

# **2016 Minimum Standards Protocol** **Multidisciplinary Investigation & Prosecution** **of Child Abuse, Sexual Abuse & Sexual Exploitation**

**State of Georgia**  
**(2016 changes are noted in Red)**  
**(2015 changes are noted in Blue)**

Special thanks to all agencies and individuals who participated in the 2016 Protocol Summit to collaboratively update the Statewide Model Protocol  
DFCS – Policy Compliance

Child Advocacy Centers of Georgia – Forensic Interviews

Dr. Messner, CHOA – Forensic Medical

CJCC SART Core Members & Expert Committee

CJCC Human Trafficking Taskforce

Prosecuting Attorney’s Council

Georgia Cares

Department of Juvenile Justice

Department of Public Health

Department of Education

DECAL

GBI, Child Abuse Specialist Agents

GBI, Child Exploitation & Computer Crimes Unit

Local Law Enforcement agencies throughout the State

GPSTC

Barton Center of Law

Rachelle Carnesale, Chief Assistant District Attorney, Blue Ridge Judicial Circuit

Judge Render Heard, Juvenile Court Judge, Tift Judicial Circuit

Angela Tyner J.D., Director of Advocacy & Program Development, Court Appointed Special Advocates

Jennifer Bartl, TF-CBT

Julia Neighbors, Prevent Child Abuse of Georgia

Tiffany Sawyer, Georgia Center for Child Advocacy

Donnie Winokur, FASD

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Editor:

Jodi Ann Spiegel, Deputy Director

Office of the Child Advocate for the Protection of Children

7 Martin Luther King Jr. Drive, Suite 327

Atlanta, GA 30303

Phone 404.656.4200 • Fax 404.656.5200

[www.oca.georgia.gov](http://www.oca.georgia.gov)

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## The Protocol and the Protocol Committee

### 1.1 Purpose of the Protocol: **Ensure a multidisciplinary response to child abuse and neglect.**

The **purpose of the protocol** shall be to *ensure coordination and cooperation* between all agencies involved in a child abuse case so as to *increase the efficiency of all agencies* handling such cases, to *minimize the stress created for the allegedly abused child* by the legal and investigatory process, and to *ensure that more effective treatment is provided* for the perpetrator, the family, and the child, including counseling. O.C.G.A. §19-15-2 (f)

The Protocol gives guidance for cooperation and procedures with the understanding that each agency involved has their own policies that may take precedence over or be incorporated into the local protocol. Court rules, operating procedure and orders take precedence as well.

### 1.2 Mission

The mission of the Protocol Committee is to *ensure coordination and cooperation* of the various agencies, organizations and individuals, as they work with abuse cases in the course of their duties:

1. To write, review and establish the protocol document, outlining in detail the procedures to be used in investigating and prosecuting cases arising from alleged child abuse and the methods to be used in coordinating treatment programs for the perpetrator, the family and the child;
2. To coordinate the efforts of all agencies that investigate, review, treat and manage cases of alleged child abuse;
3. To facilitate and support agencies, organizations and individuals whose efforts are directed toward abuse prevention.

### 1.3 Customizing this model to fit your County or Circuit

County Child Abuse Protocol committees should evaluate local resources and needs as they develop a local protocol. This model protocol can be incorporated entirely or can be customized and applied only to those areas that are feasible for the community.

Protocols give guidance for cooperation and procedures with the understanding that each agency involved has their own policies (or protocols) that may take precedence over or be incorporated into the local Protocol. Court rules, operating procedure and orders take precedence as well.

Brackets have been placed within the document around areas that may incorporate county specific information. To change all county names within the document, use the Find and Replace tool. Type “YourCountyNameHere” in the “Find” field and type your county (or circuit) name in Replace field.

**NOTE: If you need further assistance concerning the Protocol, please contact Jodi Spiegel, Deputy Director at the Office of the Child Advocate, at 404-656-4200 or [jspiegel@oca.ga.gov](mailto:jspiegel@oca.ga.gov).**

### 1.3 The Protocol Committee

When a judicial circuit is composed of more than one county, the protocol committee shall determine if it shall be established for each county in the judicial circuit or if it will serve all of the counties within the judicial circuit. (O.C.G.A. 19-15-2 (b)(3))

#### **Responsibilities of the Protocol Committee**

- \* Elect a chairperson responsible for ensuring that written protocol procedures are followed by all agencies.
  - 1) develop local protocols for the investigation and prosecution of alleged cases of child abuse. *O.C.G.A. §19-15-2(b)*
  - 2) adopt a written protocol and a written sexual abuse and sexual exploitation protocol **(now a section)**. *O.C.G.A. §19-15-2(e)*
  - 3) which shall be filed with the Division of Family and Children Services of the Department of Human Services and the **Office of the Child Advocate for the Protection of Children**, a copy of which shall be furnished to each agency in the county handling the cases of abused children
  - 4) meet at least twice annually for the purpose of evaluating the effectiveness of the protocol and modifying and updating the same. *O.C.G.A. §19-15-2(g)*
  - 5) file the updated protocol with the DFCS and the Office of the Child Advocate for the Protection of Children **not later than the first day of September each year**
  - 6) have new member training within 12 months of their appointment provided by OCA. *O.C.G.A. §19-15-2(j)*
  - 7) prepare an Annual Report due the first day of July each year which shall evaluate:
    - (1) the extent to which investigations of child abuse during the 12 months prior to the report have complied with the protocols of the protocol committee;
    - (2) recommend measures to improve compliance, and;
    - (3) describe which measures taken within the county to prevent child abuse have been successful. (O.C.G.A. §19-15-2(i))
  - 8) *transmit the Annual Report to the county governing authority, the fall term grand jury of the judicial circuit, the **Office of the Child Advocate for the Protection of Children**, and the chief superior court judge of the circuit.*

(See, Sample Annual Report in Appendix)

#### 1.4 Membership – O.C.G.A. §19-15-2 (c)(1) (3) & (4)

Each of the following individuals, agencies and entities shall designate a representative to serve on the Protocol Committee:

- a) The sheriff;
- b) The county department of family and children’s services;
- c) The district attorney for the judicial circuit;
- d) The juvenile court judge;
- e) The chief magistrate;
- f) The county board of education;
- g) The county mental health organization;
- h) The chief of police of a county in counties which have a county police department
- i) The chief of police of the largest municipality in the county;
- j) The county public health department, which shall designate a physician to serve on the protocol committee; and
- k) The coroner or county medical examiner
- l) A representative of a local child advocacy center if one exists in such location
- m) A representative of a sexual assault center if one exists in such location

In addition, the chief superior court judge designates a representative from a local citizen or advocacy group which focuses on child abuse awareness and prevention, such as:

- Children’s Advocacy Center (CAC) with appropriate jurisdiction;
- Medical Provider, preferably with child maltreatment expertise and/or;
- Court Appointed Special Advocate (CASA)

- \* **The protocol committee may appoint such additional members as necessary and proper to accomplish the purposes of the protocol committee.**

#### **CSEC Membership**

Lastly, in order to better address the complex issue of commercial sexual exploitation of children (CSEC), the Protocol Committee can include the CSEC MDT currently headed by members of CHOA (Children’s Healthcare of Atlanta) and GA Cares as Protocol members whom shall be governed by the guidelines set forth within your local county protocol.

