

XXXIII. INFORMAL ADJUSTMENT

- A. **Code Sections: O.C.G.A. §§ 15-11-49, 15-11-69, 15-11-71**
- B. **Uniform Juvenile Court Rules: 2.5, 4.1(b), 4.2, 4.3, 6.7, 6.8**
- C. **Uniform Forms: JUV-17 (Rev. 01/01)**
- D. **Procedure**
 - 1. Jurisdiction. The juvenile court shall have exclusive original jurisdiction over juvenile matters and shall be the sole court for initiating action concerning any child who is alleged to be delinquent; unruly; deprived; in need of treatment or commitment as a mentally ill or mentally retarded child; who is alleged to have committed a juvenile traffic offense defined at O.C.G.A. §15-11-73; or, who has been placed under the supervision of the court. O.C.G.A. §15-11-28.
 - 2. Local Operating Procedures. Courts exercising jurisdiction over juveniles may adopt local operating procedures governing proceedings in the juvenile court if the procedures are not inconsistent with these rules, the Constitution or statutory law. U.J.C.R. 1.2.
 - 3. Process. O.C.G.A. §15-11-69.
 - a. Diverts juvenile misconduct away from formal adjudication and disposition;
 - b. Informal adjustment concerns matters over which juvenile jurisdiction extends;
 - c. The best interest of public and child allows counsel and advice to juvenile;
 - d. Probation/intake officer must agree to informal adjustment;
 - e. Adjustment extends for three months, with a three month extension permitted;
 - f. Informed consent from parent/guardian to informal adjustment is required.

4. Exceptions.
 - a. No informal adjustment of designated felony (O.C.G.A. §15-11-63) permitted without prior written notification to the district attorney or an authorized representative. O.C.G.A. §15-11-69(d);
 - b. No informal adjustment following the filing of delinquency petition, however, see Practice (d.), *infra*;
 - c. No informal adjustment treatment permitted for delinquent traffic offenses listed at O.C.G.A. §15-11-73(c);
 - d. No informal adjustment absent juvenile admitting culpability to misconduct.
5. Considerations.
 - a. Not intended for serious delinquencies/unruly acts;
 - b. Amenability to informal handling must be assessed and approved;
 - c. Informal adjustment duration may be shortened through successful completion;
 - d. Informal adjustment failure may result in filing a delinquency/unruly petition;
 - e. No detention permitted unless authorized by Article 1 of Title 15 of Chapter 11.
6. Practice.
 - a. The juvenile court may give direction and create guidelines for informal adjustment to a complaint alleging a delinquency or unruly charge.
 - b. Time limitations set forth at O.C.G.A. §15-11-49(c) for the bringing of a delinquency petition are not applicable to the initiation of an informal adjustment. O.C.G.A. §15-11-49(b), In re M.E.H., 180 Ga. App. 591 (1986).

QUERY: *Where a delinquency petition is not filed within 30 days of the release of a juvenile from detention due to the matter undergoing an informal adjustment, will the later bringing of a delinquency petition be prohibited where the released juvenile fails to successfully complete the informal adjustment terms? Can a failure to complete informal adjustment terms be the subject of a delinquency or unruly complaint to afford a separate and distinct prosecution?*

ANSWER: *The language of U.J.C.R. 4.3 authorizes the withholding of a petition in consequence of an informal adjustment. The Rule states that “. . . the intake officer may withhold the filing of a petition with a view toward first seeking an informal adjustment of the matter.” It further states that the, “Failure to comply with such (informal adjustment) agreements may result in the filing of a petition on the complaint.” It would therefore appear that the Juvenile Code contemplates a later filing of a delinquency/unruly petition, even beyond the statutory time limits following the initial release of a detained juvenile, where an informal adjustment was attempted and failed. It would also appear that the violation of an informal adjustment would subject a juvenile to an additional unruly petition (by committing an offense applicable only to a child) and/or a citation to show cause why the juvenile should not be held in contempt of court where the informal adjustment is court ordered.*

- c. A complaint must be filed for the juvenile court to authorize a matter to be informally adjusted because it is the complaint that initiates proceedings in the juvenile court and vests jurisdiction. State v. Whetstone, 264 Ga. 135 (1994).
- d. Notwithstanding the filing of a delinquency/unruly petition, an informal adjustment may be had in the best interest of the child only upon the judge approving withdrawal of the petition. The informal adjustment does not act to dismiss the case but substitutes for a formal adjudication. U.J.C.R. 6.7.
- e. Incriminating statements made by a participant to a person giving counsel in an informal adjustment may not be used against the participant except in a juvenile disposition proceeding or in a presentence investigation after a criminal conviction against the participant. O.C.G.A. §15-11-69(c).
- f. In determining whether to provide an informal adjustment to a delinquency/unruly complaint, the probation/intake officer has statutory discretion to:

1. Hold an informal conference to counsel with the juvenile and parents and terminate further prosecution. O.C.G.A. §15-11-69(a), U.J.C.R. 4.3(b)(1);
2. Counsel and advise the juvenile for up to a renewable three month period beginning with the first such counseling session. O.C.G.A. §15-11-69(b), U.J.C.R. 4.3(b)(2);
3. Refer the child for recommended counseling. O.C.G.A. §15-11-68, U.J.C.R. 4.3(b)(3);
4. Individualize an appropriate agreement that may include community service, letters of apology, essays, or other relevant items. U.J.C.R. 4.3(b)(4).

QUERY: *Where a juvenile is referred for counseling that is not completed within the statutorily authorized six month informal adjustment period, will the failure of the juvenile to appropriately attend counseling after six months subject the juvenile to a renewed prosecution on the initial complaint and/or a citation for contempt of court?*

ANSWER: *While U.J.C.R. 4.3(b)(3) appears to open-endedly authorize a juvenile being placed into recommended counseling until successful completion, O.C.G.A. §15-11-69(b) statutorily commands that the giving of counsel and advice cannot extend beyond three months from the day it commences, or beyond a court extension of three additional months.*

- g. U.J.C.R. 3.2 requires the clerk of court to maintain a Juvenile Docket Sheet and enter the fact that a matter was handled through informal adjustment. Therefore, an informal adjustment becomes a distinct characterization that does not confirm or deny culpability for the alleged acts. Following completion of the informal adjustment, the court shall order the sealing of the files and records in the case pursuant to O.C.G.A. §15-11-79.29(a). Juvenile traffic offenses that are provided informal adjustment treatment need not be reported to the Department of Public Safety. O.C.G.A. §15-11-73(j).
- h. Informal adjustment providing informal supervision authorizes the collection of an initial court supervision fee and a monthly court supervision user's fee enforceable against the child and parent/guardian. O.C.G.A. §15-11-71(b).

7. Recommendations.

- a. The informal adjustment agreement should specifically recite that the juvenile admits culpability to the specific allegations of the charge in addition to admitting that said facts bring the case within the jurisdiction of the juvenile court.
- b. There should be a clear waiver of enumerated constitutional rights signed by the juvenile and parent/guardian to avoid potential constitutional issues.
- c. Consultation with the prosecutor and victim to allow informal adjustment treatment may contribute to establishing appropriate terms and conditions to dispose of the allegations of misconduct.
- d. The juvenile court should establish general terms and conditions for any informal adjustment agreement, including requirements for periodic reporting by the juvenile and feedback from the parent/guardian.