

IV. DISPOSITIONAL HEARING DELINQUENCY/UNRULY

A. Code Sections: O.C.G.A. §15-11-55, 15-11-64.2, 15-11-65, 15-11-66, 15-11-67, 15-11-71, 15-11-78, 15-11-79

B. Uniform Juvenile Court Rule 12.1, Form JUV-15

C. Procedure

1. Purpose. To determine appropriate actions by the court upon the adjudication of the child as either delinquent or unruly.

2. When Held. If the child is not in detention, any time after adjudication. If the child is in detention, the court shall conduct the hearing within thirty (30) days of the adjudicatory hearing unless the court makes and files written findings of fact explaining the need for the delay. O.C.G.A. §15-11-65(a).

3. Present in Court. Judge/Associate judge, child, parent(s)/guardian, prosecuting attorney, attorney for child and/or parent(s), court reporter/recorder, guardian ad litem (if appropriate), any other persons as the court finds have a proper interest in the proceeding or in the work of the court, and court clerk. O.C.G.A. §15-11-78(a). In the Court's discretion, the Court may admit the general public to any dispositional hearing. O.C.G.A. §15-11-78(b)(3).

4. Step-by-Step Procedure.

a. The matter is called for disposition hearing. The parties, attorneys and other interested persons are made known to the court and entered in the record.

b. The hearing may be formal or informal and is generally conducted by the judge. The court may consider all information which is helpful in determining the questions presented, including oral or written reports to the extent of their probative value even though not admissible during the adjudicatory phase. The parties or their counsel shall be afforded an opportunity upon request to examine and controvert written reports so received and to cross-examine individuals who prepared them. The court has discretionary authority to withhold those portions of such reports not relied upon in the decision-making process which, if revealed, would be prejudicial to the interests of the child or other parties to the proceeding. O.C.G.A. §15-11-65(b). The following is a list of some of the items the court may consider:

- (1) Social history (presentence) investigation.
- (2) Probation officer recommendations.
- (3) Comments, reports and arguments of the child's attorney.

- (4) Responses made by child and parent(s) to questions posed by the court.
- (5) Victim impact statements. O.C.G.A. §15-11-64.2.

c. Determination of the need for court intervention. O.C.G.A. §15-11-65(a). The court must make a determination whether there is clear and convincing evidence:

- (1) that an unruly child is in need of supervision, treatment or rehabilitation; or
- (2) that a delinquent child is in need of treatment or rehabilitation. (In the absence of evidence to the contrary, if the child has committed an act which would be a felony, such fact is alone sufficient to determine that child is in need of treatment and rehabilitation).

If the court finds the child is **not** in need of treatment, rehabilitation or supervision, it shall dismiss the proceeding and discharge the child from any detention or other restriction previously ordered. If the court determines the child **is** in need of treatment, rehabilitation or supervision, the court may pronounce final disposition.

d. Court Orders.

- (1) Delinquent - Generally: O.C.G.A. §15-11-66.
 - (a) Treat the child as deprived under O.C.G.A. §15-11-55.
 - (b) Place the child on probation under conditions and limitations as the court prescribes.
 - (c) Place the child in an institution, camp or other facility for delinquent children operated under the direction of the court or other local public authority.
 - (d) Commit the child to the Department of Juvenile Justice. *See Uniform Form JUV-15 for suggested Order of Commitment.*
 - (e) Order the child make restitution.
 - (f) Order the child perform community service.
 - (g) Order the child to remit to the general fund of the county a sum not to exceed the maximum applicable to an adult for commission of any of the following offenses: homicide by vehicle, manslaughter resulting from the operation of a motor vehicle, any felony in the commission of which a motor vehicle is used, hit and run or leaving the scene of an accident, racing on highways or streets, using a motor vehicle in fleeing or attempting to elude an officer, fraudulent or fictitious use of a license, driving under the influence of alcohol or drugs, possession of controlled substances or marijuana, driving without proof of minimum required motor vehicle insurance, or any violation of the Code sections contained in Title 40 which is properly adjudicated as a delinquent act.

(h) In addition to any other treatment, the court may:

(i) Suspend the child's driver's license (or prohibit the issuance) for any period up until the child's eighteenth birthday.

(ii) Require as a condition of probation the child pursue a G.E.D. or high school diploma.

(2) Order supervision fees pursuant to O.C.G.A. §15-11-71 (see Chapter XIX of this Benchbook).