#### 1.5 Confidentiality (O.C.G.A. §19-15-6)

- \* Members of a protocol committee shall not disclose what transpires at meeting nor disclose any information.
- \* Information acquired by and records of a protocol committee shall be confidential, shall not be disclosed, and shall not be subject to the Open Records Act, subpoena, discovery, or introduction into evidence in any civil or criminal proceeding;
- \* Unless (1) made public records by other law or (2) involve *a child who at the time of his or her death* was in the custody of a state department or agency or foster parent.
- \* A protocol committee meeting shall be closed to the public. O.C.G.A. §19-15-5(a)

The Protocol Committee shall have reasonable access to records concerning reports of child abuse. O.C.G.A. §49-5-41(a)(8) & (c)(5)

## 2. Mandated Reporting Definitions (O.C.G.A. §19-7-5 (e))

(See full set of definitions in Appendix)

A report shall be made immediately, but in no case later than 24 hours from the time there is reasonable cause to believe that **suspected child abuse has occurred** O.C.G.A. §19-7-5(e)

Child Abuse is defined under O.C.G.A. §19-7-5(4) as:

(A) Physical injury or death inflicted upon a child by a parent or caretaker (other than accidental);

(B) Neglect or exploitation of a child by a parent or caretaker;

(C) **Endangering a child**

**(6.1) 'Endangering a child' means:**

**(A) Any act described by subsection (d) of Code Section 16-5-70 [cruelty to children 3<sup>rd</sup>];**

**(B) Any act described by Code Section 16-5-73 [child present at meth lab];**

**(C) Any act described by subsection (I) of Code Section 40-6-391 [DUI w/child in the car]**

**(D) Prenatal abuse, as such term is defined in Code Section 15-11-2 [Juvenile Code Definition paragraph 56]**

(D) **Sexual abuse of a child;**

**Sexual abuse** shall include consensual sex acts when the sex acts are between minors if any individual is less than 14 years of age; provided, however, that it shall not include consensual sex acts when the sex acts are between a minor and an adult who is not more than four years older than the minor. This provision shall not be deemed or construed to repeal any law concerning the age or capacity to consent.

(E) **Sexual exploitation of a child.**

Conduct by any person who allows, permits, encourages, or requires that child to engage in:

(A) Prostitution, as defined in Code Section 16-6-9; or

(B) Sexually explicit conduct for the purpose of producing any visual or print medium depicting such conduct, as defined in Code Section 16-12-100 (Sexual Exploitation of Children)

### **Good Faith Exception**

**Persons who provide assistance to law enforcement officers or DFCS when the health and safety of children are adversely affected and threatened (O.C.G.A §16-3-22.1 )**

Any person that in good faith has possession of materials or images in violation of Article 3 of Chapter 12 of this title and immediately notifies law enforcement officials OR any person that is required by Code Section 19-7-5 to report suspected child abuse OR makes such notification within 72 hours from the time there is reasonable cause to believe such person is in possession of such materials or images shall be immune to the same extent as a law enforcement officer would be immune from criminal liability for such possession.

(b) The official report of the law enforcement agency or DFCS shall create a rebuttable presumption of good faith and reasonableness on the part of the person that has possession.

(c) The purpose of this Code section is to provide for those persons that act in good faith to assist law enforcement officers or DFCS when the health and safety of a child are being adversely affected and threatened by the conduct of another.

This Code section shall be liberally construed so as to carry out the purposes thereof.

**\*Note: Juvenile Code definitions of Child Abuse under O.C.G.A. §15-11-2 also include Emotional abuse §15-11-2(30)**

**Reporting to DFCS: Reporting Options & Procedures:**

A Report can be made by:

- \* an oral report by telephone or
- \* other oral communication **or**
- \* a written report by electronic submission or facsimile

Reports are taken by DFCS Centralized Intake, 24 hours a day, 7 days a week through either:

(1) Calling 1-855-GACHILD / 1-855-422-4453

(2) Submitting a completed form:

(a) E-mailing to [cpsintake@dhs.ga.gov](mailto:cpsintake@dhs.ga.gov) You will receive an auto-reply stating that the CPS report has been received.

(b) Faxing to 229-317-9663. Faxed reports convert to a PDF (Adobe) format and are automatically forwarded to the [cpsintake@dhs.ga.gov](mailto:cpsintake@dhs.ga.gov) e-mail box. Once the report is opened by a designated intake Case Manager, you will receive an e-mail stating that the CPS report has been received, if you provide an e-mail address.

(c) Via the web at: <http://dfcs.dhs.georgia.gov/child-abuse-neglect>

In order to use this site the reporter must first complete the Mandated Reporter Training at: [www.prosolutionstraining.com](http://www.prosolutionstraining.com)

Once completed the reporter will get a code to use to make a web based report. Using this code will also allow the reporter to **view or verify the status** of reports made.

The report shall include:

1. the name, addresses and age of the child;
2. the name of the child's parents or caretakers;
3. the nature and extent of the child's injuries, including any evidence of previous injuries, and;
4. any other information in establishing the cause of the injuries, the parental protective capacities of the parent and the identity of the maltreater.

DFCS will then notify law enforcement or the district attorney;

- *See Statewide Model Protocol Appendix 8-K Mandated Reporter Form*

\*Reporter information will not be disclosed unless ordered by a court.

## **2.1 Mandated Reporters - O.C.G.A. §19-7-5 (c) (1)**

The following persons having *reasonable cause* to believe that **suspected child abuse has occurred** shall report or cause reports of that abuse to be made as provided by law:

- (A) Physicians licensed to practice medicine, physician assistants, interns, or residents;
- (B) Hospital or medical personnel;
- (C) Dentists;
- (D) Licensed psychologists and persons participating in internships to obtain licensing pursuant to Chapter 39 of Title 43;
- (E) Podiatrists;
- (F) Registered professional nurses or licensed practical nurses or nurse's aides;
- (G) Professional counselors, social workers, or marriage and family therapists;
- (H) School teachers;
- (I) School administrators;
- (J) School guidance counselors, visiting teachers, school social workers, or school psychologists certified pursuant to Chapter 2 of Title 20;
- (K) Child welfare agency personnel, as that agency is defined pursuant to [Code Section 49-5-12](#);
- (L) Child-counseling personnel;
- (M) Child service organization personnel;
- (N) Law enforcement personnel; or
- (O) Reproductive health care facility or pregnancy resource center personnel and volunteers.

(2) If a person is required to report child abuse because that person attends to a child pursuant to such person's duties as an employee of or volunteer at a hospital, school, social agency, or similar facility, that person shall notify the person in charge of the facility, or the designated delegate and the person so notified shall report or cause a report to be made. An employee or volunteer who makes a report to the designated person shall be deemed to have fully complied the law.

When school employees report suspected child abuse, DFCS must write to that employee and acknowledge receipt of the report within 24 hours. Within 5 days of completing an investigation, DFCS must disclose to the counselor, or principal if no counselor, whether or not abuse was substantiated (O.C.G.A. §49-5-41(a)(5))

Cross reporting between DFCS and law enforcement is critical.

