delinquent incarcerated in adult penal institution, 95 A.L.R.3d 568.

Truancy as indicative of delinquency or incorrigibility, justifying commitment of infant or juvenile, 5 A.L.R.4th 1211.

Foster parent's right to immunity from foster child's negligence claims, 55 A.L.R.4th 778.

15-11-413. Continued custody hearing.

(a) If a child alleged to be a child in need of services is being held in a secure residential facility or nonsecure residential facility, a continued custody hearing shall be held within 24 hours, excluding weekends and holidays. If such hearing is not held within the time specified, such child shall be released from temporary detention in accordance with subsection (c) of Code Section 15-11-411 and with authorization of the detaining authority.

(b) If a child alleged to be a child in need of services is not being held in a secure residential facility or nonsecure residential facility and has not been released to the custody of such child's parent, guardian, or legal custodian, a hearing shall be held within 72 hours, excluding weekends and holidays, after such child is placed in foster care.

History. — Code 1981, § 15-11-413, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242; Ga. L. 2014, p. 780, § 1-29/SB 364.

15-11-414. Continued custody hearing; findings.

(a) At the commencement of a continued custody hearing, the court shall inform the parties of:

(1) The nature of the allegations;

(2) The nature of the proceedings;

(3) The possible consequences or dispositions that may apply to such child's case following adjudication; and

(4) Their due process rights, including the right to an attorney and to an appointed attorney; the privilege against self-incrimination; that he or she may remain silent and that anything said may be used against him or her; the right to confront anyone who testifies against him or her and to cross-examine any persons who appear to testify against him or her; the right to testify and to compel other witnesses to attend and testify in his or her own behalf; the right to a speedy adjudication hearing; and the right to appeal and be provided with a transcript for such purpose.

(b) At a continued custody hearing, the court shall determine whether there is probable cause to believe that a child has committed a status offense or is otherwise a child in need of services and that continued custody is necessary.

(c) If the court determines there is probable cause to believe that a child has committed a status offense or is otherwise in need of services, the court may order that such child:

(1) Be released to the custody of his or her parent, guardian, or legal custodian; or

(2) Be placed in the least restrictive placement consistent with such child's need for protection and control as authorized by Code Section 15-11-411 and in accordance with Code Section 15-11-415. Before placing the child in the custody of DFCS, the court shall consider whether the child may be placed with a relative or fictive kin upon such person's promise to bring such child before the court when

requested by the court. Upon finding that such a placement may be made, the court is authorized to order such a placement.

(d) If the court determines there is probable cause to believe that such child has committed a status offense or is otherwise in need of services, the court shall:

(1) Refer such child and his or her family for a community based risk reduction program; or

(2) Order that a petition for a child in need of services be filed and set a date for an adjudication hearing.

(e) Following a continued custody hearing, the court may detain a child alleged to be a child in need of services in a secure residential facility or nonsecure residential facility for up to 24 hours, excluding weekends and legal holidays, only for the purpose of providing adequate time to arrange for an appropriate alternative placement pending the adjudication hearing.

(f) All orders shall contain written findings as to the form or conditions of a child's release. If a child alleged to be a child in need of services cannot be returned to the custody of his or her parent, guardian, or legal custodian at the continued custody hearing, the court shall state the facts upon which the continued custody is based. The court shall make the following findings of fact referencing any and all evidence relied upon to make its determinations:

(1) Whether continuation in the home of such child's parent, guardian, or legal custodian is contrary to such child's welfare; and

(2) Whether reasonable efforts have been made to safely maintain such child in the home of his or her parent, guardian, or legal custodian and to prevent or eliminate the need for removal from such home. Such finding shall be made at the continued custody hearing if possible but in no case later than 60 days following such child's removal from his or her home.

History. — Code 1981, § 15-11-414, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242; Ga. L. 2014, p. 780, § 1-30/SB 364; Ga. L. 2019, p. 67, § 8/HB 472.

The 2019 amendment, effective April 18, 2019, added the second and third sentences in paragraph (c)(2).

15-11-415. Detention decision; findings.

(a) Restraints on the freedom of a child prior to adjudication shall be imposed only when there is probable cause to believe that a child committed the act of which he or she is accused, there is clear and convincing evidence that such child's freedom should be restrained, that no less restrictive alternatives will suffice, and:

(1) Such child's detention or care is required to reduce the likelihood that he or she may inflict serious bodily harm on others during the interim period; or

(2) Such child's detention is necessary to secure his or her presence in court to protect the jurisdiction and processes of the court.

(b) A child alleged to be a child in need of services shall not be detained:

(1) To punish, treat, or rehabilitate such child;

(2) To allow his or her parent, guardian, or legal custodian to avoid his or her legal responsibilities;

(3) To satisfy demands by a victim, law enforcement, or the community;

(4) To permit more convenient administrative access to him or her;

(5) To facilitate further interrogation or investigation; or

(6) Due to a lack of a more appropriate facility.

(c) Whenever a child alleged to be a child in need of services cannot be unconditionally released, conditional or supervised release that results in the least necessary interference with the liberty of such child shall be favored over more intrusive alternatives.

(d) Whenever the curtailment of the freedom of a child alleged to be a child in need of services is permitted, the exercise of authority shall reflect the following values:

(1) Respect for the privacy, dignity, and individuality of such child and his or her family;

(2) Protection of the psychological and physical health of such child;

(3) Tolerance of the diverse values and preferences among different groups and individuals;

(4) Assurance of equality of treatment by race, class, ethnicity, and sex;

(5) Avoidance of regimentation and depersonalization of such child;

(6) Avoidance of stigmatization of such child; and

(7) Assurance that such child has been informed of his or her right to consult with an attorney and that, if the child is an indigent person, an attorney will be provided.

(e) If a child alleged to be a child in need of services can remain in the custody of his or her parent, guardian, or legal custodian through the provision of services to prevent the need for removal, the court shall order that such services shall be provided.

History. — Code 1981, § 15-11-415, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242; Ga. L. 2014, p. 780, § 1-31/SB 364.

Cross references. — Definition of grandparent and securing of rights, § 19-7-3.

Law reviews. — For article discussing due process in juvenile court procedures in California and Georgia, in light of In re Gault, 387 U.S. 1, 87 S. Ct. 1428, 18 L. Ed. 2d 527 (1967), see 8 Ga. St. B. J. 9 (1971).

For note criticizing jurisdiction of juvenile justice system over runaways and advocating alternative legal approaches, see 24 Emory L. J. 1075 (1975).

For comment on grandparents' visitation rights in Georgia, see 29 Emory L. J. 1083 (1980).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 24A-1401, pre-2000 Code Section 15-11-18.1, and pre-2014 Code Section 15-11-46.1, which were subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Jurisdiction linked to petition. — Former statute indicated that assumption of jurisdiction by a juvenile court was linked to an authorized petition. Hartley v. Clack, 239 Ga. 113, 236 S.E.2d 63 (1977) (decided under former Code 1933, § 24A-1401).

Imposition of interim control or detention. — Act of placing a juvenile in the back seat of a patrol car and taking the juvenile to police headquarters was not "the imposition of interim control or detention" within the meaning of former O.C.G.A. § 15-11-18.1 (see now O.C.G.A. § 15-11-415). In re C.W., 227 Ga. App. 763, 490 S.E.2d 442 (1997) (decided under former O.C.G.A. § 15-11-18.1).

Probable cause found. — By restraining the child at an initial hearing, the juvenile court implicitly found probable cause, pursuant to former O.C.G.A. § 15-11-46.1 (see now O.C.G.A. § 15-11-415). The juvenile court therefore erred in later deciding that a 10-day adjudication hearing was actually a detention hearing and in resetting the 10-day adjudication hearing. In the Interest of K.L., 303 Ga. App. 679, 694 S.E.2d 372 (2010) (decided under former O.C.G.A. § 15-11-46.1).

RESEARCH REFERENCES

Am. Jur. 2d. — 47 Am. Jur. 2d, Juvenile Courts and Delinquent and Dependent Children, § 66 et seq.

C.J.S. — 43 C.J.S., Infants, §§ 140 et seq., 239.

U.L.A. — Uniform Juvenile Court Act (U.L.A.) § 14.

ALR. — What constitutes delinquency or incorrigibility justifying commitment of infant, 85 A.L.R. 1099.

PART 5

PETITION AND SUMMONS

15-11-420. Authority to file petition.

A petition alleging that a child is a child in need of services may be filed by a parent, a guardian, a legal custodian, a law enforcement officer, a guardian ad litem, an attorney who has knowledge of the facts alleged or is informed and believes that such facts are true, or a prosecuting attorney. Except when such petition has been filed by a prosecuting attorney, it shall not be accepted for filing unless the court or a person authorized by the court has determined and endorsed on the petition that the filing of the petition is in the best interests of the public and such child. When such petition is filed by a prosecuting attorney, the prosecuting attorney shall be authorized to conduct the proceedings on behalf of the state as parens patriae.

History. — Code 1981, § 15-11-420, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242; Ga. L. 2014, p. 780, § 1-32/SB 364; Ga. L. 2015, p. 540, § 2-3/HB 361.

Cross references. — Definition of grandparent and securing of rights, § 19-7-3.

Law reviews. — For article discussing due process in juvenile court procedures in California and Georgia, in light of In re Gault, 387 U.S. 1, 87 S. Ct. 1428, 18 L. Ed. 2d 527 (1967), see 8 Ga. St. B. J. 9 (1971). For article, "An Outline of Juvenile Court Jurisdiction with Focus on Child Custody," see 10 Ga. St. B. J. 275 (1973). For article, "Child Custody—Jurisdiction and Procedure," see 35 Emory L. J. 291 (1986). For article, "Hush, Little Baby, Don't Say a Word: How Seeking the 'Best Interests of the Child' Fostered a Lack of Accountability in Georgia's Juvenile Courts," see 58 Mercer L. Rev. 531 (2007). For article, "The Prosecuting Attorney in Georgia's Juvenile Courts," see 13 Ga. St. B. J. 27 (2008).

For note criticizing jurisdiction of juvenile justice system over runaways and advocating alternative legal approaches, see 24 Emory L. J. 1075 (1975).

For comment on grandparents' visitation rights in Georgia, see 29 Emory L. J. 1083 (1980).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 24A-1601, former Code Section 15-11-37, and pre-2000 Code Section 15-11-24, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Former Code section was not unconstitutional on the ground that the former section violated due process of law by permitting the juvenile court to allow the case to be transferred to the superior court by merely disallowing the filing of a petition such as would vest jurisdiction in the juvenile court, without the benefit of any transfer hearing. Treatment as a juvenile is not an inherent right, but one granted by the General Assembly; therefore, the General Assembly may restrict or qualify that right as the General Assembly sees fit. Lane v. Jones, 244 Ga. 17, 257 S.E.2d 525 (1979) (decided under former Code 1933, § 24A-1601).

No deprivation of due process in giving juvenile court judge discretion as to filing of petitions in that court. This

section was for the best interests of the public, as well as the child. Lane v. Jones, 244 Ga. 17, 257 S.E.2d 525 (1979) (decided under former Code 1933, § 24A-1601).

Party not deprived of due process by judge's refusal to accept petition. — Juvenile judge's refusal without a hearing to accept a petition alleging delinquency and thereby accept jurisdiction of a case does not deprive a party of due process of law. Lane v. Jones, 626 F.2d 1296 (5th Cir. 1980), cert. denied, 450 U.S. 928, 101 S. Ct. 1384, 67 L. Ed. 2d 359 (1981) (decided under former Code 1933, § 24A-1601).

Findings of likelihood of continued deprivation sufficient. — Because orders entered by the juvenile court before the Department of Human Resources (DHR) filed its termination petition related to that petition, specifically declaring the child to be deprived and that the child had been in the temporary legal custody of the DHR for over 14 months with no indication that the conditions of deprivation will be alleviated in the future, the court either substantially complied with or satisfied by implication the endorsement requirements showing that the filing of the petition was in the best interest of the public and the child. In the Interest of V.D.S., 284 Ga. App. 582, 644 S.E.2d 422 (2007), cert. denied, 2007 Ga. LEXIS 635 (Ga. 2007) (decided under former O.C.G.A., § 15-11-37).

Only petition can confer jurisdiction. — Juvenile court's issuance of order of detention did not result in that court's taking jurisdiction because only a "petition" within the meaning of the former section could commence a juvenile proceeding. Longshore v. State, 239 Ga. 437, 238 S.E.2d 22 (1977) (decided under former Code 1933, § 24A-1601).

Purpose of requiring an endorsement in the petition is to assure that the court, or someone acting for the court, has made such a determination before proceedings are commenced against the child. Such a determination can be made by the court and entered in the record by way of the order of detention. The purpose of the statute being fulfilled, the petitions are not void for lack of an endorsement. J.G.B. v. State, 136 Ga. App. 75, 220 S.E.2d 79 (1975) (decided under former Code 1933, § 24A-1601).

No custody habeas corpus proceeding without legal right of custody. — Habeas corpus proceeding to obtain the custody of minor children may not be brought by a person claiming no legal right of custody. This does not mean that a person concerned with the welfare of a child, who is being raised under conditions detrimental to the child's welfare, has no remedy. Spitz v. Holland, 243 Ga. 9, 252 S.E.2d 406 (1979) (decided under former Code 1933, § 24A-1601).

Finding of deprivation if children's mother killed by father. — Regardless of the evidence, the court is authorized to find children to be deprived when their mother has been killed by their father. George v. Anderson, 135 Ga. App. 273, 217 S.E.2d 609 (1975), overruled on other grounds, Painter v. Barkley, 157 Ga. App. 69, 276 S.E.2d 850 (1981) (decided under former Code 1933, § 24A-1601).

Construction with former provisions. — Nonprofit advocacy organization was authorized to file a deprivation petition which was separate and distinct from the initial deprivation adjudication since there is no statutory requirement that a petition for modification must be filed under former O.C.G.A. § 15-11-42 (see now O.C.G.A. § 15-11-312), instead of a deprivation petition under former O.C.G.A. § 15-11-24 (see now O.C.G.A. §§ 15-11-150, 15-11-390, and 15-11-420). In re A.V.B., 222 Ga. App. 241, 474 S.E.2d 114 (1996) (decided under former O.C.G.A. § 15-11-24).

Great aunt and uncle. — Child's great aunt and uncle had standing to bring a petition to terminate the parental rights of the child's father and mother. In re J.J., 225 Ga. App. 682, 484 S.E.2d 681 (1997) (decided under former O.C.G.A. § 15-11-24).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, § 24-2403, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

School official not liable for investigative referral of deprivation. — School official would not be held liable in a legal action founded upon the official's good faith referral of a child neglect, abuse, or abandonment situation to a county department of family and children services for investigation. 1963-65 Op. Att'y Gen. p. 746 (decided under former Code 1933, § 24-2403).

RESEARCH REFERENCES

Am. Jur. 2d. — 47 Am. Jur. 2d, Juvenile Courts and Delinquent and Dependent Children, § 75 et seq.

C.J.S. — 43 C.J.S., Infants, §§ 184 et seq., 191 et seq.

U.L.A. — Uniform Juvenile Court Act (U.L.A.) §§ 19, 20, 21.

ALR. — Defense of infancy in juvenile delinquency proceedings, 83 A.L.R.4th 1135.

15-11-421. Time limitations for filing petition.

(a) If a child alleged to be a child in need of services is not released from temporary custody at a continued custody hearing, a petition seeking an adjudication that such child is a child is in need of services shall be filed within five days of such continued custody hearing.

(b) If a child alleged to be a child in need of services was never taken into temporary custody or is released from temporary custody at a continued custody hearing, a petition seeking an adjudication that such child is a child in need of services shall be filed:

(1) Within 30 days of the filing of the complaint with the juvenile court intake officer; or

(2) Within 30 days of such child's release from temporary custody.

(c) Upon a showing of good cause and notice to all parties, the court may grant a requested extension of time for filing a petition seeking an adjudication that a child is a child in need of services in accordance with the best interests of the child. The court shall issue a written order reciting the facts justifying the extension.

(d) If no petition seeking an adjudication that a child is a child in need of services is filed within the required time frame, the complaint may be dismissed without prejudice.

History. — Code 1981, § 15-11-421, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

Cross references. — Amendment to Juvenile Court petition, Uniform Rules for the Juvenile Courts of Georgia, Rule 6.6. Continuance of adjudicatory hearing in Juvenile Court, Uniform Rules for the Juvenile Courts of Georgia, Rule 11.3.

Law reviews. — For article discussing

due process in juvenile court procedures in California and Georgia, in light of In re Gault, 387 U.S. 1, 87 S. Ct. 1428, 18 L. Ed. 2d 527 (1967), see 8 Ga. St. B. J. 9 (1971).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 24A-1701, pre-2000 Code Section 15-11-26 and pre-2014 Code Section 15-11-39, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Time limits set forth in the former statute were jurisdictional and the adjudicatory hearing must be set for a time not later than that prescribed by statute. J.T.G. v. State, 141 Ga. App. 184, 233 S.E.2d 40 (1977) (decided under former Code 1933, § 24A-1701).

Time limits established by the General Assembly in the Juvenile Code are jurisdictional and must be strictly adhered to. Crews v. Brantley County Dep't of Family & Children Servs., 146 Ga. App. 408, 246 S.E.2d 426 (1978) (decided under former Code 1933, § 24A-1701).

Language of former statute was mandatory and the time for the hearing must be set for a time not later than ten days after the petition was filed. J.B.H. v. State, 139 Ga. App. 199, 228 S.E.2d 189 (1976) (decided under former Code 1933, § 24A-1701); Crews v. Brantley County Dep't of Family & Children Servs., 146 Ga. App. 408, 246 S.E.2d 426 (1978) (decided under former Code 1933, § 24A-1701); Irvin v. Department of Human Resources, 159 Ga. App. 101, 282 S.E.2d 664 (1981) (decided under former Code 1933, § 24A-1701).

Language of former subsection (a) of this section was mandatory and the adjudicatory hearing must be set for a time not later than that prescribed. Sanchez v. Walker County Dep't of Family & Children Servs., 237 Ga. 406, 229 S.E.2d 66 (1976) (decided under former Code 1933, § 24A-1701).

Goal sought to be accomplished by the ten-day hearing requirement for detained children was the same goal for the 60-day hearing requirement for non-detained children and, thus, the latter requirement was mandatory, rather than directory. In re R.D.F., 266 Ga. 294, 466 S.E.2d 572 (1996) (decided under former O.C.G.A. § 15-11-26).

Time limits for speedy trial must be strictly adhered to. — If a legislative body has defined the right to speedy trial in terms of days, then the time limits must be strictly complied with. J.B.H. v. State, 139 Ga. App. 199, 228 S.E.2d 189 (1976) (decided under former Code 1933, § 24A-1701).

Trial court erred in setting the date for a hearing twelve days, rather than ten days, from the date of the filing of a petition charging a juvenile with the commission of the delinquent act of burglary. In re M.D.C., 214 Ga. App. 59, 447 S.E.2d 143 (1994) (decided under former O.C.G.A. § 15-11-26).

Provision of former O.C.G.A. § 15-11-26 (see now O.C.G.A. §§ 15-11-181, 15-11-400, 15-11-421, 15-11-441, and 15-11-582) that the time for a hearing shall not be later than ten days after filing of the petition if the child was in custody was the equivalent of a speedy trial demand which did not require a specific demand by the child. However, the statute's protection could be waived if not properly raised and, furthermore, the trial court had discretion to grant a continuance of a hearing properly set for a date within ten days from the filing of the petition. In re M.D.C., 214 Ga. App. 59, 447 S.E.2d 143 (1994) (decided under former O.C.G.A. § 15-11-26).

Former O.C.G.A. § 15-11-26 (see now O.C.G.A. §§ 15-11-181, 15-11-400, 15-11-421, 15-11-441, and 15-11-582) did not constitute a speedy trial demand and, therefore, the failure to comply with the former statute's provisions resulted in dismissal of the petition without prejudice. In re R.D.F., 266 Ga. 294, 466 S.E.2d 572 (1996) (decided under former O.C.G.A. § 15-11-26).

Time limits satisfied by hearing adjudicatory in nature. — When a ju-

venile and the juvenile's parents were summoned to appear at a hearing to defend against charges and to show cause why the juvenile should not be dealt with according to law, were instructed to remain in attendance at the hearing until final adjudication of the petition, were informed of the possibility of a continuance, and were told that the state would seek transfer to the superior court, the hearing was adjudicatory in nature and satisfied the requirements of former O.C.G.A. § 15-11-26. In re L.A.E., 265 Ga. 698, 462 S.E.2d 148 (1995) (decided under former O.C.G.A. § 15-11-26).

Construction with other law. — Because a juvenile's allegations that the state failed to comply with the procedural requirements under former O.C.G.A. § 15-11-49(c)(1) and (e) (see now O.C.G.A. §§ 15-11-102, 15-11-145, 15-11-151, 15-11-472, and 15-11-521) should have been raised in the superior court, and had no bearing on the validity of the delinquency petitions or the substantive charges against the juvenile in juvenile court, the court properly denied the presentation of evidence regarding the delinquency and substantive issues. In the Interest of K.C., 290 Ga. App. 416, 659 S.E.2d 821 (2008) (decided under former O.C.G.A. § 15-11-39).

Arraignment during adjudicatory hearing. — In the absence of a transcript, a juvenile failed to establish that former O.C.G.A. § 15-11-26 (see now O.C.G.A. §§ 15-11-181, 15-11-400, 15-11-421, 15-11-441, and 15-11-582) was violated since a hearing was timely scheduled and held, an arraignment was conducted at the beginning, the juvenile requested legal counsel and was found eligible to receive counsel, and a continuance was granted so counsel could be secured; conducting an arraignment was not inconsistent with an adjudicatory hearing. In re R.D.F., 266 Ga. 294, 466 S.E.2d 572 (1996), reversing In re R.D.F., 216 Ga. App. 563, 455 S.E.2d 77 (1995) (decided under former O.C.G.A. § 15-11-26).

Arraignment hearing scheduled within the 60-day time period is not sufficient to satisfy the requirement that an adjudicatory hearing must be set within that period. In re R.O.B., 216 Ga. App. 181, 453 S.E.2d 776 (1995) (decided under former O.C.G.A. § 15-11-26).

Hearing requirement applicable when child in detention when petition filed. — Ten-day hearing requirement was applicable when a child was "in detention" on the date the petition was filed in court. Sanchez v. Walker County Dep't of Family & Children Servs., 237 Ga. 406, 229 S.E.2d 66 (1976) (decided under former Code 1933, § 24A-1701).

Time for adjudicatory hearing is not mandatory. — Former O.C.G.A. § 15-11-26 (see now O.C.G.A. §§ 15-11-181, 15-11-400, 15-11-421, 15-11-441 and 15-11-582) required that an adjudicatory hearing date be set within ten days after a filing of a petition charging a minor with commission of delinquent acts, but does not require that a hearing be actually held within ten days after the filing of the petition. P.L.A. v. State, 172 Ga. App. 820, 324 S.E.2d 781 (1984) (decided under former O.C.G.A. § 15-11-26); Johnson v. State, 183 Ga. App. 168, 358 S.E.2d 313 (1987) (decided under former O.C.G.A. § 15-11-26); In re L.T.W., 211 Ga. App. 441, 439 S.E.2d 716 (1993) (decided under former O.C.G.A. § 15-11-26); In re B.W.S., 265 Ga. 567, 458 S.E.2d 847 (1995) (decided under former O.C.G.A. § 15-11-26).

Ten-day hearing rule was not absolute, and a continuance could be granted in the sound discretion of the trial court. Johnson v. State, 183 Ga. App. 168, 358 S.E.2d 313 (1987) (decided under former O.C.G.A. § 15-11-26).

Adjudicatory hearing timely. — Juvenile court did not err in denying the defendant juvenile's motion to dismiss a petition because the adjudicatory hearing was set and held within ten days of the filing of the petition pursuant to former O.C.G.A. § 15-11-39(a) (see now O.C.G.A. §§ 15-11-181, 15-11-400, 15-11-421, 15-11-441, and 15-11-582), although the hearing was then continued, which was an action that was within the juvenile court's discretion. In the Interest of C.H., 306 Ga. App. 834, 703 S.E.2d 407 (2010) (decided under former O.C.G.A. § 15-11-39).

Waiver of procedural requirements. — Time limits on setting juvenile hear-

ings are mandatory, but procedural requirements can be waived. J.T.G. v. State, 141 Ga. App. 184, 233 S.E.2d 40 (1977) (decided under former O.C.G.A. § 15-11-26); Cox v. Department of Human Resources, 148 Ga. App. 338, 250 S.E.2d 728 (1978), overruled on other grounds, 156 Ga. App. 338, 274 S.E.2d 728 (1980) (decided under former O.C.G.A. § 15-11-26).

With regard to a juvenile's adjudication of delinquency for acts which, if committed by an adult, would have constituted the offense of child molestation, the juvenile court did not err by denying the juvenile's motion to dismiss, which was based on an extended pre-trial detention as the juvenile and defense counsel agreed to a continuance and acquiesced in a hearing date delaying the adjudication for at least 48 days following the filing of the delinquency petition, which caused the juvenile to waive the right to complain that the adjudication hearing date was not set to occur in compliance with former O.C.G.A. § 15-11-39 (see now O.C.G.A. §§ 15-11-181, 15-11-400, 15-11-421, 15-11-441, and 15-11-582). However, the adjudication was reversed and the case was remanded to the juvenile court since the juvenile court erroneously applied a clear and convincing standard of proof and the standard of proof on charges of a criminal nature was the same as that used in criminal proceedings against adults, namely proof beyond a reasonable doubt. In the Interest of A.S., 293 Ga. App. 710, 667 S.E.2d 701 (2008) (decided under former O.C.G.A. § 15-11-39).

Juvenile waived the right under former O.C.G.A. § 15-11-39(a) (see now O.C.G.A. §§ 15-11-181, 15-11-400, 15-11-421, 15-11-441, and 15-11-582) to have an adjudicatory hearing within 10 days of the delinquency petition being filed by failing to object to the date proposed for the adjudicatory hearing, which was one month after the filing of the petition. In re A. T., 302 Ga. App. 713, 691 S.E.2d 642 (2010), overruled in part by Worthen v. State, 304 Ga. 862, 823 S.E.2d 291 (2019) (decided under former O.C.G.A. § 15-11-39).

Trial court did not err in denying the defendant's motion to dismiss for failure to comply with former O.C.G.A. § 15-11-39(a) (see now O.C.G.A. §§ 15-11-181, 15-11-400, 15-11-421, 15-11-441, and 15-11-582) because the defendant's parent, the defendant's representative, and an attorney acknowledged that the parent did not object when, at the arraignment hearing, it was announced that the adjudicatory hearing would be set outside of the 60-day window; the parent also did not object within the statutorily prescribed 60-day-time period, and the motion to dismiss was filed outside of the 60-day requirement. In the Interest of I.M.W., 313 Ga. App. 624, 722 S.E.2d 586 (2012) (decided under former O.C.G.A. § 15-11-39).

Hearing time limit can be waived. — If the party does not enter an objection during the course of the trial the party will not be heard to complain on appeal and if a hearing is set within the statutory time limit, the court may in the court's discretion grant a continuance. Sanchez v. Walker County Dep't of Family & Children Servs., 237 Ga. 406, 229 S.E.2d 66 (1976) (decided under former Code § 24A-1701); In re J.B., 183 Ga. App. 229, 358 S.E.2d 620, cert. denied, 183 Ga. App. 906, 358 S.E.2d 620 (1987) (decided under former O.C.G.A. § 15-11-26).

Juvenile was entitled to a copy of the delinquency petition filed against the juvenile, and pursuant to former O.C.G.A. § 15-11-39.1 (see now O.C.G.A. §§ 15-11-161, 15-11-282, 15-11-400, 15-11-424, and 15-11-531), the juvenile had a right to receive the petition at least 24 hours prior to the adjudicatory hearing; however, the juvenile waived any objection based on the grounds of improper service since the juvenile received notice right before the hearing as the juvenile did not make an objection or request a continuance on the basis that the juvenile was unprepared. In the Interest of E.S., 262 Ga. App. 768, 586 S.E.2d 691 (2003) (decided under former O.C.G.A. § 15-11-39).

Continuance requested by parent did not violate time limit. — When a hearing on a deprivation petition was held within ten days of the petition's filing, but the case was continued for eight days because the mother's counsel had a sched-

uling conflict, there was no violation of former O.C.G.A. § 15-11-39(a)'s (see now O.C.G.A. §§ 15-11-181 15-11-400, 15-11-421, 15-11-441, and 15-11-582) ten-day time limit. In the Interest of C.R., 292 Ga. App. 346, 665 S.E.2d 39 (2008) (decided under former O.C.G.A. § 15-11-39).

Parent's right to appeal delinquency adjudication. — As parties to their child's delinquency action pursuant to former O.C.G.A. § 15-11-39(b) (see now O.C.G.A. §§ 15-11-160, 15-11-423, and 15-11-530), the child's parents had the right to appeal the juvenile court's judgment and to participate in the appellate process. In the Interest of J.L.B., 280 Ga. App. 556, 634 S.E.2d 514 (2006) (decided under former O.C.G.A. § 15-11-39).

Adjudication hearing required after an initial hearing. — By restraining the child at an initial hearing, the juvenile court implicitly found probable cause, pursuant to former O.C.G.A. § 15-11-46.1 (see now O.C.G.A. §§ 15-11-415 and 15-11-503). The juvenile court therefore erred in later deciding that a 10-day adjudication hearing was actually a detention hearing and in resetting the 10-day adjudication hearing. In the Interest of K.L., 303 Ga. App. 679, 694 S.E.2d 372 (2010) (decided under former O.C.G.A. § 15-11-39).

Delay negotiated by defendant waives time limit. — If the statute does not require dismissal as a matter of law regardless of the reason for the delay, it is clear that a delay negotiated and obtained by the defendant personally would constitute a waiver of the 60-day requirement. E.S. v. State, 134 Ga. App. 724, 215 S.E.2d 732 (1975) (decided under former Code 1933, § 24A-1701).

Proceeding null when no waiver of rights nor proper service. — If, in a juvenile court proceeding, there was neither waiver of the right of a mother, nor proper service upon the parties and if the hearing is not taken under oath, or waived by any of the parties, the proceeding is an absolute nullity. McBurrough v. Dep't of Human Resources, 150 Ga. App. 130, 257 S.E.2d 35 (1979) (decided under former Code 1933, § 24A-1701).

Failure to follow mandated procedures warrants dismissal without prejudice of a petition alleging deprivation of a child. Another petition can be filed without delay if there is reason to believe the child is being neglected or abused. Sanchez v. Walker County Dep't of Family & Children Servs., 140 Ga. App. 175, 230 S.E.2d 139 (1976) (decided under former Code 1933, § 24A-1701).

Motion to dismiss necessary if no provision for automatic dismissal. — If there is no provision in the statute for automatic dismissal, there should be a motion to dismiss directed to the trial judge and it should appear that the delay is not due to the actions of the defendant. E.S. v. State, 134 Ga. App. 724, 215 S.E.2d 732 (1975) (decided under former Code 1933, § 24A-1701).

Allegation of failure to comply with time requirements not appealable. — If the defendant, prior to a hearing to determine the defendant's delinquency, appealed from the juvenile court's denial of the defendant's motion to dismiss based solely upon an alleged failure to comply with the time requirements of subsection (a) of former O.C.G.A. § 15-11-26 (see now O.C.G.A. § 15-11-181, 15-11-400, 15-11-421, 15-11-441, and 15-11-582), the Court of Appeals dismissed the appeal since a motion under that Code section cannot be analogized to the denial of a O.C.G.A. § 17-7-170 motion and did not involve a question of speedy trial rights which would be directly appealable. In re M.O.B., 190 Ga. App. 474, 378 S.E.2d 898 (1989) (decided under former O.C.G.A. § 15-11-26).

Violation of ten-day mandate does not deprive jurisdiction. — Violation of the statutory mandate to set the hearing date not later than ten days after filing of the petition if the child is in detention would not deprive the court of jurisdiction that would otherwise exist. Sanchez v. Walker County Dep't of Family & Children Servs., 138 Ga. App. 49, 225 S.E.2d 441, rev'd on other grounds, 237 Ga. 406, 229 S.E.2d 66 (1976) (decided under former Code 1933, § 24A-1701).

Legislature intended incarceration be limited according to calendar days. — General Assembly intended that a juvenile who is incarcerated after the court has had a preliminary detention

hearing should have the juvenile's incarceration limited and the juvenile's fate determined according to calendar days, not "working days." J.B.H. v. State, 139 Ga. App. 199, 228 S.E.2d 189 (1976), overruled on other grounds, In re R.D.F., 266 Ga. 294, 466 S.E.2d 572 (1996) (decided under former O.C.G.A. § 15-11-26).

No habeas corpus if compliance with statutory requirements. — Habeas corpus will not lie if the juvenile court, after notice and hearing, enters an order pursuant to former Code 1933, § 24-2409 (see now O.C.G.A. §§ 15-11-211, 15-11-212, and 15-11-215). Chaffins v. Lowndes County Dep't of Family & Children Servs., 243 Ga. 528, 255 S.E.2d 360 (1979) (decided under former Code 1933, § 24A-1701).

Effect of failure to show compliance with hearing requirement. — If the parents, in their petition seeking return of their children, allege that there has been no hearing as required by statute, and the record of prior juvenile court proceedings is silent as to whether such a hearing was ever set, continued, or held, and since the hearing requirement was mandatory, the defendant County Family and Children Services Department did not show compliance with the hearing requirement, and the parents stated claims for habeas relief which may be granted. Chaffins v. Lowndes County Dep't of Family & Children Servs., 243 Ga. 528, 255 S.E.2d 360 (1979) (decided under former Code 1933, § 24A-1701).

Permitting state's mid-trial amendment of petition to change the charge against the juvenile from a misdemeanor to a felony was error since the amendment was done without notice and provision of a continuance to allow additional time for preparation of a defense. In re D.W, 232 Ga. App. 777, 503 S.E.2d 647 (1998) (decided under former O.C.G.A. § 15-11-26).

Illegal detention. — If a petition was not presented within 72 hours of a detention hearing as required by former O.C.G.A. § 15-11-21(e) (see now O.C.G.A. §§ 15-11-145, 15-11-400, 15-11-413, 15-11-414, and 15-11-472), the state cannot thus illegally detain the child and then render such a jurisdictional defect harmless by setting the adjudication hearing within 13 days (72 hours plus 10 days) of the detention hearing under subsection (a) of former O.C.G.A. § 15-11-26 (see now O.C.G.A. §§ 15-11-181, 15-11-400, 15-11-421, 15-11-441, and 15-11-582). In re B.A.P., 180 Ga. App. 433, 349 S.E.2d 218 (1986) (decided under former O.C.G.A. § 15-11-26).

RESEARCH REFERENCES

Am. Jur. 2d. — 47 Am. Jur. 2d, Juvenile Courts and Delinquent and Dependent Children, § 66 et seq.

C.J.S. — 43 C.J.S., Infants, § 195 et seq.

U.L.A. — Uniform Juvenile Court Act (U.L.A.) § 22.

ALR. — Omission of signature of issuing officer on civil process or summons as affecting jurisdiction of the person, 37 A.L.R.2d 928.

15-11-422. Content of petitions.

(a) A petition seeking an adjudication that a child is a child in need of services shall be verified and may be on information and belief. It shall set forth plainly and with particularity:

(1) The facts which bring a child within the jurisdiction of the court, with a statement that it is in the best interests of the child and the public that the proceeding be brought;

(2) The name, date of birth, and residence address of the child alleged to be a child in need of services;

(3) The name and residence address of the parent, guardian, or legal custodian of the child named in the petition; or, if such child's parent, guardian, or legal custodian does not reside or cannot be found within the state or if such place of residence address is unknown, the name of any known adult relative of such child residing within the county or, if there is none, the known adult relative of such child residing nearest to the location of the court;

(4) The name and age of any other family member of such child living within such child's home;

(5) Whether all available and appropriate attempts to encourage voluntary use of community services by such child's family have been exhausted; and

(6) Whether any of the information required by this subsection is unknown.

(b) If a petition seeking an adjudication that a child is a child in need of services is based on a complaint filed by a school official, such petition shall be dismissed unless it includes information which shows that:

(1) The legally liable school district has sought to resolve the expressed problem through available educational approaches; and

(2) The school district has sought to engage such child's parent, guardian, or legal custodian in solving the problem but any such individual has been unwilling or unable to do so; that the problem remains; and that court intervention is needed.

(c) If a petition seeking an adjudication that a child is a child in need of services is based on a complaint filed by a school official involving a child who is eligible or suspected to be eligible for services under the federal Individuals with Disabilities Education Act or Section 504 of the federal Rehabilitation Act of 1973, such petition shall be dismissed unless it includes information which demonstrates that the legally liable school district:

(1) Has determined that such child is eligible or suspected to be eligible under the federal Individuals with Disabilities Education Act or Section 504 of the federal Rehabilitation Act of 1973; and

(2) Has reviewed for appropriateness such child's current Individualized Education Program (IEP) and placement and has made modifications where appropriate.

History. — Code 1981, § 15-11-422, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

U.S. Code. — The Individuals with Disabilities Education Act, referred to in this Code section, is codified at 20 U.S.C. § 1400 et seq.

Section 504 of the federal Rehabilitation Act of 1973, referred to in this Code section, is codified at 29 U.S.C. § 794.

Law reviews. — For article discussing due process in juvenile court procedures in California and Georgia, in light of In re Gault, 387 U.S. 1, 87 S. Ct. 1428, 18 L. Ed. 2d 527 (1967), see 8 Ga. St. B. J. 9 (1971). For article, "Child Custody—Jurisdiction and Procedure," see 35 Emory L. J. 291 (1986).

For comment on grandparents' visitation rights in Georgia, see 29 Emory L. J. 1083 (1980).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 24A-1603, pre-2000 Code Section 15-11-25 and pre-2014 Code Section 15-11-38.1, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Juvenile petition must satisfy "due process." — Although a juvenile petition does not have to be drafted with the exactitude of a criminal accusation, the petition must satisfy "due process." T.L.T. v. State, 133 Ga. App. 895, 212 S.E.2d 650 (1975) (decided under former Code 1933, § 24A-1603).

Since the state's petition failed to set forth in ordinary and concise language the facts demonstrating the nature of the parent's alleged failure to provide proper parental care or control, the parent lacked sufficient information to enable the parent to prepare a defense, and this amounted to a denial of due process. In re D.R.C., 191 Ga. App. 278, 381 S.E.2d 426 (1989) (decided under former O.C.G.A. § 15-11-25).

To meet constitutional requirement of due process the language of a juvenile petition must pass two tests: (1) the petition must contain sufficient factual details to inform the juvenile of the nature of the offense; and (2) the petition must provide data adequate to enable the accused to prepare a defense. T.L.T. v. State, 133 Ga. App. 895, 212 S.E.2d 650 (1975) (decided under former Code 1933, § 24A-1603).

Allege with particularity. — Due process requires that the petition alleging delinquency must set forth with specificity the alleged violation of law either in the language of the particular section, or so plainly that the nature of the offense charged may be easily understood by the child and the child's parents or guardian. D.P. v. State, 129 Ga. App. 680, 200 S.E.2d 499 (1973) (decided under former Code 1933, § 24A-1603).

Petition filed alleging delinquency, deprivation, or unruliness must set forth alleged misconduct with particularity. A.C.G. v. State, 131 Ga. App. 156, 205 S.E.2d 435 (1974) (decided under former Code 1933, § 24A-1603).

Insufficient notice to juvenile of alleged offense. — If a juvenile is brought to trial on a petition alleging delinquency based on a violation of former Code 1933, § 26-1601 (see now O.C.G.A. § 16-7-1) but was adjudicated delinquent for violating former Code 1933, § 26-1806 (see now O.C.G.A. § 16-8-7), there was insufficient notice to the juvenile of the offense alleged to be the basis of the juvenile's delinquency and the trial court must be reversed. D.P. v. State, 129 Ga. App. 680, 200 S.E.2d 499 (1973) (decided under former Code 1933, § 24A-1603).

Statement of custody irrelevant if jurisdiction otherwise exists. — If jurisdiction otherwise existed, such as if the action was brought in the county of the residence of both mother and son, then the requirement in paragraph (4) of former Code 1933, § 24A-1603 had no relevancy to the right of the trial court to handle the case. Sanchez v. Walker County Dep't of Family & Children Servs., 138 Ga. App. 49, 225 S.E.2d 441, rev'd on other grounds, 237 Ga. 406, 229 S.E.2d 66 (1976) (decided under former Code 1933, § 24A-1603).

Assumption of jurisdiction linked to authorized petition. — An order for detention clearly did not meet the requirements of a petition filed pursuant to former Code 1933, § 24A-1603 (see now O.C.G.A. §§ 15-11-152, 15-11-280, 15-11-390, 15-11-420, 15-11-422, and

15-11-522) to commence proceedings under former Code 1933, § 24A-1601 (see now O.C.G.A. § 15-11-420), and the assumption of jurisdiction by the juvenile court is linked to the authorized petition. Hartley v. Clack, 239 Ga. 113, 236 S.E.2d 63 (1977) (decided under former Code 1933, § 24A-1603).

In a hearing on parental custody in a divorce action, the trial court erred in awarding custody of the parties' minor children to the Department of Family and Children Services based upon findings that the children were deprived and the parents unfit because the mother had no notice that the superior court judge might award custody of the children to a third party based upon standards of deprivation. Watkins v. Watkins, 266 Ga. 269, 466 S.E.2d 860 (1996) (decided under former O.C.G.A. § 15-11-25).

Preparation and verification. — Because counsel for the Department of Children & Family Services stated to the court that counsel prepared the termination petition, that the petition was reviewed, verified, and then signed by counsel the next day, this was sufficient to comply with the requirements of former O.C.G.A. § 15-11-25 (see now O.C.G.A. §§ 15-11-152, 15-11-280, 15-11-390, 15-11-422, and 15-11-522). In re A.K.M., 235 Ga. App. 853, 510 S.E.2d 611 (1998) (decided under former O.C.G.A. § 15-11-25).

Service by correctional officer upon incarcerated father. — Personal service of a summons and a petition of deprivation by a correctional officer upon an incarcerated father was sufficient as the service procedures in the Civil Practice Act, O.C.G.A. § 9-11-1 et seq., were not adopted nor were binding on the juvenile court, and the correctional officer was acting under the direction of the court for the purposes of former O.C.G.A. § 15-11-39.1(c) (see now O.C.G.A. §§ 15-11-161, 15-11-282, 15-11-400, 15-11-424, and 15-11-531). In the Interest of A.J.M., 277 Ga. App. 646, 627 S.E.2d 399 (2006) (decided under former O.C.G.A. § 15-11-38.1).

RESEARCH REFERENCES

Am. Jur. 2d. — 47 Am. Jur. 2d, Juvenile Courts and Delinquent and Dependent Children, § 75 et seq.

C.J.S. — 43 C.J.S., Infants, § 191 et seq.

U.L.A. — Uniform Juvenile Court Act (U.L.A.) § 21.

15-11-423. Issuance of summons.

(a) The court shall direct the issuance of a summons to the child alleged to be a child in need of services, his or her parent, guardian, or legal custodian, DFCS and any other public agencies or institutions providing services, and any other persons who appear to the court to be proper or necessary parties to such child in need of services proceeding requiring them to appear before the court at the time fixed to answer the allegations of the petition seeking an adjudication that a child is in need of services. A copy of such petition shall accompany the summons.

(b) The summons shall state that a party is entitled to an attorney in the proceedings and that the court will appoint an attorney if the party is an indigent person.

(c) A party other than a child may waive service of summons by written stipulation or by voluntary appearance at the hearing.

History. — Code 1981, § 15-11-423, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

Cross references. — Amendment to Juvenile Court petition, Uniform Rules for the Juvenile Courts of Georgia, Rule 6.6. Continuance of adjudicatory hearing in Juvenile Court, Uniform Rules for the Juvenile Courts of Georgia, Rule 11.3.

Law reviews. — For article discussing due process in juvenile court procedures in California and Georgia, in light of In re Gault, 387 U.S. 1, 87 S. Ct. 1428, 18 L. Ed. 2d 527 (1967), see 8 Ga. St. B. J. 9 (1971).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 24A-1701, pre-2000 Code Section 15-11-26 and pre-2014 Code Section 15-11-39, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Waiver of notice. — In a juvenile delinquency case, although neither defendants nor their parents were served with copies of the petitions and hearing summonses as required by former O.C.G.A. § 15-11-39 (see now O.C.G.A. §§ 15-11-162, 15-11-281, and 15-11-423, 15-11-425, and 15-11-532), the defendants and their parents appeared at the hearings with their attorneys without objecting to lack of notice; thus, the defendants and their parents waived the notice issue. In the Interest of T.K.L., 277 Ga. App. 461, 627 S.E.2d 98 (2006) (decided under former O.C.G.A. § 15-11-39).

Implied waiver of service on behalf of child. — If a child is present at a juvenile court hearing with the child's parent and counsel, the child's parent impliedly may waive service of a summons on a child's behalf by voluntary appearance at a hearing without objection to lack of service. Fulton County Detention Center v. Robertson, 249 Ga. 864, 295 S.E.2d 101 (1982) (decided under former O.C.G.A. § 15-11-26).

Parent's right to appeal delinquency adjudication. — As parties to their child's delinquency action pursuant to former O.C.G.A. § 15-11-39(b) (see now O.C.G.A. §§ 15-11-160, 15-11-423, and 15-11-530), the child's parents had the right to appeal the juvenile court's judgment and to participate in the appellate process. In the Interest of J.L.B., 280 Ga. App. 556, 634 S.E.2d 514 (2006) (decided under former O.C.G.A. § 15-11-39).

Proceeding null when no waiver of rights nor proper service. — If, in a juvenile court proceeding, there was neither waiver of the right of a mother, nor proper service upon the parties and if the hearing is not taken under oath, or waived by any of the parties, the proceeding is an absolute nullity. McBurrough v. Dep't of Human Resources, 150 Ga. App. 130, 257 S.E.2d 35 (1979) (decided under former Code 1933, § 24A-1701).

No fixed date on summons. — Summons served upon a parent did not have to require the parent to appear in court on any fixed date in order to answer allegations in a petition to terminate the parent's parental rights. In re W.R.S., 213 Ga. App. 616, 445 S.E.2d 367 (1994) (decided under former O.C.G.A. § 15-11-26).

If there was no service of process and notice as required by former O.C.G.A. §§ 15-11-26(b) and 15-11-27(a) (see now O.C.G.A. § 15-11-1 et seq.) and there was no valid waiver of notice of the pending charge by service of process or otherwise, the entire hearing is a nullity. In re W.M.F., 180 Ga. App. 397, 349 S.E.2d 265 (1986) (decided under former O.C.G.A. § 15-11-26).

Waiver of right to prior notice of charge. — If neither the juvenile nor the mother were represented by counsel at the dispositional hearing, neither party knew the nature of the charge filed against the minor, and neither party knew of the serious consequences which may result in the case of an adverse adjudication of the petition filed against the juvenile, it is highly unlikely that the parties understood the significance of waiving their right to prior notice of the pending charge. In re W.M.F., 180 Ga. App. 397,

349 S.E.2d 265 (1986) (decided under former O.C.G.A. § 15-11-26).

15-11-424. Service of summons.

(a) If a party to be served with a summons pursuant to Code Section 15-11-423 is within this state and can be found, the summons shall be served upon him or her personally as soon as possible and at least 72 hours before the adjudication hearing.

(b) If a party to be served is within this state and cannot be found but his or her address is known or can be ascertained with due diligence, the summons shall be served upon such party at least five days before an adjudication hearing by mailing him or her a copy by registered or certified mail or statutory overnight delivery, return receipt requested.

(c) If a party to be served is outside this state but his or her address is known or can be ascertained with due diligence, service of the summons shall be made at least five days before an adjudication hearing either by delivering a copy to such party personally or by mailing a copy to him or her by registered or certified mail or statutory overnight delivery, return receipt requested.

(d) Service of the summons may be made by any suitable person under the direction of the court.

(e) The court may authorize payment from county funds of the costs of service and of necessary travel expenses incurred by persons summoned or otherwise required to appear at the hearing on the petition seeking an adjudication that a child is in need of services.

History. — Code 1981, § 15-11-424, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

Cross references. — Amendment to Juvenile Court petition, Uniform Rules for the Juvenile Courts of Georgia, Rule 6.6.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, §§ 24-2406 and 24A-1702, pre-2000 Code Section 15-11-27 and pre-2014 Code Section 15-11-39.1, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

There was no equal protection violation in framework of this former Code section since similarly situated residents and nonresidents were accorded equal treatment and it was only in cases when laws were applied differently to different persons under the same or similar circumstances that the equal protection of the law was denied. In re M.A.C., 244 Ga. 645, 261 S.E.2d 590 (1979) (decided under former Code 1933, § 24A-1702).

Service of summons and termination petition was ineffective since, even though the summons was left at the mother's residence, there was no evidence that the summons was left with a statutorily appropriate person, and service of

the petition the day before the hearing was not timely. In re D.R.W., 229 Ga. App. 571, 494 S.E.2d 379 (1997) (decided under former O.C.G.A. § 15-11-27).

Service by correctional officer on incarcerated parent. — Personal service of a summons and a petition of deprivation, by a correctional officer upon an incarcerated parent, was sufficient as the service procedures in the Civil Practice Act, O.C.G.A. § 9-11-1 et seq., were not adopted nor were binding on the juvenile court, and the correctional officer was acting under the direction of the court for the purposes of former O.C.G.A. § 15-11-39.1(c) (see now O.C.G.A. §§ 15-11-161, 15-11-282, 15-11-400, 15-11-424, and 15-11-531). In the Interest of A.J.M., 277 Ga. App. 646, 627 S.E.2d 399 (2006) (decided under former O.C.G.A. § 15-11-39.1).

Service not perfected on incarcerated person. — Deprivation order had to be vacated and the case remanded because service of the deprivation petition on the parent in question, who was incarcerated, was not perfected in accordance with former O.C.G.A. § 15-11-39.1(a) (see now O.C.G.A. §§ 15-11-161, 15-11-282, 15-11-400, 15-11-424, and 15-11-531). The parent had not waived personal service and personal service was not waived simply by actual notice having been achieved. In the Interest of A. R., 296 Ga. App. 62, 673 S.E.2d 586 (2009) (decided under former O.C.G.A. § 15-11-39.1).

Requirement of "reasonable effort" to find party. — Former statute required a showing by the department that a "reasonable effort" had been made to find a putative father or ascertain his address. In re J.B., 140 Ga. App. 668, 231 S.E.2d 821 (1976) (decided under former O.C.G.A. § 15-11-39.1).

If there was no service of process and notice as required by the former provisions and there was no valid waiver of notice of the pending charge by service of process or otherwise, the entire hearing is a nullity. In re W.M.F., 180 Ga. App. 397, 349 S.E.2d 265 (1986) (decided under former O.C.G.A. § 15-11-39.1).

Waiver of right to notice. — If neither the juvenile nor the juvenile's mother were represented by counsel at the dispositional hearing, neither party knew the nature of the charge filed against the minor, and neither party knew of the serious consequences which may result in the case of an adverse adjudication of the petition filed against the juvenile, it is highly unlikely that the parties understood the significance of waiving the parties right to prior notice of the pending charge. In re W.M.F., 180 Ga. App. 397, 349 S.E.2d 265 (1986) (decided under former O.C.G.A. § 15-11-39.1).

Timeliness of petition. — Juvenile was entitled to a copy of the delinquency petition filed against the juvenile, and pursuant to former O.C.G.A. § 15-11-39.1 (see now O.C.G.A. §§ 15-11-161, 15-11-282, 15-11-400, 15-11-424, and 15-11-531), the juvenile had a right to receive the petition at least 24 hours prior to the adjudicatory hearing; however, the juvenile waived any objection the juvenile had on the grounds of improper service since the juvenile received the petition right before the hearing as the juvenile did not make an objection or request a continuance on the basis that the juvenile was unprepared. In the Interest of E.S., 262 Ga. App. 768, 586 S.E.2d 691 (2003) (decided under former O.C.G.A. § 15-11-39.1).

Permitting state's mid-trial amendment of petition to change the charge against the juvenile from a misdemeanor to a felony was error since the amendment was done without notice and provision of a continuance to allow additional time for preparation of a defense. In re D.W, 232 Ga. App. 777, 503 S.E.2d 647 (1998) (decided under former O.C.G.A. § 15-11-39.1).

Reliance on section by trial court misplaced. — Because former O.C.G.A. § 15-11-96(c) (see now O.C.G.A. §§ 15-11-281 and 15-11-282) related specifically to service in termination-of-parental-rights proceedings, the trial court's reliance on the service provisions of former O.C.G.A. § 15-11-39.1 (see now O.C.G.A. §§ 15-11-161, 15-11-282, 15-11-400, 15-11-424, and 15-11-531), a statute dealing with service in juvenile court proceedings generally, was misplaced; moreover, for purposes of statutory interpretation, a specific statute pre-

vailed over a general statute, absent any indication of a contrary legislative intent. In the Interest of C.S., 282 Ga. 7, 644 S.E.2d 812 (2007) (decided under former O.C.G.A. § 15-11-39.1).

RESEARCH REFERENCES

Am. Jur. 2d. — 47 Am. Jur. 2d, Juvenile Courts and Delinquent and Dependent Children, § 72 et seq.

C.J.S. — 43 C.J.S., Infants, § 195 et seq.

U.L.A. — Uniform Juvenile Court Act (U.L.A.) § 23.

15-11-425. Sanctions for failure to obey summons.

(a) In the event a parent, guardian, or legal custodian of a child alleged to be a child in need of services willfully fails to appear personally at a hearing on the petition seeking an adjudication that a child is a child in need of services after being ordered to so appear or such parent, guardian, or legal custodian willfully fails to bring such child to such hearing after being so directed, the court may issue a rule nisi against the person directing the person to appear before the court to show cause why he or she should not be held in contempt of court.

(b) If a parent, guardian, or legal custodian of the child alleged to be a child in need of services fails to appear in response to an order to show cause, the court may issue a bench warrant directing that such parent, guardian, or legal custodian be brought before the court without delay to show cause why he or she should not be held in contempt and the court may enter any order authorized by the provisions of Code Section 15-11-31.

(c) In the event an agency representative willfully fails to appear at a hearing on the petition seeking an adjudication that a child is a child in need of services after being ordered to so appear, the court may direct the appropriate agency representative to appear before the court to show cause why a contempt order should not be issued.

(d) If a child 16 years of age or older fails to appear at a hearing on a petition seeking an adjudication that such child is a child in need of services after being ordered to so appear, the court may issue a bench warrant requiring that such child be brought before the court without delay and the court may enter any order authorized by the provisions of Code Section 15-11-31.

(e) If there is sworn testimony that a child 14 years of age but not yet 16 years of age willfully refuses to appear at a hearing on a petition seeking an adjudication that such child is a child in need of services after being ordered to so appear, the court may issue a bench warrant requiring that such child be brought before the court and the court may enter any order authorized by the provisions of Code Section 15-11-31.

History. — Code 1981, § 15-11-425, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

Cross references. — Amendment to Juvenile Court petition, Uniform Rules for the Juvenile Courts of Georgia, Rule 6.6. Continuance of adjudicatory hearing in Juvenile Court, Uniform Rules for the Juvenile Courts of Georgia, Rule 11.3.

Law reviews. — For article discussing due process in juvenile court procedures in California and Georgia, in light of In re Gault, 387 U.S. 1, 87 S. Ct. 1428, 18 L. Ed. 2d 527 (1967), see 8 Ga. St. B. J. 9 (1971).

JUDICIAL DECISIONS

Editor's notes. — Many of the following annotations should be examined in light of the amendment to Ga. Const. 1976, Art. VI, Sec. XIV, Para. VI (see now Ga. Const. 1983, Art. VI, Sec. II, Para. VI) which took effect November 1, 1981.

In light of the similarity of the statutory provisions, decisions under former Code 1933, § 24A-1101, pre-2000 Code Section 15-11-15 and pre-2014 Code Section 15-11-29, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Venue exists despite absence of child. — If a particular county is the residence of the child and of the child's mother, venue properly exists there for temporary custody actions even if the child was not personally present within the boundaries of that county on the date of the filing of the petition to the court for temporary custody. Sanchez v. Walker County Dep't of Family & Children Servs., 138 Ga. App. 49, 225 S.E.2d 441, rev'd on other grounds, 237 Ga. 406, 229 S.E.2d 66 (1976) (decided under former Code 1933, § 24A-1101).

Waiver of notice. — In a juvenile delinquency case, although neither defendants nor their parents were served with copies of the petitions and hearing summonses as required by former O.C.G.A. § 15-11-39 (see now O.C.G.A. §§ 15-11-162, 15-11-281, 15-11-423, 15-11-425, and 15-11-532), the defendants and their parents appeared at the hearings with their attorneys without objecting to lack of notice; thus, the defendants and their parents waived the notice issue. In the Interest of T.K.L., 277 Ga. App. 461, 627 S.E.2d 98 (2006) (decided under former O.C.G.A. § 15-11-39).

Implied waiver of service on behalf of child. — If a child is present at a juvenile court hearing with the child's parent and counsel, the child's parent impliedly may waive service of a summons on a child's behalf by voluntary appearance at a hearing without objection to lack of service. Fulton County Detention Center v. Robertson, 249 Ga. 864, 295 S.E.2d 101 (1982) (decided under former O.C.G.A. § 15-11-26).

Parent's right to appeal delinquency adjudication. — As parties to their child's delinquency action pursuant to former O.C.G.A. § 15-11-39(b) (see now O.C.G.A. §§ 15-11-160, 15-11-423, and 15-11-530), the child's parents had the right to appeal the juvenile court's judgment and to participate in the appellate process. In the Interest of J.L.B., 280 Ga. App. 556, 634 S.E.2d 514 (2006) (decided under former O.C.G.A. § 15-11-39).

Proceeding null when no waiver of rights nor proper service. — If, in a juvenile court proceeding, there was neither waiver of the right of a mother, nor proper service upon the parties and if the hearing is not taken under oath, or waived by any of the parties, the proceeding is an absolute nullity. McBurrough v. Dep't of Human Resources, 150 Ga. App. 130, 257 S.E.2d 35 (1979) (decided under former Code 1933, § 24A-1701).

PART 6

ADJUDICATION, DISPOSITION, AND REVIEWS

15-11-440. Standard of proof.

The petitioner, or prosecuting attorney when representing the state, has the burden of proving the allegations of a child in need of services petition by clear and convincing evidence.

History. — Code 1981, § 15-11-440, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242; Ga. L. 2015, p. 540, § 2-4/HB 361.

Law reviews. — For article, "The Child as a Party in Interest in Custody Proceedings," see 10 Ga. St. B. J. 577 (1974). For article surveying Georgia cases in the area of juvenile court practice and procedure from June 1979 through May 1980, see 32 Mercer L. Rev. 113 (1980). For article, "Termination of Parental Rights: Recent Judicial and Legislative Trends," see 30 Emory L. J. 1065 (1981).

For note criticizing jurisdiction of juvenile justice system over runaways and advocating alternative legal approaches, see 24 Emory L. J. 1075 (1975).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 24A-2201, pre-2000 Code Section 15-11-33, and pre-2014 Code Section 15-11-65, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Standard of proof on question of delinquency or termination. — An "any evidence" standard or "preponderance of the evidence" standard is inadequate in dealing with a finding of deprivation of a child or termination of parental rights and would violate U.S. Const., amend. 14. In re Suggs, 249 Ga. 365, 291 S.E.2d 233 (1982) (decided under former O.C.G.A. § 15-11-33); In re J.K.D., 211 Ga. App. 776, 440 S.E.2d 524 (1994) (decided under former O.C.G.A. § 15-11-33).

Standard of proof on charges of criminal nature against juvenile is the same as that used in criminal proceedings against adults; proof must be beyond a reasonable doubt. M.W.W. v. State, 136 Ga. App. 472, 221 S.E.2d 669 (1975) (decided under former Code 1933 § 24A-2201); In re M.M., 235 Ga. App. 109, 508 S.E.2d 484 (1998) (decided under former O.C.G.A. § 15-11-33).

With regard to a juvenile's adjudication of delinquency for acts which, if committed by an adult, would have constituted the offense of child molestation, the juvenile court did not err by denying the juvenile's motion to dismiss, which was based on an extended pre-trial detention as the juvenile and defense counsel agreed to a continuance and acquiesced in a hearing date delaying the adjudication for at least 48 days following the filing of the delinquency petition, which caused the juvenile to waive the right to complain that the adjudication hearing date was not set to occur in compliance with former O.C.G.A. § 15-11-39. However, the adjudication was reversed and the case was remanded to the juvenile court since the juvenile court erroneously applied a clear and convincing standard of proof and the standard of proof on charges of a criminal nature was the same as that used in criminal proceedings against adults, namely proof beyond a reasonable doubt. In the Interest of A.S., 293 Ga. App. 710, 667 S.E.2d 701 (2008) (decided under former O.C.G.A. § 15-11-65).

Clear and convincing evidence required for termination of parental rights. — Termination of parental rights

is a severe measure. If a third party sues the custodial parent to obtain custody of a child and to terminate the parent's custodial rights in the child, the parent is entitled to custody of the child unless the third party shows by "clear and convincing evidence" that the parent is unfit or otherwise not entitled to custody under O.C.G.A. §§ 19-7-1 and 19-7-4. Subsection (b) of former O.C.G.A. § 15-11-33 (see now O.C.G.A. §§ 15-11-440 and 15-11-581) required the court after a hearing to find "clear and convincing evidence" of "deprivation" before an order of deprivation may be entered. Heath v. McGuire, 167 Ga. App. 489, 306 S.E.2d 741 (1983) (decided under former O.C.G.A. § 15-11-33).

Clear and convincing evidence required for deprivation. — If deprivation formed the predicate upon which a third party sought a temporary transfer of the child's legal custody, in order to support such a disposition the child must first be adjudicated to be a deprived child. By statute, that finding of deprivation must be made by "clear and convincing evidence." In re J.C.P., 167 Ga. App. 572, 307 S.E.2d 1 (1983) (decided under former O.C.G.A. § 15-11-33); In re J.T.M., 200 Ga. App. 636, 409 S.E.2d 256 (1991) (decided under former O.C.G.A. § 15-11-33); but see In re A.W., 240 Ga. App. 259, 523 S.E.2d 88 (1999).

Delinquency found when delinquent acts corroborated by confession. — Child's confession out of court corroborated by evidence that the stolen items were found in the child's possession within a few hours of the theft constituted sufficient proof to support a finding of delinquency. A.C.G. v. State, 131 Ga. App. 156, 205 S.E.2d 435 (1974) (decided under former Code 1933, § 24A-2201).

Purpose of division of juvenile trials into two phases. — In dividing juvenile trials into two phases lawmakers intended to give the juvenile judge an opportunity to conduct the "functional equivalent" of a regular trial (the adjudicatory hearing) in a manner which would satisfy the required constitutional procedures concomitant with the usual legal rules, such as those dealing with admissibility of evidence, proof beyond a reasonable doubt, and similar requirements applicable to adults. Thereafter, at the dispositional phase, the judge was to explore all available additional avenues, including psychiatric and sociological studies, which would enable the judge to provide a solution for the youngster and the family aimed at making the child a secure law-abiding member of society. D.C.A. v. State, 135 Ga. App. 234, 217 S.E.2d 470 (1975) (decided under former Code 1933, § 24A-2201).

During adjudicatory phase, rules of evidence generally prevail. In the second (dispositional) phase, the court hears virtually all evidence which is material and relevant to the issue of disposition. J.B. v. State, 139 Ga. App. 545, 228 S.E.2d 712 (1976) (decided under former Code 1933, § 24A-2201).

Dispositional hearing not necessary for termination due to deprivation. — If a petition for the termination of parental rights alleged only that the children were deprived, not delinquent or unruly, it was not necessary for the juvenile judge to hold a dispositional hearing. In re J.C., 242 Ga. 737, 251 S.E.2d 299 (1978), appeal dismissed, 441 U.S. 929, 99 S. Ct. 2046, 60 L. Ed. 2d 657 (1979) (decided under former Code 1933, § 24A-2201).

Right to cross-examine afforded upon request. — Right to cross-examine adverse witnesses guaranteed by former Code 1933, § 24A-2002 (see now O.C.G.A. §§ 15-11-19 and 15-11-28) was afforded upon request according to former Code 1933, § 24A-2201 (see now O.C.G.A. §§ 15-11-400, 15-11-440, 15-11-581, 15-11-582, and 15-11-600). A.C.G. v. State, 131 Ga. App. 156, 205 S.E.2d 435 (1974) (decided under former Code 1933, § 24A-2201).

Record must show clear and convincing evidence which authorized finding. — Just as former statute did not require the court to include a specific statement as to the standard of proof of delinquency in the adjudication order, no such explicit finding is required as to the need for treatment or rehabilitation as long as the record showed that there was clear and convincing evidence which authorized the judge's implicit finding.

A.C.G. v. State, 131 Ga. App. 156, 205 S.E.2d 435 (1974) (decided under former Code 1933, § 24A-2201).

Explicit statutory findings required by former Code 1933, § 24A-2201 (see now O.C.G.A. §§ 15-11-440, 15-11-581, and 15-11-600) should be made in accordance with former Code 1933, § 81A-152 (see now O.C.G.A. § 9-11-52). Crook v. Georgia Dep't of Human Resources, 137 Ga. App 817, 224 S.E.2d 806 (1976) (decided under former Code 1933, § 24A-2201).

In ruling on deprivation petitions, findings of fact should be made in accordance with former Code 1933, § 81A-152 (see now O.C.G.A. § 9-11-52). W.R.G. v. State, 142 Ga. App. 81, 235 S.E.2d 43 (1977) (decided under former Code 1933, § 24A-2201); In re A.A.G., 143 Ga. App. 648, 239 S.E.2d 697 (1977) (decided under former Code 1933, § 24A-2201).

Disposition made following finding of delinquency. — Decision that the child is in need of treatment or rehabilitation, based upon clear and convincing evidence, is made following a finding of delinquency. A.C.G. v. State, 131 Ga. App. 156, 205 S.E.2d 435 (1974) (decided under former Code 1933, § 24A-2201).

Dispositional hearings held in county of juvenile's residence. — Dispositional hearings must be held in the county of the juvenile's residence to meet state constitutional requirements. C.L.A. v. State, 137 Ga. App. 511, 224 S.E.2d 491 (1976) (decided under former Code 1933, § 24A-2201).

No need to repeat evidence presented during adjudicatory portion. — There was no error in refusing to have the dispositional phase include a repetition of the same evidence and witnesses previously presented during the adjudicatory portion. D.C.A. v. State, 135 Ga. App. 234, 217 S.E.2d 470 (1975) (decided under former Code 1933, § 24A-2201).

Order for transfer for further disposition is not final appealable judgment. — When, pursuant to former Code 1933, § 24A-2201 (see now O.C.G.A. §§ 15-11-400, 15-11-440, 15-11-478, 15-11-581, 15-11-582, and 15-11-600), an order was entered adjudicating a juvenile guilty of an offense and, under the authority of former Code 1933, § 24A-1201 (see now O.C.G.A. §§ 15-11-401 and 15-11-490) jurisdiction was transferred to the county of the residence for further disposition, that order was not a final judgment appealable under former Code 1933, § 6-701 (see now O.C.G.A. §§ 5-6-34 and 5-6-35). D.C.E. v. State, 130 Ga. App. 724, 204 S.E.2d 481 (1974) (decided under former Code 1933, § 24A-2201).

RESEARCH REFERENCES

Am. Jur. 2d. — 47 Am. Jur. 2d, Juvenile Courts and Delinquent and Dependent Children, § 110 et seq.

C.J.S. — 43 C.J.S., Infants, § 199 et seq.

U.L.A. — Uniform Juvenile Court Act (U.L.A.) § 29.

ALR. — Applicability of rules of evidence in juvenile delinquency proceeding, 43 A.L.R.2d 1128.

Applicability of double jeopardy to juvenile court proceedings, 5 A.L.R.4th 234.

Defense of infancy in juvenile delinquency proceedings, 83 A.L.R.4th 1135.

Applicability of rules of evidence to juvenile transfer, waiver, or certification hearings, 37 A.L.R.5th 703.

15-11-441. Adjudication hearing.

(a) If a child alleged to be a child in need of services is in continued custody, the adjudication hearing shall be scheduled to be held no later than ten days after the filing of the petition seeking an adjudication that such child is a child in need of services. If such child is not in

continued custody, the adjudication hearing shall be scheduled to be held no later than 60 days after the filing of such petition.

(b) An adjudication hearing for a child alleged to be a child in need of services shall be conducted in accordance with Title 24.

(c) At the conclusion of the adjudication hearing, the court shall determine whether such child is a child in need of services.

History. — Code 1981, § 15-11-441, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242; Ga. L. 2014, p. 780, § 1-33/SB 364; Ga. L. 2015, p. 540, § 1-10/HB 361.

Cross references. — Amendment to Juvenile Court petition, Uniform Rules for the Juvenile Courts of Georgia, Rule 6.6. Continuance of adjudicatory hearing in Juvenile Court, Uniform Rules for the Juvenile Courts of Georgia, Rule 11.3.

Law reviews. — For article discussing due process in juvenile court procedures in California and Georgia, in light of In re Gault, 387 U.S. 1, 87 S. Ct. 1428, 18 L. Ed. 2d 527 (1967), see 8 Ga. St. B. J. 9 (1971).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 24A-1701, pre-2000 Code Section 15-11-26 and pre-2014 Code Section 15-11-39, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Time limits set forth in the former statute were jurisdictional and the adjudicatory hearing must be set for a time not later than that prescribed by statute. J.T.G. v. State, 141 Ga. App. 184, 233 S.E.2d 40 (1977) (decided under former Code 1933, § 24A-1701).

Time limits established by the General Assembly in the Juvenile Code are jurisdictional and must be strictly adhered to. Crews v. Brantley County Dep't of Family & Children Servs., 146 Ga. App. 408, 246 S.E.2d 426 (1978) (decided under former Code 1933, § 24A-1701).

Language of former statute was mandatory and the time for the hearing must be set for a time not later than ten days after the petition was filed. J.B.H. v. State, 139 Ga. App. 199, 228 S.E.2d 189 (1976) (decided under former Code 1933, § 24A-1701); Crews v. Brantley County Dep't of Family & Children Servs., 146 Ga. App. 408, 246 S.E.2d 426 (1978) (decided under former Code 1933, § 24A-1701); Irvin v. Department of Human Resources, 159 Ga. App. 101, 282 S.E.2d 664 (1981) (decided under former Code 1933, § 24A-1701).

Language of former subsection (a) of this section was mandatory and the adjudicatory hearing must be set for a time not later than that prescribed. Sanchez v. Walker County Dep't of Family & Children Servs., 237 Ga. 406, 229 S.E.2d 66 (1976) (decided under former Code 1933, § 24A-1701).

Goal sought to be accomplished by the ten-day hearing requirement for detained children was the same goal for the 60-day hearing requirement for non-detained children and, thus, the latter requirement was mandatory, rather than directory. In re R.D.F., 266 Ga. 294, 466 S.E.2d 572 (1996) (decided under former O.C.G.A. § 15-11-26).

Time limits for speedy trial must be strictly adhered to. — If a legislative body has defined the right to speedy trial in terms of days, then the time limits must be strictly complied with. J.B.H. v. State, 139 Ga. App. 199, 228 S.E.2d 189 (1976) (decided under former Code 1933, § 24A-1701).

Trial court erred in setting the date for a hearing twelve days, rather than ten days, from the date of the filing of a petition charging a juvenile with the com-

mission of the delinquent act of burglary. In re M.D.C., 214 Ga. App. 59, 447 S.E.2d 143 (1994) (decided under former O.C.G.A. § 15-11-26).

Provision of former O.C.G.A. § 15-11-26 (see now O.C.G.A. §§ 15-11-181, 15-11-400, 15-11-421, 15-11-441, and 15-11-582) that the time for a hearing shall not be later than ten days after filing of the petition if the child was in custody was the equivalent of a speedy trial demand which did not require a specific demand by the child. However, the statute's protection could be waived if not properly raised and, furthermore, the trial court had discretion to grant a continuance of a hearing properly set for a date within ten days from the filing of the petition. In re M.D.C., 214 Ga. App. 59, 447 S.E.2d 143 (1994) (decided under former O.C.G.A. § 15-11-26).

Former O.C.G.A. § 15-11-26 (see now O.C.G.A. § 15-11-181, 15-11-400, 15-11-421, 15-11-441, and 15-11-582) did not constitute a speedy trial demand and, therefore, the failure to comply with the former statute's provisions resulted in dismissal of the petition without prejudice. In re R.D.F., 266 Ga. 294, 466 S.E.2d 572 (1996) (decided under former O.C.G.A. § 15-11-26).

Time limits satisfied by hearing adjudicatory in nature. — When a juvenile and the juvenile's parents were summoned to appear at a hearing to defend against charges and to show cause why the juvenile should not be dealt with according to law, were instructed to remain in attendance at the hearing until final adjudication of the petition, were informed of the possibility of a continuance, and were told that the state would seek transfer to the superior court, the hearing was adjudicatory in nature and satisfied the requirements of former O.C.G.A. § 15-11-26. In re L.A.E., 265 Ga. 698, 462 S.E.2d 148 (1995) (decided under former O.C.G.A. § 15-11-26).

Construction with other law. — Because a juvenile's allegations that the state failed to comply with the procedural requirements under former O.C.G.A. § 15-11-49(c)(1) and (e) (see now O.C.G.A. §§ 15-11-102, 15-11-145, 15-11-151, 15-11-472, and 15-11-521) should have been raised in the superior court, and had no bearing on the validity of the delinquency petitions or the substantive charges against the juvenile in juvenile court, the court properly denied the presentation of evidence regarding the delinquency and substantive issues. In the Interest of K.C., 290 Ga. App. 416, 659 S.E.2d 821 (2008) (decided under former O.C.G.A. § 15-11-39).

Arraignment during adjudicatory hearing. — In the absence of a transcript, a juvenile failed to establish that former O.C.G.A. § 15-11-26 (see now O.C.G.A. §§ 15-11-181, 15-11-400, 15-11-421, 15-11-441, and 15-11-582) was violated since a hearing was timely scheduled and held, an arraignment was conducted at the beginning, the juvenile requested legal counsel and was found eligible to receive counsel, and a continuance was granted so counsel could be secured; conducting an arraignment was not inconsistent with an adjudicatory hearing. In re R.D.F., 266 Ga. 294, 466 S.E.2d 572 (1996), reversing In re R.D.F., 216 Ga. App. 563, 455 S.E.2d 77 (1995) (decided under former O.C.G.A. § 15-11-26).

Arraignment hearing scheduled within the 60-day time period is not sufficient to satisfy the requirement that an adjudicatory hearing must be set within that period. In re R.O.B., 216 Ga. App. 181, 453 S.E.2d 776 (1995) (decided under former O.C.G.A. § 15-11-26).

Hearing requirement applicable when child in detention when petition filed. — Ten-day hearing requirement was applicable when a child was "in detention" on the date the petition was filed in court. Sanchez v. Walker County Dep't of Family & Children Servs., 237 Ga. 406, 229 S.E.2d 66 (1976) (decided under former Code 1933, § 24A-1701).

Time for adjudicatory hearing is not mandatory. — Former O.C.G.A. § 15-11-26 (see now O.C.G.A. §§ 15-11-181, 15-11-400, 15-11-421, 15-11-441 and 15-11-582) required that an adjudicatory hearing date be set within ten days after a filing of a petition charging a minor with commission of delinquent acts, but does not require that a hearing be actually held within ten days after the filing of the petition. P.L.A. v.

State, 172 Ga. App. 820, 324 S.E.2d 781 (1984) (decided under former O.C.G.A. § 15-11-26); Johnson v. State, 183 Ga. App. 168, 358 S.E.2d 313 (1987) (decided under former O.C.G.A. § 15-11-26); In re L.T.W., 211 Ga. App. 441, 439 S.E.2d 716 (1993) (decided under former O.C.G.A. § 15-11-26); In re B.W.S., 265 Ga. 567, 458 S.E.2d 847 (1995) (decided under former O.C.G.A. § 15-11-26).

Ten-day hearing rule was not absolute, and a continuance could be granted in the sound discretion of the trial court. Johnson v. State, 183 Ga. App. 168, 358 S.E.2d 313 (1987) (decided under former O.C.G.A. § 15-11-26).

Adjudicatory hearing timely. — Juvenile court did not err in denying the defendant juvenile's motion to dismiss a petition because the adjudicatory hearing was set and held within ten days of the filing of the petition pursuant to former O.C.G.A. § 15-11-39(a) (see now O.C.G.A. §§ 15-11-181, 15-11-400, 15-11-421, 15-11-441, and 15-11-582), although the hearing was then continued, which was an action that was within the juvenile court's discretion. In the Interest of C.H., 306 Ga. App. 834, 703 S.E.2d 407 (2010) (decided under former O.C.G.A. § 15-11-39).

Waiver of procedural requirements. — Time limits on setting juvenile hearings are mandatory, but procedural requirements can be waived. J.T.G. v. State, 141 Ga. App. 184, 233 S.E.2d 40 (1977) (decided under former O.C.G.A. § 15-11-26). Cox v. Department of Human Resources, 148 Ga. App. 338, 250 S.E.2d 728 (1978), overruled on other grounds, 156 Ga. App. 338, 274 S.E.2d 728 (1980) (decided under former O.C.G.A. § 15-11-26).

With regard to a juvenile's adjudication of delinquency for acts which, if committed by an adult, would have constituted the offense of child molestation, the juvenile court did not err by denying the juvenile's motion to dismiss, which was based on an extended pre-trial detention as the juvenile and defense counsel agreed to a continuance and acquiesced in a hearing date delaying the adjudication for at least 48 days following the filing of the delinquency petition, which caused the juvenile to waive the right to complain that the adjudication hearing date was not set to occur in compliance with former O.C.G.A. § 15-11-39 (see now O.C.G.A. §§ 15-11-181, 15-11-400, 15-11-421, 15-11-441, and 15-11-582). However, the adjudication was reversed and the case was remanded to the juvenile court since the juvenile court erroneously applied a clear and convincing standard of proof and the standard of proof on charges of a criminal nature was the same as that used in criminal proceedings against adults, namely proof beyond a reasonable doubt. In the Interest of A.S., 293 Ga. App. 710, 667 S.E.2d 701 (2008) (decided under former O.C.G.A. § 15-11-39).

Juvenile waived the right under former O.C.G.A. § 15-11-39(a) (see now O.C.G.A. §§ 15-11-181, 15-11-400, 15-11-421, 15-11-441, and 15-11-582) to have an adjudicatory hearing within 10 days of the delinquency petition being filed by failing to object to the date proposed for the adjudicatory hearing, which was one month after the filing of the petition. In re A. T., 302 Ga. App. 713, 691 S.E.2d 642 (2010), overruled in part by Worthen v. State, 304 Ga. 862, 823 S.E.2d 291 (2019) (decided under former O.C.G.A. § 15-11-39).

Trial court did not err in denying the defendant's motion to dismiss for failure to comply with former O.C.G.A. § 15-11-39(a) (see now O.C.G.A. §§ 15-11-181, 15-11-400, 15-11-421, 15-11-441, and 15-11-582) because the defendant's parent, the defendant's representative, and an attorney acknowledged that the parent did not object when, at the arraignment hearing, it was announced that the adjudicatory hearing would be set outside of the 60-day window; the parent also did not object within the statutorily prescribed 60-day-time period, and the motion to dismiss was filed outside of the 60-day requirement. In the Interest of I.M.W., 313 Ga. App. 624, 722 S.E.2d 586 (2012) (decided under former O.C.G.A. § 15-11-39).

Hearing time limit can be waived. — If the party does not enter an objection during the course of the trial the party will not be heard to complain on appeal and if a hearing is set within the statutory

time limit, the court may in the court's discretion grant a continuance. Sanchez v. Walker County Dep't of Family & Children Servs., 237 Ga. 406, 229 S.E.2d 66 (1976) (decided under former Code § 24A-1701); In re J.B., 183 Ga. App. 229, 358 S.E.2d 620, cert. denied, 183 Ga. App. 906, 358 S.E.2d 620 (1987) (decided under former O.C.G.A. § 15-11-26).

Juvenile was entitled to a copy of the delinquency petition filed against the juvenile, and pursuant to former O.C.G.A. § 15-11-39.1 (see now O.C.G.A. §§ 15-11-161, 15-11-282, 15-11-400, 15-11-424, and 15-11-531), the juvenile had a right to receive the petition at least 24 hours prior to the adjudicatory hearing; however, the juvenile waived any objection based on the grounds of improper service since the juvenile received notice right before the hearing as the juvenile did not make an objection or request a continuance on the basis that the juvenile was unprepared. In the Interest of E.S., 262 Ga. App. 768, 586 S.E.2d 691 (2003) (decided under former O.C.G.A. § 15-11-39).