(3) Delinquent - DUI: O.C.G.A. §15-11-66(b.1). When a child is found to have committed a delinquent offense which would be a violation of O.C.G.A. §40-6-391(k), person under 21 driving with alcohol concentration of .02 grams or more, the court shall make an order of disposition which imposes the same penalty, period of confinement, and period of community service provided in O.C.G.A. §40-6-391 applicable to an adult.

(a) First adjudication:

(i) Fine of not less than \$300 nor more than \$1,000, which shall not be subject to suspension, stay or probation, except as provided in (d) below;

(ii) A period of imprisonment of not less than 10 days nor more than 12 months, which may, at the discretion of the judge, be suspended, stayed or probated, except that if the offender's alcohol concentration was .08 grams or more, the judge may suspend, stay or probate all but 24 hours of any term of imprisonment; and

(iii) Not less than 20 hours of community service, except that if the person's alcohol concentration was .08 grams or more, not less than 40 hours of community service.

(b) Second adjudication:

(i) Fine of not less than \$600 nor more than \$1,000, which shall not be subject to suspension, stay or probation, except as provided in (d) below;

(ii) A period of imprisonment of not less than 90 days nor more than 12 months. At the discretion of the judge and under terms and conditions as the judge shall impose, the judge may suspend, stay or probate all but 48 hours of any term of imprisonment; and

(iii) Not less than 40 hours of community service, except that if the person's alcohol concentration was .08 grams or more, not less than 80 hours of community service.

(c) Third or subsequent adjudication:

(i) Fine of not less than \$1,000 and not more than \$5,000, which shall not be subject to suspension, stay or probation except as provided in (d) below;

(ii) A period of imprisonment of not less than 120 days nor more than 12 months. At the discretion of the judge and under terms and conditions as the judge shall impose, the judge may suspend, stay or probate all but 10 days of any term of imprisonment; and

(iii) Not less than 40 hours of community service, except that if the person's alcohol concentration was .08 grams or more, not less than 20 days of community service.

(d) If the payment of the fine will impose an economic hardship on the child, the judge, at his sole discretion, may order the child to pay the fine in installments and such order may be enforced through a contempt proceeding or a revocation of probation. The judge, at his discretion, may suspend up to one-half of the fine imposed for a third or subsequent adjudication upon the child's undergoing an alcohol or treatment program approved by the court. O.C.G.A. §40-6-391(g).

(e) Confinement. The period of confinement may be served in an institution, camp, or other facility for delinquent children operated under the direction of the court or other local public authority, or if no such facility is available, in a regional youth detention center, provided that such child shall be kept segregated from all children other than those confined for DUI. O.C.G.A. §15-11-66(b.1). The judge may allow the period of confinement to be served on weekends by weekend confinement or during the nonworking hours of the child. Confinement during nonworking hours of a child during any day may be counted as serving a full day of the sentence. O.C.G.A. §17-10-3.1.

(f) No plea of nolo contendere shall be accepted for any person under the age of 21 charged with DUI.

(g) Community service. Any period of community service imposed shall be required to be completed within 60 days of the date of disposition.

(h) Revocation of license. The driver's license of any person under 21 adjudicated delinquent of DUI shall be revoked by the Department of Public Safety. O.C.G.A. §40-5-57.1.

(4) Unruly: O.C.G.A. §15-11-67.

(a) Any disposition authorized for a delinquent child.

(b) Commit to the Department of Juvenile Justice but **only** if the child is not amenable to treatment or rehabilitation pursuant to (1)(a), (b), or (c) above. *See Uniform Form JUV-15 for suggested Order of Commitment.*

e. Revocation of License. O.C.G.A. §40-5-57.1.

The driver's license of any person under 21 found to have committed any of the following offenses shall be revoked by the Department of Public Safety for six months for the first offense and 12 months for the second or subsequent offense: hit and run or leaving the scene of an accident; racing; fleeing or attempting to elude an officer; reckless driving, purchasing an alcoholic beverage in violation of O.C.G.A. §3-3-23(a)(2), (3) or (5); DUI; any offense for which four or more points are assessable under O.C.G.A. §40-5-57 (includes unlawful passing of school bus, improper passing on a hill or curve, exceeding speed limit by 24 or more mph). If the license was revoked for a violation of DUI and the alcohol concentration was .08 grams or more, a new license may not be issued for 12 months.

f. Records Open to the Public. O.C.G.A. §15-11-79.

Whenever the Court opens a hearing to the public pursuant to O.C.G.A. §15-11-78(b), the Complaint, Petition, and Order from that case must be made available to the public.