Law Enforcement is a mandated, as listed above, as to is DFCS once a report of child abuse is made or independently discovered by them, and they have reasonable cause to believe such report is true or the report contains any allegation or evidence of child abuse, then they shall immediately notify the appropriate police authority or district attorney. O.C.G.A. §19-7-5(e)

## **2.2 Other Reporters**

Any other person, other than those specified, who has reasonable cause to believe that a child is abused may report or cause reports to be made. (O.C.G.A. §19-7-5(d))

**Clergy** shall not be required to report child abuse reported solely within the context of confession or other similar communication required to be kept confidential under church doctrine or practice. When a clergy member receives information about child abuse from any other source, the clergy member shall comply with reporting requirements even though the clergy

member may have also received a report of child abuse from the confession of the perpetrator. (O.C.G.A. §19-7-5(g))

### **2.3 Penalties**

Any person or official required to report a suspected case of child abuse who knowingly and willfully fails to do so shall be guilty of a misdemeanor.

**Mandated Reporters can obtain training on-line at <https://www.gocfrainingonline.com>.** (See, Appendix 1 for Mandated Reporter Definitions under O.C.G.A. §19-7-5)

### **2.3 Medical Personnel**

Notify DFCS by calling 1-855-GACHILD / 1-855-422-4453 or to law enforcement; however, a physician may take "temporary protective custody" in order to protect a child who is at risk of "imminent danger", if:

- (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) 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.

### **2.4 Public Health in the Clinical Setting-Medical Providers**

- The staff member shall immediately notify DFCS of suspected cases of abuse, pursuant to O.C.G.A. § 19-7-5(e). In no case shall the report be made more than 24 hours from the time staff member has reason to believe the child has been abused.
- The incident as reported or observed shall be documented in the child's medical record.
- The child's attending physician shall be notified and advised of the incident.
- A copy of the written report shall be maintained in the child's record.
- The child's right to confidentiality should be respected. Information regarding diagnosis, current condition, and prognosis should be shared only as necessary in response to pertinent questions posed by protective services personnel. No release of information is required to make this report.
- The staff member should not verbally disclose to the parents/guardians or legal custodians of the child that a report is being made to protective services until the safety of the child has been established.
- Reports of suspected abuse and/or neglect made to appropriate protective services or police agencies in good faith render the reporter immune from civil or criminal liability.
- An incident report should be completed by a public health staff member for each suspected/actual incident of abuse.

### **2.5 Public and Private Schools**

1. A classroom teacher or other school staff who suspects abuse or neglect must **immediately** notify the appointed designee who shall immediately cause a report to be made to DFCS.
2. The appointed designee will then send a brief report to the Student Services Department at the Central Office.
3. No employee shall contact a parent/guardian regarding the interview of their student in child abuse/neglect referrals.
4. DFCS or law enforcement will be allowed to conduct a brief, preliminary interview as necessary on school grounds. Every effort will be made to provide a private area for said

interviews.

**Reporting Abuse Occurring in the School Setting** - *Charges against teachers abusing children. School staff should NOT conduct their own detailed interview of the child and staff should only question the child enough to determine if a report is necessary. School staff should notify DFCS and Law Enforcement immediately.*

## **2.6 Department of Juvenile Justice**

When any employee, volunteer or contractor believes or becomes aware of any suspected neglect, physical, emotional, sexual exploitation or sexual abuse of a child under 18 years old, that employee, volunteer and contractor shall follow DJJ Policy on Special Incident And Child Abuse Reporting and Commercial Sexual Exploitation Referrals. The suspected or alleged Sexual Exploitation of Children shall be referred to Georgia Cares and notification to the appropriate law enforcement agency within 24 hours.

**2.7 Georgia Department of Early Care and Learning (DECAL)** if a child is harmed in a licensed or unlicensed child care center or family child care learning center contact DECAL at (404)657-5562 or (404)656-5957.

Two (2) types of licensed child care programs include child care learning centers and family child care learning homes.

The Child Care Services division of Bright from the Start monitors and licenses child care programs and Investigates complaints of child care programs, licensing violations and reports of unlicensed child care operations.

DECAL Investigations include conducting interviews with adults and children and assessing the history of center to determine whether there is any immediate danger to the children there. Possible consequences could range from providing technical assistance to emergency closure of center.

## **2.6 Behavioral Health Service Providers**

If a child discloses sexual abuse or severe physical abuse during psychotherapy or counseling, the mental health provider should NOT attempt a forensic interview. The provider should not question the child in detail about the alleged abuse or attempt to use anatomically correct dolls for investigative purposes. Rather, the provider should gather the appropriate amount of information needed to complete a DFCS report to include what happened, when did it happen, where did it happen, how did it happen and who did it. The behavioral health provider should reassure the child and explain the process to the child for a possible forensic interview by a third party. Information necessary for agency's investigation of the abuse or neglect is to be shared.

Staff who receives information concerning child abuse or neglect is to report as follows:

- Therapists should report directly to DFCS or law enforcement **immediately**.\*
- Training clinicians**, clerical staff and other support staff should report the incident or information directly to supervisory staff, to be reported to DFCS **immediately**.\*
- Reports are to be made by phone, with a written follow-up if requested by DFCS, or **electronically**.

\*An immediate response from DFCS is required prior to the child's departure if danger of further abuse and neglect is suspected.

### 3 Investigative and Assessment Procedures

#### 3.1 By Division of Family and Children Services (DFCS)

- \* Centralized Intake Call Center (CICC) will make determination if report contains allegations of maltreatment and assign a **response time based on the severity of maltreatment: Immediate - 24 hours -72hours (No more 5 days)**
- \* Local DFCS will interview child victim, assess home environment, meet family and **determine the Case Track assignment: Investigation or Family Support**
- \* If, at any time, DFCS determines **safety threats exist, an in-home or out of home** safety plan will
- \* be initiated which may include removal of the child from the home
- \* **Documentation of each contact shall be entered in Georgia SHINEs within 72hours**

If it is necessary to remove the child from the home, DFCS may call law enforcement to request assistance. All removals requiring transportation of a child under the age of 8 or 4'9" must be done with a car seat pursuant to O.C.G.A. §40-8-76.

Steps to remove a child from a home:

- 1) DFCS may request the assistance of law enforcement which has the authority to take immediate action in taking a child into protective custody\* without a court order for 24 hours and DFCS will then seek a court order as follows:
- 2) Local procedure will determine how DFCS obtains an emergency court order from the Juvenile court during working hours and after hours by one of three contact methods:
  - (a) their Special Assistant Attorney General (SAAG) to obtain an emergency order for shelter care signed by a Judge or authorization for shelter care signed by a Juvenile Court Intake Officer;
  - (b) the Juvenile Intake Officer or;
  - (c) the Judge directly granting DFCS immediate temporary custody until a hearing is convened within 72 hours.

#### A. Investigation of Accepted Reports

- Refer severe physical and all sexual abuse to the Children's Advocacy Center or other designated facility to conduct forensic interviews.
- Refer sexual exploitation to **Georgia Cares** and the **GBI Child Exploitation and Computer Crimes Unit** within 24 hours.
- Contact law enforcement immediately if marks/bruises are severe. In cases where medical treatment is indicated or the cause of injury cannot be determined, seek a medical opinion.
- Contact law enforcement if needed for securing parental cooperation, access to child or protection of the child.

#### B. Interviewing Children at School:

- When planning to conduct a preliminary interview at school, the DFCS case manager or law enforcement may contact school personnel prior to being on site for the interview. The school personnel will be responsible for arranging the preliminary interview.