Continuance requested by parent did not violate time limit. — When a hearing on a deprivation petition was held within ten days of the petition's filing, but the case was continued for eight days because the mother's counsel had a scheduling conflict, there was no violation of former O.C.G.A. § 15-11-39(a)'s (see now O.C.G.A. §§ 15-11-181, 15-11-400, 15-11-421, 15-11-441, and 15-11-582) ten-day time limit. In the Interest of C.R., 292 Ga. App. 346, 665 S.E.2d 39 (2008) (decided under former O.C.G.A. § 15-11-39).

Parent's right to appeal delinquency adjudication. — As parties to their child's delinquency action pursuant to former O.C.G.A. § 15-11-39(b) (see now O.C.G.A. §§ 15-11-160, 15-11-423, and 15-11-530), the child's parents had the right to appeal the juvenile court's judgment and to participate in the appellate process. In the Interest of J.L.B., 280 Ga. App. 556, 634 S.E.2d 514 (2006) (decided under former O.C.G.A. § 15-11-39).

Adjudication hearing required after an initial hearing. — By restraining the child at an initial hearing, the juvenile court implicitly found probable cause, pursuant to former O.C.G.A. § 15-11-46.1 (see now O.C.G.A. §§ 15-11-415 and 15-11-503). The juvenile court therefore erred in later deciding that a 10-day adjudication hearing was actually a detention hearing and in resetting the 10-day adjudication hearing. In the Interest of K.L., 303 Ga. App. 679, 694 S.E.2d 372 (2010) (decided under former O.C.G.A. § 15-11-39).

Delay negotiated by defendant waives time limit. — If the statute does not require dismissal as a matter of law regardless of the reason for the delay, it is clear that a delay negotiated and obtained by the defendant personally would constitute a waiver of the 60-day requirement. E.S. v. State, 134 Ga. App. 724, 215 S.E.2d 732 (1975) (decided under former Code 1933, § 24A-1701).

Proceeding null when no waiver of rights nor proper service. — If, in a juvenile court proceeding, there was neither waiver of the right of a mother, nor proper service upon the parties and if the hearing is not taken under oath, or waived by any of the parties, the proceeding is an absolute nullity. McBurrough v. Dep't of Human Resources, 150 Ga. App. 130, 257 S.E.2d 35 (1979) (decided under former Code 1933, § 24A-1701).

Failure to follow mandated procedures warrants dismissal without prejudice of a petition alleging deprivation of a child. Another petition can be filed without delay if there is reason to believe the child is being neglected or abused. Sanchez v. Walker County Dep't of Family & Children Servs., 140 Ga. App. 175, 230 S.E.2d 139 (1976) (decided under former Code 1933, § 24A-1701).

Motion to dismiss necessary if no provision for automatic dismissal. — If there is no provision in the statute for automatic dismissal, there should be a motion to dismiss directed to the trial judge and it should appear that the delay is not due to the actions of the defendant. E.S. v. State, 134 Ga. App. 724, 215 S.E.2d 732 (1975) (decided under former Code 1933, § 24A-1701).

Allegation of failure to comply with time requirements not appealable. — If the defendant, prior to a hearing to

determine the defendant's delinquency, appealed from the juvenile court's denial of the defendant's motion to dismiss based solely upon an alleged failure to comply with the time requirements of subsection (a) of former O.C.G.A. § 15-11-26 (see now O.C.G.A. §§ 15-11-181, 15-11-400, 15-11-421, 15-11-441, and 15-11-582), the Court of Appeals dismissed the appeal since a motion under that Code section cannot be analogized to the denial of a O.C.G.A. § 17-7-170 motion and did not involve a question of speedy trial rights which would be directly appealable. In re M.O.B., 190 Ga. App. 474, 378 S.E.2d 898 (1989) (decided under former O.C.G.A. § 15-11-26).

Violation of ten-day mandate does not deprive jurisdiction. — Violation of the statutory mandate to set the hearing date not later than ten days after filing of the petition if the child is in detention would not deprive the court of jurisdiction that would otherwise exist. Sanchez v. Walker County Dep't of Family & Children Servs., 138 Ga. App. 49, 225 S.E.2d 441, rev'd on other grounds, 237 Ga. 406, 229 S.E.2d 66 (1976) (decided under former Code 1933, § 24A-1701).

Legislature intended incarceration be limited according to calendar days. — General Assembly intended that a juvenile who is incarcerated after the court has had a preliminary detention hearing should have the juvenile's incarceration limited and the juvenile's fate determined according to calendar days, not "working days." J.B.H. v. State, 139 Ga. App. 199, 228 S.E.2d 189 (1976), overruled on other grounds, In re R.D.F., 266 Ga. 294, 466 S.E.2d 572 (1996) (decided under former O.C.G.A. § 15-11-26).

No habeas corpus if compliance with statutory requirements. — Habeas corpus will not lie if the juvenile court, after notice and hearing, enters an order pursuant to former Code 1933, § 24-2409 (see now O.C.G.A. §§ 15-11-211, 15-11-212, and 15-11-215). Chaffins v. Lowndes County Dep't of Family & Children Servs., 243 Ga. 528, 255 S.E.2d 360 (1979) (decided under former Code 1933, § 24A-1701).

Effect of failure to show compliance with hearing requirement. — If the parents, in their petition seeking return of their children, allege that there has been no hearing as required by statute, and the record of prior juvenile court proceedings is silent as to whether such a hearing was ever set, continued, or held, and since the hearing requirement was mandatory, the defendant County Family and Children Services Department did not show compliance with the hearing requirement, and the parents stated claims for habeas relief which may be granted. Chaffins v. Lowndes County Dep't of Family & Children Servs., 243 Ga. 528, 255 S.E.2d 360 (1979) (decided under former Code 1933, § 24A-1701).

Permitting state's mid-trial amendment of petition to change the charge against the juvenile from a misdemeanor to a felony was error since the amendment was done without notice and provision of a continuance to allow additional time for preparation of a defense. In re D.W, 232 Ga. App. 777, 503 S.E.2d 647 (1998) (decided under former O.C.G.A. § 15-11-26).

Illegal detention. — If a petition was not presented within 72 hours of a detention hearing as required by former O.C.G.A. § 15-11-21(e) (see now O.C.G.A. §§ 15-11-145, 15-11-400, 15-11-413, 15-11-414, and 15-11-472), the state cannot thus illegally detain the child and then render such a jurisdictional defect harmless by setting the adjudication hearing within 13 days (72 hours plus 10 days) of the detention hearing under subsection (a) of former O.C.G.A. § 15-11-26 (see now O.C.G.A. §§ 15-11-181, 15-11-400, 15-11-421, 15-11-441, and 15-11-582). In re B.A.P., 180 Ga. App. 433, 349 S.E.2d 218 (1986) (decided under former O.C.G.A. § 15-11-26).

RESEARCH REFERENCES

Am. Jur. 2d. — 47 Am. Jur. 2d, Juvenile Courts and Delinquent and Dependent Children, § 66 et seq.

C.J.S. — 43 C.J.S., Infants, § 195 et seq.

U.L.A. — Uniform Juvenile Court Act (U.L.A.) § 22.

ALR. — Omission of signature of issuing officer on civil process or summons as affecting jurisdiction of the person, 37 A.L.R.2d 928.

15-11-442. Disposition hearing; time limitations; disposition of a child in need of services.

(a) If the court finds that a child is a child in need of services, a final disposition hearing shall be held and completed within 30 days of the conclusion of the adjudication hearing if the final disposition hearing is not held in conjunction with such adjudication hearing.

(b) The court shall order the least restrictive and most appropriate disposition. Such disposition may include:

(1) Permitting such child to remain with his or her caregiver without limitations or conditions;

(2) Permitting such child to remain with his or her caregiver subject to such limitations and conditions as the court may prescribe;

(3) Placing such child on probation or unsupervised probation on such terms and conditions as deemed in the best interests of such child and the public. An order granting probation to a child in need of services may be revoked on the ground that the terms and conditions of the probation have not been observed;

(4) Requiring that such child perform community service in a manner prescribed by the court and under the supervision of an individual designated by the court;

(5) Requiring that such child make restitution. A restitution order may remain in force and effect simultaneously with another order of the court. Payment of funds shall be made by such child or his or her family or employer directly to the clerk of the juvenile court entering the order or another employee of that court designated by the judge, and such court shall disburse such funds in the manner authorized in the order. While an order requiring restitution is in effect, the court may transfer enforcement of its order to:

(A) The juvenile court of the county of such child's residence and its probation staff, if he or she changes his or her place of residence; or

(B) A superior court once such child reaches 18 years of age if he or she thereafter comes under the jurisdiction of the superior court;

(6) Imposing a fine on such child who has committed an offense which, if committed by an adult, would be a violation under the criminal laws of this state or has violated an ordinance or bylaw of a county, city, town, or consolidated government. Such fine shall not exceed the fine which may be imposed against an adult for the same offense;

(7) Requiring such child to attend structured after-school or evening programs or other court approved programs as well as requiring supervision of such child during the time of the day in which he or she most often used to perform the acts complained of in the petition alleging that such child is a child in need of services;

(8) Any order authorized for the disposition of a dependent child;

(9) Any order authorized for the disposition of a delinquent child except that a child in need of services shall not be placed in a secure residential facility or nonsecure residential facility nor shall such facility accept such child;

(10) Any order authorized under Code Section 15-11-29.1; or

(11) Any combination of the dispositions set forth in paragraphs (1) through (10) of this subsection as the court deems to be in the best interests of a child and the public.

(c) All disposition orders shall include written findings of the basis for the disposition and such conditions as the court imposes and a specific plan of the services to be provided.

History. — Code 1981, § 15-11-442, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242; Ga. L. 2014, p. 780, § 1-34/SB 364; Ga. L. 2017, p. 604, § 1-3/SB 175.

Cross references. — Power of juvenile court to require restitution by unruly child as condition or limitation of probation, § 17-14-5. Further provisions regarding commitment of unruly child to Department of Juvenile Justice, §§ 49-4A-8 and 49-5-7.

Administrative rules and regulations. — Regional Educational Services, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Education, Chapter 160-5-1.

Law reviews. — For note criticizing jurisdiction of juvenile justice system over runaways and advocating alternative legal approaches, see 24 Emory L. J. 1075 (1975).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under pre-2014 Code Section 15-11-67, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Applicability. — Contrary to the defendant's claims, neither former O.C.G.A. § 15-11-67 (see now O.C.G.A. § 15-11-442) nor former O.C.G.A. § 15-11-48(e) (see now O.C.G.A. §§ 15-11-135, 15-11-400, and 15-11-412) applied to the defendant's case because both provisions applied when the child was found "unruly," and the defendant

was adjudicated delinquent, not unruly. In the Interest of B. Q. L. E., 297 Ga. App. 273, 676 S.E.2d 742, cert. denied, No. S09C1197, 2009 Ga. LEXIS 787 (Ga. 2009) (decided under former O.C.G.A. § 15-11-67).

Petition insufficient to charge juvenile as unruly. — Juvenile court erred in denying the defendant juvenile's special demurrer to a petition accusing the juvenile of being unruly pursuant to former O.C.G.A. §§ 15-11-2 and 15-11-67 (see now O.C.G.A. §§ 15-11-2, 15-11-381, 15-11-442, and 15-11-471) because the petition did not allege the defendant's misconduct with particularity, and the defendant was unable to determine what acts of disobedience supported the allegation that the defendant was unruly; although the petition alleged the date the defendant was disobedient, the petition provided no factual details, and the petition merely mirrored the language of former § 15-11-2(12)(B) (see now O.C.G.A. §§ 15-11-2, 15-11-381, and 15-11-471). In the Interest of C.H., 306 Ga. App. 834, 703 S.E.2d 407 (2010) (decided under former O.C.G.A. § 15-11-67).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under pre-2000 Code Section 15-11-36, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

All costs related to subsistence and detention, including emergency medical costs, incurred on behalf of juveniles held in Department of Juvenile Justice facilities prior to a formal commitment to the Department of Juvenile Justice are properly assessed to the counties. 2002 Op. Att'y Gen. No. 2002-6 (decided under former O.C.G.A. § 15-11-36).

RESEARCH REFERENCES

Am. Jur. 2d. — 42 Am. Jur. 2d, Infants, § 50. 47 Am. Jur. 2d, Juvenile Courts and Delinquent and Dependent Children, §§ 7, 56 et seq.

C.J.S. — 43 C.J.S., Infants, § 234 et seq.

U.L.A. — Uniform Juvenile Court Act (U.L.A.) § 32.

ALR. — Applicability of double jeopardy to juvenile court proceedings, 5 A.L.R.4th 234.

Truancy as indicative of delinquency or incorrigibility, justifying commitment of infant or juvenile, 5 A.L.R.4th 1211.

15-11-443. Duration of disposition orders.

(a) An order of disposition shall be in effect for the shortest time necessary to accomplish the purposes of the order and for not more than two years. A written disposition order shall state the length of time the order is to be in effect. An order of extension may be made if:

(1) A hearing is held prior to the expiration of the order upon motion of DFCS, DJJ, the petitioner, the prosecuting attorney, or on the court's own motion;

(2) Reasonable notice of the factual basis of the motion and of the hearing and opportunity to be heard are given to the parties affected;

(3) The court finds that the extension is necessary to accomplish the purposes of the order extended; and

(4) The extension does not exceed two years from the expiration of the prior order.

(b) The court may terminate an order of disposition or an extension of such a disposition order prior to its expiration, on its own motion or an application of a party, if it appears to the court that the purposes of the order have been accomplished.

(c) When a child adjudicated as a child in need of services reaches 18 years of age, all orders affecting him or her then in force shall terminate and he or she shall be discharged from further obligation or control.

History. — Code 1981, § 15-11-443, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242; Ga. L. 2014, p. 780, § 1-35/SB 364; Ga. L. 2015, p. 540, § 2-5/HB 361.

Cross references. — Age of majority, § 39-1-1. Motion for extension of Juvenile Court order, Uniform Rules for the Juvenile Courts of Georgia, Rule 4.5. Time limitations upon other orders of disposition in Juvenile Court proceedings, Uniform Rules for the Juvenile Courts of Georgia, Rule 15.3.

Law reviews. — For article, "An Outline of Juvenile Court Jurisdiction with Focus on Child Custody," see 10 Ga. St. B. J. 275 (1973). For article surveying developments in Georgia juvenile court practice and procedure from mid-1980 through mid-1981, see 33 Mercer L. Rev. 167 (1981). For review of 1998 legislation relating to courts, see 15 Ga. St. U.L. Rev. 54 (1998). For annual survey of law on appellate practice and procedure, see 62 Mercer L. Rev. 25 (2010).

For review of 1996 juvenile proceedings legislation, see 13 Ga. St. U.L. Rev. 88 and 91 (1996).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 24A-2701, pre-2000 Code Section 15-11-41, and pre-2014 Code Section 15-11-70, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Constitutionality of provision for extension of custody. — Provision of former O.C.G.A. § 15-11-41 (see now O.C.G.A. §§ 15-11-443 and 15-11-607) permitting the court to extend an order of disposition for two years did not violate constitutional prohibitions against double jeopardy since the statute operated to further the accomplishment of the juvenile's treatment and rehabilitation. In re T.B., 268 Ga. 149, 486 S.E.2d 177 (1997) (decided under former O.C.G.A. § 15-11-41).

Construction with O.C.G.A. § 17-14-10. — Despite the fact that former O.C.G.A. § 15-11-70 (see now O.C.G.A. §§ 15-11-443 and 15-11-607) allowed for a juvenile probation order to be extended if, among other things, a hearing was held prior to the expiration of the order upon motion of a party or on the court's own motion, the juvenile court erred in extending a juvenile's probation and imposing the condition that restitution be paid without making the requisite findings set forth in O.C.G.A. § 17-14-10, such as the juvenile's financial condition. In the Interest of C.S., 280 Ga. App. 781, 635 S.E.2d 176 (2006), overruled on other grounds, McCart v. State, 289 Ga. App. 830, 658 S.E.2d 465 (2008) (decided under former O.C.G.A. § 15-11-70).

Applicability. — Provisions of former O.C.G.A. § 15-11-41 (see now O.C.G.A. §§ 15-11-443 and 15-11-607) were not applicable in proceedings under former O.C.G.A. § 15-11-81 (see now O.C.G.A. § 15-11-709) for termination of parental rights. In re V.S., 230 Ga. App. 26, 495 S.E.2d 142 (1998).

Juvenile court did not abuse the court's discretion in transferring a former juvenile's case to the superior court because, as a 28-year-old adult, the juvenile court no longer had jurisdiction over the matter, and the court could not be assured that the former juvenile would receive the appropriate treatment for the necessary length of time in the juvenile system; furthermore, the transfer under former O.C.G.A. § 15-11-30.2(a)(3) (see now O.C.G.A. § 15-11-561) did not violate substantive due process under the Fourteenth Amendment. In the Interest of R.T., 278 Ga. App. 225, 628 S.E.2d 662 (2006) (decided under former O.C.G.A. § 15-11-70).

Contrary to a juvenile's claim that the juvenile court erred in committing the juvenile into the custody of the Department of Juvenile Justice for two years consecutive to a 60-day boot camp program, the disposition was valid under both former O.C.G.A. §§ 15-11-66(b)(1) and 15-11-70(a) (see now O.C.G.A. §§ 15-11-443, 15-11-600, and 15-11-607) as: (1) the former granted the court the discretion, in a case involving a felony offense, to order the juvenile to serve up to a maximum of 60 days in a youth development center in addition to any other treatment or rehabilitation; and (2) under the latter, an order of disposition continued in force for two years, or until the child was sooner discharged by the department. In the Interest of J.R., 280 Ga. App. 143, 633 S.E.2d 447 (2006) (decided under former O.C.G.A. § 15-11-70).

Exclusive jurisdiction for at least two years over deprived children. — Juvenile Code vests exclusive jurisdiction in the juvenile court for at least two years over matters concerning children whom the juvenile court has duly found to be deprived. West v. Cobb County Dep't of Family & Children Servs., 243 Ga. 425, 254 S.E.2d 373 (1979) (decided under former Code 1933, § 24A-2701).

Statute permitted a juvenile court to extend an order of probation until the juvenile reached the age of 21 years. State v. Crankshaw, 243 Ga. 183, 253 S.E.2d 69 (1979) (decided under former Code 1933, § 24A-2701).

Credibility of witnesses in custody. — Witness who is under commitment to the Department of Juvenile Justice is equally subject to the allegation that the witness is shading their testimony in favor of the state in order to obtain more favorable treatment. Wright v. State, 279 Ga. 498, 614 S.E.2d 56 (2005) (decided under former O.C.G.A. § 15-11-70).

Juvenile adjudication of witness. — Trial court's restriction of the defendant's cross-examination of two state's witnesses about their juvenile adjudications was error as the state's case relied primarily on these witnesses, who provided the only evidence that the defendant shot the victim; thus, the defendant's conviction for felony murder was reversed. Wright v. State, 279 Ga. 498, 614 S.E.2d 56 (2005) (decided under former O.C.G.A. § 15-11-70).

Extension of probation proper. — Juvenile's argument on appeal that the juvenile court was not authorized to extend an order of probation for the purpose of payment of restitution, and in doing so, the juvenile court assumed a prosecutorial role, lacked merit, given the language in former O.C.G.A. § 15-11-70(b) (see now O.C.G.A. § 15-11-607) and the state policy pronounced in O.C.G.A. § 17-14-5. In the Interest of C.S., 280 Ga. App. 781, 635 S.E.2d 176 (2006), overruled on other grounds, McCart v. State, 289 Ga. App. 830, 658 S.E.2d 465 (2008) (decided under former O.C.G.A. § 15-11-70).

Juvenile's inability to comply with the juvenile court's order to complete 120 days of a reporting program without extending probation was directly attributable to the juvenile's actions in violating probation and, thus, the juvenile court did not err in extending the juvenile's probation period. In the Interest of M. A. I., 319 Ga. App. 578, 737 S.E.2d 585 (2013) (decided under former O.C.G.A. § 15-11-70).

Custody by Department suspends parental right. — Removal of custody of the child from the parents is a determination that, for whatever length of time custody is exercised by the Department of Family and Children Services, this right has been suspended, although not finally terminated. Rodgers v. Department of Human Resources, 157 Ga. App. 235, 276 S.E.2d 902 (1981) (decided under former O.C.G.A. § 15-11-41).

Effect of order reversing termination of parental rights. — After the court of appeals reversed an order of the juvenile court terminating parental rights, on remand, the juvenile court, which had already extended an order giving custody to the Department of Family and Children Services for two years, lacked authority to extend the order further. In re B.G., 231 Ga. App. 39, 497 S.E.2d 572 (1998) (decided under former O.C.G.A. § 15-11-41).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, § 24A-2701, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Unexpired order of commitment. — Department of Corrections properly has custody of an individual under the provisions of a criminal sentence which was imposed subsequent to an unexpired order of commitment; at the expiration of the criminal sentence, alternative arrangements for custody should be made for the remainder of the term of commitment. 1975 Op. Att'y Gen. No. 75-20 (decided under former Code 1933, § 24A-2701).

RESEARCH REFERENCES

Am. Jur. 2d. — 42 Am. Jur. 2d, Infants, § 50. 47 Am. Jur. 2d, Juvenile Courts and Delinquent and Dependent Children, §§ 54 et seq., 110 et seq.

C.J.S. — 43 C.J.S., Infants, § 224 et seq.

U.L.A. — Uniform Juvenile Court Act (U.L.A.) § 36.

15-11-444. Probation revocation.

(a) An order granting probation to a child adjudicated to be a child in need of services may be revoked on the ground that the conditions of probation have been violated.

(b) Any violation of a condition of probation may be reported to any person authorized to make a petition alleging that a child is in need of services as set forth in Code Section 15-11-420. A motion for revocation of probation shall contain specific factual allegations constituting each violation of a condition of probation.

(c) A motion for revocation of probation shall be served upon the child, his or her attorney, and parent, guardian, or legal custodian in accordance with the provisions of Code Section 15-11-424.

(d) If a child in need of services is taken into custody because of the alleged violation of probation, the provisions governing the detention of a child under this article shall apply.

(e) A revocation hearing shall be scheduled to be held no later than 30 days after the filing of a motion to revoke probation.

(f) If the court finds, beyond a reasonable doubt, that a child in need of services violated the terms and conditions of probation, the court may:

(1) Extend his or her probation;

(2) Impose additional conditions of probation; or

(3) Make any disposition that could have been made at the time probation was imposed.

History. — Code 1981, § 15-11-444, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

Administrative rules and regulations. — Admission by order of a juvenile court, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Human Services, Mental Health, Developmental Disabilities and Addictive Diseases, Admission, Treatment and Release of Minors from Mental Health Facilities, Rule 290-4-7-.07.

JUDICIAL DECISIONS

Analysis

Modification or Vacation of Orders
Revocation of Probation

Modification or Vacation of Orders

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 24A-2801, pre-2000 Code Section 15-11-42, and pre-2014 Code Section 15-11-40, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Burden of proof for modification is preponderance of the evidence. — Trial court erred in requiring a father to prove by clear and convincing proof that changed circumstances warranted modification of an order placing the father's children with their maternal aunts; the father retained an interest in the children, under former O.C.G.A. §§ 15-11-13 and 15-11-58(i)(1) (see now O.C.G.A. §§ 15-11-30 and 15-11-204), sufficient to support a right to petition for modification, and the father was only required to prove the motion under former O.C.G.A. § 15-11-40(b) (see now O.C.G.A. §§ 15-11-444 and 15-11-608) by a preponderance of the evidence. In re J. N., 302 Ga. App. 631, 691 S.E.2d 396 (2010) (decided under former O.C.G.A. § 15-11-40).

Delinquency adjudication. — Defendant juvenile's appeal of an order denying a motion to reconsider, vacate, or modify the delinquent adjudication was proper because the denial of the motion was a final judgment and was directly appealable; therefore, the defendant could appeal the ruling on disposition as well as on the original finding of delinquency. An order denying a motion under former O.C.G.A. § 15-11-40(b) (see now O.C.G.A. §§ 15-11-32, 15-11-444, and 15-11-608) seeking a modification based on changed circumstances in a delinquency matter is a final judgment directly appealable under O.C.G.A. § 5-6-34(a)(1) and former O.C.G.A. § 15-11-3 (see now O.C.G.A. § 15-11-35). In the Interest of J. L. K., 302 Ga. App. 844, 691 S.E.2d 892 (2010) (decided under former O.C.G.A. § 15-11-40).

Modification of a sentencing order was proper since a juvenile had been committed to the Department of Children & Youth Services (DCYS) for a period of detention and treatment but had not been transferred to the physical custody of DCYS but was held in a detention center pending placement in a youth development campus. In re B.D.T., 219 Ga. App. 804, 466 S.E.2d 680 (1996) (decided under former O.C.G.A. § 15-11-42).

Modification was improper. — Since it was undisputed that after the juvenile court adjudicated the child as delinquent and committed the child to the Department of Juvenile Justice, and the child was placed in the physical custody of the Department, which confined the child for

a year, the Department had already taken physical custody of the child and therefore the juvenile court could not subsequently modify the original dispositional order. In the Interest of S.S., 276 Ga. App. 666, 624 S.E.2d 251 (2005) (decided under former O.C.G.A. § 15-11-40).

Claim for commutation or reduction. — When former O.C.G.A. §§ 15-11-40(b), 15-11-63(e)(1)(D) and (e)(2)(c) (see now O.C.G.A. §§ 15-11-32, 15-11-444, 15-11-602, and 15-11-608) were read together to effectuate their meaning as required by O.C.G.A. § 1-3-1(a), the juvenile court did not err in denying a juvenile's motion to commute or reduce the sentence imposed. Allegations that the juvenile was rehabilitated while in restrictive custody and would benefit from being released were insufficient to grant the juvenile court authority to modify the juvenile court's commitment order once physical custody of the juvenile was transferred to the Department of Juvenile Justice. In the Interest of J.V., 282 Ga. App. 319, 638 S.E.2d 757 (2006) (decided under former O.C.G.A. § 15-11-40).

Reduction in sentence not authorized. — Although former O.C.G.A. § 15-11-40(b) (see now O.C.G.A. §§ 15-11-32, 15-11-444, and 15-11-608) prohibited the change, modification, or vacation of a commitment order once a child is in the custody of the Department of Juvenile Justice "on the ground that changed circumstances so require in the best interest of the child" or because the child had been rehabilitated, the statute did not prohibit the change, modification, or vacation of a commitment order on other grounds. Further the application of former § 15-11-40(b) did not render former O.C.G.A. § 15-11-63(e)(2)(C) (see now O.C.G.A. § 15-11-602) purposeless in these circumstances when the juvenile based a reduction in sentence on rehabilitation. In re T. H., 298 Ga. App. 536, 680 S.E.2d 569 (2009) (decided under former O.C.G.A. § 15-11-40).

Commitment order could not be changed. — Defendant moved for early release from a youth development center on grounds that alleged changed circumstances required release in the best interests of the child. The motion was properly denied because under former O.C.G.A. § 15-11-40(b) (see now O.C.G.A. §§ 15-11-32, 15-11-444, and 15-11-608), once the Georgia Department of Juvenile Justice had physical custody, a commitment order could not be changed on that basis but could be changed on other grounds. In the Interest of J.W., 293 Ga. App. 408, 667 S.E.2d 161 (2008) (decided under former O.C.G.A. § 15-11-40).

Modification of a juvenile commitment order under former O.C.G.A. § 15-11-40(b) (see now O.C.G.A. 15-11-32, 15-11-444, and 15-11-608) on the ground that changed circumstances required modification in the best interest of the child was not available to a minor because the minor was already in the custody of the Department of Juvenile Justice; the fact that the custody was based on the minor's restrictive custody under a different commitment order, and not on the commitment order the minor sought to modify, had no bearing on whether the modification could be made. In the Interest of P.S., 295 Ga. App. 724, 673 S.E.2d 74 (2009) (decided under former O.C.G.A. § 15-11-40).

Although former O.C.G.A. § 15-11-63 (see now O.C.G.A. §§ 15-11-2, 15-11-471, 15-11-602, and 15-11-707) suggested that a juvenile defendant could move for early release from a youth development center after the defendant was already in custody, former O.C.G.A. § 15-11-40(b) (see now O.C.G.A. §§ 15-11-32, 15-11-444, and 15-11-608) prohibited modification of a commitment order on the grounds of changed circumstances. As a change in circumstances was the basis of the defendant's motion for early release, the juvenile court lacked jurisdiction to grant the motion. In re K.F., 299 Ga. App. 685, 683 S.E.2d 650 (2009) (decided under former O.C.G.A. § 15-11-40).

Contents of motion. — If the substance of a post-trial motion made no reference to any of the factors which would warrant the vacation or modification of the juvenile court's order, it could not be considered a motion to modify or vacate, thus an appeal could not be taken. In re C.M., 205 Ga. App. 543, 423 S.E.2d 280, cert. denied, 205 Ga. App. 900, 423 S.E.2d 280 (1992) (decided under former

Modification or Vacation of Orders (Cont'd)

O.C.G.A. § 15-11-42).

Evidence insufficient to support finding of delinquency. — Trial court erred in denying the defendant juvenile's motion to reconsider, vacate, or modify a delinquent adjudication for the offense of simple assault because the evidence was insufficient to support the finding of delinquency since, pursuant to O.C.G.A. § 16-5-20(a)(2), the crime of simple assault required proof that the defendant's actions placed the defendant's grandmother in reasonable apprehension of immediately receiving a violent injury, but the only evidence of that fact was hearsay; a police officer, who was the only witness, testified that the grandmother told the officer that the grandmother was afraid of the defendant, and that the defendant was perhaps going to hit the grandmother, but the officer admitted that there were no allegations that the defendant attempted to hit the grandmother, nor did the officer witness any of the alleged events. In the Interest of J. L. K., 302 Ga. App. 844, 691 S.E.2d 892 (2010) (decided under former O.C.G.A. § 15-11-40).

New disposition was sanction for original offense. — Although the initial act of bringing a weapon to school was not a designated felony under the statute in effect when a juvenile's probation was revoked, a dispositional order imposed upon revocation of probation related to the original delinquent act because the new disposition was a sanction for the original offense. In the Interest of N.M., 316 Ga. App. 649, 730 S.E.2d 127 (2012) (decided under former O.C.G.A. § 15-11-40).

Modification based on failure to provide interpreter to parents. — Juvenile court did not abuse the court's discretion in denying the parents' motion to modify or set aside the termination of parental rights order based on the parents' claim that a language barrier existed at the time of the termination hearing and during critical times in their case because the parents did not assert that the Georgia Department of Family and Children Services should have provided them with an interpreter who spoke their Guatemalan dialect of Mam. In the Interest of A. M., 324 Ga. App. 512, 751 S.E.2d 144 (2013).

Revocation of Probation

There is no double jeopardy protection against revocation of probation and the imposition of imprisonment. In re B.N.D., 185 Ga. App. 906, 366 S.E.2d 187, cert. denied, 185 Ga. App. 910, 366 S.E.2d 187 (1988) (decided under former O.C.G.A. § 15-11-42).

Hearing in juvenile court seeking termination of probation must be treated as a delinquency trial. K.E.S. v. State, 134 Ga. App. 843, 216 S.E.2d 670 (1975) (decided under former Code 1933, § 24A-2801); T.S.I. v. State, 139 Ga. App. 775, 229 S.E.2d 553 (1976) (decided under former O.C.G.A. § 15-11-42).

Hearing to determine delinquency required prior to revocation of probation. — In order to revoke a juvenile's probation, a de novo hearing is required to determine whether a delinquent act has been committed and that the child is delinquent. T.S.I. v. State, 139 Ga. App. 775, 229 S.E.2d 553 (1976) (decided under former Code 1933, § 24A-2801).

Juvenile court cannot sua sponte revoke probation and order a disposition as for a "designated felony act" after conducting a hearing on a petition which alleges only delinquency by reason of the commission of an act not within the ambit of former O.C.G.A. § 15-11-37 (see now O.C.G.A. §§ 15-11-2, 15-11-471, 15-11-602, and 15-11-707). Before a juvenile court may revoke an order granting probation, a petition must be filed requesting such relief. In re B.C., 169 Ga. App. 200, 311 S.E.2d 857 (1983) (decided under former O.C.G.A. § 15-11-42).

Burden of proof in revocation proceeding. — Finding of delinquency through parole violation in a revocation proceeding must be on proof beyond a reasonable doubt. T.S.I. v. State, 139 Ga. App. 775, 229 S.E.2d 553 (1976) (decided under former Code 1933, § 24A-2801).

Slight evidence will not be sufficient to authorize revocation of juvenile's probation. T.S.I. v. State, 139 Ga. App. 775, 229 S.E.2d 553 (1976) (decided under

former Code 1933, § 24A-2801).

Juvenile proceeding differs from adult hearing. — Juvenile revocation of probation proceedings is not analogous to adult probation revocation hearings. T.S.I. v. State, 139 Ga. App. 775, 229 S.E.2d 553 (1976) (decided under former Code 1933, § 24A-2801).

RESEARCH REFERENCES

Am. Jur. 2d. — 42 Am. Jur. 2d, Infants, § 51. 47 Am. Jur. 2d, Juvenile Courts and Delinquent and Dependent Children, § 113 et seq.

C.J.S. — 43 C.J.S., Infants, § 245 et seq.

U.L.A. — Uniform Juvenile Court Act (U.L.A.) § 37.

15-11-445. Disposition reviews; time limitations.

The court shall review the disposition of a child in need of services at least once within three months after such disposition and at least every six months thereafter so long as the order of disposition is in effect.

History. — Code 1981, § 15-11-445, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

Part 7

Mental Health

15-11-450. Comprehensive services plan for child found unrestorably incompetent to proceed; plan manager.

(a) After determining, in accordance with the provisions of Article 7 of this chapter, that a child alleged to be a child in need of services in a petition under this article or who has been alleged to have committed a delinquent act is unrestorably incompetent to proceed and the court orders that procedures for a comprehensive services plan be initiated, the court shall appoint a plan manager, if one has not already been appointed, to direct the development of a comprehensive services plan for such child.

(b) The plan manager shall convene all relevant parties to develop a comprehensive services plan. A plan manager shall request that the following persons attend such meeting:

(1) The parent, guardian, or legal custodian of such child;

(2) Such child's attorney;

(3) The person who filed the petition alleging that a child is in need of services or committed a delinquent act;

(4) Such child's guardian ad litem, if any;

(5) Mental health or developmental disabilities representatives;

(6) Such child's caseworker;

(7) A representative from such child's school; and

(8) Any family member of such child who has shown an interest and involvement in such child's well-being.

(c) A plan manager may request that other relevant persons attend a comprehensive services plan meeting, including but not limited to the following:

(1) A representative from the Department of Public Health;

(2) A DFCS caseworker;

(3) A prosecuting attorney;

(4) Representatives of the public and private resources to be utilized in the plan; and

(5) Other persons who have demonstrated an ongoing commitment to the child.

(d) A plan manager shall be responsible for collecting all previous histories of such child, including, but not limited to, previous evaluations, assessments, and school records, and for making such histories available for consideration by the persons at the comprehensive services plan meeting.

(e) Unless a time extension is granted by the court, a plan manager shall submit the comprehensive services plan to the court within 30 days of the entry of the court's disposition order for a child adjudicated to be unrestorably incompetent to proceed under Article 7 of this chapter. The plan shall include the following:

(1) An outline of the specific provisions for supervision of such child for protection of the community and such child;

(2) An outline of a plan designed to provide treatment, habilitation, support, or supervision services for a child in the least restrictive environment;

(3) If such child's evaluation recommends inpatient treatment, certification by such plan manager that such child is mentally ill or developmentally disabled and meets the requirements for civil commitment pursuant to Chapters 3 and 4 of Title 37 and that all other appropriate community based treatment options have been exhausted; and

(4) Identification of all parties responsible for each element of the plan, including such child, agency representatives, and other persons.

(f) A plan manager shall also be responsible for:

(1) Convening a meeting of all parties and representatives of all agencies prior to the comprehensive services plan hearing and review hearings;

(2) Identifying to the court any person who should provide testimony at the comprehensive services plan hearing; and

(3) Monitoring the comprehensive services plan, presenting to the court amendments to the plan as needed, and presenting evidence to the court for the reapproval of the plan at subsequent review hearings.

History. — Code 1981, § 15-11-450, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242; Ga. L. 2014, p. 780, § 1-37/SB 364; Ga. L. 2015, p. 540, § 2-6/HB 361.

15-11-451. Hearing on mental health plan; time limitations.

(a) The court shall hold a comprehensive services plan hearing within 30 days after the comprehensive services plan has been submitted to the court for the purpose of approving the plan. Thereafter, the court shall hold a comprehensive services plan hearing every six months for the purpose of reviewing such child's condition and approving the comprehensive services plan.

(b) The persons required to be notified of a comprehensive services plan hearing and witnesses identified by a plan manager shall be given at least ten days' prior notice of the hearing and any subsequent hearing to review such child's condition and shall be afforded an opportunity to be heard at any such hearing. The victim, if any, of a child's alleged delinquent act shall also be provided with the same ten days' prior notice and shall be afforded an opportunity to be heard and to present a victim impact form as provided in Code Section 17-10-1.1 to the court at the comprehensive services plan hearing. The judge shall make a determination regarding sequestration of witnesses in order to protect the privileges and confidentiality rights of a child adjudicated to be unrestorably incompetent to proceed under Article 7 of this chapter.

(c) At the comprehensive services plan hearing, the court shall enter an order incorporating a comprehensive services plan as part of the disposition of the comprehensive services plan hearing. At the time of the disposition, a child shall be placed in an appropriate treatment setting, as recommended by the examiner, unless such child has already been placed in an appropriate treatment setting pursuant to subsection (d) of Code Section 15-11-656.

(d) If, during the comprehensive services plan hearing or any subsequent review hearing, the court determines that a child is mentally ill

or developmentally disabled and meets the requirements for civil commitment pursuant to Chapters 3 and 4 of Title 37, such child may be committed to an appropriate treatment setting.

(e) At any time, in the event of a change in circumstances regarding such child, the court on its own motion or on the motion of the attorney representing such child, any guardian ad litem for such child, the person who filed the petition alleging that a child is in need of services or committed a delinquent act, the prosecuting attorney, or the plan manager may set a hearing for review of the comprehensive services plan and any proposed amendments to such plan. The court may issue an appropriate order incorporating an amended plan.

(f) If a child is under a comprehensive services plan when he or she reaches the age of 18, the plan manager shall make a referral for appropriate adult services.

History. — Code 1981, § 15-11-451, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242; Ga. L. 2014, p. 780, § 1-38/SB 364; Ga. L. 2015, p. 540, § 2-7/HB 361.

Cross references. — Age of majority, § 39-1-1.

Law reviews. — For article, "Criminal Procedure," see 27 Ga. St. U.L. Rev. 29 (2011).

RESEARCH REFERENCES

Am. Jur. Proof of Facts. — Defendant's Competency to Stand Trial, 40 POF2d 171.

ARTICLE 6

DELINQUENCY

Law reviews. — For annual survey on criminal law, see 66 Mercer L. Rev. 37 (2014).

PART 1

GENERAL PROVISIONS

15-11-470. Purpose of article.

The purpose of this article is:

(1) Consistent with the protection of the public interest, to hold a child committing delinquent acts accountable for his or her actions, taking into account such child's age, education, mental and physical condition, background, and all other relevant factors, but to mitigate the adult consequences of criminal behavior;

(2) To accord due process of law to each child who is accused of having committed a delinquent act;

(3) To provide for a child committing delinquent acts with supervision, care, and rehabilitation which ensure balanced attention to the protection of the community, the imposition of accountability, and the development of competencies to enable such child to become a responsible and productive member of the community;

(4) To promote a continuum of services for a child and his or her family from prevention of delinquent acts to aftercare, considering, whenever possible, prevention, diversion, and early intervention, including an emphasis on community based alternatives;

(5) To provide effective sanctions to acts of juvenile delinquency; and

(6) To strengthen families and to successfully reintegrate delinquent children into homes and communities.

History. — Code 1981, § 15-11-470, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

15-11-471. Definitions.

As used in this article, the term:

(1) "AIDS transmitting crime" shall have the same meaning as set forth in Code Section 31-22-9.1.

(2) "Behavioral health evaluation" means a court ordered evaluation completed by a licensed psychologist or psychiatrist of a child alleged to have committed or adjudicated of a delinquent act so as to provide the juvenile court with information and recommendations relevant to the behavioral health status and mental health treatment needs of such child.

(3) "Community rehabilitation center" means a rehabilitation and custodial center established within a county for the purpose of assisting in the rehabilitation of delinquent children and children in need of services in a neighborhood and family environment in cooperation with community educational, medical, and social agencies. Such center shall:

(A) Be located within any county having a juvenile court presided over by at least one full-time judge exercising jurisdiction exclusively over juvenile matters; and

(B) Be operated by a nonprofit corporation organized under Chapter 3 of Title 14, the "Georgia Nonprofit Corporation Code,"

and have a full-time chief executive officer. The charter, bylaws, and method of selecting the board of directors and chief executive officer of such nonprofit corporation shall be subject to the unanimous approval of the chief judge of the judicial circuit in which the county is located, the judge or judges of the juvenile court, the superintendent of the county school district, and the commissioner of juvenile justice; such approval shall be in writing and shall be appended to the charter and bylaws of the nonprofit organization. Any amendment of the charter or bylaws of the nonprofit corporation shall be subject to the same written approval as the original charter and bylaws.

(4) "Determined to be infected with HIV" means having a confirmed positive human immunodeficiency virus (HIV) test or having been clinically diagnosed as having AIDS.

(5) "Graduated sanctions" means:

(A) Verbal and written warnings;

(B) Increased restrictions and reporting requirements;

(C) Community service;

(D) Referral to treatment and counseling programs in the community;

(E) Weekend programming;

(F) Electronic monitoring, as such term is defined in Code Section 42-3-111;

(G) Curfew;

(H) An intensive supervision program; or

(I) A home confinement program.

(6) "Hearing officer" means a DJJ employee or county juvenile probation office employee, as applicable, who has been selected and appointed by DJJ or the county juvenile probation office, as applicable, to hear cases alleging violations of probation for administrative sanctioning. A hearing officer shall not be a probation officer who has direct supervision over the child who is the subject of the hearing.

(7) "HIV test" means any antibody, antigen, viral particle, viral culture, or other test to indicate the presence of HIV in the human body, and such test has been approved for such purposes by the regulations of the Department of Community Health.

(8) "Intensive supervision" means the monitoring of a child's activities on a more frequent basis than regular aftercare supervision, pursuant to regulations of the commissioner of juvenile justice.

(9) "Low risk" means the lowest risk to recidivate as calculated by a risk assessment.

(10) "Moderate risk or high risk" means a calculation by a risk assessment that is not low risk.

(11) "Probation management program" means a special condition of probation that includes graduated sanctions.

(12) "Secure probation sanctions program" means confinement in a secure residential facility or nonsecure residential facility for seven, 14, or 30 days.

History. — Code 1981, § 15-11-471, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242; Ga. L. 2015, p. 422, § 5-11/HB 310.

Cross references. — Testing for sexually transmitted diseases required, § 16-6-13.1. AIDS transmitting crimes, § 17-10-15. Sex education and AIDS prevention, § 20-2-143. Confidential nature of AIDS information, § 24-12-20.

Editor's notes. — Ga. L. 2015, p. 422, § 6-1/HB 310, not codified by the General Assembly, provides, in part, that the amendment by this Act shall apply to sentences entered on or after July 1, 2015.

Law reviews. — For article on the 2015 amendment of this Code section, see 32 Ga. St. U.L. Rev. 231 (2015).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 24A-401, former Code Section 15-11-2, pre-2000 Code Section 15-11-37, and pre-2014 Code Section 15-11-63, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Sufficient evidence was present to find child truant and unruly, as well as in need of supervision, since the evidence showed a large number of unexcused absences and the mother never applied for the services of a homebound teacher for the child as required by the school. In re A.D.F., 176 Ga. App. 5, 335 S.E.2d 144 (1985) (decided under former O.C.G.A. § 15-11-2).

Determination of in need of supervision. — Since the corroboration rule, which requires independent corroborative evidence to support testimony of accomplice, does not apply to misdemeanors, a juvenile proceeding was reconsidered, as an erroneous finding about the juvenile's alleged crime may have affected the court's finding concerning whether the juvenile was in need of correction and supervision. J.B.L. v. State, 144 Ga. App. 223, 241 S.E.2d 40 (1977) (decided under former Code 1933, § 24A-401).

Evidence from forensic pediatrician and clinical psychologist. — There was no merit to a father's argument that the trial court erred in admitting certain evidence in finding that three children were deprived and in authorizing the grant of a motion for nonreunification with the father. Although the father claimed that certain documents contained hearsay, it was presumed that the trial court in a nonjury trial would select only legal evidence; the father had not shown that the opinions of a forensic pediatrician and a clinical psychologist who were qualified as experts should have been excluded; the father had not made any argument as to how he was prejudiced by evidence apparently introduced against the mother; and an indictment for one child's injuries was properly admitted as the father's custody status was an issue in the case. In the Interest of A.R., 295 Ga. App. 22, 670 S.E.2d 858 (2008) (decided under former O.C.G.A. § 15-11-2).

Psychological testimony on developmental delay. — Evidence was sufficient to show that three children were deprived and to authorize the grant of a motion for nonreunification with their father. There was evidence that one child was seriously and intentionally injured while in either the sole or joint care of the father; the psychologist who evaluated the children, as well as their foster parent, testified as to numerous ways the children were developmentally delayed when initially taken into protective custody; and the father cited no evidence that he had made any attempt to maintain a parental bond with any of his children, met any of the other goals of the reunification plans, or otherwise provided for the needs of his children. In the Interest of A.R., 295 Ga. App. 22, 670 S.E.2d 858 (2008) (decided under former O.C.G.A. § 15-11-2).

Jurisdiction. — Under former O.C.G.A. §§ 15-11-2(2)(B) and 15-11-28(a)(1)(F) (see now O.C.G.A. §§ 15-11-2, 15-11-381, and 15-11-471), a juvenile court lacked jurisdiction over the defendant, who was over 17 when a probation violation occurred; thus, the defendant's commitment under former O.C.G.A. § 15-11-63 (see now O.C.G.A. §§ 15-11-2, 15-11-471, and 15-11-602) was void. The state had not filed a petition for probation revocation, but only for a violation of probation. In the Interest of T.F., 314 Ga. App. 606, 724 S.E.2d 892 (2012) (decided under former O.C.G.A. § 15-11-63).

RESEARCH REFERENCES

Am. Jur. 2d. — 47 Am. Jur. 2d, Juvenile Courts and Delinquent and Dependent Children, §§ 7, 53 et seq.

15-11-472. Delinquency case time limitations.

(a) A detention hearing shall be held promptly and no later than:

(1) Two business days after an alleged delinquent child is placed in preadjudication custody if he or she is taken into custody without an arrest warrant; or

(2) Five business days after an alleged delinquent child is placed in preadjudication custody if he or she is taken into custody pursuant to an arrest warrant.

(b) If an alleged delinquent child is placed in preadjudication custody without an arrest warrant and the detention hearing cannot be held within 48 hours because the expiration of the 48 hours falls on a weekend or legal holiday, the court shall review the detention assessment and the decision to detain such child and make a finding based on probable cause within 48 hours of such child being placed in preadjudication custody.

(c) If an alleged delinquent child is released from preadjudication custody at the detention hearing or was never taken into custody, the following time frames shall apply:

(1) Any petition alleging delinquency shall be filed within 30 days of the filing of the complaint or within 30 days after such child is released from preadjudication custody. If a complaint was not filed,

the complaint shall be filed within the statute of limitations as provided by Chapter 3 of Title 17;

(2) Summons shall be served at least 72 hours before the adjudication hearing;

(3) The arraignment hearing shall be scheduled no later than 30 days after the filing of the petition alleging delinquency;

(4) The adjudication hearing shall be held no later than 60 days from the filing of the petition alleging delinquency unless a continuance is granted as provided in Code Section 15-11-478; and

(5) The disposition hearing shall be held within 30 days of the adjudication hearing unless the court makes written findings of fact explaining the delay.

(d) If an alleged delinquent child is not released from preadjudication custody at the detention hearing, the following time frames shall apply:

(1) The petition alleging delinquency shall be filed within 72 hours of the detention hearing;

(2) Summons shall be served at least 72 hours before the adjudication hearing;

(3) The adjudication hearing shall be held no later than ten days after the filing of the petition alleging delinquency unless a continuance is granted as provided in Code Section 15-11-478; and

(4) The disposition hearing shall be held within 30 days of the adjudication hearing unless the court makes written findings of fact explaining the delay.

(e) For purposes of this Code section, preadjudication custody begins when a juvenile court intake officer authorizes the placement of a child in a secure residential facility.

(f) A child who is released from detention but subject to conditions of release shall not be considered to be in detention for purposes of calculating time frames set forth in this article or for purposes of calculating time served.

History. — Code 1981, § 15-11-472, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

JUDICIAL DECISIONS

Continuance request on the part of the state. — Order granting the state's request for a continuance in a juvenile proceeding was vacated because the juvenile court did not consider whether the state's proffered reason of needing more

time to determine whether to file a removal petition constituted good cause given the juvenile's objection to the continuance and the expressed desire to admit to the charged crimes. In the Interest of A. H., 332 Ga. App. 590, 774 S.E.2d 163 (2015).

Cited in In the Interest of M.D.H., 300 Ga. 46, 793 S.E.2d 49 (2016).

15-11-473. Conduct of delinquency proceeding by prosecuting attorney; access to information.

(a) A prosecuting attorney shall conduct delinquency proceedings on behalf of the state.

(b) Except as provided in Article 9 of this chapter, in any delinquency proceeding, the prosecuting attorney shall be entitled to complete access to all court files, probation files, hearing transcripts, delinquency reports, and any other juvenile court records. It shall be the duty of the clerk, probation and intake officer, probation officers of the juvenile court, community supervision officers, and DJJ to assist a prosecuting attorney in obtaining any requested items.

History. — Code 1981, § 15-11-473, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242; Ga. L. 2015, p. 422, § 5-12/HB 310.

Cross references. — Prosecuting attorneys, T. 15, C. 18.

Editor's notes. — Ga. L. 2015, p. 422, § 6-1/HB 310, not codified by the General Assembly, provides, in part, that the amendment by this Act shall apply to sentences entered on or after July 1, 2015.

Law reviews. — For article, "The Prosecuting Attorney in Georgia's Juvenile Courts," see 13 Ga. St. B. J. 27 (2008). For article on the 2015 amendment of this Code section, see 32 Ga. St. U.L. Rev. 231 (2015).

15-11-474. Parties in a delinquency proceeding; notice to DJJ.

(a) An alleged delinquent child and the state shall be parties at all stages of delinquency proceedings.

(b) A parent, guardian, or legal custodian of an alleged delinquent child shall have the right to notice, the right to be present in the courtroom, and the opportunity to be heard at all stages of delinquency proceedings.

(c) DJJ shall receive notice of the disposition hearing.

History. — Code 1981, § 15-11-474, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

15-11-475. Right to attorney; waiver.

(a) An alleged delinquent child shall have the right to be represented by an attorney at all proceedings under this article.

(b) A parent, guardian, or legal custodian of an alleged delinquent child shall not waive his or her child's right to be represented by an attorney.

(c) An alleged delinquent child may waive the right to an attorney under limited circumstances as set forth in subsection (b) of Code Section 15-11-511, but if a child's liberty is in jeopardy, he or she shall be represented by an attorney.

(d) Upon a motion by an attorney for an alleged delinquent child, together with written permission of such child, a judge shall issue an order providing that such child's attorney shall have access to all dependency, school, hospital, physician, or other health or mental health care records relating for such child.

History. — Code 1981, § 15-11-475, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

Cross references. — Cases in which public defender representation required; timing of representation; juvenile divisions; contract with local governments, O.C.G.A. § 17-12-32.

Law reviews. — For article, "Georgia's Juvenile Code: New Law for the New Year," see 19 Ga. St. B. J. 13 (Dec. 2013).

JUDICIAL DECISIONS

Analysis

General Consideration
Waiver

General Consideration

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 24A-2001, pre-2000 Code Section 15-11-30 and pre-2014 Code Section 15-11-6, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Due process requires notice of right to counsel. — Due process clause of U.S. Const., amend. 14, requires that in respect of proceedings to determine delinquency which may result in commitment to an institution in which the juvenile's freedom is curtailed, the child and the child's parents must be notified of the child's right to be represented by counsel retained by the parents, or if the parents are unable to afford counsel, that counsel will be appointed to represent the child. Freeman v. Wilcox, 119 Ga. App. 325, 167 S.E.2d 163 (1969), disapproved in Riley v. State, 237 Ga. 124, 226 S.E.2d 922 (1976), to the extent that no automatic exclusionary rule should be applied to incriminating statements made by a juvenile whose parents were not separately advised of the right to counsel (decided under former Code 1933, § 24A-2001).

Right to counsel at delinquency hearing. — General Assembly intended that in a juvenile court a child is of right entitled to counsel at a hearing which covers a determination by the court concerning the existence of delinquency by reason of the violation of probation conditions. K.E.S. v. State, 134 Ga. App. 843, 216 S.E.2d 670 (1975) (decided under former Code 1933, § 24A-2001).

No right to counsel before judicial citizens review panel. — Former O.C.G.A. § 15-11-6(b) (see now O.C.G.A. §§ 15-11-103, 15-11-402, and 15-11-475) did not apply to reviews by a judicial citizens review panel as the proceedings mentioned in former § 15-11-6(b) were

General Consideration (Cont'd)

proceedings before the juvenile court; the citizen's review panel's findings of fact and recommendations are not legal evidence as the panel were not a court of record and the panel's actions were not necessarily in compliance with regard to legal due process considerations. In the Interest of K.M.C., 273 Ga. App. 276, 614 S.E.2d 896 (2005) (decided under former O.C.G.A. § 15-11-6).

Parent entitled to representation at all stages of deprivation proceeding. — Under former O.C.G.A. § 15-11-6(b), a parent was entitled to representation at all stages of the proceedings alleging deprivation. In the Interest of A. R., 296 Ga. App. 62, 673 S.E.2d 586 (2009) (decided under former O.C.G.A. § 15-11-6).

Parent entitled to effective representation. — Mother was entitled to effective representation in termination hearing. In re A.H.P., 232 Ga. App. 330, 500 S.E.2d 418 (1998) (decided under former O.C.G.A. § 15-11-30).

Right applies to informal detention hearing and other stages. — Accused juvenile was entitled to counsel at an "informal detention hearing" required by Ga. L. 1971, p. 709, § 1 (see now O.C.G.A. § 15-11-60), or at any of the other stages of any proceedings alleging delinquency, unruliness, and deprivation. A.C.G. v. State, 131 Ga. App. 156, 205 S.E.2d 435 (1974) (decided under former Code 1933, § 24A-2001).

Juvenile entitled to principles necessary for fair trial. — Juvenile charged with "delinquency" is entitled by right to have the court apply those common-law jurisprudential principles which experience and reason have shown are necessary to give the accused the essence of a fair trial. T.L.T. v. State, 133 Ga. App. 895, 212 S.E.2d 650 (1975) (decided under former Code 1933, § 24A-2001).

Ingredients of fair trial. — To give one accused in a juvenile proceeding a fair trial, the trial must include such ingredients as the presumption of innocence, the requirement that if the conviction is based entirely upon circumstantial evidence then the proved facts shall exclude every other reasonable hypothesis save that of guilt, and the necessity of producing independent corroborative evidence to that of an accomplice for a finding of guilt when based upon the latter's testimony. T.L.T. v. State, 133 Ga. App. 895, 212 S.E.2d 650 (1975) (decided under former Code 1933, § 24A-2001).

Cannot reverse delinquency adjudication unless deprivation of counsel harmful. — Although an accused is entitled to counsel at the stage known as "a detention hearing", there is no authority for reversing an adjudication of delinquency after a fair trial with legal representation because of lack of counsel at the detention hearing, unless it appears that deprivation of counsel at that stage resulted in harm to the juvenile. T.K. v. State, 126 Ga. App. 269, 190 S.E.2d 588 (1972) (decided under former Code 1933, § 24A-2001).

Juvenile Code recognizes that a parent is a "party" to proceedings involving the parent's child. Sanchez v. Walker County Dep't of Family & Children Servs., 237 Ga. 406, 229 S.E.2d 66 (1976) (decided under former Code 1933, § 24A-2001).

Physical presence of parent cannot be equated with meaningful representation. K.E.S. v. State, 134 Ga. App. 843, 216 S.E.2d 670 (1975) (decided under former Code 1933, § 24A-2001).

Indigent putative father's performance of the duties of a parent does not control the determination of whether he is entitled to appointed representation; the crucial inquiry is whether the putative father was a "party" to any of the proceedings within the meaning of the former statute. Wilkins v. Georgia Dep't of Human Resources, 255 Ga. 230, 337 S.E.2d 20 (1985) (decided under former O.C.G.A. § 15-11-30).

Former Code section did not imply that foster parents may have certain rights. Drummond v. Fulton County Dep't of Family & Children Servs., 237 Ga. 449, 228 S.E.2d 839 (1976), cert. denied, 432 U.S. 905, 97 S. Ct. 2949, 53 L. Ed. 2d 1077 (1977) (decided under former Code 1933, § 24A-2001).

Parent's right to representation not violated. — Mother's right to appointed

counsel was not violated since, after being notified of such right, she did not request counsel until shortly before the termination hearing and did not identify any proceeding at which she appeared unrepresented. In re A.M.R., 230 Ga. App. 133, 495 S.E.2d 615 (1998) (decided under former O.C.G.A. § 15-11-30).

Juvenile court did not err by refusing to dismiss the proceedings to terminate a mother's parental rights for the failure of the mother to be represented by counsel at the judicial citizens review panel as the proceedings mentioned in former O.C.G.A. § 15-11-6(b) (see now O.C.G.A. §§ 15-11-103, 15-11-402, and 15-11-475) were proceedings before the juvenile court and were not reviews by the panel; further, any error was harmless as the juvenile court did not rely on the panel's recommendations in terminating the mother's parental rights. In the Interest of K.M.C., 273 Ga. App. 276, 614 S.E.2d 896 (2005) (decided under former O.C.G.A. § 15-11-6).

Parent, who was represented by counsel during the course of a termination of parental rights proceeding, could not prove that the parent was denied counsel during the proceeding because, beyond the claim that the parent was denied counsel, the parent failed to show what arguments the parent would have advanced, what evidence the parent would have produced in the parent's favor, or how the parent would have been successful had the parent been represented by counsel; moreover, in light of the overwhelming evidence supporting the termination of the parent's parental rights, there was nothing in the record that would support a finding of harm. In the Interest of M.S., 279 Ga. App. 254, 630 S.E.2d 856 (2006), overruled on other grounds, In re J.M.B., 296 Ga. App. 786, 676 S.E.2d 9 (2009) (decided under former O.C.G.A. § 15-11-6).

Indigent parent entitled to paupered transcript for use in appeal. — Indigent parent, whose parental rights have been terminated by an order of the juvenile court on a petition filed by an agency of the state, is entitled to a paupered transcript of the proceeding in the juvenile court for use in appealing the decision of that court. Nix v. Department of Human Resources, 236 Ga. 794, 225 S.E.2d 306 (1976) (decided under former Code 1933, § 24A-2001).

Trial court committed reversible error in failing to determine whether appointed counsel was required for parent. — Fact that there was sufficient evidence to support the termination of a parent's rights did not relieve the trial court of the court's obligation to determine whether counsel should have been appointed for the parent under former O.C.G.A. § 15-11-6(b) (see now O.C.G.A. §§ 15-11-103, 15-11-402, and 15-11-475). The trial court's limited inquiry as to whether the parent waived the right to counsel, and the court's failure to ascertain the parent's financial status was reversible error. In the Interest of P. D. W., 296 Ga. App. 189, 674 S.E.2d 338 (2009) (decided under former O.C.G.A. § 15-11-6).

Waiver

Right to counsel may be waived unless child is not represented by the child's parents, guardian, or custodian. A.C.G. v. State, 131 Ga. App. 156, 205 S.E.2d 435 (1974) (decided under former Code 1933, § 24A-2001).

Determination of voluntary and knowing waiver of right. — Question of a voluntary and knowing waiver of a juvenile's right to counsel depends on the totality of the circumstances and the state has a heavy burden in showing that the juvenile did understand and waive the juvenile's right to counsel. Crawford v. State, 240 Ga. 321, 240 S.E.2d 824 (1977) (decided under former Code 1933, § 24A-2001).

Trial court apparently determined that, given the court's finding that the mother was not competent, the mother was unable to show a knowing and voluntary waiver of her right to appointed counsel at the child deprivation hearing; thus, the trial court did not err in refusing to allow her to proceed pro se. Additionally, the mother failed to establish that she was harmed by her counsel's representation; thus, without harm, the mother's alleged error presented no basis for reversal. In the Interest of B.B., 267 Ga. App. 360, 599

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S.E.2d 304 (2004) (decided under former O.C.G.A. § 15-11-6).

Factors considered in determining proper waiver. — Several of the factors to be considered among the totality of the circumstances in determining whether the juvenile's waiver of counsel is made knowingly and voluntarily are: (1) age of the accused; (2) education of the accused; (3) knowledge of the accused as to both the substance of the charge and the nature of the accused's rights to consult with an attorney and remain silent; (4) whether the accused was held incommunicado or allowed to consult with relatives, friends, or an attorney; (5) whether the accused was interrogated before or after formal charges were filed; (6) methods used in interrogations; (7) length of interrogations; (8) whether vel non the accused refused to voluntarily give statements on prior occasions; and (9) whether the accused repudiated an extra-judicial statement at a later date. Crawford v. State, 240 Ga. 321, 240 S.E.2d 824 (1977) (decided under former 1933, § 24A-2001).

Juvenile court proceeding null if no waiver. — If in a juvenile court proceeding, there was neither waiver of right of a mother, nor proper service upon the parties and since the hearing was not taken under oath, or waived by any of the parties, the proceeding was an absolute nullity. McBurrough v. Dep't of Human Resources, 150 Ga. App. 130, 257 S.E.2d 35 (1979) (decided under former Code 1933 § 24A-2001).

Mother who waives child's rights must be unbiased mother, free of interests conflicting with the needs of her daughter whom she undertakes to represent; an ally, not an adversary. K.E.S. v. State, 134 Ga. App. 843, 216 S.E.2d 670 (1975) (decided under former Code 1933 § 24A-2001).

Right to counsel waived. — Trial judge's determination that a 15-year-old girl knowingly and voluntarily waived her right to counsel in a murder case was not clearly erroneous since she was interrogated before formal charges were filed, was not held incommunicado, and there was no evidence that coercive or deceptive interrogation techniques were employed. J.E.W. v. State, 256 Ga. 464, 349 S.E.2d 713 (1986) (decided under former O.C.G.A. §§ 15-11-6 and 15-11-30).

Right to counsel not waived. — In a proceeding for termination of parental rights, an indigent parent did not waive the right to appointed counsel in a knowing, intelligent, and voluntary manner simply because the parent failed to request counsel prior to the hearing as directed by the court. The court's denial of the parent's request for counsel was reversible error. In re J. M. B., 296 Ga. App. 786, 676 S.E.2d 9 (2009) (decided under former O.C.G.A. § 15-11-6).

Error in proceeding without counsel harmless. — As a juvenile court in a mother's parental rights termination proceeding failed to make inquiry as to whether the mother was indigent and whether she was waiving the right to counsel pursuant to O.C.G.A. § 15-11-6(b), the judgment terminating her parental rights over her three children could not stand. Moreover, the record demonstrated many instances of harm caused by the mother's lack of counsel. In the Interest of P. D. W., 296 Ga. App. 189, 674 S.E.2d 338 (2009) (decided under former O.C.G.A. § 15-11-6).

Juvenile did not make a knowing and intelligent decision to proceed without counsel where the referee did not warn her or her mother of the danger of proceeding without counsel or of the consequences of an affirmative finding or admission of the charge enumerated in the petition; the juvenile appellant and her mother did not stand before the court with open eyes, knowing the danger and consequences of proceeding without the benefit of legal representation. In re W.M.F., 180 Ga. App. 397, 349 S.E.2d 265 (1986) (decided under former O.C.G.A. § 15-10-30).

15-11-476. Appointment of guardian ad litem.

(a) The court shall appoint a guardian ad litem whenever:

(1) An alleged delinquent child appears before the court without his or her parent, guardian, or legal custodian;

(2) It appears to the court that a parent, guardian, or legal custodian of an alleged delinquent child is incapable or unwilling to make decisions in the best interests of such child with respect to proceedings under this article such that there may be a conflict of interest between such child and his or her parent, guardian, or legal custodian; or

(3) The court finds that it is otherwise in a child's best interests to do so.

(b) The role of a guardian ad litem in a delinquency proceeding shall be the same role as provided for in all dependency proceedings under Article 3 of this chapter.

(c) In a delinquency proceeding, a child's parent, guardian, legal custodian, or attorney shall not prohibit or impede the child's guardian ad litem's access to such child.

History. — Code 1981, § 15-11-476, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242; Ga. L. 2014, p. 780, § 1-36/SB 364.

15-11-477. Orders for behavioral health evaluations.

(a) At any time prior to the issuance of a final dispositional order, the court may order a behavioral health evaluation of a child alleged to be or adjudicated as a delinquent child which may be conducted by DBHDD or a private psychologist or psychiatrist.

(b) The court shall order and give consideration to the results of a child's behavioral health evaluation before ordering a child adjudicated for a class A designated felony act or class B designated felony act placed in restrictive custody; provided, however, that such order shall not be required if the court has considered the results of a prior behavioral health evaluation of such child that had been completed in the preceding six months.

(c) Statements made by a child during a behavioral health evaluation shall only be admissible into evidence as provided in Code Section 15-11-479.

History. — Code 1981, § 15-11-477, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

15-11-478. Continuance of a hearing in delinquency proceedings.

A continuance shall be granted only upon a showing of good cause and only for that period of time shown to be necessary by the moving party at the hearing on the motion. Whenever any continuance is granted, the facts which require the continuance shall be entered into the court record.

History. — Code 1981, § 15-11-478, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

Law reviews. — For article, "The Child as a Party in Interest in Custody Proceedings," see 10 Ga. St. B. J. 577 (1974). For article, "Termination of Parental Rights: Recent Judicial and Legislative Trends," see 30 Emory L. J. 1065 (1981).

For note criticizing jurisdiction of juvenile justice system over runaways and advocating alternative legal approaches, see 24 Emory L. J. 1075 (1975).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 24A-2201, pre-2000 Code Section 15-11-33, and pre-2014 Code Section 15-11-65, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Separate trials (adjudication and dispositional) with each having different goals are required. See D.C.A. v. State, 135 Ga. App. 234, 217 S.E.2d 470 (1975) (decided under former Code 1933, § 24A-2201). J.B. v. State, 139 Ga. App. 545, 228 S.E.2d 712 (1976) (decided under former Code 1933, § 24A-2201).

Purpose of division of juvenile trials into two phases. — In dividing juvenile trials into two phases lawmakers intended to give the juvenile judge an opportunity to conduct the "functional equivalent" of a regular trial (the adjudicatory hearing) in a manner which would satisfy the required constitutional procedures concomitant with the usual legal rules, such as those dealing with admissibility of evidence, proof beyond a reasonable doubt, and similar requirements applicable to adults. Thereafter, at the dispositional phase, the judge was to explore all available additional avenues, including psychiatric and sociological studies, which would enable the judge to provide a solution for the youngster and the family aimed at making the child a secure law-abiding member of society. D.C.A. v. State, 135 Ga. App. 234, 217 S.E.2d 470 (1975) (decided under former Code 1933, § 24A-2201).

During adjudicatory phase, rules of evidence generally prevail. In the second (dispositional) phase, the court hears virtually all evidence which is material and relevant to the issue of disposition. J.B. v. State, 139 Ga. App. 545, 228 S.E.2d 712 (1976) (decided under former Code 1933, § 24A-2201).

Dispositional hearing not necessary for termination due to deprivation. — If a petition for the termination of parental rights alleged only that the children were deprived, not delinquent or unruly, it was not necessary for the juvenile judge to hold a dispositional hearing. In re J.C., 242 Ga. 737, 251 S.E.2d 299 (1978), appeal dismissed, 441 U.S. 929, 99 S. Ct. 2046, 60 L. Ed. 2d 657 (1979) (decided under former Code 1933, § 24A-2201).

Continuation of a dispositional hearing should have been allowed when the probation officer notified the court that the officer was not prepared to make a recommendation regarding disposition. In re M.D., 233 Ga. App. 261, 503 S.E.2d

888 (1998) (decided under former O.C.G.A. § 15-11-33).

Dispositional hearing was held, albeit briefly, since, at the conclusion of the trial, the court found that the juvenile had committed the offense charged and questioned the juvenile with regard to whether the juvenile had been in court before and whether the juvenile had ever been charged with similar conduct. In re B.J.G., 234 Ga. App. 285, 506 S.E.2d 449 (1998) (decided under former O.C.G.A. § 15-11-33).

Timing of dispositional hearing. — When a juvenile court, having concluded the adjudicatory hearing and having found a juvenile defendant guilty of contempt, proceeded immediately to a dispositional hearing at which the defendant had the opportunity to be heard and to give evidence, the defendant waived any assertion of error by not objecting to this proceeding. In the Interest of P.W., 289 Ga. App. 323, 657 S.E.2d 270 (2008) (decided under former O.C.G.A. § 15-11-65).

Disposition made following finding of delinquency. — Decision that the child is in need of treatment or rehabilitation, based upon clear and convincing evidence, is made following a finding of delinquency. A.C.G. v. State, 131 Ga. App. 156, 205 S.E.2d 435 (1974) (decided under former Code 1933, § 24A-2201).

Dispositional hearings held in county of juvenile's residence. — Dispositional hearings must be held in the county of the juvenile's residence to meet state constitutional requirements. C.L.A. v. State, 137 Ga. App. 511, 224 S.E.2d 491 (1976) (decided under former Code 1933, § 24A-2201).

Continuance request on the part of the state. — Order granting the state's request for a continuance in a juvenile proceeding was vacated because the juvenile court did not consider whether the state's proffered reason of needing more time to determine whether to file a removal petition constituted good cause given the juvenile's objection to the continuance and the expressed desire to admit to the charged crimes. In the Interest of A. H., 332 Ga. App. 590, 774 S.E.2d 163 (2015).

No need to repeat evidence presented during adjudicatory portion. — There was no error in refusing to have the dispositional phase include a repetition of the same evidence and witnesses previously presented during the adjudicatory portion. D.C.A. v. State, 135 Ga. App. 234, 217 S.E.2d 470 (1975) (decided under former Code 1933, § 24A-2201).

RESEARCH REFERENCES

Am. Jur. 2d. — 47 Am. Jur. 2d, Juvenile Courts and Delinquent and Dependent Children, § 110 et seq.

C.J.S. — 43 C.J.S., Infants, § 199 et seq.

U.L.A. — Uniform Juvenile Court Act (U.L.A.) § 29.

ALR. — Applicability of rules of evidence in juvenile delinquency proceeding, 43 A.L.R.2d 1128.

Applicability of double jeopardy to juvenile court proceedings, 5 A.L.R.4th 234.

Defense of infancy in juvenile delinquency proceedings, 83 A.L.R.4th 1135.

Applicability of rules of evidence to juvenile transfer, waiver, or certification hearings, 37 A.L.R.5th 703.

15-11-479. Admissions to court personnel inadmissible; exceptions.

Voluntary statements made in the course of intake screening of a child alleged to be or adjudicated as a delinquent child or in the course of his or her treatment, any evaluation, or any other related services shall be inadmissible in any adjudication hearing in which such child is

the accused and shall not be considered by the court except such statement shall be admissible as rebuttal or impeachment evidence.

History. — Code 1981, § 15-11-479, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 24A-1402, pre-2000 Code Section 15-11-19, and former Code Section 15-11-47, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section.

Rule as to confessions of juveniles should be same as that for confessions of adults because law enforcement officers cannot be certain when officers question a juvenile what kind of case may develop, and the statutory safeguards are applicable to both criminal and juvenile cases. Crawford v. State, 240 Ga. 321, 240 S.E.2d 824 (1977) (decided under former Code 1933, § 24A-1402); Jackson v. State, 146 Ga. App. 375, 246 S.E.2d 407 (1978) (decided under former Code 1933, § 24A-1402).

Confession inadmissible if failure to comply with safeguards. — Failure to comply with the statutory safeguards renders a confession of a juvenile inadmissible in evidence. Bussey v. State, 144 Ga. App. 875, 243 S.E.2d 99 (1978) (decided under former Code 1933, § 24A-1402).

Failure to comply with the statutory safeguards renders confession of a juvenile inadmissible even in a criminal case where a juvenile is tried as an adult. Manning v. State, 162 Ga. App. 494, 292 S.E.2d 95 (1982) (decided under former O.C.G.A. § 15-11-19).

Confession obtained illegally inadmissible in delinquency hearing. — Confession obtained from a juvenile in violation of the statute was inadmissible in a hearing to determine the delinquency of a juvenile. J.J. v. State, 135 Ga. App. 660, 218 S.E.2d 668 (1975) (decided under former Code 1933, § 24A-1402).

Confession admissible after juvenile opted not to have parent present. — Because the undisputed evidence established that a juvenile defendant was informed of the right to have a parent present during an interview with police in which a custodial statement was obtained, but did not invoke that right, there was no error in allowing the juvenile defendant's statement into evidence. Green v. State, 282 Ga. 672, 653 S.E.2d 23 (2007) (decided under former O.C.G.A. § 15-11-47).

Confession admissible if parent present and rights protected. — Juvenile defendant's confession was admissible despite the fact that the defendant was not taken before an impartial juvenile intake officer but a member of the county police department since the defendant's mother was present during the juvenile's interrogation and it was not alleged that the officer failed to perform any duty imposed upon the officer. Worthy v. State, 253 Ga. 661, 324 S.E.2d 431 (1985) (decided under former O.C.G.A. § 15-11-19).

Issue of whether officer to whom juvenile was taken and to whom the juvenile made a confession was a "juvenile court intake officer" did not affect the admissibility of the statement since Miranda warnings were given and the juvenile's mother was present. Houser v. State, 173 Ga. App. 378, 326 S.E.2d 513 (1985) (decided under former O.C.G.A. § 15-11-19).

Language of former O.C.G.A. § 15-11-19 (see now O.C.G.A. § 15-11-133, 15-11-501, and 15-11-502) requiring the bringing of a child before juvenile authorities was directory and did not serve to render inadmissible a juvenile's confession if the juvenile's rights were otherwise protected, such as if the juvenile's father was present and was continually apprised of the questioning. W.G.C. v. State, 173 Ga. App. 528, 327 S.E.2d 522 (1985) (decided under former O.C.G.A. § 15-11-19).

Confession admissible despite technical violation. — Police officer's failure

to bring juvenile initially to juvenile court did not render the 14-year old's confession inadmissible since the confession was obtained only after the juvenile waived the juvenile's rights knowingly and voluntarily, and with the knowledge and consent of both the juvenile's mother and legal guardian. In re J.D.G., 207 Ga. App. 698, 429 S.E.2d 118 (1993) (decided under former O.C.G.A. § 15-11-19).

Since the defendant's statement was knowingly and intelligently given before officers had an opportunity to take the juvenile anywhere, former O.C.G.A. § 15-11-19 (see now O.C.G.A. § 15-11-133, 15-11-501, and 15-11-502) was neither implicated nor violated. McKoon v. State, 266 Ga. 149, 465 S.E.2d 272 (1996) (decided under former O.C.G.A. § 15-11-19).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under pre-2000 Code Section 15-11-19, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section.

Juvenile court intake officers. — Officers of the juvenile division of the sheriff's department may not also serve as juvenile court intake officers for purposes of compliance with former statutory provisions. 1983 Op. Att'y Gen. No. U83-66 (decided under former O.C.G.A. § 15-11-19).

15-11-480. When jeopardy attaches.

(a) When a child enters a denial to a petition alleging his or her delinquency, jeopardy attaches when the first witness is sworn at the adjudication hearing.

(b) When a child enters an admission to a petition alleging his or her delinquency, jeopardy attaches when the court accepts the admission.

History. — Code 1981, § 15-11-480, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

JUDICIAL DECISIONS

Cited in In the Interest of M.D.H., 300 Ga. 46, 793 S.E.2d 49 (2016).

15-11-481. Victim impact statement in delinquency proceedings.

(a) The victim of a child's alleged delinquent act shall be entitled to the same rights, notices, and benefits as the victim of a crime committed by an adult as set forth in Chapters 14, 15, 15A, and 17 of Title 17. The rights, notices, and benefits to a victim set forth in this article shall not be construed to deny or diminish the rights, notices, and benefits set forth in Chapters 14, 15, 15A, and 17 of Title 17.

(b) In any delinquency proceeding in which a petition has been filed, the prosecuting attorney shall notify any victim of a child's alleged delinquent act that the victim may submit a victim impact form as provided in Code Section 17-10-1.1.

(c) The provisions of subsection (e) of Code Section 17-10-1.1 shall apply to the use and disclosure of the victim impact form.

(d) Prior to the imposition of a dispositional order for a child adjudicated for a delinquent act, the juvenile court shall permit the victim, the family of the victim, or other witness with personal knowledge of the delinquent act to testify about the impact of the delinquent act on the victim, the victim's family, or the community. Except as provided in subsection (f) of this Code section, such evidence shall be given in the presence of the child adjudicated for a delinquent act and shall be subject to cross-examination.

(e) The admissibility of the evidence described in subsection (d) of this Code section shall be in the sole discretion of the judge and in any event shall be permitted only in such a manner and to such a degree as not to unduly prejudice the child adjudicated for a delinquent act. If the judge excludes evidence, the state shall be allowed to make an offer of proof.

(f) Upon a finding by the court specific to the case and the witness that the witness would not be able to testify in person without showing undue emotion or that testifying in person will cause the witness severe physical or emotional distress or trauma, evidence presented pursuant to subsection (d) of this Code section may be in the form of, but not limited to, a written statement or a prerecorded audio or video statement, provided that such witness is subject to cross-examination. Photographs of the victim may be included with any evidence presented pursuant to subsection (d) of this Code section.

(g) In presenting such evidence, the victim, the family of the victim, or other witness having personal knowledge of the impact of the delinquent act on the victim, the victim's family, or the community shall, if applicable:

(1) Describe the nature of the delinquent act;

(2) Itemize any economic loss suffered by the victim or the family of the victim, if restitution is sought;

(3) Identify any physical injury suffered by the victim as a result of the delinquent act along with its seriousness and permanence;

(4) Describe any change in the victim's personal welfare or familial relationships as a result of the delinquent act;

(5) Identify any request for psychological services initiated by the victim or the victim's family as a result of the delinquent act; and

(6) Include any other information related to the impact of the delinquent act upon the victim, the victim's family, or the community that the court inquires of.

(h) The court shall allow the child adjudicated for a delinquent act the opportunity to cross-examine and rebut the evidence presented of the victim's personal characteristics and the emotional impact of the delinquent act on the victim, the victim's family, or the community, and such cross-examination and rebuttal evidence shall be subject to the same discretion set forth in subsection (d) of this Code section.

(i) No disposition of a child adjudicated as delinquent shall be invalidated because of failure to comply with the provisions of this Code section. This Code section shall not be construed to create any cause of action or any right of appeal on behalf of the victim, the state, or such child; provided, however, that if the court intentionally fails to comply with this Code section, the victim may file a complaint with the Judicial Qualifications Commission.

History. — Code 1981, § 15-11-481, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242; Ga. L. 2015, p. 5, § 15/HB 90.

Law reviews. — For article, "Criminal Procedure," see 27 Ga. St. U.L. Rev. 29 (2011).

Part 2

Venue in Delinquency Proceedings

15-11-490. Venue; transfers between juvenile courts.

(a) A proceeding under this article may be commenced:

(1) In the county in which an allegedly delinquent child legally resides; or

(2) In any county in which the alleged delinquent acts occurred.

(b) If the adjudicating court finds that a nonresident child has committed a delinquent act, the adjudicating court may retain jurisdiction over the disposition of a nonresident child or may transfer the proceeding to the county of such child's residence for disposition. Like transfer may be made if the residence of such child changes pending the proceeding.

(c) If the adjudicating court retains jurisdiction, prior to making any order for disposition of a nonresident child, the adjudicating court shall communicate to the court of the county of such child's residence the fact that such child has been adjudicated to have committed a delinquent act. Such communication shall state the date upon which the adjudicating court plans to enter an order for disposition of such nonresident child and shall request any information or recommendations relevant

to the disposition of such nonresident child. Any such recommendation shall be considered by but shall not be binding upon the adjudicating court in making its order for disposition.

(d) When any case is transferred, certified copies of all documents and records pertaining to the case on file with the clerk of the court shall accompany the transfer order. Compliance with this subsection shall terminate jurisdiction in the transferring court and initiate jurisdiction in the receiving court.