## **D. Investigations of Commercially Sexually Exploited Children**

DFCS will respond to reports of children being commercially sexually exploited, whether by caregivers or non-caregivers.

### **DFCS Definition of Commercially Sexually Exploited Children and**

Commercial Sexual Exploitation of Children (hereinafter referred to as CSEC)/ Domestic Minor Sex Trafficking (hereinafter referred to as DMST) is defined as follows:

*Sexual abuse/prostitution of a child by an adult or older juvenile involving payment in cash, food, shelter or other forms of value to the child or a third person; involving treatment of the child as a sexual and commercial object in activities such as prostitution, adult entertainment, pornography, and other forms of transactional sex where a child engages in sexual activities.*

#### **1. Initial Assessment**

It is very important that an initial assessment carefully consider whether a possible victim of commercial sexual exploitation should be taken into care or placed back in the home

\*CPS staff/case managers should familiarize themselves the Indicators/Risk Factors found in Appendix 8-C & Common CSEC/DMST Street Terminology found in Appendix 8-D of the 2015 Statewide Model Protocol

Investigate the circumstances of the commercial sexual exploitation of the child and the child's mental state carefully during the assessment phase of the case and well before making reunification plans with the parents and/or guardians

If the parents are **not** part of any sexual exploitation of the child, the case manager should then work closely with the parent and/or guardians in providing the appropriate CSEC/DMST resources to the child and family throughout the case

A request by Law Enforcement for the Division to not make contact with the parents for the safety of the child should be respected. The Juvenile Court should be fully advised of this request when applying for a Shelter Care Order

2. Upload to GA SHINES at least 2 photos of the child: one full length standing photo and one passport-like full face view photo.

#### **3. Make a referral to Georgia Cares.**

-Refer to Georgia Cares who can help to properly address the needs of and coordination of services to children who are victims of commercial sexual exploitation.

-Georgia Cares will conduct a meeting to ask additional screening questions of the child.

-A CSEC/DMST Service Coordinator who coordinates services will be assigned.

*(Georgia Cares Referral Form can be found in the Statewide Model Protocol Appendix)*

### **Georgia Cares Contact Information:**

Phone: **844-8GA-DMST (844-842-3678)** / Fax to: 404-371-1030

Website: [www.gacares.org](http://www.gacares.org) / Email: [referrals@gacares.org](mailto:referrals@gacares.org) / Administrative: [admin@gacares.org](mailto:admin@gacares.org)

#### **4. Medical Attention**

Contact the Child Advocacy Center (CAC), **Sexual Assault Center (SAC)** or other facility set up to conduct forensic medical exams or a pediatric doctor who uses telemedicine with CHOA. If this resource does not exist, then the child should be brought to the local Emergency Room for a medical evaluation for the health of the child or a pediatric SANE for a sexual assault exam. If the child is recovered within the Metro-Atlanta area, the child should be taken to the Children's Healthcare of Atlanta's Emergency Department.

(See Section 4.4 on Obtainment of a Forensic Medical Exam/Sexual Assault Exam)

#### **5. Forensic Interview**

- If the child is cooperative, coordinate a CSEC/DMST forensic interview through the local Children's Advocacy Center as soon as practical
- If the child is denying victimization, and/or is not cooperative, it may be best to delay the forensic interview until some trust has been established with the child

#### **6. State Office Placement Resources Operations (PRO) Team**

Make a referral to the **State Office Placement Resources Operations (PRO) Team** to assist with finding an appropriate placement (for out-of-home cases)

#### **7. Local Law Enforcement**

If the initial referral does not come from law enforcement, DFCS should always contact law enforcement within 24 hours and provide them with all information gathered from both intake and the initial investigation.

#### **8. Georgia Bureau of Investigation, Child Exploitation and Computer Crimes Unit**

Contact the GBI Child Exploitation and Computer Crimes Unit within 24 hours when a child is suspected of being a victim of commercial sexual exploitation.

\*Regular business hours-404-270-8870, Child Exploitation & Computer Crimes Unit Agent on call.

\*On nights, weekends, and holidays call the GBI communications center at 404-244-2600 or 1-800-282-8746 and ask for the Child Exploitation and Computer Crimes Agent that is on call.

NOTE: DFCS Regional Case Management Protocols will be developed by December, 2015.  
Check your local Regional Protocol for localized requirements.

### **D. DFCS Records Release & Confidentiality of Records**

\*DFCS will release records to the DA office and LE upon request.

\*DFCS records remain confidential during an ongoing investigation and are not subject to release under the Open Records Act except in serious injury or death. DFCS will contact LE upon receipt of an OR request.

### **3.2 By Law Enforcement**

#### **Basic Procedure for Police Investigation of *Child Abuse***

-Meet with complainant for nature of allegation.

-Give immediate consideration to child's safety and get medical attention if needed.\*

-Determine if the allegation of sexual abuse, sexual exploitation, physical abuse or neglect is founded by

probable cause.

- If the offense occurred outside of the responding officer's jurisdiction, advise complainant and assist with filing a report with the appropriate law enforcement agency.
- Gather information for incident report from complainant and any other witnesses.
- If the responding officer has to interview the victim, ask only basic non-detailed questions. A more detailed interview will be deferred to Child Advocacy Center
- Contact his/her supervisor so that they can notify an investigator.
- Report the referral to DFCS
- Notify and assist DFCS if circumstances justify taking a child into protective custody.\*
- Complete the initial incident report. Respond to and obtain evidence at the scene or medical facility. Observe, record, photograph, document and report events.
- Obtain physical or testimonial evidence from medical personnel if medical exam occurs.
- Consult with and document information gathered from hospital or school professionals at the scene (i.e., pediatrician, emergency room doctor, counselor, administrator, etc.).
- Consult with other involved agencies and interview witnesses and parents of victim.
- Obtain statements from victim by audio and/or video recordings through trained interviewer at the children's advocacy center within 72 hours.\*
- Arrange analysis and evaluation of evidence and review results with involved agencies.
- Interview suspect when identified and re-interview as appropriate.
- Obtain and execute any applicable search warrants for evidence to include known samples from victim, corroborating evidence from scene or other location.
- Obtain arrest warrants, apprehend suspect and conduct additional interviews or interrogations within the issued rights of the suspect.
- Compile case file for prosecution, criminal history check, etc.
- Consult with District Attorney's office for prosecution.
- Participate in subsequent judicial proceedings.

\*All transportation of a child under the age of 8 or 4'9" must be done with a car seat pursuant to O.C.G.A. §40-8-76.

### **Basic Procedure for Police Investigation of *Child Commercial Sexual Exploitation***

In addition to the above, other potential evidence of sexual exploitation can include:

- hotel worker(s) statements and hotel records
- Photographs of victim, scene, outside of hotel, hotel room, corner where girl was standing
- Security video from any place victim said they went that has a recorded video
- Cell phones from victim and accused, cell phone numbers and records (Make sure the phones are not placed in property and returned to defendant-Get a search warrant to dump the phone
- "Exploitation clothing" worn by the victim
- Anything bought by accused for victim (eyelashes, hair pieces, clothing)
- Sheets & blankets, condoms
- On-line ads (get SW/subpoena for ad info & subscriber history)
- Username and passwords for social media accounts
- Fake or stolen IDs (locate & get statements from ID victims)
- Anything that can corroborate the victim's statement (even something as small as McDonald's receipt; if she said he took her to McDonald's, it's corroboration)
- Photos of tattoos & what they mean to victim
- Journal, diary, calendar, agenda (may or may not be electronic)
- Screenshot of any internet site that is applicable

-Electronic devices

See, “Indicators” of Child Sexual Exploitation below

**Additional Steps to take:**

- Establish custody of the Child\*
- Call DFCS and advise the child is a potential CSEC victim and request DFCS respond to take custody\*
- Contact Georgia Cares **844-8GA-DMST (844-842-3678)** for services and placement assistance
- Take child to hospital, CAC or SAC for forensic medical examination. Obtain and send Evidence Collection kit to GBI crime lab. Debrief with doctor, nurse or SANE who conducted the exam as they are often a wealth of information helpful to the investigation
- Contact GBI, Child Exploitation and Computer Crimes Unit 404-244-2600 (24 hours)

\*All removals requiring transportation of a child under the age of 8 or 4’9” must be done with a car seat pursuant to O.C.G.A. §40-8-76.

**Cross-Reporting to DFCS is critical to ensure the safety of the child & it’s the law - O.C.G.A. 19-7-5**

In cases where law enforcement initially receives the report of abuse, report the referral to DFCS.

- Conduct an initial screening of the referral.
- Make contact with the reporter whenever possible to assess the accuracy of the referral, safety of the child and other issues that may influence the interview.
- Check records for previous law enforcement histories with the family.
- Meet with DFCS to discuss the case and decide how to proceed with the investigation.
- Schedule an interview at the CAC or designated location within 24 hours or assist DFCS to do so.
- If the interview does not take place within 24 hours, assist DFCS with protection of the victim if necessary.

**Basic Procedure for Police Investigation of Domestic Violence with Child Present**

Determine whether children are or were present at the residence and obtain their name, age, demeanor, relationship to the parties and whether the child(ren) witnessed, heard or were physically harmed during the incident (intentionally or accidentally).

Ask the parties where the child(ren) is/are and the importance for the officer to check on the child(ren).

If the parties will not or are unable to answer as to the child(ren)’s welfare, and the officer has reason to believe a child(ren) is/are present by evidence of toys, clothes, etc., follow police protocol for further search of the house.

**Secure the safety of the child:** If a child(ren) is/are found at the house and the child(ren) witnessed, heard or were physically harmed during the incident (intentionally or accidentally), determine whether to seek protective custody and if so, contact the DFCS on-call case worker or director and make a report to DFCS Centralized Intake.

**Consider a forensic interview of the child**

Make a referral or give the adult victim information on the nearest Domestic Violence Shelter for him/her and the child(ren) if needed. **Try to connect the victim with a person at the Domestic Violence Shelter or at**

minimum talk to the victim about available services.

Include the name of the child and date of birth in the incident reports.

**Try to separate children and where possible, AVOID:**

Interviewing parties in the presence of child

Subduing or arresting someone in child's presence.

Having the child interpret for the parent(s)

Leaving the child alone for a "long" period of time while conducting interview with adults

**TIPS FOR TALKING WITH CHILDREN AT SCENE**

Address the child at eye level

Explain your role in easy to understand terms

Honor a child's loyalty to an abusive parent

Do not criticize or demean the abusive parent

Acknowledge child's right *not* to speak

Communicate your concern about the child's safety

Don't make promises you can't keep

Discuss confidentiality and its limits

Taken from Vermont's 2004 Model Protocol as adapted from a handout developed by the Child Witness to Violence Project, Boston Medical Center

**3 Basic Procedure for Children with Disabilities**

Establish rapport and respectful communication with the victim. Presume victim competence to participate in an interview and the criminal justice process.

When possible, the officer will want to gather some initial information before interviewing the person:

-Determine if the victim has any kind of disability.

-Find out how this disability *may* affect the interview process

-Determine if the victim uses any adaptive equipment, such as a hearing aid, crutches or a wheelchair?

-Determine if the victim has any attention difficulties.

-Determine how the victim best communicates their wants and needs.

-Determine what makes it easiest for the victim to understand what others communicate.

-Assure the setting for the interview is accessible to the victim.

-Create a safe and non-judgmental environment

-Do not ask for a lot of details, do not rephrase questions as it can cause confusion

-Do not touch the victim as this could cause a fight or flight response in children with certain disabilities

-Arrange for forensic interview at the Child Advocacy Center

**Georgia Department of Early Care and Learning (DECAL)** if a child is harmed in a licensed or **unlicensed** child care center or family child care learning center contact **DECAL** at (404)657-5562 or (404)656-5957.

**Two (2)** types of licensed child care programs include child care learning centers and **family child care learning homes**.

DECAL works closely with Law Enforcement and DFCS during child abuse and neglect investigations in a child care program. If law enforcement, DFCS or any other agency is investigating child abuse,

neglect, injuries or any other allegation at a child care center, please contact DECAL as soon as possible so as to coordinate investigations.

#### **4 Joint Investigations between Law Enforcement and DFCS**

##### **In a Joint Investigation, Law Enforcement will:**

At their discretion, take the lead role in interviewing the perpetrator  
Determine if the allegation of sexual, physical or emotional abuse or neglect is founded by probable cause and if the crime occurred in the jurisdiction of the agency  
If probable cause is found, take warrant(s) out with Magistrate Court  
Be familiar with the Protocol and make every attempt to follow it  
Ensure the child's interview is conducted at the CAC w/in 72 hours of the report  
Decide if LE, DFCS or both will attend and monitor the forensic interview  
If unsubstantiated, note the interview and evidence in report

**DFCS and Law Enforcement will accept notifications of child abuse allegations received by one another and work together and communicate in cases including but not limited to:**

##### **Sexual abuse**

(See above: **A. Basic Procedure for Police Investigation of Child Abuse**)

##### **Sexual exploitation**

###### **Indicators**

Child has run away from home three or more times within the last twelve months  
Inappropriate dress, including oversized clothing or overtly sexy clothing  
Avoids eye contact  
Unexplained bruises or injuries  
Cigarette burns  
Child is in possession of large amounts of money, more than one cell phone or hotel keys  
Presence of "gifts" the origin of which is unknown  
Older boyfriend, male friend or relative close to 5 years older than the child  
Not enrolled in school  
Fake identification  
Gang clothing or other gang symbols  
Tattoo of someone's name or nickname, particularly on the back of the neck  
Arrest(s) of the child is in or around an area known for prostitution, such as an adult entertainment venue, strip club, massage parlor, X-rated video shop and/or hotel

(See above: **B. Basic Procedures for Police Investigation of Child Commercial Sexual Exploitation**)

##### **Physical abuse**

###### **Indicators**

Unexplained bruises or welts on the face, lips, mouth, torso, back, buttocks, thighs, or injuries in various stages of healing. The bruises may be in clusters or in patterns. They may appear on several different surface areas. Injuries may appear regularly after absences (weekends or vacations) May include bald patches on scalp.  
Injuries include unexplained fractures/dislocations to skull, nose, and/or facial structure or in various stages of healing. Fractures may also include multiple, or spinal fractures  
Injuries may also include unexplained burns from cigars, cigarettes, especially on palms, soles, back or buttocks. This may also include immersion burns (sock-like, glove like, or doughnut shaped on buttocks or genitals). Infected burns may indicate a delay in seeking treatment

##### **Severe emotional abuse**

Indicators may include speech disorders, lags in physical development, failure to thrive, or hyperactive/disruptive behavior