History. — Code 1981, § 15-11-490, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

Cross references. — Venue for criminal actions generally, Ga. Const. 1983, Art. VI, Sec. II, Para. VI and § 17-2-2. Intrastate transfer of cases among Juvenile Courts, Uniform Rules for the Juvenile Courts of Georgia, Rule 5.3.

Law reviews. — For article discussing venue problems in juvenile court practice and suggesting solutions, see 23 Mercer L. Rev. 341 (1972). For article, "An Outline of Juvenile Court Jurisdiction with Focus on Child Custody," see 10 Ga. St. B. J. 275 (1973).

JUDICIAL DECISIONS

Editor's notes. — Many of the following annotations should be examined in light of the amendment to Ga. Const. 1976, Art. VI, Sec. XIV, Para. VI (see now Ga. Const. 1983, Art. VI, Sec. II, Para. VI) which took effect November 1, 1981.

In light of the similarity of the statutory provisions, decisions under former Code 1933, § 24A-1101, pre-2000 Code Sections 15-11-15 and 15-11-16 and pre-2014 Code Sections 15-11-29 and 15-11-30, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Determining legal residence. — Juvenile proceeding for delinquency or unruly conduct may be tried either in the county where the child resides or in the county where the unruly or delinquent conduct occurred. In re A.M.C., 213 Ga. App. 897, 446 S.E.2d 760 (1994) (decided under former O.C.G.A. § 15-11-15).

In determining where a juvenile resides for purposes of venue, it is generally the legal residence that controls. In re A.M.C., 213 Ga. App. 897, 446 S.E.2d 760 (1994) (decided under former O.C.G.A. § 15-11-15).

In a proceeding against a juvenile for the status offense of unruliness, the juvenile's legal residence for purposes of venue was in the county of the Department of Family & Children Services having custody over the juvenile, even though the place of the offense and the juvenile's family residence were in other counties. In re A.M.C., 213 Ga. App. 897, 446 S.E.2d 760 (1994) (decided under former O.C.G.A. § 15-11-15).

Delinquency adjudication hearing serves same purpose as arraignment. — Delinquency adjudication hearing merely serves the same purpose in the civil juvenile court proceeding as an arraignment under the criminal code. M.E.B. v. State, 230 Ga. 154, 195 S.E.2d 891 (1973) (decided under former Code 1933, § 24A-1101); D.C.E. v. State, 130 Ga. App. 724, 204 S.E.2d 481 (1974) (decided under former Code 1933, § 24A-1101).

Adjudication proceeding is actually nothing more than pretrial hearing held in the county where the child was apprehended and in the custody of local authorities for committing the alleged unruly acts or delinquent behavior. M.E.B. v. State, 230 Ga. 154, 195 S.E.2d 891 (1973) (decided under former Code 1933, § 24A-1101).

Order entered following a delinquency adjudicatory hearing under

former Code 1933, § 24A-1201 (see now O.C.G.A. §§ 15-11-17 and 15-11-490) was not a final judgment appealable under former Code 1933, § 6-701 (see now O.C.G.A. § 5-6-34) but was instead merely an order entered in a pretrial hearing similar to an arraignment. D.C.E. v. State, 130 Ga. App. 724, 204 S.E.2d 481 (1974) (decided under former Code 1933, § 24A-1101).

Former statute did not conflict with general venue provisions of Constitution insofar as delinquency proceedings were concerned. G.S.K. v. State, 147 Ga. App. 571, 249 S.E.2d 671 (1978) (decided under former Code 1933, § 24A-1101).

Venue lies in county where juvenile committed criminal act. — Although some of the proceedings in juvenile court are of a criminal character, not all are. For those that are, delinquency, unruliness and juvenile traffic offenses, the venue provisions of the Juvenile Code and the state constitution, that venue lies in the county in which the act was committed, are in accord. Quire v. Clayton County Dep't of Family & Children Servs., 242 Ga. 85, 249 S.E.2d 538 (1978) (decided under former Code 1933, § 24A-1101).

Juvenile's change of residence did not bar the exercise of jurisdiction over the juvenile by the juvenile court in the county in which the offense occurred. In re D.L., 228 Ga. App. 503, 492 S.E.2d 273 (1997) (decided under former O.C.G.A. § 15-11-15).

Evidence showed that the delinquent conduct occurred in the victim's house, which was sufficient to establish the venue of the case wherein the juvenile was properly adjudicated. In the Interest of M.C., 322 Ga. App. 239, 744 S.E.2d 436 (2013) (decided under former O.C.G.A. § 15-11-29).

Officer testified that the officer responded to a stolen-vehicle dispatch; that officer arrived at the scene of the location where the vehicle or vehicles reportedly had been stolen; the juvenile was at that location; and the vehicle had been stolen out of DeKalb County; thus, from that testimony, the juvenile court could have concluded that the delinquent act occurred in DeKalb County, Georgia. In the Interest of A. P., 348 Ga. App. 638, 824 S.E.2d 94 (2019).

Insufficient proof of venue. — In a juvenile delinquency case, the state failed to prove venue since the state offered no evidence that a church where an aggravated assault occurred was within the boundaries of the county in question; as to charges of obstruction of an officer, there was no evidence as to the location of the houses where the acts in question occurred. In the Interest of D.D., 287 Ga. App. 512, 651 S.E.2d 817 (2007) (decided under former O.C.G.A. § 15-11-29).

Although there was sufficient evidence to support a juvenile's adjudication of delinquency based on the finding that the juvenile had committed acts, which, had the juvenile been an adult, would have supported a conviction for burglary in violation of O.C.G.A. § 16-7-1(a), the adjudication was reversed because the state failed to present any evidence to establish proof of venue beyond a reasonable doubt. The investigating officers' county of employment did not, in and of itself, constitute sufficient proof of venue to meet the beyond a reasonable doubt standard; however, the reviewing court noted that retrying the juvenile was not prohibited under the Double Jeopardy Clause because the evidence presented at trial was otherwise sufficient to support the adjudication of delinquency. In the Interest of B.R., 289 Ga. App. 6, 656 S.E.2d 172 (2007) (decided under former O.C.G.A. § 15-11-29).

Because the state failed to prove the element of venue beyond a reasonable doubt, and there was no indication in the record that the juvenile waived that requirement or that the court took judicial notice of venue as an element of the offenses charged, the juvenile's adjudications of delinquency had to be reversed. In the Interest of J.B., 289 Ga. App. 617, 658 S.E.2d 194 (2008) (decided under former O.C.G.A. § 15-11-29).

Dispositional hearings conducted in county where defendant resides. — It was at the dispositional hearings provided for in former Code 1933, § 24A-2201 (see now O.C.G.A. §§ 15-11-101 and 15-11-210) that the actual "case" was tried, thereby comporting with the constitutional mandate that civil

cases shall be tried in the county where the defendant resided. M.E.B. v. State, 230 Ga. 154, 195 S.E.2d 891 (1973) (decided under former Code 1933, § 24A-1101).

Transfer provisions were not violative of Constitution. — Ga. L. 1971, p. 709, § 1, by providing that after adjudication of delinquency in a court of another county the proceeding shall be transferred to the county of the child's residence for disposition, is not violative of the Georgia Constitution. M.E.B. v. State, 230 Ga. 154, 195 S.E.2d 891 (1973) (decided under former Code 1933, § 24A-1201).

Failure to transfer prior to notice of appeal. — If it is undisputed that a child was a "nonresident child" as defined in former paragraph (a)(2) of O.C.G.A. § 15-11-30 at the time of the delinquent act and at the time of the adjudication of delinquency, in that the child then resided in Spalding County, Georgia, the juvenile court of Henry County erred in failing to transfer the case to the county of the child's residence for disposition prior to the filing of the child's notice of appeal in accordance with former subsection (b) of that section. In re R.W., 186 Ga. App. 885, 368 S.E.2d 824 (1988) (decided under former O.C.G.A. § 15-11-16).

Dispositional hearings held in county where defendant resides constitutional. — It was at the dispositional hearings provided for in former Code 1933, § 24A-2201 (see now O.C.G.A. §§ 15-11-110 and 15-11-210) that the actual "case" was tried, thereby comporting with the constitutional mandate that civil cases shall be tried in the county where the defendant resided. M.E.B. v. State, 230 Ga. 154, 195 S.E.2d 891 (1973) (decided under former Code 1933, § 24A-1201).

Authority to grant new trials. — Juvenile courts are courts of record; therefore, juvenile courts are authorized to grant new trials. In re T.A.W., 265 Ga. 106, 454 S.E.2d 134 (1995) (decided under former O.C.G.A. § 15-11-16).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, § 24A-1201, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Failure to comply prejudices constitutional rights of child. — Failure to comply with the transfer provisions of former subsection (b) of Ga. L. 1971, p. 709, § 1 would prejudice the rights of the child under the venue provisions of the Georgia Constitution to have a dispositional hearing in the county of the child's residence. 1979 Op. Att'y Gen. No. U79-4 (decided under former Code 1933, § 24A-1201).

Transfer after delinquency or unruliness adjudication. — Once a child has been adjudicated delinquent or unruly in juvenile court, the child would have to be transferred to the juvenile court in the county of the child's residence. 1979 Op. Att'y Gen. No. U79-4 (decided under former Code 1933, § 24A-1201).

RESEARCH REFERENCES

Am. Jur. 2d. — 42 Am. Jur. 2d, Infants, § 27 et seq. 47 Am. Jur. 2d, Juvenile Courts and Delinquent and Dependent Children, § 39 et seq.

C.J.S. — 43 C.J.S., Infants, § 180 et seq.

U.L.A. — Uniform Juvenile Court Act (U.L.A.) §§ 11, 12.

ALR. — Right of indigent parent to appointed counsel in proceeding for involuntary termination of parental rights, 92 A.L.R.5th 379.

PART 3

CUSTODY AND RELEASE OF CHILD

15-11-500. Order to take child into immediate custody.

If it appears from a filed affidavit or from sworn testimony before the court that the conduct, condition, or surroundings of an alleged delinquent child are endangering such child's health or welfare or those of others or that such child may abscond or be removed from the jurisdiction of the court or will not be brought before the court, notwithstanding the service of the summons, the court may endorse upon the summons an order that a law enforcement officer shall serve the summons and take such child into immediate custody and bring him or her forthwith before the court.

History. — Code 1981, § 15-11-500, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

Cross references. — Amendment to Juvenile Court petition, Uniform Rules for the Juvenile Courts of Georgia, Rule 6.6. Continuance of adjudicatory hearing in Juvenile Court, Uniform Rules for the Juvenile Courts of Georgia, Rule 11.3.

Law reviews. — For article discussing due process in juvenile court procedures in California and Georgia, in light of In re Gault, 387 U.S. 1, 87 S. Ct. 1428, 18 L. Ed. 2d 527 (1967), see 8 Ga. St. B. J. 9 (1971).

JUDICIAL DECISIONS

Cited in Howard v. State, 334 Ga. App. 7, 778 S.E.2d 19 (2015).

RESEARCH REFERENCES

Am. Jur. 2d. — 42 Am. Jur. 2d, Infants, § 12 et seq. 47 Am. Jur. 2d, Juvenile Courts and Delinquent and Dependent Children, § 66 et seq.

C.J.S. — 43 C.J.S., Infants, § 195 et seq. 67A C.J.S., Parent and Child, § 83.

U.L.A. — Uniform Juvenile Court Act (U.L.A.) § 22.

15-11-501. Taking child into custody; notice to custodian; notification of prosecuting attorney.

(a) An alleged delinquent child may be taken into custody:

(1) Pursuant to an order of the court under this article, including an order to a DJJ employee to apprehend:

(A) When he or she has escaped from an institution or facility operated by DJJ; or

(B) When he or she has been placed under supervision and has violated its conditions;

(2) Pursuant to the laws of arrest; or

(3) By a law enforcement officer or duly authorized officer of the court if there are reasonable grounds to believe that a child has committed a delinquent act.

(b) A law enforcement officer taking a child into custody shall promptly give notice together with a statement of the reasons for taking such child into custody to his or her parent, guardian, or legal custodian and to the court.

(c) When a child who is taken into custody has committed an act which would constitute a felony if committed by an adult, the juvenile court, within 48 hours after it learns of such child having been taken into custody, shall notify the prosecuting attorney of the judicial circuit in which the juvenile proceedings are to be instituted.

History. — Code 1981, § 15-11-501, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

Cross references. — Exercise of power of arrest generally, § 17-4-1 et seq. Authority of peace officer to assume temporary custody of child absent from school without lawful authority or excuse, § 20-2-698 et seq.

Law reviews. — For article, "The Prosecuting Attorney in Georgia's Juvenile Courts," see 13 Ga. St. B. J. 27 (2008).

For note criticizing jurisdiction of juvenile justice system over runaways and advocating alternative legal approaches, see 24 Emory L. J. 1075 (1975).

For comment, "School Bullies — They Aren't Just Students: Examining School Interrogations and the Miranda Warning," see 59 Mercer L. Rev. 731 (2008).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 24A-1402, pre-2000 Code Sections 15-11-17 and 15-11-19, and pre-2014 Code Sections 15-11-45 and 15-11-47, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Escape from custody. — Juvenile who was taken into custody by the police for a probation violation, and who escaped, could not be adjudicated delinquent based on the adult crime of misdemeanor escape since the juvenile was not in custody prior to or after having been convicted of a felony, misdemeanor, or violation of a municipal ordinance. In re J.B., 222 Ga. App. 252, 474 S.E.2d 111 (1996) (decided under former O.C.G.A. § 15-11-17).

Purpose. — Purpose of former Code 1933, § 24A-1402 (see now O.C.G.A. §§ 15-11-133, 15-11-501, and 15-11-502) was to make certain that a juvenile's rights were protected when the juvenile was taken into custody or placed in detention. Paxton v. State, 159 Ga. App. 175, 282 S.E.2d 912, cert. denied, 248 Ga. 231, 283 S.E.2d 235 (1981) (decided under former Code 1933, § 24A-1402).

Importance of procedural due process in juvenile proceedings. — Safeguarding of the child's procedural rights takes on the same importance that procedural due process has in an adult criminal proceeding context. R.A.S. v. State, 156 Ga. App. 366, 274 S.E.2d 752 (1980), overruled on other grounds, In re R.D.F., 66 Ga. 294, 466 S.E.2d 572 (1996) (decided under former Code 1933, § 24A-1402).

Applicability of statutory safeguards. — Statutory safeguards were applicable to juvenile cases and a criminal case when a juvenile was tried as an adult. Bussey v. State, 144 Ga. App. 875, 243 S.E.2d 99 (1978) (decided under former Code 1933, § 24A-1402).

Trial court did not err in admitting a juvenile defendant's videotaped statement to the police because the police did not

follow the juvenile intake procedures outlined in former O.C.G.A. § 15-11-47(a) (see now O.C.G.A. §§ 15-11-133 and 15-11-502) as: (1) defendant was 15-years-old at the time of the shooting and police discussed the nature of the charges; (2) police read defendant the Miranda rights, and all questioning took place with defendant's mother present; (3) both defendant and the mother voluntarily signed a waiver of counsel form that explained defendant's Miranda rights prior to any questioning taking place; (4) defendant averred that no threats, promises, tricks, or other forms of persuasion were used to induce the defendant to sign the waiver form; (5) the interview itself lasted only 15 or 20 minutes, and police did not employ any tactics to pressure or coerce the defendant into giving a statement; and (6) police ceased all questioning the moment that the defendant's mother asked for an attorney. Williams v. State, 273 Ga. App. 42, 614 S.E.2d 146 (2005) (decided under former O.C.G.A. § 15-11-47).

Because a juvenile's allegations that the state failed to comply with the procedural requirements under former O.C.G.A. § 15-11-49(c)(1) and (e) (see now O.C.G.A. §§ 15-11-102, 15-11-145, 15-11-151, 15-11-472, and 15-11-521) should have been raised in the superior court and had no bearing on the validity of the delinquency petitions or the substantive charges against the juvenile in juvenile court, the juvenile court properly prevented the juvenile from presenting evidence regarding the procedural violations. In the Interest of K.C., 290 Ga. App. 416, 659 S.E.2d 821 (2008) (decided under former O.C.G.A. § 15-11-47).

Notice and hearing requirements of § 15-11-21 and former Code 1933, §§ 24A-1402 and 24A-1404 (see now O.C.G.A. §§ 15-11-501 and 15-11-506) were mandatory and must be adhered to in order for the juvenile court to proceed with the adjudicatory hearing. If, for some reason the statutes were not, dismissal of the petition would be without prejudice. Sanchez v. Walker County Dep't of Family & Children Servs., 237 Ga. 406, 229 S.E.2d 66 (1976) (decided under former Code 1933, § 24A-1402).

Procedural requirements are applicable when child is taken into custody or temporarily detained, regardless of whether it is for alleged delinquency, unruliness, or deprivation. Sanchez v. Walker County Dep't of Family & Children Servs., 237 Ga. 406, 229 S.E.2d 66 (1976) (decided under former Code 1933, § 24A-1402).

Failure to follow mandated procedures warrants dismissal without prejudice of a petition alleging deprivation of a child. Another petition can be filed without delay if there is reason to believe the child is being neglected or abused. Sanchez v. Walker County Dep't of Family & Children Servs., 140 Ga. App. 175, 230 S.E.2d 139 (1976) (decided under former Code 1933, § 24A-1402).

Failure to follow procedures did not warrant dismissal. — Even though taking a juvenile to police headquarters before releasing the juvenile to the juvenile's parents was a violation of subsection (a) of former O.C.G.A. § 15-11-19 (see now O.C.G.A. §§ 15-11-133 and 15-11-502), dismissal of the delinquency petition was not required because the violation did not cause injury or prejudice to the juvenile. In re C.W., 227 Ga. App. 763, 490 S.E.2d 442 (1997) (decided under former O.C.G.A. § 15-11-19).

Former statute directed person taking child into custody to follow one of specified courses, "without first taking the child elsewhere," such as to the police station. M.K.H. v. State, 135 Ga. App. 565, 218 S.E.2d 284 (1975) (decided under former Code 1933, § 24A-1402).

When failure to bring juvenile promptly before court not prejudicial. — Any deviation from former O.C.G.A. § 15-11-19 (see now O.C.G.A. §§ 15-11-133, 15-11-410, 15-11-411, 15-11-412, 15-11-501, 15-11-502, and 15-11-507) resulting from a police officer taking a juvenile to the scene of a crime for show-up identification following the juvenile's arrest but prior to taking the juvenile before the juvenile court was minimal and not prejudicial error. M.A.K. v. State, 171 Ga. App. 151, 318 S.E.2d 828 (1984) (decided under former O.C.G.A. § 15-11-19).

Failure of the state police to take a

defendant promptly before a judicial officer does not make the defendant's conviction constitutionally infirm unless the defendant's defense was prejudiced thereby. Paxton v. Jarvis, 735 F.2d 1306 (11th Cir.), cert. denied, 469 U.S. 935, 105 S. Ct. 335, 83 L. Ed. 2d 271 (1984); Barnes v. State, 178 Ga. App. 205, 342 S.E.2d 388 (1986) (decided under former O.C.G.A. § 15-11-19).

Juvenile may first be booked if rights are observed. — There was no violation of former Code 1933, § 24A-1402) (see now O.C.G.A. §§ 15-11-133, 15-11-410, 15-11-411, 15-11-412, 15-11-501, 15-11-502, and 15-11-507) because a juvenile suspect was first taken to a police station for booking purposes, if the juvenile was advised of the juvenile's rights under that section to be questioned elsewhere; the juvenile signed a waiver of these rights on an "advice to juveniles" form and was detained at a youth development center. Marshall v. State, 248 Ga. 227, 282 S.E.2d 301 (1981) (decided under former Code 1933, § 24A-1402).

Juvenile court intake officers act in a judicial capacity; therefore, law enforcement officers, who perform an executive function, are per se disqualified from acting as intake officers. Brown v. Scott, 266 Ga. 44, 464 S.E.2d 607 (1995) (decided under former O.C.G.A. § 15-11-19).

Juvenile court intake officer is a public officer for purposes of a quo warranto proceeding. Brown v. Scott, 266 Ga. 44, 464 S.E.2d 607 (1995) (decided under former O.C.G.A. § 15-11-19).

Failure to comply with notice and hearing requirements of the Juvenile Code, after an allegedly deprived child has been taken from the parent's custody, prejudices or injures the rights of the parent, primarily the right to possession of the child under former Code 1933, §§ 74-106, 74-108, and 74-203 (see now O.C.G.A. §§ 19-7-1, 19-7-25, and 19-9-2). Sanchez v. Walker County Dep't of Family & Children Servs., 237 Ga. 406, 229 S.E.2d 66 (1976) (decided under former Code 1933, § 24A-1402).

Time limits are jurisdictional and must be adhered to. — Time limits established by the General Assembly in the Juvenile Code are jurisdictional and must be strictly adhered to. A failure to comply with the time periods requires dismissal. R.A.S. v. State, 156 Ga. App. 366, 274 S.E.2d 752 (1980), overruled on other grounds, In re R.D.F., 66 Ga. 294, 466 S.E.2d 572 (1996) (decided under former Code 1933, § 24A-1402).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under pre-2000 Code Section 15-11-19, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Juvenile court intake officers. — Officers of the juvenile division of the sheriff's department may not also serve as juvenile court intake officers for purposes of compliance with former statutory provisions. 1983 Op. Att'y Gen. No. U83-66 (decided under former O.C.G.A. § 15-11-19).

RESEARCH REFERENCES

Am. Jur. 2d. — 47 Am. Jur. 2d, Juvenile Courts and Delinquent and Dependent Children, §§ 7, 66 et seq.

C.J.S. — 43 C.J.S., Infants, §§ 140 et seq., 239.

U.L.A. — Uniform Juvenile Court Act (U.L.A.) §§ 13, 15.

ALR. — Constitutionality of statute which for reformatory purposes deprives parent of custody or control of child, 60 A.L.R. 1342.

Applicability of double jeopardy to juvenile court proceedings, 5 A.L.R.4th 234.

Truancy as indicative of delinquency or incorrigibility, justifying commitment of infant or juvenile, 5 A.L.R.4th 1211.

15-11-502. Procedure after taking child into custody; detention.

(a) A person taking an alleged delinquent child into custody, with all reasonable speed and without first taking such child elsewhere, shall:

(1) Immediately release such child, without bond, to his or her parent, guardian, or legal custodian upon such person's promise to bring such child before the court when requested by the court;

(2) Immediately deliver such child to a medical facility if such child is believed to suffer from a serious physical condition or illness which requires prompt treatment and, upon delivery, shall promptly contact a juvenile court intake officer. Immediately upon being notified by the person taking such child into custody, the juvenile court intake officer shall determine if such child can be administered a detention assessment and if so, shall conduct such assessment and determine if such child should be released, remain in protective custody, or be brought before the court; or

(3) Bring such child immediately before the juvenile court or promptly contact a juvenile court intake officer. The court or juvenile court intake officer shall determine if such child should be released or detained. All determinations and court orders regarding detention shall comply with the requirements of this article and shall be based on an individual detention assessment of such child and his or her circumstances.

(b) Notwithstanding subsection (a) of this Code section, a law enforcement officer may detain an alleged delinquent child for a reasonable period of time sufficient to conduct interrogations and perform routine law enforcement procedures including but not limited to fingerprinting, photographing, and the preparation of any necessary records.

(c) Prior to a detention hearing, an alleged delinquent child shall be placed in detention, if necessary, only in such places as are authorized by Code Section 15-11-504.

History. — Code 1981, § 15-11-502, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 24A-1402, pre-2000 Code Section 15-11-19, and pre-2014 Code Section 15-11-47, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Purpose. — Purpose of former Code 1933, § 24A-1402 (see now O.C.G.A. §§ 15-11-133, 15-11-501, and 15-11-502) was to make certain that a juvenile's rights were protected when the juvenile

was taken into custody or placed in detention. Paxton v. State, 159 Ga. App. 175, 282 S.E.2d 912, cert. denied, 248 Ga. 231, 283 S.E.2d 235 (1981) (decided under former Code 1933, § 24A-1402).

Importance of procedural due process in juvenile proceedings. — Safeguarding of the child's procedural rights takes on the same importance that procedural due process has in an adult criminal proceeding context. R.A.S. v. State, 156 Ga. App. 366, 274 S.E.2d 752 (1980), overruled on other grounds, In re R.D.F., 66 Ga. 294, 466 S.E.2d 572 (1996) (decided under former Code 1933, § 24A-1402).

Applicability of statutory safeguards. — Statutory safeguards were applicable to juvenile cases and a criminal case when a juvenile was tried as an adult. Bussey v. State, 144 Ga. App. 875, 243 S.E.2d 99 (1978) (decided under former Code 1933, § 24A-1402).

Trial court did not err in admitting a juvenile defendant's videotaped statement to the police because the police did not follow the juvenile intake procedures outlined in former O.C.G.A. § 15-11-47(a) (see now O.C.G.A. §§ 15-11-133 and 15-11-502) as: (1) defendant was 15-years-old at the time of the shooting and police discussed the nature of the charges; (2) police read defendant the Miranda rights, and all questioning took place with defendant's mother present; (3) both defendant and the mother voluntarily signed a waiver of counsel form that explained defendant's Miranda rights prior to any questioning taking place; (4) defendant averred that no threats, promises, tricks, or other forms of persuasion were used to induce the defendant to sign the waiver form; (5) the interview itself lasted only 15 or 20 minutes, and police did not employ any tactics to pressure or coerce the defendant into giving a statement; and (6) police ceased all questioning the moment that the defendant's mother asked for an attorney. Williams v. State, 273 Ga. App. 42, 614 S.E.2d 146 (2005) (decided under former O.C.G.A. § 15-11-47).

Because a juvenile's allegations that the state failed to comply with the procedural requirements under former O.C.G.A. § 15-11-49(c)(1) and (e) (see now O.C.G.A. §§ 15-11-102, 15-11-145, 15-11-151, 15-11-472, and 15-11-521) should have been raised in the superior court and had no bearing on the validity of the delinquency petitions or the substantive charges against the juvenile in juvenile court, the juvenile court properly prevented the juvenile from presenting evidence regarding the procedural violations. In the Interest of K.C., 290 Ga. App. 416, 659 S.E.2d 821 (2008) (decided under former O.C.G.A. § 15-11-47).

Procedural requirements are applicable when child is taken into custody or temporarily detained, regardless of whether it is for alleged delinquency, unruliness, or deprivation. Sanchez v. Walker County Dep't of Family & Children Servs., 237 Ga. 406, 229 S.E.2d 66 (1976) (decided under former Code 1933, § 24A-1402).

Failure to follow mandated procedures warrants dismissal without prejudice of a petition alleging deprivation of a child. Another petition can be filed without delay if there is reason to believe the child is being neglected or abused. Sanchez v. Walker County Dep't of Family & Children Servs., 140 Ga. App. 175, 230 S.E.2d 139 (1976) (decided under former Code 1933, § 24A-1402).

Failure to follow procedures did not warrant dismissal. — Even though taking a juvenile to police headquarters before releasing the juvenile to the juvenile's parents was a violation of subsection (a) of former O.C.G.A. § 15-11-19 (see now O.C.G.A. §§ 15-11-133 and 15-11-502), dismissal of the delinquency petition was not required because the violation did not cause injury or prejudice to the juvenile. In re C.W., 227 Ga. App. 763, 490 S.E.2d 442 (1997) (decided under former O.C.G.A. § 15-11-19).

Former statute directed person taking child into custody to follow one of specified courses, "without first taking the child elsewhere," such as to the police station. M.K.H. v. State, 135 Ga. App. 565, 218 S.E.2d 284 (1975) (decided under former Code 1933, § 24A-1402).

When failure to bring juvenile promptly before court not prejudicial. — Any deviation from former O.C.G.A. § 15-11-19 (see now O.C.G.A.

§§ 15-11-133, 15-11-410, 15-11-411, 15-11-412, 15-11-501, 15-11-502, and 15-11-507) resulting from a police officer taking a juvenile to the scene of a crime for show-up identification following the juvenile's arrest but prior to taking the juvenile before the juvenile court was minimal and not prejudicial error. M.A.K. v. State, 171 Ga. App. 151, 318 S.E.2d 828 (1984) (decided under former O.C.G.A. § 15-11-19).

Failure of the state police to take a defendant promptly before a judicial officer does not make the defendant's conviction constitutionally infirm unless the defendant's defense was prejudiced thereby. Paxton v. Jarvis, 735 F.2d 1306 (11th Cir.), cert. denied, 469 U.S. 935, 105 S. Ct. 335, 83 L. Ed. 2d 271 (1984); Barnes v. State, 178 Ga. App. 205, 342 S.E.2d 388 (1986) (decided under former O.C.G.A. § 15-11-19).

Juvenile may first be booked if rights are observed. — There was no violation of former Code 1933, § 24A-1402) (see now O.C.G.A. §§ 15-11-133, 15-11-410, 15-11-411, 15-11-412, 15-11-501, 15-11-502, and 15-11-507) because a juvenile suspect was first taken to a police station for booking purposes, if the juvenile was advised of the juvenile's rights under that section to be questioned elsewhere; the juvenile signed a waiver of these rights on an "advice to juveniles" form and was detained at a youth development center. Marshall v. State, 248 Ga. 227, 282 S.E.2d 301 (1981) (decided under former Code 1933, § 24A-1402).

Juvenile court intake officers act in a judicial capacity; therefore, law enforcement officers, who perform an executive function, are per se disqualified from acting as intake officers. Brown v. Scott, 266 Ga. 44, 464 S.E.2d 607 (1995) (decided under former O.C.G.A. § 15-11-19).

Juvenile court intake officer is a public officer for purposes of a quo warranto proceeding. Brown v. Scott, 266 Ga. 44, 464 S.E.2d 607 (1995) (decided under former O.C.G.A. § 15-11-19).

Failure to comply with notice and hearing requirements of the Juvenile Code, after an allegedly deprived child has been taken from the parent's custody, prejudices or injures the rights of the parent, primarily the right to possession of the child under former Code 1933, §§ 74-106, 74-108, and 74-203 (see now O.C.G.A. §§ 19-7-1, 19-7-25, and 19-9-2). Sanchez v. Walker County Dep't of Family & Children Servs., 237 Ga. 406, 229 S.E.2d 66 (1976) (decided under former Code 1933, § 24A-1402).

Time limits are jurisdictional and must be adhered to. — Time limits established by the General Assembly in the Juvenile Code are jurisdictional and must be strictly adhered to. A failure to comply with the time periods requires dismissal. R.A.S. v. State, 156 Ga. App. 366, 274 S.E.2d 752 (1980), overruled on other grounds, In re R.D.F., 66 Ga. 294, 466 S.E.2d 572 (1996) (decided under former Code 1933, § 24A-1402).

No jurisdiction for acts punishable by loss of life or confinement for life. — Juvenile court did not have exclusive jurisdiction over delinquent acts for which a child (under 17 years old) may be punished by loss of life or confinement for life in the penitentiary. Nevertheless, the statutory safeguards provided were applicable to both criminal and juvenile cases. Jackson v. State, 146 Ga. App. 375, 246 S.E.2d 407 (1978) (decided under former Code 1933, § 24A-1402).

Incriminating statements obtained in violation of the Juvenile Code are not rendered per se inadmissible; rather, the issue to be considered is whether there was a knowing and intelligent waiver by the appellant of the appellant's constitutional rights in making the incriminating statements. Lattimore v. State, 265 Ga. 102, 454 S.E.2d 474 (1995) (decided under former O.C.G.A. § 15-11-19); Barber v. State, 267 Ga. 521, 481 S.E.2d 813 (1997) (decided under former O.C.G.A. § 15-11-19); Skidmore v. State, 226 Ga. App. 130, 485 S.E.2d 540 (1997) (decided under former O.C.G.A. § 15-11-19); Gilliam v. State, 268 Ga. 690, 492 S.E.2d 185 (1997) (decided under former O.C.G.A. § 15-11-19); Simon v. State, 269 Ga. 208, 497 S.E.2d 231 (1998) (decided under former O.C.G.A. § 15-11-19); Hanifa v. State, 269 Ga. 797, 505 S.E.2d 731 (1998) (decided under former O.C.G.A. § 15-11-19); Attaway v. State,

244 Ga. App. 5, 534 S.E.2d 580 (2000) (decided under former O.C.G.A. § 15-11-19).

Evidence not inadmissible because of technical violations. — Since no injury appeared to have resulted, technical violations of former O.C.G.A. § 15-11-19 (see now O.C.G.A. §§ 15-11-133, 15-11-410, 15-11-411, 15-11-412, 15-11-501, and 15-11-502) would not render infirm evidence obtained as a result of such violations. In re J.D.M., 187 Ga. App. 285, 369 S.E.2d 920 (1988) (decided under former O.C.G.A. § 15-11-19).

Guardian cooperating with police. — By notifying the defendant's guardian of the defendant's arrest and the grounds therefor, the police complied with subsection (c) of former O.C.G.A. § 15-11-19 (see now O.C.G.A. § 15-11-501). That the guardian cooperated with the police in the police investigation of the defendant's involvement in the crime did not require a finding that the statement was not voluntarily made. Burnham v. State, 265 Ga. 129, 453 S.E.2d 449 (1995), overruled on other grounds, Stinski v. State, 281 Ga. 783, 642 S.E.2d 1 (2007) (decided under former O.C.G.A. § 15-11-19).

Rule as to confessions of juveniles should be same as that for confessions of adults because law enforcement officers cannot be certain when officers question a juvenile what kind of case may develop, and the statutory safeguards are applicable to both criminal and juvenile cases. Crawford v. State, 240 Ga. 321, 240 S.E.2d 824 (1977) (decided under former Code 1933, § 24A-1402); Jackson v. State, 146 Ga. App. 375, 246 S.E.2d 407 (1978) (decided under former Code 1933, § 24A-1402).

Confession inadmissible if failure to comply with safeguards. — Failure to comply with the statutory safeguards renders a confession of a juvenile inadmissible in evidence. Bussey v. State, 144 Ga. App. 875, 243 S.E.2d 99 (1978) (decided under former Code 1933, § 24A-1402).

Failure to comply with the statutory safeguards renders confession of a juvenile inadmissible even in a criminal case where a juvenile is tried as an adult. Manning v. State, 162 Ga. App. 494, 292 S.E.2d 95 (1982) (decided under former O.C.G.A. § 15-11-19).

Confession obtained illegally inadmissible in delinquency hearing. — Confession obtained from a juvenile in violation of the statute was inadmissible in a hearing to determine the delinquency of a juvenile. J.J. v. State, 135 Ga. App. 660, 218 S.E.2d 668 (1975) (decided under former Code 1933, § 24A-1402).

Confession admissible after juvenile opted not to have parent present. — Because the undisputed evidence established that a juvenile defendant was informed of the right to have a parent present during an interview with police in which a custodial statement was obtained, but did not invoke that right, there was no error in allowing the juvenile defendant's statement into evidence. Green v. State, 282 Ga. 672, 653 S.E.2d 23 (2007) (decided under former O.C.G.A. § 15-11-47).

Confession admissible if parent present and rights protected. — Juvenile defendant's confession was admissible despite the fact that the defendant was not taken before an impartial juvenile intake officer but a member of the county police department since the defendant's mother was present during the juvenile's interrogation and it was not alleged that the officer failed to perform any duty imposed upon the officer. Worthy v. State, 253 Ga. 661, 324 S.E.2d 431 (1985) (decided under former O.C.G.A. § 15-11-19).

Issue of whether officer to whom juvenile was taken and to whom the juvenile made a confession was a "juvenile court intake officer" did not affect the admissibility of the statement since Miranda warnings were given and the juvenile's mother was present. Houser v. State, 173 Ga. App. 378, 326 S.E.2d 513 (1985) (decided under former O.C.G.A. § 15-11-19).

Language of former O.C.G.A. § 15-11-19 (see now O.C.G.A. §§ 15-11-133, 15-11-501, and 15-11-502) requiring the bringing of a child before juvenile authorities was directory and did not serve to render inadmissible a juvenile's confession if the juvenile's rights were otherwise protected, such as if the juvenile's father was present and was continually apprised of the questioning. W.G.C. v. State, 173 Ga. App. 528, 327 S.E.2d 522 (1985) (decided under former O.C.G.A. § 15-11-19).

Confession admissible despite technical violation. — Police officer's failure to bring juvenile initially to juvenile court did not render the 14-year old's confession inadmissible since the confession was obtained only after the juvenile waived the juvenile's rights knowingly and voluntarily, and with the knowledge and consent of both the juvenile's mother and legal guardian. In re J.D.G., 207 Ga. App. 698, 429 S.E.2d 118 (1993) (decided under former O.C.G.A. § 15-11-19).

Since the defendant's statement was knowingly and intelligently given before officers had an opportunity to take the juvenile anywhere, former O.C.G.A. § 15-11-19 (see now O.C.G.A. §§ 15-11-133, 15-11-501, and 15-11-502) was neither implicated nor violated. McKoon v. State, 266 Ga. 149, 465 S.E.2d 272 (1996) (decided under former O.C.G.A. § 15-11-19).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under pre-2000 Code Section 15-11-19, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Juvenile court intake officers. — Officers of the juvenile division of the sheriff's department may not also serve as juvenile court intake officers for purposes of compliance with former statutory provisions. 1983 Op. Att'y Gen. No. U83-66 (decided under former O.C.G.A. § 15-11-19).

RESEARCH REFERENCES

Am. Jur. 2d. — 47 Am. Jur. 2d, Juvenile Courts and Delinquent and Dependent Children, § 66 et seq.

C.J.S. — 43 C.J.S., Infants, §§ 140 et seq., 239.

U.L.A. — Uniform Juvenile Court Act (U.L.A.) § 15.

15-11-503. Detention decision; findings.

(a) Restraints on the freedom of an alleged delinquent child prior to adjudication shall be imposed only when there is probable cause to believe that such child committed the act of which he or she is accused, that there is clear and convincing evidence that such child's freedom should be restrained, that no less restrictive alternatives will suffice, and that:

(1) Such child's detention or care is required to reduce the likelihood that he or she may inflict serious bodily harm on others during the interim period;

(2) Such child has a demonstrated pattern of theft or destruction of property such that detention is required to protect the property of others;

(3) Such child's detention is necessary to secure his or her presence in court to protect the jurisdiction and processes of the court; or

(4) An order for such child's detention has been made by the court.

(b) All children who are detained shall be informed of their right to bail as provided by Code Section 15-11-507.

(c) An alleged delinquent child shall not be detained:

(1) To punish, treat, or rehabilitate him or her;

(2) To allow his or her parent, guardian, or legal custodian to avoid his or her legal responsibilities;

(3) To satisfy demands by a victim, law enforcement, or the community;

(4) To permit more convenient administrative access to him or her;

(5) To facilitate further interrogation or investigation; or

(6) Due to a lack of a more appropriate facility.

(d) Whenever an alleged delinquent child cannot be unconditionally released, conditional or supervised release that results in the least necessary interference with the liberty of such child shall be favored over more intrusive alternatives.

(e) Whenever the curtailment of the freedom of an alleged delinquent child is permitted, the exercise of authority shall reflect the following values:

(1) Respect for the privacy, dignity, and individuality of such child and his or her family;

(2) Protection of the psychological and physical health of such child;

(3) Tolerance of the diverse values and preferences among different groups and individuals;

(4) Assurance of equality of treatment by race, class, ethnicity, and sex;

(5) Avoidance of regimentation and depersonalization of such child;

(6) Avoidance of stigmatization of such child; and

(7) Assurance that such child has been informed of his or her right to consult with an attorney and that, if such child is an indigent person, an attorney will be provided.

(f) Before entering an order authorizing detention, the court shall determine whether a child's continuation in his or her home is contrary to his or her welfare and whether there are available services that would prevent or eliminate the need for detention. The court shall make that determination on a case-by-case basis and shall make written

findings of fact referencing any and all evidence relied upon in reaching its decision.

(g) If an alleged delinquent child can remain in the custody of his or her parent, guardian, or legal custodian through the provision of services to prevent the need for removal, the court shall order that such services shall be provided.

History. — Code 1981, § 15-11-503, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

Law reviews. — For article discussing due process in juvenile court procedures in California and Georgia, in light of In re Gault, 387 U.S. 1, 87 S. Ct. 1428, 18 L. Ed. 2d 527 (1967), see 8 Ga. St. B. J. 9 (1971).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 24A-1401, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Jurisdiction linked to petition. — Former statute indicated that assumption of jurisdiction by a juvenile court was linked to an authorized petition. Hartley v. Clack, 239 Ga. 113, 236 S.E.2d 63 (1977) (decided under former Code 1933, § 24A-1401).

Consideration of evidence from detention hearing at adjudication. — Although evidence presented at a juvenile detention hearing was for the purpose of determining whether preadjudication custody of the child was required, a juvenile court did not err in considering evidence presented at the detention hearing during the adjudication hearing; any error was harmless as the same judge, counsel, and witnesses participated in both hearings and the evidence was substantially the same. In the Interest of C. S., 334 Ga. App. 153, 778 S.E.2d 396 (2015).

RESEARCH REFERENCES

Am. Jur. 2d. — 47 Am. Jur. 2d, Juvenile Courts and Delinquent and Dependent Children, § 66 et seq.

C.J.S. — 43 C.J.S., Infants, §§ 140 et seq., 239.

U.L.A. — Uniform Juvenile Court Act (U.L.A.) § 14.

ALR. — What constitutes delinquency or incorrigibility justifying commitment of infant, 85 A.L.R. 1099.

15-11-504. Place of detention; data on child detained.

(a) An alleged delinquent child may be detained only in:

(1) A licensed foster home;

(2) A home approved by the court which may be a public or private home;

(3) The home of such child's noncustodial parent or of a relative;

(4) A facility operated by a licensed child welfare agency; or

(5) A secure residential facility or nonsecure residential facility.

(b) Placement shall be made in the least restrictive facility available consistent with the best interests of the child.

(c) A child 15 years of age or older and alleged to be a delinquent child may be held in a jail or other facility for the detention of adults for identification or processing procedures or while awaiting transportation only so long as necessary to complete such activities for up to six hours, or for up to 24 hours if the closest secure residential facility is more than 70 miles from such facility, if all of the following apply:

(1) Such child is detained for the commission of a crime that would constitute a class A designated felony act, class B designated felony act, or a serious violent felony as defined in Code Section 17-10-6.1;

(2) Such child is awaiting a detention hearing;

(3) Such child's detention hearing is scheduled within 24 hours after being taken into custody, excluding weekends and legal holidays;

(4) There is no existing acceptable alternative placement for such child; and

(5) The jail or other facility for the detention of adults provides sight and sound separation for children, including:

(A) Total separation between children and adult facility spatial areas such that there is no verbal, visual, or physical contact and there could be no haphazard or accidental contact between child and adult residents in the respective facilities;

(B) Total separation in all program activities for children and adults within the facilities, including recreation, education, counseling, health care, dining, sleeping, and general living activities;

(C) Continuous visual supervision of a child; and

(D) Separate staff for children and adults, specifically direct care staff such as recreation, education, and counseling, although specialized services staff, such as cooks, bookkeepers, and medical professionals who are not normally in contact with detainees or whose infrequent contacts occur under conditions of separation of children and adults, can serve both.

(d) A child shall not be transported with adults who have been charged with or convicted of a crime. DJJ may transport a child with children who have been charged with or convicted of a crime in superior court.

(e) The official in charge of a jail or other facility for the detention of adult offenders or persons charged with a crime shall inform the court or the juvenile court intake officer immediately when a child who

appears to be under the age of 17 years is received at such facility and shall deliver such child to the court upon request or transfer such child to the facility designated by the juvenile court intake officer or the court.

(f) All facilities shall maintain data on each child detained and such data shall be recorded and retained by the facility for three years and shall be made available for inspection during normal business hours by any court exercising juvenile court jurisdiction, by DJJ, by the Governor's Office for Children and Families, by the Criminal Justice Coordinating Council, by the Administrative Office of the Courts, and by the Council of Juvenile Court Judges. Such data shall be used by the inspecting agency for official purposes and shall not be subject to release by such agency pursuant to Article 4 of Chapter 18 of Title 50, nor subject to subpoena. The required data are each detained child's:

(1) Name;

(2) Date of birth;

(3) Sex;

(4) Race;

(5) Offense or offenses for which such child is being detained;

(6) Date of and authority for confinement;

(7) Location of the offense and the name of the school if the offense occurred in a school safety zone, as defined in Code Section 16-11-127.1;

(8) The name of the referral source, including the name of the school if the referring source was a school;

(9) The score on the detention assessment;

(10) The basis for detention if such child's detention assessment score does not in and of itself mandate detention;

(11) The reason for detention, which may include, but shall not be limited to, preadjudication detention, detention while awaiting a postdisposition placement, or serving a short-term program disposition;

(12) Date of and authority for release or transfer; and

(13) Transfer or to whom released.

History. — Code 1981, § 15-11-504, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242; Ga. L. 2015, p. 890, § 3/HB 263.

Law reviews. — For note criticizing jurisdiction of juvenile justice system over runaways and advocating alternative legal approaches, see 24 Emory L. J. 1075 (1975).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 24A-1403, pre-2000 Code Section 15-11-20, and pre-2014 Code Section 15-11-48, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Applicability. — Contrary to the defendant's claims, neither former O.C.G.A. § 15-11-67 (see now O.C.G.A. § 15-11-442) nor former O.C.G.A. § 15-11-48(e) (see now O.C.G.A. §§ 15-11-135, 15-11-400, and 15-11-412) applied to the defendant's case because both provisions applied when the child was found "unruly," and the defendant was adjudicated delinquent, not unruly. In the Interest of B. Q. L. E., 297 Ga. App. 273, 676 S.E.2d 742, cert. denied, No. S09C1197, 2009 Ga. LEXIS 787 (Ga. 2009) (decided under former O.C.G.A. § 15-11-48).

Suspect may first be booked if rights are observed. — There was no violation of former O.C.G.A. § 15-11-20 (see now O.C.G.A. §§ 15-11-155, 15-11-400, 15-11-412, and 15-11-504) because a juvenile suspect was first taken to a police station for booking purposes, if the juvenile was advised of the juvenile's rights under that section to be questioned elsewhere; the juvenile signed a waiver of these rights on an "advice to juveniles" form and was detained at a youth development center. Marshall v. State, 248 Ga. 227, 282 S.E.2d 301 (1981) (decided under former Code 1933, § 24A-1403).

Confession admissible if juvenile taken before county police. — Juvenile defendant's confession was admissible despite the fact that the juvenile was not taken before an impartial juvenile intake officer but a member of the county police department since the defendant's mother was present during the juvenile's interrogation and it was not alleged that the officer failed to perform any duty imposed upon the officer. Worthy v. State, 253 Ga. 661, 324 S.E.2d 431 (1985) (decided under former O.C.G.A. § 15-11-20).

All detention facilities not supervised and controlled by juvenile courts. — Juvenile courts are not granted the power and authority to supervise and control all the various detention facilities. Jones v. State, 134 Ga. App. 611, 215 S.E.2d 483 (1975) (decided under former Code 1933, § 24A-1403).

No guarantee of all bed space desired by courts. — Subsection (a) of former section contemplated otherwise than that the Department of Human Resources guarantee all bed space desired by the juvenile courts. Jones v. State, 134 Ga. App. 611, 215 S.E.2d 483 (1975) (decided under former Code 1933, § 24A-1403).

Confinement designation not exercise of court's jurisdiction. — Juvenile court's order for detention was merely an order pursuant to the former statute; designating the place of confinement was not an exercise of jurisdiction by that court. Hartley v. Clack, 239 Ga. 113, 236 S.E.2d 63 (1977) (decided under former Code 1933, § 24A-1403).

Foster relationship gives rise to no state-created rights. — Children are placed in foster homes as an alternative to institutional care for what is clearly designed as a transitional phase in the child's life. Therefore, in the eyes of the state, which creates the foster relationship, the relationship is considered temporary at the outset and gives rise to no state-created rights in the foster parents. Drummond v. Fulton County Dep't of Family & Children's Servs., 563 F.2d 1200 (5th Cir. 1977), cert. denied, 437 U.S. 910, 98 S. Ct. 3103, 57 L. Ed. 2d 1141 (1978) (decided under former Code 1933, § 24A-1403).

School officials not involved in admission of student to detention center. — Because the school officials exercised their discretion under the law to report alleged criminal action against a school resource officer by the student, there was no evidence that school officials were involved in the decision to admit the student into the youth detention center, and the student was allowed to return to school upon the student's release from the youth detention center, the disciplinary

hearing was not untimely, as there was evidence that the student had not been suspended before the hearing, and, thus, the superior court erred in reversing the state board of education's decision and remanding the case to the state board with direction to vacate the adjudication of expulsion entered against the student. Fulton County Bd. of Educ. v. D. R. H., 325 Ga. App. 53, 752 S.E.2d 103 (2013) (decided under former O.C.G.A. § 54-11-48).

Restrictive custody appropriate. — Trial court did not abuse the court's discretion by ordering a juvenile to serve 12 months in restrictive custody as the juvenile's school disciplinary record; record of delinquency; violations of probation; immaturity; susceptibility to temptation; use of marijuana; lack of positive male role models; lack of structure; and the absence of other activities to occupy time demonstrated that restrictive custody was in the juvenile's best interests, as well as the community's, and was not arbitrary. In the Interest of C. M., 331 Ga. App. 16, 769 S.E.2d 737 (2015).

Cited in M.K.H. v. State, 135 Ga. App. 565, 218 S.E.2d 284 (1975); R.A.M. v. State, 148 Ga. App. 226, 251 S.E.2d 139 (1978); Lewis v. State, 246 Ga. 101, 268 S.E.2d 915 (1980); Long v. Long, 303 Ga. App. 215, 692 S.E.2d 811 (2010).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, § 24A-1403, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Juvenile intake officer to locate appropriate juvenile facility. — Juvenile intake officer should make all reasonable efforts to locate an appropriate juvenile facility for the detention of an allegedly delinquent child before determining that such a facility was "not available" for purposes of the former statute. 1978 Op. Att'y Gen. No. U78-13 (decided under former Code 1933, § 24A-1403).

RESEARCH REFERENCES

Am. Jur. 2d. — 47 Am. Jur. 2d, Juvenile Courts and Delinquent and Dependent Children, §§ 47 et seq., 53 et seq., 66.

C.J.S. — 43 C.J.S., Infants, §§ 140 et seq., 226 et seq., 239.

U.L.A. — Uniform Juvenile Court Act (U.L.A.) § 16.

ALR. — What constitutes delinquency or incorrigibility, justifying commitment of infant, 45 A.L.R. 1533; 85 A.L.R. 1099.

Authority of court to order juvenile delinquent incarcerated in adult penal institution, 95 A.L.R.3d 568.

Truancy as indicative of delinquency or incorrigibility, justifying commitment of infant or juvenile, 5 A.L.R.4th 1211.

Foster parent's right to immunity from foster child's negligence claims, 55 A.L.R.4th 778.

15-11-505. Use of detention assessments to determine if detention is warranted; "serious delinquent act" defined.

(a) If an alleged delinquent child is brought before the court, delivered to a secure residential facility or nonsecure residential facility or foster care facility designated by the court, or otherwise taken into custody, the juvenile court intake officer shall immediately administer a detention assessment and determine if such child should be detained, taking into account subsection (b) of this Code section. Such child shall be released unless it appears that his or her detention is warranted.

(b)(1) As used in this subsection, the term "serious delinquent act" means to commit, attempt to commit, conspiracy to commit, or solicitation of another to commit a delinquent act which if committed by an adult would constitute:

(A) Aggravated assault;

(B) Aggravated battery;

(C) Aggravated child molestation;

(D) Aggravated cruelty to animals;

(E) Aggravated sexual battery;

(F) Aggravated sodomy;

(G) Armed robbery involving a firearm;

(H) Arson in the first degree;

(I) Burglary in the first degree;

(J) Child molestation;

(K) Escape;

(L) Hijacking a motor vehicle in the first degree;

(M) Home invasion in the first or second degree;

(N) Involuntary manslaughter;

(O) Murder;

(P) Participating in criminal gang activity, as defined in subparagraphs (A) through (G) and (J) of paragraph (1) of Code Section 16-15-3, in violation of Code Section 16-15-4;

(Q) Rape;

(R) Robbery;

(S) Sexual exploitation of children;

(T) Smash and grab burglary;

(U) Trafficking of substances in violation of Code Section 16-13-31 or 16-13-31.1;

(V) Vehicular homicide; or

(W) Voluntary manslaughter.

(2) When a child who is 13 years of age or younger is taken into custody as provided in subsection (a) of this Code section for any delinquent act other than a serious delinquent act, there shall be a presumption that such child should not be detained.

History. — Code 1981, § 15-11-505, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242; Ga. L. 2016, p. 443, § 1-7/SB 367; Ga. L. 2017, p. 417, § 2-1/SB 104.

Law reviews. — For article on the 2016 amendment of this Code section, see 33 Georgia St. U.L. Rev. 139 (2016). For article on the 2017 amendment of this Code section, see 34 Ga. St. U.L. Rev. 61 (2017). For annual survey on criminal law, see 69 Mercer L. Rev. 73 (2017).

15-11-506. Detention hearing; time limitations.

(a) A detention hearing shall be held to determine whether preadjudication custody of an alleged delinquent child is required. If such hearing is not held within the time specified, such child shall be released from detention or foster care.

(b) If an alleged delinquent child is detained and is not released from preadjudication custody, a detention hearing shall be held promptly and not later than:

(1) Two days after such child is placed in preadjudication custody if such child is taken into custody without an arrest warrant; or

(2) Five days after such child is placed in preadjudication custody if such child is taken into custody pursuant to an arrest warrant.

(c) Notwithstanding Code Section 15-11-5, if the detention hearing cannot be held within two days in accordance with paragraph (1) of subsection (b) of this Code section because the date for the hearing falls on a weekend or legal holiday, the court shall review the decision to detain such child and make a finding based on probable cause within 48 hours of such child being placed in preadjudication custody.

(d) Reasonable oral or written notice of the detention hearing, stating the time, place, and purpose of the hearing, shall be given to an alleged delinquent child and to his or her parent, guardian, or legal custodian, if he or she can be found. In the event such child's parent, guardian, or legal custodian cannot be found, the court shall forthwith appoint a guardian ad litem for such child.

(e) If an alleged delinquent child is not released from preadjudication custody and his or her parent, guardian, or legal custodian or guardian ad litem, if any, has not been notified of the hearing and did not appear or waive appearance at such hearing and thereafter files an affidavit showing such facts, the court shall rehear the matter without unnecessary delay and shall order such child's release unless it appears from such hearing that such child's detention or foster care is warranted or required.

(f) At the commencement of the detention hearing, the court shall inform an alleged delinquent child of:

(1) The contents of the complaint or petition;

(2) The nature of the proceedings;

(3) The right to make an application for bail, as provided by Code Section 15-11-507 and Title 17;

(4) The possible consequences or dispositions that may apply to such child's case following adjudication; and

(5) His or her due process rights, including the right to an attorney and to an appointed attorney; the privilege against self-incrimination; that he or she may remain silent and that anything said may be used against him or her; the right to confront anyone who testifies against him or her and to cross-examine any persons who appear to testify against him or her; the right to testify and to compel other witnesses to attend and testify in his or her own behalf; the right to a speedy adjudication hearing; and the right to appeal and be provided with a transcript for such purpose.

(g) If an alleged delinquent child can be returned to the custody of his or her parent, guardian, or legal custodian through the provision of services to eliminate the need for removal, the court shall release such child to the physical custody of his or her parent, guardian, or legal custodian and order that those services shall be provided.

(h) If an alleged delinquent child cannot be returned to the custody of his or her parent, guardian, or legal custodian, a probation officer or community supervision officer, as applicable, shall provide referrals for services as soon as possible to enable such child's parent, guardian, or legal custodian to obtain any assistance that may be needed to effectively provide the care and control necessary for such child to return home.

(i) For purposes of this Code section, preadjudication custody begins when a juvenile court intake officer authorizes the placement of a child in a secure residential facility.

History. — Code 1981, § 15-11-506, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242; Ga. L. 2015, p. 422, § 5-13/HB 310; Ga. L. 2015, p. 540, § 1-11/HB 361.

Editor's notes. — Ga. L. 2015, p. 422, § 6-1/HB 310, not codified by the General Assembly, provides, in part, that the amendment by this Act shall apply to sentences entered on or after July 1, 2015.

Law reviews. — For article on the 2015 amendment of this Code section, see 32 Ga. St. U.L. Rev. 231 (2015).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 24A-1404, pre-2000 Code Section 15-11-21, and pre-2014 Code Section 15-11-49, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Notice and hearing requirements of

former Code 1933, §§ 24A-1402 and 24A-1404 (see now O.C.G.A. §§ 15-11-501, 15-11-502, 15-11-506, and 15-11-507) were mandatory and must be adhered to in order for the juvenile court to proceed with the adjudicatory hearing. If for some reason the statutes were not, dismissal of the petition would be without prejudice. Sanchez v. Walker County Dep't of Family & Children Servs., 237 Ga. 406, 229 S.E.2d 66 (1976) (decided under former Code 1933, § 24A-1404).

Provisions for detention and prosecution of a juvenile are mandatory, and a failure to comply with the provisions prejudices or injures the due process rights of the juvenile. In re B.A.P., 180 Ga. App. 433, 349 S.E.2d 218 (1986) (decided under former O.C.G.A. § 15-11-21).

Failure to comply with notice and hearing requirements of the Juvenile Code, after an allegedly deprived child has been taken from the parent's custody, prejudices or injures the rights of the parent, primarily the right to possession of the child under former Code 1933, §§ 74-106, 74-108, and 74-203 (see now O.C.G.A. §§ 19-7-1, 19-7-25, and 19-9-2). Sanchez v. Walker County Dep't of Family & Children Servs., 237 Ga. 406, 229 S.E.2d 66 (1976) (decided under former Code 1933, § 24A-1404).

Applicability of provisions of this section. — Subsection (c) of former Code 1933, § 24A-1404 (see now O.C.G.A. § 15-11-506) had no application unless a juvenile was taken into custody, not released under former Code 1933, § 24A-1402 (see now O.C.G.A. § 15-11-58), but instead brought before the juvenile court or delivered to a detention or shelter care facility designated by the court and then released after an investigation under subsection (a) of former Code 1933, § 24A-1404. D.C. v. State, 145 Ga. App. 868, 245 S.E.2d 26 (1978) (decided under former Code 1933, § 24A-1404).

Because a juvenile's allegations that the state failed to comply with the procedural requirements under former O.C.G.A. § 15-11-49(c)(1) and (e) (see now O.C.G.A. § 15-11-506) should have been raised in the superior court and had no bearing on the validity of the delinquency petitions or the substantive charges against the juvenile in juvenile court, said court properly prevented the juvenile from presenting evidence regarding the same. In the Interest of K.C., 290 Ga. App. 416, 659 S.E.2d 821 (2008) (decided under former O.C.G.A. § 15-11-49).

Section inapplicable. — Former O.C.G.A. § 15-11-21 (see now O.C.G.A. § 15-11-506) did not apply because the juvenile was released to the juvenile's parents after being taken to the police station. In re C.W., 227 Ga. App. 763, 490 S.E.2d 442 (1997) (decided under former O.C.G.A. § 15-11-21).

Failure to comply with time limits requires dismissal. — Time limits established by the General Assembly in the Juvenile Code are jurisdictional and must be strictly adhered to. A failure to comply with the time periods set out in the statute requires dismissal. R.A.S. v. State, 156 Ga. App. 366, 274 S.E.2d 752 (1980), overruled on other grounds, In re R.D.F., 66 Ga. 294, 466 S.E.2d 572 (1996) (decided under former Code 1933, § 24A-1404).

Dismissal without prejudice for violating five day time limit. — In dismissing a deprivation petition because the petition was filed outside of the five-day limit of former O.C.G.A. § 15-11-49(e) (see now O.C.G.A. § 15-11-506), the trial court properly made the dismissal without prejudice. The Georgia Supreme Court had stated that in such a case any dismissal for failure to follow one of the procedural rules was without prejudice. In the Interest of E.C., 291 Ga. App. 440, 662 S.E.2d 252 (2008) (decided under former O.C.G.A. § 15-11-49).

Running of time limit for holding hearing. — If juvenile was originally under the jurisdiction of the superior court, the time limit for holding a juvenile detention hearing did not begin running when the Attorney General mailed a letter to the juvenile court declining prosecution as an adult, but began to run when all the requirements for transfer were met and a petition for delinquency was filed. In re T.C.S., 220 Ga. App. 545, 469 S.E.2d 802 (1996) (decided under former O.C.G.A. § 15-11-21).

Importance of procedural due process in juvenile proceedings. — Safe-

guarding of the child's procedural rights take on the same importance that procedural due process has in an adult criminal proceeding context. R.A.S. v. State, 156 Ga. App. 366, 274 S.E.2d 752 (1980), overruled on other grounds, In re R.D.F., 66 Ga. 294, 466 S.E.2d 572 (1996) (decided under former Code 1933, § 24A-1404).

Waiver of requirements of former section. — Although the procedural requirements of former O.C.G.A. § 15-11-21 (see now O.C.G.A. § 15-11-506 have been held to be mandatory, such requirements can be waived. Irvin v. Department of Human Resources, 159 Ga. App. 101, 282 S.E.2d 664 (1981) (decided under former O.C.G.A. § 15-11-21).

Right to counsel of accused juvenile. — An accused juvenile is entitled to counsel at an "informal detention hearing,", or at any of the other stages of any proceedings alleging delinquency, unruliness, and deprivation. A.C.G. v. State, 131 Ga. App. 156, 205 S.E.2d 435 (1974) (decided under former Code 1933, § 24A-1404).

Jurisdiction linked to petition. — Former statute indicated that assumption of jurisdiction by a juvenile court was linked to an authorized petition. Hartley v. Clack, 239 Ga. 113, 236 S.E.2d 63 (1977) (decided under former Code 1933, § 24A-1404).

No acquisition of jurisdiction by juvenile court ordering place of detention. — Juvenile court's order for detention was merely a designation of the place of detention as required by former statute, the juvenile court did not acquire jurisdiction by the court's order for detention. Hartley v. Clack, 239 Ga. 113, 236 S.E.2d 63 (1977) (decided under former Code 1933, § 24A-1404).

Former Juvenile Code recognized that parent was "party" to proceedings involving the parent's child. Sanchez v. Walker County Dep't of Family & Children Servs., 237 Ga. 406, 229 S.E.2d 66 (1976) (decided under former Code 1933, § 24A-1404).

Definition of "day." — Word "day," not being qualified, means a calendar or civil day consisting of 24 hours from midnight to midnight. J.B.H. v. State, 139 Ga. App. 199, 228 S.E.2d 189 (1976), overruled on other grounds, In re R.D.F., 266 Ga. 294, 466 S.E.2d 572 (1996) (decided under former Code 1933, § 24A-1404).

Charging petition "logged" in by clerk deemed "presented to the court." — When the chief deputy clerk and calendar clerk received a petition charging a minor with commission of various delinquent acts and "logged" the petition in, the petition was "presented to the court" within the meaning of subsection (e) of former O.C.G.A. § 15-11-21 (see now O.C.G.A. § 15-11-506). P.L.A. v. State, 172 Ga. App. 820, 324 S.E.2d 781 (1984) (decided under former O.C.G.A. § 15-11-21).

Adjudication hearing required after an initial hearing. — By restraining the child at an initial hearing, the juvenile court implicitly found probable cause, pursuant to former O.C.G.A. § 15-11-46.1 (see now O.C.G.A. § 15-11-415). The juvenile court therefore erred in later deciding that a 10-day adjudication hearing was actually a detention hearing and in resetting the 10-day adjudication hearing. In the Interest of K.L., 303 Ga. App. 679, 694 S.E.2d 372 (2010) (decided under former O.C.G.A. § 15-11-49).

Illegal detention. — When the petition on the charge on which a juvenile was detained had not been presented within 72 hours of the detention hearing, the state was not at liberty to hold the juvenile until the state developed evidence of other crimes or discovered the juvenile had committed other crimes, although if the charge upon which the juvenile had been detained was properly petitioned within 72 hours and the juvenile was then lawfully detained, the state could have prosecuted the juvenile at the subsequent adjudicatory hearing within ten days under former O.C.G.A. § 15-11-26(a) (see now O.C.G.A. §§ 15-11-181, 15-11-400, 15-11-421, 15-11-441, and 15-11-522) for any offenses the state uncovered in the meantime, including one upon a petition filed the day of the adjudicatory hearing. In re B.A.P., 180 Ga. App. 433, 349 S.E.2d 218 (1986) (decided under former O.C.G.A. § 15-11-21).

Since the petition was not presented within 72 hours of a detention hearing as required by subsection (e) of former

O.C.G.A. § 15-11-21 (see now O.C.G.A. § 15-11-506), the state cannot thus illegally detain the child and then render such a jurisdictional defect harmless by setting the adjudication hearing within 13 days (72 hours plus 10 days) of the detention hearing under former O.C.G.A. § 15-11-26(a) (see now O.C.G.A. §§ 15-11-181, 15-11-400, 15-11-421, 15-11-441, and 15-11-522). In re B.A.P., 180 Ga. App. 433, 349 S.E.2d 218 (1986) (decided under former O.C.G.A. § 15-11-21).

Return of a child to custody following the child's escape was not an "informal detention" pursuant to subsection (c) of former O.C.G.A. § 15-11-21 (see now O.C.G.A. § 15-11-506) so as to require a hearing within 72 hours of the child's recapture. In re J.L.P., 226 Ga. App. 160, 486 S.E.2d 387 (1997) (decided under former O.C.G.A. § 15-11-21).

Dismissal of depravation complaint. — Because a child's mother and stepfather tested negative for chlamydia and were cooperating with authorities, pursuant to Ga. Unif. Juv. Ct. R. 8.1 and former O.C.G.A. § 15-11-49 (see now O.C.G.A. § 15-11-506), the trial court properly dismissed a depravation complaint for lack of reasonable grounds showing intentional or unintentional misconduct resulting in abuse or neglect of the child. In the Interest of J. F., 310 Ga. App. 807, 714 S.E.2d 399 (2011) (decided under former O.C.G.A. § 15-11-49).

Additional charges. — Since a child remained in custody continually from the child's arrest on December 31, 1990, and a detention hearing was held on January 2, 1991, and the 72-hour period following that hearing did not expire until January 5, the state was authorized to bring additional charges at a detention hearing on January 7, 1991, and the additional charges constituted compliance with subsection (c) of former O.C.G.A. § 15-11-21 (see now O.C.G.A. § 15-11-506). In re S.E.M., 201 Ga. App. 454, 411 S.E.2d 350 (1991) (decided under former O.C.G.A. § 15-11-21).

Timely hearing. — When the defendant was arrested in the early hours of Friday, a hearing conducted at 9:00 a.m. the following Monday was timely. Livingston v. State, 266 Ga. 501, 467 S.E.2d 886 (1996) (decided under former O.C.G.A. § 15-11-21).

Findings made in unrecorded hearing reversed. — Because the juvenile court primarily based the juvenile court's decision that a parent's two children were deprived, awarding temporary custody of the children to the county, on evidence received at an unrecorded hearing, and a waiver requiring a transcript of that hearing was not in evidence, those findings were reversed, and the case was remanded. In the Interest of D.P., 284 Ga. App. 453, 644 S.E.2d 299 (2007) (decided under former O.C.G.A. § 15-11-49).

Consideration of evidence from detention hearing at adjudication. — Although evidence presented at a juvenile detention hearing was for the purpose of determining whether preadjudication custody of the child was required, a juvenile court did not err in considering evidence presented at the detention hearing during the adjudication hearing; any error was harmless as the same judge, counsel, and witnesses participated in both hearings and the evidence was substantially the same. In the Interest of C. S., 334 Ga. App. 153, 778 S.E.2d 396 (2015).

RESEARCH REFERENCES

Am. Jur. 2d. — 47 Am. Jur. 2d, Juvenile Courts and Delinquent and Dependent Children, § 66 et seq.

C.J.S. — 43 C.J.S., Infants, §§ 140 et seq., 226 et seq., 239.

U.L.A. — Uniform Juvenile Court Act (U.L.A.) § 17.

ALR. — Right of indigent parent to appointed counsel in proceeding for involuntary termination of parental rights, 80 A.L.R.3d 1141.

15-11-507. (For effective date, see note.) Bail.

(a) All children alleged to have committed a delinquent act shall have the same right to bail as adults.

(b) The judge shall admit to bail all children in the same manner and under the same circumstances and procedures as are applicable to adults accused of the commission of crimes, with the exception that applying for bail, holding a hearing on the application, and granting bail for children alleged to have committed a delinquent act may only occur:

(1) At intake in accordance with Code Section 15-11-503; or

(2) At the detention hearing in accordance with Code Section 15-11-506.

(c) A court shall be authorized to release an alleged delinquent child on bail if the court finds that such child:

(1) Poses no significant risk of fleeing from the jurisdiction of the court or failing to appear in court when required;

(2) Poses no significant threat or danger to any person, to the community, or to any property in the community;

(3) Poses no significant risk of committing any felony pending trial; and

(4) Poses no significant risk of intimidating witnesses or otherwise obstructing the administration of justice.

(d) If a child is accused of committing an act that would be a serious violent felony, as defined in Code Section 17-10-6.1, if committed by an adult and such child has previously been adjudicated for a delinquent act for committing an act that would be a serious violent felony if committed by an adult, there shall be a rebuttable presumption that no condition or combination of conditions will reasonably assure the appearance of such child as required or assure the safety of any other person or the community.

(e) Any person having legal custody or an adult blood relative or stepparent of an alleged delinquent child shall be entitled to post bail but shall be required immediately to return such child to the individual or entity having legal custody of such child.

(f) (For effective date, see note.) For the purposes of this Code section, the term "bail" shall include the release of a child on an unsecured judicial release as provided for in Code Section 17-6-12.

History. — Code 1981, § 15-11-507, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242; Ga. L. 2020, p. 570, § 3-1/SB 402.

Delayed effective date. — Subsection (f), as set out above, becomes effective January 1, 2021. For version of subsection (f) in effect until January 1, 2021, see the 2020 amendment note.

The 2020 amendment, effective January 1, 2021, in subsection (f), substituted "release" for "releasing" and substituted "an unsecured judicial release as provided for in Code Section 17-6-12" for "his or her own recognizance".

Cross references. — Bonds and recognizances, T. 17, C. 6. Prohibition against excessive bail, U.S. Const., amend. 8 and Ga. Const. 1983, Art. I, Sec. I, Para. XVII. Bonds and first appearance, Uniform State Court Rules, Rule 26.1. Bond hearings in Juvenile Court, Uniform Rules for the Juvenile Courts of Georgia, Rules 9.1 and 9.2.

JUDICIAL DECISIONS

Jurisdiction of trial court not affected by denial of bail. — Even assuming an irregularity in the prior imprisonment of the appellant, such as an abuse of discretion in the denial of bail, this would in nowise affect the jurisdiction of the court trying appellant. R.T.M. v. State, 138 Ga. App. 92, 225 S.E.2d 510 (1976) (decided under former Code 1933, § 24A-1402).

RESEARCH REFERENCES

Am. Jur. 2d. — 8A Am. Jur. 2d, Bail and Recognizance, § 1 et seq. 21 Am. Jur. 2d, Criminal Law, § 562. 47 Am. Jur. 2d, Juvenile Courts and Delinquent and Dependent Children, § 69.

15-11-508. Notification to victim of child's release from detention.

(a) As used in this Code section, the term:

(1) "Notice" shall have the same meaning as set forth in Code Section 17-17-3.

(2) "Victim" shall have the same meaning as set forth in Code Section 17-17-3.

(3) "Violent delinquent act" means to commit, attempt to commit, conspiracy to commit, or solicitation of another to commit a delinquent act which if committed by an adult would constitute:

(A) A serious violent felony as defined by Code Section 17-10-6.1;

(B) A class A designated felony act or class B designated felony act;

(C) Stalking or aggravated stalking as provided by Article 7 of Chapter 5 of Title 16; or

(D) Any attempt to commit, conspiracy to commit, or solicitation of another to commit an offense enumerated in subparagraphs (A) through (C) of this paragraph.

(b) If a child accused of a violent delinquent act is detained pending adjudication, a juvenile court intake officer shall provide notice to the victim, whenever practicable, that such child is to be released from detention not less than 24 hours prior to such child's release from detention.

(c) Not less than 48 hours prior to a child who has been adjudicated to have committed a violent delinquent act being released from detention or transferred to a nonsecure residential facility, a juvenile court intake officer shall, whenever practicable, provide notice to the victim of such pending release or transfer.

(d) Victim notification need not be given unless a victim has expressed a desire for such notification and has provided a juvenile court intake officer with a current address and telephone number. It shall be the duty of a juvenile court intake officer to advise the victim of his or her right to notification and of the requirement of the victim to provide a primary and personal telephone number to which such notification shall be directed.

History. — Code 1981, § 15-11-508, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

Cross references. — Crime Victims' Bill of Rights, T. 17, C. 17.

Part 4

Intake or Arraignment

15-11-510. Intake; informal adjustment.

(a) If an alleged delinquent child has not been detained after the filing of a complaint, he or she shall be promptly referred to intake or given a date for arraignment.

(b) At intake, the court, the juvenile court intake officer, or other officer designated by the court shall inform a child of:

(1) The contents of the complaint;

(2) The nature of the proceedings;

(3) The possible consequences or dispositions that may apply to such child's case following adjudication; and

(4) His or her due process rights, including the right to an attorney and to an appointed attorney; the privilege against self-incrimination; that he or she may remain silent and that anything said may be used against him or her; the right to confront anyone who testifies against him or her and to cross-examine any persons who appear to testify against him or her; the right to testify

and to compel other witnesses to attend and testify in his or her own behalf; the right to a speedy adjudication hearing; and the right to appeal and be provided with a transcript for such purpose.

(c) A juvenile court intake officer may elect to pursue a case through informal adjustment or other nonadjudicatory procedure in accordance with the provisions of Code Section 15-11-515.

(d) If a case is to be prosecuted further and handled other than by informal adjustment or other nonadjudicatory procedure, a referral shall be made to the prosecuting attorney and a petition for delinquency shall be filed within 30 days of the filing of a complaint.

History. — Code 1981, § 15-11-510, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

15-11-511. Arraignment; admissions at arraignment; right to attorney.

(a) At arraignment, the court shall inform a child of:

(1) The contents of the petition alleging delinquency;

(2) The nature of the proceedings;

(3) The possible consequences or dispositions that may apply to such child's case following adjudication; and

(4) His or her due process rights, including the right to an attorney and to an appointed attorney; the privilege against self-incrimination; that he or she may remain silent and that anything said may be used against him or her; the right to confront anyone who testifies against him or her and to cross-examine any persons who appear to testify against him or her; the right to testify and to compel other witnesses to attend and testify in his or her own behalf; the right to a speedy adjudication hearing; and the right to appeal and be provided with a transcript for such purpose.

(b) The court may accept an admission at arraignment and may proceed immediately to disposition if a child is represented by counsel at arraignment. If a child's liberty is not in jeopardy, he or she may waive the right to counsel at arraignment, provided that such waiver is made knowingly, voluntarily, and on the record. A child represented by counsel or whose liberty is not in jeopardy may make a preliminary statement indicating whether he or she plans to admit or deny the allegations of the complaint at the adjudication hearing. The court shall not accept an admission from a child whose liberty is in jeopardy and who is unrepresented by counsel.

(c) The court shall appoint an attorney to represent an alleged delinquent child whose liberty is in jeopardy and who is an indigent person.

History. — Code 1981, § 15-11-511, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242; Ga. L. 2014, p. 780, § 1-39/SB 364; Ga. L. 2018, p. 935, § 4/SB 131.

The 2018 amendment, effective July 1, 2018, added the proviso at the end of the second sentence of subsection (b).

JUDICIAL DECISIONS

Editor's notes. — Many of the following annotations should be examined in light of the amendment to Ga. Const. 1976, Art. VI, Sec. XIV, Para. VI (see now Ga. Const. 1983, Art. VI, Sec. II, Para. VI) which took effect November 1, 1981.

In light of the similarity of the statutory provisions, decisions under former Code 1933, §§ 24A-1101, 24A-1201, pre-2000 Code Sections 15-11-15 and 15-11-16 and pre-2014 Code Sections 15-11-29 and 15-11-30, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Arraignment during adjudicatory hearing. — In the absence of a transcript, a juvenile failed to establish that former O.C.G.A. § 15-11-26 (see now O.C.G.A. §§ 15-11-181, 15-11-400, 15-11-421, 15-11-441, and 15-11-582) was violated since a hearing was timely scheduled and held, an arraignment was conducted at the beginning, the juvenile requested legal counsel and was found eligible to receive counsel, and a continuance was granted so counsel could be secured; conducting an arraignment was not inconsistent with an adjudicatory hearing. In re R.D.F., 266 Ga. 294, 466 S.E.2d 572 (1996).

Arraignment hearing scheduled within the 60-day time period is not sufficient to satisfy the requirement that an adjudicatory hearing must be set within that period. In re R.O.B., 216 Ga. App. 181, 453 S.E.2d 776 (1995).

Delinquency adjudication hearing serves same purpose as arraignment. — Delinquency adjudication hearing merely serves the same purpose in the civil juvenile court proceeding as an arraignment under the criminal code. M.E.B. v. State, 230 Ga. 154, 195 S.E.2d 891 (1973) (decided under former Code 1933, § 24A-1101); D.C.E. v. State, 130 Ga. App. 724, 204 S.E.2d 481 (1974) (decided under former Code 1933, § 24A-1101).

Rule as to confessions of juveniles should be same as that for confessions of adults because law enforcement officers cannot be certain when officers question a juvenile what kind of case may develop, and the statutory safeguards are applicable to both criminal and juvenile cases. Crawford v. State, 240 Ga. 321, 240 S.E.2d 824 (1977) (decided under former Code 1933, § 24A-1402); Jackson v. State, 146 Ga. App. 375, 246 S.E.2d 407 (1978) (decided under former Code 1933, § 24A-1402).

Confession inadmissible if failure to comply with safeguards. — Failure to comply with the statutory safeguards renders a confession of a juvenile inadmissible in evidence. Bussey v. State, 144 Ga. App. 875, 243 S.E.2d 99 (1978) (decided under former Code 1933, § 24A-1402).

Failure to comply with the statutory safeguards renders confession of a juvenile inadmissible even in a criminal case where a juvenile is tried as an adult. Manning v. State, 162 Ga. App. 494, 292 S.E.2d 95 (1982) (decided under former O.C.G.A. § 15-11-19).

Confession obtained illegally inadmissible in delinquency hearing. — Confession obtained from a juvenile in violation of the statute was inadmissible in a hearing to determine the delinquency of a juvenile. J.J. v. State, 135 Ga. App. 660, 218 S.E.2d 668 (1975) (decided under former Code 1933, § 24A-1402).

Confession admissible after juvenile opted not to have parent present. — Because the undisputed evidence established that a juvenile defendant was informed of the right to have a parent present during an interview with police in which a custodial statement was obtained, but did not invoke that right, there was no error in allowing the juvenile defendant's statement into evidence. Green v. State, 282 Ga. 672, 653 S.E.2d 23 (2007) (decided under former O.C.G.A. § 15-11-47).

Confession admissible if parent present and rights protected. — Juvenile defendant's confession was admissible despite the fact that the defendant was not taken before an impartial juvenile intake officer but a member of the county police department since the defendant's mother was present during the juvenile's interrogation and it was not alleged that the officer failed to perform any duty imposed upon the officer. Worthy v. State, 253 Ga. 661, 324 S.E.2d 431 (1985) (decided under former O.C.G.A. § 15-11-19).

Issue of whether officer to whom juvenile was taken and to whom the juvenile made a confession was a "juvenile court intake officer" did not affect the admissibility of the statement since Miranda warnings were given and the juvenile's mother was present. Houser v. State, 173 Ga. App. 378, 326 S.E.2d 513 (1985) (decided under former O.C.G.A. § 15-11-19).

Language of former O.C.G.A. § 15-11-19 (see now O.C.G.A. §§ 15-11-133, 15-11-501, and 15-11-502) requiring the bringing of a child before juvenile authorities was directory and did not serve to render inadmissible a juvenile's confession if the juvenile's rights were otherwise protected, such as if the juvenile's father was present and was continually apprised of the questioning. W.G.C. v. State, 173 Ga. App. 528, 327 S.E.2d 522 (1985) (decided under former O.C.G.A. § 15-11-19).

Confession admissible despite technical violation. — Police officer's failure to bring juvenile initially to juvenile court did not render the 14-year old's confession inadmissible since the confession was obtained only after the juvenile waived the juvenile's rights knowingly and voluntarily, and with the knowledge and consent of both the juvenile's mother and legal guardian. In re J.D.G., 207 Ga. App. 698, 429 S.E.2d 118 (1993) (decided under former O.C.G.A. § 15-11-19).

Since the defendant's statement was knowingly and intelligently given before officers had an opportunity to take the juvenile anywhere, former O.C.G.A. § 15-11-19 (see now O.C.G.A. §§ 15-11-133, 15-11-501, and 15-11-502) was neither implicated nor violated. McKoon v. State, 266 Ga. 149, 465 S.E.2d 272 (1996) (decided under former O.C.G.A. § 15-11-19).