## Neglect

### **Indicators**

Underweight / Hungry  
Exhibit poor growth patterns or a failure to thrive  
Have poor hygiene or inappropriate dress  
Report a consistent lack of supervision  
Have unattended physical or medical needs  
Bald patches on the scalp

### **Domestic violence or family violence.**

(See above: **C. Basic Procedure for Police Investigation of Domestic Violence with Child Present**)

### **Any substance abuse in the home, including by parents or children**

### **What Is A Drug Endangered Child?**

The Federal Interagency Task Force on Drug Endangered Children (DEC) defines a drug-endangered child as:

**a person under the age of 18**

**who lives in or is exposed to an environment where drugs are present for any**

**number of reasons, including trafficking and manufacturing of these drugs**

(<http://www.justice.gov/dec>)

### **RESULTS OF EXPOSURE**

**Children experience or are at high risk of experiencing:**

**Physical abuse**

**Sexual abuse**

**Mental/emotional abuse**

**Neglect or abandonment**

**Exposure and accidental poisoning (meth labs)**

**Sexual Exploitation: Risk of being forced to participate in illegal or sexual activity in exchange for drugs or money likely to be used to purchase drugs**

**Overdose-Death (prescription drugs/heroine)**

**Any refusal by a family to allow a DFCS worker to see the child victim in any abuse or neglect investigation or response**

**The presence of any serious injury on a child for which the explanation offered is inadequate to explain the injury**

**Any referral of abuse diagnosed by a physician**

**Any form of Munchausen by Proxy/ Pediatric Condition Falsification**

**Any suspicious death of a child**

\*All evidence of any investigation must be turned over to the District Attorney not only for trial preparation and use at trial but for the DA to comply with his/her legal duty to turn evidence over to the defense during discovery which includes evidence in possession by law enforcement agencies involved in the investigation of the case being prosecuted. O.C.G.A. §17-16-1

### **Georgia Bureau of Investigation - Child Abuse Specialist Agents**

The GBI Child Abuse Specialist Agents are located in each of their 15 regions throughout the state to assist with and work hand in hand with local law enforcement on child abuse cases involving physical and sexual abuse.

- \* **Contact Bahan Rich – Special Agent in Charge, 229-225-4090, [Bahan.rich@gbj.ga.gov](mailto:Bahan.rich@gbj.ga.gov)**

### **Georgia Bureau of Investigation, Child Exploitation and Computer Crimes Unit**

-During regular business workdays please call [404-270-8870](tel:404-270-8870) and ask for the Child Exploitation and Computer Crimes Unit Agent on call.

-On nights, weekends, and holidays call the GBI communications center at [404-244-2600](tel:404-244-2600) or [1-800-282-8746](tel:1-800-282-8746) and ask for the Child Exploitation and Computer Crimes Agent that is on call.

### **Attorney General's Office Human Trafficking Special Prosecutor**

Camila Wright has been appointed special prosecutor dedicated to the prosecution of human trafficking including the Commercial Sexual Exploitation of Children. Ms. Wright can provide law enforcement and prosecution assistance on these complex cases. In addition to handling prosecutions, Ms. Wright is available to conduct both law enforcement and prosecution trainings and will oversee the Attorney General's policy agenda on human trafficking. Ms. Wright may be contacted at [404-656-3336](tel:404-656-3336) or via email [cwright@law.ga.gov](mailto:cwright@law.ga.gov).

### **3.3 Forensic Interview Procedures**

The Child Advocacy Center is an integral part of the Joint Investigation between DFCS and law enforcement. When an interview of a child is required at any time during the investigation, it must be done through a Child Advocacy Center or other location that has trained forensic interviewers who received specialized training through a nationally recognized forensic interview training course through programs such as Child First (formerly known as Finding Words), the National Children's Advocacy Center (NCAC), Corner House, the National Institute of Child Health Development (NICHD) and the American Professional Society of Abuse of Children (APSAC).

*In general, children most appropriate for a forensic interview include children who have either:*

**Present concerns regarding** physical abuse with injuries, severe negligence, emotional abuse, sexual abuse, sexual exploitation and/or abduction or **witnessed** any type of violence including but not limited to domestic violence, rapes and murders.

The **alleged** child victim and his or her legal guardian should be made aware that even though the forensic interview has been, or will be, conducted, that may **not** take the place of the child having to testify if the case goes to trial.

#### **Referrals to the Child Advocacy Center**

Referrals can be made by DFCS, law enforcement, the District Attorney's office, **Solicitor's Office**, the Juvenile &/or Superior Court **and Adult Protective Services**. An interview time will be scheduled. Although both DFCS and law enforcement should be present to ensure all relevant information is obtained, **a representative of the referring agency must attend.**

Children 3 or under who are insufficiently verbal for an interview but who present with medical evidence or sexualized behaviors should be referred for multidisciplinary review.

Video recorded forensic interviews of children 3-17 **or 18 and over if the child is still in high school.**

Children 14-17 may be interviewed by a trained interviewer at an agency location if circumstances require immediate response; however, these cases should be referred to the Children's Advocacy Center for interdisciplinary case coordination the same or following business day.

### **Adult(s) with special needs**

#### **Documentation of Forensic Interviews**

The interview conducted at the CAC should be recorded.

The assigned caseworker and law enforcement investigator assigned to the case will have access to observe the interview from a separate viewing room.

Once recording begins, it should not be discontinued until the interview is completed.

Two original recordings are filmed simultaneously. One original recording must remain secured with law enforcement. The second original recording will remain secured at the CAC.

Recorded forensic interview copies will only be given to law enforcement, DFCS, DA office or court order as describe in D. below.

#### **CAC Access to Child Abuse Records (O.C.G.A. 49-5-41(a)(7.1))**

The CAC which is certified and which is operated for the purpose of investigation of known or suspected child abuse and treatment of a child or a family which is the subject of a report of abuse, shall have access to all records and information relevant to the child's case with few exceptions provided, however, that any child advocacy center which is granted access to records concerning reports of child abuse shall be subject to the confidentiality provisions of O.C.G.A. §49-5-40 (b) and shall be subject to the penalties imposed by O.C.G.A. §49-5-44 for authorizing or permitting unauthorized access to or use of such records.

#### **CAC Release of Records including the Recorded Forensic Interview**

-Recorded Forensic Interviews will only be released to DFCS, law enforcement, the District Attorney's Office and a court appointed Guardian Ad Litem or CASA pursuant to O.C.G.A. 49-5-41(c) (5) or upon Court Order obtained through a subpoena filed contemporaneously with a motion seeking such records and requesting an in camera inspection of records under O.C.G.A. §49-5-41 (11) and such Order is accompanied with a Protective Order under O.C.G.A. §49-5-41 (g)(3). (*See, Appendix*)

Every attempt will be made to notify law enforcement of a request for the recorded forensic interview and the DA's Office if a case is under indictment.

#### **Payment of Forensic Interviews ("FI") - (O.C.G.A. § 17-15-16)**

A portion of the forensic interview used for the identification of the interviewee's needs may be paid for by the Georgia Crime Victims Compensation Program (CVCP) for crimes occurring in Georgia on or after July 1, 2014. CVCP can pay (the CAC/forensic interviewer) up to \$200.00 per victim, per victimization (when funding is available) if a completed application is submitted to the CVCP and certain provisions are met.

*(See [cjcc.ga.gov](http://cjcc.ga.gov) for further provisions, Application for Payment and Referral Document)*

#### **Forensic Interviews of Special Populations**

##### **Sexually Exploited Children**

Although normally best practice suggests that children should have a forensic interview as soon as possible, interviews with children who have been sexually exploited may require an interval of time

to assess their readiness to be interviewed.

More than one forensic interview may be required.

Sexually exploited children are often taught by pimps/traffickers to be distrustful of health/social service providers, police, and government officials.

These children believe that revealing what has happened to them will result in arrest and detention for prostitution.

Further, many children have a “love” relationship with their pimp and fear that the state may lock up their “boyfriends” if they are truthful.

An additional complication is that sexual exploitation victims are frequently brought into the system as suspects or arrestees and some interviews initially take the tone of interrogation. This makes children reluctant to believe the state is trying to help them.

Effective information gathering requires that service providers and interviewers work to empower the child and help him/her understand their “victimization.” Trust should be established over time, and the formal forensic interview needs to occur after this trust has been established.

Georgia Cares, a statewide system of care for victims of sexual exploitation, can help to connect you with victim advocates, family advocates, and specialized services providers who can assist in preparing the child for a forensic interview.

Format and dynamics of this type of interview are different than traditional sexual abuse cases, because:

- \* Victim most likely has lengthy history of abuse/neglect and may feel the abuse that they have “chosen” by running to the streets or finding a pimp is preferable to the abuse they suffered at home. As a result, they often refuse to identify themselves as victims;
- \* Victims have a strong distrust of authority;
- \* Victims may fear for the safety of their families or others due to threats made by a pimp; and
- \* Adolescents often reject any outreach that is perceived as condescending.

### **Children with Special Needs**

If a forensic interview is needed for a child with a cognitive or physical disability, the protocol should be modified to accommodate the needs of the individual child. Children with learning disabilities should also be accommodated to maximize their ability to communicate effectively. All agencies involved in the investigation are required to adhere to federal regulations, specifically, Titles II and III of the Americans with Disabilities Act and the Rehabilitation Act. These requirements include accommodations for communication and requirements for accessibility for services. Regarding communication, the federal regulations require “State and local government programs must ensure effective communication with individuals with disabilities by providing appropriate auxiliary devices.” The basic core of the forensic interview is communication and it is likely these individuals already have communication devices they use on a daily basis. The requirements include to “furnish auxiliary aids when necessary to ensure effective communication, unless undue burden or fundamental alteration would result.” There should also be non-discrimination on the basis of a disability by public accommodations.

### **8) Alternatives to the Single Session Forensic Interview (FI)**

**At times, the investigative team may determine that multiple forensic interviews are warranted.**

**Potential reasons to conduct more than one session may include but are not limited to the following:**

**Decision-making regarding protection of the child cannot be made based upon information obtained during the initial interview.**

When an interview could not be completed in one session due to the child's level of engagement/participation; developmental/cognitive abilities; social/emotional/physical functioning, or another reason when information could not be fully or effectively gathered in the single session.

The child was unable to complete the initial forensic interview and needs additional time due to victimization type (CSEC victims; long-term victims; poly-victims)

The child disclosed additional information following initial FI; or indicated reason he/she could not tell; or due to changes in the situation, circumstances, external evidence or corroboration emerges.

The child did not disclose abuse during the initial FI but there are concerning factors of possible victimization, such as sexualized behaviors, medical findings, statements of other children and/or adult witnesses, pornography, or access by a known offender.

The child did not disclose abuse during the initial FI but allegedly disclosed to some other person.

Under some circumstances, multiple forensic sessions may also be planned from the beginning and carried out over 2-6 sessions (typically, as dictated by the needs of the child) to address and fit a particular child's needs such as age, developmental disabilities or other special needs, ability to communicate, being multi-lingual and/or -requiring an interpreter, multiple allegations, offenders &/or types of abuse, and for those who have been severely traumatized.

Regardless of the number of sessions, all FIs should abide by the following best practices:

- purposeful in nature (a valid reason can be articulated for conducting more than one interview)
- forensically sound
- non-duplicative
- neutral and objective
- child friendly
- child-focused
- developmentally appropriate
- culturally competent

### Policies

Following the conducting of an initial forensic interview, the investigating agencies (i.e. law enforcement, DFCS or District Attorney's Office) will refer an alleged child abuse victim for additional forensic interview sessions when deemed necessary, based on the previously mentioned reasons. Additional forensic interview sessions will be scheduled at the request of child protective services, law enforcement, and the District Attorney's Office only.

Additional forensic interview sessions may be conducted by the same ACCC staff member who conducted the initial interview or may also be conducted by a different ACCC staff member, depending on the circumstances and needs of the child. All additional forensic interview sessions should be conducted in a legally defensible manner that will facilitate protective, therapeutic, and investigative decision-making.

Non-offending caregivers may accompany the child to the Center, but are not allowed to be present or observe additional forensic interview sessions.

**While additional forensic interviews are being scheduled and conducted, it is preferable that the child have no contact with alleged offender(s), if identified at the time.**

**All involved investigators will provide the forensic interviewer with case information, including nature and circumstances of the allegations, and any possible alternative explanations for the allegations.**

**During the period of time that additional forensic interviews are being conducted with the child, any new information disclosed during the process pertaining to the abuse allegations should be immediately relayed to the involved investigative team members for follow up.**

### **3.4 Multi-Disciplinary Team (MDT)**

Upon completion of the forensic interview, the multidisciplinary team make recommendations regarding the child's need for medical and mental health treatment. The MDT consists of law enforcement, DFCS, the District Attorney's office, Child Advocacy Center (CAC), **Sexual Assault Center (SAC)**, mental health and medical professionals, **DV Shelters when a child is involved** and others who provide a coordinated response designed to increase the effectiveness of investigations while reducing the stress and risk of secondary traumatization to children.

#### **Coordination of MDT Meetings**

The Children's Advocacy Center, DFCS or other designated agency will coordinate multidisciplinary team (MDT) meetings for the primary purpose of facilitating communication between agencies involved in the investigation and prosecution of child maltreatment and agencies responsible for protecting child victims.

MDT members may request to staff any case they believe can benefit from the collaborative input of the team. Requests can include cases involving children who were not seen for services at the CAC as long as there is an active investigation.

Requests for cases to be staffed by the MDT are accepted from any MDT member and/or appropriate agencies. Appropriate referral sources include, but are not limited to, DFCS, Board of Education, Law Enforcement, District Attorney's office, the Department of Juvenile Justice, medical, mental health personnel and the **Sexual Assault Center**.

A special reconvening of the MDT may be called by the District Attorney's office if circumstances change prior to indictment.

Because the purpose of the MDT staffing is to facilitate the sharing of information between agencies, all individuals from DFCS, Law Enforcement, prosecution, **CAC, SAC, DV Shelters when a child is involved**, medical, and mental health who are involved with a case being staffed should be present **and consistently participate in the MDT meetings**.

### **3.5 Forensic Medical Exam for Child Sexual Abuse, Physical Abuse and Neglect**

The Forensic Medical Examination ("FME") will most likely begin with the examiner obtaining a complete and thorough medical history from the victim. The medical forensic exam also involves a head to toe physical examination and can include labs and radiology in physical abuse and neglect cases.