Part 5

Informal Adjustment

15-11-515. Informal adjustment; circumstances; admissions; exceptions.

(a) Before a petition for informal adjustment is filed, a probation officer or other officer designated by the court, subject to the court's direction, may inform the parties of informal adjustment if it appears that:

(1) The admitted facts bring the case within the jurisdiction of the court;

(2) Counsel and advice without an adjudication would be in the best interests of the public and a child, taking into account at least the following factors:

(A) The nature of the alleged offense;

(B) The age and individual circumstances of such child;

(C) Such child's prior record, if any;

(D) Recommendations for informal adjustment made by the complainant or the victim; and

(E) Services to meet such child's needs and problems may be unavailable within the formal court system or may be provided more effectively by alternative community programs; and

(3) A child and his or her parent, guardian, or legal custodian consent with knowledge that consent is not obligatory.

(b) The giving of counsel and advice shall not extend beyond three months unless extended by the court for an additional period not to exceed three months and shall not authorize the detention of a child if not otherwise permitted by this article.

(c) An incriminating statement made by a participant in an informal adjustment to the person giving counsel or advice and in the discussion or conferences incident thereto shall not be used against the declarant over objection in any hearing except in a hearing on disposition in a juvenile court proceeding or in a criminal proceeding upon conviction for the purpose of a presentence investigation.

(d) If a child is alleged to have committed a class A designated felony act or class B designated felony act, the case shall not be subject to informal adjustment, counsel, or advice without the prior consent of the district attorney or his or her authorized representative.

History. — Code 1981, § 15-11-515, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

Law reviews. — For article, "The Prosecuting Attorney in Georgia's Juvenile Courts," see 13 Ga. St. B. J. 27 (2008).

RESEARCH REFERENCES

Am. Jur. 2d. — 47 Am. Jur. 2d, Juvenile Courts and Delinquent and Dependent Children, § 78 et seq.

C.J.S. — 43 C.J.S., Infants, § 180 et seq.

U.L.A. — Uniform Juvenile Court Act (U.L.A.) § 10.

PART 6

DELINQUENCY PETITION

15-11-520. Authority to file petition.

A petition alleging delinquency shall be filed by an attorney as set forth in Code Section 15-18-6.1.

History. — Code 1981, § 15-11-520, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

Law reviews. — For note criticizing jurisdiction of juvenile justice system over runaways and advocating alternative legal approaches, see 24 Emory L. J. 1075 (1975).

15-11-521. Time limitations for filing petition.

(a) If a child is in detention prior to adjudication, a petition alleging delinquency shall be filed not later than 72 hours after the detention hearing. If no petition alleging delinquency is filed within the applicable time, such child shall be released from detention and the complaint shall be dismissed without prejudice. Such petition may be refiled as provided in subsection (b) of this Code section within the statute of limitations.

(b) If a child is not in detention prior to adjudication, a petition alleging delinquency shall be filed within 30 days of the filing of the complaint alleging violation of a criminal law or within 30 days of such child's release pursuant to a determination that detention is not warranted. Upon a showing of good cause and notice to all parties, the court may grant an extension of time for filing a petition alleging delinquency. The court shall issue a written order reciting the facts justifying any extension.

History. — Code 1981, § 15-11-521, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

JUDICIAL DECISIONS

Question of dismissal of action if neither petition nor extension filed. — Because two conflicting decisions that governed a case regarding interpretation of O.C.G.A. § 15-11-521(b) were before the Supreme Court of Georgia on certiorari review, the court certified resolution of the case to the Supreme Court via a certified question under Ga. Const. 1983, Art. VI, Sec. V, Para. IV. To await the Supreme Court's decision would run afoul of the two-term rule, Ga. Const. 1983, Art. VI, Sec. IX, Para. II. In the Interest of J. F., 338 Ga. App. 15, 789 S.E.2d 274 (2016).

30-day deadline. — Under O.C.G.A. § 15-11-521(b), the state must file a petition alleging delinquency against a juvenile who is not detained within 30 days of filing of the complaint or seek an extension of that deadline from the juvenile court; if the state misses the 30-day deadline and does not seek an extension, the

case must be dismissed without prejudice. In the Interest of M.D.H., 300 Ga. 46, 793 S.E.2d 49 (2016).

15-11-522. Contents of petition.

A petition alleging delinquency shall be verified and may be on information and belief. It shall set forth plainly and with particularity:

(1) The facts which bring a child within the jurisdiction of the court, with a statement that it is in the best interests of such child and the public that the proceeding be brought and that such child is in need of supervision, treatment, or rehabilitation, as the case may be;

(2) The name, age, and residence address of such child on whose behalf such petition is brought;

(3) The name and residence address of such child's parent, guardian, or legal custodian; or, if such child's parent, guardian, or legal custodian does not reside or cannot be found within this state or if such place of residence address is unknown, the name of any of such child's known adult relative residing within the county or, if there is none, such child's known adult relative residing nearest to the location of the court;

(4) If a child is in custody, the place of his or her detention and the time such child was taken into custody;

(5) If a child is being charged with a class A designated felony act or class B designated felony act; and

(6) Whether any of the information required by this Code section is unknown.

History. — Code 1981, § 15-11-522, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

Law reviews. — For article discussing due process in juvenile court procedures in California and Georgia, in light of In re Gault, 387 U.S. 1, 87 S. Ct. 1428, 18 L. Ed. 2d 527 (1967), see 8 Ga. St. B. J. 9 (1971). For article, "Child Custody—Jurisdiction and Procedure," see 35 Emory L. J. 291 (1986).

For comment on grandparents' visitation rights in Georgia, see 29 Emory L. J. 1083 (1980).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 24A-1603, pre-2000 Code Section 15-11-25 and pre-2014 Code Section 15-11-38.1, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Juvenile petition must satisfy "due process." — Although a juvenile petition does not have to be drafted with the exac-

titude of a criminal accusation, the petition must satisfy "due process." T.L.T. v. State, 133 Ga. App. 895, 212 S.E.2d 650 (1975) (decided under former Code 1933, § 24A-1603).

Since the state's petition failed to set forth in ordinary and concise language the facts demonstrating the nature of the parent's alleged failure to provide proper parental care or control, the parent lacked sufficient information to enable the parent to prepare a defense, and this amounted to a denial of due process. In re D.R.C., 191 Ga. App. 278, 381 S.E.2d 426 (1989) (decided under former O.C.G.A. § 15-11-25).

To meet constitutional requirement of due process the language of a juvenile petition must pass two tests: (1) the petition must contain sufficient factual details to inform the juvenile of the nature of the offense; and (2) the petition must provide data adequate to enable the accused to prepare a defense. T.L.T. v. State, 133 Ga. App. 895, 212 S.E.2d 650 (1975) (decided under former Code 1933, § 24A-1603).

Allege with particularity. — Due process requires that the petition alleging delinquency must set forth with specificity the alleged violation of law either in the language of the particular section, or so plainly that the nature of the offense charged may be easily understood by the child and the child's parents or guardian. D.P. v. State, 129 Ga. App. 680, 200 S.E.2d 499 (1973) (decided under former Code 1933, § 24A-1603).

Petition filed alleging delinquency, deprivation, or unruliness must set forth alleged misconduct with particularity. A.C.G. v. State, 131 Ga. App. 156, 205 S.E.2d 435 (1974) (decided under former Code 1933, § 24A-1603).

Insufficient notice to juvenile of alleged offense. — If a juvenile is brought to trial on a petition alleging delinquency based on a violation of former Code 1933, § 26-1601 (see now O.C.G.A. § 16-7-1) but was adjudicated delinquent for violating former Code 1933, § 26-1806 (see now O.C.G.A. § 16-8-7), there was insufficient notice to the juvenile of the offense alleged to be the basis of the juvenile's delinquency and the trial court must be reversed. D.P. v. State, 129 Ga. App. 680, 200 S.E.2d 499 (1973) (decided under former Code 1933, § 24A-1603).

Statement of custody irrelevant if jurisdiction otherwise exists. — If jurisdiction otherwise existed, such as if the action was brought in the county of the residence of both mother and son, then the requirement in paragraph (4) of former Code 1933, § 24A-1603 had no relevancy to the right of the trial court to handle the case. Sanchez v. Walker County Dep't of Family & Children Servs., 138 Ga. App. 49, 225 S.E.2d 441, rev'd on other grounds, 237 Ga. 406, 229 S.E.2d 66 (1976) (decided under former Code 1933, § 24A-1603).

Assumption of jurisdiction linked to authorized petition. — An order for detention clearly did not meet the requirements of a petition filed pursuant to former Code 1933, § 24A-1603 (see now O.C.G.A. §§ 15-11-152, 15-11-280, 15-11-390, 15-11-420, 15-11-422, and 15-11-522) to commence proceedings under former Code 1933, § 24A-1601 (see now O.C.G.A. § 15-11-420), and the assumption of jurisdiction by the juvenile court is linked to the authorized petition. Hartley v. Clack, 239 Ga. 113, 236 S.E.2d 63 (1977) (decided under former Code 1933, § 24A-1603).

In a hearing on parental custody in a divorce action, the trial court erred in awarding custody of the parties' minor children to the Department of Family and Children Services based upon findings that the children were deprived and the parents unfit because the mother had no notice that the superior court judge might award custody of the children to a third party based upon standards of deprivation. Watkins v. Watkins, 266 Ga. 269, 466 S.E.2d 860 (1996) (decided under former O.C.G.A. § 15-11-25).

Preparation and verification. — Because counsel for the Department of Children & Family Services stated to the court that counsel prepared the termination petition, that the petition was reviewed, verified, and then signed by counsel the next day, this was sufficient to comply with the requirements of former O.C.G.A. § 15-11-25 (see now O.C.G.A. §§ 15-11-152, 15-11-280, 15-11-390, 15-11-422, and 15-11-522). In re A.K.M.,

235 Ga. App. 853, 510 S.E.2d 611 (1998) (decided under former O.C.G.A. § 15-11-25).

Service by correctional officer upon incarcerated father. — Personal service of a summons and a petition of deprivation by a correctional officer upon an incarcerated father was sufficient as the service procedures in the Civil Practice Act, O.C.G.A. § 9-11-1 et seq., were not adopted nor were binding on the juvenile court, and the correctional officer was acting under the direction of the court for the purposes of former O.C.G.A. § 15-11-39.1(c) (see now O.C.G.A. §§ 15-11-161, 15-11-282, 15-11-400, 15-11-424, and 15-11-531). In the Interest of A.J.M., 277 Ga. App. 646, 627 S.E.2d 399 (2006) (decided under former O.C.G.A. § 15-11-38.1).

RESEARCH REFERENCES

Am. Jur. 2d. — 47 Am. Jur. 2d, Juvenile Courts and Delinquent and Dependent Children, § 75 et seq.

C.J.S. — 43 C.J.S., Infants, § 191 et seq.

U.L.A. — Uniform Juvenile Court Act (U.L.A.) § 21.

15-11-523. Amendment of petition.

(a) A prosecuting attorney may amend a petition alleging delinquency at any time prior to the commencement of the adjudication hearing. However, if an amendment is made, a child may request a continuance of his or her adjudication hearing. A continuance may be granted by the court for such period as required in the interest of justice.

(b) When a petition alleging delinquency is amended to include material changes to the allegations or new charges of delinquency for adjudication, the petition shall be served in accordance with Code Sections 15-11-530 and 15-11-531.

(c) After jeopardy attaches, a petition alleging delinquency shall not be amended to include new charges of delinquency.

History. — Code 1981, § 15-11-523, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former O.C.G.A. § 15-11-39.1 which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Permitting state's mid-trial amendment of petition to change the charge against the juvenile from a misdemeanor to a felony was error since the amendment was done without notice and provision of a continuance to allow additional time for preparation of a defense. In re D.W, 232 Ga. App. 777, 503 S.E.2d 647 (1998) (decided under former O.C.G.A. § 15-11-39.1).

Amendment erroneously allowed. — Trial court erred in allowing an amendment to the delinquency petition because the state sought to make a material

amendment to the petition absent proper notice and service and after the hearing had commenced and jeopardy attached pursuant to O.C.G.A. § 15-11-480(b). In the Interest of J.H., 335 Ga. App. 848, 783 S.E.2d 367 (2016).

Part 7

Summons and Service

15-11-530. Issuance of summons.

(a) The court shall direct the issuance of a summons to a child and his or her parent, guardian, or legal custodian requiring them to appear before the court at the time fixed to answer the allegations of a petition alleging delinquency. A copy of the petition shall accompany the summons.

(b) The summons shall state that a party shall be entitled to have an attorney in the proceedings and that the court will appoint an attorney if the party is an indigent person.

History. — Code 1981, § 15-11-530, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

Cross references. — Amendment to Juvenile Court petition, Uniform Rules for the Juvenile Courts of Georgia, Rule 6.6. Continuance of adjudicatory hearing in Juvenile Court, Uniform Rules for the Juvenile Courts of Georgia, Rule 11.3.

Law reviews. — For article discussing due process in juvenile court procedures in California and Georgia, in light of In re Gault, 387 U.S. 1, 87 S. Ct. 1428, 18 L. Ed. 2d 527 (1967), see 8 Ga. St. B. J. 9 (1971).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 24A-1701, pre-2000 Code Section 15-11-26 and pre-2014 Code Section 15-11-39, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Parent's right to appeal delinquency adjudication. — As parties to their child's delinquency action pursuant to former O.C.G.A. § 15-11-39(b) (see now O.C.G.A. §§ 15-11-160, 15-11-423, and 15-11-530), the child's parents had the right to appeal the juvenile court's judgment and to participate in the appellate process. In the Interest of J.L.B., 280 Ga. App. 556, 634 S.E.2d 514 (2006) (decided under former O.C.G.A. § 15-11-39).

Proceeding null when no waiver of rights nor proper service. — If, in a juvenile court proceeding, there was neither waiver of the right of a mother, nor proper service upon the parties and if the hearing is not taken under oath, or waived by any of the parties, the proceeding is an absolute nullity. McBurrough v. Dep't of Human Resources, 150 Ga. App. 130, 257 S.E.2d 35 (1979) (decided under former Code 1933, § 24A-1701).

No fixed date on summons. — Summons served upon a parent did not have to require the parent to appear in court on any fixed date in order to answer allegations in a petition to terminate the parent's parental rights. In re W.R.S., 213 Ga. App. 616, 445 S.E.2d 367 (1994) (decided under former O.C.G.A. § 15-11-26).

If there was no service of process and notice as required by former O.C.G.A. §§ 15-11-26(b) and 15-11-27(a) (see now O.C.G.A. § 15-11-1 et seq.) and there was no valid waiver of notice of the

pending charge by service of process or otherwise, the entire hearing is a nullity. In re W.M.F., 180 Ga. App. 397, 349 S.E.2d 265 (1986) (decided under former O.C.G.A. § 15-11-26).

Waiver of right to prior notice of charge. — If neither the juvenile nor the mother were represented by counsel at the dispositional hearing, neither party knew the nature of the charge filed against the minor, and neither party knew of the serious consequences which may result in the case of an adverse adjudication of the petition filed against the juvenile, it is highly unlikely that the parties understood the significance of waiving their right to prior notice of the pending charge. In re W.M.F., 180 Ga. App. 397, 349 S.E.2d 265 (1986) (decided under former O.C.G.A. § 15-11-26).

15-11-531. Service of summons.

(a) If a party to be served with a summons is within this state and can be found, the summons shall be served upon him or her personally as soon as possible and at least 72 hours before the adjudication hearing.

(b) If a party to be served is within this state and cannot be found but his or her address is known or can be ascertained with due diligence, the summons shall be served upon such party at least five days before the adjudication hearing by mailing him or her a copy by registered or certified mail or statutory overnight delivery, return receipt requested.

(c) If an individual to be served is outside this state but his or her address is known or can be ascertained with due diligence, notice of the summons shall be made at least five days before the adjudication hearing either by delivering a copy to such party personally or by mailing a copy to him or her by registered or certified mail or statutory overnight delivery, return receipt requested.

(d) Service of the summons may be made by any suitable person under the direction of the court.

(e) The court may authorize payment from county funds of the costs of service and of necessary travel expenses incurred by persons summoned or otherwise required to appear at the hearing.

History. — Code 1981, § 15-11-531, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242; Ga. L. 2014, p. 780, § 1-40/SB 364.

Cross references. — Amendment to Juvenile Court petition, Uniform Rules for the Juvenile Courts of Georgia, Rule 6.6.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, §§ 24-2406 and 24A-1702, pre-2000 Code Section 15-11-27 and pre-2014 Code Section 15-11-39.1, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

There was no equal protection violation in framework of this former Code section since similarly situated

residents and nonresidents were accorded equal treatment and it was only in cases when laws were applied differently to different persons under the same or similar circumstances that the equal protection of the law was denied. In re M.A.C., 244 Ga. 645, 261 S.E.2d 590 (1979) (decided under former Code 1933, § 24A-1702).

Service of summons and termination petition was ineffective since, even though the summons was left at the mother's residence, there was no evidence that the summons was left with a statutorily appropriate person, and service of the petition the day before the hearing was not timely. In re D.R.W., 229 Ga. App. 571, 494 S.E.2d 379 (1997) (decided under former O.C.G.A. § 15-11-27).

Service by correctional officer on incarcerated parent. — Personal service of a summons and a petition of deprivation, by a correctional officer upon an incarcerated parent, was sufficient as the service procedures in the Civil Practice Act, O.C.G.A. § 9-11-1 et seq., were not adopted nor were binding on the juvenile court, and the correctional officer was acting under the direction of the court for the purposes of former O.C.G.A. § 15-11-39.1(c) (see now O.C.G.A. §§ 15-11-161, 15-11-282, 15-11-400, 15-11-424, and 15-11-531). In the Interest of A.J.M., 277 Ga. App. 646, 627 S.E.2d 399 (2006) (decided under former O.C.G.A. § 15-11-39.1).

Service not perfected on incarcerated person. — Deprivation order had to be vacated and the case remanded because service of the deprivation petition on the parent in question, who was incarcerated, was not perfected in accordance with former O.C.G.A. § 15-11-39.1(a) (see now O.C.G.A. §§ 15-11-161, 15-11-282, 15-11-400, 15-11-424, and 15-11-531). The parent had not waived personal service and personal service was not waived simply by actual notice having been achieved. In the Interest of A. R., 296 Ga. App. 62, 673 S.E.2d 586 (2009) (decided under former O.C.G.A. § 15-11-39.1).

Requirement of "reasonable effort" to find party. — Former statute required a showing by the department that a "reasonable effort" had been made to find a putative father or ascertain his address. In re J.B., 140 Ga. App. 668, 231 S.E.2d 821 (1976) (decided under former O.C.G.A. § 15-11-39.1).

If there was no service of process and notice as required by the former provisions and there was no valid waiver of notice of the pending charge by service of process or otherwise, the entire hearing is a nullity. In re W.M.F., 180 Ga. App. 397, 349 S.E.2d 265 (1986) (decided under former O.C.G.A. § 15-11-39.1).

Waiver of right to notice. — If neither the juvenile nor the juvenile's mother were represented by counsel at the dispositional hearing, neither party knew the nature of the charge filed against the minor, and neither party knew of the serious consequences which may result in the case of an adverse adjudication of the petition filed against the juvenile, it is highly unlikely that the parties understood the significance of waiving the parties right to prior notice of the pending charge. In re W.M.F., 180 Ga. App. 397, 349 S.E.2d 265 (1986) (decided under former O.C.G.A. § 15-11-39.1).

Timeliness of petition. — Juvenile was entitled to a copy of the delinquency petition filed against the juvenile, and pursuant to former O.C.G.A. § 15-11-39.1 (see now O.C.G.A. §§ 15-11-161, 15-11-282, 15-11-400, 15-11-424, and 15-11-531), the juvenile had a right to receive the petition at least 24 hours prior to the adjudicatory hearing; however, the juvenile waived any objection the juvenile had on the grounds of improper service since the juvenile received the petition right before the hearing as the juvenile did not make an objection or request a continuance on the basis that the juvenile was unprepared. In the Interest of E.S., 262 Ga. App. 768, 586 S.E.2d 691 (2003) (decided under former O.C.G.A. § 15-11-39.1).

Reliance on section by trial court misplaced. — Because former O.C.G.A. § 15-11-96(c) (see now O.C.G.A. §§ 15-11-281 and 15-11-282) related specifically to service in termination-of-parental-rights proceedings, the trial court's reliance on the service provisions of former O.C.G.A. § 15-11-39.1 (see now §§ 15-11-161, 15-11-282, 15-11-400, 15-11-424, and 15-11-531), a statute deal-

ing with service in juvenile court proceedings generally, was misplaced; moreover, for purposes of statutory interpretation, a specific statute prevailed over a general statute, absent any indication of a contrary legislative intent. In the Interest of C.S., 282 Ga. 7, 644 S.E.2d 812 (2007) (decided under former O.C.G.A. § 15-11-39.1).

RESEARCH REFERENCES

Am. Jur. 2d. — 47 Am. Jur. 2d, Juvenile Courts and Delinquent and Dependent Children, §§ 72, 73.

C.J.S. — 43 C.J.S., Infants, § 195 et seq.

U.L.A. — Uniform Juvenile Court Act (U.L.A.) § 23.

15-11-532. Sanctions for failure to obey summons.

(a) In the event a child's parent, guardian, or legal custodian willfully fails to appear personally at a hearing on a petition alleging delinquency after being ordered to so appear or a child's parent, guardian, or legal custodian willfully fails to bring such child to a hearing after being so directed, the court may issue a rule nisi against the person directing the person to appear before the court to show cause why he or she should not be held in contempt of court.

(b) If a parent, guardian, or legal custodian of the alleged delinquent child fails to appear in response to an order to show cause, the court may issue a bench warrant directing that such parent, guardian, or legal custodian be brought before the court without delay to show cause why he or she should not be held in contempt and the court may enter any order authorized by the provisions of Code Section 15-11-31.

(c) If a child 16 years of age or older fails to appear at a hearing on a petition alleging delinquency after being ordered to so appear, the court may issue a bench warrant requiring that such child be brought before the court without delay and the court may enter any order authorized by the provisions of Code Section 15-11-31.

(d) If there is sworn testimony that a child less than 16 years of age willfully refuses to appear at a hearing on a petition alleging delinquency after being ordered to so appear, the court may issue a bench warrant requiring that such child be brought before the court and the court may enter any order authorized by the provisions of Code Section 15-11-31.

History. — Code 1981, § 15-11-532, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242; Ga. L. 2014, p. 780, § 1-41/SB 364.

Cross references. — Amendment to Juvenile Court petition, Uniform Rules for the Juvenile Courts of Georgia, Rule 6.6. Continuance of adjudicatory hearing in Juvenile Court, Uniform Rules for the Juvenile Courts of Georgia, Rule 11.3.

Law reviews. — For article discussing due process in juvenile court procedures in California and Georgia, in light of In re Gault, 387 U.S. 1, 87 S. Ct. 1428, 18 L. Ed. 2d 527 (1967), see 8 Ga. St. B. J. 9 (1971).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 24A-1701, pre-2000 Code Section 15-11-26 and pre-2014 Code Section 15-11-39, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Waiver of notice. — In a juvenile delinquency case, although neither defendants nor their parents were served with copies of the petitions and hearing summonses as required by former O.C.G.A. § 15-11-39 (see now O.C.G.A. §§ 15-11-162, 15-11-281, 15-11-423, 15-11-425, and 15-11-532), the defendants and their parents appeared at the hearings with their attorneys without objecting to lack of notice; thus, the defendants and their parents waived the notice issue. In the Interest of T.K.L., 277 Ga. App. 461, 627 S.E.2d 98 (2006) (decided under former O.C.G.A. § 15-11-39).

Implied waiver of service on behalf of child. — If a child is present at a juvenile court hearing with the child's parent and counsel, the child's parent impliedly may waive service of a summons on a child's behalf by voluntary appearance at a hearing without objection to lack of service. Fulton County Detention Center v. Robertson, 249 Ga. 864, 295 S.E.2d 101 (1982) (decided under former O.C.G.A. § 15-11-26).

Parent's right to appeal delinquency adjudication. — As parties to their child's delinquency action pursuant to former O.C.G.A. § 15-11-39(b) (see now O.C.G.A. §§ 15-11-160, 15-11-423, and 15-11-530), the child's parents had the right to appeal the juvenile court's judgment and to participate in the appellate process. In the Interest of J.L.B., 280 Ga. App. 556, 634 S.E.2d 514 (2006) (decided under former O.C.G.A. § 15-11-39).

Proceeding null when no waiver of rights nor proper service. — If, in a juvenile court proceeding, there was neither waiver of the right of a mother, nor proper service upon the parties and if the hearing is not taken under oath, or waived by any of the parties, the proceeding is an absolute nullity. McBurrough v. Dep't of Human Resources, 150 Ga. App. 130, 257 S.E.2d 35 (1979) (decided under former Code 1933, § 24A-1701).

Part 8

Preadjudication Procedures

15-11-540. Motion for dismissal.

A delinquency petition shall be dismissed by the court upon the motion of the prosecuting attorney setting forth that there is not sufficient evidence to warrant further proceedings.

History. — Code 1981, § 15-11-540, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

Law reviews. — For article, "The Prosecuting Attorney in Georgia's Juvenile Courts," see 13 Ga. St. B. J. 27 (2008).

JUDICIAL DECISIONS

Cited in In the Interest of H. J. C., 331 Ga. App. 506, 771 S.E.2d 184 (2015).

15-11-541. Discovery procedures.

(a) Except as limited by subsection (d) of Code Section 15-11-542, in all cases in which a child is charged with having committed a delinquent act, such child shall, upon filing a motion for discovery with the court and serving a copy of the motion to the prosecuting attorney, have full access to the following for inspection, copying, or photographing:

(1) A copy of the complaint;

(2) A copy of the petition for delinquency;

(3) The names and last known addresses and telephone numbers of each witness to the occurrence which forms the basis of the charge;

(4) A copy of any written statement made by such child or any witness that relates to the testimony of a person whom the prosecuting attorney intends to call as a witness;

(5) A copy of any written statement made by any alleged coparticipant which the prosecuting attorney intends to use at a hearing;

(6) Transcriptions, recordings, and summaries of any oral statement of such child or of any witness, except attorney work product;

(7) Any scientific or other report which is intended to be introduced at the hearing or that pertains to physical evidence which is intended to be introduced;

(8) Photographs and any physical evidence which are intended to be introduced at the hearing; and

(9) Copies of the police incident report and supplemental report, if any, regarding the occurrence which forms the basis of the charge.

(b) The prosecuting attorney shall disclose all evidence, known or that may become known to him or her, favorable to such child and material either to guilt or punishment.

(c) If a child requests disclosure of information pursuant to subsection (a) of this Code section, it shall be the duty of such child to promptly make the following available for inspection, copying, or photographing to the prosecuting attorney:

(1) The names and last known addresses and telephone numbers of each witness to the occurrence which forms the basis of the defense;

(2) Any scientific or other report which is intended to be introduced at the hearing or that pertains to physical evidence which is intended to be introduced;

(3) Photographs and any physical evidence which he or she intends to introduce at the hearing; and

(4) A copy of any written statement made by any witness that relates to the testimony of a person whom the child intends to call as a witness.

(d) A request for discovery or reciprocal discovery shall be complied with promptly and not later than 48 hours prior to the adjudication hearing, except when later compliance is made necessary by the timing of the request. If the request for discovery is made fewer than 48 hours prior to the adjudication hearing, the discovery response shall be produced in a timely manner.

(e) Any material or information furnished to a child pursuant to a discovery request shall remain in the exclusive custody of such child and shall only be used during the pendency of the case and shall be subject to such other terms and conditions as the court may provide.

History. — Code 1981, § 15-11-541, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

Law reviews. — For article, "The Prosecuting Attorney in Georgia's Juvenile Courts," see 13 Ga. St. B. J. 27 (2008).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under pre-2014 Code Section 15-11-75, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

No Brady violation shown. — In a juvenile proceeding wherein the juvenile was adjudicated delinquent as a result of a battery against a schoolmate on a school bus, the trial court did not err in allegedly failing to enforce the discovery provisions of former O.C.G.A. § 15-11-75(a)(7) (see now O.C.G.A. § 15-11-541) and in allegedly failing to remedy a Brady violation because the videotape at issue was not in the custody and control of the State of Georgia; the juvenile could have obtained the evidence had the juvenile simply subpoenaed the video prior to trial and, significantly, the unrebutted evidence of record established that the videotape lacked any exculpatory or evidentiary value since the videotape was blank. In the Interest of E.J., 283 Ga. App. 648, 642 S.E.2d 179 (2007) (decided under former O.C.G.A. § 15-11-75).

15-11-542. Motion to compel discovery; limitations; sanctions.

(a) If a request for discovery is refused, application may be made to the court for a written order granting discovery.

(b) Motions to compel discovery shall certify that a request for discovery was made and was refused.

(c) An order granting discovery shall require reciprocal discovery.

(d) The court may deny, in whole or in part, or otherwise limit or set conditions concerning discovery upon sufficient showing by a person or

entity to whom a request for discovery is made that disclosure of the information would:

(1) Jeopardize the safety of a party, witness, or confidential informant;

(2) Create a substantial threat of physical or economic harm to a witness or other person;

(3) Endanger the existence of physical evidence;

(4) Disclose privileged information; or

(5) Impede the criminal prosecution of a child who is being prosecuted as an adult or the prosecution of an adult charged with an offense arising from the same transaction or occurrence.

History. — Code 1981, § 15-11-542, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

15-11-543. Notice of alibi defense.

(a) Upon written request by a prosecuting attorney stating the time, date, and place at which the alleged delinquent act was committed, a child shall serve upon the prosecuting attorney a written notice of his or her intention to offer a defense of alibi.

(b) A notice to offer an alibi defense shall state the specific place or places at which a child claims to have been at the time of the alleged delinquent act and the names, addresses, dates of birth, and telephone numbers of the witnesses, if known to the child, upon whom such child intends to rely to establish his or her alibi, unless previously supplied.

(c) A request for alibi evidence shall be complied with promptly and not later than 48 hours prior to the adjudication hearing, except when later compliance is made necessary by the timing of the request. If the request for alibi evidence is made fewer than 48 hours prior to the adjudication hearing, the alibi evidence shall be produced in a timely manner.

(d) If a child withdraws his or her notice of intention to rely upon an alibi defense, the notice and intention to rely upon an alibi defense shall not be admissible; provided, however, that a prosecuting attorney may offer any other evidence regarding alibi.

(e) A prosecuting attorney shall serve upon a child a written notice stating the names, addresses, dates of birth, and telephone numbers of the witnesses, if known to the state, upon whom the state intends to rely to rebut such child's evidence of alibi, unless previously supplied.

History. — Code 1981, § 15-11-543, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

RESEARCH REFERENCES

Am. Jur. Proof of Facts. — Alibi Defense, 27 POF2d 431.

15-11-544. Continuing duty to disclose.

If, subsequent to providing a discovery response, the existence of additional evidence is found, it shall be promptly provided to the state or child making the discovery request.

History. — Code 1981, § 15-11-544, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

15-11-545. Court discretion to order disclosure.

Nothing contained in the provisions governing discovery procedure under this part shall prohibit the court from ordering the disclosure of any information that the court deems necessary and appropriate for proper adjudication.

History. — Code 1981, § 15-11-545, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

15-11-546. Failure to comply with discovery request.

If at any time during the course of the proceedings it is brought to the attention of the court that a person or entity has failed to comply with a discovery request, the court may order the person or entity to permit the discovery or inspection of evidence, grant a continuance, or upon a showing of prejudice and bad faith, prohibit the party from introducing in evidence the information not disclosed or presenting the witness not disclosed, or enter such other order as the court deems just under the circumstances. The court may specify the time, place, and manner of making the discovery, inspection, and interview and may prescribe such terms and conditions as are just.

History. — Code 1981, § 15-11-546, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

PART 9

TRANSFERS

15-11-560. Concurrent and original jurisdiction of superior court.

(a) Except as provided in subsection (b) of this Code section, the court shall have concurrent jurisdiction with the superior court over a child who is alleged to have committed a delinquent act which would be considered a crime if tried in a superior court and for which an adult may be punished by loss of life, imprisonment for life without possibility of parole, or confinement for life in a penal institution.

(b) The superior court shall have exclusive original jurisdiction over the trial of any child 13 to 17 years of age who is alleged to have committed any of the following offenses:

(1) Murder;

(2) Murder in the second degree;

(3) Voluntary manslaughter;

(4) Rape;

(5) Aggravated sodomy;

(6) Aggravated child molestation;

(7) Aggravated sexual battery;

(8) Armed robbery if committed with a firearm;

(9) Aggravated assault if committed with a firearm upon a public safety officer as such acts are prohibited under subsection (c) of Code Section 16-5-21; or

(10) Aggravated battery upon a public safety officer as such acts are prohibited under subsection (c) of Code Section 16-5-24.

(c) The granting of bail or pretrial release of a child charged with an offense enumerated in subsection (b) of this Code section shall be governed by the provisions of Code Section 17-6-1.

(d) At any time before indictment, the district attorney may, after investigation and for cause, decline prosecution in the superior court of a child 13 to 17 years of age alleged to have committed an offense specified in subsection (b) of this Code section. Upon declining such prosecution in the superior court, the district attorney shall cause a petition to be filed in the appropriate juvenile court for adjudication within 72 hours if the child is in detention or 30 days if the child is not in detention. Except as provided in paragraph (8) of subsection (b) of

Code Section 15-11-602, any case transferred by the district attorney to the juvenile court pursuant to this subsection shall be subject to the class A designated felony act provisions of Code Section 15-11-602, and the transfer of the case from superior court to juvenile court shall constitute notice to such child that such case is subject to the class A designated felony act provisions of Code Section 15-11-602.

(e)(1) After indictment, the superior court may after investigation transfer to the juvenile court any case involving a child 13 to 17 years of age alleged to have committed any act described in paragraph (3), (5), (6), (7), (9), or (10) of subsection (b) of this Code section. In considering the transfer of such case, the court shall consider the criteria set forth in Code Section 15-11-562. Any such transfer shall be appealable by the State of Georgia pursuant to Code Section 5-7-1. Upon such a transfer by the superior court, jurisdiction shall vest in the juvenile court and jurisdiction of the superior court shall terminate.

(2) Except as provided in paragraph (8) of subsection (b) of Code Section 15-11-602, any case transferred by the superior court to the juvenile court pursuant to this subsection shall be subject to the class A designated felony act provisions of Code Section 15-11-602, and the transfer of the case from superior court to juvenile court shall constitute notice to such child that such case is subject to the class A designated felony act provisions of Code Section 15-11-602.

(f) The superior court may transfer any case involving a child 13 to 17 years of age alleged to have committed any offense enumerated in subsection (b) of this Code section and convicted of a lesser included offense not included in subsection (b) of this Code section to the juvenile court of the county of such child's residence for disposition. Upon such a transfer by the superior court, jurisdiction shall vest in the juvenile court and jurisdiction of the superior court shall terminate.

(g) Within 30 days of any proceeding in which a child 13 to 17 years of age is convicted of certain offenses over which the superior court has original jurisdiction as provided in subsection (b) of this Code section or adjudicated as a delinquent child on the basis of conduct which if committed by an adult would constitute such offenses, the superior court shall provide written notice to the school superintendent or his or her designee of the school in which such child is enrolled or, if the information is known, of the school in which such child plans to be enrolled at a future date. Such notice shall include the specific criminal offense that such child committed. The local school system to which such child is assigned may request further information from the court's file.

(h) As used in this Code section, the term "firearm" means a handgun, rifle, shotgun, or other weapon which will or can be converted to expel a projectile by the action of an explosive or electrical charge.

History. — Code 1981, § 15-11-560, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242; Ga. L. 2014, p. 444, § 2-4/HB 271; Ga. L. 2015, p. 540, § 1-12/HB 361; Ga. L. 2017, p. 500, § 2-2/SB 160.

Editor's notes. — Ga. L. 2017, p. 500, § 1-1/SB 160, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Back the Badge Act of 2017.'"

Law reviews. — For article recommending more consistency in age requirements of laws pertaining to the welfare of minors, see 6 Ga. St. B. J. 189 (1969). For article discussing the uneasy sharing of powers and responsibilities between the superior and juvenile courts in their concurrent jurisdiction over juveniles aged 13 to 18 and suggesting reforms, see 23 Mercer L. Rev. 341 (1972). For article, "An Outline of Juvenile Court Jurisdiction with Focus on Child Custody," see 10 Ga. St. B. J. 275 (1973). For article, "Child Custody—Jurisdiction and Procedure," see 35 Emory L. J. 291 (1986). For article, "The Prosecuting Attorney in Georgia's Juvenile Courts," see 13 Ga. St. B. J. 27 (2008). For article on the 2017 amendment of this Code section, see 34 Ga. St. U.L. Rev. 89 (2017). For annual survey on criminal law, see 69 Mercer L. Rev. 73 (2017).

For comment on Stanton v. Stanton, 213 Ga. 545, 100 S.E.2d 289 (1957), holding that parents cannot by contract restrict the discretion of the court in awarding custody and provision regulating the religious upbringing of the child may be entirely disregarded by the court, see 20 Ga. B. J. 546 (1958). For comment on J.W.A. v. State, 233 Ga. 683, 212 S.E.2d 849 (1975), see 27 Mercer L. Rev. 335 (1975). For comment on Parham v. J.R., 442 U.S. 584 (1979) and Secretary of Pub. Welfare v. Institutionalized Juveniles, 442 U.S. 640 (1979), regarding juvenile commitment to state mental hospitals upon application of parents or guardians, see 29 Emory L. J. 517 (1980).

JUDICIAL DECISIONS

Analysis

General Consideration
Original Jurisdiction
Concurrent Jurisdiction
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Civil Matters

General Consideration

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, §§ 24-2402, 24-2408 and 24A-301, pre-2000 Code Section 15-11-5 and pre-2014 Code Section 15-11-28(b), which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

In light of the reenactment of this chapter, effective January 1, 2014, the reader is advised to consult the annotations following Code Section 15-11-10, which may also be applicable to this Code section.

Additionally, many of the annotations found under this Code section were taken from cases decided prior to the adoption of the 1983 Constitution. See Ga. Const. 1983, Art. VI, Sec. III, Para. I and Ga. Const. 1983, Art. VI, Sec. IV, Para. I.

Constitutionality of application. — Defendant's contention that the provision for charging juveniles as adults was applied in an unconstitutionally discriminatory manner against the defendant and other black males was not established by any evidence. Skidmore v. State, 226 Ga. App. 130, 485 S.E.2d 540 (1997) (decided under former O.C.G.A. § 15-11-28).

Definition of "full age." — One becomes of "full age" on the day preceding the anniversary of one's birth, on the first moment of that day. Edmonds v. State, 154 Ga. App. 650, 269 S.E.2d 512 (1980)

(decided under former Code 1933, § 24A-301).

Child turned 17 on the earliest moment of the day before juvenile's birthday. — Delinquency petition against a juvenile was properly transferred to the state court on the ground that the juvenile was arrested for possessing marijuana on the day before the juvenile's seventeenth birthday; pursuant to former O.C.G.A. §§ 15-11-2 and 15-11-28 (see now O.C.G.A. §§ 15-11-2, 15-11-10, 15-11-11, 15-11-212, and 15-11-560), the juvenile was deemed to have been 17 at the earliest moment of the day before the juvenile's birthday, which was the day the juvenile was arrested. In the Interest of A.P.S., 304 Ga. App. 513, 696 S.E.2d 483 (2010) (decided under former O.C.G.A. § 15-11-28).

Confinement implies juvenile in need of supervision, correction, and training. — Confinement necessarily deprives the parents of their prima facie prerogative of training and supervision, and implies that the juvenile is, within the terms of the juvenile law, one who is in need of supervision beyond the control of the parents and in need of correction and training which the parents cannot provide. Young v. State, 120 Ga. App. 605, 171 S.E.2d 756 (1969) (decided under former Code 1933, § 24A-301).

Defendant claimed under 17 at the time offenses were committed. — Superior court had authority to try the defendant who claimed to be under 17 at the time the offenses were committed since the jury was instructed that the defendant should be found guilty only if the defendant committed the alleged acts after the defendant turned 17. Johnson v. State, 214 Ga. App. 319, 447 S.E.2d 663 (1994) (decided under former O.C.G.A. § 15-11-5).

Exceptions to superior court jurisdiction to try juvenile. — Superior court has jurisdictional power to try a juvenile defendant accused of an offense or offenses for which the maximum criminal penalty is neither life imprisonment nor death. J.J. v. State, 135 Ga. App. 660, 218 S.E.2d 668 (1975) (decided under former Code 1933, § 24A-301).

Waiver of presentment. — Lower appellate court erred when the court affirmed the transfer of the defendant from the superior court to the juvenile court because the court misunderstood O.C.G.A. § 17-7-50.1 when the court concluded that the statute does not permit a detained child to waive presentation within 180 days of the date of detention as the defendant filed an express waiver. State v. Baxter, 300 Ga. 268, 794 S.E.2d 49 (2016).

Habeas corpus petition does not confer superior court jurisdiction. — If a juvenile court order entered pursuant to former Code 1933, § 24A-2301 (see now O.C.G.A. §§ 15-11-211, 15-11-212, 15-11-215) after notice and hearing was still in effect, the superior court had no jurisdiction of the related habeas corpus petition. West v. Cobb County Dep't of Family & Children Servs., 243 Ga. 425, 254 S.E.2d 373 (1979) (decided under former Code 1933, § 24A-301).

Jurisdiction over offenses committed when juvenile 16. — Juvenile court retained jurisdiction over the defendant for an offense the defendant committed when the defendant was 16 years old until the entry of the court's order transferring the case to the superior court. In re D.L., 228 Ga. App. 503, 492 S.E.2d 273 (1997) (decided under former O.C.G.A. § 15-11-5).

Lack of jurisdiction to award permanent custody. — Judgment was reversed because the juvenile court's authority to place a child in the custody of a "willing" and "qualified" relative was not authority to award permanent custody of the child as custody was determined by discerning the best interests of the child and not the willingness or the qualifications of a person to take temporary custody of the child. Ertter v. Dunbar, 292 Ga. 103, 734 S.E.2d 403 (2012) (decided under former O.C.G.A. § 15-11-28).

Juvenile court is court of special and limited jurisdiction, and the court's judgments must show on the judgment's face such facts as are necessary to give the court jurisdiction of the person and subject matter. If the order of a juvenile court fails to recite the jurisdictional facts, the judgment is void. Williams v. Department of Human Resources, 150 Ga. App. 610, 258 S.E.2d 288 (1979) (decided under former Code 1933, § 24A-301).

General Consideration (Cont'd)

Juvenile courts are courts of limited jurisdiction, possessing only those powers specifically conferred upon the courts by statute. In re J.O., 191 Ga. App. 521, 382 S.E.2d 214 (1989), overruled on other grounds, In re T.A.W., 265 Ga. 106, 454 S.E.2d 134 (1995) (decided under former O.C.G.A. § 15-11-5).

Age at time of offense controls. — Although a juvenile no longer qualified as a child under former O.C.G.A. § 15-11-2(2)(A) and (B) (see now O.C.G.A. § 15-11-2) after the seventeenth birthday, it is the juvenile's age at the time of the offense that controls; therefore, because the juvenile was under the age of 17 at the time the act of delinquency was committed, the juvenile court properly exercised exclusive original jurisdiction over the juvenile's case. In the Interest of J.T.D., 242 Ga. App. 243, 529 S.E.2d 377 (2000) (decided under former O.C.G.A. § 15-11-28).

As there was evidence that the defendant molested the victim after turning 17, the juvenile court did not have exclusive jurisdiction over the defendant's sexual molestation case, and the defendant's conviction in a superior court was proper. McGruder v. State, 279 Ga. App. 851, 632 S.E.2d 730 (2006) (decided under former O.C.G.A. § 15-11-28).

Prosecutor's discretion to choose superior rather than juvenile court. — Prosecutor's decision to bring an action in superior rather than juvenile court does not violate the separation of powers doctrine of the state constitution because the initial option to select a forum when concurrent jurisdiction exists belongs to the litigant, and it is neither judicial, legislative, or executive power. Chapman v. State, 259 Ga. 592, 385 S.E.2d 661 (1989) (decided under former O.C.G.A. § 15-11-5).

Jurisdiction over juveniles of county juvenile or superior courts. — Minor who is a resident of this state is subject to the jurisdiction of the juvenile court of the county of the minor's residence, the proceedings in such court being civil rather than criminal in nature. If the crime charged is a felony, such minor is also subject to the criminal jurisdiction of the superior court of the county wherein the felony was committed. Whitman v. State, 96 Ga. App. 730, 101 S.E.2d 621 (1957) (decided under former Code 1933, § 24-2402).

Giving the juvenile court an additional opportunity to take jurisdiction of a case at the earliest possible moment is consistent with the rehabilitative purpose of the Juvenile Code. In re C.R., 263 Ga. 155, 430 S.E.2d 3 (1993) (decided under former O.C.G.A. § 15-11-5).

Original Jurisdiction

Juvenile court has jurisdiction despite indictment for noncapital felony. — Indictment of a juvenile for a noncapital felony in the superior court does not oust the juvenile court of the court's first obtained jurisdiction under the Georgia Constitution and statute law. J.W.A. v. State, 233 Ga. 683, 212 S.E.2d 849 (1975), commented on in 27 Mercer L. Rev. 335 (1975). (decided under former Code 1933, § 24A-301).

Jurisdiction in superior court. — Superior court had exclusive jurisdiction over the trial of two persons, 15 and 16 years of age, who were alleged to have committed armed robbery with a rifle, and there was no error in the court's refusal to transfer the case to juvenile court. Bearden v. State, 241 Ga. App. 842, 528 S.E.2d 275 (2000) (decided under former O.C.G.A. § 15-11-28).

Unaccepted offer to reduce armed robbery to robbery did not obligate the state to reduce the charge because armed robbery was punishable by life imprisonment, it was not a transferable offense, and the trial court was without authority to transfer the armed robbery case from superior court to juvenile court. State v. Harper, 271 Ga. App. 761, 610 S.E.2d 699 (2005) (decided under former O.C.G.A. § 15-11-28).

While an original child molestation charge brought against a juvenile was properly filed in the juvenile court, once the state added an aggravated sexual battery count via an amendment, the superior court gained jurisdiction. Thus, the juvenile's allegations that the state failed to comply with the procedural requirements under former O.C.G.A.

§§ 15-11-49(c)(1) and (e) (see now O.C.G.A. § 15-11-472) should have been raised in the superior court, and had no bearing on the validity of the delinquency petitions or the substantive charges against the juvenile in juvenile court. In the Interest of K.C., 290 Ga. App. 416, 659 S.E.2d 821 (2008) (decided under former O.C.G.A. § 15-11-28).

Since an armed robbery was completed when control of the money in a cash register was ceded to the defendant and the other four robbers, the facts were sufficient to indict the defendant, who was 16 years old, for armed robbery under O.C.G.A. § 16-8-41(a); therefore, the superior court lacked authority under former O.C.G.A. § 15-11-28(b)(2)(B) (see now O.C.G.A. § 15-11-560) to transfer the case to a juvenile court. Gutierrez v. State, 306 Ga. App. 371, 702 S.E.2d 642 (2010) (decided under former O.C.G.A. § 15-11-28).

Trial court did not err in sentencing the defendant to 20 years to serve 10 in prison pursuant to O.C.G.A. § 16-8-41(b) and (d) because, although the defendant was only 13 years old, the defendant participated in an armed robbery; the legislature's determination that the superior court has jurisdiction over minors 13 to 17 years of age who are alleged to have committed certain serious offenses is founded on a rational basis, including the need for secure placement of certain violent juvenile offenders and the safety of students and citizens of Georgia. Cuvas v. State, 306 Ga. App. 679, 703 S.E.2d 116 (2010) (decided under former O.C.G.A. § 15-11-28).

Superior court loss of jurisdiction after 180 days. — Because a grand jury did not indict a juvenile within 180 days after the juvenile's detention as required by former O.C.G.A. § 15-11-28(b)(2)(A)(vii) and no extension of time had been granted as of that date, the grand jury lost authority over the case by operation of law. The trial court's order granting the state's request for an out-of-time extension was void. Nunnally v. State, 311 Ga. App. 558, 716 S.E.2d 608 (2011) (decided under former O.C.G.A. § 15-11-28).

Same 180-day time limitation applied to both former O.C.G.A. §§ 15-11-28(b) and 15-11-30.2 (see now O.C.G.A. §§ 15-11-560, 15-11-561, 15-11-563, and 15-11-566), and that 180 days began to run on the day the juvenile was detained whenever the superior court was exercising jurisdiction under either section; it necessarily follows that anytime the superior court loses jurisdiction which was conferred by former O.C.G.A. § 15-11-28(b) because the state failed to obtain an indictment within 180 days of the date the juvenile was detained, the time will also have expired within which the state could procure an indictment if the superior court were proceeding under former O.C.G.A. § 15-11-30.2 and, thus, a transfer back to the superior court under those circumstances is pointless since an indictment returned by the grand jury would be void. In the Interest of C.B., 313 Ga. App. 778, 723 S.E.2d 21 (2012) (decided under former O.C.G.A. § 15-11-28).

Although O.C.G.A. § 17-7-50.1 allows the state to request one automatic 90-day extension, this extension cannot be granted after the expiration of the 180 days; the legislature intended to set time limitations for the state to act in those situations in which the juvenile is detained and the superior court is exercising jurisdiction over the matter pursuant to either former O.C.G.A. § 15-11-28(b) (see now O.C.G.A. § 15-11-560) or former O.C.G.A. § 15-11-30.2 (see now O.C.G.A. §§ 15-11-561, 15-11-563, and 15-11-566). In the Interest of C.B., 313 Ga. App. 778, 723 S.E.2d 21 (2012) (decided under former O.C.G.A. § 15-11-28).

Exceptions to juvenile court's exclusive original jurisdiction. — Former Code 1933, §§ 24A-301 and 24A-401 (see now O.C.G.A. §§ 15-11-2, 15-11-10, 15-11-11, 15-11-212, and 15-11-560) did not vest exclusive original jurisdiction in the juvenile court over the following class of youthful offenders: persons between the ages of 17 and 21 years, who have committed noncapital felonies, and who were under the supervision of or were on probation to a juvenile court for acts of delinquency committed before reaching the age of 17 years. State v. Crankshaw, 243 Ga. 183, 253 S.E.2d 69 (1979) (decided under former Code 1933, § 24A-301).

Original Jurisdiction (Cont'd)

Superior courts not deprived of constitutional felony jurisdiction. — While the juvenile court jurisdiction embraces all minors under the age of 17, this cannot deprive the superior courts of this state of their constitutional felony jurisdiction. Jones v. State, 119 Ga. App. 105, 166 S.E.2d 617 (1969) (decided under former Code 1933, § 24-2402).

Concurrent Jurisdiction

Constitution authorizes concurrent jurisdictional scheme. — Law provides a concurrent jurisdictional scheme that is authorized by Ga. Const. 1976, Art. VI, Sec. IV, Para. I (see now Ga. Const. 1983, Art. VI, Sec. IV, Para. I). J.W.A. v. State, 233 Ga. 683, 212 S.E.2d 849 (1975), commented on in 27 Mercer L. Rev. 335 (1975) (decided under former Code 1933, § 24A-301).

When the controlling language of Ga. Const. 1976, Art. VI, Sec. IV, Para. I (see now Ga. Const. 1983, Art. VI, Sec. IV, Para. I) was read with the former Juvenile Code, it was apparent that a harmonious and reasonable system of concurrent jurisdiction between the juvenile courts and superior courts had been achieved. J.W.A. v. State, 233 Ga. 683, 212 S.E.2d 849 (1975), commented on in 27 Mercer L. Rev. 335 (1975) (decided under former Code 1933, § 24A-301).

Statutory scheme which contemplates trials of juveniles in felony cases that are punished by death or life imprisonment in either superior or juvenile court does not deprive juveniles of any substantive or procedural due process rights. Chapman v. State, 259 Ga. 592, 385 S.E.2d 661 (1989) (decided under former O.C.G.A. § 15-11-5).

Jurisdiction of capital felonies and custody cases distinguished. — Juvenile court and the superior court have concurrent jurisdiction of delinquent acts which constitute capital felonies, but the juvenile court may consider questions of custody only if such issues are transferred to the juvenile court from the superior court. Quire v. Clayton County Dep't of Family & Children Servs., 242 Ga. 85, 249 S.E.2d 538 (1978) (decided under former Code 1933, § 24-2402).

Concurrent jurisdiction of superior courts to try juvenile defendants. — The 1935 amendment to former Code 1933, § 24-2402 did not so change the Juvenile Court Act of 1915 (former Code 1910, Ch. 24-24) as to deprive the superior courts in a county where juvenile courts had been established of the right to try a defendant indicted for a felony, although the defendant may have been less than 16 years of age at the time of the commission of the alleged crime. Mills v. State, 56 Ga. App. 390, 192 S.E. 730 (1937) (decided under former Code 1933, § 24-2402).

Superior court exceeded the court's authority in transferring the prosecution of two juveniles to juvenile court after the state elected to pursue the cases in superior court as former O.C.G.A. § 15-11-28(b)(1) (see now O.C.G.A. §§ 15-11-10, 15-11-11, and 15-11-560) granted the superior court concurrent jurisdiction over the cases before it, and the court was obligated to retain jurisdiction prior to indictment. State v. Henderson, 281 Ga. 623, 641 S.E.2d 515 (2007) (decided under former O.C.G.A. § 15-11-28).

Because the juvenile court had concurrent jurisdiction over proceedings involving the termination of parental rights in connection with an adoption proceeding, pursuant to O.C.G.A. § 15-11-28(a)(2)(C), the appellate court rejected a parent's argument that the juvenile court improperly referred to surrender of parental rights in certain of the court's orders and that by doing so the court exceeded the court's jurisdiction. In the Interest of A.C., 283 Ga. App. 743, 642 S.E.2d 418 (2007) (decided under former O.C.G.A. § 15-11-5).

In a case in which: (1) an inmate was charged in juvenile court with aggravated assault and aggravated battery pursuant to former O.C.G.A. § 15-11-28(a) (see now O.C.G.A. §§ 15-11-10, 15-11-11, and 15-11-560); (2) after the victim died, the inmate was indicted in a county superior court for felony murder, aggravated assault, and aggravated battery without a transfer hearing being held in the juvenile court as required by former O.C.G.A. § 15-11-30.2; (3) the superior court was exercising the court's jurisdiction pursu-

ant to former § 15-11-28(b)(2)(A); and (4) the juvenile court judge ordered the juvenile complaint against the inmate to be dismissed, the inmate's motion for reconsideration of the denial of the inmate's petition for a writ of habeas corpus was properly denied; any due process error had no effect on the outcome of the inmate's case since the felony murder charge was properly before the superior court and would have been proved by the same evidence. Moreover, the inmate's right against excessive punishment was not violated. Miller v. Martin, No. 1:04-cv-1120-WSD-JFK, 2007 U.S. Dist. LEXIS 61192 (N.D. Ga. Aug. 20, 2007) (decided under former O.C.G.A. § 15-11-28).

Concurrent jurisdiction over capital felonies must necessarily extend to related lesser crimes forming part of the same criminal transaction. Worthy v. State, 253 Ga. 661, 324 S.E.2d 431 (1985) (decided under former O.C.G.A. § 15-11-5).

When the superior court obtained exclusive jurisdiction over the defendant upon allegations of aggravated sodomy and aggravated child molestation against the defendant, evidence of other acts not within the exclusive jurisdiction of the court did not constitute "extraordinary cause" to transfer the case to the juvenile court. Reynolds v. State, 217 Ga. App. 570, 458 S.E.2d 855 (1995) (decided under former O.C.G.A. § 15-11-5).

First court to take jurisdiction will retain jurisdiction, where courts have concurrent jurisdiction. J.G.B. v. State, 136 Ga. App. 75, 220 S.E.2d 79 (1975) (decided under former Code 1933, § 24A-301); Couch v. State, 253 Ga. 764, 325 S.E.2d 366 (1985) (decided under former O.C.G.A. § 15-11-5).

When common-law courts have concurrent jurisdiction, first court taking jurisdiction will retain jurisdiction. Lincoln v. State, 138 Ga. App. 234, 225 S.E.2d 708 (1976) (decided under former Code 1933, § 24A-301).

Whichever court first takes jurisdiction retains jurisdiction subject to the power of the juvenile court to transfer cases to the superior court. Lane v. Jones, 626 F.2d 1296 (5th Cir. 1980), cert. denied, 450 U.S. 928, 101 S. Ct. 1384, 67 L. Ed. 2d 359 (1981).

Original and concurrent jurisdiction in noncapital juvenile cases. — Under the statutory scheme, exclusive original jurisdiction of noncapital juvenile cases is placed in the juvenile courts with the concurrent jurisdiction of the superior courts becoming effective when activated by a proper transfer from the juvenile courts. J.W.A. v. State, 233 Ga. 683, 212 S.E.2d 849 (1975), commented on in 27 Mercer L. Rev. 335 (1975) (decided under former Code 1933, § 24A-301).

While under former O.C.G.A. § 15-11-28(b) (see now O.C.G.A. §§ 15-11-10, 15-11-11 and 15-11-560) an involuntary manslaughter charge could not be initiated in a superior court, which properly transferred the matter to a juvenile court, assuming the requirements of former O.C.G.A. § 15-11-30.2(a)(3) (see now O.C.G.A. §§ 15-11-10, 15-11-11, and 15-11-561) were met, the juvenile court did not err in granting a motion to transfer the case back to the superior court as the authority to do so was specifically given in former § 15-11-30.2. In the Interest of C.G., 291 Ga. App. 743, 662 S.E.2d 823 (2008) (decided under former O.C.G.A. § 15-11-28).

Statutory criminal safeguards with concurrent jurisdiction. — Juvenile court does not have exclusive jurisdiction over delinquent acts for which a child under 17 years old may be punished by loss of life or confinement for life in the penitentiary. Nevertheless, the rules as to confessions of juveniles are the same because law enforcement officers cannot be certain when the officers question a juvenile what kind of case may develop, and the statutory safeguards are applicable to both criminal and juvenile cases. Jackson v. State, 146 Ga. App. 375, 246 S.E.2d 407 (1978) (decided under former Code 1933, § 24A-301).

Filing of juvenile complaint does not vest exclusive jurisdiction in juvenile court. — Although the filing of a juvenile complaint form alone may commence informal proceedings, the filing will not operate to vest exclusive jurisdiction in the juvenile court since the juvenile court would have concurrent jurisdic-

Concurrent Jurisdiction (Cont'd)

tion with the superior court. State v. Whetstone, 264 Ga. 135, 441 S.E.2d 842 (1994) (decided under former O.C.G.A. § 15-11-5).

Jurisdiction, once exercised, becomes exclusive. — Jurisdiction, once exercised, becomes exclusive rather than concurrent, subject to the right of either court to transfer to the other. J.T.M. v. State, 142 Ga. App. 635, 236 S.E.2d 764 (1977) (decided under former Code 1933, § 24A-301).

Transfers

Juvenile subject to criminal adjudication when case transferred to superior court. — Juvenile whose case is properly transferred to the superior court is subject to the criminal sanctions which may be imposed in that court. Thus, an adjudication of guilt of a juvenile in superior court is a criminal adjudication. Carrindine v. Ricketts, 236 Ga. 283, 223 S.E.2d 627 (1976) (decided under former Code 1933, § 24A-301).

Juvenile court not divested of jurisdiction unless transfer proceeding held. — Since jurisdiction is first acquired by the juvenile court, a subsequent superior court indictment does not divest the juvenile court of the juvenile court's jurisdiction unless a proper transfer proceeding has been held. Hartley v. Clack, 239 Ga. 113, 236 S.E.2d 63 (1977) (decided under former Code 1933, § 24A-301).

Transfer to superior court not required if no exclusive jurisdiction. — In a child molestation case, it was not necessary for the juvenile court to transfer the charges to the superior court in order for the superior court to have jurisdiction because the juvenile court's finding that there was no evidence that the defendant was under 17 when the acts were committed amounted to a finding that the juvenile court did not have exclusive jurisdiction. Landrum v. State, 210 Ga. App. 275, 436 S.E.2d 40 (1993) (decided under former O.C.G.A. § 15-11-5).

Transfer from superior court. — State did not show that a superior court abused the court's discretion in reaching a decision that a 14-year-old defendant's aggravated sexual assault case was "extraordinary" and should be heard in juvenile court due to the defendant's social immaturity. State v. Ware, 258 Ga. App. 564, 574 S.E.2d 632 (2002) (decided under former O.C.G.A. § 15-11-28).

Collateral estoppel did not prohibit transfer back to superior court. — Disregarding the question of whether collateral estoppel actually applied in the context of a case, the transfer of an involuntary manslaughter case, under former O.C.G.A. § 15-11-30.4 (see now O.C.G.A. § 15-11-567), against a juvenile to the juvenile court did not collaterally estop a later transfer of the case back to the superior court under former O.C.G.A. § 15-11-30.2 (see now O.C.G.A. §§ 15-11-561, 15-11-563, 15-11-566) because the first transfer was based on the jurisdictional restrictions in former O.C.G.A. § 15-11-28(b) (see now O.C.G.A. § 15-11-560) and at the time of that transfer, the superior court did not consider or rule on the multiple factors in former § 15-11-30.2 on which the second transfer was based. In the Interest of C.G., 291 Ga. App. 743, 662 S.E.2d 823 (2008) (decided under former O.C.G.A. § 15-11-28).

Transfer to superior court was improper. — Juvenile court erred in granting the state's motion to transfer the defendant juvenile's case back to the superior court pursuant to former O.C.G.A. § 15-11-30.2 (see now O.C.G.A. §§ 15-11-561, 15-11-563, and 15-11-566) because the superior court had properly transferred the case to the juvenile court since the defendant was not indicted within 180 days of detention as required by O.C.G.A. § 17-7-50.1; the time limits set forth in O.C.G.A. § 17-7-50.1 were plainly stated and mandatory and clearly express the legislative intent that when a juvenile was detained and the superior court was exercising jurisdiction under either former O.C.G.A. § 15-11-28(b) (see now O.C.G.A. § 15-11-560) or former O.C.G.A. § 15-11-30.2, the state must obtain an indictment within the specified time or the superior court lost the jurisdiction conferred by those provisions. In the Interest of C.B., 313 Ga. App. 778, 723 S.E.2d 21 (2012) (decided under former O.C.G.A. § 15-11-28).

Juvenile court properly dismissed delinquency petition since transfer hearing did not apply. — Juvenile court properly dismissed a delinquency petition without a hearing, which petition alleged that the juvenile committed aggravated sodomy, as former O.C.G.A. § 15-11-30.2(f) (see now O.C.G.A. § 15-11-561) expressly provided that the transfer hearing provisions did not apply to any proceeding within the exclusive jurisdiction of a superior court, pursuant to former O.C.G.A. § 15-11-28(b)(2)(A) (see now O.C.G.A. § 15-11-560), which included aggravated sodomy. In the Interest of N.C., 293 Ga. App. 374, 667 S.E.2d 181 (2008) (decided under former O.C.G.A. § 15-11-28).

Superior court may deny motion for transfer to juvenile court. — When a juvenile defendant is charged with a crime for which the juvenile could be punished by loss of life or confinement for life in a penitentiary, and the superior court first took jurisdiction over such juvenile, the trial court may deny a motion which seeks to transfer jurisdiction to the juvenile court for a hearing to determine defendant's amenability to rehabilitation in the juvenile court system. Brown v. State, 235 Ga. 353, 219 S.E.2d 419 (1975) (decided under former Code 1933, § 24-301).

Denial of transfer after verdict. — Superior court did not abuse the court's discretion in denying the defendant's motion to transfer to the juvenile court for final disposition after the defendant was found guilty of a lesser included offense over which the court lacked exclusive jurisdiction. Reynolds v. State, 266 Ga. 235, 466 S.E.2d 218 (1996) (decided under former O.C.G.A. § 15-11-5).

Juvenile defendant was charged with murder and conspiracy to commit armed robbery; the defendant was convicted in the superior court of the latter crime. As former O.C.G.A. § 15-11-28(b)(2)(A)(i) (see now O.C.G.A. § 15-11-560) have the superior court the discretion over whether to transfer the case to juvenile court for disposition or to retain jurisdiction for sentencing, the court properly sentenced the defendant as an adult to 10 years' imprisonment, the maximum sentence. Furthermore, the sentence did not violate the defendant's due process or equal protection rights as the defendant had no constitutional right to be treated as a juvenile. Pascarella v. State, 294 Ga. App. 414, 669 S.E.2d 216 (2008), cert. denied, No. S09C0426, 2009 Ga. LEXIS 188 (Ga. 2009) (decided under former O.C.G.A. § 15-11-28).

Transfer provisions did not apply in armed robbery case. — Juvenile court erred in finding that a juvenile case involving armed robbery with a firearm was subject to the transfer provisions delineated in former O.C.G.A. § 15-11-30.2 (see now O.C.G.A. §§ 15-11-561, 15-11-563, and 15-11-566) because, under subsection (f) of that section, the transfer provisions did not apply in cases involving armed robbery with a firearm, which were subject to the exclusive jurisdiction of the superior court under former O.C.G.A. § 15-11-28(b)(2)(A)(vii) (see now O.C.G.A. §§ 15-11-10, 15-11-11, and 15-11-560). However, because the juvenile court had concurrent jurisdiction to enter the judgment due to the state's filing a petition in the juvenile court, the state had no right to appeal from the judgment pursuant to O.C.G.A. § 5-7-1(A)(5). In re D. L., 302 Ga. App. 234, 690 S.E.2d 522 (2010) (decided under former O.C.G.A. § 15-11-28).

No transfer hearing required when concurrent jurisdiction. — Transfer hearing is not required when the offense is one over which the juvenile and superior courts have concurrent jurisdiction and the superior court first takes jurisdiction. Lewis v. State, 246 Ga. 101, 268 S.E.2d 915 (1980) (decided under former Code 1933, § 24A-301).

If either the juvenile court or the superior court properly could have exercised jurisdiction, no petition alleging delinquency was ever filed in the juvenile court, and the superior court first took jurisdiction through indictment, jurisdiction properly vested in the superior court and no transfer hearing pursuant to former O.C.G.A. § 15-11-39 (see now O.C.G.A. § 15-11-561, 15-11-563, and 15-11-566) was required. Taylor v. State, 194 Ga. App. 871, 392 S.E.2d 57 (1990) (decided under former O.C.G.A. § 15-11-5).

No transfer hearing if juvenile court did not exercise jurisdiction. — When

Transfers (Cont'd)

the defendant, then a juvenile, was charged with armed robbery in 1993, both the juvenile and superior courts could exercise jurisdiction over the defendant under former O.C.G.A. § 15-11-5(b) (see now O.C.G.A. § 15-11-10, 15-11-11, and 15-11-560). Since there was no evidence that the juvenile court had ever exercised jurisdiction, no transfer hearing was required for the superior court to exercise jurisdiction. Styles v. State, 291 Ga. App. 255, 661 S.E.2d 641 (2008) (decided under former O.C.G.A. § 15-11-28).

No error to transfer case to juvenile court for investigation. — If a change of circumstances is alleged subsequent to a decree of divorce awarding custody of a minor child to one of the two parties, it is not error for the judge of the superior court to transfer the investigation thus called for to the juvenile court for investigation. Slate v. Coggins, 181 Ga. 17, 181 S.E. 145 (1935) (decided under former Code 1933, § 24-2402).

Decree of divorce in a case in which the custody of a minor child is involved, awarding the child to one party or the other, is final, except when a change of circumstances is shown; when such change is alleged, it is not error for the judge of the superior court to transfer the investigation thus called for to the juvenile court for investigation. Fortson v. Fortson, 197 Ga. 699, 30 S.E.2d 165 (1944) (decided under former Code 1933, § 24-2402).

Since there was evidence that the living conditions and conduct of children, subjects of a custody award in a divorce decree, were much worse than as shown upon a former trial, the judge did not err in transferring the investigation to the juvenile court for trial and determination. Fortson v. Fortson, 197 Ga. 699, 30 S.E.2d 165 (1944) (decided under former Code 1933, § 24-2402).

Superior court may deny motion for transfer to juvenile court. — When a juvenile defendant is charged with a crime for which the juvenile could be punished by loss of life or confinement for life in a penitentiary, and the superior court first took jurisdiction over such juvenile, the trial court may deny a motion which seeks to transfer jurisdiction to the juvenile court for a hearing to determine defendant's amenability to rehabilitation in the juvenile court system. Brown v. State, 235 Ga. 353, 219 S.E.2d 419 (1975) (decided under former Code 1933, § 24-301).

Denial of transfer after verdict. — Superior court did not abuse the court's discretion in denying the defendant's motion to transfer to the juvenile court for final disposition after the defendant was found guilty of a lesser included offense over which the court lacked exclusive jurisdiction. Reynolds v. State, 266 Ga. 235, 466 S.E.2d 218 (1996) (decided under former O.C.G.A. § 15-11-5).

Juvenile defendant was charged with murder and conspiracy to commit armed robbery; the defendant was convicted in the superior court of the latter crime. As former O.C.G.A. § 15-11-28(b)(2)(A)(i) (see now O.C.G.A. § 15-11-560) have the superior court the discretion over whether to transfer the case to juvenile court for disposition or to retain jurisdiction for sentencing, the court properly sentenced the defendant as an adult to 10 years' imprisonment, the maximum sentence. Furthermore, the sentence did not violate the defendant's due process or equal protection rights as the defendant had no constitutional right to be treated as a juvenile. Pascarella v. State, 294 Ga. App. 414, 669 S.E.2d 216 (2008), cert. denied, No. S09C0426, 2009 Ga. LEXIS 188 (Ga. 2009) (decided under former O.C.G.A. § 15-11-28).

Specific Offenses

Violation of probation. — Under former O.C.G.A. §§ 15-11-2(2)(B) and 15-11-28(a)(1)(F) (see now O.C.G.A. §§ 15-11-2, 15-11-10, and 15-11-11), a juvenile court lacked jurisdiction over the defendant, who was over 17 when a probation violation occurred; thus, the defendant's commitment under former O.C.G.A. § 15-11-63 (see now O.C.G.A. §§ 15-11-2, and 15-11-602) was void. The state had not filed a petition for probation revocation, but only for a violation of probation. In the Interest of T.F., 314 Ga. App. 606, 724 S.E.2d 892 (2012) (decided under former O.C.G.A. § 15-11-28).

Child molestation. — Because child molestation was not an offense listed in former O.C.G.A. § 15-11-28(b)(2)(A) (see now O.C.G.A. § 15-11-560), the trial court erred in using former O.C.G.A. § 15-11-63(a)(2)(D) (see now O.C.G.A. § 15-11-2) to classify the offense as a designated felony act when the court sentenced a juvenile. In the Interest of M. S., 277 Ga. App. 706, 627 S.E.2d 422 (2006) (decided under former O.C.G.A. § 15-11-28).

Because the indictment alleged and the evidence at trial authorized a finding that the defendant committed aggravated child molestation on some date after July 1, 2006, the trial court could not be divested of jurisdiction pursuant to O.C.G.A. § 15-11-28(b)(2)(B) (see now O.C.G.A. §§ 15-11-2 and 15-11-560). Therefore, the trial court correctly denied the motion to transfer the case to juvenile court. Adams v. State, 288 Ga. 695, 707 S.E.2d 359 (2011) (decided under former O.C.G.A. § 15-11-28).

Armed robbery. — Denial of the defendant's motion to transfer under former O.C.G.A. § 15-11-28(b)(2)(B) (see now O.C.G.A. § 15-11-560) was upheld; the armed robbery was completed at the time the cash register was opened and the flap resting on the top of the cash raised, thereby ceding control of the money to the perpetrators and satisfying the requisite slightest change of location necessary for the armed robbery. Gutierrez v. State, 290 Ga. 643, 723 S.E.2d 658 (2012) (decided under former O.C.G.A. § 15-11-28).

Aggravated assault as part of same transaction as armed robbery. — Superior court had jurisdiction to convict a juvenile defendant of aggravated assault since that offense was part of the same transaction as the greater offense of armed robbery over which the court had jurisdiction. Leeks v. State, 226 Ga. App. 227, 483 S.E.2d 691 (1997) (decided under former O.C.G.A. § 15-11-5); Houston v. State, 237 Ga. App. 878, 517 S.E.2d 357 (1999) (decided under former O.C.G.A. § 15-11-5).

Noncapital juvenile cases. — Juvenile courts have exclusive original jurisdiction over noncapital juvenile cases. State v. Crankshaw, 243 Ga. 183, 253 S.E.2d 69 (1979) (decided under former Code 1933, § 24A-301).

Speeding is an act designated a crime by O.C.G.A. § 40-6-1 (now subsection (a) of § 40-6-1) and, therefore, a speeding charge against a 16-year-old juvenile could be tried only in juvenile court. In re L.J.V., 180 Ga. App. 400, 349 S.E.2d 37 (1986) (decided under former O.C.G.A. § 15-11-5).

Acts constituting armed robbery with a firearm. — Trial court did not err in denying the defendant's motion to dismiss an indictment on the ground that the prosecution was barred by double jeopardy since the defendant previously had been adjudicated delinquent in juvenile court for the acts alleged in the indictment because the juvenile court's adjudication of the defendant as delinquent was void, and jeopardy did not attach during the juvenile court proceeding; because the superior court had exclusive jurisdiction under former O.C.G.A. § 15-11-28(b)(2)(vii) (see now O.C.G.A. § 15-11-560) since the defendant was alleged in the juvenile court to have committed acts constituting armed robbery with a firearm, the juvenile court lacked jurisdiction to adjudicate the defendant delinquent for acts constituting armed robbery, notwithstanding the state's initial participation in the juvenile proceedings or the defendant's admission of the allegations in that court. Bonner v. State, 302 Ga. App. 57, 690 S.E.2d 216 (2010) (decided under former O.C.G.A. § 15-11-528).

Armed robbery case could not be transferred to juvenile court. — Trial counsel did not provide ineffective assistance of counsel by failing to petition to have the defendant's case transferred to juvenile court as the defendant was 16 when the crime was committed; as the case involved an armed robbery, the case could not be transferred to juvenile court. Hall v. State, 274 Ga. App. 842, 619 S.E.2d 344 (2005) (decided under former O.C.G.A. § 15-11-28).

Juveniles charged with capital offenses. — Superior courts and juvenile courts have concurrent jurisdiction over juveniles charged with capital offenses, and whichever court first takes jurisdiction over the matter in question may re-

Specific Offenses (Cont'd)

tain jurisdiction, subject to the right of the juvenile court to transfer the case to the superior court. Relyea v. State, 236 Ga. 299, 223 S.E.2d 638 (1976) (decided under former Code 1933, § 24A-301); Hartley v. Clack, 239 Ga. 113, 236 S.E.2d 63 (1977) (decided under former Code 1933, § 24A-301).

Armed robbery case could not be transferred to juvenile court. — Trial counsel did not provide ineffective assistance of counsel by failing to petition to have the defendant's case transferred to juvenile court as the defendant was 16 when the crime was committed; as the case involved an armed robbery, the case could not be transferred to juvenile court. Hall v. State, 274 Ga. App. 842, 619 S.E.2d 344 (2005) (decided under former O.C.G.A. § 15-11-28).

Civil Matters

Matters relating to custody and visitation. — Superior and juvenile courts exercise concurrent jurisdiction over all matters relating to custody and visitation, except in those situations in which exclusive jurisdiction is vested in the superior court. In re D.N.M., 193 Ga. App. 812, 389 S.E.2d 336, cert. denied, 193 Ga. App. 910, 389 S.E.2d 336 (1989) (decided under former O.C.G.A. § 15-11-5).

Matters relating to adoption. — Fact that the natural mother of a child, who sought the termination of the natural father's parental rights, contemplated a possible adoption did not automatically render the proceeding one "in connection with" an adoption. In re D.L.N., 234 Ga. App. 123, 506 S.E.2d 403 (1998) (decided under former O.C.G.A. § 15-11-5).

Trial court did not err in concluding that the court had jurisdiction over an adoption and termination of parental rights proceeding as statutory law granted the trial court jurisdiction over adoption proceedings and other proceedings that were not granted exclusively to the juvenile courts; since the juvenile courts were granted exclusive jurisdiction over deprivation proceedings, those types of matters were to be heard by the juvenile courts, but the trial court had the authority to hear adoption and other matters, such as the adoptive parents' adoption petition filed to adopt the biological parents' minor child. Snyder v. Carter, 276 Ga. App. 426, 623 S.E.2d 241 (2005) (decided under former O.C.G.A. § 15-11-28).

Court lacked jurisdiction in adoption. — Georgia superior court erred by ordering a father's parental rights terminated and granting a couple's petition for adoption because the court lacked jurisdiction in the case since adoption had already commenced via a deprivation proceeding in a Georgia juvenile court; thus, the juvenile court should have presided over the termination proceeding. Alizota v. Stanfield, 319 Ga. App. 256, 734 S.E.2d 497 (2012) (decided under former O.C.G.A. § 15-11-28).

Concurrent jurisdiction over custody issues. — Subsection (c) of the former section was applicable only in those cases when the juvenile court and the superior court have concurrent jurisdiction and custody was the subject of controversy. Brooks v. Leyva, 147 Ga. App. 616, 249 S.E.2d 628 (1978) (decided under former Code 1933, § 24A-301).

In custody litigation, the juvenile court errs in hearing a case in which there is no order transferring the case from the superior court. Further, if an order of a juvenile court fails to recite the jurisdictional facts (i.e., such facts as are necessary to give it jurisdiction of the person and subject matter), the judgment is void. Lockhart v. Stancil, 258 Ga. 634, 373 S.E.2d 355 (1988) (decided under former O.C.G.A. § 15-11-5); In re W.W.W., 213 Ga. App. 732, 445 S.E.2d 832 (1994) (decided under former O.C.G.A. § 15-11-5), but see In re M.C.J., 271 Ga. 546, 523 S.E.2d 6 (1999) (decided under former O.C.G.A. § 15-11-5).

Juvenile court cannot modify superior court's custody determination. — Juvenile court, without proper transfer from superior court, is without authority to modify custody provisions of the final divorce decree in regard to the mother's visitation privileges. In re M.M.A., 174 Ga. App. 898, 332 S.E.2d 39 (1985) (decided under former O.C.G.A. § 15-11-5); Owen v. Owen, 183 Ga. App. 472, 359 S.E.2d 229 (1987) (decided under former O.C.G.A. § 15-11-5).

Jurisdiction in temporary custody matters. — Trial court erred when the court prohibited the Department of Human Resources from placing children with their mother or allowing the children to visit with the mother unsupervised and by staying any decision of a juvenile court that would be contrary to the court's order because, although the trial court and the juvenile court had concurrent jurisdiction over the temporary custody of the children, the juvenile court in the contemporaneous deprivation proceeding had the authority to order the disposition best suited to the needs of the children, including the transfer of temporary legal custody, and the juvenile court had already exercised the court's jurisdiction over the temporary custody of the children in light of the deprivation action; although the trial court expressed the court's concern about the department's decision to recommend that the children be physically placed with the mother, the juvenile court was competent to oversee the department, and there was no good reason for the trial court to conclude that the trial court was in a better position to address the department's placement decisions than the juvenile court. Long v. Long, 303 Ga. App. 215, 692 S.E.2d 811 (2010) (decided under former O.C.G.A. § 15-11-28).

No transfer of custody issue. — Juvenile court lacked jurisdiction since there was no order of the superior court transferring the issue of custody so as to meet the requirements of subsection (c) of former O.C.G.A. § 15-11-5 (see now O.C.G.A. § 15-11-212). In re C.F., 199 Ga. App. 858, 406 S.E.2d 279 (1991) (decided under former O.C.G.A. § 15-11-5).

Cited in In the Interest of D. H., 332 Ga. App. 274, 772 S.E.2d 70 (2015); State v. Cash, 302 Ga. 587, 807 S.E.2d 405 (2017).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, § 24A-301, pre-2000 Code Section 15-11-5 and pre-2014 Code Section 15-11-28(b), which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Scope of exclusive jurisdiction. — Juvenile court has exclusive jurisdiction over the following classes of traffic offenders: (1) offenders under the age of 16 who have committed a "juvenile traffic offense"; (2) offenders under the age of 17 who have committed any traffic offense; and (3) offenders under the age of 21 who have committed any traffic offense, and "who committed an act of delinquency before reaching the age of 17 years, and who have been placed under the supervision of the court or on probation to the court." 1985 Op. Att'y Gen. No. U85-18 (decided under former O.C.G.A. § 15-11-5).

Magistrate court judge may issue arrest warrants for juveniles charged with an offense enumerated in subparagraph (b)(2)(A) of former O.C.G.A. § 15-11-5 (see now O.C.G.A. § 15-11-560). 1998 Op. Att'y Gen. No. U98-9 (decided under former O.C.G.A. § 15-11-5).

Court records concerning juveniles prosecuted as adults. — Court records concerning juveniles should be afforded the same treatment as any other superior court records when the court retains exclusive jurisdiction over a case involving a juvenile 13 to 17 years of age who is accused of committing specified felonies. 1995 Op. Att'y Gen. No. U95-8 (decided under former O.C.G.A., § 15-11-5).

RESEARCH REFERENCES

Am. Jur. 2d. — 42 Am. Jur. 2d, Infants, § 27 et seq. 47 Am. Jur. 2d, Juvenile Courts and Delinquent and Dependent Children, § 39 et seq.

C.J.S. — 21 C.J.S., Courts, §§ 11 et seq., 252 et seq. 43 C.J.S., Infants, §§ 180 et seq., 287 et seq. 67A C.J.S., Parent and Child, §§ 99 et seq., 122 et seq.

U.L.A. — Uniform Juvenile Court Act (U.L.A.) §§ 3, 4.

ALR. — Constitutionality of statute as affected by discrimination in punishments for same offense based upon age, color, or sex, 3 A.L.R. 1614; 8 A.L.R. 854.

Jurisdiction of another court over child as affected by assumption of jurisdiction by juvenile court, 11 A.L.R. 147; 78 A.L.R. 317; 146 A.L.R. 1153.

What constitutes delinquency or incorrigibility, justifying commitment of infant, 45 A.L.R. 1533; 85 A.L.R. 1099.

Power of juvenile court to exercise continuing jurisdiction over infant delinquent or offender, 76 A.L.R. 657.

Enlistment or mustering of minors into military service, 137 A.L.R. 1467; 147 A.L.R. 1311; 148 A.L.R. 1388; 149 A.L.R. 1457; 150 A.L.R. 1420; 151 A.L.R. 1455; 151 A.L.R. 1456; 152 A.L.R. 1452; 153 A.L.R. 1420; 153 A.L.R. 1422; 154 A.L.R. 1448; 155 A.L.R. 1451; 155 A.L.R. 1452; 156 A.L.R. 1450; 157 A.L.R. 1449; 157 A.L.R. 1450; 158 A.L.R. 1450.

Marriage as affecting jurisdiction of juvenile court over delinquent or dependent, 14 A.L.R.2d 336.

Homicide by juvenile as within jurisdiction of a juvenile court, 48 A.L.R.2d 663.

Age of child at time of alleged offense or delinquency, or at time of legal proceedings, as criterion of jurisdiction of juvenile court, 89 A.L.R.2d 506.

Parent's involuntary confinement, for failure to care for child as result thereof, as evincing neglect, unfitness, or the like in dependency or divestiture proceeding, 79 A.L.R.3d 417.

Authority of court to order juvenile delinquent incarcerated in adult penal institution, 95 A.L.R.3d 568.

Applicability of double jeopardy to juvenile court proceedings, 5 A.L.R.4th 234.

Jurisdiction or power of juvenile court to order parent of juvenile to make restitution for juvenile's offense, 66 A.L.R.4th 985.

15-11-561. Waiver of juvenile court jurisdiction and transfer to superior court.

(a) After a petition alleging delinquency has been filed but before the adjudication hearing, on its own motion or on a motion by a prosecuting attorney, the court may convene a hearing to determine whether to transfer the offense to the appropriate superior court for criminal trial if the court determines that:

(1) There is probable cause to believe that a child committed the alleged offense;

(2) Such child is not committable to an institution for the developmentally disabled or mentally ill; and

(3) The petition alleges that such child:

(A) Was at least 15 years of age at the time of the commission of the offense and committed an act which would be a felony if committed by an adult; or

(B) Was 13 or 14 years of age and either committed an act for which the punishment is loss of life or confinement for life in a penal institution or committed aggravated battery resulting in serious bodily injury to an alleged victim who is not a public safety officer as such term is defined in Code Section 16-5-19.

(b) At least three days prior to the scheduled transfer hearing, written notice shall be given to a child and his or her parent, guardian, or legal custodian. The notice shall contain a statement that the purpose of the hearing is to determine whether such child is to be tried in the juvenile court or transferred for trial as an adult in superior court. A child may request and the court shall grant a continuance to prepare for the transfer hearing.

(c) After consideration of a probation report, risk assessment, and any other evidence the court deems relevant, including any evidence offered by a child, the court may determine that because of the seriousness of the offense or such child's prior record, the welfare of the community requires that criminal proceedings against such child be instituted. The court shall also consider the criteria listed in subsection (a) of Code Section 15-11-562.

(d) No child, either before or after reaching 17 years of age, shall be prosecuted in superior court for an offense committed before the child turned 17, unless the case has been transferred as provided in this part. In addition, no child shall be subject to criminal prosecution at any time for an offense arising out of a criminal transaction for which the juvenile court retained jurisdiction in its transfer order.

History. — Code 1981, § 15-11-561, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242; Ga. L. 2015, p. 540, § 1-13/HB 361; Ga. L. 2017, p. 500, § 2-3/SB 160.

Cross references. — Duties of the clerk of the Juvenile Court, Uniform Rules for the Juvenile Courts of Georgia, Rule 2.2(a).

Editor's notes. — Ga. L. 2017, p. 500, § 1-1/SB 160, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Back the Badge Act of 2017.'"

Law reviews. — For article suggesting upward adjustment to age 15 of the age of criminal responsibility and creation of a rebuttable presumption of adult accountability for youths aged 15 to 18, see 23 Mercer L. Rev. 341 (1972). For article, "An Outline of Juvenile Court Jurisdiction with Focus on Child Custody," see 10 Ga. St. B. J. 275 (1973). For article, "The Prosecuting Attorney in Georgia's Juvenile Courts," see 13 Ga. St. B. J. 27 (2008). For article on the 2017 amendment of this Code section, see 34 Ga. St. U.L. Rev. 89 (2017). For annual survey on criminal law, see 69 Mercer L. Rev. 73 (2017).

For comment on J.W.A. v. State, 233 Ga. 683, 212 S.E.2d 849 (1975), see 27 Mercer L. Rev. 335 (1975).

JUDICIAL DECISIONS

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General Consideration

Editor's notes. — In light of the similarity of the statutory provisions, annotations taken from cases decided prior to the adoption of the 1983 Constitution are included in the annotations for this Code section. See Ga. Const. 1983, Art. VI, Sec. III, Para. I and Ga. Const. 1983, Art. VI, Sec. IV, Para. I.

In light of the similarity of the statutory provisions, decisions under former Code 1933, § 24A-2501, pre-2000 Code Section 15-11-39, and pre-2014 Code Section 15-11-30.2, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Reasonable and not unconstitutional. — Former statute was reasonable and did not violate substantive due process under U.S. Const., amend. 14. In re J.J.S., 246 Ga. 617, 272 S.E.2d 294 (1980) (decided under former Code 1933, § 24A-2501).

Attempt to transfer after adjudicatory hearing is unconstitutional. — Attempt to transfer a juvenile to superior court after an adjudicatory hearing violated subsection (a) of former O.C.G.A. § 15-11-39 (see now O.C.G.A. § 15-11-561) and placed the juvenile in jeopardy twice in violation of the Fifth and Fourteenth Amendments. In re T.E.D., 169 Ga. App. 401, 312 S.E.2d 864 (1984) (decided under former O.C.G.A. § 15-11-39).

Legislature may restrict or qualify right to treatment as juvenile. — Treatment as a juvenile is not an inherent right but one granted by the state legislature, and the legislature may restrict or qualify that right as the legislature sees fit as long as no arbitrary or discriminatory classification is involved. Lane v. Jones, 244 Ga. 17, 257 S.E.2d 525 (1979) (decided under former Code 1933, § 24A-2501); In re J.J.S., 246 Ga. 617, 272 S.E.2d 294 (1980) (decided under former Code 1933, § 24A-2501).

Jurisdiction linked to petition. — Former statute indicated that assumption of jurisdiction by a juvenile court was linked to an authorized petition. Hartley v. Clack, 239 Ga. 113, 236 S.E.2d 63 (1977) (decided under former Code 1933, § 24A-2501).

Subsection (c) of former statute (see now O.C.G.A. § 15-11-566) did not enlarge scope of former statute beyond that specified in former subsection (a) (see now O.C.G.A. § 15-11-561). Williams v. State, 238 Ga. 298, 232 S.E.2d 535 (1977) (decided under former Code 1933, § 24A-2501).

Juvenile has no absolute right to waive juvenile court jurisdiction. — Absent compliance with former O.C.G.A. § 15-11-39 (see now O.C.G.A. § 15-11-561), there can be no such transfer of a juvenile to another court for treatment as an adult criminal defendant. In re D.B., 187 Ga. App. 3, 369 S.E.2d 498 (1988) (decided under former O.C.G.A. § 15-11-39).

Continuance request on the part of the state. — Order granting the state's request for a continuance in a juvenile proceeding was vacated because the juvenile court did not consider whether the state's proffered reason of needing more time to determine whether to file a removal petition constituted good cause given the juvenile's objection to the continuance and the expressed desire to admit to the charged crimes. In the Interest of A. H., 332 Ga. App. 590, 774 S.E.2d 163 (2015).

Collateral estoppel did not prohibit transfer back to superior court. — Disregarding the question of whether collateral estoppel actually applied in the context of a case, the transfer of an involuntary manslaughter case, under former O.C.G.A. § 15-11-30.4 (see now O.C.G.A. § 15-11-567), against a juvenile to the juvenile court did not collaterally estop a later transfer of the case back to the superior court under former O.C.G.A. § 15-11-30.2 (see now O.C.G.A. § 15-11-561) because the first transfer was based on the jurisdictional restrictions in former O.C.G.A. § 15-11-28(b) (see now O.C.G.A. § 15-11-560) and at the time of that transfer, the superior court did not consider or rule on the multiple factors in former § 15-11-30.2 on which the second transfer was based. In the Interest of C.G., 291 Ga. App. 743, 662

S.E.2d 823 (2008) (decided under former O.C.G.A. § 15-11-30.2).

Juvenile not intellectually disabled or mentally ill. — Juvenile court did not err in finding that the defendant juvenile was not committable to an institution for the developmentally disabled or mentally ill based on a doctor's evaluation which found that the defendant did not meet the criteria for intellectual disability or mental illness after having conducted an evaluation of the defendant. In the Interest of K. S., 348 Ga. App. 440, 823 S.E.2d 536 (2019).

Transfer Hearings

Juvenile court divests itself of jurisdiction. — Requirements of former statute constitute the only means by which the former juvenile court can divest itself of jurisdiction under the former Juvenile Code. J.W.A. v. State, 233 Ga. 683, 212 S.E.2d 849 (1975); C.L.A. v. State, 137 Ga. App. 511, 224 S.E.2d 491 (1976); K.G.W. v. State, 140 Ga. App. 571, 231 S.E.2d 421 (1976), cert. dismissed, 238 Ga. 599, 234 S.E.2d 535 (1977) (decided under former Code 1933, § 24A-2501).

Former Code section was designed to require a hearing on the issue of transfer if the juvenile court was considering relinquishing jurisdiction. J.J. v. State, 135 Ga. App. 660, 218 S.E.2d 668 (1975) (decided under former Code 1933, § 24A-2501).

Former Code section was designed to define procedures and requirements governing transfer hearings. J.J. v. State, 135 Ga. App. 660, 218 S.E.2d 668 (1975) (decided under former Code 1933, § 24A-2501).

Juvenile court properly dismissed a delinquency petition without a hearing. — Juvenile's due process rights were not violated when the court dismissed, without a hearing, a delinquency petition which alleged that the juvenile committed aggravated sodomy as former O.C.G.A. § 15-11-30.2(f) (see now O.C.G.A. § 15-11-561) expressly provided that the transfer hearing provisions did not apply to any proceeding within the exclusive jurisdiction of a superior court, pursuant to former O.C.G.A. § 15-11-28(b)(2)(A) (see now O.C.G.A. § 15-11-560), which included aggravated sodomy. In the Interest of N.C., 293 Ga. App. 374, 667 S.E.2d 181 (2008) (decided under former O.C.G.A. § 15-11-30.2).

Broad discretion of a juvenile court. — Juvenile court was vested with broad discretion in determining whether reasonable grounds exist for transferring a delinquency petition to the appropriate court for prosecution of a crime or public offense. In re K.L.L., 204 Ga. App. 320, 419 S.E.2d 312, cert. denied, 204 Ga. App. 922, 419 S.E.2d 312 (1992) (decided under former O.C.G.A. § 15-11-39).

Juvenile appellant challenged the juvenile court's transfer order contending that the evidence was insufficient to show: (a) that the juvenile committed the offenses alleged against the juvenile as the evidence was based on hearsay testimony from an investigator; (b) that the juvenile was not committable to an institution for the mentally retarded or mentally ill, and (c) that the juvenile was not amenable to treatment in the juvenile system. However, the hearsay evidence was admissible at the instant transfer hearing and the juvenile court did not abuse the court's discretion in finding that the appellant was not committable upon the mental health report of its psychologist. In the Interest of D.W.B., 259 Ga. App. 662, 577 S.E.2d 819 (2003) (decided under former O.C.G.A. § 15-11-30.2).

Juvenile court did not abuse the juvenile court's discretion in transferring a former juvenile's case to the superior court because, as a 28-year-old adult, the juvenile court no longer had jurisdiction over the matter, and the court could not be assured that the former juvenile would receive the appropriate treatment for the necessary length of time in the juvenile system; furthermore, the transfer under former O.C.G.A. § 15-11-30.2(a)(3) (see now O.C.G.A. § 15-11-561) did not violate substantive due process under the Fourteenth Amendment. In the Interest of R.T., 278 Ga. App. 225, 628 S.E.2d 662 (2006) (decided under former O.C.G.A. § 15-11-30.2).

Transfer decision by court is critical determination. — Decision by a juvenile court to surrender the court's jurisdiction is a critical determination

Transfer Hearings (Cont'd)

affecting the tenor of the juvenile's subsequent treatment in the courts and therefore must measure up to the essentials of due process and fair treatment. C.L.A. v. State, 137 Ga. App. 511, 224 S.E.2d 491 (1976) (decided under former Code 1933, § 24A-2501).

Transfer hearings must meet essentials of due process and fair treatment. — Transfer hearings are critically important proceedings affecting important rights of the juvenile. While the hearing need not conform with all of the requirements of a criminal trial or even of the usual administrative hearing, the hearing must measure up to the essentials of due process and fair treatment. R.S. v. State, 156 Ga. App. 460, 274 S.E.2d 810 (1980) (decided under former Code 1933, § 24A-2501).

Pre-custody statements without Miranda warnings were admissible in considering transfer. — Statements of the defendant, a juvenile, were admissible and were properly considered in deciding to transfer the defendant's case to the superior court for prosecution even though the statements were made prior to the defendant receiving Miranda warnings since the defendant voluntarily spoke to the police and was not in custody or otherwise detained at the time the statements were made; even if the statements were inadmissible, other evidence, including statements by others which incriminated the defendant, was admissible and supported the transfer determination. In the Interest of B.Y., 257 Ga. App. 253, 570 S.E.2d 689 (2002) (decided under former O.C.G.A. § 15-11-30.2).

Transfer hearing not similar to committal court or arraignment. — Transfer hearings are not to be treated as similar to a committal court nor as an arraignment under the criminal procedure provisions. C.L.A. v. State, 137 Ga. App. 511, 224 S.E.2d 491 (1976) (decided under former Code 1933, § 24A-2501).

No transfer hearing without petition filed in juvenile court. — If no petition alleging delinquency was filed in juvenile court, no transfer hearing in that court was required. Williams v. State, 238 Ga. 298, 232 S.E.2d 535 (1977) (decided under former Code 1933, § 24A-2501); Longshore v. State, 239 Ga. 437, 238 S.E.2d 22 (1977) (decided under former Code 1933, § 24A-2501).

Evaluation of mental condition. — In an action against a juvenile charging the juvenile with the delinquent act of murder, when nonexpert witnesses did not provide any basis for their opinion that the juvenile was not mentally ill, the juvenile court abused the court's discretion in transferring the case to the superior court without sufficient evaluation of the juvenile's mental health. In re R.A.J., 214 Ga. App. 162, 447 S.E.2d 158 (1994), overruled on other grounds, In re R.B., 264 Ga. 602, 448 S.E.2d 690 (1994) (decided under former O.C.G.A. § 15-11-39).

To the extent that consideration of the need for future psychiatric treatment might have influenced the determination of whether a transfer to the superior court would be in the juvenile's best interest, the relevant consideration was whether the juvenile required treatment now or in the future and whether such treatment was available through the superior court or exclusively through the juvenile court, not whether the juvenile was suffering from a delusional compulsion at the time of the prior act. In re E.J.P., 236 Ga. App. 221, 511 S.E.2d 290 (1999) (decided under former O.C.G.A. § 15-11-39).

Jeopardy did not attach so as to preclude further proceedings against a juvenile for crimes the juvenile admitted at a transfer hearing since the juvenile court accepted the admission for the limited purpose of determining whether the case should be transferred to superior court. In re M.E.J., 260 Ga. 805, 401 S.E.2d 254 (1991) (decided under former O.C.G.A. § 15-11-39).

Transfer decision usually final and reviewable. — Transfer decision is determinative as to the juvenile aspect of the case and thus may be final and reviewable. Fulton County Dep't of Family & Children Servs. v. Perkins, 244 Ga. 237, 259 S.E.2d 427 (1978) (decided under former Code 1933, § 24A-2501).

Transfer to superior court was proper since the transfer was based in part on the severity of murder and rob-

bery offenses and in part on the involvement in the crimes at issue of adult offenders, along with the defendant's role as the apparent instigator of the offenses. Waller v. State, 261 Ga. 830, 412 S.E.2d 531 (1992) (decided under former O.C.G.A. § 15-11-39).

Transfer from the juvenile court to the superior court was proper since evidence was presented as to each transfer requirement and the juvenile court ruled that such evidence justified transfer. In re E.J.P., 236 Ga. App. 221, 511 S.E.2d 290 (1999) (decided under former O.C.G.A. § 15-11-39).

Since there were reasonable grounds to determine that the juvenile was a party to the crime of armed robbery and was not likely to be amenable to treatment in the juvenile system, the juvenile court did not abuse the court's discretion in transferring the case to the superior court. In re J.L.B., 240 Ga. App. 655, 523 S.E.2d 645 (1999) (decided under former O.C.G.A. § 15-11-39).

Since both the state's and the juvenile's expert witnesses testified that the juvenile did not require involuntary commitment, there was ample evidence supporting the juvenile court's determination that the juvenile did not meet the criteria for involuntary commitment; therefore, the transfer from juvenile court to superior court for criminal prosecution was proper. In the Interest of A.B.S., 242 Ga. App. 277, 529 S.E.2d 415 (2000) (decided under former O.C.G.A. § 15-11-30.2).

Juvenile court did not abuse the court's discretion in transferring the cases of two juvenile defendants to the superior court for prosecution on charges of aggravated assault and attempted armed robbery. The record supported a finding that the transfer criteria of former O.C.G.A. § 15-11-30.2(a)(3) and (a)(4) were met since the juvenile court found that the interests of the defendants and the community mandated transfer in light of the seriousness of the conduct, which included one victim being hit repeatedly with a baseball bat, since there was evidence that the defendants committed the alleged delinquent acts when both were older than 15, and since neither of the defendants were committable to an institution for the mentally infirm. In the Interest of B.Y., 257 Ga. App. 253, 570 S.E.2d 689 (2002) (decided under former O.C.G.A. § 15-11-30.2).

Juvenile court did not abuse the juvenile court's discretion in transferring the prosecution of two juveniles to the superior court, pursuant to former O.C.G.A. § 15-11-30.2, based on the nature and severity of the crimes alleged, the community interest, the age of both juveniles charged, and the fact that insufficient time existed to provide both with adequate treatment in the juvenile system. In the Interest of S.K.K., 280 Ga. App. 877, 635 S.E.2d 263 (2006) (decided under former O.C.G.A. § 15-11-30.2).

In a case in which: (1) an inmate was charged in juvenile court with aggravated assault and aggravated battery pursuant to former O.C.G.A. § 15-11-28(a) (see now O.C.G.A. § 15-11-10); (2) after the victim died, the inmate was indicted in a county superior court for felony murder, aggravated assault, and aggravated battery without a transfer hearing being held in the juvenile court as required by former O.C.G.A. § 15-11-30.2 (see now O.C.G.A. § 15-11-561); (3) the superior court was exercising the superior court's jurisdiction pursuant to former § 15-11-28(b)(2)(A) (see now O.C.G.A. § 15-11-560); and (4) the juvenile court judge ordered the juvenile complaint against the inmate to be dismissed, the inmate's motion for reconsideration of the denial of the inmate's petition for a writ of habeas corpus was properly denied; any due process error had no effect on the outcome of the inmate's case since the felony murder charge was properly before the superior court and would have been proved by the same evidence. Moreover, the inmate's right against excessive punishment was not violated. Miller v. Martin, No. 1:04-cv-1120-WSD-JFK, 2007 U.S. Dist. LEXIS 61192 (N.D. Ga. Aug. 20, 2007) (decided under former O.C.G.A. § 15-11-30.2).

Juvenile defendant's long history of offenses, the failure of attempts at rehabilitation through the juvenile system, and the fact that, as the defendant was 17, alternative rehabilitation programs in the juvenile system would be difficult, if not

Transfer Hearings (Cont'd)

impossible, to find, supported the juvenile court's determination that the interests of the defendant and the community would be better served by transferring the case to superior court. In the Interest of T. F., 295 Ga. App. 417, 671 S.E.2d 887 (2008) (decided under former O.C.G.A. § 15-11-30.2).

Because a juvenile had an extensive history of delinquency offenses, because past rehabilitative attempts had proven fruitless, and because several of the pending charges against the juvenile involved seriously violent behavior, transfer of the juvenile's case to a superior court pursuant to former O.C.G.A. § 15-11-30.2 (see now O.C.G.A. § 15-11-561) was proper. In re R.W., 299 Ga. App. 505, 683 S.E.2d 80 (2009) (decided under former O.C.G.A. § 15-11-30.2).

State met the requirements of former O.C.G.A. § 15-11-30.2(a)(3)(C) (see now O.C.G.A. § 15-11-561) for transferring a criminal case against a juvenile to the superior court based on the nature and severity of the offenses, the involvement of adult offenders, and the juvenile's role as an instigator in a gang shooting that injured five innocent bystanders. In re D. C., 303 Ga. App. 395, 693 S.E.2d 596 (2010) (decided under former O.C.G.A. § 15-11-30.2).

Transfer to superior court was improper. — Juvenile court erred in granting the state's motion to transfer the defendant juvenile's case back to the superior court pursuant to former O.C.G.A. § 15-11-30.2 because the superior court had properly transferred the case to the juvenile court since the defendant was not indicted within 180 days of detention as required by O.C.G.A. § 17-7-50.1; the time limits set forth in O.C.G.A. § 17-7-50.1 are plainly stated and mandatory and clearly express the legislative intent that when a juvenile is detained and the superior court is exercising jurisdiction under either former O.C.G.A. § 15-11-28(b) (see now O.C.G.A. § 15-11-560) or former O.C.G.A. § 15-11-30.2 (see now O.C.G.A. § 15-11-561), the state must obtain an indictment within the specified time or the superior court loses the jurisdiction conferred by those provisions. In the Interest of C.B., 313 Ga. App. 778, 723 S.E.2d 21 (2012) (decided under former O.C.G.A. § 15-11-30.2).

Hearsay testimony from an investigator as evidence of the "reasonable grounds to believe" that the juvenile had committed murder was admissible at a transfer hearing. In re R.B., 264 Ga. 602, 448 S.E.2d 690 (1994) (decided under former O.C.G.A. § 15-11-39).

Affirmative defense not issue in transfer hearings. — Consideration of an affirmative defense goes to the merits of a case and is not an issue during the juvenile court's consideration of whether to transfer a case. In re E.J.P., 236 Ga. App. 221, 511 S.E.2d 290 (1999) (decided under former O.C.G.A. § 15-11-39).

Community interests met. — Juvenile court did not abuse the court's discretion in transferring a murder case since the juvenile court found that because of the heinous nature of the offense the community's interest in treating the appellant as an adult outweighed the appellant's interest in being treated as a juvenile. In re C.R., 264 Ga. 215, 442 S.E.2d 737 (1994), cert. denied, 513 U.S. 947, 115 S. Ct. 357, 130 L. Ed. 2d 311 (1994) (decided under former O.C.G.A. § 15-11-39).

Severity of crime. — Juvenile court may, but is not required to, consider the severity of the crimes committed when determining the weight to be given the community's interest in trying a juvenile in superior court. In re J.N.B., 263 Ga. 600, 436 S.E.2d 202 (1993) (decided under former O.C.G.A. § 15-11-39).

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Burden of meeting stated requirements of former statute was upon state. C.L.A. v. State, 137 Ga. App. 511, 224 S.E.2d 491 (1976) (decided under former Code 1933, § 24A-2501).

State is required to carry the burden of showing that the child is not amenable to treatment or rehabilitation. In re E.W., 256 Ga. 681, 353 S.E.2d 175 (1987) (decided under former O.C.G.A. § 15-11-39); In re S.P., 189 Ga. App. 829, 377 S.E.2d 911 (1989) (decided under former O.C.G.A. § 15-11-39).

State has the burden of showing that the child is not amenable to treatment or rehabilitation in order to make a finding that the interests of the child and the community require placing the child under legal restraint and making the transfer to another court. In re K.S.J., 258 Ga. 52, 365 S.E.2d 820 (1988) (decided under former O.C.G.A. § 15-11-39).

Determination that a child is not committable to an institution for the mentally retarded or mentally ill must be supported by competent evidence, and the burden of presenting such evidence lies with the state. In re K.S.J., 258 Ga. 52, 365 S.E.2d 820 (1988) (decided under former O.C.G.A. § 15-11-39); In re S.P., 189 Ga. App. 829, 377 S.E.2d 911 (1989) (decided under former O.C.G.A. § 15-11-39).

Showing necessary. — As to offenses charged, all that is required is to show court had reasonable grounds to believe child committed delinquent acts and is not amenable to treatment or rehabilitation through available facilities. D.L.M. v. State, 160 Ga. App. 424, 287 S.E.2d 355 (1981) (decided under former O.C.G.A. § 15-11-39).

Nature of crime alone was not sufficient to satisfy requirements of former section. C.L.A. v. State, 137 Ga. App. 511, 224 S.E.2d 491 (1976) (decided under former Code 1933, § 24A-2501).

Same transfer requirements for capital and noncapital offenses. — If a petition alleging delinquency has been filed in the juvenile court, the same requirements must be met in order for the juvenile court to transfer a case involving a capital offense to the superior court as a case involving a noncapital offense. J.G.B. v. State, 136 Ga. App. 75, 220 S.E.2d 79 (1975) (decided under former Code 1933, § 24A-2501).

Time limitation. — Same 180-day time limitation applies to both former O.C.G.A. §§ 15-11-28(b) and 15-11-30.2 (see now O.C.G.A. §§ 15-11-560 and 15-11-561), and that 180 days begins to run on the day the juvenile is detained whenever the superior court is exercising jurisdiction under either section; it necessarily follows that anytime the superior court loses jurisdiction which was conferred by former O.C.G.A. § 15-11-28(b) because the state failed to obtain an indictment within 180 days of the date the juvenile was detained, the time will also have expired within which the state could procure an indictment if the superior court were proceeding under former O.C.G.A. § 15-11-30.2 (see now O.C.G.A. § 15-11-561) and, thus, a transfer back to the superior court under those circumstances is pointless since an indictment returned by the grand jury would be void. In the Interest of C.B., 313 Ga. App. 778, 723 S.E.2d 21 (2012) (decided under former O.C.G.A. § 15-11-30.2).

Although O.C.G.A. § 17-7-50.1 allows the state to request one automatic 90-day extension, this extension cannot be granted after the expiration of the 180 days; the legislature intended to set time limitations for the state to act in those situations in which the juvenile is detained and the superior court is exercising jurisdiction over the matter pursuant to either former O.C.G.A. § 15-11-28(b) (see now O.C.G.A. § 15-11-560) or former O.C.G.A. § 15-11-30.2 (see now O.C.G.A. § 15-11-561). In the Interest of C.B., 313 Ga. App. 778, 723 S.E.2d 21 (2012) (decided under former O.C.G.A. § 15-11-30.2).

Waiver of presentment. — Lower appellate court erred when the court affirmed the transfer of the defendant from the superior court to the juvenile court because the court misunderstood O.C.G.A. § 17-7-50.1 when the court concluded that the statute did not permit a detained child to waive presentation within 180 days of the date of detention as the defendant filed an express waiver. State v. Baxter, 300 Ga. 268, 794 S.E.2d 49 (2016).

Notice of transfer required to meet due process. — Giving the accused juvenile notice of an intention to transfer the case out of the juvenile court's jurisdiction was instituted in order to satisfy the essentials of due process and fair treatment. Reed v. State, 125 Ga. App. 568, 188 S.E.2d 392 (1972) (decided under former Code 1933, § 24A-2501).

Notice when hearing to make transfer decision. — Former statute specifically required that in cases in which the juvenile court decided to yield to concur-

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rent jurisdiction over the juvenile to another court that the accused child and the child's parents must be notified that the hearing was for this specific "purpose." Reed v. State, 125 Ga. App. 568, 188 S.E.2d 392 (1972) (decided under former Code 1933, § 24A-2501).

Juvenile facing transfer of case has right to evidentiary hearing. — When former Code 1933, §§ 24A-2501 and 24A-2002 are read together, a juvenile faced with the possible transfer of the juvenile's case from juvenile court to "the appropriate court having jurisdiction of the offense" has the right to an evidentiary hearing at which the juvenile must be given the opportunity to introduce evidence and otherwise be heard in the juvenile's own behalf and to cross-examine adverse witnesses. R.S. v. State, 156 Ga. App. 460, 274 S.E.2d 810 (1980) (decided under former Code 1933, § 24A-2501).

Adequate notice of hearing. — There was no harmful error in the failure of the notice to state the purpose of the hearing since, even if the initial knowledge of the purpose of the hearing was insufficient to establish proper notice to the juvenile, the mother, and the attorney, a five-day postponement of the portion of the hearing dealing with whether to process the juvenile as an adult provided adequate notice. In re B.A.H., 198 Ga. App. 713, 402 S.E.2d 791 (1991) (decided under former O.C.G.A. § 15-11-39).

Failure to object to motion for transfer. — Since a juvenile admitted receipt of the state's written motion for transfer and interposed no objection, but proceeded on the merits of the motion, any valid objection to the sufficiency of the motion was waived. In re L.R., 219 Ga. App. 755, 466 S.E.2d 653 (1996) (decided under former O.C.G.A. § 15-11-39); Rivers v. State, 229 Ga. App. 12, 493 S.E.2d 2 (1997) (decided under former O.C.G.A. § 15-11-39).

Juvenile court must conduct evidentiary hearing. — Juvenile court has discretion to determine whether there are "reasonable grounds" and to order the transfer only after conducting an evidentiary hearing. The juvenile court may not simply waive juvenile jurisdiction and deny an appellant the right to an evidentiary hearing on the "reasonable grounds" for the transfer. R.S. v. State, 156 Ga. App. 460, 274 S.E.2d 810 (1980) (decided under former Code 1933 § 24A-2501).

Standard under former O.C.G.A. § 15-11-30.2(a)(3) (see now O.C.G.A. § 15-11-561) required only that the court find that there are "reasonable grounds to believe" that the child committed the act alleged, not "proof beyond a reasonable doubt" was is required for a conviction. Moreover, the court's determination, if based on evidence, will not be controlled by the appellate court. In re K.S.J., 258 Ga. 52, 365 S.E.2d 820 (1988) (decided under former O.C.G.A. § 15-11-39); In re R.J., 191 Ga. App. 712, 382 S.E.2d 671 (1989) (decided under former O.C.G.A. § 15-11-39); In the Interest of J.B.H., 241 Ga. App. 736, 527 S.E.2d 18 (1999) (decided under former O.C.G.A. § 15-11-39).

Right to effective assistance of counsel and inspection of records. — While former Code 1933, §§ 24A-3501 and 24A-3502 (see now O.C.G.A. §§ 15-11-704 and 15-11-708) both require the consent of the court to inspect a juvenile's records and files, a juvenile's right to effective assistance of counsel limits the court's discretion to withhold such consent from counsel representing the juvenile in a "critically important" transfer proceeding. R.S. v. State, 156 Ga. App. 460, 274 S.E.2d 810 (1980) (decided under former Code 1933, § 24A-2501).

Error to limit access of defense counsel to juvenile's records. — Since the court granted defense counsel's motion pursuant to former Code 1933, §§ 24A-3501 and 24A-3502 (see now O.C.G.A. §§ 15-11-704 and 15-11-708) but limited access to only those files and records of appellant which would be "used against" the juvenile concerned at the transfer hearing, to the extent that the appellant's counsel was not granted access to files and records of the appellant which were considered by the juvenile court in transferring jurisdiction, the ruling was erroneous. R.S. v. State, 156 Ga. App. 460, 274 S.E.2d 810 (1980) (decided under for-

mer Code 1933, § 24A-2501).

Right to view all records and files. — Not only are a juvenile and the juvenile's counsel entitled to know what information in the juvenile's records and files the court relied upon in the juvenile court's adverse decision to transfer jurisdiction, but the juvenile and counsel are also entitled to view those records and files considered but not relied upon by the juvenile judge. R.S. v. State, 156 Ga. App. 460, 274 S.E.2d 810 (1980) (decided under former Code 1933, § 24A-2501).

Examine material before decision on waiver. — If a decision on waiver is "critically important" it is equally of "critical importance" that the material submitted to the judge be subjected to examination, criticism, and refutation within reasonable limits having regard to the theory of the former Juvenile Code. R.S. v. State, 156 Ga. App. 460, 274 S.E.2d 810 (1980) (decided under former Code 1933, § 24A-2501).

Effect of denial of access to certain materials. — While allowing counsel access to materials which will be "used against" a juvenile serves the defensive purpose of ensuring that any adverse material considered by the court will be subject to attack and refutation, it denies counsel the opportunity to examine, for the purpose of discovering and ensuring that proper and due consideration is given thereto, any material to be considered by the court which might serve as a "reasonable ground" for retaining, rather than transferring, jurisdiction. R.S. v. State, 156 Ga. App. 460, 274 S.E.2d 810 (1980) (decided under former Code 1933, § 24A-2501).

Testimony of nonexpert on child's mental condition allowed. — Child's mental condition may be established by the testimony of a nonexpert witness, such as a court services worker, provided the witness gives sufficient facts and circumstances to establish the basis for the witness's opinion. L.K.F. v. State, 173 Ga. App. 770, 328 S.E.2d 394 (1985) (decided under former O.C.G.A. § 15-11-39).

Limits on judge's discretionary determination. — Discretion conferred by paragraph (a)(3) of the former statute cannot be based on undisclosed personal information known to the trial jurist and in disregard of the evidence in the record. C.L.A. v. State, 137 Ga. App. 511, 224 S.E.2d 491 (1976) (decided under former Code 1933, § 24A-2501).

Transfer based on layperson's testimony of juvenile's mental condition. — Juvenile court did not abuse the juvenile court's discretion in ordering a transfer merely because the court relied on layperson rather than expert testimony as to the juvenile's mental condition and amenability to treatment. D.T.R. v. State, 174 Ga. App. 695, 331 S.E.2d 70 (1985) (decided under former O.C.G.A. § 15-11-39).

Community's interest in treating juvenile as adult strongest. — Juvenile court's finding that, because of the heinous nature of the offenses (aggravated assaults leaving one victim with permanent brain damage), the community's interest in treating the juvenile as an adult outweighed the juvenile's interest in remaining in the juvenile system and was sufficient to warrant transfer. State v. M.M., 259 Ga. 637, 386 S.E.2d 35 (1989) (decided under former O.C.G.A. § 15-11-39).

Juvenile court did not err in the juvenile court's reliance upon the heinous nature of the charged offense in determining that the community's interest in treating a juvenile defendant as an adult outweighed the defendant's interest in being treated in the juvenile system. In re J.H., 260 Ga. 447, 396 S.E.2d 885 (1990) (decided under former O.C.G.A. § 15-11-39).

Transfer judgment must be based on evidentiary hearing. — Since the juvenile court judge refused to conduct a hearing at which evidence bearing upon the "transfer criteria" listed in the former section could be introduced, the judgment of the juvenile court transferring jurisdiction must be reversed and the case remanded for an appropriate evidentiary hearing. R.S. v. State, 156 Ga. App. 460, 274 S.E.2d 810 (1980) (decided under former Code 1933, § 24A-2501).

Hearsay evidence admissible at transfer hearings. — Given that the right of confrontation is a trial right, there is no reason to apply that right to a transfer hearing involving a juvenile.

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Therefore, hearsay evidence is admissible at such hearings. In the Interest of T. F., 295 Ga. App. 417, 671 S.E.2d 887 (2008) (decided under former O.C.G.A. § 15-11-30.2).

Conduct cannot waive statutory requirements if juvenile involved. — If the juvenile had a full hearing and the child and the child's parents were present and participated in the hearing, normally such conduct, including the acknowledgment of service by the attorney of the initial petition under the former Juvenile Code, might constitute a waiver of the three-day notice requirement of paragraph (a)(2) of the former section, but if a juvenile was involved then such conduct will not operate as an estoppel or legal waiver of statutory requirements. Reed v. State, 125 Ga. App. 568, 188 S.E.2d 392 (1972) (decided under former Code 1933, § 24A-2501).

Juvenile court judge may disallow filing of petitions to avoid jurisdiction. — Former Code 1933, § 24A-1601 (see now O.C.G.A. § 15-11-420) was not unconstitutional on the ground that the statute violated due process of law by permitting the juvenile court to allow the case to be transferred to the superior court by merely disallowing the filing of a petition such as would vest jurisdiction in the juvenile court, without the benefit of any transfer hearing. Lane v. Jones, 244 Ga. 17, 257 S.E.2d 525 (1979) (decided under former Code 1933, § 24A-2501).

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Testimony regarding rehabilitation possibilities or absence needed. — Since the former section required the state to show "reasonable grounds," there must be testimony as to the rehabilitation possibilities or absence thereof in the record to meet the due process requirements granted juveniles by the Georgia Supreme Court. C.L.A. v. State, 137 Ga. App. 511, 224 S.E.2d 491 (1976) (decided under former Code 1933, § 24A-2501); In re T.J.M., 142 Ga. App. 415, 236 S.E.2d 152 (1977) (decided under former Code 1933, § 24A-2501).

Reflection of nonamenability in transfer order. — Transfer order must realistically reflect why a child is not amenable to treatment as a juvenile. Such a decision must be based on evidence and the basis for the decision must be clearly reflected in the transfer order itself. C.L.A. v. State, 137 Ga. App. 511, 224 S.E.2d 491 (1976) (decided under former Code 1933, § 24A-2501).

Overly general transfer order. — Transfer order which did not reflect why the child was not amenable to treatment as a juvenile was too general to sustain and was remanded for specific findings and conclusions balancing the amenability factor against the interests of the community in processing the child as an adult. In re H.W.A., 182 Ga. App. 188, 354 S.E.2d 884 (1987) (decided under former O.C.G.A. § 15-11-39); In re M.M., 190 Ga. App. 795, 380 S.E.2d 75 (1989) (decided under former O.C.G.A. § 15-11-39).

Number and severity of offenses, standing alone, cannot establish absence of amenability to rehabilitation. J.G.B. v. State, 136 Ga. App. 75, 220 S.E.2d 79 (1975) (decided under former Code 1933, § 24A-2501); C.L.A. v. State, 137 Ga. App. 511, 224 S.E.2d 491 (1976) (decided under former Code 1933, § 24A-2501).

Child's amenability or nonamenability to treatment is but one factor to consider in determining the child's and the community's interests. Both the state and the juvenile are free to put forth any evidence they desire relating to the child's and the community's interest. State v. M.M., 259 Ga. 637, 386 S.E.2d 35 (1989) (decided under former O.C.G.A. § 15-11-39).

Juvenile court finding that it would be in the best interest of a juvenile defendant and of the public for the defendant to be dealt with as an adult based on the severity of the offense does not abuse the juvenile court's discretion in ordering the transfer of that case to superior court based on these findings. In re A.G., 265 Ga. 481, 458 S.E.2d 343 (1995) (decided under former O.C.G.A. § 15-11-39).

Whether a juvenile is amenable to treatment in the juvenile system is but one factor for the juvenile court to con-

sider when making this determination. In re J.B., 234 Ga. App. 775, 507 S.E.2d 874 (1998) (decided under former O.C.G.A. § 15-11-39).

Amenability factor may be outweighed by interests of community. — Juvenile court may transfer to the superior court a juvenile who is amenable to treatment if the juvenile court finds that the amenability factor is outweighed by the interests of the community in treating the child as an adult. In re K.S.J., 258 Ga. 52, 365 S.E.2d 820 (1988) (decided under former O.C.G.A. § 15-11-39).

Findings required. — Order of the juvenile court transferring a juvenile's case to superior court so that the juvenile could be treated as an adult offender was required to be remanded because, even though the record contained facts on which the court's conclusion could be based, the record failed to show the required balancing of the interests of the juvenile and the community. In the Interest of B.J.W., 247 Ga. App. 437, 543 S.E.2d 811 (2000) (decided under former O.C.G.A. § 15-11-30.2).

It is not necessary to prove the juvenile's amenability to treatment in the juvenile system if the interest of the community mandates a transfer. In re S.B.B., 234 Ga. App. 778, 507 S.E.2d 879 (1998) (decided under former O.C.G.A. § 15-11-39).

Former statute subsumed a juvenile's amenability to treatment within the concept, "the interest of the child," and authorized a juvenile court to transfer to the superior court a juvenile who was amenable to treatment if the juvenile court found that the amenability factor was outweighed by the interest of the community in processing the child as an adult. In re J.J.S., 246 Ga. 617, 272 S.E.2d 294 (1980) (decided under Code 1933, § 24A-2501).

After a juvenile stole two pounds of cocaine from a sheriff's property room, and had a history of delinquency adjudications, there was no abuse of discretion in the juvenile court's transfer of the defendant to superior court for prosecution of this offense. In re T.M., 195 Ga. App. 342, 393 S.E.2d 448 (1990) (decided under former O.C.G.A. § 15-11-39).

Even though the juvenile defendant was amenable to treatment, considering the severity of the crimes involved and the involvement of an adult offender, the juvenile court had sufficient basis for finding that the community's interest mandated the defendant's adjudication to the adult system. In re C.B.D., 215 Ga. App. 655, 449 S.E.2d 1 (1994) (decided under former O.C.G.A. § 15-11-39).

State is not required to show, nor is the transfer order required to explain, why the child is not amenable to treatment when that factor is not relied on as the basis for the transfer. In re J.D., 264 Ga. 836, 452 S.E.2d 105 (1995) (decided under former O.C.G.A. § 15-11-39).

State did not err in failing to determine whether the juvenile was amenable to treatment since the court found it would be in the best interest of the public for the juvenile to be dealt with as an adult based on the severity of the offense and the community's interest in public prosecution. In re J.D., 264 Ga. 836, 452 S.E.2d 105 (1995) (decided under former O.C.G.A. § 15-11-39).

Because the record showed that the juvenile had a five-year history of treatment in the juvenile system resulting from criminal offenses escalating in severity, including carrying a concealed weapon and carrying a pistol without a license, the juvenile court correctly balanced the juvenile's interest in treatment in the juvenile court system against the community's interest in treating the juvenile as an adult. In re A.P.W., 265 Ga. 8, 453 S.E.2d 457 (1995) (decided under former O.C.G.A. § 15-11-39); In the Interest of D.W.B., 259 Ga. App. 662, 577 S.E.2d 819 (2003) (decided under former O.C.G.A. § 15-11-30.2).

Burden of proving nonamenability. — If the state seeks a transfer based at least in part on the child's nonamenability to treatment in the juvenile system, the state has the burden of proving the child is not amenable to treatment. But if the state argues that, even though a juvenile is amenable to treatment, the community's interest in transferring the juvenile to the adult system outweighs the juvenile's interest in treatment in the juvenile system, the state does not have to prove the

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child's nonamenability to treatment. State v. M.M., 259 Ga. 637, 386 S.E.2d 35 (1989) (decided under former O.C.G.A. § 15-11-39).

If the juvenile court relies in part on the child's nonamenability to treatment in ordering the transfer, the transfer order, in performing the balancing test required by subparagraph (a)(3)(C) of former O.C.G.A. § 15-11-39 (see now O.C.G.A. § 15-11-561), must reflect why the child is not amenable to treatment, but if the state argues that, even though a juvenile is amenable to treatment, the community's interest in transferring the juvenile to the adult system outweighs the juvenile's interest in treatment in the juvenile system, and the court orders a transfer, the order does not have to reflect why the juvenile is not amenable to treatment. Instead, the order must balance the child's interest in treatment in the juvenile system, including but not limited to the child's amenability to treatment, against the community's interest in treating the child as an adult. State v. M.M., 259 Ga. 637, 386 S.E.2d 35 (1989) (decided under former O.C.G.A. § 15-11-39); In re J.B., 234 Ga. App. 775, 507 S.E.2d 874 (1998) (decided under former O.C.G.A. § 15-11-39).

State did not meet the state's burden to prove the defendant's nonamenability to juvenile treatment since the defendant had no prior record and had no previous experience in the juvenile system and, although the state and the court's order relied on nonamenability, no proof of such was offered. In re E.M., 198 Ga. App. 729, 402 S.E.2d 751, cert. denied, 198 Ga. App. 898, 402 S.E.2d 751 (1991) (decided under former O.C.G.A. § 15-11-39).

Availability of treatment facilities. — Since there were reasonable grounds for the court to conclude that the juvenile could not receive appropriate treatment in a secure facility for the necessary length of time in the juvenile system, the juvenile court did not abuse the court's discretion in ordering a transfer. In re J.N.B., 263 Ga. 600, 436 S.E.2d 202 (1993) (decided under former O.C.G.A. § 15-11-39).

Evidence supported juvenile court's judgment ordering transfer of charges for trial in superior court. — Evidence that a juvenile had a history of using marijuana and other drugs, had used marijuana before the juvenile lost control of a car the juvenile was driving while racing another car on a public street, causing a multi-car collision in which two people died, had challenged other people to automobile races on several occasions, violated the conditions of the juvenile's driver's license by driving with a non-family member, and used drugs after the accident was sufficient to support the juvenile court's judgment that the juvenile was not amenable to treatment in the juvenile court system and that the interests of the juvenile and the community would be better served if the case was transferred to the superior court. In the Interest of W.N.J., 268 Ga. App. 637, 602 S.E.2d 173 (2004) (decided under former O.C.G.A. § 15-11-30.2).

Juvenile court's order transferring the defendant, a juvenile, for trial as an adult pursuant to former O.C.G.A. § 15-11-30.2(a) (see now O.C.G.A. § 15-11-561) was proper because the juvenile court properly found that based on the testimony of the defendant's probation officer, the defendant was not amenable to treatment in that court; the juvenile court also properly found that the community's interest in transfer outweighed the defendant's interest in remaining in juvenile court based on the escalating nature of the defendant's alleged criminal conduct, all while on probation. Evidence that the defendant was intelligent and performed well in school did not demand a finding or necessarily demonstrate that the defendant was amenable to the treatment solutions offered in the juvenile court. In re D.M., 299 Ga. App. 586, 683 S.E.2d 130 (2009) (decided under former O.C.G.A. § 15-11-30.2).

Juvenile court did not abuse the court's discretion in determining that the community's interest in having the defendant prosecuted as an adult, pursuant to former O.C.G.A. § 15-11-30.2(a) (see now O.C.G.A. § 15-11-30.2), outweighed the defendant's interest in having the case stay in juvenile court because the factors favoring the community's interest outweighed the defendant's amenability to

treatment in the juvenile court, particularly, the seriousness of the offenses in that the defendant killed a child and caused another to be a quadriplegic, the fact that the defendant was the instigator, the limited options for detention and supervision available to the juvenile court in dealing with the defendant, and the community's need for a full and public trial. In the Interest of J. R. L., 319 Ga. App. 666, 738 S.E.2d 144 (2013) (decided under former O.C.G.A. § 15-11-30.2).

Concurrent Jurisdiction

Court first taking jurisdiction retains jurisdiction unless transfer. — Superior courts and the juvenile courts have concurrent jurisdiction over juveniles charged with capital offenses, and whichever court first takes jurisdiction over the matter may retain jurisdiction, subject to the right of the juvenile court to transfer the case to the superior court. Hartley v. Clack, 239 Ga. 113, 236 S.E.2d 63 (1977) (decided prior to adoption of 1983 Constitution and under former Code 1933, § 24A-2501).

After a delinquency petition was filed, alleging that a 16-year-old committed the criminal offense of armed robbery, and the juvenile court conducted a hearing to determine whether the offense should be transferred for prosecution in the superior court, the juvenile court did not err when the juvenile court determined that the commission of the serious offense of armed robbery by a 16-year-old acting in concert with adult co-perpetrators warrants the conclusion that the child is not amenable to treatment as a juvenile. In re J.D., 195 Ga. App. 801, 395 S.E.2d 280 (1990) (decided under former O.C.G.A. § 15-11-39).

Concurrent jurisdiction of superior court activated upon proper transfer. — Under the statutory scheme, exclusive original jurisdiction of noncapital juvenile cases is placed in the juvenile courts with the concurrent jurisdiction of the superior courts becoming effective when activated by a proper transfer from the juvenile courts. J.W.A. v. State, 233 Ga. 683, 212 S.E.2d 849 (1975), for comment, see 27 Mercer L. Rev. 335 (1975) (decided prior to adoption of 1983 Constitution and under former Code 1933, § 24A-2501).

While under former O.C.G.A. § 15-11-28(b) (see now O.C.G.A. § 15-11-560) an involuntary manslaughter charge could not be initiated in a superior court, which properly transferred the matter to a juvenile court, assuming the requirements of former O.C.G.A. § 15-11-30.2(a)(3) (see now O.C.G.A. § 15-11-561) were met, the juvenile court did not err in granting a motion to transfer the case back to the superior court as the authority to do so was specifically given in former § 15-11-30.2. In the Interest of C.G., 291 Ga. App. 743, 662 S.E.2d 823 (2008) (decided under former O.C.G.A. § 15-11-30.2).

No transfer hearing required for concurrent jurisdiction. — When either the juvenile court or the superior court properly could have exercised jurisdiction, no petition alleging delinquency was ever filed in the juvenile court, and the superior court first took jurisdiction through indictment, jurisdiction properly vested in the superior court and no transfer hearing pursuant to former O.C.G.A. § 15-11-39 (see now O.C.G.A. § 15-11-561) was required. Taylor v. State, 194 Ga. App. 871, 392 S.E.2d 57 (1990) (decided under former O.C.G.A. § 15-11-39).

Because the defendant was charged with participating in a "pattern of criminal street gang activity" that included armed robbery and murder, the trial court's jurisdiction necessarily extended to the related lesser crimes even though the defendant was a juvenile at the time and the case had not been transferred pursuant to former O.C.G.A. § 15-11-30.2 (see now O.C.G.A. § 15-11-561). Seabolt v. State, 279 Ga. 518, 616 S.E.2d 448 (2005) (decided under former O.C.G.A. § 15-11-30.2).

Subsequent juvenile court proceedings void if superior court first exercised jurisdiction. — If the superior court first exercised jurisdiction over a minor charged with murder by conducting a committal hearing, subsequent proceedings in juvenile court which charged the appellant with aggravated assault and ordered transferral to superior court were

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null and void. J.T.M. v. State, 142 Ga. App. 635, 236 S.E.2d 764 (1977) (decided prior to adoption of 1983 Constitution and under former Code 1933, § 24A-2501).

Superior court may deny transfer motion seeking juvenile court hearing. — If a juvenile defendant is charged with a crime for which the juvenile could be punished by loss of life or confinement for life in a penitentiary, and the superior court first took jurisdiction over such juvenile, the trial court may deny a motion which seeks to transfer jurisdiction to the juvenile court for a hearing to determine the defendant's amenability to rehabilitation in the juvenile court system. Brown v. State, 235 Ga. 353, 219 S.E.2d 419 (1975) (decided prior to adoption of 1983 Constitution and under former Code 1933, § 24A-2501).

Juvenile court's judgment to try the defendant as a juvenile is res judicata as the determination of guilt was made in that court. Lincoln v. State, 138 Ga. App. 234, 225 S.E.2d 708 (1976) (decided prior to adoption of 1983 Constitution and under former Code 1933, § 24A-2501).

Properly transferred juvenile subject to criminal adjudication. — Juvenile whose case is properly transferred to the superior court is subject to the criminal sanctions which may be imposed in that court. Thus, an adjudication of guilt of a juvenile in superior court is a criminal adjudication. Carrindine v. Ricketts, 236 Ga. 283, 223 S.E.2d 627 (1976) (decided prior to adoption of 1983 Constitution and under former Code 1933, § 24A-2501).

Juvenile court and superior court with concurrent jurisdiction in armed robbery case. — Juvenile court erred in finding that a juvenile case involving armed robbery with a firearm was subject to the transfer provisions delineated in former O.C.G.A. § 15-11-30.2 (see now O.C.G.A. § 15-11-561) because, under former subsection (f) of that section, the transfer provisions did not apply in cases involving armed robbery with a firearm, which were subject to the exclusive jurisdiction of the superior court under former O.C.G.A. § 15-11-28(b)(2)(A)(vii) (see now O.C.G.A. § 15-11-560). However, because the juvenile court had concurrent jurisdiction to enter the judgment due to the state's filing a petition in the juvenile court, the state had no right to appeal from the judgment pursuant to O.C.G.A. § 5-7-1(a)(5). In re D. L., 302 Ga. App. 234, 690 S.E.2d 522 (2010) (decided under former O.C.G.A. § 15-11-30.2).

RESEARCH REFERENCES

Am. Jur. 2d. — 47 Am. Jur. 2d, Juvenile Courts and Delinquent and Dependent Children, § 10 et seq.

C.J.S. — 43 C.J.S., Infants, § 141 et seq.

U.L.A. — Uniform Juvenile Court Act (U.L.A.) § 34.

ALR. — Jurisdiction of another court over child as affected by assumption of jurisdiction by juvenile court, 11 A.L.R. 147; 78 A.L.R. 317; 146 A.L.R. 1153.

Power of juvenile court to exercise continuing jurisdiction over infant delinquent or offender, 76 A.L.R. 657.

Possibility of rehabilitation as affecting whether juvenile offender should be tried as adult, 22 A.L.R.4th 1162.

Juvenile's guilty or no contest plea in adult court as waiver of defects in transfer or certification proceedings, 74 A.L.R.5th 453.

15-11-562. Transfer criteria; written report.

(a) The criteria that the juvenile court shall consider in determining whether to transfer an alleged delinquent child as set forth in subsection (a) of Code Section 15-11-561 to superior court and the criteria that the superior court shall consider in determining whether to transfer

any case involving a child 13 to 17 years of age alleged to have committed any act described in paragraph (3), (5), (6), (7), (9), or (10) of subsection (b) of Code Section 15-11-560 to juvenile court as set forth in subsection (e) of Code Section 15-11-560 includes, but shall not be limited to:

(1) The age of such child;

(2) The seriousness of the alleged offense, especially if personal injury resulted;

(3) Whether the protection of the community requires transfer of jurisdiction;

(4) Whether the alleged offense involved violence or was committed in an aggressive or premeditated manner;

(5) The impact of the alleged offense on the alleged victim, including the permanence of any physical or emotional injury sustained, health care expenses incurred, and lost earnings suffered;

(6) The culpability of such child including such child's level of planning and participation in the alleged offense;

(7) Whether the alleged offense is a part of a repetitive pattern of offenses which indicates that such child may be beyond rehabilitation in the juvenile justice system;

(8) The record and history of such child, including experience with the juvenile justice system, other courts, supervision, commitments to juvenile institutions, and other placements;

(9) The sophistication and maturity of such child as determined by consideration of his or her home and environmental situation, emotional condition, and pattern of living;

(10) The program and facilities available to the juvenile court in considering disposition; and

(11) Whether or not a child can benefit from the treatment or rehabilitative programs available to the juvenile court.

(b) A probation officer, or community supervision officer, as applicable, shall prepare a written report developing fully all available information relevant to the transfer criteria. Such officer shall submit such report to the parties and the court as soon as practicable but not later than 24 hours before the scheduled hearing. The child subject to transfer and the prosecuting attorney shall have the right to review such report and cross-examine the individual making such report.

(c) The court may order a transfer evaluation of a child's clinical status as it may impact the criteria in subsection (a) of this Code

section. Statements made by a child in a transfer evaluation shall only be admissible into evidence in an adjudication hearing or in a criminal proceeding as provided by Code Sections 15-11-479 and 15-11-563.

History. — Code 1981, § 15-11-562, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242; Ga. L. 2015, p. 422, § 5-14/HB 310; Ga. L. 2015, p. 540, § 1-14/HB 361; Ga. L. 2017, p. 500, § 2-4/SB 160.

Editor's notes. — Ga. L. 2015, p. 422, § 6-1/HB 310, not codified by the General Assembly, provides, in part, that the amendment by this Act shall apply to sentences entered on or after July 1, 2015.

Ga. L. 2017, p. 500, § 1-1/SB 160, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Back the Badge Act of 2017.'"

Law reviews. — For article on the 2015 amendment of this Code section, see 32 Ga. St. U.L. Rev. 231 (2015). For article on the 2017 amendment of this Code section, see 34 Ga. St. U.L. Rev. 89 (2017). For annual survey on criminal law, see 69 Mercer L. Rev. 73 (2017).

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Transfer of the defendant's case was supported by evidence that it was in the community's interest, and the defendant failed to abide by the conditions of probation and continued to engage in criminal activity that escalated in severity. In the Interest of T. S., 336 Ga. App. 352, 785 S.E.2d 32 (2016).

Transfer order was appropriate after the juvenile court considered all the statutory factors and noted, inter alia, that the defendant juvenile had a history of stealing cars, stealing from stores, vandalizing property, smoking marijuana daily, associating with gang members, and scoring in the low range on the treatment amenability scale of the risk-sophistication-treatment inventory. In the Interest of K. S., 348 Ga. App. 440, 823 S.E.2d 536 (2019).

Standard of review. — Function of the Georgia Court of Appeals is limited to ascertaining whether there was some evidence to support the juvenile court's determination, and absent an abuse of discretion, the appellate court will affirm the order transferring jurisdiction. In the Interest of J. M. S., 334 Ga. App. 142, 778 S.E.2d 391 (2015), overruled on other grounds by In the Interest of J. H., 340 Ga. App. 733, 797 S.E.2d 185 (Ga. Ct. App. 2017).

15-11-563. Statements made at transfer hearing.

Statements made by a child at a transfer hearing shall not be admissible against such child over objection in a criminal proceedings if transfer is ordered except as impeachment or rebuttal evidence.

History. — Code 1981, § 15-11-563, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

Cross references. — Duties of the clerk of the Juvenile Court, Uniform Rules for the Juvenile Courts of Georgia, Rule 2.2(a).

Law reviews. — For article suggesting upward adjustment to age 15 of the age of criminal responsibility and creation of a rebuttable presumption of adult accountability for youths aged 15 to 18, see 23 Mercer L. Rev. 341 (1972). For article, "An Outline of Juvenile Court Jurisdiction with Focus on Child Custody," see 10 Ga. St. B. J. 275 (1973). For article, "The Prosecuting Attorney in Georgia's Juvenile Courts," see 13 Ga. St. B. J. 27 (2008).

For comment on J.W.A. v. State, 233 Ga. 683, 212 S.E.2d 849 (1975), see 27 Mercer L. Rev. 335 (1975).

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Editor's notes. — In light of the similarity of the statutory provisions, annotations taken from cases decided prior to the adoption of the 1983 Constitution are included in the annotations for this Code section. See Ga. Const. 1983, Art. VI, Sec. III, Para. I and Ga. Const. 1983, Art. VI, Sec. IV, Para. I.

In light of the similarity of the statutory provisions, decisions under former Code 1933, § 24A-2501, pre-2000 Code Section 15-11-39, and pre-2014 Code Section 15-11-30.2, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Legislature may restrict or qualify right to treatment as juvenile. — Treatment as a juvenile is not an inherent right but one granted by the state legislature, and the legislature may restrict or qualify that right as the legislature sees fit as long as no arbitrary or discriminatory classification is involved. Lane v. Jones, 244 Ga. 17, 257 S.E.2d 525 (1979) (decided under former Code 1933, § 24A-2501); In re J.J.S., 246 Ga. 617, 272 S.E.2d 294 (1980) (decided under former Code 1933, § 24A-2501).

Pre-custody statements without Miranda warnings were admissible in considering transfer. — Statements of the defendant, a juvenile, were admissible and were properly considered in deciding to transfer the defendant's case to the superior court for prosecution even though the statements were made prior to the defendant receiving Miranda warnings since the defendant voluntarily spoke to the police and was not in custody or otherwise detained at the time the statements were made; even if the statements were inadmissible, other evidence, including statements by others which incriminated the defendant, was admissible and supported the transfer determination. In the Interest of B.Y., 257 Ga. App. 253, 570 S.E.2d 689 (2002) (decided under former O.C.G.A. § 15-11-30.2).

Jeopardy did not attach so as to preclude further proceedings against a juvenile for crimes the juvenile admitted at a transfer hearing since the juvenile court accepted the admission for the limited purpose of determining whether the case should be transferred to superior court. In re M.E.J., 260 Ga. 805, 401 S.E.2d 254 (1991) (decided under former O.C.G.A. § 15-11-39).

Juvenile facing transfer of case has right to evidentiary hearing. — When former Code 1933, §§ 24A-2501 and 24A-2002 are read together, a juvenile faced with the possible transfer of the juvenile's case from juvenile court to "the appropriate court having jurisdiction of the offense" has the right to an evidentiary hearing at which the juvenile must be given the opportunity to introduce evidence and otherwise be heard in the juvenile's own behalf and to cross-examine adverse witnesses. R.S. v. State, 156 Ga. App. 460, 274 S.E.2d 810 (1980) (decided under former Code 1933, § 24A-2501).

15-11-564. Appeal of transfer order.

(a) The decision of the court regarding transfer of the case shall only be an interlocutory judgment which either a child or the prosecuting attorney, or both, have the right to have reviewed by the Court of Appeals.

(b) The pendency of an interlocutory appeal shall stay criminal proceedings in superior court. A child transferred for trial as an adult in superior court shall be detained only in those places authorized for the preadjudication detention of a child as set forth in Code Section 15-11-504.

History. — Code 1981, § 15-11-564, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

Cross references. — Orders, decisions, or judgments appealable and a defendant's right to cross appeal, § 5-7-1.

Law reviews. — For annual survey on criminal law, see 66 Mercer L. Rev. 37 (2014).

15-11-565. Places authorized for detention of child before and after transfer order.

(a) Prior to the entry of a judgment ordering a child's transfer or during the pendency of an appeal of a judgment ordering a child's transfer, such child shall be detained only in those places authorized for the preadjudication detention of a child as set forth in Code Section 15-11-504.

(b) After the entry of a judgment ordering transfer, a child shall be detained only in those places authorized for the detention of a child until such child, as set forth in Code Section 15-11-34, reaches 17 years of age.

History. — Code 1981, § 15-11-565, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

RESEARCH REFERENCES

Am. Jur. 2d. — 47 Am. Jur. 2d, Juvenile Courts and Delinquent and Dependent Children, §§ 47 et seq., 53 et seq., 66 et seq.

C.J.S. — 43 C.J.S., Infants, §§ 140 et seq., 226 et seq., 239.

U.L.A. — Uniform Juvenile Court Act (U.L.A.) § 16.

ALR. — What constitutes delinquency or incorrigibility, justifying commitment of infant, 45 A.L.R. 1533; 85 A.L.R. 1099.

Authority of court to order juvenile delinquent incarcerated in adult penal institution, 95 A.L.R.3d 568.

15-11-566. Dismissal order upon transfer to superior court.

(a) If the court decides to transfer a child for trial in superior court, it shall dismiss the juvenile court petition alleging delinquency for the offense or offenses being transferred, set forth the offense or offenses which are being transferred, and make the following findings of fact in its dismissal order:

(1) That the court had jurisdiction of the cause and the parties;

(2) That the child subject to transfer was represented by an attorney; and

(3) That the hearing was held in the presence of the child subject to transfer and his or her attorney.

(b) The dismissal order shall also recount the reasons underlying the decision to transfer jurisdiction.

(c) A dismissal of the petition alleging delinquency terminates the jurisdiction of the juvenile court over such child as to those offenses which are transferred. If the petition alleging delinquency alleges multiple offenses that constitute a single criminal transaction, the court shall either retain or transfer all offenses relating to a single criminal transaction.

(d) Once juvenile court jurisdiction is terminated, the superior court shall retain jurisdiction even though, thereafter, a child pleads guilty to, or is convicted of, a lesser included offense. The plea to, or conviction of, a lesser included offense shall not revest juvenile jurisdiction over such child.

(e) A copy of the petition alleging delinquency and order of dismissal shall be sent to the district attorney of the judicial circuit in which the proceeding is taking place.

(f) If the court decides not to transfer a child for trial in superior court, it shall set a date for an adjudication hearing in juvenile court on the petition alleging delinquency.

History. — Code 1981, § 15-11-566, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242; Ga. L. 2014, p. 780, § 1-42/SB 364.

Cross references. — Duties of the clerk of the Juvenile Court, Uniform Rules for the Juvenile Courts of Georgia, Rule 2.2(a).

Law reviews. — For article suggesting upward adjustment to age 15 of the age of criminal responsibility and creation of a rebuttable presumption of adult accountability for youths aged 15 to 18, see 23 Mercer L. Rev. 341 (1972). For article, "An Outline of Juvenile Court Jurisdiction with Focus on Child Custody," see 10 Ga. St. B. J. 275 (1973). For article, "The Prosecuting Attorney in Georgia's Juvenile Courts," see 13 Ga. St. B. J. 27 (2008).

For comment on J.W.A. v. State, 233 Ga. 683, 212 S.E.2d 849 (1975), see 27 Mercer L. Rev. 335 (1975).

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Editor's notes. — In light of the similarity of the statutory provisions, annotations taken from cases decided prior to the adoption of the 1983 Constitution are included in the annotations for this Code section. See Ga. Const. 1983, Art. VI, Sec. III, Para. I and Ga. Const. 1983, Art. VI, Sec. IV, Para. I.

In light of the similarity of the statutory provisions, decisions under former Code 1933, § 24A-2501, pre-2000 Code Section 15-11-39, and pre-2014 Code Section 15-11-30.2, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Legislature may restrict or qualify right to treatment as juvenile. — Treatment as a juvenile is not an inherent right but one granted by the state legislature, and the legislature may restrict or qualify that right as the legislature sees fit as long as no arbitrary or discriminatory classification is involved. Lane v. Jones, 244 Ga. 17, 257 S.E.2d 525 (1979) (decided under former Code 1933,

§ 24A-2501); In re J.J.S., 246 Ga. 617, 272 S.E.2d 294 (1980) (decided under former Code 1933, § 24A-2501).

Subsection (c) of former statute (see now O.C.G.A. § 15-11-566) did not enlarge scope of former statute beyond that specified in former subsection (a) (see now O.C.G.A. § 15-11-561). Williams v. State, 238 Ga. 298, 232 S.E.2d 535 (1977) (decided under former Code 1933, § 24A-2501).

15-11-567. Transfers to juvenile court.

(a) Except in those cases in which the superior court has exclusive original jurisdiction or juvenile court jurisdiction has been terminated and the child has been transferred to superior court, if it appears to any court in a criminal proceeding or a quasi-criminal proceeding that the accused is a child, the case shall forthwith be transferred to the juvenile court together with a copy of the indictment, special presentment, accusation, or citation and all other papers, documents, and transcripts of testimony relating to the case.

(b) The transferring court shall order that a child be taken forthwith to the juvenile court or to a place of detention designated by the court or shall release him or her to the custody of his or her parent, guardian, legal custodian, or other person legally responsible for him or her to be brought before the juvenile court at a time designated by that court. The indictment, special presentment, accusation, or citation may not serve in lieu of a petition alleging delinquency in the juvenile court except as provided in Part 14 of this article.

History. — Code 1981, § 15-11-567, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

Law reviews. — For article discussing the uneasy sharing of powers and responsibilities between the superior and juvenile courts in their concurrent jurisdiction over juveniles aged 13 to 18 and suggesting reforms, see 23 Mercer L. Rev. 341 (1972).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, §§ 24-2414 and 24-2415, and pre-2014 Code Section 15-11-30.4, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Purpose of former statute was obviously to provide a forum in which all juveniles may receive equal treatment. Kelly v. State, 122 Ga. App. 185, 176 S.E.2d 468 (1970) (decided under former Code 1933, §§ 24-2414 and 24-2415).

Multiple transfers. — Disregarding the question of whether collateral estoppel actually applied in the context of a case, the transfer of an involuntary manslaughter case, under former O.C.G.A. § 15-11-30.4 (see now O.C.G.A. § 15-11-567), against a juvenile to the juvenile court did not collaterally estop a later transfer of the case back to the superior court under former O.C.G.A. § 15-11-30.2 (see now O.C.G.A. § 15-11-561) because the first transfer was based on the jurisdictional restrictions in former O.C.G.A. § 15-11-28(b) (see now O.C.G.A. § 15-11-560) and at the time of that transfer, the superior court did not consider or rule on the multiple factors in former § 15-11-30.2 on which

the second transfer was based. In the Interest of C.G., 291 Ga. App. 743, 662 S.E.2d 823 (2008) (decided under former O.C.G.A. §§ 15-11-30.4).

RESEARCH REFERENCES

Am. Jur. 2d. — 47 Am. Jur. 2d, Juvenile Courts and Delinquent and Dependent Children, § 4.

C.J.S. — 43 C.J.S., Infants, § 373 seq.

U.L.A. — Uniform Juvenile Court Act (U.L.A.) § 9.

Part 10

Adjudication

15-11-580. Admission or denial of the allegations of a petition.

(a) At the commencement of the adjudication hearing, the court shall address the alleged delinquent child, in language understandable to the child, and determine whether such child is capable of understanding statements about his or her rights under this article.

(b) If a child is capable, the court shall inquire how he or she responds to the allegations of the delinquency petition. The child may:

(1) Deny the allegations of such petition, in which case the court shall proceed to hear evidence on such petition; or

(2) Admit the allegations of such petition, in which case the court shall further inquire to determine whether there is a factual basis for adjudication. If so, the court may then adjudge such child to have committed a delinquent act.

(c) If a child stands mute, refuses to answer, or answers evasively, the court shall enter a denial of the allegations.

History. — Code 1981, § 15-11-580, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 24A-2201, pre-2000 Code Section 15-11-34, and former Code Section 15-11-55, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Courts may consider reports which contain hearsay in disposition phase. — Former statute required that in the hearing on a petition alleging deprivation the trial court shall first make the court's finding as to whether the children were deprived, and it was only after this decision had been made that the judge, in considering the disposition to be made of the children, may consider written reports which contain hearsay matter. In re J.C., 242 Ga. 737, 251 S.E.2d 299 (1978), appeal dismissed, 441 U.S. 929, 99 S. Ct. 2046, 60 L. Ed. 2d 657 (1979) (decided under former Code 1933, § 24A-2201).

Entry of Alford plea by juvenile. — Juvenile court erred by denying a juve-

nile's request to enter an Alford plea since the Georgia General Assembly did not expressly prohibit the entry of Alford pleas in juvenile court, and the juvenile court was required to construe O.C.G.A. § 15-11-580 liberally to ensure the juvenile's best interests. In the Interest of B. C., 333 Ga. App. 763, 777 S.E.2d 52 (2015).

15-11-581. Standard of proof.

The state shall have the burden of proving the allegations of a delinquency petition beyond a reasonable doubt.

History. — Code 1981, § 15-11-581, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

Law reviews. — For article, "The Child as a Party in Interest in Custody Proceedings," see 10 Ga. St. B. J. 577 (1974). For article surveying Georgia cases in the area of juvenile court practice and procedure from June 1979 through May 1980, see 32 Mercer L. Rev. 113 (1980). For article, "Termination of Parental Rights: Recent Judicial and Legislative Trends," see 30 Emory L. J. 1065 (1981).

For note criticizing jurisdiction of juvenile justice system over runaways and advocating alternative legal approaches, see 24 Emory L. J. 1075 (1975).

JUDICIAL DECISIONS

Analysis

General Consideration

General Consideration

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 24A-2201, pre-2000 Code Section 15-11-33, and pre-2014 Code Section 15-11-65, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Standard of proof on question of delinquency or termination. — An "any evidence" standard or "preponderance of the evidence" standard is inadequate in dealing with a finding of deprivation of a child or termination of parental rights and would violate U.S. Const., amend. 14. In re Suggs, 249 Ga. 365, 291 S.E.2d 233 (1982) (decided under former O.C.G.A. § 15-11-33); In re J.K.D., 211 Ga. App. 776, 440 S.E.2d 524 (1994) (decided under former O.C.G.A. § 15-11-33).

Standard of proof on charges of criminal nature against juvenile is the same as that used in criminal proceedings against adults; proof must be beyond a reasonable doubt. M.W.W. v. State, 136 Ga. App. 472, 221 S.E.2d 669 (1975) (decided under former Code 1933 § 24A-2201); In re M.M., 235 Ga. App. 109, 508 S.E.2d 484 (1998) (decided under former O.C.G.A. § 15-11-33).

With regard to a juvenile's adjudication of delinquency for acts which, if committed by an adult, would have constituted the offense of child molestation, the juvenile court did not err by denying the juvenile's motion to dismiss, which was based on an extended pre-trial detention as the juvenile and defense counsel agreed to a continuance and acquiesced in a hearing date delaying the adjudication for at least 48 days following the filing of the delinquency petition, which caused the juvenile to waive the right to complain that the adjudication hearing date was not set to occur in compliance with former O.C.G.A. § 15-11-39. However, the adjudication was reversed and the case was remanded to the juvenile court since the juvenile court erroneously applied a clear and convincing standard of proof and the standard of proof on charges of a criminal

nature was the same as that used in criminal proceedings against adults, namely proof beyond a reasonable doubt. In the Interest of A.S., 293 Ga. App. 710, 667 S.E.2d 701 (2008) (decided under former O.C.G.A. § 15-11-65).

Wrong standard of proof applied in juvenile's case. — Juvenile's adjudication as delinquent for theft related acts was reversed because the juvenile court applied an erroneous standard of proof by concluding that there was some evidence to find that the juvenile removed a teacher's wallet from the teacher's desk since the wallet was found in the juvenile's book bag as the proper standard was proof beyond a reasonable doubt, not the lesser and different standard of some evidence. In the Interest of A. G., No. A20A0054, 2020 Ga. App. LEXIS 385 (June 24, 2020).

Clear and convincing evidence required for termination of parental rights. — Termination of parental rights is a severe measure. If a third party sues the custodial parent to obtain custody of a child and to terminate the parent's custodial rights in the child, the parent is entitled to custody of the child unless the third party shows by "clear and convincing evidence" that the parent is unfit or otherwise not entitled to custody under O.C.G.A. §§ 19-7-1 and 19-7-4. Subsection (b) of former O.C.G.A. § 15-11-33 (see now O.C.G.A. §§ 15-11-440 and 15-11-581) required the court after a hearing to find "clear and convincing evidence" of "deprivation" before an order of deprivation may be entered. Heath v. McGuire, 167 Ga. App. 489, 306 S.E.2d 741 (1983) (decided under former O.C.G.A. § 15-11-33).

Clear and convincing evidence required for deprivation. — If deprivation formed the predicate upon which a third party sought a temporary transfer of the child's legal custody, in order to support such a disposition the child must first be adjudicated to be a deprived child. By statute, that finding of deprivation must be made by "clear and convincing evidence." In re J.C.P., 167 Ga. App. 572, 307 S.E.2d 1 (1983) (decided under former O.C.G.A. § 15-11-33); In re J.T.M., 200 Ga. App. 636, 409 S.E.2d 256 (1991) (decided under former O.C.G.A. § 15-11-33), but see In re A.W., 240 Ga. App. 259, 523 S.E.2d 88 (1999).

Delinquency found when delinquent acts corroborated by confession. — Child's confession out of court corroborated by evidence that the stolen items were found in the child's possession within a few hours of the theft constituted sufficient proof to support a finding of delinquency. A.C.G. v. State, 131 Ga. App. 156, 205 S.E.2d 435 (1974) (decided under former Code 1933, § 24A-2201).

Purpose of division of juvenile trials into two phases. — In dividing juvenile trials into two phases lawmakers intended to give the juvenile judge an opportunity to conduct the "functional equivalent" of a regular trial (the adjudicatory hearing) in a manner which would satisfy the required constitutional procedures concomitant with the usual legal rules, such as those dealing with admissibility of evidence, proof beyond a reasonable doubt, and similar requirements applicable to adults. Thereafter, at the dispositional phase, the judge was to explore all available additional avenues, including psychiatric and sociological studies, which would enable the judge to provide a solution for the youngster and the family aimed at making the child a secure law-abiding member of society. D.C.A. v. State, 135 Ga. App. 234, 217 S.E.2d 470 (1975) (decided under former Code 1933, § 24A-2201).

During adjudicatory phase, rules of evidence generally prevail. In the second (dispositional) phase, the court hears virtually all evidence which is material and relevant to the issue of disposition. J.B. v. State, 139 Ga. App. 545, 228 S.E.2d 712 (1976) (decided under former Code 1933, § 24A-2201).

Dispositional hearing not necessary for termination due to deprivation. — If a petition for the termination of parental rights alleged only that the children were deprived, not delinquent or unruly, it was not necessary for the juvenile judge to hold a dispositional hearing. In re J.C., 242 Ga. 737, 251 S.E.2d 299 (1978), appeal dismissed, 441 U.S. 929, 99 S. Ct. 2046, 60 L. Ed. 2d 657 (1979) (decided under former Code 1933, § 24A-2201).

General Consideration (Cont'd)

Right to cross-examine afforded upon request. — Right to cross-examine adverse witnesses guaranteed by former Code 1933, § 24A-2002 (see now O.C.G.A. §§ 15-11-19 and 15-11-28) was afforded upon request according to former Code 1933, § 24A-2201 (see now O.C.G.A. §§ 15-11-400, 5-11-440, 15-11-581, 15-11-582, and 15-11-600). A.C.G. v. State, 131 Ga. App. 156, 205 S.E.2d 435 (1974) (decided under former Code 1933, § 24A-2201).

Record must show clear and convincing evidence which authorized finding. — Just as former statute did not require the court to include a specific statement as to the standard of proof of delinquency in the adjudication order, no such explicit finding is required as to the need for treatment or rehabilitation as long as the record showed that there was clear and convincing evidence which authorized the judge's implicit finding. A.C.G. v. State, 131 Ga. App. 156, 205 S.E.2d 435 (1974) (decided under former Code 1933, § 24A-2201).

Explicit statutory findings required by former Code 1933, § 24A-2201 (see now O.C.G.A. §§ 15-11-440, 15-11-581, and 15-11-600) should be made in accordance with former Code 1933, § 81A-152 (see now O.C.G.A. § 9-11-52). Crook v. Georgia Dep't of Human Resources, 137 Ga. App 817, 224 S.E.2d 806 (1976) (decided under former Code 1933, § 24A-2201).

In ruling on deprivation petitions, findings of fact should be made in accordance with former Code 1933, § 81A-152 (see now O.C.G.A. § 9-11-52). W.R.G. v. State, 142 Ga. App. 81, 235 S.E.2d 43 (1977) (decided under former Code 1933, § 24A-2201); In re A.A.G., 143 Ga. App. 648, 239 S.E.2d 697 (1977) (decided under former Code 1933, § 24A-2201).

Dispositional hearings held in county of juvenile's residence. — Dispositional hearings must be held in the county of the juvenile's residence to meet state constitutional requirements. C.L.A. v. State, 137 Ga. App. 511, 224 S.E.2d 491 (1976) (decided under former Code 1933, § 24A-2201).

No need to repeat evidence presented during adjudicatory portion. — There was no error in refusing to have the dispositional phase include a repetition of the same evidence and witnesses previously presented during the adjudicatory portion. D.C.A. v. State, 135 Ga. App. 234, 217 S.E.2d 470 (1975) (decided under former Code 1933, § 24A-2201).

Order for transfer for further disposition is not final appealable judgment. — When, pursuant to former Code 1933, § 24A-2201 (see now O.C.G.A. §§ 15-11-400, 15-11-440, 15-11-478, 15-11-581, 15-11-582, and 15-11-600), an order was entered adjudicating a juvenile guilty of an offense and, under the authority of former Code 1933, § 24A-1201 (see now O.C.G.A. §§ 15-11-401 and 15-11-490) jurisdiction was transferred to the county of the residence for further disposition, that order was not a final judgment appealable under former Code 1933, § 6-701 (see now O.C.G.A. §§ 5-6-34 and 5-6-35). D.C.E. v. State, 130 Ga. App. 724, 204 S.E.2d 481 (1974) (decided under former Code 1933, § 24A-2201).

RESEARCH REFERENCES

Am. Jur. 2d. — 47 Am. Jur. 2d, Juvenile Courts and Delinquent and Dependent Children, § 110 et seq.

C.J.S. — 43 C.J.S., Infants, § 199 et seq.

U.L.A. — Uniform Juvenile Court Act (U.L.A.) § 29.

ALR. — Applicability of rules of evidence in juvenile delinquency proceeding, 43 A.L.R.2d 1128.

Applicability of double jeopardy to juvenile court proceedings, 5 A.L.R.4th 234.

Defense of infancy in juvenile delinquency proceedings, 83 A.L.R.4th 1135.

Applicability of rules of evidence to juvenile transfer, waiver, or certification hearings, 37 A.L.R.5th 703.

15-11-582. Adjudication hearing; time limitations; findings.

(a) The court shall fix a time for the adjudication hearing. If an alleged delinquent child is in detention, the hearing shall be held no later than ten days after the filing of the delinquency petition. If a child is not in detention, the hearing shall be held no later than 60 days after the filing of such petition.

(b) Adjudication hearings shall be conducted:

(1) By the court without a jury;

(2) In accordance with Article 5 and Part 1 of Article 6 of Chapter 7 and Chapter 8 of Title 17, unless otherwise provided in this article;

(3) In accordance with the rules of evidence set forth in Title 24; and

(4) In language understandable to the child subject to the delinquency petition and participants, to the fullest extent practicable.

(c) The court shall determine if the allegations of the petition alleging delinquency are admitted or denied in accordance with the provisions of Code Section 15-11-580.

(d) After hearing all of the evidence, the court shall make and record its findings on whether the delinquent acts ascribed to a child were committed by such child. If the court finds that the allegations of delinquency have not been established, it shall dismiss the delinquency petition and order such child be released from any detention or legal custody imposed in connection with the proceedings.

(e) The court shall make a finding that a child has committed a delinquent act based on a valid admission made in open court of the allegations of the delinquency petition or on the basis of proof beyond a reasonable doubt. If the court finds that a child has committed a delinquent act, the court may proceed immediately or at a postponed hearing to make disposition of the case.

History. — Code 1981, § 15-11-582, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242; Ga. L. 2014, p. 780, § 1-43/SB 364.

Cross references. — Amendment to Juvenile Court petition, Uniform Rules for the Juvenile Courts of Georgia, Rule 6.6. Continuance of adjudicatory hearing in Juvenile Court, Uniform Rules for the Juvenile Courts of Georgia, Rule 11.3.

Law reviews. — For article discussing due process in juvenile court procedures in California and Georgia, in light of In re Gault, 387 U.S. 1, 87 S. Ct. 1428, 18 L. Ed. 2d 527 (1967), see 8 Ga. St. B. J. 9 (1971). For article, "The Child as a Party in Interest in Custody Proceedings," see 10 Ga. St. B. J. 577 (1974). For article, "Termination of Parental Rights: Recent Judicial and Legislative Trends," see 30 Emory L. J. 1065 (1981).

For note criticizing jurisdiction of juvenile justice system over runaways and advocating alternative legal approaches, see 24 Emory L. J. 1075 (1975).

JUDICIAL DECISIONS

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General Consideration

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, §§ 24A-1701 and 24A-2201, pre-2000 Code Sections 15-11-26 and 15-11-33, and pre-2014 Code Sections 15-11-39 and 15-11-65, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Time limits set forth in the former statute were jurisdictional and the adjudicatory hearing must be set for a time not later than that prescribed by statute. J.T.G. v. State, 141 Ga. App. 184, 233 S.E.2d 40 (1977) (decided under former Code 1933, § 24A-1701).

Time limits established by the General Assembly in the Juvenile Code are jurisdictional and must be strictly adhered to. Crews v. Brantley County Dep't of Family & Children Servs., 146 Ga. App. 408, 246 S.E.2d 426 (1978) (decided under former Code 1933, § 24A-1701).

Language of former statute was mandatory and the time for the hearing must be set for a time not later than ten days after the petition was filed. J.B.H. v. State, 139 Ga. App. 199, 228 S.E.2d 189 (1976) (decided under former Code 1933, § 24A-1701); Crews v. Brantley County Dep't of Family & Children Servs., 146 Ga. App. 408, 246 S.E.2d 426 (1978) (decided under former Code 1933, § 24A-1701); Irvin v. Department of Human Resources, 159 Ga. App. 101, 282 S.E.2d 664 (1981) (decided under former Code 1933, § 24A-1701).

Language of former subsection (a) of this section was mandatory and the adjudicatory hearing must be set for a time not later than that prescribed. Sanchez v. Walker County Dep't of Family & Children Servs., 237 Ga. 406, 229 S.E.2d 66 (1976) (decided under former Code 1933, § 24A-1701).

Goal sought to be accomplished by the ten-day hearing requirement for detained children was the same goal for the 60-day hearing requirement for non-detained children and, thus, the latter requirement was mandatory, rather than directory. In re R.D.F., 266 Ga. 294, 466 S.E.2d 572 (1996) (decided under former O.C.G.A. § 15-11-26).

Time limits for speedy trial must be strictly adhered to. — If a legislative body has defined the right to speedy trial in terms of days, then the time limits must be strictly complied with. J.B.H. v. State, 139 Ga. App. 199, 228 S.E.2d 189 (1976) (decided under former Code 1933, § 24A-1701).

Trial court erred in setting the date for a hearing twelve days, rather than ten days, from the date of the filing of a petition charging a juvenile with the commission of the delinquent act of burglary. In re M.D.C., 214 Ga. App. 59, 447 S.E.2d 143 (1994) (decided under former O.C.G.A. § 15-11-26).

Provision of former O.C.G.A. § 15-11-26 (see now O.C.G.A. §§ 15-11-181, 15-11-400, 15-11-421, 15-11-441, and 15-11-582) that the time for a hearing shall not be later than ten days after filing of the petition if the child was in custody was the equivalent of a speedy trial demand which did not require a specific demand by the child. However, the statute's protection could be waived if not properly raised and, furthermore, the trial court had discretion to grant a continuance of a hearing properly set for a date within ten days from the filing of the petition. In re M.D.C., 214 Ga. App. 59, 447 S.E.2d 143 (1994) (decided under former O.C.G.A. § 15-11-26).

Former O.C.G.A. § 15-11-26 (see now O.C.G.A. §§ 15-11-181, 15-11-400, 15-11-421, 15-11-441, and 15-11-582) did not constitute a speedy trial de-

mand and, therefore, the failure to comply with the former statute's provisions resulted in dismissal of the petition without prejudice. In re R.D.F., 266 Ga. 294, 466 S.E.2d 572 (1996) (decided under former O.C.G.A. § 15-11-26).

Time limits satisfied by hearing adjudicatory in nature. — When a juvenile and the juvenile's parents were summoned to appear at a hearing to defend against charges and to show cause why the juvenile should not be dealt with according to law, were instructed to remain in attendance at the hearing until final adjudication of the petition, were informed of the possibility of a continuance, and were told that the state would seek transfer to the superior court, the hearing was adjudicatory in nature and satisfied the requirements of former O.C.G.A. § 15-11-26. In re L.A.E., 265 Ga. 698, 462 S.E.2d 148 (1995) (decided under former O.C.G.A. § 15-11-26).

Construction with other law. — Because a juvenile's allegations that the state failed to comply with the procedural requirements under former O.C.G.A. § 15-11-49(c)(1) and (e) (see now O.C.G.A. §§ 15-11-102, 15-11-145, 15-11-151, 15-11-472, and 15-11-521) should have been raised in the superior court, and had no bearing on the validity of the delinquency petitions or the substantive charges against the juvenile in juvenile court, the court properly denied the presentation of evidence regarding the delinquency and substantive issues. In the Interest of K.C., 290 Ga. App. 416, 659 S.E.2d 821 (2008) (decided under former O.C.G.A. § 15-11-39).

Arraignment during adjudicatory hearing. — In the absence of a transcript, a juvenile failed to establish that former O.C.G.A. § 15-11-26 (see now O.C.G.A. §§ 15-11-181, 15-11-400, 15-11-421, 15-11-441, and 15-11-582) was violated since a hearing was timely scheduled and held, an arraignment was conducted at the beginning, the juvenile requested legal counsel and was found eligible to receive counsel, and a continuance was granted so counsel could be secured; conducting an arraignment was not inconsistent with an adjudicatory hearing. In re R.D.F., 266 Ga. 294, 466 S.E.2d 572 (1996), reversing In re R.D.F., 216 Ga. App. 563, 455 S.E.2d 77 (1995) (decided under former O.C.G.A. § 15-11-26).

Arraignment hearing scheduled within the 60-day time period is not sufficient to satisfy the requirement that an adjudicatory hearing must be set within that period. In re R.O.B., 216 Ga. App. 181, 453 S.E.2d 776 (1995) (decided under former O.C.G.A. § 15-11-26).

Hearing requirement applicable when child in detention when petition filed. — Ten-day hearing requirement was applicable when a child was "in detention" on the date the petition was filed in court. Sanchez v. Walker County Dep't of Family & Children Servs., 237 Ga. 406, 229 S.E.2d 66 (1976) (decided under former Code 1933, § 24A-1701).

Time for adjudicatory hearing is not mandatory. — Former O.C.G.A. § 15-11-26 (see now O.C.G.A. §§ 15-11-181, 15-11-400, 15-11-421, 15-11-441 and 15-11-582) required that an adjudicatory hearing date be set within ten days after a filing of a petition charging a minor with commission of delinquent acts, but does not require that a hearing be actually held within ten days after the filing of the petition. P.L.A. v. State, 172 Ga. App. 820, 324 S.E.2d 781 (1984) (decided under former O.C.G.A. § 15-11-26); Johnson v. State, 183 Ga. App. 168, 358 S.E.2d 313 (1987) (decided under former O.C.G.A. § 15-11-26); In re L.T.W., 211 Ga. App. 441, 439 S.E.2d 716 (1993) (decided under former O.C.G.A. § 15-11-26); In re B.W.S., 265 Ga. 567, 458 S.E.2d 847 (1995) (decided under former O.C.G.A. § 15-11-26).

Ten-day hearing rule was not absolute, and a continuance could be granted in the sound discretion of the trial court. Johnson v. State, 183 Ga. App. 168, 358 S.E.2d 313 (1987) (decided under former O.C.G.A. § 15-11-26).

Adjudicatory hearing timely. — Juvenile court did not err in denying the defendant juvenile's motion to dismiss a petition because the adjudicatory hearing was set and held within ten days of the filing of the petition pursuant to former O.C.G.A. § 15-11-39(a) (see now O.C.G.A. §§ 15-11-181, 15-11-400, 15-11-421, 15-11-441, and 15-11-582), although the

General Consideration (Cont'd)

hearing was then continued, which was an action that was within the juvenile court's discretion. In the Interest of C.H., 306 Ga. App. 834, 703 S.E.2d 407 (2010) (decided under former O.C.G.A. § 15-11-39).

Waiver of procedural requirements. — Time limits on setting juvenile hearings are mandatory, but procedural requirements can be waived. J.T.G. v. State, 141 Ga. App. 184, 233 S.E.2d 40 (1977) (decided under former O.C.G.A. § 15-11-26). Cox v. Department of Human Resources, 148 Ga. App. 338, 250 S.E.2d 728 (1978), overruled on other grounds, 156 Ga. App. 338, 274 S.E.2d 728 (1980) (decided under former O.C.G.A. § 15-11-26).

With regard to a juvenile's adjudication of delinquency for acts which, if committed by an adult, would have constituted the offense of child molestation, the juvenile court did not err by denying the juvenile's motion to dismiss, which was based on an extended pre-trial detention as the juvenile and defense counsel agreed to a continuance and acquiesced in a hearing date delaying the adjudication for at least 48 days following the filing of the delinquency petition, which caused the juvenile to waive the right to complain that the adjudication hearing date was not set to occur in compliance with former O.C.G.A. § 15-11-39 (see now O.C.G.A. §§ 15-11-181, 15-11-400, 15-11-421, 15-11-441, and 15-11-582). However, the adjudication was reversed and the case was remanded to the juvenile court since the juvenile court erroneously applied a clear and convincing standard of proof and the standard of proof on charges of a criminal nature was the same as that used in criminal proceedings against adults, namely proof beyond a reasonable doubt. In the Interest of A.S., 293 Ga. App. 710, 667 S.E.2d 701 (2008) (decided under former O.C.G.A. § 15-11-39).

Juvenile waived the right under former O.C.G.A. § 15-11-39(a) (see now O.C.G.A. §§ 15-11-181, 15-11-400, 15-11-421, 15-11-441, and 15-11-582) to have an adjudicatory hearing within 10 days of the delinquency petition being filed by failing to object to the date proposed for the adjudicatory hearing, which was one month after the filing of the petition. In re A. T., 302 Ga. App. 713, 691 S.E.2d 642 (2010), overruled in part by Worthen v. State, 304 Ga. 862, 823 S.E.2d 291 (2019) (decided under former O.C.G.A. § 15-11-39).

Trial court did not err in denying the defendant's motion to dismiss for failure to comply with former O.C.G.A. § 15-11-39(a) (see now O.C.G.A. §§ 15-11-181, 15-11-400, 15-11-421, 15-11-441, and 15-11-582) because the defendant's parent, the defendant's representative, and an attorney acknowledged that the parent did not object when, at the arraignment hearing, it was announced that the adjudicatory hearing would be set outside of the 60-day window; the parent also did not object within the statutorily prescribed 60-day-time period, and the motion to dismiss was filed outside of the 60-day requirement. In the Interest of I.M.W., 313 Ga. App. 624, 722 S.E.2d 586 (2012) (decided under former O.C.G.A. § 15-11-39).

Hearing time limit can be waived. — If the party does not enter an objection during the course of the trial the party will not be heard to complain on appeal and if a hearing is set within the statutory time limit, the court may in the court's discretion grant a continuance. Sanchez v. Walker County Dep't of Family & Children Servs., 237 Ga. 406, 229 S.E.2d 66 (1976) (decided under former Code § 24A-1701); In re J.B., 183 Ga. App. 229, 358 S.E.2d 620, cert. denied, 183 Ga. App. 906, 358 S.E.2d 620 (1987) (decided under former O.C.G.A. § 15-11-26).

Juvenile was entitled to a copy of the delinquency petition filed against the juvenile, and pursuant to former O.C.G.A. § 15-11-39.1 (see now O.C.G.A. §§ 15-11-161, 15-11-282, 15-11-400, 15-11-424, and 15-11-531), the juvenile had a right to receive the petition at least 24 hours prior to the adjudicatory hearing; however, the juvenile waived any objection based on the grounds of improper service since the juvenile received notice right before the hearing as the juvenile did not make an objection or request a continuance on the basis that the juvenile

was unprepared. In the Interest of E.S., 262 Ga. App. 768, 586 S.E.2d 691 (2003) (decided under former O.C.G.A. § 15-11-39).

Continuance requested by parent did not violate time limit. — When a hearing on a deprivation petition was held within ten days of the petition's filing, but the case was continued for eight days because the mother's counsel had a scheduling conflict, there was no violation of former O.C.G.A. § 15-11-39(a)'s (see now O.C.G.A. §§ 15-11-181 15-11-400, 15-11-421, 15-11-441, and 15-11-582) ten-day time limit. In the Interest of C.R., 292 Ga. App. 346, 665 S.E.2d 39 (2008) (decided under former O.C.G.A. § 15-11-39).

Parent's right to appeal delinquency adjudication. — As parties to their child's delinquency action pursuant to former O.C.G.A. § 15-11-39(b) (see now O.C.G.A. §§ 15-11-160, 15-11-423, and 15-11-530), the child's parents had the right to appeal the juvenile court's judgment and to participate in the appellate process. In the Interest of J.L.B., 280 Ga. App. 556, 634 S.E.2d 514 (2006) (decided under former O.C.G.A. § 15-11-39).

Adjudication hearing required after an initial hearing. — By restraining the child at an initial hearing, the juvenile court implicitly found probable cause, pursuant to former O.C.G.A. § 15-11-46.1 (see now O.C.G.A. §§ 15-11-415 and 15-11-503). The juvenile court therefore erred in later deciding that a 10-day adjudication hearing was actually a detention hearing and in resetting the 10-day adjudication hearing. In the Interest of K.L., 303 Ga. App. 679, 694 S.E.2d 372 (2010) (decided under former O.C.G.A. § 15-11-39).

Delay negotiated by defendant waives time limit. — If the statute does not require dismissal as a matter of law regardless of the reason for the delay, it is clear that a delay negotiated and obtained by the defendant personally would constitute a waiver of the 60-day requirement. E.S. v. State, 134 Ga. App. 724, 215 S.E.2d 732 (1975) (decided under former Code 1933, § 24A-1701).

Proceeding null when no waiver of rights nor proper service. — If, in a juvenile court proceeding, there was neither waiver of the right of a mother, nor proper service upon the parties and if the hearing is not taken under oath, or waived by any of the parties, the proceeding is an absolute nullity. McBurrough v. Dep't of Human Resources, 150 Ga. App. 130, 257 S.E.2d 35 (1979) (decided under former Code 1933, § 24A-1701).

Failure to follow mandated procedures warrants dismissal without prejudice of a petition alleging deprivation of a child. Another petition can be filed without delay if there is reason to believe the child is being neglected or abused. Sanchez v. Walker County Dep't of Family & Children Servs., 140 Ga. App. 175, 230 S.E.2d 139 (1976) (decided under former Code 1933, § 24A-1701).

Motion to dismiss necessary if no provision for automatic dismissal. — If there is no provision in the statute for automatic dismissal, there should be a motion to dismiss directed to the trial judge and it should appear that the delay is not due to the actions of the defendant. E.S. v. State, 134 Ga. App. 724, 215 S.E.2d 732 (1975) (decided under former Code 1933, § 24A-1701).

Allegation of failure to comply with time requirements not appealable. — If the defendant, prior to a hearing to determine the defendant's delinquency, appealed from the juvenile court's denial of the defendant's motion to dismiss based solely upon an alleged failure to comply with the time requirements of subsection (a) of former O.C.G.A. § 15-11-26 (see now O.C.G.A. §§ 15-11-181, 15-11-400, 15-11-421, 15-11-441, and 15-11-582), the Court of Appeals dismissed the appeal since a motion under that Code section cannot be analogized to the denial of a O.C.G.A. § 17-7-170 motion and did not involve a question of speedy trial rights which would be directly appealable. In re M.O.B., 190 Ga. App. 474, 378 S.E.2d 898 (1989) (decided under former O.C.G.A. § 15-11-26).

Violation of ten-day mandate does not deprive jurisdiction. — Violation of the statutory mandate to set the hearing date not later than ten days after filing of the petition if the child is in detention would not deprive the court of jurisdiction

General Consideration (Cont'd)

that would otherwise exist. Sanchez v. Walker County Dep't of Family & Children Servs., 138 Ga. App. 49, 225 S.E.2d 441, rev'd on other grounds, 237 Ga. 406, 229 S.E.2d 66 (1976) (decided under former Code 1933, § 24A-1701).

Legislature intended incarceration be limited according to calendar days. — General Assembly intended that a juvenile who is incarcerated after the court has had a preliminary detention hearing should have the juvenile's incarceration limited and the juvenile's fate determined according to calendar days, not "working days." J.B.H. v. State, 139 Ga. App. 199, 228 S.E.2d 189 (1976), overruled on other grounds, In re R.D.F., 266 Ga. 294, 466 S.E.2d 572 (1996) (decided under former O.C.G.A. § 15-11-26).

No habeas corpus if compliance with statutory requirements. — Habeas corpus will not lie if the juvenile court, after notice and hearing, enters an order pursuant to former Code 1933, § 24-2409 (see now O.C.G.A. §§ 15-11-211, 15-11-212, and 15-11-215). Chaffins v. Lowndes County Dep't of Family & Children Servs., 243 Ga. 528, 255 S.E.2d 360 (1979) (decided under former Code 1933, § 24A-1701).

Effect of failure to show compliance with hearing requirement. — If the parents, in their petition seeking return of their children, allege that there has been no hearing as required by statute, and the record of prior juvenile court proceedings is silent as to whether such a hearing was ever set, continued, or held, and since the hearing requirement was mandatory, the defendant County Family and Children Services Department did not show compliance with the hearing requirement, and the parents stated claims for habeas relief which may be granted. Chaffins v. Lowndes County Dep't of Family & Children Servs., 243 Ga. 528, 255 S.E.2d 360 (1979) (decided under former Code 1933, § 24A-1701).

Permitting state's mid-trial amendment of petition to change the charge against the juvenile from a misdemeanor to a felony was error since the amendment was done without notice and provision of a continuance to allow additional time for preparation of a defense. In re D.W, 232 Ga. App. 777, 503 S.E.2d 647 (1998) (decided under former O.C.G.A. § 15-11-26).

Illegal detention. — If a petition was not presented within 72 hours of a detention hearing as required by former O.C.G.A. § 15-11-21(e) (see now O.C.G.A. §§ 15-11-145, 15-11-400, 15-11-413, 15-11-414, and 15-11-472), the state cannot thus illegally detain the child and then render such a jurisdictional defect harmless by setting the adjudication hearing within 13 days (72 hours plus 10 days) of the detention hearing under subsection (a) of former O.C.G.A. § 15-11-26 (see now O.C.G.A. §§ 15-11-181, 15-11-400, 15-11-421, 15-11-441, and 15-11-582). In re B.A.P., 180 Ga. App. 433, 349 S.E.2d 218 (1986) (decided under former O.C.G.A. § 15-11-26).

Limited restraining order appropriate disposition. — After a juvenile attacked a store detective, and subsequently displayed violent behavior and threatened another store employee, the court's conclusion that the juvenile was in need of treatment and rehabilitation, and the court's limited restraining order preventing the juvenile from entering any store owned by the company in Fulton County, except in the immediate presence of a parent or adult relative, was an appropriate disposition and justified by the evidence. In re J.M., 237 Ga. App. 298, 513 S.E.2d 742 (1999) (decided under former O.C.G.A. § 15-11-33).

Separate trials (adjudication and dispositional) with each having different goals are required. See D.C.A. v. State, 135 Ga. App. 234, 217 S.E.2d 470 (1975) (decided under former Code 1933, § 24A-2201); J.B. v. State, 139 Ga. App. 545, 228 S.E.2d 712 (1976) (decided under former Code 1933, § 24A-2201).

Purpose of division of juvenile trials into two phases. — In dividing juvenile trials into two phases lawmakers intended to give the juvenile judge an opportunity to conduct the "functional equivalent" of a regular trial (the adjudicatory hearing) in a manner which would satisfy the required constitutional procedures concomitant with the usual legal rules, such as those dealing with

admissibility of evidence, proof beyond a reasonable doubt, and similar requirements applicable to adults. Thereafter, at the dispositional phase, the judge was to explore all available additional avenues, including psychiatric and sociological studies, which would enable the judge to provide a solution for the youngster and the family aimed at making the child a secure law-abiding member of society. D.C.A. v. State, 135 Ga. App. 234, 217 S.E.2d 470 (1975) (decided under former Code 1933, § 24A-2201).

Disposition made following finding of delinquency. — Decision that the child is in need of treatment or rehabilitation, based upon clear and convincing evidence, is made following a finding of delinquency. A.C.G. v. State, 131 Ga. App. 156, 205 S.E.2d 435 (1974) (decided under former Code 1933, § 24A-2201).

Dispositional Hearings

Dispositional hearing not necessary for termination due to deprivation. — If a petition for the termination of parental rights alleged only that the children were deprived, not delinquent or unruly, it was not necessary for the juvenile judge to hold a dispositional hearing. In re J.C., 242 Ga. 737, 251 S.E.2d 299 (1978), appeal dismissed, 441 U.S. 929, 99 S. Ct. 2046, 60 L. Ed. 2d 657 (1979) (decided under former Code 1933, § 24A-2201).

Continuation of a dispositional hearing should have been allowed when the probation officer notified the court that the officer was not prepared to make a recommendation regarding disposition. In re M.D., 233 Ga. App. 261, 503 S.E.2d 888 (1998) (decided under former O.C.G.A. § 15-11-33).

Dispositional hearing was held, albeit briefly, since, at the conclusion of the trial, the court found that the juvenile had committed the offense charged and questioned the juvenile with regard to whether the juvenile had been in court before and whether the juvenile had ever been charged with similar conduct. In re B.J.G., 234 Ga. App. 285, 506 S.E.2d 449 (1998) (decided under former O.C.G.A. § 15-11-33).

Dispositional hearings held in county of juvenile's residence. — Dispositional hearings must be held in the county of the juvenile's residence to meet state constitutional requirements. C.L.A. v. State, 137 Ga. App. 511, 224 S.E.2d 491 (1976) (decided under former Code 1933, § 24A-2201).

Evidentiary Issues

During adjudicatory phase, rules of evidence generally prevail. In the second (dispositional) phase, the court hears virtually all evidence which is material and relevant to the issue of disposition. J.B. v. State, 139 Ga. App. 545, 228 S.E.2d 712 (1976) (decided under former Code 1933, § 24A-2201).

Right to cross-examine afforded upon request. — Right to cross-examine adverse witnesses guaranteed by former Code 1933, § 24A-2002 (see now O.C.G.A. §§ 15-11-19 and 15-11-28) was afforded upon request according to former Code 1933, § 24A-2201 (see now O.C.G.A. §§ 15-11-400, 5-11-440, 15-11-581, 15-11-582, and 15-11-600). A.C.G. v. State, 131 Ga. App. 156, 205 S.E.2d 435 (1974) (decided under former Code 1933, § 24A-2201).

No need to repeat evidence presented during adjudicatory portion. — There was no error in refusing to have the dispositional phase include a repetition of the same evidence and witnesses previously presented during the adjudicatory portion. D.C.A. v. State, 135 Ga. App. 234, 217 S.E.2d 470 (1975) (decided under former Code 1933, § 24A-2201).

Consideration of evidence from detention hearing at adjudication. — Although evidence presented at a juvenile detention hearing was for the purpose of determining whether preadjudication custody of the child was required, a juvenile court did not err in considering evidence presented at the detention hearing during the adjudication hearing; any error was harmless as the same judge, counsel, and witnesses participated in both hearings and the evidence was substantially the same. In the Interest of C. S., 334 Ga. App. 153, 778 S.E.2d 396 (2015).

RESEARCH REFERENCES

Am. Jur. 2d. — 47 Am. Jur. 2d, Juvenile Courts and Delinquent and Dependent Children, §§ 66 et seq., 110 et seq.

C.J.S. — 43 C.J.S., Infants, § 195 et seq.

U.L.A. — Uniform Juvenile Court Act (U.L.A.) §§ 22, 29.

ALR. — Omission of signature of issuing officer on civil process or summons as affecting jurisdiction of the person, 37 A.L.R.2d 928.

Applicability of rules of evidence in juvenile delinquency proceeding, 43 A.L.R.2d 1128.

Applicability of double jeopardy to juvenile court proceedings, 5 A.L.R.4th 234.

Defense of infancy in juvenile delinquency proceedings, 83 A.L.R.4th 1135.

Applicability of rules of evidence to juvenile transfer, waiver, or certification hearings, 37 A.L.R.5th 703.

Part 11

Report Contents; Disclosure

15-11-590. Predisposition investigation and report.

(a) After an adjudication that a child has committed a delinquent act, the court may direct that a written predisposition investigation report be prepared by the probation officer or other person designated by the court.

(b) A predisposition investigation report shall contain such information about the characteristics, family, environment, and the circumstances affecting the child who is the subject of the report as the court determines may be helpful in its determination of the need for treatment or rehabilitation and a proper disposition of the case, including but not limited to:

(1) A summary of the facts of the conduct of such child that led to the adjudication;

(2) The sophistication and maturity of such child;

(3) A summary of such child's home environment, family relationships, and background;

(4) A summary of such child's prior contacts with the juvenile court and law enforcement agencies, including the disposition following each contact and the reasons therefor;

(5) A summary of such child's educational status, including, but not limited to, his or her strengths, abilities, and special educational needs. The report shall identify appropriate educational and vocational goals for such child. Examples of appropriate goals include:

(A) Attainment of a high school diploma or its equivalent;

(B) Successful completion of literacy courses;

(C) Successful completion of vocational courses;

(D) Successful attendance and completion of such child's current grade if enrolled in school; or

(E) Enrollment in an apprenticeship or a similar program;

(6) A summary of the results and recommendations of any of such child's significant physical and mental examinations;

(7) The seriousness of the offense to the community;

(8) The nature of the offense; and

(9) Whether the offense was against persons or against property.

(c) If the court has ordered a child's physical or mental examination to be conducted, the report shall include a copy of the results of the examination.

(d) If the court has ordered a risk assessment for a child, that assessment shall be included in the predisposition investigation report.

(e) All information shall be presented in a concise and factual manner. The report shall indicate the sources of information in the report.

(f) The original report and any other material to be disclosed shall be furnished to the court, and copies shall be furnished to the attorney for the child who is the subject of such report and to the prosecuting attorney at least five days prior to the disposition hearing.

History. — Code 1981, § 15-11-590, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

RESEARCH REFERENCES

C.J.S. — 43 C.J.S., Infants, § 209 et seq.

U.L.A. — Uniform Juvenile Court Act (U.L.A.) § 28.

ALR. — Defense of infancy in juvenile delinquency proceedings, 83 A.L.R.4th 1135.

Part 12

Disposition

15-11-600. Disposition hearing; time limitations; findings; evidence.

(a)(1) After a finding that a child has committed a delinquent act, the court shall hear evidence and determine whether:

(A) Such child is in need of treatment, rehabilitation, or supervision;

(B) Such child's continuation in his or her home is contrary to such child's welfare; and

(C) Reasonable efforts have been made to prevent or eliminate the need to remove such child from his or her home.

(2) After hearing the evidence described in paragraph (1) of this subsection, the court shall make and file its findings based upon such determinations.

(b) The court may proceed immediately to the disposition hearing after the adjudication hearing or conduct the disposition hearing within 30 days of the adjudication hearing. The disposition hearing may occur later than 30 days after the adjudication hearing only if the court makes and files written findings of fact explaining the need for delay.

(c) In the absence of evidence to the contrary, evidence sufficient to warrant a finding that felony acts have been committed shall also be sufficient to sustain a finding that the child is in need of treatment or rehabilitation.

(d) If the court finds that a child who committed a delinquent act is not in need of treatment, rehabilitation, or supervision, it shall dismiss the proceeding and discharge such child from any detention or other restriction previously ordered.

(e) If the court finds that a child who committed a delinquent act is in need of supervision but not of treatment or rehabilitation, it shall find that such child is a child in need of services and enter any disposition authorized by Code Section 15-11-442.

(f) The court may consider any evidence, including hearsay evidence, that the court finds to be relevant, reliable, and necessary to determine the needs of a child who committed a delinquent act and the most appropriate disposition.

(g)(1) Prior to the disposition hearing, and upon request, the parties and their attorneys shall be afforded an opportunity to examine any written reports received by the court.

(2) Portions of written reports not relied on by the court in reaching its decision which if revealed would be prejudicial to the interests of any party to the proceeding, or reveal confidential sources, may be withheld in the court's discretion.

(3) Parties and their attorneys shall be given the opportunity to controvert written reports received by the court and to cross-examine individuals making such reports.

(h) In scheduling investigations and hearings, the court shall give priority to proceedings in which a child is in detention or has otherwise been removed from his or her home.

History. — Code 1981, § 15-11-600, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242; Ga. L. 2014, p. 34, § 1-1/SB 365.

Law reviews. — For article, "The Child as a Party in Interest in Custody Proceedings," see 10 Ga. St. B. J. 577 (1974). For article, "Termination of Parental Rights: Recent Judicial and Legislative Trends," see 30 Emory L. J. 1065 (1981). For article on the 2014 amendment of this Code section, see 31 Ga. St. U.L. Rev. 25 (2014).

For note criticizing jurisdiction of juvenile justice system over runaways and advocating alternative legal approaches, see 24 Emory L. J. 1075 (1975).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 24A-2201, pre-2000 Code Section 15-11-33, and pre-2014 Code Section 15-11-65, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Delinquency found when delinquent acts corroborated by confession. — Child's confession out of court corroborated by evidence that the stolen items were found in the child's possession within a few hours of the theft constituted sufficient proof to support a finding of delinquency. A.C.G. v. State, 131 Ga. App. 156, 205 S.E.2d 435 (1974) (decided under former Code 1933, § 24A-2201).

Limited restraining order appropriate disposition. — After a juvenile attacked a store detective, and subsequently displayed violent behavior and threatened another store employee, the court's conclusion that the juvenile was in need of treatment and rehabilitation, and the court's limited restraining order preventing the juvenile from entering any store owned by the company in Fulton County, except in the immediate presence of a parent or adult relative, was an appropriate disposition and justified by the evidence. In re J.M., 237 Ga. App. 298, 513 S.E.2d 742 (1999) (decided under former O.C.G.A. § 15-11-33).

Purpose of division of juvenile trials into two phases. — In dividing juvenile trials into two phases lawmakers intended to give the juvenile judge an opportunity to conduct the "functional equivalent" of a regular trial (the adjudicatory hearing) in a manner which would satisfy the required constitutional procedures concomitant with the usual legal rules, such as those dealing with admissibility of evidence, proof beyond a reasonable doubt, and similar requirements applicable to adults. Thereafter, at the dispositional phase, the judge was to explore all available additional avenues, including psychiatric and sociological studies, which would enable the judge to provide a solution for the youngster and the family aimed at making the child a secure law-abiding member of society. D.C.A. v. State, 135 Ga. App. 234, 217 S.E.2d 470 (1975) (decided under former Code 1933, § 24A-2201).

During adjudicatory phase, rules of evidence generally prevail. In the second (dispositional) phase, the court hears virtually all evidence which is material and relevant to the issue of disposition. J.B. v. State, 139 Ga. App. 545, 228 S.E.2d 712 (1976) (decided under former Code 1933, § 24A-2201).

Continuation of a dispositional hearing should have been allowed when the probation officer notified the court that the officer was not prepared to make a recommendation regarding disposition. In re M.D., 233 Ga. App. 261, 503 S.E.2d 888 (1998) (decided under former O.C.G.A. § 15-11-33).

Courts may consider reports which contain hearsay in disposition phase. — Former statute required that in the

hearing on a petition alleging deprivation the trial court shall first make the court's finding as to whether the children were deprived, and it was only after this decision had been made that the judge, in considering the disposition to be made of the children, may consider written reports which contain hearsay matter. In re J.C., 242 Ga. 737, 251 S.E.2d 299 (1978), appeal dismissed, 441 U.S. 929, 99 S. Ct. 2046, 60 L. Ed. 2d 657 (1979) (decided under former Code 1933, § 24A-2201).

Consideration of case plan not admitted into evidence. — In a termination of parental rights proceeding, it was not error for a trial court to consider a case plan that had not been admitted into evidence because former O.C.G.A. § 15-11-65(b) (see now O.C.G.A. § 15-11-600) allowed the court to consider all helpful evidence even though not otherwise competent. In the Interest of E.G., 315 Ga. App. 35, 726 S.E.2d 510 (2012) (decided under former Code 1933, § 24A-2201).

Assault victim's uncertified, unauthenticated medical reports admissible. — Court does not err in allowing uncertified and unauthenticated medical reports of an assault victim in evidence at the disposition hearing. C.P. v. State, 167 Ga. App. 374, 306 S.E.2d 688 (1983) (decided under former O.C.G.A. § 15-11-33).

Dismissal of DUI charge authorized. — Plain language of O.C.G.A. §§ 15-11-600(a)(1), (d) and 15-11-630(i), authorized a juvenile court's decision to dismiss a juvenile's DUI case after finding that the juvenile had attended a substance abuse treatment program; had passed drug and alcohol tests; was receiving counseling; and had complied with court-ordered driving restrictions. The juvenile court was not required to comply with O.C.G.A. § 40-6-391(c). In the Interest of R. M., 354 Ga. App. 36, 840 S.E.2d 144 (2020).

Right to cross-examine afforded upon request. — Right to cross-examine adverse witnesses guaranteed by former Code 1933, § 24A-2002 (see now O.C.G.A. §§ 15-11-19 and 15-11-28) was afforded upon request according to former Code 1933, § 24A-2201 (see now O.C.G.A. §§ 15-11-400, 15-11-440, 15-11-581, 15-11-582, and 15-11-600). A.C.G. v. State, 131 Ga. App. 156, 205 S.E.2d 435 (1974) (decided under former Code 1933, § 24A-2201).

Record must show clear and convincing evidence which authorized finding. — Just as former statute did not require the court to include a specific statement as to the standard of proof of delinquency in the adjudication order, no such explicit finding is required as to the need for treatment or rehabilitation as long as the record showed that there was clear and convincing evidence which authorized the judge's implicit finding. A.C.G. v. State, 131 Ga. App. 156, 205 S.E.2d 435 (1974) (decided under former Code 1933, § 24A-2201).

Explicit statutory findings required by former Code 1933, § 24A-2201 (see now O.C.G.A. §§ 15-11-440, 15-11-581, and 15-11-600) should be made in accordance with former Code 1933, § 81A-152 (see now O.C.G.A. § 9-11-52). Crook v. Georgia Dep't of Human Resources, 137 Ga. App 817, 224 S.E.2d 806 (1976) (decided under former Code 1933, § 24A-2201).

In ruling on deprivation petitions, findings of fact should be made in accordance with former Code 1933, § 81A-152 (see now O.C.G.A. § 9-11-52). W.R.G. v. State, 142 Ga. App. 81, 235 S.E.2d 43 (1977) (decided under former Code 1933, § 24A-2201). In re A.A.G., 143 Ga. App. 648, 239 S.E.2d 697 (1977) (decided under former Code 1933, § 24A-2201).

Timing of dispositional hearing. — When a juvenile court, having concluded the adjudicatory hearing and having found a juvenile defendant guilty of contempt, proceeded immediately to a dispositional hearing at which the defendant had the opportunity to be heard and to give evidence, the defendant waived any assertion of error by not objecting to this proceeding. In the Interest of P.W., 289 Ga. App. 323, 657 S.E.2d 270 (2008) (decided under former O.C.G.A. § 15-11-65).

Disposition made following finding of delinquency. — Decision that the child is in need of treatment or rehabilitation, based upon clear and convincing evidence, is made following a finding of delinquency. A.C.G. v. State, 131 Ga. App.

156, 205 S.E.2d 435 (1974) (decided under former Code 1933, § 24A-2201).

Dispositional hearings held in county of juvenile's residence. — Dispositional hearings must be held in the county of the juvenile's residence to meet state constitutional requirements. C.L.A. v. State, 137 Ga. App. 511, 224 S.E.2d 491 (1976) (decided under former Code 1933, § 24A-2201).

No need to repeat evidence presented during adjudicatory portion. — There was no error in refusing to have the dispositional phase include a repetition of the same evidence and witnesses previously presented during the adjudicatory portion. D.C.A. v. State, 135 Ga. App. 234, 217 S.E.2d 470 (1975) (decided under former Code 1933, § 24A-2201).

Order for transfer for further disposition is not final appealable judgment. — When, pursuant to former Code 1933, § 24A-2201 (see now O.C.G.A. §§ 15-11-400, 15-11-440, 15-11-478, 15-11-581, 15-11-582, and 15-11-600), an order was entered adjudicating a juvenile guilty of an offense and, under the authority of former Code 1933, § 24A-1201 (see now O.C.G.A. §§ 15-11-401 and 15-11-490) jurisdiction was transferred to the county of the residence for further disposition, that order was not a final judgment appealable under former Code 1933, § 6-701 (see now O.C.G.A. §§ 5-6-34 and 5-6-35). D.C.E. v. State, 130 Ga. App. 724, 204 S.E.2d 481 (1974) (decided under former Code 1933, § 24A-2201).

French-speaking parent's stipulation to certain facts presented in a deprivation petition was sufficient evidence to support a finding that the parent's children were deprived and the parent's argument that the parent did not "understand" the meaning or significance of the stipulation was properly rejected. In re M.O., 233 Ga. App. 125, 503 S.E.2d 362 (1998) (decided under former O.C.G.A. § 15-11-478).

Merger doctrine inapplicable. — Because of the unique nature of juvenile court proceedings and the fact that a disposition or adjudication order is not a conviction of a crime, the doctrine of merger is inapplicable in juvenile proceedings. In the Interest of I. H., 350 Ga. App. 394, 829 S.E.2d 437 (2019).

RESEARCH REFERENCES

Am. Jur. 2d. — 47 Am. Jur. 2d, Juvenile Courts and Delinquent and Dependent Children, § 110 et seq.

C.J.S. — 43 C.J.S., Infants, § 199 et seq.

U.L.A. — Uniform Juvenile Court Act (U.L.A.) § 29.

ALR. — Applicability of rules of evidence in juvenile delinquency proceeding, 43 A.L.R.2d 1128.

Applicability of double jeopardy to juvenile court proceedings, 5 A.L.R.4th 234.

Defense of infancy in juvenile delinquency proceedings, 83 A.L.R.4th 1135.

Applicability of rules of evidence to juvenile transfer, waiver, or certification hearings, 37 A.L.R.5th 703.

15-11-601. Disposition of delinquent act.

(a) At the conclusion of the disposition hearing, if a child who committed a delinquent act is determined to be in need of treatment or rehabilitation, then after considering the results of such child's risk assessment if the court is contemplating placing such child in restrictive custody, the court shall enter the least restrictive disposition order appropriate in view of the seriousness of the delinquent act, such child's culpability as indicated by the circumstances of the particular case, the age of such child, such child's prior record, and such child's strengths

and needs. The court may make any of the following orders of disposition, or combination of them, best suited to such child's treatment, rehabilitation, and welfare:

(1) Any order authorized for the disposition of a dependent child other than placement in the temporary custody of DFCS unless such child is also adjudicated as a dependent child;

(2) An order requiring such child and his or her parent, guardian, or legal custodian to participate in counseling or in counsel and advice. Such counseling and counsel and advice may be provided by the court, court personnel, probation officers, community supervision officers, professional counselors or social workers, psychologists, physicians, physician assistants, qualified volunteers, or appropriate public, private, or volunteer agencies and shall be designed to assist in deterring future delinquent acts or other conduct or conditions which would be harmful to such child or society;

(3) An order placing such child on probation under conditions and limitations the court prescribes and which may include the probation management program. The court may place such child on probation under the supervision of:

(A) A probation officer of the court or the court of another state or a community supervision officer;

(B) Any public agency authorized by law to receive and provide care for such child; or

(C) Any community rehabilitation center if its chief executive officer has acknowledged in writing its willingness to accept the responsibility for the supervision of such child;

(4) An order placing a child on unsupervised probation under conditions and limitations the court prescribes;

(5) In any case in which such child who has not achieved a high school diploma or the equivalent is placed on probation, the court shall consider and may order as a condition of probation that he or she pursue a course of study designed to lead to achieving a high school diploma or the equivalent;

(6) An order requiring that such child perform community service in a manner prescribed by the court and under the supervision of an individual designated by the court;

(7) An order requiring that such child make restitution. In ordering a child to make restitution, the court shall follow the procedure set forth in Article 1 of Chapter 14 of Title 17. Such order may remain in force and effect simultaneously with another order of the court, including but not limited to an order of commitment to DJJ. However,

no order of restitution shall be enforced while such child is at a secure residential facility or nonsecure residential facility unless the commissioner of juvenile justice certifies that a restitution program is available at such facility. Payment of funds shall be made by such child or his or her family or employer directly to the clerk of the juvenile court entering the order or to another employee of such court designated by the judge, and that court shall disburse such funds in the manner authorized in the order. While an order requiring restitution is in effect, the court may transfer enforcement of its order to:

(A) DJJ;

(B) The juvenile court of the county of such child's residence and its probation staff, if he or she changes his or her place of residence; or

(C) The superior court once such child reaches 18 years of age as set forth in Code Section 17-14-5 if he or she thereafter comes under the jurisdiction of such court, and the court shall transfer enforcement of its order to superior court if the terms of such order are not completed when such child reaches 21 years of age;

(8) An order requiring such child remit to the general fund of the county a sum not to exceed the maximum fine applicable to an adult for commission of any of the following offenses:

(A) Any felony in the commission of which a motor vehicle is used;

(B) Driving under the influence of alcohol or drugs;

(C) Driving without proof of minimum required motor vehicle insurance;

(D) Fraudulent or fictitious use of a driver's license;

(E) Hit and run or leaving the scene of an accident;

(F) Homicide by vehicle;

(G) Manslaughter resulting from the operation of a motor vehicle;

(H) Possession of controlled substances or marijuana;

(I) Racing on highways or streets;

(J) Using a motor vehicle in fleeing or attempting to elude an officer; or

(K) Any violation of the provisions contained in Title 40 which is properly adjudicated as a delinquent act;

(9) An order suspending such child's driver's license for a period not to exceed the date on which he or she reaches 18 years of age or, in the case of a child who does not have a driver's license, an order prohibiting the issuance of a driver's license to such child for a period not to exceed the date on which he or she reaches 18 years of age. The court shall retain the driver's license during such period of suspension and return it to such child at the end of such period. The court shall notify the Department of Driver Services of any actions taken pursuant to this paragraph;

(10) An order placing such child in an institution, camp, or other facility for delinquent children operated under the direction of the court or other local public authority only if such child was adjudicated for a delinquent act involving:

(A) An offense that would be a felony if committed by an adult; or

(B) An offense that would be a misdemeanor if committed by an adult and such child has had at least one prior adjudication for an offense that would be a felony if committed by an adult and at least three other prior adjudications for a delinquent act as defined in subparagraph (A) of paragraph (19) of Code Section 15-11-2;

(11) With the same exceptions as set forth in subparagraphs (A) and (B) of paragraph (10) of this subsection, an order committing such child to DJJ; or

(12) Any order authorized under Code Section 15-11-29.1.

(b)(1) This subsection shall apply to cases involving:

(A) An offense that would be a felony if committed by an adult; or

(B) An offense that would be a misdemeanor if committed by an adult and such child has had at least one prior adjudication for an offense that would be a felony if committed by an adult and at least three other prior adjudications for a delinquent act as defined in subparagraph (A) of paragraph (19) of Code Section 15-11-2.

(2) In addition to any other treatment or rehabilitation, the court may order such child to serve up to a maximum of 30 days in a secure residential facility or, after a risk assessment and with the court's approval, in a treatment program provided by DJJ or the juvenile court.

(c) Any child ordered to a secure residential facility under subsection (b) of this Code section and detained after the adjudication hearing in a secure residential facility or nonsecure residential facility pending placement in a secure residential facility shall be given credit for time

served in a secure residential facility or nonsecure residential facility awaiting placement.

(d) A child shall be given adequate information concerning the obligations and conditions imposed upon him or her by the disposition ordered by the court and the consequences of failure to meet such obligations and conditions. Such information shall be given in terms understandable to a child to enable such child to conform his or her conduct to the requirements of the disposition.

History. — Code 1981, § 15-11-601, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242; Ga. L. 2015, p. 422, § 5-15/HB 310; Ga. L. 2017, p. 604, § 1-4/SB 175.

Cross references. — Diploma requirement as condition of probated or suspended sentence in criminal proceedings, § 17-10-1. Power of juvenile court to require restitution by delinquent child as condition or limitation of probation, § 17-14-5. Power of court to place delinquent children pursuant to Interstate Compact on the Placement of Children, § 39-4-7. Further provisions regarding commitment of delinquent child to Department of Juvenile Justice, §§ 49-4A-8 and 49-5-7. Post-adjudication transfer of Juvenile Court cases for supervision, Uniform Rules for the Juvenile Courts of Georgia, Rule 5.3(c).

Editor's notes. — Ga. L. 2015, p. 422, § 6-1/HB 310, not codified by the General Assembly, provides, in part, that the amendment by this Act shall apply to sentences entered on or after July 1, 2015.

Law reviews. — For article on the 2015 amendment of this Code section, see 32 Ga. St. U.L. Rev. 231 (2015).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 24A-2302, pre-2000 Code Section 15-11-35, and pre-2014 Code Section 15-11-66, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Applicability. — Contrary to a juvenile's claim that the juvenile court erred in committing the juvenile into the custody of the Department of Juvenile Justice for two years consecutive to a 60-day boot camp program, the disposition was valid under both former O.C.G.A. §§ 15-11-66(b)(1) and 15-11-70(a) (see now O.C.G.A. §§ 15-11-443, 15-11-601, and 15-11-607) as: (1) the former granted the court the discretion, in a case involving a felony offense, to order the juvenile to serve up to a maximum of 60 days in a youth development center in addition to any other treatment or rehabilitation; and (2) under the latter, an order of disposition continued in force for two years, or until the child was sooner discharged by the department. In the Interest of J.R., 280 Ga. App. 143, 633 S.E.2d 447 (2006) (decided under former O.C.G.A. § 15-11-66).

Limitation on "sentencing." — After hearing evidence during the adjudicatory phase, the juvenile court makes a single determination of whether the child is delinquent, regardless of the number of offenses committed; thus, the court did not have the power to order a juvenile to serve two consecutive 90-day terms in a youth development center for separate acts of delinquency. In re M.D., 233 Ga. App. 261, 503 S.E.2d 888 (1998) (decided under former O.C.G.A. § 15-11-35).

Limited restraining order appropriate disposition. — After a juvenile attacked a store detective, and subsequently displayed violent behavior and threatened another store employee, the court's conclusion that the juvenile was in need of treatment and rehabilitation, and the court's limited restraining order preventing the juvenile from entering any store owned by the company in Fulton

County, except in the immediate presence of a parent or adult relative, was an appropriate disposition and justified by the evidence. In re J.M., 237 Ga. App. 298, 513 S.E.2d 742 (1999) (decided under former O.C.G.A. § 15-11-35).

Designation of work of public purpose for destruction of public property is constructive rather than punitive. It comes within the statutory mandate that juvenile court judges are to make such disposition of a delinquent child as is "best suited to his treatment, rehabilitation, and welfare." M.J.W. v. State, 133 Ga. App. 350, 210 S.E.2d 842 (1974) (decided under former Code 1933, § 24A-2302).

Restitution as condition for probation. — Both power and necessity to require restitution as condition for probation exist under the Juvenile Code. P.R. v. State, 133 Ga. App. 346, 210 S.E.2d 839 (1974) (decided under former Code 1933, § 24A-2302).

Term "conditions and limitations" must include right to order restitution. This right is inherent in the power of the court, in what is, in effect, the burden upon the court, to make such disposition of a delinquent child as is "best suited to his treatment, rehabilitation, and welfare." P.R. v. State, 133 Ga. App. 346, 210 S.E.2d 839 (1974) (decided under former Code 1933, § 24A-2302).

Liability for restitution not conferred on parents. — Paragraph (a)(5) of former O.C.G.A. § 15-11-35 (see now O.C.G.A. § 15-11-601) fixes the restitution obligation on the juvenile, the offending party, and does not confer liability for restitution on the parents. In re C.R.D., 197 Ga. App. 571, 398 S.E.2d 845 (1990) (decided under former O.C.G.A. § 15-11-35).

Mechanics of forwarding restitution funds to court. — Reasonable reading of the concluding language of paragraph (a)(5) of former O.C.G.A. § 15-11-35 (see now O.C.G.A. § 15-11-601) was that the language specified acceptable means or conduits by which the money owed by the juvenile offender could be paid, i.e., the mechanics of forwarding the restitution funds to the court. It was a statement of practical administrative convenience deemed necessary to implement restitution. It did not independently broaden restitution liability. In re C.R.D., 197 Ga. App. 571, 398 S.E.2d 845 (1990) (decided under former O.C.G.A. § 15-11-35).

30-day limitation not applicable to pre-dispositional period. — Despite the 41-day confinement of the first juvenile, the juvenile court complied with the statutory limits relied upon by the first juvenile as the disposition order did not include any confinement in a secure residential facility, so the 30-day confinement limit was not directly implicated by the disposition order and, by its plain terms, the credit-for-time-served requirement only addressed dispositional confinement, not other confinement. In the Interest of B. L., 333 Ga. App. 860, 777 S.E.2d 705 (2015).

Commitment to Department of Juvenile Justice proper. — Juvenile defendant's commitment to the Department of Juvenile Justice (DJJ) was proper because the defendant was on probation for a delinquent act and the defendant's violation of probation terms was also a delinquent act, and commitment to DJJ was found to be the treatment or rehabilitation best suited to the child's needs. In the Interest of B. Q. L. E., 297 Ga. App. 273, 676 S.E.2d 742, cert. denied, No. S09C1197, 2009 Ga. LEXIS 787 (Ga. 2009) (decided under former O.C.G.A. § 15-11-66).

Confinement of juvenile for public indecency not allowed. — Since the defendant's delinquent act of public indecency did not constitute an act which, if committed by an adult, would be punishable either as a felony or as a misdemeanor of a high and aggravated nature involving bodily injury or a substantial likelihood of injury under former O.C.G.A. § 15-11-66 (see now O.C.G.A. § 15-11-601), the juvenile court's sentence which included confinement exceeded that allowed by law and was void. In the Interest of C. H., 319 Ga. App. 373, 735 S.E.2d 291 (2012) (decided under former O.C.G.A. § 15-11-66).

Prohibition against driving during period of probation authorized. — After a juvenile was found delinquent, the court did not exceed the court's authority by prohibiting the juvenile from driving

until the expiration of the juvenile's probation, rather than the juvenile's eighteenth birthday. In re A.H.S., 223 Ga. App. 824, 479 S.E.2d 157 (1996) (decided under former O.C.G.A. § 15-11-35).

Credit for time served. — Juvenile court erred in expressly denying a juvenile credit for the time served in detention prior to the delinquency adjudication because under O.C.G.A. § 15-11-601(11)(c), the juvenile court was required to give a child credit for time served in a secure residential facility and the credit for time served applies to the disposition of all offenses, including felonies, pursuant to O.C.G.A. § 15-11-604(b). In the Interest of D. D., 335 Ga. App. 676, 782 S.E.2d 728 (2016).

Appeal of adjudication after disposition order expired was not moot. — Juvenile who appealed the juvenile's adjudication of delinquency after the disposition order had expired was not required to show adverse collateral consequences in the record in order to avoid a finding of mootness; such consequences were presumed based on the uses to which a prior adjudication of delinquency could be put. In the Interest of M. F., 305 Ga. 820, 828 S.E.2d 350 (2019).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, decisions under pre-2000 Code Section 15-11-35, and pre-2014 Code Section 15-11-66, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Court costs. — Juvenile court had no authority to impose court costs on child as part of conditions of probation. 1982 Op. Att'y Gen. No. U82-14 (decided under former O.C.G.A. § 15-11-35).

All costs related to subsistence and detention, including emergency medical costs, incurred on behalf of juveniles held in Department of Juvenile Justice facilities prior to a formal commitment to the Department of Juvenile Justice are properly assessed to the counties. 2002 Op. Att'y Gen. No. 2002-6 (decided under former O.C.G.A. § 15-11-66).

Free education of school-age children. — School-age children placed in facilities by the Department of Human Resources or the Department of Children and Youth Services must be provided with a free education by the local school system in which the facility is located. 1996 Op. Att'y Gen. No. 96-23 (decided under former O.C.G.A. § 15-11-35).

RESEARCH REFERENCES

Am. Jur. 2d. — 42 Am. Jur. 2d, Infants, § 50. 47 Am. Jur. 2d, Juvenile Courts and Delinquent and Dependent Children, §§ 56 et seq., 110 et seq.

C.J.S. — 43 C.J.S., Infants, § 234 et seq.

U.L.A. — Uniform Juvenile Court Act (U.L.A.) § 31.

ALR. — Defense of infancy in juvenile delinquency proceedings, 83 A.L.R.4th 1135.

15-11-602. Disposition of class A or class B designated felony act.

(a) When a child is adjudicated to have committed a class A designated felony act or class B designated felony act, the order of disposition shall be made within 20 days of the conclusion of the disposition hearing. The court may make one of the following orders of disposition best suited to provide for the rehabilitation of such child and the protection of the community:

(1) Any order authorized by Code Section 15-11-601, if the court finds that placement in restrictive custody is not required; or

(2) An order placing such child in restrictive custody.

(b) Every order shall include a finding, based on a preponderance of the evidence, of whether such child requires placement in restrictive custody. If placement in restrictive custody is ordered for a child classified as low risk, the court shall make a specific written finding as to why placement in restrictive custody is necessary. In determining whether placement in restrictive custody is required, the court shall consider and make specific written findings of fact as to each of the following factors:

(1) The age and maturity of such child;

(2) The needs and best interests of such child;

(3) The record, background, and risk level of such child as calculated by a risk assessment, including, but not limited to, information disclosed in the probation investigation, diagnostic assessment, school records, and dependency records;

(4) The nature and circumstances of the offense, including whether any injury involved was inflicted by such child or another participant, the culpability of such child or another participant in planning and carrying out the offense, and the existence of any aggravating or mitigating factors;

(5) The need for protection of the community;

(6) The age and physical condition of the victim;

(7) If the act was trafficking of substances in violation of Code Section 16-13-31 or 16-13-31.1, whether the circumstances involved sale, delivery, or manufacture of the substances, and if such circumstances were not involved, the court shall dispose of the act as a class B designated felony act; and

(8) If the act was aggravated child molestation and subject to the provisions of paragraph (2) of subsection (d) of Code Section 16-6-4, the court shall adjudicate the act as a delinquent act and impose a disposition in accordance with Code Section 15-11-601.

(c) An order for a child adjudicated for a class A designated felony act placing such child in restrictive custody shall provide that:

(1) Such child shall be placed in DJJ custody for an initial period of up to 60 months;

(2) Such child shall be confined for a period set by the order in a secure residential facility, except as provided in subsection (e) of this

Code section. All time spent in a secure residential facility or nonsecure residential facility shall be counted toward the confinement period set by the order;

(3) After a period of confinement set by the court, such child shall be placed under intensive supervision not to exceed 12 months;

(4) Such child shall not be released from intensive supervision unless by court order; and

(5) All home visits shall be carefully arranged and monitored by DJJ personnel while such child is placed in a secure residential facility or nonsecure residential facility.

(d) An order for a child adjudicated for a class B designated felony act placing such child in restrictive custody shall provide that:

(1) Such child shall be placed in DJJ custody for an initial period of up to 36 months; provided, however, that not more than 18 months of such custodial period shall be spent in restrictive custody;

(2) Except as provided in subsection (e) of this Code section, if such child is classified as moderate risk or high risk, he or she shall be confined for a period set by the order in a secure residential facility for half of the period of restrictive custody and the other half of the period of restrictive custody may, at the discretion of DJJ, be spent in a nonsecure residential facility. All time spent in a secure residential facility or nonsecure residential facility shall be counted toward the confinement period set by the order;

(3) Except as provided in subsection (e) of this Code section, if such child is classified as low risk, he or she shall be confined for a period set by the order in a nonsecure residential facility. All time spent in a secure residential facility or nonsecure residential facility shall be counted toward the confinement period set by the order;

(4) Such child shall be placed under intensive supervision not to exceed six months either after a period of confinement set by the court or as an initial period of supervision;

(5) Such child shall not be released from intensive supervision unless by court order; and

(6) All home visits shall be carefully arranged and monitored by DJJ personnel while a child is placed in a secure residential facility or nonsecure residential facility.

(e)(1) Any child who is ordered to be confined in restrictive custody who is diagnosed with a developmental disability and is not amenable to treatment in a secure residential facility may be transferred by DJJ to a nonsecure residential facility determined to be appropriate

for such child by DJJ, provided that the court and prosecuting attorney are notified of such change of placement.

(2) Notwithstanding subsection (b) of this Code section, the court shall order placement in restrictive custody in any case where the child is found to have committed a class A designated felony act or class B designated felony act in which such child inflicted serious physical injury upon another person who is 72 years of age or older.

(f) During a child's placement order or any extension of the placement in restrictive custody:

(1) While in a secure residential facility or nonsecure residential facility, such child shall be permitted to participate in all services and programs and shall be eligible to receive special medical and treatment services, regardless of the time of confinement in such facility. A child adjudicated to have committed a class A designated felony act or class B designated felony act may be eligible to participate in programs sponsored by such facility, including community work programs and sheltered workshops under the general supervision of DJJ staff outside of such facility. In cooperation and coordination with the DJJ, such child shall be allowed to participate in state sponsored programs for evaluation and services under the Georgia Vocational Rehabilitation Agency and the Department of Behavioral Health and Developmental Disabilities;

(2)(A) A child adjudicated to have committed a class A designated felony act or class B designated felony act shall not be discharged from placement in a secure residential facility or nonsecure residential facility prior to the period of time provided in the court's order except as provided in paragraph (1) of subsection (e) of this Code section or when a motion to be discharged from placement in a secure residential facility or nonsecure residential facility is granted by the court. After a court order denying a motion to discharge a child from placement in a secure residential facility or nonsecure residential facility, a subsequent such motion shall not be filed until at least six months have elapsed. Notwithstanding Code Section 15-11-32, DJJ or any party may file a motion with the court seeking a child's release from placement in a secure residential facility or nonsecure residential facility, an order modifying the court's order requiring placement in a secure residential facility or nonsecure residential facility, or termination of an order of disposition for a child committed for a class A designated felony act or class B designated felony act.

(B) All motions filed under this paragraph shall be accompanied by a written recommendation for release, modification, or termination from a child's DJJ counselor or placement supervisor, filed in

the court that committed such child to DJJ, and served on the prosecuting attorney for such jurisdiction.

(C) At least 14 days prior to the date of the hearing on the motion, the moving party shall serve a copy of the motion, by first-class mail, upon the victim of the class A designated felony act or class B designated felony act, if any, at the victim's last known address, the child's attorney, if any, the child's parents or guardian, and the law enforcement agency that investigated the class A designated felony act or class B designated felony act. In addition to the parties to the motion, the prosecuting attorney and the victim, if any, shall have a right to be heard and to present evidence to the court relative to any motion filed pursuant to this paragraph.

(D) A court hearing a motion filed under this paragraph shall determine the disposition of a child based upon a preponderance of the evidence. In determining whether a motion for release from custody, modification of placement in a secure residential facility or nonsecure residential facility, or termination of an order of disposition should be granted or denied due to changed circumstances, the court shall be required to find whether or not such child has been rehabilitated and shall consider and make specific findings of fact as to each of the following factors:

(i) The needs and best interests of such child;

(ii) The record and background of such child, including the disciplinary history of such child during the period of placement in a secure residential facility or nonsecure residential facility and subsequent offense history;

(iii) The academic progress of such child during the period of placement in a secure residential facility or nonsecure residential facility, including, if he or she is receiving services under the federal Individuals with Disabilities Education Act or Section 504 of the federal Rehabilitation Act of 1973, a review of his or her Individualized Education Program (IEP) and such child's progress toward IEP goals;

(iv) The victim's impact statement submitted for purposes of a hearing conducted pursuant to this paragraph;

(v) The safety risk to the community if such child is released; and

(vi) Such child's acknowledgment to the court and victim, if any, of his or her conduct being the cause of harm to others; and

(3) Unless otherwise specified in the order, DJJ shall report in writing to the court not less than once every six months during the placement on the status, adjustment, and progress of such child.

(g) Notwithstanding the initial periods of placement in restrictive custody ordered by the court pursuant to subsection (c) or (d) of this Code section, the period of placement may be extended on motion by DJJ, after a disposition hearing, for two additional periods not to exceed 12 months each, provided that no placement or extension of custody may continue beyond a child's twenty-first birthday.

(h) The court shall identify the school last attended by a child adjudicated for a class A designated felony act or class B designated felony act and the school which such child intends to attend and shall transmit a copy of the adjudication to the principals of both schools within 30 days of the adjudication. Such information shall be subject to notification, distribution, and other requirements as provided in Code Section 20-2-671.

History. — Code 1981, § 15-11-602, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242; Ga. L. 2014, p. 780, § 1-44/SB 364.

Cross references. — Time limitations upon orders of disposition — termination of order, Uniform Rules for the Juvenile Courts of Georgia, Rule 15.4.

U.S. Code. — The Individuals with Disabilities Education Act, referred to in this Code section, is codified at 20 U.S.C. § 1400 et seq.

Section 504 of the federal Rehabilitation Act of 1973, referred to in this Code section, is codified at 29 U.S.C. § 701 et seq.

Law reviews. — For annual survey on criminal law, see 66 Mercer L. Rev. 37 (2014).

JUDICIAL DECISIONS

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General Consideration

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 24A-2801, pre-2000 Code Sections 15-11-37 and 15-11-42, and pre-2014 Code Sections 15-11-40 and 15-11-63, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Constitutionality. — Order of restrictive custody was not sufficiently like a criminal adjudication to invoke a constitutional right to a trial by jury. In re L.C., 273 Ga. 886, 548 S.E.2d 335 (2001) (decided under former O.C.G.A. § 15-11-63).

Construction with other statutes. — When former O.C.G.A. §§ 15-11-40(b) and 15-11-63(e)(1)(D) and (e)(2)(c) (see now O.C.G.A. §§ 15-11-444, 15-11-602 and 15-11-608) were read together to effectuate their meaning, as required by O.C.G.A. § 1-3-1(a), the juvenile court did not err in denying a juvenile's motion to commute or reduce the sentence imposed as allegations that the juvenile was rehabilitated while in restrictive custody and would benefit from being released were insufficient to grant the juvenile court authority to modify the court's commitment order once physical custody of the juvenile was transferred to the Department of Juvenile Justice. In the Interest of J.V., 282 Ga. App. 319, 638 S.E.2d 757 (2006) (decided under former O.C.G.A.

§ 15-11-63).

Under former O.C.G.A. § 15-11-63(e)(1)(D) and (e)(2)(C) (see now O.C.G.A. § 15-11-602), a juvenile court may order a child released from a youth development center or transferred to a nonsecure facility during the period of restrictive custody set out in the initial order or may discharge a child from the custody of the Georgia Department of Juvenile Justice upon a motion after a year of custody. However, such an order may not be made on the ground that changed circumstances so require in the best interest of the child. Reading former O.C.G.A. §§ 15-11-40 and 15-11-63(e) (see now O.C.G.A. §§ 15-11-32, 15-11-444, and 15-11-602) together, such a motion for release should be based on other grounds. In the Interest of J.W., 293 Ga. App. 408, 667 S.E.2d 161 (2008) (decided under former O.C.G.A. § 15-11-63).

Jurisdiction. — Under former O.C.G.A. §§ 15-11-2(2)(B) and 15-11-28(a)(1)(F) (see now O.C.G.A. §§ 15-11-2, 15-11-381, and 15-11-471), a juvenile court lacked jurisdiction over the defendant, who was over 17 when a probation violation occurred; thus, the defendant's commitment under former O.C.G.A. § 15-11-63 (see now O.C.G.A. §§ 15-11-2, 15-11-471, and 15-11-602) was void. The state had not filed a petition for probation revocation, but only for a violation of probation. In the Interest of T.F., 314 Ga. App. 606, 724 S.E.2d 892 (2012) (decided under former O.C.G.A. § 15-11-63).

Juvenile court had jurisdiction under O.C.G.A. § 15-11-602 to modify the juvenile's disposition after the juvenile was committed to the custody of the Department of Juvenile Justice because the juvenile made a cognizable claim that the juvenile's disposition was void, contending that the juvenile did not qualify as a Class-B designated felon. In the Interest of D. B., 341 Ga. App. 559, 802 S.E.2d 19 (2017).

Delinquency adjudication. — Defendant juvenile's appeal of an order denying a motion to reconsider, vacate, or modify the delinquent adjudication was proper because the denial of the motion was a final judgment and was directly appealable; therefore, the defendant could appeal the ruling on disposition as well as on the original finding of delinquency. An order denying a motion under former O.C.G.A. § 15-11-40(b) (see now O.C.G.A. §§ 15-11-32, 15-11-444, and 15-11-608) seeking a modification based on changed circumstances in a delinquency matter is a final judgment directly appealable under O.C.G.A. § 5-6-34(a)(1) and former O.C.G.A. § 15-11-3 (see now O.C.G.A. § 15-11-35). In the Interest of J. L. K., 302 Ga. App. 844, 691 S.E.2d 892 (2010) (decided under former O.C.G.A. § 15-11-40).

Modification of a sentencing order was proper since a juvenile had been committed to the Department of Children & Youth Services (DCYS) for a period of detention and treatment but had not been transferred to the physical custody of DCYS but was held in a detention center pending placement in a youth development campus. In re B.D.T., 219 Ga. App. 804, 466 S.E.2d 680 (1996) (decided under former O.C.G.A. § 15-11-42).

Modification was improper. — Since it was undisputed that after the juvenile court adjudicated the child as delinquent and committed the child to the Department of Juvenile Justice, and the child was placed in the physical custody of the Department, which confined the child for a year, the Department had already taken physical custody of the child and therefore the juvenile court could not subsequently modify the original dispositional order. In the Interest of S.S., 276 Ga. App. 666, 624 S.E.2d 251 (2005) (decided under former O.C.G.A. § 15-11-40).

Reduction in sentence not authorized. — Although former O.C.G.A. § 15-11-40(b) (see now O.C.G.A. §§ 15-11-32, 15-11-444, and 15-11-608) prohibited the change, modification, or vacation of a commitment order once a child is in the custody of the Department of Juvenile Justice "on the ground that changed circumstances so require in the best interest of the child" or because the child had been rehabilitated, the statute did not prohibit the change, modification, or vacation of a commitment order on other grounds. Further the application of former § 15-11-40(b) did not render former O.C.G.A. § 15-11-63(e)(2)(C) (see now

General Consideration (Cont'd)

O.C.G.A. § 15-11-602) purposeless in these circumstances when the juvenile based a reduction in sentence on rehabilitation. In re T. H., 298 Ga. App. 536, 680 S.E.2d 569 (2009) (decided under former O.C.G.A. § 15-11-40).

Commitment order could not be changed. — Modification of a juvenile commitment order under former O.C.G.A. § 15-11-40(b) (see now O.C.G.A. 15-11-32, 15-11-444, and 15-11-608) on the ground that changed circumstances required modification in the best interest of the child was not available to a minor because the minor was already in the custody of the Department of Juvenile Justice; the fact that the custody was based on the minor's restrictive custody under a different commitment order, and not on the commitment order the minor sought to modify, had no bearing on whether the modification could be made. In the Interest of P.S., 295 Ga. App. 724, 673 S.E.2d 74 (2009) (decided under former O.C.G.A. § 15-11-40).

Juvenile court did not err in dismissing a juvenile's motion to modify the commitment order on the basis that the purpose of rehabilitation was not being served because the motion was not accompanied by a written recommendation from the juvenile's Georgia Department of Juvenile Justice counselor or placement supervisor; thus, O.C.G.A. §§ 15-11-32 and 15-11-602 barred the juvenile court from modifying the commitment order as requested. In the Interest of D. H., 332 Ga. App. 274, 772 S.E.2d 70 (2015).

Contents of motion. — If the substance of a post-trial motion made no reference to any of the factors which would warrant the vacation or modification of the juvenile court's order, it could not be considered a motion to modify or vacate, thus an appeal could not be taken. In re C.M., 205 Ga. App. 543, 423 S.E.2d 280, cert. denied, 205 Ga. App. 900, 423 S.E.2d 280 (1992) (decided under former O.C.G.A. § 15-11-42).

Evidence insufficient to support finding of delinquency. — Trial court erred in denying the defendant juvenile's motion to reconsider, vacate, or modify a delinquent adjudication for the offense of simple assault because the evidence was insufficient to support the finding of delinquency since, pursuant to O.C.G.A. § 16-5-20(a)(2), the crime of simple assault required proof that the defendant's actions placed the defendant's grandmother in reasonable apprehension of immediately receiving a violent injury, but the only evidence of that fact was hearsay; a police officer, who was the only witness, testified that the grandmother told the officer that the grandmother was afraid of the defendant, and that the defendant was perhaps going to hit the grandmother, but the officer admitted that there were no allegations that the defendant attempted to hit the grandmother, nor did the officer witness any of the alleged events. In the Interest of J. L. K., 302 Ga. App. 844, 691 S.E.2d 892 (2010) (decided under former O.C.G.A. § 15-11-40).

New disposition was sanction for original offense. — Although the initial act of bringing a weapon to school was not a designated felony under the statute in effect when a juvenile's probation was revoked, a dispositional order imposed upon revocation of probation related to the original delinquent act because the new disposition was a sanction for the original offense. In the Interest of N.M., 316 Ga. App. 649, 730 S.E.2d 127 (2012) (decided under former O.C.G.A. § 15-11-40).

Modification based on failure to provide interpreter to parents. — Juvenile court did not abuse the court's discretion in denying the parents' motion to modify or set aside the termination of parental rights order based on the parents' claim that a language barrier existed at the time of the termination hearing and during critical times in their case because the parents did not assert that the Georgia Department of Family and Children Services should have provided the parents with an interpreter who spoke their Guatemalan dialect of Mam. In the Interest of A. M., 324 Ga. App. 512, 751 S.E.2d 144 (2013).

Claim for commutation or reduction. — When former O.C.G.A. §§ 15-11-40(b), 15-11-63(e)(1)(D) and (e)(2)(c) (see now O.C.G.A. §§ 15-11-32,

15-11-444, 15-11-602, and 15-11-608) were read together to effectuate their meaning as required by O.C.G.A. § 1-3-1(a), the juvenile court did not err in denying a juvenile's motion to commute or reduce the sentence imposed. Allegations that the juvenile was rehabilitated while in restrictive custody and would benefit from being released were insufficient to grant the juvenile court authority to modify the juvenile court's commitment order once physical custody of the juvenile was transferred to the Department of Juvenile Justice. In the Interest of J.V., 282 Ga. App. 319, 638 S.E.2d 757 (2006) (decided under former O.C.G.A. § 15-11-40).

Credit for time served. — Juvenile court erred in expressly denying a juvenile credit for the time served in detention prior to the delinquency adjudication because under O.C.G.A. § 15-11-601(11)(c), the juvenile court was required to give a child credit for time served in a secure residential facility and the credit for time served applies to the disposition of all offenses, including felonies, pursuant to O.C.G.A. § 15-11-604(b). In the Interest of D. D., 335 Ga. App. 676, 782 S.E.2d 728 (2016).

Disposition as designated felon appropriate. — Disposition of the defendant juvenile as a "designated felon" was not improper since the evidence provided by the victims, a sheriff's deputy, and the defendant's own statements were legally sufficient to support the delinquency adjudication for acts that if committed by an adult would constitute burglary, theft by taking-vehicle (three acts), and obstruction of an officer. In the Interest of E.J., 292 Ga. App. 69, 663 S.E.2d 411 (2008) (decided under former O.C.G.A. § 15-11-63).

Disposition as designated felon inappropriate. — Juvenile court erred by imposing restrictive custody against a juvenile under former O.C.G.A. § 15-11-63(b) (see now O.C.G.A. § 15-11-602) because the juvenile did not knowingly and voluntarily waive the right to counsel in a prior adjudication for motor vehicle theft; thus, that prior adjudication was inadmissible for the purposes of the designated felony statute, O.C.G.A. § 15-11-63(a)(2)(E), as to the current adjudication for motor vehicle theft. In the Interest of S. M., 322 Ga. App. 678, 745 S.E.2d 863 (2013).

Petition necessary to revoke probation. — Juvenile court cannot sua sponte revoke probation and order a disposition as for a "designated felony act" after conducting a hearing on a petition which alleges only delinquency by reason of the commission of an act not within the ambit of former O.C.G.A. § 15-11-37 (see now O.C.G.A. §§ 15-11-2 and 15-11-602). Before a juvenile court may revoke an order granting probation, a petition must be filed requesting such relief. In re B.C., 169 Ga. App. 200, 311 S.E.2d 857 (1983) (decided under former O.C.G.A. § 15-11-37).

No age requirement for previous designated felony acts. — Juvenile court did not err in finding that the defendant committed a designated felony act under former subparagraph (a)(2)(D) of former O.C.G.A. § 15-11-37 (see now O.C.G.A. §§ 15-11-2 and 15-11-602), although the previous adjudicated delinquent acts were not committed when the defendant was 13 or more years of age. The previous act of burglary to which former subparagraph (a)(2)(D) referred carried no age requirement. The only requirement was that the juvenile commit a felonious act after three previous adjudications for acts which would have been felonies if committed by an adult. In re K.A.B., 188 Ga. App. 515, 373 S.E.2d 395 (1988) (decided under former O.C.G.A. § 15-11-37).

Criteria must be expressed in writing. — Court's failure in judgment and disposition to expressly recite all of the criteria set forth in subsection (c) of former O.C.G.A. § 15-11-37 (see now O.C.G.A. § 15-11-602) warranted reversal and remand, even though a staff report tracked the statutory language and contained ample facts to serve as a sufficient basis for the court's findings of fact and conclusions of law. In re N.N.G, 196 Ga. App. 765, 397 S.E.2d 40 (1990) (decided under former O.C.G.A. § 15-11-37).

Extent and depth of analysis to which each of the "elements" in subsection (c) of former O.C.G.A. § 15-11-37 (see now O.C.G.A. § 15-11-602) must be subjected is in large measure within the sound dis-

General Consideration (Cont'd)

cretion of the court. It was required, as a statutory minimum, that each of these "elements" must be specifically addressed in writing. In re C.T., 197 Ga. App. 300, 398 S.E.2d 286 (1990) (decided under former O.C.G.A. § 15-11-37); In re S.P., 240 Ga. App. 827, 525 S.E.2d 403 (1999) (decided under former O.C.G.A. § 15-11-37).

Trial court's failure to make written findings on each of the five elements set forth in subsection (c) of former O.C.G.A. § 15-11-37 (see now O.C.G.A. § 15-11-602) required reversal of a delinquency adjudication. In re Y.E., 229 Ga. App. 506, 494 S.E.2d 297 (1997) (decided under former O.C.G.A. § 15-11-37).

Vacation of the juvenile court's judgment and remand of the case was required for compliance with the requirement that the court consider the needs and the best interests of the juvenile and enter appropriate written findings addressing this element after which an appropriate order of disposition may be entered. In the Interest of E.D.F., 243 Ga. App. 68, 532 S.E.2d 424 (2000) (decided under former O.C.G.A. § 15-11-37).

After the juvenile was convicted of aggravated assault, the trial court erred in failing to make written findings under former O.C.G.A. § 15-11-63(c) (see now O.C.G.A. § 15-11-602) regarding the necessity of confining the juvenile to restrictive custody because such findings were mandatory. In the Interest of M.D.L., 271 Ga. App. 738, 610 S.E.2d 687 (2005) (decided under former O.C.G.A. § 15-11-63).

Notice of designated felony act charge not required. — Due process does not require that the juvenile be informed either in writing or in the delinquency petition that the juvenile is being charged with a designated felony act which may require that the juvenile be sentenced to restrictive custody. In the Interest of A.T., 246 Ga. App. 30, 539 S.E.2d 540 (2000) (decided under former O.C.G.A. § 15-11-37).

Commitment order could not be changed. — Defendant moved for early release from a youth development center on grounds that alleged changed circumstances required release in the best interests of the child. The motion was properly denied because under former O.C.G.A. § 15-11-40(b) (see now O.C.G.A. §§ 15-11-444 and 15-11-608), once the Georgia Department of Juvenile Justice had physical custody, a commitment order could not be changed on that basis but could only be made on other grounds. In the Interest of J.W., 293 Ga. App. 408, 667 S.E.2d 161 (2008) (decided under former O.C.G.A. § 15-11-63).

Although former O.C.G.A. § 15-11-40(b) (see now O.C.G.A. O.C.G.A. §§ 15-11-444 and 15-11-608) prohibited the change, modification, or vacation of a commitment order once a child was in the custody of the Department of Juvenile Justice "on the ground that changed circumstances so require in the best interest of the child" or because the child had been rehabilitated, the statute did not prohibit the change, modification, or vacation of a commitment order on other grounds. Further the application of former O.C.G.A. § 15-11-40(b) did not render former O.C.G.A. § 15-11-63 (e)(2)(C) (see now O.C.G.A. § 15-11-602) purposeless in these circumstances when the juvenile based a reduction in sentence on rehabilitation. In re T. H., 298 Ga. App. 536, 680 S.E.2d 569 (2009) (decided under former O.C.G.A. § 15-11-63).

Although former O.C.G.A. § 15-11-63 (see now O.C.G.A. § 15-11-602) suggested that a juvenile defendant could move for early release from a youth development center after the juvenile was already in custody, former O.C.G.A. § 15-11-40(b) (see now O.C.G.A. §§ 15-11-444 and 15-11-608) prohibited modification of a commitment order on the grounds of changed circumstances. As a change in circumstances was the basis of the defendant's motion for early release, the juvenile court lacked jurisdiction to grant the motion. In re K.F., 299 Ga. App. 685, 683 S.E.2d 650 (2009) (decided under former O.C.G.A. § 15-11-63).

Predisposition detainment credit mandated. — Juvenile court erred in ordering that a juvenile receive no credit for time served because former O.C.G.A. § 15-11-63(e)(1)(B) (see now O.C.G.A. § 15-11-602) mandated that the juvenile's predisposition detainment had to be cred-

ited to the time set for confinement. In the Interest of L.R., 316 Ga. App. 374, 729 S.E.2d 520 (2012) (decided under former O.C.G.A. § 15-11-63).

Judge's action not violation of juvenile's right not to testify. — Juvenile court did not comment on the juvenile's right not to testify because the court was required to make the factual findings that the juvenile acted alone and the existence of aggravating or mitigating evidence in rendering the court's disposition. In the Interest of C. M., 331 Ga. App. 16, 769 S.E.2d 737 (2015).

Identified Felonies

Construction with § 16-11-127.1. — Evidence established that the juvenile committed the designated felony act of carrying a weapon on school property because under former O.C.G.A. § 15-11-63(a)(2)(B)(iv) (see now O.C.G.A. §§ 15-11-2, 15-11-602, and 15-11-707), the carrying or possession of a weapon in violation of O.C.G.A. § 16-11-127.1(b) was a designated felony act if done by any child. In the Interest of A.M., 248 Ga. App. 241, 545 S.E.2d 688 (2001) (decided under former O.C.G.A. § 15-11-63).

Child molestation. — Because child molestation was not an offense listed in former O.C.G.A. § 15-11-28(b)(2)(A) (see now O.C.G.A. §§ 15-11-401 and 15-11-490), the trial court erred in using former O.C.G.A. § 15-11-63(a)(2)(D) (see now O.C.G.A. §§ 15-11-2 and 15-11-602) to classify the offense as a designated felony act when the court sentenced a juvenile. In the Interest of M. S., 277 Ga. App. 706, 627 S.E.2d 422 (2006) (decided under former O.C.G.A. § 15-11-63).

Evidentiary Issues

Burden of proof for modification is preponderance of the evidence. — Trial court erred in requiring a father to prove by clear and convincing proof that changed circumstances warranted modification of an order placing the father's children with their maternal aunts; the father retained an interest in the children, under former O.C.G.A. §§ 15-11-13 and 15-11-58(i)(1) (see now O.C.G.A. §§ 15-11-30 and 15-11-204), sufficient to support a right to petition for modification, and the father was only required to prove the motion under former O.C.G.A. § 15-11-40(b) (see now O.C.G.A. §§ 15-11-444 and 15-11-608) by a preponderance of the evidence. In re J. N., 302 Ga. App. 631, 691 S.E.2d 396 (2010) (decided under former O.C.G.A. § 15-11-40).

Sufficient findings warranting restrictive custody. — Juvenile court adequately set forth findings of fact required by former O.C.G.A. § 15-11-63(c) (see now O.C.G.A. § 15-11-602) when the court imposed a sentence of restrictive custody on a minor for committing aggravated child molestation; the egregiousness of the offense made restrictive custody necessary to promote the best interests of the minor and to protect the community. In the Interest of T.N., 254 Ga. App. 330, 562 S.E.2d 374 (2002) (decided under former O.C.G.A. § 15-11-63).

Trial court properly imposed restrictive custody on a juvenile after finding that the juvenile stole a second car in a single criminal episode as former O.C.G.A. § 15-11-63(a)(2)(E) (see now O.C.G.A. §§ 15-11-2 and 15-11-602) did not require proof of a second adjudication of delinquency to authorize restrictive custody; it sufficed that the juvenile committed a second violation of O.C.G.A. §§ 16-8-2 through 16-8-9, since the stolen property was a motor vehicle. In the Interest of L.J., 279 Ga. App. 237, 630 S.E.2d 771 (2006) (decided under former O.C.G.A. § 15-11-63).

Juvenile court did not err in determining that a defendant juvenile was in need of restrictive custody with thirty months of confinement in a youth detention center because: (1) the court complied with former O.C.G.A. § 15-11-63(c) (see now O.C.G.A. § 15-11-602) by making specific written findings of fact as to each of the statutory elements; (2) the court's findings analyzed the defendant's needs and best interest; and (3) the court properly considered the report of a psychological evaluation performed on the defendant, along with the defendant's background and prior juvenile history, in making the court's determination that the defendant's needs would be better served with restrictive custody; the juvenile court's findings

Evidentiary Issues (Cont'd)

accurately reflected the nature and circumstances of the aggravated assault the defendant committed, including the facts that the victim did receive a serious injury when the defendant shot the victim in the head and that the victim had to receive medical treatment for the victim's head injury, and the juvenile court's findings as to those basic facts were supported by the trial evidence and showed circumstances that authorized the order for restrictive custody. In the Interest of I.C., 300 Ga. App. 683, 686 S.E.2d 279 (2009) (decided under former O.C.G.A. § 15-11-63).

Juvenile court did not abuse the court's discretion in placing the defendant in restrictive custody because, once the juvenile court determined that the victim was sixty-two or older and suffered serious injuries, the court was required to sentence the defendant to restrictive custody under former O.C.G.A. § 15-11-63(d) (see now O.C.G.A. § 15-11-602); having no discretion in the matter, the juvenile court was not required to make findings of fact regarding the factors listed in former § 15-11-63(c), which the court would otherwise have to consider to determine whether to place the defendant in restrictive custody. In the Interest of J. W., 306 Ga. App. 339, 702 S.E.2d 649 (2010) (decided under former O.C.G.A. § 15-11-63).

Juvenile court, upon considering the evidence presented, made the requisite findings in the court's order, pursuant to former O.C.G.A. § 15-11-63(c) (see now O.C.G.A. § 15-11-602), to determine whether restrictive custody was required. In re S.F., 312 Ga. App. 671, 719 S.E.2d 558 (2011) (decided under former O.C.G.A. § 15-11-63).

Juvenile court did not abuse the court's discretion in placing the juvenile in restrictive custody because the juvenile court, following a hearing and upon considering the evidence presented, made the finding required under former O.C.G.A. § 15-11-63(c) (see now O.C.G.A. § 15-11-602) to determine whether restrictive custody was required; any alleged predisposition to commit the juvenile to restrictive custody was belied by the juvenile court's pronouncement of intent to review the record before issuing any ruling. In the Interest of R.W., 315 Ga. App. 227, 726 S.E.2d 708 (2012) (decided under former O.C.G.A. § 15-11-63).

Juvenile court did not err in sentencing the juvenile as a designated felon because the juvenile court considered the factors in former O.C.G.A. § 15-11-63 (see now O.C.G.A. §§ 15-11-2, 15-11-471, and 15-11-602), and the court's findings that the juvenile had three prior separate felony adjudications, that the juvenile had a pistol during the commission of the crimes, and that the community needed protection from the juvenile were sufficient. In the Interest of K.F., 316 Ga. App. 437, 729 S.E.2d 575 (2012) (decided under former O.C.G.A. § 15-11-63).

Juvenile court did not abuse the court's discretion in ordering a juvenile to serve 36 months in restrictive custody because the court's findings authorized the court to find that the juvenile's criminal history, repeated violations of probation, removal of the electronic tether, and frequent use of marijuana demonstrated that restrictive custody was in the juvenile's best interests, as well as the community's, and outweighed the absence of any physical harm to the victim of the theft by receiving incident. In the Interest of D. C., 324 Ga. App. 95, 748 S.E.2d 514 (2013).

Improper consideration of evidence required remand. — Because two of three felony charges against a child were reversed on appeal, and the juvenile court improperly considered the victim's cognitive and memory losses when there was no evidence that the losses were caused by the child's beating of the victim and not by a preexisting brain tumor, remand was required for consideration of the sentence of restrictive custody on only the aggravated assault adjudication. In the Interest of Q. S., 310 Ga. App. 70, 712 S.E.2d 99 (2011) (decided under former O.C.G.A. § 15-11-63).

Restrictive Custody

Juvenile may receive restrictive custody for the designated felony act of aggravated assault alone. C.P. v. State, 167 Ga. App. 374, 306 S.E.2d 688 (1983) (decided under former O.C.G.A. § 15-11-37).

If the juvenile court made all the factual findings required by former O.C.G.A. § 15-11-37 (see now O.C.G.A. §§ 15-11-2, 15-11-471, 15-11-602) and specifically found "the child is in need of restrictive custody" in the juvenile court's order of commitment, there was no error in confining the child in a youth development center. In re T.T., 236 Ga. App. 46, 510 S.E.2d 901 (1999) (decided under former O.C.G.A. § 15-11-37).

Trial court did not err in placing the defendants, both juveniles, in restrictive custody, as the aggravated assault that the defendants committed was a designated felony under former O.C.G.A. § 15-11-63(a) (see now O.C.G.A. § 15-11-2) that required a finding under former O.C.G.A. § 15-11-63(b) (see now O.C.G.A. § 15-11-62) as to whether defendants required restrictive custody; the circumstances under O.C.G.A. § 15-11-63(c) (see now O.C.G.A. § 15-11-62) supported the imposition of restrictive custody since the crime was severe, the crime was premeditated, and the crime had a devastating impact on the victim's life. In the Interest of T.K.L., 277 Ga. App. 461, 627 S.E.2d 98 (2006) (decided under former O.C.G.A. § 15-11-63).

Juvenile's sentence of four years in custody was proper on six counts of aggravated assault and one count of possession of a handgun by an underage person because the juvenile was not subject to one of the most severe punishments allowed by law, but was sentenced under former O.C.G.A. § 15-11-63 (see now O.C.G.A. §§ 15-11-2 and 15-11-602), which had the central purpose of rehabilitation and treatment of the child and not punishment. In the Interest of T. D. J., 325 Ga. App. 786, 755 S.E.2d 29 (2014) (decided under former O.C.G.A. § 15-11-63).

Proper restrictive custody finding. — In a juvenile delinquency case, the trial court did not make improper findings under former O.C.G.A. § 15-11-63(c) (see now O.C.G.A. § 15-11-602) in the court's decision to impose restrictive custody. The finding that the defendant was "in need of treatment and rehabilitation" drew a conclusion about the needs and best interests of the defendant, and although a reference to "previous convictions" was a misnomer, it was clear that the trial court was aware that the defendant's record and background included only one delinquency adjudication. In the Interest of J.A.C., 291 Ga. App. 728, 662 S.E.2d 811 (2008) (decided under former O.C.G.A. § 15-11-63).

Oral statements the juvenile court made during the hearing did not show that the juvenile court abused the court's discretion in placing the juvenile in restrictive custody because the statements were not replicated in the juvenile court's written order, which set forth the juvenile court's basis for committing the juvenile to restrictive custody. Furthermore, the commitment order showed that the juvenile court found the juvenile to be in need of secure confinement and rehabilitation before the juvenile was allowed to return to the community, and that was sufficient to show that the juvenile court considered the juvenile's needs and best interests. In the Interest of R.W., 315 Ga. App. 227, 726 S.E.2d 708 (2012) (decided under former O.C.G.A. § 15-11-63).

Juvenile court erred by ordering a juvenile into restrictive custody under former O.C.G.A. § 15-11-63 (see now O.C.G.A. § 15-11-602) after failing to make specific written findings of fact in the court's disposition order and, instead, relying on boilerplate text that the court had considered the necessary factors following the juvenile's delinquency adjudication for violating O.C.G.A. § 16-11-127.1(b)(1) for possession of a weapon in a school zone. In the Interest of J.X.B., 317 Ga. App. 492, 731 S.E.2d 381 (2012) (decided under former O.C.G.A. § 15-11-63).

Trial court did not abuse the court's discretion by ordering a juvenile to serve 12 months in restrictive custody as the juvenile's school disciplinary record; record of delinquency; violations of probation; immaturity; susceptibility to temptation; use of marijuana; lack of positive male role models; lack of structure; and the absence of other activities to occupy time demonstrated that restrictive custody was in the juvenile's best interests, as well as the community's, and was not arbitrary. In the Interest of C. M., 331 Ga. App. 16, 769 S.E.2d 737 (2015).

While not specifically delineated under a separate heading, the juvenile court

Restrictive Custody (Cont'd)

considered and made specific written findings as to the child's record, background, and risk level as required by O.C.G.A. § 15-11-602(b)(3): the juvenile court specifically noted that the Behavioral Health Evaluation revealed that the child had been diagnosed with attention-deficit/hyperactivity disorder, oppositional defiant disorder, depressive disorder, cannabis abuse, and borderline intellectual functioning. In the Interest of C. S., 334 Ga. App. 153, 778 S.E.2d 396 (2015).

Second violation, not second adjudication. — Former O.C.G.A. § 15-11-63(a)(2)(E) (see now O.C.G.A. §§ 15-11-2 and 15-11-602) did not require proof of a second or subsequent "adjudication" of delinquency to authorize the imposition of restrictive custody; rather, former O.C.G.A. § 15-11-63(a)(2)(E) authorized restrictive custody when a child was found to have committed a second or subsequent "violation" of O.C.G.A. §§ 16-8-2 through 16-8-9, if the property which was the subject of the theft was a motor vehicle. In the Interest of L.J., 279 Ga. App. 237, 630 S.E.2d 771 (2006) (decided under former O.C.G.A. § 15-11-63).

Violation of probation. — Although the violation of probation may constitute a "delinquent act" in and of itself, a violation of probation which occurs after the juvenile's 17th birthday will not authorize the initiation of a new delinquency petition against the juvenile. The juvenile court's jurisdiction would extend only to revoking the juvenile's probation for the juvenile's previous adjudication of delinquency. In re B.S.L., 200 Ga. App. 170, 407 S.E.2d 123 (1991) (decided under former O.C.G.A. § 15-11-37).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, §§ 24A-2301A and 24A-2302A, and pre-2000 Code Section 15-11-37, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Purpose. — Former Code section was enacted to ensure that certain juveniles who commit serious acts ("designated felonies") are, upon judicial determination, placed in restrictive custody and that the option of the Division of Youth Services to release a juvenile so placed would be somewhat limited. 1980 Op. Att'y Gen. No. 80-160 (decided under former Code 1933, §§ 24A-2301A and 24A-2302A).

Participation in community work program violated spirit of former section. — General Assembly intended that juveniles committed to the Division of Youth Services under a restrictive custody dispositional order should be held in secure facilities and should not be allowed to come in contact with the general public. Participation by designated felons in community work programs was at least a violation of the spirit, if not the interpretive letter, of the former statute. 1980 Op. Att'y Gen. No. 80-160 (decided under former Code 1933, §§ 24A-2301A and 24A-2302A).

Statutory rape and the combined offenses of statutory rape and criminal trespass may not be considered designated felony acts under paragraph (a)(2) of former O.C.G.A. § 15-11-37 (see now O.C.G.A. §§ 15-11-2 and 15-11-602). 1983 Op. Att'y Gen. No. 83-17 (decided under former O.C.G.A. § 15-11-37).

Designated felony act. — Unless a juvenile had been adjudicated a delinquent in prior court appearances for acts of burglary, a multiple count petition was not sufficient to fall within former subparagraph (a)(2)(D) of former O.C.G.A. § 15-11-37 (see now O.C.G.A. § 15-11-63). 1983 Op. Att'y Gen. No. U83-10 (decided under former O.C.G.A. § 15-11-37).

RESEARCH REFERENCES

Am. Jur. 2d. — 47 Am. Jur. 2d, Juvenile Courts and Delinquent and Dependent Children, §§ 7, 53 et seq., 110 et seq.
42 Am. Jur. 2d, Infants, § 51.

C.J.S. — 43 C.J.S., Infants, § 245 et seq.

U.L.A. — Uniform Juvenile Court Act (U.L.A.) § 37.

15-11-603. Disposition of child adjudged to have committed delinquent act constituting AIDS transmitting crime; HIV testing; reports.

(a) As part of any order of disposition regarding a child adjudged to have committed a delinquent act constituting an AIDS transmitting crime, the court may in its discretion and after conferring with the director of the health district, order that such child submit to an HIV test within 45 days following the adjudication of delinquency. The court shall mail DJJ a copy of the order within three days following its issuance.

(b) Within 30 days following receipt of the copy of the order, DJJ shall arrange for the HIV test for such child.

(c) Any child placed in the custody and control of DJJ shall be HIV tested in accordance with DJJ's policies and procedures.

(d) If a child is determined to be infected with HIV, that determination and the name of the child shall be deemed to be AIDS confidential information and shall only be reported to:

(1) DJJ or the Department of Corrections, as the case may be, and the Department of Public Health, which may disclose the name of such child if necessary to provide counseling and which shall provide counseling to each victim of the AIDS transmitting crime or to any parent, guardian, or legal custodian of any victim who is a minor or incompetent person if DJJ or the Department of Corrections believes the crime posed a reasonable risk of transmitting HIV to the victim. Counseling shall include providing the person with information and explanations medically appropriate for such person which may include all or part of the following: accurate information regarding AIDS and HIV; an explanation of behaviors that reduce the risk of transmitting AIDS and HIV; an explanation of the confidentiality of information relating to AIDS diagnoses and HIV tests; an explanation of information regarding both social and medical implications of HIV tests; and disclosure of commonly recognized treatment or treatments for AIDS and HIV;

(2) The court which ordered the HIV test; and

(3) Those persons in charge of any facility to which such child has been confined by order of the court. In addition to any other

restrictions regarding the confinement of a child, a child determined to be an HIV infected person may be confined separately from any other children in that facility other than those who have been determined to be infected with HIV if:

(A) That child is reasonably believed to be sexually active while confined;

(B) That child is reasonably believed to be sexually predatory either during or prior to detention; or

(C) The commissioner of juvenile justice reasonably determines that other circumstances or conditions exist which indicate that separate confinement would be warranted.

History. — Code 1981, § 15-11-603, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

Cross references. — Criminal conduct by HIV infected persons, § 16-5-60. Testing for sexually transmitted diseases required, § 16-6-13.1. AIDS transmitting crimes, § 17-10-15. Sex education and AIDS prevention, § 20-2-143. Confidential nature of AIDS information, § 24-12-20. Disclosure of AIDS confidential information, § 24-12-21. Control of HIV, T. 31, C. 17A. Use of HIV test results in granting relief from sentence, § 42-9-42.1.

15-11-604. Credit for time served.

(a) A child adjudicated to have committed a delinquent act shall be given credit for each day spent in a secure residential facility, a nonsecure residential facility, or any institution or facility for the treatment or examination of a physical or mental disability awaiting adjudication, pending disposition and in connection with and resulting from a court order entered in the proceedings for which the disposition was imposed and in any institution or facility for treatment or examination of a physical or mental disability. Such credit shall be applied toward the child's disposition.

(b) Subsection (a) of this Code section shall apply to dispositions for all offenses, whether classified as violations, misdemeanors, or felonies.

History. — Code 1981, § 15-11-604, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242; Ga. L. 2014, p. 780, § 1-45/SB 364.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under pre-2014 Code Section 15-11-66, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Credit for time served. — Prior to the 2010 amendment of former O.C.G.A. § 15-11-66 (see now O.C.G.A. § 15-11-604), the defendant was not entitled to credit for time served prior to

adjudication of delinquency for the probation violation. In the Interest of M. A. I., 319 Ga. App. 578, 737 S.E.2d 585 (2013) (decided under former O.C.G.A. § 15-11-66).

Juvenile court erred in expressly denying a juvenile credit for the time served in detention prior to the delinquency adjudication because under O.C.G.A. § 15-11-601, the juvenile court was required to give a child credit for time served in a secure residential facility and the credit for time served applies to the disposition of all offenses, including felonies, pursuant to O.C.G.A. § 15-11-604(b). In the Interest of D. D., 335 Ga. App. 676, 782 S.E.2d 728 (2016).

15-11-605. Probation management programs or secure probation sanctions programs; violations of probation programs.

(a) In addition to any other terms or conditions of probation provided for under this article, the court may require that children who receive a disposition of probation:

(1) Be ordered to a probation management program; or

(2) Be ordered to a secure probation sanctions program by a probation officer or hearing officer.

(b) When a child has been ordered to a probation management program or secure probation sanctions program, the court shall retain jurisdiction throughout the period of the probated sentence and may modify or revoke any part of a probated sentence as provided in Code Section 15-11-32.

(c)(1) DJJ in jurisdictions where DJJ is authorized to provide probation supervision or the county juvenile probation office in jurisdictions where probation supervision is provided directly by the county, as applicable, shall be authorized to establish rules and regulations for graduated sanctions as an alternative to judicial modifications or revocations for probationers who violate the terms and conditions of a probation management program.

(2) DJJ or the county juvenile probation office, as applicable, shall not sanction probationers for violations of conditions of probation if the court has expressed an intention in a written order that such violations be heard by the court.

(d) DJJ or the county juvenile probation office, as applicable, shall impose only those restrictions equal to or less restrictive than the maximum sanction established by the court.

(e) The secure probation sanctions program shall be established by DJJ. Exclusion of a child from a secure probation sanctions program otherwise authorized by this Code section to enter such program shall be mutually agreed upon by the Council of Juvenile Court Judges and DJJ. The secure probation sanctions program shall be available to the

juvenile courts to the extent that each secure facility has capacity for such offenders within its facilities. Prior to reaching full capacity, DJJ shall inform the various juvenile courts of its capacity constraints.

(f)(1) When requesting the secure probation sanctions program, probation officers supervising a child under a probation management program shall provide an affidavit to the court specifying:

(A) The elements of such child's probation program;

(B) Such child's failures to respond to graduated sanctions in the community; and

(C) Such child's number of violations and the nature of each violation.

(2) If a probation officer fails to document the violations and specify how a child has failed to complete a probation management program, such child shall be ineligible to enter the secure probation sanctions program.

(3) A child may enter the secure probation sanctions program if ordered by the court and:

(A) The probation officer has complied with the provisions of paragraph (1) of this subsection and the criteria set by the department for entrance into such program and such child has had three or more violations of probation; or

(B) A child in a probation management program and his or her parent or guardian, or a child in such program and his or her attorney, admit to three or more violations of such program and sign a waiver accepting the sanction proposed by the probation officer.

(4) Each new violation of a condition of a probated sentence may result in a child being sentenced to the secure probation sanctions program; provided, however, that if a child is sentenced to the secure probation sanctions program and completes all program components in the seven, 14, and 30 day programs, such child shall be ineligible to attend the secure probation sanctions program for a future violation of a condition of the same probated sentence.

(g)(1) When a violation of a condition of probation occurs, a child may have an administrative hearing conducted by a hearing officer. If the hearing officer determines by a preponderance of the evidence that such child violated the conditions of probation, the probation officer shall be authorized to impose graduated sanctions. A child's failure to comply with a sanction imposed under this paragraph shall constitute another violation of probation.

(2) A hearing officer's decision shall be final unless such child files, within five days of the service of such decision, a written demand with the hearing officer who conducted the administrative hearing for review of such decision. Such demand shall not stay the sanction decision. Such hearing officer shall issue a response to such demand within five days of receiving such demand.

(3) If such hearing officer insists on the sanction, his or her decision shall be final unless the child subject to the sanction files an appeal in the court that originally adjudicated such child. Such appeal shall be filed within ten days of the date of the decision of the hearing officer.

(4) The appeal shall first be reviewed by the court upon the record. At the court's discretion, a de novo hearing may be held on the decision. The filing of the appeal shall not stay the sanction decision.

(5) Where the court does not act on the appeal within 15 days of the date of the filing of the appeal, the sanction decision shall be affirmed by operation of law.

History. — Code 1981, § 15-11-605, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

15-11-606. Order of disposition not conviction of crime.

An order of disposition or adjudication shall not be a conviction of a crime and shall not impose any civil disability ordinarily resulting from a conviction nor operate to disqualify the child in any civil service application or appointment.

History. — Code 1981, § 15-11-606, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

Cross references. — Persons ineligible to hold civil office, § 45-2-1.

Law reviews. — For article discussing venue problems in juvenile court practice and suggesting solutions, see 23 Mercer L. Rev. 341 (1972).

For comment criticizing Davis v. Alaska, 415 U.S. 308, 94 S. Ct. 1105, 39 L. Ed. 2d 347 (1974), holding petitioner's right to confrontation was preeminent to state policy protecting anonymity of juvenile offenders, see 26 Mercer L. Rev. 343 (1974).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 24A-2401, pre-2000 Code Section 15-11-38, and pre-2014 Code Section 15-11-72, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Treatment of juvenile delinquency as class of conduct. — It is clear that the General Assembly sought to treat

matters of juvenile delinquency as a class of conduct separate and distinct from conventional criminality. T.L.T. v. State, 133 Ga. App. 895, 212 S.E.2d 650 (1975) (decided under former Code 1933, § 24A-2401).

Juvenile court cannot find anyone guilty of crime. T.L.T. v. State, 133 Ga. App. 895, 212 S.E.2d 650 (1975) (decided under former Code 1933, § 24A-2401).

Adjudication of delinquency when child has not attained 13 years. — Juvenile court may adjudicate a child a delinquent based upon a petition alleging that the child committed an act designated a crime under Georgia law, when that child has not yet attained the age of 13 years. K.M.S. v. State, 129 Ga. App. 683, 200 S.E.2d 916 (1973) (decided under former Code 1933, § 24A-2401).

Juvenile subject to criminal adjudication if case transferred. — Juvenile whose case is properly transferred to the superior court is subject to the criminal sanctions which may be imposed in that court. Thus, an adjudication of guilt of a juvenile in superior court is a criminal adjudication. Carrindine v. Ricketts, 236 Ga. 283, 223 S.E.2d 627 (1976) (decided under former Code 1933, § 24A-2401).

Court must recognize quasi-criminal aspects of juvenile law. — Although former statute declared that an adjudication order was noncriminal, nevertheless, the court must recognize the quasi-criminal aspects of juvenile law. M.J.W. v. State, 133 Ga. App. 350, 210 S.E.2d 842 (1974) (decided under former Code 1933, § 24A-2401).

Due process must be adhered to in juvenile court proceedings. — While cases in the juvenile court are not criminal proceedings, due process must always be scrupulously adhered to. D.P. v. State, 129 Ga. App. 680, 200 S.E.2d 499 (1973) (decided under former Code 1933, § 24A-2401).

Merger doctrine inapplicable. — Because of the unique nature of juvenile court proceedings and the fact that a disposition or adjudication order is not a conviction of a crime, the doctrine of merger is inapplicable in juvenile proceedings. In the Interest of I. H., 350 Ga. App. 394, 829 S.E.2d 437 (2019).

Use of records during sentencing. — Juvenile records may be introduced during the sentencing phase of a trial. Burrell v. State, 258 Ga. 841, 376 S.E.2d 184 (1989) (decided under former Code 1933, § 24A-2401).

Out-of-state convictions for acts committed while the defendant was a juvenile could not be used as prior felony convictions for purposes of recidivist sentencing under O.C.G.A. § 17-10-7 because the defendant would not have been convicted of those felonies in this state, but would have been adjudicated delinquent. Miller v. State, 231 Ga. App. 869, 501 S.E.2d 42 (1998) (decided under former O.C.G.A. § 15-11-38).

Commitment to Department of Juvenile Justice proper. — Contrary to the defendant's contention, the commitment to the Department of Juvenile Justice pursuant to former O.C.G.A. § 15-11-66(a)(4) (see now O.C.G.A. § 15-11-601) was not cruel and unusual punishment; the commitment was not a conviction of a crime and did not impose any civil disability ordinarily resulting from a conviction nor operate to disqualify the child in any civil service application or appointment. Further, the commitment was statutorily authorized. In the Interest of B. Q. L. E., 297 Ga. App. 273, 676 S.E.2d 742, cert. denied, No. S09C1197, 2009 Ga. LEXIS 787 (Ga. 2009) (decided under former O.C.G.A. § 15-11-72).

Appeal of adjudication after disposition order expired was not moot. — Juvenile who appealed the juvenile's adjudication of delinquency after the disposition order had expired was not required to show adverse collateral consequences in the record in order to avoid a finding of mootness; such consequences were presumed based on the uses to which a prior adjudication of delinquency could be put. In the Interest of M. F., 305 Ga. 820, 828 S.E.2d 350 (2019).

RESEARCH REFERENCES

Am. Jur. 2d. — 47 Am. Jur. 2d, Juvenile Courts and Delinquent and Dependent Children, §§ 56 et seq., 110 et seq.

C.J.S. — 43 C.J.S., Infants, § 224 et seq.

U.L.A. — Uniform Juvenile Court Act (U.L.A.) § 33.

ALR. — Use of judgment in prior juvenile court proceeding to impeach credibility of witness, 63 A.L.R.3d 1112.

Consideration of accused's juvenile court record in sentencing for offense committed as adult, 64 A.L.R.3d 1291.

Applicability of double jeopardy to juvenile court proceedings, 5 A.L.R.4th 234.

15-11-607. Duration of disposition orders.

(a) Except as otherwise provided in Code Section 15-11-602, an order of disposition committing a child adjudicated for a delinquent act to DJJ shall continue in force for two years or until such child is sooner discharged by DJJ. The court which made the order may extend its duration for a period not to exceed two years subject to like discharge, if:

(1) A hearing is held upon DJJ's motion prior to the expiration of the order;

(2) Reasonable notice of the factual basis of the motion and of the hearing and an opportunity to be heard are given to such child and his or her parent, guardian, or legal custodian; and

(3) The court finds that the extension is necessary for the treatment or rehabilitation of such child.

(b) Any other order of disposition except an order of restitution as allowed by paragraph (7) or (8) of subsection (a) of Code Section 15-11-601 shall continue in force for not more than two years. An order of extension may be made if:

(1) A hearing is held prior to the expiration of the order on the court's own motion or upon motion of DJJ or the prosecuting attorney;

(2) Reasonable notice of the factual basis of the motion and of the hearing and opportunity to be heard are given to the parties affected;

(3) The court finds that the extension is necessary to accomplish the purposes of the order extended; and

(4) The extension does not exceed two years from the expiration of the prior order.

(c) The court may terminate an order of disposition or an extension of such a disposition order prior to its expiration, on its own motion or an application of a party, if it appears to the court that the purposes of the order have been accomplished.

(d) Except as otherwise provided in paragraph (7) of subsection (a) of Code Section 15-11-601 and Code Section 17-14-5, when a child reaches

21 years of age, all orders affecting him or her then in force terminate and he or she is discharged from further obligation or control.

History. — Code 1981, § 15-11-607, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

Cross references. — Motion for extension of Juvenile Court order, Uniform Rules for the Juvenile Courts of Georgia, Rule 4.5. Time limitations upon other orders of disposition in Juvenile Court proceedings, Uniform Rules for the Juvenile Courts of Georgia, Rule 15.3.

Law reviews. — For article, "An Outline of Juvenile Court Jurisdiction with Focus on Child Custody," see 10 Ga. St. B. J. 275 (1973). For article surveying developments in Georgia juvenile court practice and procedure from mid-1980 through mid-1981, see 33 Mercer L. Rev. 167 (1981). For annual survey of law on appellate practice and procedure, see 62 Mercer L. Rev. 25 (2010).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 24A-2701, pre-2000 Code Section 15-11-41, and pre-2014 Code Section 15-11-70, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Constitutionality of provision for extension of custody. — Provision of former O.C.G.A. § 15-11-41 (see now O.C.G.A. §§ 15-11-443 and 15-11-607) permitting the court to extend an order of disposition for two years did not violate constitutional prohibitions against double jeopardy since the statute operated to further the accomplishment of the juvenile's treatment and rehabilitation. In re T.B., 268 Ga. 149, 486 S.E.2d 177 (1997) (decided under former O.C.G.A. § 15-11-41).

Construction with O.C.G.A. § 17-14-10. — Despite the fact that former O.C.G.A. § 15-11-70 (see now O.C.G.A. §§ 15-11-443 and 15-11-607) allowed for a juvenile probation order to be extended if, among other things, a hearing was held prior to the expiration of the order upon motion of a party or on the court's own motion, the juvenile court erred in extending a juvenile's probation and imposing the condition that restitution be paid without making the requisite findings set forth in O.C.G.A. § 17-14-10, such as the juvenile's financial condition. In the Interest of C.S., 280 Ga. App. 781, 635 S.E.2d 176 (2006), overruled on other grounds, McCart v. State, 289 Ga. App. 830, 658 S.E.2d 465 (2008) (decided under former O.C.G.A. § 15-11-70).

Applicability. — Provisions of former O.C.G.A. § 15-11-41 (see now O.C.G.A. § 15-11-443 and 15-11-607) were not applicable in proceedings under former O.C.G.A. § 15-11-81 (see now O.C.G.A. § 15-11-709) for termination of parental rights. In re V.S., 230 Ga. App. 26, 495 S.E.2d 142 (1998).

Juvenile court did not abuse the court's discretion in transferring a former juvenile's case to the superior court because, as a 28-year-old adult, the juvenile court no longer had jurisdiction over the matter, and the court could not be assured that the former juvenile would receive the appropriate treatment for the necessary length of time in the juvenile system; furthermore, the transfer under former O.C.G.A. § 15-11-30.2(a)(3) (see now O.C.G.A. § 15-11-561) did not violate substantive due process under the Fourteenth Amendment. In the Interest of R.T., 278 Ga. App. 225, 628 S.E.2d 662 (2006) (decided under former O.C.G.A. § 15-11-70).

Contrary to a juvenile's claim that the juvenile court erred in committing the juvenile into the custody of the Department of Juvenile Justice for two years consecutive to a 60-day boot camp program, the disposition was valid under both former O.C.G.A. §§ 15-11-66(b)(1) and 15-11-70(a) (see now O.C.G.A.

§§ 15-11-443, 15-11-600, and 15-11-607) as: (1) the former granted the court the discretion, in a case involving a felony offense, to order the juvenile to serve up to a maximum of 60 days in a youth development center in addition to any other treatment or rehabilitation; and (2) under the latter, an order of disposition continued in force for two years, or until the child was sooner discharged by the department. In the Interest of J.R., 280 Ga. App. 143, 633 S.E.2d 447 (2006) (decided under former O.C.G.A. § 15-11-70).

Exclusive jurisdiction for at least two years over deprived children. — Juvenile Code vests exclusive jurisdiction in the juvenile court for at least two years over matters concerning children whom the juvenile court has duly found to be deprived. West v. Cobb County Dep't of Family & Children Servs., 243 Ga. 425, 254 S.E.2d 373 (1979) (decided under former Code 1933, § 24A-2701).

Statute permitted a juvenile court to extend an order of probation until the juvenile reached the age of 21 years. State v. Crankshaw, 243 Ga. 183, 253 S.E.2d 69 (1979) (decided under former Code 1933, § 24A-2701).

Credibility of witnesses in custody. — Witness who is under commitment to the Department of Juvenile Justice is equally subject to the allegation that the witness is shading their testimony in favor of the state in order to obtain more favorable treatment. Wright v. State, 279 Ga. 498, 614 S.E.2d 56 (2005) (decided under former O.C.G.A. § 15-11-70).

Juvenile adjudication of witness. — Trial court's restriction of the defendant's cross-examination of two state's witnesses about their juvenile adjudications was error as the state's case relied primarily on these witnesses, who provided the only evidence that the defendant shot the victim; thus, the defendant's conviction for felony murder was reversed. Wright v. State, 279 Ga. 498, 614 S.E.2d 56 (2005) (decided under former O.C.G.A. § 15-11-70).

Extension of probation proper. — Juvenile's argument on appeal that the juvenile court was not authorized to extend an order of probation for the purpose of payment of restitution, and in doing so, the juvenile court assumed a prosecutorial role, lacked merit, given the language in former O.C.G.A. § 15-11-70(b) (see now O.C.G.A. § 15-11-607) and the state policy pronounced in O.C.G.A. § 17-14-5. In the Interest of C.S., 280 Ga. App. 781, 635 S.E.2d 176 (2006), overruled on other grounds, McCart v. State, 289 Ga. App. 830, 658 S.E.2d 465 (2008) (decided under former O.C.G.A. § 15-11-70).

Juvenile's inability to comply with the juvenile court's order to complete 120 days of a reporting program without extending probation was directly attributable to the juvenile's actions in violating probation and, thus, the juvenile court did not err in extending the juvenile's probation period. In the Interest of M. A. I., 319 Ga. App. 578, 737 S.E.2d 585 (2013) (decided under former O.C.G.A. § 15-11-70).

Custody by Department suspends parental right. — Removal of custody of the child from the parents is a determination that, for whatever length of time custody is exercised by the Department of Family and Children Services, this right has been suspended, although not finally terminated. Rodgers v. Department of Human Resources, 157 Ga. App. 235, 276 S.E.2d 902 (1981) (decided under former O.C.G.A. § 15-11-41).

Effect of order reversing termination of parental rights. — After the court of appeals reversed an order of the juvenile court terminating parental rights, on remand, the juvenile court, which had already extended an order giving custody to the Department of Family and Children Services for two years, lacked authority to extend the order further. In re B.G., 231 Ga. App. 39, 497 S.E.2d 572 (1998) (decided under former O.C.G.A. § 15-11-41).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, § 24A-2701, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for

this Code section. See the Editor's notes at the beginning of the chapter.

Unexpired order of commitment. — Department of Corrections properly has custody of an individual under the provisions of a criminal sentence which was imposed subsequent to an unexpired order of commitment; at the expiration of the criminal sentence, alternative arrangements for custody should be made for the remainder of the term of commitment. 1975 Op. Att'y Gen. No. 75-20 (decided under former Code 1933, § 24A-2701).

RESEARCH REFERENCES

Am. Jur. 2d. — 42 Am. Jur. 2d, Infants, § 50. 47 Am. Jur. 2d, Juvenile Courts and Delinquent and Dependent Children, §§ 57 et seq., 110 et seq.

C.J.S. — 43 C.J.S., Infants, § 224 et seq.

U.L.A. — Uniform Juvenile Court Act (U.L.A.) § 36.

15-11-608. Probation revocation; procedure.

(a) An order granting probation to a child adjudicated for a delinquent act may be revoked on the ground that the conditions of probation have been violated.

(b) Any violation of a condition of probation may be reported to the prosecuting attorney who may file a motion in the court for revocation of probation. A motion for revocation of probation shall contain specific factual allegations constituting each violation of a condition of probation.

(c) The motion for revocation of probation shall be served upon the child serving the probated sentence, his or her attorney, and his or her parent, guardian, or legal custodian in accordance with the provisions of Code Section 15-11-531.

(d) If a child serving a probated sentence is taken into custody because of an alleged violation of probation, the provisions governing the detention of a child shall apply.

(e) A revocation hearing shall be scheduled to be held no later than 30 days after the filing of such motion or, if a child has been detained as a result of the filing of such motion for revocation, not later than ten days after the filing of the motion.

(f) If the court finds, beyond a reasonable doubt, that a child violated the terms and conditions of probation, the court may:

(1) Extend probation;

(2) Impose additional conditions of probation; or

(3) Make any disposition that could have been made at the time probation was imposed.

(g) In the case of a class A designated felony act or class B designated felony act, if the court finds that a child violated the terms and

conditions of probation, the court shall reconsider and make specific findings of fact as to each of the factors in subsection (b) of Code Section 15-11-602 to determine whether placement in restrictive custody.

(h) In the case of a class A designated felony act or class B designated felony act, if the court finds, beyond a reasonable doubt, that a child violated the terms and conditions of probation and revokes the order granting probation, the child shall be given credit for time served on probation and time served in preadjudication custody.

History. — Code 1981, § 15-11-608, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

Administrative rules and regulations. — Admission by order of a juvenile court, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Human Services, Mental Health, Developmental Disabilities and Addictive Diseases, Admission, Treatment and Release of Minors from Mental Health Facilities, Rule 290-4-7-.07.

JUDICIAL DECISIONS

Analysis

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General Consideration

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 24A-2801, pre-2000 Code Section 15-11-42, and pre-2014 Code Section 15-11-40, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Cited in In the Interest of H. J. C., 331 Ga. App. 506, 771 S.E.2d 184 (2015).

Modification or Vacation of Orders

Reduction in sentence not authorized. — Although former O.C.G.A. § 15-11-40(b) (see now O.C.G.A. §§ 15-11-32, 15-11-444, and 15-11-608) prohibited the change, modification, or vacation of a commitment order once a child is in the custody of the Department of Juvenile Justice "on the ground that changed circumstances so require in the best interest of the child" or because the child had been rehabilitated, the statute did not prohibit the change, modification, or vacation of a commitment order on other grounds. Further the application of former § 15-11-40(b) did not render former O.C.G.A. § 15-11-63(e)(2)(C) (see now O.C.G.A. § 15-11-602) purposeless in these circumstances when the juvenile based a reduction in sentence on rehabilitation. In re T. H., 298 Ga. App. 536, 680 S.E.2d 569 (2009) (decided under former O.C.G.A. § 15-11-40).

Commitment order could not be changed. — Defendant moved for early release from a youth development center on grounds that alleged changed circumstances required release in the best interests of the child. The motion was properly denied because under former O.C.G.A. § 15-11-40(b) (see now O.C.G.A. §§ 15-11-32, 15-11-444, and 15-11-608), once the Georgia Department of Juvenile Justice had physical custody, a commitment order could not be changed on that basis but could be changed on other grounds. In the Interest of J.W., 293 Ga. App. 408, 667 S.E.2d 161 (2008) (decided under former O.C.G.A. § 15-11-40).

Modification of a juvenile commitment order under former O.C.G.A. § 15-11-40(b) (see now O.C.G.A. §§ 15-11-32, 15-11-444, and 15-11-608) on the ground that changed circumstances

Modification or Vacation of Orders (Cont'd)

required modification in the best interest of the child was not available to a minor because the minor was already in the custody of the Department of Juvenile Justice; the fact that the custody was based on the minor's restrictive custody under a different commitment order, and not on the commitment order the minor sought to modify, had no bearing on whether the modification could be made. In the Interest of P.S., 295 Ga. App. 724, 673 S.E.2d 74 (2009) (decided under former O.C.G.A. § 15-11-40).

Although former O.C.G.A. § 15-11-63 (see now O.C.G.A. §§ 15-11-2, 15-11-471, 15-11-602, and 15-11-707) suggested that a juvenile defendant could move for early release from a youth development center after the defendant was already in custody, former O.C.G.A. § 15-11-40(b) (see now O.C.G.A. §§ 15-11-32, 15-11-444, and 15-11-608) prohibited modification of a commitment order on the grounds of changed circumstances. As a change in circumstances was the basis of the defendant's motion for early release, the juvenile court lacked jurisdiction to grant the motion. In re K.F., 299 Ga. App. 685, 683 S.E.2d 650 (2009) (decided under former O.C.G.A. § 15-11-40).

Contents of motion. — If the substance of a post-trial motion made no reference to any of the factors which would warrant the vacation or modification of the juvenile court's order, it could not be considered a motion to modify or vacate, thus an appeal could not be taken. In re C.M., 205 Ga. App. 543, 423 S.E.2d 280, cert. denied, 205 Ga. App. 900, 423 S.E.2d 280 (1992) (decided under former O.C.G.A. § 15-11-42).

Probation violation included in justification of delinquency petition. — Juvenile court erred when the court dismissed the state's petition alleging that a child had committed the delinquent act of violating probation as O.C.G.A. § 15-11-2(19)(B) plainly included a probation violation in the category of actions that may give rise to a new delinquency petition and O.C.G.A. § 15-11-608(b) plainly permitted the filing of a motion for revocation of probation, and no court is authorized to ignore either a petition brought under the first or a motion brought under the second. In the Interest of H. J. C., 331 Ga. App. 506, 771 S.E.2d 184 (2015).

Evidence insufficient to support finding of delinquency. — Trial court erred in denying the defendant juvenile's motion to reconsider, vacate, or modify a delinquent adjudication for the offense of simple assault because the evidence was insufficient to support the finding of delinquency since, pursuant to O.C.G.A. § 16-5-20(a)(2), the crime of simple assault required proof that the defendant's actions placed the defendant's grandmother in reasonable apprehension of immediately receiving a violent injury, but the only evidence of that fact was hearsay; a police officer, who was the only witness, testified that the grandmother told the officer that the grandmother was afraid of the defendant, and that the defendant was perhaps going to hit the grandmother, but the officer admitted that there were no allegations that the defendant attempted to hit the grandmother, nor did the officer witness any of the alleged events. In the Interest of J. L. K., 302 Ga. App. 844, 691 S.E.2d 892 (2010) (decided under former O.C.G.A. § 15-11-40).

New disposition was sanction for original offense. — Although the initial act of bringing a weapon to school was not a designated felony under the statute in effect when a juvenile's probation was revoked, a dispositional order imposed upon revocation of probation related to the original delinquent act because the new disposition was a sanction for the original offense. In the Interest of N.M., 316 Ga. App. 649, 730 S.E.2d 127 (2012) (decided under former O.C.G.A. § 15-11-40).

Modification based on failure to provide interpreter to parents. — Juvenile court did not abuse its discretion in denying the parents' motion to modify or set aside the termination of parental rights order based on the parents' claim that a language barrier existed at the time of the termination hearing and during critical times in their case because the parents did not assert that the Georgia

Department of Family and Children Services should have provided the parents with an interpreter who spoke their Guatemalan dialect of Mam. In the Interest of A. M., 324 Ga. App. 512, 751 S.E.2d 144 (2013).

Revocation of Probation

There is no double jeopardy protection against revocation of probation and the imposition of imprisonment. In re B.N.D., 185 Ga. App. 906, 366 S.E.2d 187, cert. denied, 185 Ga. App. 910, 366 S.E.2d 187 (1988) (decided under former O.C.G.A. § 15-11-42).

Hearing in juvenile court seeking termination of probation must be treated as a delinquency trial. K.E.S. v. State, 134 Ga. App. 843, 216 S.E.2d 670 (1975) (decided under former Code 1933, § 24A-2801); T.S.I. v. State, 139 Ga. App. 775, 229 S.E.2d 553 (1976) (decided under former O.C.G.A. § 15-11-42).

Hearing to determine delinquency required prior to revocation of probation. — In order to revoke a juvenile's probation, a de novo hearing is required to determine whether a delinquent act has been committed and that the child is delinquent. T.S.I. v. State, 139 Ga. App. 775, 229 S.E.2d 553 (1976) (decided under former Code 1933, § 24A-2801).

Juvenile court cannot sua sponte revoke probation and order a disposition as for a "designated felony act" after conducting a hearing on a petition which alleges only delinquency by reason of the commission of an act not within the ambit of former O.C.G.A. § 15-11-37 (see now O.C.G.A. §§ 15-11-2, 15-11-471, 15-11-602, and 15-11-707). Before a juvenile court may revoke an order granting probation, a petition must be filed requesting such relief. In re B.C., 169 Ga. App. 200, 311 S.E.2d 857 (1983) (decided under former O.C.G.A. § 15-11-42).

Burden of proof in revocation proceeding. — Finding of delinquency through parole violation in a revocation proceeding must be on proof beyond a reasonable doubt. T.S.I. v. State, 139 Ga. App. 775, 229 S.E.2d 553 (1976) (decided under former Code 1933, § 24A-2801).

Slight evidence will not be sufficient to authorize revocation of juvenile's probation. T.S.I. v. State, 139 Ga. App. 775, 229 S.E.2d 553 (1976) (decided under former Code 1933, § 24A-2801).

Juvenile proceeding differs from adult hearing. — Juvenile revocation of probation proceedings is not analogous to adult probation revocation hearings. T.S.I. v. State, 139 Ga. App. 775, 229 S.E.2d 553 (1976) (decided under former Code 1933, § 24A-2801).

RESEARCH REFERENCES

Am. Jur. 2d. — 42 Am. Jur. 2d, Infants, § 51. 47 Am. Jur. 2d, Juvenile Courts and Delinquent and Dependent Children, § 113 et seq.

C.J.S. — 43 C.J.S., Infants, § 245 et seq.

U.L.A. — Uniform Juvenile Court Act (U.L.A.) § 37.

Part 13

Permanency Planning for Delinquent and Dependent Children

15-11-620. Calculating time when child is delinquent and dependent.

(a) When a child is alleged to have committed a delinquent act and be a dependent child, the date such child is considered to have entered foster care shall be the date of the first judicial finding that such child has been subjected to child abuse or neglect or the date that is 60 days after the date on which such child is removed from his or her home, whichever is earlier.

(b) When a child is alleged to have committed a delinquent act and is placed directly in a nonsecure residential facility, the date such child is considered to have entered foster care shall be 60 days after the date on which such child is removed from his or her home.

(c) If a child alleged or adjudicated to have committed a delinquent act is detained in a facility operated primarily for the detention of delinquent children but is later placed in foster care within 60 days of such child's removal from the home, then the date of entry into foster care shall be 60 days after the date of removal.

(d) When a child alleged or adjudicated to have committed a delinquent act is detained in a facility operated primarily for the detention of delinquent children but is later placed in a nonsecure residential facility within 60 days of such child's removal from the home, the date such child is considered to have entered foster care shall be 60 days from the date on which such child is removed from his or her home.

(e) If a child is detained in a facility operated primarily for the detention of delinquent children pending placement in foster care and remains detained for more than 60 days, then the date of entry into foster care shall be the date such child is placed in foster care.

(f) When a child alleged or adjudicated to have committed a delinquent act is detained in a facility operated primarily for the detention of delinquent children and remains detained for more than 60 days and such child is subsequently placed in a nonsecure residential facility, the date such child is considered to have entered foster care shall be the date such child was placed in a nonsecure residential facility.

History. — Code 1981, § 15-11-620, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242; Ga. L. 2014, p. 34, § 1-2/SB 365.

Law reviews. — For article on the 2014 amendment of this Code section, see 31 Ga. St. U.L. Rev. 25 (2014).

15-11-621. Periodic review hearings for delinquent children in foster care or committed to the Department of Juvenile Justice.

(a) The periodic review hearing requirements under Code Sections 15-11-216, 15-11-217, and 15-11-218 shall apply to proceedings involving a child alleged or adjudicated to have committed a delinquent act and placed in foster care.

(b) When a child is committed to DJJ and for whom a determination has been made that the child's continuation in his or her home is contrary to the child's welfare and he or she is placed in a nonsecure residential facility, such child shall receive a periodic review before an administrative review panel within DJJ within six months following the date the child entered the nonsecure residential facility and every

six months thereafter while the child remains in such facility. The administrative review panel within DJJ shall transmit its report, including its findings and recommendations, to the court within five days after conducting its review.

History. — Code 1981, § 15-11-621, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242; Ga. L. 2014, p. 34, § 1-3/SB 365.

Law reviews. — For article on the 2014 amendment of this Code section, see 31 Ga. St. U.L. Rev. 25 (2014)

15-11-622. Permanency planning requirements; reasons for failure to terminate parental rights.

(a) The permanency plan requirements under Code Sections 15-11-230, 15-11-231, and 15-11-232 shall apply to proceedings involving a child alleged or adjudicated to have committed a delinquent act and placed in foster care.

(b) In addition to the compelling reasons set forth in Code Section 15-11-233, a compelling reason for determining that filing a termination of parental rights petition is not in the best interests of a child alleged or adjudicated to have committed a delinquent act may include, but not be limited to:

(1) A child's developmental needs require continued out-of-home placement for an additional number of months, and his or her parent, guardian, or legal custodian has cooperated with referrals, visitation, and family conferences, as well as therapy;

(2) A child is uncooperative with services or referrals; and

(3) The length of the delinquency disposition affects the permanency plan.

History. — Code 1981, § 15-11-622, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

15-11-623. Permanency plan; hearing, notice, report, and findings of fact when a child is committed to the Department of Juvenile Justice.

(a) As used in this Code section, the term "permanency plan" means a specific written plan prepared by DJJ designed to ensure that a child is reunified with his or her family or ensure that such child quickly attains a substitute long-term home when return to such child's family is not possible or is not in such child's best interests.

(b)(1) The court shall hold a hearing to review the permanency plan for each child committed to DJJ when a determination has been made that the child's continuation in his or her home is contrary to the

child's welfare, and the child is placed in a nonsecure residential facility.

(2) Such hearing shall be held no later than 12 months from the date a child is considered to have entered foster care and every 12 months thereafter to make determinations including whether the permanency plan for such child is appropriate and whether reasonable efforts to finalize the permanency plan have been made by DJJ.

(3) A child's parent, guardian, legal custodian, attorney, any relatives providing care for such child, and other interested parties shall be given written notice of such hearing at least five days in advance of such hearing and shall be advised that the permanency plan will be submitted to the court for consideration as the order of the court.

(4) At least five days prior to such hearing, DJJ shall submit for the court's consideration a report recommending a permanency plan for a child committed to a nonsecure residential facility. Such report shall include documentation of the steps taken by DJJ to finalize the permanent placement for such child.

(5) Subsequent to such hearing, the court shall make written findings of fact that shall include whether DJJ has made reasonable efforts to finalize the permanency plan in effect at the time of the hearing.

History. — Code 1981, § 15-11-623, enacted by Ga. L. 2014, p. 34, § 1-4/SB 365.

Law reviews. — For article on the 2014 enactment of this Code section, see 31 Ga. St. U.L. Rev. 25 (2014)

Part 14

Traffic Offenses

15-11-630. "Child" defined; juvenile traffic offenses; summons; hearings; penalties; transfers; providing information to Department of Driver Services.

(a) As used in this Code section, the term "child" means an individual under 17 years of age.

(b) A juvenile traffic offense consists of a violation by a child of:

(1) A law or local ordinance governing the operation of a moving motor vehicle upon the streets or highways of this state or upon the waterways within or adjoining this state; or

(2) Any other motor vehicle traffic law or local ordinance if a child is taken into custody and detained for its violation or is transferred to the juvenile court by the court hearing the charge.

(c) The following offenses shall be acts of delinquency and shall not be handled as juvenile traffic offenses: aggressive driving, reckless driving, a speeding offense punishable by four or more points, homicide by vehicle, manslaughter resulting from the operation of a vehicle, any felony in the commission of which a motor vehicle is used, racing on highways and streets, using a motor vehicle in fleeing or attempting to elude an officer, fraudulent or fictitious use of a driver's license, hit and run or leaving the scene of an accident, driving under the influence of alcohol or drugs, and any offense committed by an unlicensed driver under 16 years of age.

(d) A juvenile traffic offense shall not be an act of delinquency unless the case is transferred to the delinquency calendar.

(e) The summons, notice to appear, or other designation of a citation accusing a child of committing a juvenile traffic offense constitutes the commencement of the proceedings in the court of the county in which the alleged violation occurred and serves in place of a summons and petition under this article. These cases shall be filed and heard separately from other proceedings of the court. If a child is taken into custody on the charge, Code Sections 15-11-503 and 15-11-505 shall apply. If a child is, or after commencement of the proceedings becomes, a resident of another county of this state, the court in the county where the alleged traffic offense occurred may retain jurisdiction over the entire case.

(f) The court shall fix a time for a hearing and shall give reasonable notice thereof to the child accused of committing a juvenile traffic offense and, if his or her address is known, to his or her parent, guardian, or legal custodian. If the accusation made in the summons, notice to appear, or other designation of a citation is denied, a hearing shall be held at which the parties shall have the right to subpoena witnesses, present evidence, cross-examine witnesses, and appear with their attorney. The hearing shall be open to the public.

(g) If the court finds on the admission of a child or upon the evidence that a child committed the offense charged, it may make one or more of the following orders:

(1) Reprimand, counsel, or warn such child and his or her parent, guardian, or legal custodian; provided, however, that this disposition order shall not be available for any act of delinquency;

(2) As a matter of supervised or unsupervised probation, order the Department of Driver Services to suspend such child's privilege to drive under stated conditions and limitations for a period not to exceed 12 months;

(3) Require such child to attend a traffic school approved by the Department of Driver Services or a substance abuse clinic or program

approved by either DBHDD or the Council of Juvenile Court Judges for a reasonable period of time;

(4) Assess a fine and order such child to remit to the general fund of the county a sum not exceeding the maximum applicable to an adult for a like offense. The fine shall be subject to all additions and penalties as specified under this title and Title 47;

(5) Require such child to participate in a program of community service as specified by the court;

(6) Impose any sanction authorized by Code Section 15-11-442 or 15-11-601; or

(7) Place such child on probation subject to the conditions and limitations imposed by Title 40 governing probation granted to adults for like offenses, provided that such probation shall be supervised by the court or shall be unsupervised probation.

(h) In lieu of the orders provided by subsection (g) of this Code section, if the evidence warrants, the court may transfer the case to the delinquency calendar of the court and direct the filing and service of a summons and delinquency petition.

(i) Upon finding that a child has committed a juvenile traffic offense or an act of delinquency which would be a violation of Title 40 if committed by an adult, the court shall forward, within ten days, a report of the final adjudication and disposition of the charge to the Department of Driver Services; provided, however, that this procedure shall not be applicable to those cases which have been dismissed or in which a child and his or her parent, guardian, or legal custodian have been reprimanded, counseled, or warned by the court. The Department of Driver Services shall record the adjudication and disposition of the offense on such child's permanent record, and such adjudication and disposition shall be deemed a conviction for the purpose of suspending or revoking such child's driver's license. Such record shall also be available to law enforcement agencies and courts as are the permanent traffic records of adults.

History. — Code 1981, § 15-11-630, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242; Ga. L. 2015, p. 540, § 1-15/HB 361.

Cross references. — Prosecution of traffic offenses generally, § 40-13-1 et seq. Liability of parent for malicious acts of minor child, § 51-2-3. Juvenile traffic offenses, Uniform Rules for the Juvenile Courts of Georgia, Rule 13.

Law reviews. — For article recommending more consistency in age requirements of laws pertaining to the welfare of minors, see 6 Ga. St. B. J. 189 (1969).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 24A-3101, pre-2000 Code Section

15-11-49, and pre-2014 Code Section 15-11-73, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Traffic offenses were covered by former statute and were treated separately from delinquency proceedings unless an appropriate petition was filed at the direction of the court. Quire v. Clayton County Dep't of Family & Children Servs., 242 Ga. 85, 249 S.E.2d 538 (1978) (decided under former Code 1933, § 24A-3101).

The procedures in juvenile courts for traffic offenses were established in former O.C.G.A. § 15-11-49 (see now O.C.G.A. § 15-11-650) and juvenile traffic offenses were given special treatment in juvenile law and were not considered delinquency proceedings unless transferred to the delinquency calendar. In re B.G.W. III, 218 Ga. App. 384, 461 S.E.2d 568 (1995) (decided under former O.C.G.A. § 15-11-49).

Rule requiring giving advice on rights inapplicable. — Considering the informal nature of the proceedings under former O.C.G.A. § 15-11-49 (see now O.C.G.A. § 15-11-630), Juvenile Court Rule 4.7, requiring advice to the juvenile regarding the juvenile's rights, was not applicable to traffic offenses. In re B.G.W. III, 218 Ga. App. 384, 461 S.E.2d 568 (1995) (decided under former O.C.G.A. § 15-11-49).

Double jeopardy plea. — As a prosecutor had no actual knowledge of a prior juvenile traffic citation arising out of the same incident that was resolved against the defendant, a juvenile, when the prosecutor initiated charges against the juvenile on additional delinquency traffic citations under former O.C.G.A. § 15-11-73 (see now O.C.G.A. § 15-11-630), the juvenile court properly denied the juvenile's motion to acquit and plea of double jeopardy under O.C.G.A. § 16-1-7(b). In re C. E. H., 297 Ga. App. 467, 677 S.E.2d 318 (2009) (decided under former O.C.G.A. § 15-11-73).

Delinquency order improper. — There was no indication that a juvenile defendant's speeding case was transferred to the delinquency calendar, so under former O.C.G.A. § 15-11-73(d) (see now O.C.G.A. § 15-11-630), the trial court's order adjudging the juvenile delinquent was error. In the Interest of R.G., 272 Ga. App. 276, 612 S.E.2d 94 (2005) (decided under former O.C.G.A. § 15-11-73).

RESEARCH REFERENCES

C.J.S. — 43 C.J.S., Infants, § 369 et seq. 61A C.J.S., Motor Vehicles, § 681 et seq.

U.L.A. — Uniform Juvenile Court Act (U.L.A.) § 44.

ARTICLE 7

COMPETENCY IN DELINQUENCY OR CHILD IN NEED OF SERVICES CASES

Administrative rules and regulations. — Rules and regulations on Mental Health and Developmental Disabilities and Addictive Diseases, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Human Services, Subjects 290-4-1 and 290-4-3 et seq.

15-11-650. Purpose of article.

The purpose of this article is:

(1) To set forth procedures for a determination of whether a child is incompetent to proceed; and

(2) To provide a mechanism for the development and implementation of competency remediation services, when appropriate, including treatment, habilitation, support, or supervision services.

History. — Code 1981, § 15-11-650, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

Law reviews. — For note, "Statutory Reform in the Georgia Juvenile Court System: Juvenile Competency Issues Finally Addressed," see 15 Ga. St. U.L. Rev. 879 (1999).

15-11-651. Definitions.

As used in this article, the term:

(1) "Competency remediation services" means outpatient interventions directed only at facilitating the attainment of competence to proceed for a child adjudicated to be incompetent to proceed. Such term may include mental health treatment to reduce interfering symptoms, specialized psychoeducational programming, or a combination of these interventions.

(2) "Comprehensive services plan" shall have the same meaning as set forth in Code Section 15-11-381.

(3) "Incompetent to proceed" means lacking sufficient present ability to understand the nature and object of the proceedings, to comprehend his or her own situation in relation to the proceedings, and to assist his or her attorney in the preparation and presentation of his or her case in all adjudication, disposition, or transfer hearings. Such term shall include consideration of a child's age or immaturity.

(4) "Mental competency proceeding" means a hearing conducted to determine whether a child is incompetent to proceed in adjudication, a disposition hearing, or a transfer proceeding.

(5) "Plan manager" shall have the same meaning as set forth in Code Section 15-11-381.

(6) "Treatment facility" means a facility that receives patients for psychiatric treatment as provided in Code Sections 37-3-80 through 37-3-84 but shall not include a secure residential facility.

History. — Code 1981, § 15-11-651, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

RESEARCH REFERENCES

Am. Jur. Proof of Facts. — Defendant's Competency to Stand Trial, 40 POF2d 171.

15-11-652. Stay of proceedings regarding child who may not be mentally competent to stand trial; appointment of attorney; tolling of time periods.

(a) If at any time after the filing of a petition alleging delinquency or that a child is a child in need of services the court has reason to believe that the child named in the petition may be incompetent to proceed, the court on its own motion or on the motion of the attorney representing such child, any guardian ad litem for such child, such child's parent, guardian, or legal custodian, or the prosecuting attorney shall stay all proceedings relating to such petition and, unless the court accepts a stipulation by the parties as to such child's incompetency, shall order a competency evaluation of and report on such child's mental condition.

(b) When a delinquency petition is filed alleging a child under the age of 13 has committed a serious violent felony, as defined in Code Section 17-10-6.1, the court shall stay all delinquency proceedings relating to such petition and, unless the court accepts a stipulation by the parties as to such child's incompetency, shall order a competency evaluation and report concerning such child's mental condition.

(c) Any motion, notice of hearing, order, or other pleading relating to a child's incompetency to proceed shall be served upon him or her, his or her attorney, his or her guardian ad litem, if any, his or her parent, guardian, or legal custodian, and the prosecuting attorney.

(d) Prior to the administration of any evaluation, the court shall appoint an attorney to represent a child if he or she is not yet represented by an attorney.

(e) All time limits set forth in Articles 5 and 6 of this chapter for adjudication and disposition of a delinquency or a child in need of services proceeding shall be tolled during the evaluation, adjudication, and disposition phases of the mental competency proceeding and during provision of competency remediation services.

History. — Code 1981, § 15-11-652, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

15-11-653. Evaluation of a child's mental condition; procedures; written reports; additional evaluations.

(a) The court ordered evaluation and report shall be conducted by an examiner who shall consider whether a child is incompetent to proceed. The court shall provide the examiner with any law enforcement or court records necessary for understanding the petition alleging delinquency. The attorney for the child being examined and the prosecuting attorney

shall provide the examiner with any records from any other available sources that are deemed necessary for the competency evaluation.

(b) The competency evaluation shall be performed on an outpatient basis; provided, however, that if a child is in an out-of-home placement, the evaluation shall be performed at such child's location.

(c) The examiner who conducts the evaluation shall submit a written report to the court within 30 days of receipt of the court order for evaluation. The court may, in its discretion, grant the examiner an extension in filing such report. The report shall contain the following:

(1) The specific reason for the evaluation, as provided by the court or the party requesting the evaluation;

(2) The evaluation procedures used, including any psychometric instruments administered, any records reviewed, and the identity of any persons interviewed;

(3) Any available pertinent background information;

(4) The results of a mental status exam, including the diagnosis if any and description of any psychiatric symptoms, cognitive deficiency, or both;

(5) A description of a child's abilities and deficits in the following mental competency functions:

(A) The ability to understand and appreciate the nature and object of the proceedings;

(B) The ability to comprehend his or her situation in relation to the proceedings; and

(C) The ability to assist his or her attorney in the preparation and presentation of his or her case;

(6) An opinion regarding the potential significance of a child's mental competency, strengths, and deficits;

(7) An opinion regarding whether or not a child should be considered incompetent to proceed; and

(8) A specific statement explaining the reasoning supporting the examiner's final determination.

(d) If, in the opinion of the examiner, a child should be considered incompetent to proceed, the report shall also include the following:

(1) An opinion on whether the primary cause of incompetency to proceed is immaturity, mental illness, developmental disability, or a combination of mental illness and developmental disability;

(2) An opinion on whether there is a substantial probability that the examined child will attain the mental competency necessary to participate in adjudication, a disposition hearing, or a transfer hearing in the foreseeable future;

(3) If the examiner believes that the examined child will attain mental competency, recommendations for the general level and type of competency remediation services necessary for significant deficits;

(4) A recommendation on the appropriate treatment or services;

(5) A recommendation as to the least restrictive setting in which competency remediation services may be effectively provided to such child if he or she is in a secure residential facility or nonsecure residential facility and how such detention should continue;

(6) When appropriate, recommendations for modifications of court procedure which may help compensate for mental competency weaknesses; and

(7) Any relevant medication history.

(e) If the examiner determines that the examined child is currently competent because of ongoing treatment with medication or other services, the report shall address the necessity of continuing such treatment and shall include a description of any limitation such treatment may have on competency.

(f) Copies of the written evaluation report shall be provided by the court to the attorney representing the examined child, the prosecuting attorney or a member of his or her staff, and any guardian ad litem for the examined child no later than five days after receipt of the report by the court.

(g) Upon a showing of good cause by any party or upon the court's own motion, the court may order additional evaluations by other licensed psychologists or psychiatrists. In no event shall more than one evaluation be conducted by an examiner employed by DBHDD.

History. — Code 1981, § 15-11-653, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242; Ga. L. 2017, p. 604, § 2-1/SB 175.

15-11-654. Transfer of proceedings.

(a) If at any time following a finding that a child is incompetent to proceed the court determines that such child is a resident of a county of this state other than the county in which the court sits, the court may transfer the proceeding to the county of such child's residence.

(b) When any case is transferred, certified copies of all legal, social history, health, or mental health records pertaining to the case on file

with the clerk of the court shall accompany the transfer. Compliance with this subsection shall terminate jurisdiction in the transferring court and initiate jurisdiction in the receiving court.

(c) If a court determines that such child's competency is remediated, jurisdiction of the case may be returned to the transferring court for the adjudication hearing and any subsequent proceedings.

History. — Code 1981, § 15-11-654, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

15-11-655. Mental competency hearing; burden of proof; notice; rights during hearing; procedure; findings.

(a) A hearing to determine if a child is incompetent to proceed shall be conducted within 60 days after the initial court order for evaluation. The hearing may be continued by the court for good cause shown.

(b) Written notice shall be given to all parties and the victim at least ten days prior to such hearing.

(c) The burden of proving that a child is incompetent to proceed shall be on such child. The standard of proof necessary for proving mental competency shall be a preponderance of the evidence.

(d) At the hearing to determine incompetency to proceed, a child's attorney and the prosecuting attorney shall have the right to:

(1) Present evidence;

(2) Call and examine witnesses;

(3) Cross-examine witnesses; and

(4) Present arguments.

(e) The examiner appointed by the court shall be considered the court's witness and shall be subject to cross-examination by both a child's attorney and the prosecuting attorney.

(f) The court's findings of fact shall be based on any evaluations of a child's mental condition conducted by licensed psychologists or psychiatrists appointed by the court, any evaluations of a child's mental condition conducted by independent licensed psychologists or psychiatrists hired by the parties, and any additional evidence presented.

(g) If the court finds that a child is not incompetent to proceed, the proceedings which have been suspended shall be resumed. The time limits under Article 5 or 6 of this chapter for adjudication and disposition of the petition shall begin to run from the date of the order finding such child mentally competent.

(h) Copies of the court's findings shall be given to the parties within ten days following the issuance of such findings.

History. — Code 1981, § 15-11-655, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

15-11-656. Disposition of incompetent child; competency remediation.

(a) If the court finds that a child is incompetent to proceed but such child's incompetence may be remediated, if such child is alleged:

(1) To be a child in need of services, the court shall either dismiss the petition without prejudice or order competency remediation services for such child; or

(2) To have committed a delinquent act, the court may order competency remediation services for such child.

(b) In determining whether to order competency remediation services, the court shall consider:

(1) Whether there is probable cause to believe the allegations in the petition are true;

(2) The nature of the incompetency;

(3) An incompetent child's age; and

(4) The nature of the act alleged to have been committed by the incompetent child, in particular whether the act is a serious violent felony as such term is defined in Code Section 17-10-6.1.

(c) If a child is determined to be incompetent to proceed, the court has ordered that competency remediation services should be provided, and:

(1) Such child is alleged to have committed an act that would be a felony if committed by an adult, the court may retain jurisdiction of such child for up to two years after the date of the order of incompetency, with review hearings at least every six months to redetermine competency or proceed as provided in subsection (f) of this Code section; or

(2) A child is alleged to have committed an act that would be a misdemeanor if committed by an adult, the court may retain jurisdiction of a child for up to 120 days after the date of the order of incompetency or proceed as provided in subsection (f) of this Code section.

(d) All court orders determining incompetency shall include specific written findings by the court as to the nature of the incompetency and

the mandated outpatient competency remediation services. If such child is in an out-of-home placement, the court shall specify the type of competency remediation services to be performed at such child's location. A child may be placed in a facility or program authorized or designated by DBHDD if the court makes a finding by clear and convincing evidence that all available less restrictive alternatives, including treatment in community residential facilities or community settings which would offer an opportunity for improvement of a child's condition, are inappropriate.

(e) A child who is incompetent to proceed shall not be subject to transfer to superior court, adjudication, disposition, or modification of disposition so long as the mental incompetency exists.

(f) If the court determines that an alleged delinquent child is incompetent to proceed, the court may dismiss the petition without prejudice.

(g)(1) If a child is detained in a secure residential facility or nonsecure residential facility and the court determines that such child is incompetent to proceed, within five days of such determination the court shall issue an order to:

(A) Immediately release such child to the appropriate parent, guardian, or legal custodian; or

(B) Detain such child in the least restrictive setting, if such child is alleged to have committed a delinquent act and the court finds by clear and convincing evidence that such child's detention or care is required:

(i) To reduce the likelihood that he or she may inflict serious bodily harm to others;

(ii) Because he or she has a demonstrated pattern of theft or destruction of property such that detention is required to protect the property of others; or

(iii) Because detention is necessary to secure his or her presence in court to protect the jurisdiction and processes of the court.

(2) If such child is unrestorably incompetent to proceed, such child shall not be detained in a secure residential facility or nonsecure residential facility after a comprehensive services plan has been adopted as provided in Code Section 15-11-451. If such child is incompetent to proceed but his or her incompetence may be remediated, such child shall not be detained in a secure residential facility or nonsecure residential facility for any longer period of time than is allowed for the disposition of a delinquent act under Code

Section 15-11-601 or for the disposition of a class A designated felony act or class B designated felony act under Code Section 15-11-602, as applicable.

History. — Code 1981, § 15-11-656, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242; Ga. L. 2014, p. 780, § 1-46/SB 364; Ga. L. 2017, p. 604, § 2-2/SB 175.

15-11-657. Restoration to competency; remediation orders and reports.

(a) All competency remediation service orders issued by the court shall contain:

(1) The name of the competency remediation service program provider and the location of the program;

(2) A statement of the arrangements for a child's transportation to the program site;

(3) The length of the competency remediation service program;

(4) A statement of the arrangements for a child's transportation after the program ends; and

(5) A direction concerning the frequency of reports required by the court.

(b) DBHDD or a licensed psychologist or psychiatrist shall file a written report with the court:

(1) Not later than six months after the date the court orders that competency remediation be attempted but prior to the first review hearing;

(2) Every six months after the first review hearing if a child remains incompetent to proceed and under an order for remediation;

(3) At any time DBHDD or a licensed psychologist or psychiatrist opines a child has attained competency; or

(4) At shorter intervals designated by the court in its competency remediation order.

(c) DBHDD or the licensed psychologist or psychiatrist written report shall include, but not be limited to:

(1) Whether a child's competency can be remediated or whether a child is likely to remain incompetent to proceed for the foreseeable future;

(2) Whether additional time is needed to remediate a child's competency; and

(3) If a child has attained competency, the effect, if any, of any limitations that are imposed by any medication or other treatment used in the effort to remediate competency.

History. — Code 1981, § 15-11-657, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

15-11-658. Disposition of a child found unrestorably incompetent to proceed.

(a) If the court initially finds that a child is unrestorably incompetent to proceed, the court shall dismiss the petition, appoint a plan manager, and order that procedures for a comprehensive services plan be initiated under Article 5 of this chapter. When appropriate, the court may:

(1) Order that a child be referred for civil commitment pursuant to Chapters 3 and 4 of Title 37. Such proceedings shall be instituted not less than 60 days prior to the dismissal of the delinquency or a child in need of services petition; or

(2) Order that referral be made for appropriate adult services if a child has reached the age of 18 years at the time of the competency determination.

(b) If at any time after a child is ordered to undergo competency remediation services DBHDD or a licensed psychologist or psychiatrist opines that a child is likely to remain incompetent to proceed for the foreseeable future, DBHDD or the licensed psychologist or psychiatrist shall submit a report to the court so stating.

(c) Upon receipt of the report specified in subsection (b) of this Code section, the court shall make a competency determination and shall dismiss the delinquency petition, appoint a plan manager, and order that procedures for a comprehensive services plan be initiated under Article 5 of this chapter. When appropriate, the court may:

(1) Order that a child be referred for civil commitment pursuant to Chapters 3 and 4 of Title 37. Such proceedings shall be instituted not less than 60 days prior to the dismissal of the delinquency or child in need of services petition; or

(2) Order that referral be made for appropriate adult services if a child has reached the age of 18 years at the time of the competency determination.

History. — Code 1981, § 15-11-658, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

Cross references. — Treatment for mental illness generally, § 37-3-1 et seq. Habilitation of the developmentally disabled generally, § 37-4-1 et seq. Juvenile Court disposition of mentally ill or mentally retarded child, Uniform Rules for the Juvenile Courts of Georgia, Rule 20.3.

Law reviews. — For article, "An Outline of Juvenile Court Jurisdiction with Focus on Child Custody," see 10 Ga. St. B. J. 275 (1973).

For comment on Parham v. J.R., 442 U.S. 584, 99 S. Ct. 2493, 61 L. Ed. 2d 101 (1979); Secretary of Pub. Welfare v. Institutionalized Juveniles, 442 U.S. 640, 99 S. Ct. 2523, 61 L. Ed. 2d 142 (1979), regarding juvenile commitment to state mental hospitals upon application of parents or guardians, see 29 Emory L. J. 517 (1980).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, § 24A-2601, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section.

Requirements prior to commitment of mentally retarded or mentally ill child. — A mentally retarded child may not properly be committed to the Department of Human Resources unless the department first advises the court that the department has appropriate facilities available to serve that particular child; a mentally ill child may not be similarly committed unless the child is in need of hospitalization because the child is likely to injure oneself or others if not hospitalized or because, due to the child's mental illness, the child is incapable of caring for the child's physical health and safety. 1976 Op. Att'y Gen. No. 76-111 (decided under former Code 1933, § 24A-2601).

RESEARCH REFERENCES

Am. Jur. 2d. — 47 Am. Jur. 2d, Juvenile Courts and Delinquent and Dependent Children, §§ 7, 56 et seq., 106 et seq.

U.L.A. — Uniform Juvenile Court Act (U.L.A.) § 35.

15-11-659. Court's duty when child found unrestorably incompetent to proceed.

If at any time after a child is adjudicated to be incompetent to proceed due to age, immaturity, or for any reason other than mental illness or developmental disability and is ordered to undergo competency remediation services and DBHDD determines that such child is likely to remain incompetent to proceed for the foreseeable future, DBHDD shall submit a report and its conclusions to the court. Upon receipt of such report, the court shall:

(1) Make a competency determination;

(2) Order that the applicable petition be dismissed; and

(3) Order that a plan manager be appointed and that the procedures for a comprehensive services plan be initiated under Article 5 of this chapter.

History. — Code 1981, § 15-11-659, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

15-11-660. Review hearings.

(a) The court shall hold a hearing to review a child's progress toward competency:

(1) At least every six months;

(2) At any time, on its own motion or on the motion of the prosecuting attorney, a child's attorney, or a child's guardian ad litem, if any;

(3) On receipt of a report submitted by DBHDD; or

(4) Not less than three months before a child's eighteenth birthday.

(b) If at a review hearing the court finds that a child has attained competency, the suspended proceedings shall be resumed and the time limits applicable under Article 5 or 6 of this chapter shall begin to run from the date of the order finding the child mentally competent.

(c) If at a review hearing held following the court's receipt of a DBHDD or licensed psychologist or psychiatrist's report the court finds that a child's incompetency has not been remediated but that such child has made substantial progress toward remediation, the court may extend the competency remediation program period for an additional 60 days if the court determines by clear and convincing evidence that further participation is likely to lead to remediation of competency.

(d) If at a review hearing the court finds that a child's competency is not remediated and is not likely to be remediated within the time left before such child's eighteenth birthday, the court shall dismiss the petition with prejudice if such child is alleged to be a child in need of services or to have committed a delinquent act which would be a misdemeanor if committed by an adult.

(e) At each review hearing, the court shall also consider whether the petition alleging delinquency or that a child is a child in need of services should be withdrawn, maintained, or dismissed, without prejudice, upon grounds other than a child's being incompetent to proceed. If the court dismisses the petition, the prosecuting attorney may seek to refile a petition alleging a delinquent act which would be a felony if committed by an adult if a child is later determined to be mentally competent. The prosecuting attorney may also seek transfer to superior court if a child is later determined to be mentally competent and otherwise meets all the requirements for transfer under Article 6 of this chapter.

History. — Code 1981, § 15-11-660, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

ARTICLE 8

PARENTAL NOTIFICATION ACT

Cross references. — Abortion, T. 16, C. 12, A. 5. Criminal abortion, § 16-12-140. Abortions not to be performed by physician assistants, § 43-34-110. Parental Notification Act, Rules of the Supreme Court of Georgia, Rules 62 — 66. Parental Notification Act, Rules of the Court of Appeals of the State of Georgia, Rule 45. Parental notification of abortion, Uniform Rules for the Juvenile Courts of Georgia, Rules 23.1 — 23.9.

Law reviews. — For article, "Two Decades of Reproductive Freedom Litigation and Activism in Georgia: From Doe v. Bolton to Atlanta v. Operation Rescue," see 28 Ga. St. B. J. 34 (1991).

RESEARCH REFERENCES

ALR. — Use of Planned Parenthood v. Casey's "Large-Fraction" test in review of abortion regulations, 38 A.L.R.7th Art. 6.

15-11-680. Short title.

This article shall be known and may be cited as the "Parental Notification Act."

History. — Code 1981, § 15-11-680, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

Cross references. — Abortion, T. 16, C. 12, A. 5. Criminal abortion, § 16-12-140. Abortions not to be performed by physician assistants, § 43-34-110. Parental Notification Act, Rules of the Supreme Court of Georgia, Rules 62 — 66. Parental Notification Act, Rules of the Court of Appeals of the State of Georgia, Rule 45. Parental notification of abortion, Uniform Rules for the Juvenile Courts of Georgia, Rules 23.1 — 23.9.

Law reviews. — For note, "What Do We Have Against Parents?: An Assessment of Judicial Bypass Procedures and Parental Involvement in Abortions by Minors," see 43 Ga. L. Rev. 617 (2009).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code Section 15-11-110, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section.

Standard of proof. — Former Parental Notification Act, former O.C.G.A. § 15-11-110 et seq. (see now O.C.G.A. § 15-11-680 et seq.), did not require a quantum of proof greater than a preponderance of the evidence. The juvenile court was not tasked with balancing any broader societal interests; thus, there was no basis for imposing a heightened "clear and convincing" standard of proof. In the Interest of Doe, 319 Ga. App. 574, 737 S.E.2d 581 (2013) (decided under former O.C.G.A. § 15-11-110).

RESEARCH REFERENCES

Am. Jur. Pleading and Practice Forms. — 1 Am. Jur. Pleading and Practice Forms, Abortion, § 21.

15-11-681. Definitions.

As used in this article, the term:

(1) "Abortion" means the use or prescription of any instrument, medicine, drug, or any other substance or device with the intent to terminate the pregnancy of a female known to be pregnant. The term "abortion" shall not include the use or prescription of any instrument, medicine, drug, or any other substance or device employed solely to increase the probability of a live birth, to preserve the life or health of the child after live birth, or to remove a dead unborn child who died as a result of a spontaneous abortion. The term "abortion" also shall not include the prescription or use of contraceptives.

(2) "Proper identification" means any document issued by a governmental agency containing a description of the person, the person's photograph, or both, including but not limited to a driver's license, an identification card authorized under Code Sections 40-5-100 through 40-5-104 or similar identification card issued by another state, a military identification card, a passport, or an appropriate work authorization issued by the United States Immigration and Customs Enforcement Division of the Department of Homeland Security.

(3) "Unemancipated minor" means any person under the age of 18 who is not or has not been married or who is under the care, custody, and control of such person's parent or parents, guardian, or the juvenile court of competent jurisdiction.

History. — Code 1981, § 15-11-681, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

15-11-682. Parental notification of abortion; hearing; venue.

(a) No physician or other person shall perform an abortion upon an unemancipated minor unless:

(1)(A) The unemancipated minor seeking an abortion is accompanied by his or her parent or guardian who shall show proper identification and state that he or she is the lawful parent or guardian of the unemancipated minor and that he or she has been notified that an abortion is to be performed on the unemancipated minor;

(B) The physician or the physician's qualified agent gives at least 24 hours' actual notice, in person or by telephone, to the parent or guardian of the unemancipated minor of the pending abortion and the name and address of the place where the abortion is to be performed; provided, however, that, if the person so notified indicates that he or she has been previously informed that the

unemancipated minor was seeking an abortion or if the person so notified has not been previously informed and he or she clearly expresses that he or she does not wish to consult with the unemancipated minor, then in either event the abortion may proceed in accordance with Chapter 9A of Title 31; or

(C) The physician or a physician's qualified agent gives written notice of the pending abortion and the address of the place where the abortion is to be performed, sent by registered or certified mail or statutory overnight delivery, return receipt requested with delivery confirmation, addressed to a parent or guardian of the unemancipated minor at the usual place of abode of the parent or guardian. Unless proof of delivery is otherwise sooner established, such notice shall be deemed delivered 48 hours after mailing. The time of mailing shall be recorded by the physician or agent in the unemancipated minor's file. The abortion may be performed 24 hours after the delivery of the notice; provided, however, that, if the person so notified certifies in writing that he or she has been previously informed that the unemancipated minor was seeking an abortion or if the person so notified has not been previously informed and he or she certifies in writing that he or she does not wish to consult with the unemancipated minor, then in either event the abortion may proceed in accordance with Chapter 9A of Title 31; and

(2) The unemancipated minor signs a consent form stating that she consents, freely and without coercion, to the abortion.

(b) If the unemancipated minor or the physician or a physician's qualified agent, as the case may be, elects not to comply with any one of the requirements of subparagraph (a)(1)(A), (a)(1)(B), or (a)(1)(C) of this Code section, or if the parent or legal guardian of the unemancipated minor cannot be located, the unemancipated minor may petition, on his or her own behalf or by next friend, any juvenile court in the state for a waiver of such requirement pursuant to the procedures provided for in Code Section 15-11-684. The juvenile court shall assist the unemancipated minor or next friend in preparing the petition and notices required pursuant to this Code section. Venue shall be lawful in any county.

(c) No abortion shall be performed unless the requirements of subparagraph (a)(1)(A), (a)(1)(B), or (a)(1)(C) of this Code section have been met or the unemancipated minor has obtained a court order waiving such requirements.

History. — Code 1981, § 15-11-682, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

Law reviews. — For note, "What Do We Have Against Parents?: An Assessment of Judicial Bypass Procedures and Parental Involvement in Abortions by Minors," see 43 Ga. L. Rev. 617 (2009).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under pre-2014 Code Section 15-11-112, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Constitutionality. — Former Georgia Parental Notification Act's requirements, former O.C.G.A. § 15-11-110 et seq. (see now O.C.G.A. § 15-11-680 et seq.), taken together, did not unduly burden a minor's abortion decision. Planned Parenthood Ass'n v. Miller, 934 F.2d 1462 (11th Cir. 1991) (decided under former O.C.G.A. § 15-11-112).

Constructive delivery provision of subparagraph (a)(1)(C) of former O.C.G.A. § 15-11-112 (see now O.C.G.A. § 15-11-682) ensured that, with no parental action, and no actual notice to her parent, a minor can proceed with her abortion. The provision did not unduly burden a minor's abortion right, and it therefore survived constitutional scrutiny. Planned Parenthood Ass'n v. Miller, 934 F.2d 1462 (11th Cir. 1991) (decided under former O.C.G.A. § 15-11-112).

Notice. — By limiting written notice to notice by the United States Postal Service — and excluding notice by private carriers such as Federal Express and Airborne Express — Georgia has enacted reasonable regulations that foster Georgia's important state interest in protecting immature minors. Planned Parenthood Ass'n v. Miller, 934 F.2d 1462 (11th Cir. 1991) (decided under former O.C.G.A. § 15-11-112).

Legislature may permit notice by telephone or in person, or by some other means that guarantees sufficient reliability; it may refuse to recognize notice if a physician simply sends a note home with a minor or uses an uncertified mail service since, with either of these methods, there is a substantial likelihood that the notice will not reach its destination. Planned Parenthood Ass'n v. Miller, 934 F.2d 1462 (11th Cir. 1991) (decided under former O.C.G.A. § 15-11-112).

Authority of judicial officers. — An intake officer's authority to make a preliminary determination under Juvenile Court Rule 4.1 regarding a minor's petition does not impose an impermissible third-party veto over a minor's abortion decision. Planned Parenthood Ass'n v. Miller, 934 F.2d 1462 (11th Cir. 1991) (decided under former O.C.G.A. § 15-11-112).

Because a guardian ad litem who is familiar with the conduct of the waiver hearing and appeal offers invaluable assistance to a pregnant minor, Juvenile Court Rule 23.2, which provides for the appointment of a guardian, will promote rather than burden the minor's abortion decision. Planned Parenthood Ass'n v. Miller, 934 F.2d 1462 (11th Cir. 1991) (decided under former O.C.G.A. § 15-11-112).

Waiver of notification denied. — Juvenile court correctly found that an unemanicipated minor would have to notify her parents before having an abortion because she did not consult with her doctor before making this decision and there was no evidence that it would not be in her best interest to inform her parents. In re E.H., 240 Ga. App. 91, 524 S.E.2d 2 (1999) (decided under former O.C.G.A. § 15-11-112).

RESEARCH REFERENCES

ALR. — Validity, construction, and application of statutes requiring parental notification of or consent to minor's abortion, 77 A.L.R.5th 1.

15-11-683. Time and notice of hearing.

Notwithstanding Code Sections 15-11-40, 15-11-150, 15-11-152, 15-11-160, 15-11-281, 15-11-424, and 15-11-531, the unemancipated

minor or next friend shall be notified of the date, time, and place of the hearing in such proceedings at the time of filing the petition. The hearing shall be held within three days of the date of filing, excluding weekends and legal holidays. The parent, guardian, or legal custodian of the unemancipated minor shall not be served with the petition or with a summons or otherwise notified of the proceeding. If a hearing is not held within the time prescribed in this Code section, the petition shall be deemed granted.

History. — Code 1981, § 15-11-683, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

Cross references. — Hearings in Juvenile Court proceedings under Parental Notification Act, Uniform Rules for the Juvenile Courts of Georgia, Rules 23.4 — 23.9.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under pre-2014 Code Section 15-11-113, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Constitutionality. — Former Georgia Parental Notification Act's requirements, former O.C.G.A. § 15-11-110 et seq. (see now O.C.G.A. § 15-11-683), taken together, did not unduly burden a minor's abortion decision. Planned Parenthood Ass'n v. Miller, 934 F.2d 1462 (11th Cir. 1991) (decided under former O.C.G.A. § 15-11-113).

15-11-684. Conduct of hearing; appeal.

(a) An unemancipated minor may participate in proceedings in the court on such minor's own behalf and the court shall advise such minor of the right to court appointed counsel and shall provide such minor with such counsel upon request or if such minor is not already adequately represented.

(b) All court proceedings under this Code section shall be conducted in a manner to preserve the complete anonymity of the parties and shall be given such precedence over other pending matters as is necessary to ensure that a decision is reached by the court as expeditiously as is possible under the circumstances of the case. In no event shall the name, address, birth date, or social security number of such minor be disclosed.

(c) The requirements of subparagraph (a)(1)(A), (a)(1)(B), or (a)(1)(C) of Code Section 15-11-682 shall be waived if the court finds either:

(1) That the unemancipated minor is mature enough and well enough informed to make the abortion decision in consultation with her physician, independently of the wishes of such minor's parent or guardian; or

(2) That the notice to a parent or, if the unemancipated minor is subject to guardianship, the legal guardian pursuant to Code Section 15-11-682 would not be in the best interests of such minor.

(d) A court that conducts proceedings under this Code section shall issue written and specific factual findings and legal conclusions supporting its decision and shall order that a record of the evidence be maintained. The juvenile court shall render its decision within 24 hours of the conclusion of the hearing and a certified copy of same shall be furnished immediately to the unemancipated minor. If the juvenile court fails to render its decision within 24 hours after the conclusion of the hearing, then the petition shall be deemed granted. All juvenile court records shall be sealed in a manner that will preserve anonymity.

(e) An expedited appeal completely preserving the anonymity of the parties shall be available to any unemancipated minor to whom the court denies a waiver of notice. The appellate courts are authorized and requested to issue promptly such rules as are necessary to preserve anonymity and to ensure the expeditious disposition of procedures provided by this Code section. In no event shall the name, address, birth date, or social security number of such minor be disclosed during the expedited appeal or thereafter.

(f) No filing fees shall be required of any unemancipated minor who uses the procedures provided by this Code section.

History. — Code 1981, § 15-11-684, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

Cross references. — Disclosure of information on appeal from hearing in Juvenile Court proceeding under Parental Notification Act, Uniform Rules for the Juvenile Courts of Georgia, Rule 23.9.

Law reviews. — For note, "What Do We Have Against Parents?: An Assessment of Judicial Bypass Procedures and Parental Involvement in Abortions by Minors," see 43 Ga. L. Rev. 617 (2009).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under pre-2014 Code Section 15-11-114, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Constitutionality. — There was no constitutional infirmity in the constructive order provision in former subsection (d) of O.C.G.A. § 15-11-114 (see now O.C.G.A. § 15-11-684); as long as the state imposed a constitutional timetable for the minor's petition to be heard and acted upon, this was sufficient to demonstrate that bypass procedure's expediency. Planned Parenthood Ass'n v. Miller, 934 F.2d 1462 (11th Cir. 1991) (decided under former O.C.G.A. § 15-11-114).

Time requirement. — Although a hearing was conducted on a Friday, former O.C.G.A. § 15-11-114 (see now O.C.G.A. § 15-11-684) included no provision allowing the court to delay the court's ruling on the petition beyond 24 hours in order to accommodate an intervening weekend or holiday. The statute did not use vague language to describe the appli-

cable time period, such as "one day" or "by the end of the next business day"; instead, the statute specifically stated "within 24 hours of the conclusion of the hearing." In the Interest of Doe, 319 Ga. App. 574, 737 S.E.2d 581 (2013) (decided under former O.C.G.A. § 15-11-114).

Order not rendered within 24 hours of conclusion of hearing. — Juvenile was entitled to reversal of the denial of the juvenile's petition for waiver of the parental notification requirement before an unemancipated minor may have an abortion because the juvenile court failed to comply with the statutory mandate that the court render a decision and provide a certified copy of the order to the minor within 24 hours of the conclusion of the hearing pursuant to former O.C.G.A. § 15-11-114(d) (see now O.C.G.A. § 15-11-684). In the Interest of Doe, 319 Ga. App. 574, 737 S.E.2d 581 (2013) (decided under former O.C.G.A. § 15-11-114).

Complete anonymity is not critical. — Fact that some public officials have access to the minor's court record did not compromise the record's confidentiality, nor did it mean that the officials would make unauthorized disclosures of the record. Planned Parenthood Ass'n v. Miller, 934 F.2d 1462 (11th Cir. 1991) (decided under former O.C.G.A. § 15-11-114).

15-11-685. Applicability to nonresidents.

The requirements and procedures of this article shall apply to all unemancipated minors within this state whether or not such persons are residents of this state.

History. — Code 1981, § 15-11-685, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

15-11-686. Medical emergency.

This article shall not apply when, in the best clinical judgment of the attending physician on the facts of the case before him or her, a medical emergency exists that so complicates the condition of the unemancipated minor as to require an immediate abortion. A person who performs an abortion as a medical emergency under the provisions of this Code section shall certify in writing the medical indications on which this judgment was based when filing such reports as are required by law.

History. — Code 1981, § 15-11-686, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

15-11-687. Immunity of health care provider acting in good faith.

Any physician or any person employed or connected with a physician, hospital, or health care facility performing abortions who acts in good faith shall be justified in relying on the representations of the unemancipated minor or of any other person providing the information required under this article. No physician or other person who furnishes

professional services related to an act authorized or required by this article and who relies upon the information furnished pursuant to this article shall be held to have violated any criminal law or to be civilly liable for such reliance, provided that the physician or other person acted in good faith.

History. — Code 1981, § 15-11-687, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

15-11-688. Penalty.

Any person who violates the provisions of this article shall be guilty of a misdemeanor and any person who intentionally encourages another to provide false information pursuant to this article shall be guilty of a misdemeanor.

History. — Code 1981, § 15-11-688, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

Cross references. — Mental capacity and insanity, § 16-3-2. Insanity and mental incompetency, § 17-7-130 et seq. Mental health, T. 37.

Administrative rules and regulations. — Rules and regulations on Mental Health, Developmental Disabilities and Addictive Diseases, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Human Services, Subjects 290-4-1 and 290-4-3 et seq.

ARTICLE 9

ACCESS TO HEARINGS AND RECORDS

15-11-700. Admission to hearings of general public and media.

(a) As used in this Code section, the term "dependency proceeding" means a court proceeding stemming from a petition alleging that a child is a dependent child.

(b) The general public shall be admitted to:

(1) An adjudicatory hearing involving an allegation of a class A designated felony act or class B designated felony act;

(2) An adjudicatory hearing involving an allegation of delinquency brought in the interest of any child who has previously been adjudicated for committing a delinquent act; provided, however, the court shall close any delinquency hearing on an allegation of sexual assault or any delinquency hearing at which any party expects to introduce substantial evidence related to matters of dependency;

(3) Any child support hearing;

(4) Any hearing in a legitimation action filed pursuant to Code Section 19-7-22;

(5) At the court's discretion, any dispositional hearing involving any proceeding under this article; or

(6) Any hearing in a dependency proceeding, except as otherwise provided in subsection (c) of this Code section.

(c) The court may close the hearing in a dependency proceeding only upon making a finding upon the record and issuing a signed order stating the reason or reasons for closing all or part of a hearing in such proceeding and stating that:

(1) The proceeding involves an allegation of an act which, if done by an adult, would constitute a sexual offense under Chapter 6 of Title 16; or

(2) It is in the best interests of the child. In making such a determination, the court shall consider such factors as:

(A) The age of the child alleged or adjudicated as a dependent child;

(B) The nature of the allegations;

(C) The effect that an open court proceeding will have on the court's ability to reunite and rehabilitate the family unit; and

(D) Whether the closure is necessary to protect the privacy of a child, of a foster parent or other caretaker of a child, or of a victim of domestic violence.

(d) The court may close a hearing or exclude a person from a hearing in any proceeding on its own motion, by motion of a party to the proceeding, or by motion of the child who is the subject of the proceeding or the child's attorney or guardian ad litem.

(e) Only the parties, their counsel, witnesses, persons accompanying a party for his or her assistance, the victim, and any other persons as the court finds have a proper interest in the proceeding or in the work of the court may be admitted by the court to hearings from which the public is excluded; provided, however, that when the conduct alleged in the dependency proceeding could give rise to a criminal or delinquent act prosecution, attorneys for the prosecution and the defense shall be admitted.

(f) The court may refuse to admit a person to a hearing in any proceeding upon making a finding upon the record and issuing a signed order that the person's presence at the hearing would:

(1) Be detrimental to the best interests of the child who is a party to the proceeding;

(2) Impair the fact-finding process; or

(3) Be otherwise contrary to the interest of justice.

(g) The court may temporarily exclude any child from a termination of parental rights hearing except while allegations of his or her delinquency or child in need of services conduct are being heard.

(h) Any request for installation and use of electronic recording, transmission, videotaping, or motion picture or still photography of any judicial proceeding shall be made to the court at least two days in advance of the hearing. The request shall be evaluated by the court pursuant to the standards set forth in Code Section 15-1-10.1.

(i) The judge may order the media not to release identifying information concerning any child or family members or foster parent or other caretaker of a child involved in hearings open to the public.

(j) The general public shall be excluded from proceedings in juvenile court unless such hearing has been specified as one in which the general public shall be admitted to pursuant to this Code section.

History. — Code 1981, § 15-11-700, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

Cross references. — Freedom of press, U.S. Const., amend. 1. Exclusion of public from criminal trials generally, § 17-8-53.

Law reviews. — For article, "The World Where Parallel Lines Converge: The Privilege Against Self-Incrimination in Concurrent Civil and Criminal Child Abuse Proceedings," see 24 Ga. L. Rev. 473 (1990). For article, "Criminal Procedure," see 27 Ga. St. U.L. Rev. 29 (2011).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 24A-1801, pre-2000 Code Section 15-11-28, and pre-2014 Code Section 15-11-78, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Parents to be present throughout hearing. — Former statute indicated the legislative plan for the conduct of hearings was for the parents to be present at all times. D.C.A. v. State, 135 Ga. App. 234, 217 S.E.2d 470 (1975) (decided under former Code 1933, § 24A-1801).

Presence of members of the press. — In a proceeding seeking the termination of parental rights, if no objection to the presence of members of the press is made at any time during the hearing, any enumeration of error is without merit. Heath v. McGuire, 167 Ga. App. 489, 306 S.E.2d 741 (1983) (decided under former O.C.G.A. § 15-11-28).

Adoption caseworker. — Trial court did not err by permitting an adoption caseworker to remain in the courtroom during the father's termination of parental rights hearing after the father's counsel invoked the rule of sequestration; the rule of sequestration did not apply because the caseworker was not a witness, and the trial court did not abuse the court's discretion in determining that it was necessary for the caseworker to hear the evidence at the hearing for purposes of efficiency. In the Interest of T.G.Y., 279 Ga. App. 449, 631 S.E.2d 467 (2006) (decided under former O.C.G.A. § 15-11-78).

Consideration of public's rights to open hearing. — When a member of the public or press institutes a judicial proceeding to require the opening of a juvenile hearing, the court must, in an expeditious manner, give the public or press an

opportunity to present evidence and argument to show that the state's or juvenile's interest in a closed hearing is overridden by the public's interest in a public hearing. Florida Publishing Co. v. Morgan, 253 Ga. 467, 322 S.E.2d 233 (1984) (decided under former O.C.G.A. § 15-11-28).

RESEARCH REFERENCES

Am. Jur. 2d. — 47 Am. Jur. 2d, Juvenile Courts and Delinquent and Dependent Children, §§ 78 et seq., 91 et seq.

C.J.S. — 43 C.J.S., Infants, § 163 et seq.

U.L.A. — Uniform Juvenile Court Act (U.L.A.) § 24.

ALR. — Right to jury trial in juvenile court delinquency proceedings, 100 A.L.R.2d 1241.

Defense of infancy in juvenile delinquency proceedings, 83 A.L.R.4th 1135.

Propriety of exclusion of press or other media representatives from civil trial, 39 A.L.R.5th 103.

15-11-701. Sealing of files and records; hearings; limitations on disclosure; identity of victim.

(a) Upon dismissal of a petition or complaint alleging delinquency or that a child is a child in need of services or completion of the process in a case handled through informal adjustment, mediation, or other nonadjudicatory procedure, the court shall order the sealing of the files and records in the case.

(b) On application of a person who has been adjudicated for committing a delinquent act or as a child in need of services or on the court's own motion, and after a hearing, the court shall order the sealing of the files and records in the proceeding if the court finds that:

(1) Two years have elapsed since the final discharge of the person;

(2) Since the final discharge of the person he or she has not been convicted of a felony or of a misdemeanor involving moral turpitude or adjudicated for committing a delinquent act or as a child in need of services and no proceeding seeking conviction or adjudication is pending against the person; and

(3) The person has been rehabilitated.

(c) On application of a person who has been adjudicated for a delinquent act or on the court's own motion, and after a hearing, the court shall order the sealing of the files and records in the proceeding, including those specified in Code Sections 15-11-702 and 15-11-708, if the court finds that the child was adjudicated for a delinquent act for a sexual crime as defined in Code Section 16-3-6 and such crime resulted from the child being:

(1) Trafficked for sexual servitude in violation of Code Section 16-5-46; or

(2) A victim of sexual exploitation as defined in Code Section 49-5-40.

(d) Reasonable notice of the hearing required by subsection (b) and (c) of this Code section shall be given to:

(1) The prosecuting attorney;

(2) DJJ, when appropriate;

(3) The authority granting the discharge if the final discharge was from an institution or from parole; and

(4) The law enforcement officers or department having custody of the files and records if the files and records specified in Code Sections 15-11-702 and 15-11-708 are included in the application or motion.

(e) Upon the entry of the order the proceeding shall be treated as if it had never occurred. All index references shall be deleted and the person, the court, the law enforcement officers, and the departments shall properly reply that no record exists pertaining to the person upon inquiry in any matter. Copies of the order shall be sent to each agency or designated official and shall also be sent to the deputy director of the Georgia Crime Information Center of the Georgia Bureau of Investigation. Inspection of the sealed files and records thereafter may be permitted by an order of the court upon petition by the person who is the subject of the records and otherwise only by those persons named in the order or to criminal justice officials upon petition to the court for official judicial enforcement or criminal justice purposes.

(f) The court may seal any record containing information identifying a victim of an act which, if done by an adult, would constitute a sexual offense under Chapter 6 of Title 16.

History. — Code 1981, § 15-11-701, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

Cross references. — Sealing of records, notice, and hearing, Uniform Rules for the Juvenile Courts of Georgia, Rules 3.4 — 3.7.

Administrative rules and regulations. — Completeness and accuracy of criminal justice information, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Crime Information Center Council, Practice and Procedure, Rule 140-2.03.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 24A-3504, pre-2000 Code Section 15-11-61, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

"Moral turpitude." — In general, the phrase "moral turpitude" refers to felonies which are malum in se. In re Long, 153 Ga. App. 883, 267 S.E.2d 481 (1980) (decided under former Code 1933, § 24A-3504).

Records of the Department of Family and Children Services which are not part of a juvenile court proceeding are not sealable. In re W.J.K., 188 Ga. App. 299, 372 S.E.2d 681 (1988) (decided under former O.C.G.A. § 15-11-61).

Motion to seal juvenile court record premature. — Juvenile court properly

denied each of the minor's motions to seal the juvenile court record because the motions were filed prematurely as at least two years had to elapse from the time the minor completed the terms of the minor's sentence and was released from probation before the minor was entitled to a sealed record. In the Interest of L.T., 325 Ga. App. 590, 754 S.E.2d 380 (2014) (decided under former OCGA § 15-11-79.2).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, § 24A-3504, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Inspection by employees of adult probation and parole offices. — Pursuant to former Code 1933, § 24A-3504 (see now O.C.G.A. § 15-11-701), a juvenile court judge may, in the judge's discretion, permit employees of an adult probation office and an adult parole office to inspect juvenile court records, except in cases where those records have been sealed under former Code 1933, § 24A-2401 (see now O.C.G.A. § 15-11-703). 1981 Op. Att'y Gen. No. U81-34 (decided under former Code 1933, § 24A-3504).

Consent of court needed for access of parole board. — Consent of the court must be obtained on each individual to allow the State Board of Pardons and Paroles access to juvenile records, and if those records are sealed, the subject must petition the court to allow the board access to such records. 1978 Op. Att'y Gen. No. 78-76 (decided under former Code 1933, § 24A-3504).

RESEARCH REFERENCES

Am. Jur. 2d. — 47 Am. Jur. 2d, Juvenile Courts and Delinquent and Dependent Children, § 116 et seq.

C.J.S. — 43 C.J.S., Infants, § 254. 76 C.J.S., Records, § 41 et seq.

U.L.A. — Uniform Juvenile Court Act (U.L.A.) § 57.

ALR. — Restricting public access to judicial records of state courts, 84 A.L.R.3d 598.

15-11-702. Children's fingerprints, photographs, and names.

(a)(1) Every child charged with an offense that would be a felony if committed by an adult shall be fingerprinted and photographed upon being taken into custody.

(2) Fingerprints and photographs of children to be used in investigating the commission of crimes shall be taken and filed separately from those of adults by law enforcement officials and shall be made available as provided in this article and as may be directed by the court.

(b) Fingerprint files and photographs of children may be inspected by law enforcement officers when necessary for criminal justice purposes and for the discharge of their official duties. Other inspections may be authorized by the court in individual cases upon a showing that it is necessary in the public interest.

(c) If a child has been charged with an offense that if committed by an adult would be a felony or if the case is transferred to another court

for prosecution, such child's identification data, and other pertinent information shall be forwarded to the Georgia Crime Information Center of the Georgia Bureau of Investigation. The center shall create a juvenile fingerprint file and enter the data into the computerized criminal history files. The Georgia Bureau of Investigation shall act as the official state repository for juvenile history data and shall be authorized to disseminate such data for the purposes specified in Code Section 15-11-708.

(d) Upon application of a child, fingerprints and photographs of such child shall be removed from the file and destroyed if a petition alleging delinquency is not filed or the proceedings are dismissed after either such petition is filed or the case is transferred to the juvenile court or the child is adjudicated not to be a delinquent child. The court shall notify the deputy director of the Georgia Crime Information Center when fingerprints and photographs are destroyed, and the Georgia Bureau of Investigation shall treat such records in the same manner as criminal history record information is restricted pursuant to Code Section 35-3-37.

(e) Except as provided in subsection (a) of this Code section, without the consent of the judge, a child shall not be photographed after he or she is taken into custody unless the case is transferred to another court for prosecution.

(f) Upon request, the judge or his or her designee shall release the name of any child with regard to whom a petition has been filed alleging a child committed a class A designated felony act or class B designated felony act or alleging a child committed a delinquent act if such child has previously been adjudicated for committing a delinquent act or if such child has previously been before the court on a delinquency charge and adjudication was withheld.

History. — Code 1981, § 15-11-702, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

Administrative rules and regulations. — Completeness and accuracy of criminal justice information, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Crime Information Center Council, Practice and Procedure, Rule 140-2.03.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under pre-2014 repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Section held unconstitutional. — Conclusive presumption in paragraph (g)(1) of former O.C.G.A. § 15-11-60 (see now O.C.G.A. § 15-11-702) that juvenile proceedings are to be closed to the press and public is unconstitutional. Florida Publishing Co. v. Morgan, 253 Ga. 467,

322 S.E.2d 233 (1984) (decided under former O.C.G.A. § 15-11-60).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, § 24A-2503, and pre-2000 Code Section 15-11-60, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Inapplicable to children prosecuted in superior court. — Provisions of former statute concerning compilation and maintenance of fingerprint records of children investigated by law enforcement authorities should not apply to the case of a child who is either indicted and tried in the superior court for a capital felony or who is transferred from the juvenile court for criminal prosecution; in either of those instances a child may be fingerprinted in accordance with standard practice; thus, such a child's fingerprint file would neither have to be "kept separate from those of adults" nor "maintained on a local basis only," but could be forwarded "to a central state or federal depository" for storage in the routine manner. 1974 Op. Att'y Gen. No. 74-58 (decided under former Code 1933, § 24A-3503).

Disposition of fingerprints. — Fingerprints of children taken as authorized in subsection (a) of former O.C.G.A. § 15-11-60 may be filed locally and need not be delivered to the court; fingerprints taken as authorized in subsection (e) must be destroyed or delivered to the court. 1983 Op. Att'y Gen. No. U83-66 (decided under former O.C.G.A. § 15-11-60).

For a discussion of the validity of provisions as to publication of child's name or picture, in light of Smith v. Daily Mail Publishing Co., 443 U.S. 97, 98 S. Ct. 2667, 61 L. Ed. 2d 399 (1979) see 1980 Op. Att'y Gen. No. 80-11 (decided under former Code 1933, § 24A-3503).

Court orders for the release of information should be written. 1987 Op. Att'y Gen. No. U87-18 (decided under former O.C.G.A. § 15-11-60).

Mandatory release of name. — Court has a mandatory duty to release only the name of a child who is before the court for a second or subsequent delinquency matter. 1987 Op. Att'y Gen. No. U87-18 (decided under former O.C.G.A. § 15-11-60).

RESEARCH REFERENCES

Am. Jur. 2d. — 47 Am. Jur. 2d, Juvenile Courts and Delinquent and Dependent Children, § 116 et seq.

C.J.S. — 43 C.J.S., Infants, § 254. 76 C.J.S., Records, § 41 et seq.

U.L.A. — Uniform Juvenile Court Act (U.L.A.) § 56.

15-11-703. Use of disposition and evidence.

Except as provided in subsection (d) of Code Section 24-6-609, the disposition of a child and evidence adduced in a hearing in the juvenile court shall not be used against such child in any proceeding in any court other than as provided in Code Section 16-15-9 or 24-4-418 or for a proceeding for delinquency or a child in need of services, whether before or after reaching 18 years of age, except in the establishment of conditions of bail, plea negotiations, and sentencing in criminal offenses; and, in such excepted cases, such records of dispositions and

evidence shall be available to prosecuting attorneys, superior or state court judges, and the accused and may be used in the same manner as adult records. Whenever such record of disposition is filed in a superior or state court or admitted into evidence in a superior or state court proceeding, it shall be filed under seal.

History. — Code 1981, § 15-11-703, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242; Ga. L. 2016, p. 811, § 1/HB 874.

Cross references. — Authority of Department of Corrections to establish separate correctional institutions for the care of juvenile offenders, § 42-5-52.

Law reviews. — For article discussing venue problems in juvenile court practice and suggesting solutions, see 23 Mercer L. Rev. 341 (1972). For article, "Evidence," see 27 Ga. St. U.L. Rev. 1 (2011).

For comment criticizing Davis v. Alaska, 415 U.S. 308, 94 S. Ct. 1105, 39 L. Ed. 2d 347 (1974), holding petitioner's right to confrontation was preeminent to state policy protecting anonymity of juvenile offenders, see 26 Mercer L. Rev. 343 (1974).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 24A-2401, pre-2000 Code Section 15-11-38, and pre-2014 Code Section 15-11-79.1, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Purpose. — Former O.C.G.A. § 15-11-38 (see now O.C.G.A. § 15-11-703) was designed to protect children from disclosure relating to matters resulting from and produced in juvenile hearings, not to insulate a child from the effect of testimony of those investigating crimes. Hayward v. Ramick, 248 Ga. 841, 285 S.E.2d 697 (1982) (decided under former O.C.G.A. § 15-11-38).

Finding delinquent act. — Juvenile court may find that any act designated a crime under the law is a delinquent act when committed by a juvenile. In order to do this, it is not necessary that the juvenile be considered or found guilty of a crime. K.M.S. v. State, 129 Ga. App. 683, 200 S.E.2d 916 (1973) (decided under former Code 1933, § 24A-2401); T.L.T. v. State, 133 Ga. App. 895, 212 S.E.2d 650 (1975) (decided under former Code 1933, § 24A-2401).

Adjudication of delinquency when child has not attained 13 years. — Juvenile court may adjudicate a child a delinquent based upon a petition alleging that the child committed an act designated a crime under Georgia law, when the child has not yet attained the age of 13 years. K.M.S. v. State, 129 Ga. App. 683, 200 S.E.2d 916 (1973) (decided under former Code 1933, § 24A-2401).

Due process must be adhered to in juvenile court proceedings. — While cases in the juvenile court are not criminal proceedings, due process must always be scrupulously adhered to. D.P. v. State, 129 Ga. App. 680, 200 S.E.2d 499 (1973) (decided under former Code 1933, § 24A-2401).

Section not bar to all evidence adduced at hearing. — Former O.C.G.A. § 15-11-38 (see now O.C.G.A. § 15-11-703) bared use only of such evidence as would disclose the "disposition of a child" at a juvenile hearing and did not bar introduction of testimony regarding the juvenile's prior commission of a rape if such evidence was used to show lustful disposition and for corroboration purposes. Houser v. State, 173 Ga. App. 378, 326 S.E.2d 513 (1985) (decided under former O.C.G.A. § 15-11-38).

Authority for use of juvenile court record in dispositional proceedings. — Former Code 1933, §§ 24A-2401 and 27-2702 (see now O.C.G.A. §§ 15-11-703 and 42-8-34), construed in pari materia, clearly authorized the use of the juvenile court record in dispositional proceedings after conviction of a felony for the pur-

poses of a presentence investigation and report. Jones v. State, 129 Ga. App. 623, 200 S.E.2d 487 (1973) (decided under former Code 1933, § 24A-2401).

Evidence of incident occurring when defendant was a juvenile. — Trial court did not err when the court denied the defendant's motion for new trial on the basis that the state proffered similar transaction evidence of an incident that occurred when the defendant was a juvenile because the trial court offered to give a curative instruction to the jury, but trial counsel refused the curative instruction citing "strategy" as counsel's reasons; the trial court admonished the witness not to make any references to the juvenile court proceeding. Kitchens v. State, 289 Ga. 242, 710 S.E.2d 551 (2011) (decided under former O.C.G.A. § 15-11-79.1).

Use of materials produced during investigation. — In the prosecution of a felony murder case, the admission of testimony of an investigating officer relating to a statement made by the defendant during a juvenile investigation was not error since the officer's testimony did not disclose the "disposition of a child" nor was the testimony "evidence adduced in a hearing in juvenile court." Waugh v. State, 263 Ga. 691, 437 S.E.2d 297 (1993), cert. denied, 511 U.S. 1090, 114 S. Ct. 1850, 128 L. Ed. 2d 474 (1994) (decided under former O.C.G.A. § 15-11-38).

Use of records during sentencing. — Juvenile records may be introduced during the sentencing phase of a trial. Burrell v. State, 258 Ga. 841, 376 S.E.2d 184 (1989) (decided under former O.C.G.A. § 15-11-38).

Out-of-state convictions for acts committed while the defendant was a juvenile could not be used as prior felony convictions for purposes of recidivist sentencing under O.C.G.A. § 17-10-7 because the defendant would not have been convicted of those felonies in this state, but would have been adjudicated delinquent. Miller v. State, 231 Ga. App. 869, 501 S.E.2d 42 (1998) (decided under former O.C.G.A. § 15-11-38).

Because juvenile court dispositions could be used in sentencing in felony offenses, and the records of dispositions and evidence were available to district attorneys, superior court judges, and the accused and could be used in the same manner as adult records, the trial court properly considered the defendant's juvenile court records in sentencing the defendant. Taylor v. State, 331 Ga. App. 577, 771 S.E.2d 224 (2015) (decided under former O.C.G.A. § 15-11-79.1).

Use of adjudications to determine probation. — It is not unconstitutional to use juvenile-court adjudications to determine whether subsequent felony conviction should be probated. Brawner v. State, 250 Ga. 125, 296 S.E.2d 551 (1982) (decided under former O.C.G.A. § 15-11-38).

Appeal of adjudication after disposition order expired was not moot. — Juvenile who appealed the juvenile's adjudication of delinquency after the disposition order had expired was not required to show adverse collateral consequences in the record in order to avoid a finding of mootness; such consequences were presumed based on the uses to which a prior adjudication of delinquency could be put. In the Interest of M. F., 305 Ga. 820, 828 S.E.2d 350 (2019).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under pre-2000 Code Section 15-11-38, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section.

Code section to be considered in deciding whether to permit inspection. — In determining whether to permit inspection of juvenile court records, a juvenile court judge should take former O.C.G.A. § 15-11-38 (see now O.C.G.A. § 15-11-703) into account and determine whether the person seeking inspection of an individual's juvenile court records would be permitted to use those records "against" the individuals whose juvenile court records are sought. 1981 Op. Att'y Gen. No. U81-34 (decided under former O.C.G.A. § 15-11-38).

Psychological tests results may be

used in later proceedings. — Results of psychological tests administered to juveniles appearing in the juvenile court may be computerized and used in later court proceedings, if appropriate safeguards to protect the confidentiality of the records are undertaken. 1983 Op. Att'y Gen. No. U83-25 (decided under former O.C.G.A. § 15-11-38).

Access to records by superior court judge. — Superior court judge is not entitled to have access to juvenile court records relating to a defendant before the judge in any hearing or proceeding prior to the defendant's conviction of a felony. 1986 Op. Att'y Gen. No. U86-36 (decided under former O.C.G.A. § 15-11-38).

RESEARCH REFERENCES

Am. Jur. 2d. — 47 Am. Jur. 2d, Juvenile Courts and Delinquent and Dependent Children, §§ 56 et seq., 110 et seq.

C.J.S. — 43 C.J.S., Infants, § 224 et seq.

U.L.A. — Uniform Juvenile Court Act (U.L.A.) § 33.

ALR. — Use of judgment in prior juvenile court proceeding to impeach credibility of witness, 63 A.L.R.3d 1112.

Consideration of accused's juvenile court record in sentencing for offense committed as adult, 64 A.L.R.3d 1291.

Applicability of double jeopardy to juvenile court proceedings, 5 A.L.R.4th 234.

15-11-704. Public inspection of court files and records; use in subsequent juvenile or criminal prosecution.

(a) Except as provided in subsection (b) of this Code section and Code Sections 15-11-705 and 15-11-706, all files and records of the court in a proceeding under this chapter shall be open to inspection only upon order of the court.

(b) The general public shall be allowed to inspect court files and records for any proceeding that was open to the public pursuant to paragraphs (1) through (5) of subsection (b) of Code Section 15-11-700.

(c) A judge may permit authorized representatives of recognized organizations compiling statistics for proper purposes to inspect and make abstracts from official records under whatever conditions upon their use and distribution such judge may deem proper and may punish by contempt any violation of those conditions.

(d) A judge shall permit authorized representatives of DJJ, the Governor's Office for Children and Families, the Criminal Justice Coordinating Council, the Administrative Office of the Courts, and the Council of Juvenile Court Judges to inspect and extract data from any court files and records for the purpose of obtaining statistics on children and to make copies pursuant to the order of the court. Such data shall be used by the inspecting agency for official purposes and shall not be subject to release by such agency pursuant to Article 4 of Chapter 18 of Title 50, nor subject to subpoena.

(e) Except as otherwise provided in Code Sections 15-11-701 and 15-11-703, the complaint, petition, order of adjudication, and order of

disposition in any delinquency case shall be disclosed upon request of the prosecuting attorney or the accused for use preliminarily to or in conjunction with a subsequent juvenile or criminal proceeding in a court of record.

History. — Code 1981, § 15-11-704, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242; Ga. L. 2015, p. 890, § 4/HB 263.

Cross references. — Inspection of public records generally, § 50-18-70 et seq.

Law reviews. — For comment criticizing Davis v. Alaska, 415 U.S. 308, 94 S. Ct. 1105, 39 L. Ed. 2d 347 (1974), holding petitioner's right to confrontation was preeminent to state policy protecting anonymity of juvenile offenders, see 26 Mercer L. Rev. 343 (1974).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 24A-3501, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Right to effective assistance of counsel and withholding inspection. — While former Code 1933, §§ 24A-3501 and 24A-3502 (see now O.C.G.A. §§ 15-11-704 and 15-11-708) both require the consent of the court to inspect a juvenile's records and files, a juvenile's right to effective assistance of counsel limited the court's discretion to withhold such consent from counsel representing the juvenile in a "critically important" transfer proceeding. R.S. v. State, 156 Ga. App. 460, 274 S.E.2d 810 (1980) (decided under former Code 1933, § 24A-3501).

Erroneous ruling if court limited access of defense counsel. — If the court granted defense counsel's motion pursuant to former Code 1933, §§ 24A-3501 and 24A-3502 (see now O.C.G.A. §§ 15-11-704 and 15-11-708) but limited access to only those files and records of appellant which would be "used against" the juvenile concerned at the transfer hearing, to the extent that the appellant's counsel was not granted access to files and records of the appellant which were considered by the juvenile court in transferring jurisdiction, the ruling was erroneous. R.S. v. State, 156 Ga. App. 460, 274 S.E.2d 810 (1980) (decided under former Code 1933, § 24A-3501).

Effect of limited access to materials. — While allowing counsel access to materials which will be "used against" a juvenile serves the defensive purpose of ensuring that any adverse material considered by the court will be subject to attack and refutation, it denies counsel the opportunity to examine, for the purpose of discovering and ensuring that proper and due consideration is given thereto, any material to be considered by the court which might serve as a reasonable ground for retaining, rather than transferring, jurisdiction. R.S. v. State, 156 Ga. App. 460, 274 S.E.2d 810 (1980) (decided under former Code 1933, § 24A-3501).

Right to view records and files considered but not relied upon. — Not only are a juvenile and a juvenile's counsel entitled to know what information in the juvenile's records and files the court relied upon in the court's adverse decision to transfer jurisdiction, but the juvenile and counsel are also entitled to view those records and files considered but not relied upon by the juvenile judge. R.S. v. State, 156 Ga. App. 460, 274 S.E.2d 810 (1980) (decided under former Code 1933, § 24A-3501).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, § 24A-3501, and pre-2000 Code Section 15-11-58, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Requests to inspect should be denied except if specifically provided. — Legislature intended that requests to inspect court files and records in situations other than those that are specifically provided for in Ga. L. 1971, p. 709, § 1 should ordinarily be denied. 1976 Op. Att'y Gen. No. U76-7 (decided under former Code 1933, § 24A-3501).

Considering former O.C.G.A. § 15-11-58 (see now O.C.G.A. § 15-11-704) in the statute's entirety, it appears that the General Assembly intended that requests to inspect juvenile court files and records, in situations other than those that are specifically provided for in that section, should ordinarily be denied. 1981 Op. Att'y Gen. No. U81-34 (decided under former O.C.G.A. § 15-11-58).

Discretion of judge over inspection and copying of records. — Judge may as a matter of discretion release copies of files and records in any case in which the judge may permit inspection; however, a judge could in the judge's discretion permit inspection and still refuse to release copies, or the judge could impose conditions upon the use and distribution of copies. 1976 Op. Att'y Gen. No. U76-7 (decided under former Code 1933, § 24A-3501).

Access to records by superior court judge. — Superior court judge is not entitled to have access to juvenile court records relating to a defendant before the judge in any hearing or proceeding prior to the defendant's conviction of a felony. 1986 Op. Att'y Gen. No. U86-36 (decided under former O.C.G.A. § 15-11-58).

Court orders for the release of information should be written. 1987 Op. Att'y Gen. No. U87-18 (decided under former O.C.G.A. § 15-11-58).

Conditions for release. — Juvenile court should only release information regarding a child's delinquency charges when disclosure is found to be in the child's own interest or otherwise mandated by the Constitution. 1987 Op. Att'y Gen. No. U87-18 (decided under former O.C.G.A. § 15-11-58).

Inspection by employees of adult parole and probation offices. — Pursuant to former O.C.G.A. § 15-11-58 (see now O.C.G.A. § 15-11-704), a juvenile court judge may, in the judge's discretion, permit employees of an adult probation office and an adult parole office to inspect juvenile court records, except in cases when those records have been sealed under former O.C.G.A. § 15-11-61 (see now O.C.G.A. § 15-11-701). 1981 Op. Att'y Gen. No. U81-34 (decided under former O.C.G.A. § 15-11-58).

RESEARCH REFERENCES

Am. Jur. 2d. — 47 Am. Jur. 2d, Juvenile Courts and Delinquent and Dependent Children, § 116. 66 Am. Jur. 2d, Records and Recording Laws, § 28.

C.J.S. — 43 C.J.S., Infants, § 254. 76 C.J.S., Records, § 41 et seq.

ALR. — Restricting public access to judicial records of state courts, 84 A.L.R.3d 598.

15-11-705. Child in need of services records; penalty for disclosure.

(a) Notwithstanding other provisions of this article, the court records of proceedings under Article 5 of this chapter shall be withheld from

public inspection but shall be open to inspection by juvenile probation officers, community supervision officers, a child who is a party in a proceeding, his or her parent, guardian, or legal custodian, such child's attorney, and others entrusted with the supervision of such child. Additional access to court records may be granted by court order.

(b) It shall be unlawful for any person to disclose court records, or any part thereof, to persons other than those entitled to access under subsection (a) of this Code section, except by court order. Any person who knowingly violates this subsection shall be guilty of contempt and the court may enter any order authorized by the provisions of Code Section 15-11-31.

History. — Code 1981, § 15-11-705, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242; Ga. L. 2015, p. 422, § 5-17/HB 310.

Editor's notes. — Ga. L. 2015, p. 422, § 6-1/HB 310, not codified by the General Assembly, provides, in part, that the amendment by this Act shall apply to sentences entered on or after July 1, 2015.

Law reviews. — For article on the 2015 amendment of this Code section, see 32 Ga. St. U.L. Rev. 231 (2015).

15-11-706. Records for cases handled through informal adjustment, mediation, or other nonadjudicatory procedure; penalty for disclosure.

(a) When a decision is made to handle a case through informal adjustment, mediation, or other nonadjudicatory procedure, the juvenile court intake officer shall file with the court in the county in which a child legally resides all of the following information:

(1) The name, address, and date of birth of the child subject to informal adjustment, mediation, or other nonadjudicatory procedure;

(2) The act or offense for which such child was apprehended;

(3) The diversion decision made;

(4) The nature of such child's compliance with an informal adjustment agreement; and

(5) If an informal adjustment agreement is revoked, the fact of and reasons for the revocation.

(b) Notwithstanding subsection (a) of Code Section 15-11-701, the court in the county in which a child resides shall keep a separate record for such child which shall be open to the court, the prosecuting attorney, or an officer designated by the court only for the purpose of deciding whether to handle a subsequent case through informal adjustment, mediation, or other nonadjudicatory procedure or for use in disposition of a subsequent proceeding. Any person who knowingly violates this subsection shall be guilty of contempt and the court may enter any order authorized by the provisions of Code Section 15-11-31.

History. — Code 1981, § 15-11-706, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

15-11-707. Notice to school superintendent.

Within 30 days of any proceeding in which a child is adjudicated for committing a delinquent act for a second or subsequent time or is adjudicated for committing a class A designated felony act or class B designated felony act, the court shall provide written notice to the school superintendent of the school in which such child is enrolled or his or her designee or, if the information is known, of the school in which such child plans to be enrolled at a future date. Such notice shall include the specific delinquent act or class A designated felony act or class B designated felony act such child committed.

History. — Code 1981, § 15-11-707, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

RESEARCH REFERENCES

Am. Jur. 2d. — 47 Am. Jur. 2d, Juvenile Courts and Delinquent and Dependent Children, §§ 7, 53 et seq.

15-11-708. Separation of juvenile and adult records for law enforcement; inspection; limited fingerprint access.

(a) Law enforcement records and files concerning a child shall be kept separate from the records and files of arrests of adults.

(b) Unless a charge of delinquency is transferred for criminal prosecution, the interest of national security requires, the case is one in which the general public may not be excluded from the hearings, or the court otherwise orders in the best interests of the child, the records and files shall not be open to public inspection nor shall their contents be disclosed to the public.

(c) Inspection of the records and files shall be permitted by:

(1) A juvenile court having a child before it in any proceeding;

(2) The attorney for a party to the proceedings, with the consent of the court;

(3) The officers of public institutions or agencies to whom a child is committed;

(4) Law enforcement officers and prosecuting attorneys of this state, the United States, or any other jurisdiction when necessary for the discharge of their official duties;

(5) A court in which a child is convicted of a criminal offense, for the purpose of a presentence report or other disposition proceeding;

(6) Officials of penal institutions and other penal facilities to which a child is committed; or

(7) A parole board in considering a child's parole or discharge or in exercising supervision over such child.

(d) The court shall allow authorized representatives of DJJ, the Governor's Office for Children and Families, the Criminal Justice Coordinating Council, the Administrative Office of the Courts, and the Council of Juvenile Court Judges to inspect and copy law enforcement records for the purpose of obtaining statistics on children. Such data shall be used by the inspecting agency for official purposes and shall not be subject to release by such agency pursuant to Article 4 of Chapter 18 of Title 50, nor subject to subpoena.

(e) Access to fingerprint records submitted to the Georgia Bureau of Investigation shall be limited to the administration of criminal justice purposes.

History. — Code 1981, § 15-11-708, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242; Ga. L. 2015, p. 890, § 5/HB 263.

Cross references. — Juvenile Court records, Uniform Rules for the Juvenile Courts of Georgia, Rules 3.1 — 3.3.

Administrative rules and regulations. — Completeness and accuracy of criminal justice information, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Crime Information Center Council, Practice and Procedure, Rule 140-2.03.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 24A-3502, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Right to effective assistance of counsel and right to inspect. — While former Code 1933, §§ 24A-2002 and 24A-2501 (see now O.C.G.A. §§ 15-11-19, and 15-11-28) both required the consent of the court to inspect a juvenile's records and files, a juvenile's right to effective assistance of counsel limited the court's discretion to withhold such consent from counsel representing the juvenile in a "critically important" transfer proceeding under former Code 1933, § 24A-2501. R.S. v. State, 156 Ga. App. 460, 274 S.E.2d 810 (1980) (decided under former Code 1933, § 24A-3502).

Right to view records and files considered but not relied upon. — Not only are a juvenile and the juvenile's counsel entitled to know what information in the juvenile's records and files the court relied upon in the juvenile court's adverse decision to transfer jurisdiction, but the juvenile and counsel are also entitled to view those records and files considered but not relied upon by the juvenile judge. R.S. v. State, 156 Ga. App. 460, 274 S.E.2d 810 (1980) (decided under former Code 1933, § 24A-3502).

Erroneous ruling if court limited access of defense counsel. — If the court granted defense counsel's motion pursuant to former Code 1933, §§ 24A-2002 and 24A-2501 (see now

O.C.G.A. §§ 15-11-19 and 15-11-28) but limited access to only those files and records of appellant which would be "used against" the juvenile concerned at the transfer hearing, to the extent that appellant's counsel was not granted access to the files and records of appellant which were considered by the juvenile court in transferring jurisdiction, the ruling was erroneous. R.S. v. State, 156 Ga. App. 460, 274 S.E.2d 810 (1980) (decided under former Code 1933, § 24A-3502).

Effect of limited access to materials. — While allowing counsel access to materials which will be "used against" a juvenile serves the defensive purpose of ensuring that any adverse material considered by the court will be subject to attack and refutation, it denies counsel the opportunity to examine, for the purpose of discovering and ensuring that proper and due consideration is given thereto, any material to be considered by the court which might serve as a "reasonable ground" for retaining, rather than transferring, jurisdiction. R.S. v. State, 156 Ga. App. 460, 274 S.E.2d 810 (1980) (decided under former Code 1933, § 24A-3502).

Appeal of adjudication after disposition order expired was not moot. — Juvenile who appealed the juvenile's adjudication of delinquency after the disposition order had expired was not required to show adverse collateral consequences in the record in order to avoid a finding of mootness; such consequences were presumed based on the uses to which a prior adjudication of delinquency could be put. In the Interest of M. F., 305 Ga. 820, 828 S.E.2d 350 (2019).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, § 24A-3502, and pre-2000 Code Section 15-11-59, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

Psychological test results may be used in later proceedings. — Results of psychological tests administered to juveniles appearing in the juvenile court may be computerized and used in later court proceedings, if appropriate safeguards to protect the confidentiality of the records are undertaken. 1983 Op. Att'y Gen. No. U83-25 (decided under former O.C.G.A. § 15-11-59).

Consent of court needed for access by parole board. — Consent of the court must be obtained on each individual to allow the State Board of Pardons and Paroles access to juvenile records, and if those records are sealed, the subject must petition the court to allow the board access to such records. 1978 Op. Att'y Gen. No. 78-76 (decided under former Code 1933, § 24A-3502).

Court records concerning juveniles prosecuted as adults. — Court records concerning juveniles should be afforded the same treatment as any other superior court records when the court retains exclusive jurisdiction over a case involving a juvenile 13 to 17 years of age who is accused of committing specified felonies. 1995 Op. Att'y Gen. No. U95-8 (decided under former O.C.G.A. § 15-11-59).

Court orders for the release of information should be written. 1987 Op. Att'y Gen. No. U87-18 (decided under former O.C.G.A. § 15-11-59).

Conditions for release. — Juvenile court should only release information regarding a child's delinquency charges when disclosure is found to be in the child's own interest or otherwise mandated by the Constitution. 1987 Op. Att'y Gen. No. U87-18 (decided under former O.C.G.A. § 15-11-59).

RESEARCH REFERENCES

Am. Jur. 2d. — 47 Am. Jur. 2d, Juvenile Courts and Delinquent and Dependent Children, §§ 1, 4, 110 et seq. 66 Am. Jur. 2d, Records and Recording Laws, § 28.

C.J.S. — 43 C.J.S., Infants, § 254. 76 C.J.S., Records, § 41 et seq.

U.L.A. — Uniform Juvenile Court Act (U.L.A.) § 55.

ALR. — Constitutionality, construction, and application of statutory provision against use in evidence in any other case of records or evidence in juvenile court proceedings, 147 A.L.R. 443.

Restricting public access to judicial records of state courts, 84 A.L.R.3d 598.

15-11-709. Preservation and destruction of records; computer retrieval.

(a) Subject to the earlier sealing of certain records pursuant to Code Section 15-11-701, the juvenile court shall make and keep records of all cases brought before it and shall preserve the records pertaining to a child in accordance with the common records retention schedules for courts approved by the State Records Committee pursuant to Code Section 50-18-92.

(b) Thereafter, the court may destroy such records, except that the records of cases in which a court terminates the parental rights of a parent and the records of cases involving a petition for legitimation of a child shall be preserved permanently.

(c) The juvenile court shall make official minutes consisting of all petitions and orders filed in a case and any other pleadings, certificates, proofs of publication, summonses, warrants, and other writs which may be filed and shall make social records consisting of records of investigation and treatment and other confidential information.

(d) Identification data shall be maintained and shall be disseminated to criminal justice officials for official judicial enforcement or criminal justice purposes as provided in Code Section 35-3-33.

(e) Nothing in this chapter shall restrict or otherwise prohibit a juvenile court clerk from electing to store for computer retrieval any or all records, dockets, indexes, or files; nor shall a juvenile court clerk be prohibited from combining or consolidating any books, dockets, files, or indexes in connection with the filing for record of papers of the kind specified in this chapter or any other law, provided that any automated or computerized record-keeping method or system shall provide for the systematic and safe preservation and retrieval of all books, dockets, records, or indexes. When the clerk of a juvenile court elects to store for computer retrieval any or all records, the same data elements used in a manual system shall be used, and the same integrity and security shall be maintained.

History. — Code 1981, § 15-11-709, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

Cross references. — Juvenile Court records, Uniform Rules for the Juvenile Courts of Georgia, Rules 3.1 — 3.3. Juvenile Court as court of inquiry, Uniform Rules for the Juvenile Courts of Georgia, Rule 14.

Administrative rules and regulations. — Completeness and accuracy of criminal justice information, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Crime Information Center Council, Practice and Procedure, Rule 140-2.03.

Law reviews. — For article, "An Outline of Juvenile Court Jurisdiction with Focus on Child Custody," see 10 Ga. St. B. J. 275 (1973).

RESEARCH REFERENCES

Am. Jur. 2d. — 47 Am. Jur. 2d, Juvenile Courts and Delinquent and Dependent Children, §§ 116, 117.

15-11-710. Exchange of information.

(a) As used in this Code section, the term "governmental entity" shall mean the court, superior court, DJJ, DBHDD, DFACS, county departments of family and children services, or public schools, as such term is defined in Code Section 16-11-35.

(b) Governmental entities and state, county, municipal, or consolidated government departments, boards, or agencies shall exchange with each other all information not held as confidential pursuant to federal law and relating to a child which may aid a governmental entity in the assessment, treatment, intervention, or rehabilitation of a child, notwithstanding Code Section 15-1-15, 15-1-19, 15-11-40, 15-11-70, 15-11-105, 15-11-170, 15-11-264, 15-11-541, 15-11-542, 15-11-603, 15-11-708, 15-11-709, 15-11-744, 20-2-751.2, 20-14-40, 24-12-10, 24-12-11, 24-12-20, 26-4-5, 26-4-80, 26-5-17, 31-5-5, 31-33-6, 37-1-53, 37-2-9.1, 42-5-36, 42-8-40, 42-8-109.2, 49-5-40, 49-5-41, 49-5-41.1, 49-5-44, or 49-5-45, in order to serve the best interests of such child. Information which is shared pursuant to this subsection shall not be utilized to assist in the prosecution of a child in juvenile, superior, or state court or utilized to the detriment of such child.

(c) Information released pursuant to this Code section shall not change or rescind the confidential nature of such information and such information shall not be subject to public disclosure or inspection unless otherwise provided by law.

History. — Code 1981, § 15-11-710, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242; Ga. L. 2015, p. 422, § 5-16/HB 310; Ga. L. 2016, p. 443, § 1-8/SB 367; Ga. L. 2020, p. 181, § 2/HB 993.

The 2020 amendment, effective July 1, 2020, inserted "or" preceding "49-5-45" and deleted "49-5-183, 49-5-184, 49-5-185, or 49-5-186," near the end of the first sentence of subsection (b).

Editor's notes. — Ga. L. 2015, p. 422, § 6-1/HB 310, not codified by the General

Assembly, provides, in part, that the amendment by this Act shall apply to sentences entered on or after July 1, 2015.

Law reviews. — For article, "Evidence," see 27 Ga. St. U.L. Rev. 1 (2011). For article on the 2015 amendment of this Code section, see 32 Ga. St. U.L. Rev. 231 (2015). For article on the 2016 amendment of this Code section, see 33 Georgia St. U.L. Rev. 139 (2016).

ARTICLE 10

EMANCIPATION

Law reviews. — For article on 2006 enactment of this article, see 23 Ga. St. U.L. Rev. 79 (2006).

RESEARCH REFERENCES

Am. Jur. 2d. — 59 Am. Jur. 2d, Parent and Child, §§ 73 et seq.

Am. Jur. Pleading and Practice Forms. — Pleading and Practice Forms, § 189.

C.J.S. — 43 C.J.S., Infants, § 321 et seq.

15-11-720. Conditions under which emancipation may occur.

(a) Emancipation may occur by operation of law or pursuant to a petition filed with the court as provided in this article by a child who is at least 16 years of age.

(b) An emancipation occurs by operation of law:

(1) When a child is validly married;

(2) When a child reaches the age of 18 years; or

(3) During the period when a child is on active duty with the armed forces of the United States.

(c) An emancipation occurs by court order pursuant to a petition filed by a child with the juvenile court.

History. — Code 1981, § 15-11-720, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

15-11-721. Petition requirements.

(a) A child seeking emancipation shall file a petition for emancipation in the juvenile court in the county where such child resides. The petition shall be signed and verified by the petitioner and shall include:

(1) The petitioner's full name and birth date and the county and state where the petitioner was born;

(2) A certified copy of the petitioner's birth certificate;

(3) The name and last known address of the petitioner's parent, guardian, or legal custodian and, if no parent, guardian, or legal custodian can be found, the name and address of the petitioner's nearest living relative residing within this state;

(4) The petitioner's present address and length of residency at that address;

(5) A declaration by the petitioner demonstrating the ability to manage his or her financial affairs together with any information necessary to support the declaration;

(6) A declaration by the petitioner demonstrating the ability to manage his or her personal and social affairs together with any information necessary to support the declaration; and

(7) The names of individuals who have personal knowledge of the petitioner's circumstances and believe that under those circumstances emancipation is in the best interests of the petitioner. Such individuals may include any of the following:

(A) A licensed physician, physician assistant, or osteopath;

(B) A registered professional nurse or licensed practical nurse;

(C) A licensed psychologist;

(D) A licensed professional counselor, social worker, or marriage and family therapist;

(E) A school guidance counselor, school social worker, or school psychologist;

(F) A school administrator, school principal, or school teacher;

(G) A member of the clergy;

(H) A law enforcement officer; or

(I) An attorney.

(b) If the petition provided for under subsection (a) of this Code section is based on the petitioner's desire to enter into a valid marriage, the petitioner shall:

(1) Be at least 17 years of age;

(2) In addition to the requirements provided for under subsection (a) of this Code section, include in such petition the name, age, date of birth, and address of residence of the intended spouse;

(3) Include a statement of the reasons why the petitioner desires to marry, how the parties came to know each other, and how long they have known each other; and

(4) Attach copies of any criminal records of either party to be married and of any family violence or stalking protective order issued to protect or restrain either party to be married.

History. — Code 1981, § 15-11-721, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242; Ga. L. 2019, p. 558, § 2-1/HB 228.

The 2019 amendment, effective July 1, 2019, designated the existing provisions as subsection (a); deleted the comma following "petitioner" in the second sentence of the introductory language of subsection (a); and added subsection (b).

15-11-722. Summons, answer, and time limitations.

(a) Upon filing the petition, a copy of the petition for emancipation and a summons to appear at the hearing shall be served on all persons named in the petition and upon any individual who provided an affidavit for the emancipation.

(b) A person served with a petition may file an answer in the juvenile court in which the petition was filed within 30 days of being served.

History. — Code 1981, § 15-11-722, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

15-11-723. Appointment of attorney and guardian ad litem; affidavits of adults supporting emancipation.

(a) After a petition for emancipation is filed, the court shall appoint an attorney for the petitioner and may:

(1) Appoint a guardian ad litem to investigate the allegations of the petition and to file a report with the court, including a recommendation as to whether it is in the best interests of the petitioner that the petition for emancipation be granted; and

(2) Appoint an attorney for the petitioner's parent, guardian, or legal custodian if he or she is an indigent person and if he or she opposes the petition.

(b) After a petition for emancipation is filed, the court shall seek an affidavit from each person identified in the petition pursuant to paragraph (7) of subsection (a) of Code Section 15-11-721 that describes why that person believes the petitioner should be emancipated.

History. — Code 1981, § 15-11-723, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242; Ga. L. 2019, p. 558, § 2-2/HB 228.

The 2019 amendment, effective July 1, 2019, inserted "shall appoint an attorney for the petitioner and" in the introductory language of subsection (a); added "and" at the end of paragraph (a)(1); deleted former paragraph (a)(2), which read: "Appoint an attorney for the petitioner; and"; redesignated former paragraph (a)(3) as present paragraph (a)(2); and inserted "subsection (a) of" in the middle of subsection (b).

15-11-724. Standard of proof.

A child who petitions the court for emancipation shall have the burden of showing that emancipation should be ordered by a preponderance of evidence.

History. — Code 1981, § 15-11-724, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

15-11-725. Emancipation hearing; findings.

(a)(1) Except as provided for in paragraph (2) of this subsection, the court shall issue an emancipation order if, after a hearing, it determines that emancipation is in the best interests of the child and such child has established:

(A) That his or her parent, guardian, or legal custodian does not object to the petition; or, if a parent, guardian, or legal custodian objects to the petition, that the best interests of the child are served by allowing the emancipation to occur by court order;

(B) That he or she is a resident of this state;

(C) That he or she has demonstrated the ability to manage his or her financial affairs, including proof of employment or other means of support. "Other means of support" shall not include general assistance or aid received from means-tested public assistance programs such as Temporary Assistance for Needy Families as provided in Article 9 of Chapter 4 of Title 49 or similar programs under Title IV-A of the federal Social Security Act;

(D) That he or she has the ability to manage his or her personal and social affairs, including, but not limited to, proof of housing; and

(E) That he or she understands his or her rights and responsibilities under this article as an emancipated child.

(2) If the court finds that the petition for emancipation is based upon the petitioner's desire to enter into a valid marriage, the court shall not issue an emancipation order if the court further finds that:

(A) The petitioner is being compelled to marry against the petitioner's will by force, fraud, or coercion;

(B) The petitioner is younger than 17 years of age, or the age difference between the parties is more than four years;

(C) The intended spouse was or is in a position of authority or special trust as defined in Code Section 16-6-5.1 in relation to the petitioner;

(D) The intended spouse has been convicted of or entered into a diversion program for a crime against a person under Chapter 5 of Title 16 that involves an act of violence or includes a child victim or is for a crime defined as a sexual offense under Chapter 6 of Title 16;

(E) There is a preponderance of evidence that the petitioner was the victim and the intended spouse was the perpetrator of statutory rape as defined in Code Section 16-6-3;

(F) The intended spouse has previously been enjoined by a family violence or stalking protective order, regardless of whether or not the person to be protected by the order was the petitioner; or

(G) The intended marriage is not in the best interests of the petitioner. A past or current pregnancy of the petitioner or the intended spouse or the wishes of the parents or legal guardians of the petitioner may be considered by the court, but shall not alone or together be sufficient evidence to determine the best interests of the minor.

(b) If the court issues an emancipation order, the court shall retain a copy of the order until the emancipated child becomes 25 years of age.

(c) An emancipation obtained by fraud is voidable. Voiding an emancipation order shall not affect an obligation, responsibility, right, or interest that arose during the period of time the order was in effect.

(d) A child or his or her parent, guardian, or legal custodian may appeal the court's grant or denial of an emancipation petition.

History. — Code 1981, § 15-11-725, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242; Ga. L. 2019, p. 558, § 2-3/HB 228.

The 2019 amendment, effective July 1, 2019, designated the existing provisions of the introductory paragraph of subsection (a) as paragraph (a)(1); substituted "Except as provided for in paragraph (2) of this subsection, the" for "The" at the beginning of paragraph (a)(1); redesignated former paragraphs (a)(1) through (a)(5) as present subparagraphs (a)(1)(A) through (a)(1)(E), respectively; and added paragraph (a)(2).

U.S. Code. — Title IV-A of the federal Social Security Act, referred to in this Code section, is codified at 42 U.S.C. § 601 et seq.

15-11-726. Rescission of emancipation order.

(a) A child emancipated by court order may petition the juvenile court that issued the emancipation order to rescind such order.

(b) A copy of the petition for rescission and a summons shall be served on the petitioner's parent, guardian, or legal custodian.

(c) The court shall grant the petition and rescind the order of emancipation if it finds:

(1) That the petitioner is an indigent person and has no means of support;

(2) That the petitioner and the petitioner's parent, guardian, or legal custodian agree that the order should be rescinded; or

(3) That there is a resumption of family relations inconsistent with the existing emancipation order.

(d) If a petition for rescission is granted, the court shall issue an order rescinding the emancipation order and retain a copy of the order until the petitioner becomes 25 years of age.

(e) Rescission of an emancipation order shall not alter any contractual obligations or rights or any property rights or interests that arose during the period of time that the emancipation order was in effect.

(f) A child or his or her parent, guardian, or legal custodian may appeal the court's grant or denial of a petition for rescission of an emancipation order. The appeal shall be filed in the Court of Appeals.

History. — Code 1981, § 15-11-726, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

15-11-727. Rights of emancipated child; limitations of parental obligations.

(a) A child emancipated by operation of law or by court order shall be considered to have the rights and responsibilities of an adult, except for those specific constitutional and statutory age requirements regarding voting, use of alcoholic beverages, and other health and safety regulations relevant to a child because of his or her age. The rights of a child to receive any transfer of property or money pursuant to "The Georgia Transfers to Minors Act" under Article 5 of Chapter 5 of Title 44; under the Uniform Transfers to Minors Act, the Uniform Gift to Minors Act, or other substantially similar act of another state; or pursuant to a trust agreement shall not be affected by a declaration of an emancipation under this article.

(b) A child shall be considered emancipated for the purposes of, but not limited to:

(1) The right to enter into enforceable contracts, including apartment leases;

(2) The right to sue or be sued in his or her own name;

(3) The right to retain his or her own earnings;

(4) The right to establish a separate domicile;

(5) The right to act autonomously, and with the rights and responsibilities of an adult, in all business relationships, including but not limited to property transactions and obtaining accounts for utilities, except for those estate or property matters that the court determines may require a conservator or guardian ad litem;

(6) The right to earn a living, subject only to the health and safety regulations designed to protect those under the age of 18 regardless of their legal status;

(7) The right to authorize his or her own preventive health care, medical care, dental care, and mental health care, without parental knowledge or liability;

(8) The right to apply for a driver's license or other state licenses for which he or she might be eligible;

(9) The right to register for school;

(10) The right to apply for medical assistance programs and for other welfare assistance, if needed;

(11) The right, if a parent, to make decisions and give authority in caring for his or her own minor child; and

(12) The right to make a will.

(c) A parent, guardian, or legal custodian of a child emancipated by court order shall not be liable for any debts incurred by his or her child during the period of emancipation.

History. — Code 1981, § 15-11-727, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

15-11-728. Duty to support; ability to marry.

(a) The duty to provide support for a child shall continue until an emancipation order is granted.

(b) A child emancipated under this article shall not be considered a dependent child.

(c) The provisions set forth in Code Section 19-3-2 regarding age limitations to contract for marriage shall apply to a child who has become emancipated under this article.

History. — Code 1981, § 15-11-728, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

ARTICLE 11

GEORGIA CHILD ADVOCATE FOR THE PROTECTION OF CHILDREN ACT

15-11-740. Short title; purpose.

(a) This article shall be known and may be cited as the "Georgia Child Advocate for the Protection of Children Act."

(b) In keeping with this article's purpose of assisting, protecting, and restoring the security of children whose well-being is threatened, it is the intent of the General Assembly that the mission of protection of the children of this state should have the greatest legislative and executive priority. Recognizing that the needs of children must be attended to in a timely manner and that more aggressive action should be taken to protect children from abuse and neglect, the General Assembly creates the Office of the Child Advocate for the Protection of Children to provide independent oversight of persons, organizations, and agencies responsible for providing services to or caring for children who are victims of child abuse and neglect or whose domestic situation requires intervention by the state. The Office of the Child Advocate for the Protection of Children will provide children with an avenue through which to seek relief when their rights are violated by state officials and agents entrusted with their protection and care.

History. — Code 1981, § 15-11-740, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

15-11-741. Definitions.

As used in this article, the term:

(1) "Advocate" or "child advocate" means the Child Advocate for the Protection of Children established under Code Section 15-11-742.

(2) "Agency" shall have the same meaning and application as provided for in paragraph (1) of subsection (a) of Code Section 50-14-1.

(3) "Child" or "children" means an individual receiving protective services from DFCS, for whom DFCS has an open case file, or who has been, or whose siblings, parents, or other caretakers have been, the subject of a report to DFCS within the previous five years.

History. — Code 1981, § 15-11-741, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

15-11-742. Creation of the Office of Child Advocate for the Protection of Children; staff and personnel; contracts.

(a) There is created the Office of the Child Advocate for the Protection of Children. The Governor, by executive order, shall create a nominating committee which shall consider nominees for the position of the advocate and shall make a recommendation to the Governor. Such person shall have knowledge of the child welfare system, the juvenile justice system, and the legal system and shall be qualified by training and experience to perform the duties of the office as set forth in this article.

(b) The advocate shall be appointed by the Governor from a list of at least three names submitted by the nominating committee for a term of three years and until his or her successor is appointed and qualified and may be reappointed. The salary of the advocate shall not be less than $60,000.00 per year, shall be fixed by the Governor, and shall come from funds appropriated for the purposes of the advocate.

(c) The Office of the Child Advocate for the Protection of Children shall be assigned to the Office of Planning and Budget for administrative purposes only, as described in Code Section 50-4-3.

(d) The advocate may appoint such staff as may be deemed necessary to effectively fulfill the purposes of this article, within the limitations of the funds available for the purposes of the advocate. The duties of the staff may include the duties and powers of the advocate if performed under the direction of the advocate. The advocate and his or her staff shall receive such reimbursement for travel and other expenses as is normally allowed to state employees from funds appropriated for the purposes of the advocate.

(e) The advocate shall have the authority to contract with experts in fields including but not limited to medicine, psychology, education, child development, juvenile justice, mental health, and child welfare as needed to support the work of the advocate, utilizing funds appropriated for the purposes of the advocate.

(f) Notwithstanding any other provision of state law, the advocate shall act independently of any state official, department, or agency in the performance of his or her duties.

(g) The advocate or his or her designee shall be a member of the Georgia Child Fatality Review Panel.

History. — Code 1981, § 15-11-742, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

15-11-743. Duties of advocate.

The advocate shall perform the following duties:

(1) Identify, receive, investigate, and seek the resolution or referral of complaints made by or on behalf of children concerning any act, omission to act, practice, policy, or procedure of an agency or any contractor or agent thereof that may adversely affect the health, safety, or welfare of the children;

(2) Refer complaints involving abused children to appropriate regulatory and law enforcement agencies;

(3) Report the death of any child to the chairperson of the review committee, as such term is defined in Code Section 19-15-1, for the county in which such child resided at the time of death, unless the advocate has knowledge that such death has been reported by the county medical examiner or coroner, pursuant to Code Section 19-15-3, and to provide such committee access to any records of the advocate relating to such child;

(4) Provide periodic reports on the work of the Office of the Child Advocate for the Protection of Children, including but not limited to an annual written report for the Governor and the General Assembly and other persons, agencies, and organizations deemed appropriate. Such reports shall include recommendations for changes in policies and procedures to improve the health, safety, and welfare of children and shall be made expeditiously in order to timely influence public policy;

(5) Establish policies and procedures necessary for the Office of the Child Advocate for the Protection of Children to accomplish the purposes of this article, including without limitation providing DFCS with a form of notice of availability of the Office of the Child Advocate for the Protection of Children. Such notice shall be posted prominently, by DFCS, in DFCS offices and in facilities receiving public moneys for the care and placement of children and shall include information describing the Office of the Child Advocate for the Protection of Children and procedures for contacting such office; and

(6) Convene quarterly meetings with organizations, agencies, and individuals who work in the area of child protection to seek opportunities to collaborate and improve the status of children in Georgia.

History. — Code 1981, § 15-11-743, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242; Ga. L. 2014, p. 34, § 2-2/SB 365.

Editor's notes. — Ga. L. 2014, p. 34, § 2-1/SB 365, not codified by the General Assembly, provides that: "This part shall be known and may be cited as the 'Journey Ann Cowart Act.'"

Ga. L. 2014, p. 34, § 2-9/SB 365, not codified by the General Assembly, provides that: "It is the intent of the General Assembly to provide for transparency rel-

ative to investigations involving child abuse and child fatalities in order to best protect the children of this state. The General Assembly finds that more disclosure of information may be necessary when a child is deceased. The General Assembly intends that agencies and departments of this state share data in order to conduct research for the purpose of preventing child fatalities in this state."

Law reviews. — For article on the 2014 amendment of this Code section, see 31 Ga. St. U.L. Rev. 25 (2014)

15-11-744. Rights and powers of advocate; subpoena; judicial actions.

(a) The advocate shall have the following rights and powers:

(1) To communicate privately, by mail or orally, with any child and with each child's parent, guardian, or legal custodian;

(2) To have access to all records and files of DFCS concerning or relating to a child, and to have access, including the right to inspect, copy, and subpoena records held by clerks of the various courts, law enforcement agencies, service providers, including medical and mental health, and institutions, public or private, with whom a particular child has been either voluntarily or otherwise placed for care or from whom the child has received treatment within this state. To the extent any such information provides the names and addresses of individuals who are the subject of any confidential proceeding or statutory confidentiality provisions, such names and addresses or related information that has the effect of identifying such individuals shall not be released to the public without the consent of such individuals. The Office of the Child Advocate for the Protection of Children shall be bound by all confidentiality safeguards provided in Code Sections 49-5-40 and 49-5-44. Anyone wishing to obtain records held by the Office of the Child Advocate shall petition the original agency of record where such records exist;

(3) To enter and inspect any and all institutions, facilities, and residences, public and private, where a child has been placed by a court or DFCS and is currently residing. Upon entering such a place, the advocate shall notify the administrator or, in the absence of the administrator, the person in charge of the facility, before speaking to any children. After notifying the administrator or the person in charge of the facility, the advocate may communicate privately and confidentially with children in the facility, individually or in groups, or the advocate may inspect the physical plant. To the extent possible, entry and investigation provided by this Code section shall be conducted in a manner which will not significantly disrupt the provision of services to children;

(4) To apply to the Governor to bring legal action in the nature of a writ of mandamus or application for injunction pursuant to Code

Section 45-15-18 to require an agency to take or refrain from taking any action required or prohibited by law involving the protection of children;

(5) To apply for and accept grants, gifts, and bequests of funds from other states, federal and interstate agencies, independent authorities, private firms, individuals, and foundations for the purpose of carrying out the lawful responsibilities of the Office of the Child Advocate for the Protection of Children;

(6) When less formal means of resolution do not achieve appropriate results, to pursue remedies provided by this article on behalf of children for the purpose of effectively carrying out the provisions of this article; and

(7) To engage in programs of public education and legislative advocacy concerning the needs of children requiring the intervention, protection, and supervision of courts and state and county agencies.

(b)(1) Upon issuance by the advocate of a subpoena in accordance with this article for law enforcement investigative records concerning an ongoing investigation, the subpoenaed party may move a court with appropriate jurisdiction to quash such subpoena.

(2) The court shall order a hearing on the motion to quash within five days of the filing of the motion to quash, and the hearing may be continued for good cause shown by any party or by the court on its own motion. Subject to any right to an open hearing in contempt proceedings, such hearing shall be closed to the extent necessary to prevent disclosure of the identity of a confidential source; disclosure of confidential investigative or prosecution material which would endanger the life or physical safety of any person or persons; or disclosure of the existence of confidential surveillance, investigation, or grand jury materials or testimony in an ongoing criminal investigation or prosecution. Records, motions, and orders relating to a motion to quash shall be kept sealed by the court to the extent and for the time necessary to prevent public disclosure of such matters, materials, evidence, or testimony.

(c) The court shall, at or before the time specified in the subpoena for compliance therewith, enter an order:

(1) Enforcing the subpoena as issued;

(2) Quashing or modifying the subpoena if it is unreasonable and oppressive; or

(3) Conditioning enforcement of the subpoena on the advocate maintaining confidential any evidence, testimony, or other information obtained from law enforcement or prosecution sources pursuant

to the subpoena until the time the criminal investigation and prosecution are concluded. Unless otherwise ordered by the court, an investigation or prosecution shall be deemed to be concluded when the information becomes subject to public inspection pursuant to Code Section 50-18-72. The court shall include in its order written findings of fact and conclusions of law.

History. — Code 1981, § 15-11-744, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

15-11-745. Discrimination or retaliation prohibited against persons making complaints or providing information.

(a) No person shall discriminate or retaliate in any manner against any child, parent, guardian, or legal custodian of a child, employee of a facility, agency, institution or other type of provider, or any other person because of the making of a complaint or providing of information in good faith to the advocate or willfully interfere with the advocate in the performance of his or her official duties.

(b) Any person violating subsection (a) of this Code section shall be guilty of a misdemeanor.

History. — Code 1981, § 15-11-745, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

15-11-746. Investigation of complaints.

The advocate shall be authorized to request an investigation by the Georgia Bureau of Investigation of any complaint of criminal misconduct involving a child.

History. — Code 1981, § 15-11-746, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

15-11-747. Child advocate advisory committee; membership; role of committee.

(a) There is established a Child Advocate Advisory Committee. The advisory committee shall consist of:

(1) One representative of a not for profit children's agency appointed by the Governor;

(2) One representative of a for profit children's agency appointed by the Lieutenant Governor;

(3) One pediatrician appointed by the Speaker of the House of Representatives;

(4) One social worker with experience and knowledge of child protective services who is not employed by the state appointed by the Governor;

(5) One psychologist appointed by the Lieutenant Governor;

(6) One attorney from the Children and the Courts Committee of the State Bar of Georgia appointed by the Speaker of the House of Representatives; and

(7) One juvenile court judge appointed by the Chief Justice of the Supreme Court.

Each member of the advisory committee shall serve a two-year term and until the appointment and qualification of such member's successor. Appointments to fill vacancies in such offices shall be filled in the same manner as the original appointment.

(b) The advisory committee shall meet a minimum of three times a year with the advocate and his or her staff to review and assess the following:

(1) Patterns of treatment and service for children;

(2) Policy implications; and

(3) Necessary systemic improvements.

The advisory committee shall also provide for an annual evaluation of the effectiveness of the Office of the Child Advocate for the Protection of Children.

History. — Code 1981, § 15-11-747, enacted by Ga. L. 2013, p. 294, § 1-1/HB 242.

CHAPTER 11A

FAMILY COURT DIVISION

15-11A-1 through 15-11A-9.

Repealed by Ga. L. 2005, p. 1505, § 3/HB 254, effective July 1, 2010.

Editor's notes. — The former chapter consisted of Code Sections 15-11A-1 through 15-11A-9, relating to the family court division pilot project, and was based on Ga. L. 1998, p. 905, § 1; Ga. L. 2001, p. 486, §§ 1-4, and was repealed by Ga. L. 2001, p. 486, § 4, effective July 1, 2004.

This chapter consisted of Code Sections 15-11A-1 through 15-11A-9, relating to the family court division pilot project, and was based on Ga. L. 2005, p. 1505, § 3/HB 254; Ga. L. 2009, p. 453, § 2-2/HB 228.