For sexual abuse, the physical examination includes the genital area. The exam may also include:

Collection of blood, urine, hair and other body secretion samples.  
Photo documentation.  
Collection of the victim's clothing, especially undergarments.  
Collection of any possible physical evidence that may have transferred onto the victim.

**Purpose:**

Identify medical evidence to prosecute the offenders;  
Screen for injuries and medical conditions and initiate medical treatment, and;  
Answer questions and reassure victims and parents about the child's physical wellbeing.

Even in the absence of medical evidence, exams can support prosecution because it preempts defense claims that evidence collection is insufficient without an exam (*See American Prosecutors Research Institute, 2004*). Also, when medical evidence is lacking, the exam can engage a doctor or nurse who can provide expert testimony to explain this lack of evidence to judges and juries.

**Identification and documentation of injuries and interpretation of physical findings include:**

1. a written description of the exam findings (including the type, appearance, and location of injury and any indication of tenderness or induration), AND;
2. forensic imaging of anogenital exam OR diagram of findings on appropriate anatomic drawing.

**Children's Healthcare of Atlanta - Pediatric Telemedicine**

The expertise of Children's pediatric specialists is now available to patients and healthcare providers through telemedicine. Telemedicine offers patients and providers remote consultations, evaluations and training using live video. A clinical provider may call the Children's Telemedicine office at 404-785-1111 to obtain a telemedicine appointment for their patient. To schedule a second opinion consultation, call the CSHC at 404-785-3820 and asks for the physician-on-call.

**Who can conduct the Forensic Medical Examination:**

While the physician, nurse practitioner or physician assistant providing care for the child can conduct the medical evaluation, it is preferable for the evaluation to be performed by a provider with expertise in child maltreatment. Experts include child abuse physicians, or other physicians, nurse practitioners or physician assistants with specialized training and experience in child abuse and neglect, or sexual assault nurse examiners (SANE). Medical professionals are encouraged to seek help from experts when possible by referring the patient for specialized care, by requesting telephone consultation, and/or by obtaining a second opinion review of exam photographs. Second opinion is especially critical if the inexperienced provider reports positive findings on exam. For names of local experts, providers should contact the nearest child advocacy center, **sexual assault center** or call the Children's Advocacy Centers of Georgia (770) 319-6888.

**Sexual Assault Forensic Medical Examination (SAFME)**

Dual purpose of the exam process

Address the needs of individuals disclosing sexual assault. This is accomplished (w/their permission) by:

- Evaluating and treating injuries;
- Conducting prompt examinations;

- Providing support, crisis intervention, and advocacy;
- Providing prophylaxis against STIs;
- Assessing female patients for pregnancy risk and discussing treatment options, including; reproductive health services; and
- Providing follow-up care for medical and emotional needs.

Address justice system needs. This is accomplished by:

- Obtaining a history of the assault;
- Documenting exam findings;
- Properly collecting, handling, and preserving evidence; and
- Interpreting and analyzing findings (post exam); and
- Subsequently, presenting findings and providing factual and expert opinion related to the exam and evidence collection.

Recognize the forensic purpose of the exam. During the exam, examiners methodically document physical findings and facilitate the collection of evidence from patients' bodies and clothing. The findings in the exam and collected evidence often provide information to help reconstruct the details about the events in question in an objective and scientific manner. Of course, health care needs and concerns of patients may be presented in the course of the exam that should be addressed prior to discharge. However, patients must understand that the exam does not provide routine medical care. For example, a pap smear will not be done during the female pelvic exam.

Examiners typically ask patients to provide a medical forensic history after initial medical care for acute problems and before the examination and evidence collection. This history, obtained by asking patients detailed forensic and medical questions related to the assault, is intended to guide the exam, evidence collection, and crime lab analysis of findings. Law enforcement representatives also collect information from patients to help in the apprehension of suspects and in case investigation. Prosecutors familiar with the legal requirements of the criminal statutes may also need certain specific information.

[A National Protocol of Sexual Assault Medical Forensic Examinations \(Adults/Adolescent\), 2004.](#)

### **Timing of the examination**

Sexual Assault Forensic Medical Examinations are usually recommended as soon as possible after a sexual assault but within 120 hours after the assault. However, cases should be evaluated on an individual basis as the medical forensic examination may be completed beyond 120 hours. [Statewide Model Sexual Assault Response \(SART\) Protocol\\*](#)

\* The Sexual Assault Expert Committee has developed a Statewide Model Sexual Assault Response (SART) Protocol that includes further information on the Sexual Assault Examination as well as the Georgia Sexual Assault Standards. Please contact Amy Hutsell, SART Planning and Policy Specialist, Criminal Justice Coordinating Council, for a copy of the SART Protocol and/or SART Protocol training at 404-657-1965.

### **Evidence Collection\***

- Sexual assault evidence kits are recommended when the assault involved possible exchange of bodily fluids or trace evidence and occurred within the past 72 hours (in some cases collection may be helpful up to 120 hours after the event).
- Collect and preserve evidence for analysis by the crime laboratory.
- Collect & preserve toxicology samples in suspected alcohol or drug facilitated sexual assault cases.
- Maintain and document the chain of custody for evidence.

•Maintain the integrity of the evidence to ensure that optimal lab results are obtained  
Once the examination is completed and all specimens are collected, they are carefully packaged and stored to assure that they are not contaminated. They are maintained under chain of custody until further action is taken. **Chain of custody is critical to the admissibility of evidence at trial.**

\*When a forensic medical examination is performed, evidence is collected, and the alleged victim has requested that law enforcement officials be notified, the individual performing such exam, or his or her designee, shall notify the appropriate law enforcement agency of the collection of such evidence. Law enforcement officials shall take possession of such evidence no later than 96 hours of being notified and ensure that such evidence is submitted to the division (Division of Forensic Sciences of the Georgia Bureau of Investigation) within 30 days of it being collected, in accordance with the procedures established by the division. O.C.G.A. 35-1-2.

### **Who can conduct the acute Sexual Assault Examination**

#### **Sexual Assault Nurse Examiner (SANE)\***

A Sexual Assault Nurse Examiner –Adult and Adolescent (SANE–A) - is a qualification for registered nurses who have received specialized education and fulfill clinical requirements to perform a sexual assault evidentiary exams for victims. Pediatric SANES (SANE-P) have additional training conducting exams with children.\*\* SANES should have physician oversight as they cannot render a diagnosis.

#### **Sexual Assault Forensic Examiners (SAFE) and Sexual Assault Examiner (SAE)**

The terms SAFE and SAE are often used more broadly to denote a health care provider (e.g., a physician, physician assistant, nurse, or nurse practitioner) who has been specially educated and completed clinical requirements to perform this exam. A National Protocol of Sexual Assault Medical Forensic Examinations (Adults/Adolescent), 2004.

**Forensic Nurse Examiners (FNE) are specially educated and fulfill clinical requirements enabling them to collect forensic evidence for a variety of crimes.** A National Protocol of Sexual Assault Medical Forensic Examinations (Adults/Adolescent), 2004.

\*International Association of Forensic Nurses (IAFN) SANE Educational Guidelines include both coursework content and didactic component for: Adult/Adolescent and Pediatric/Adolescent 40 hours or a Combination Adolescent/Adult/Pediatric 64 hours of continuing education contact hours of classroom instruction, or (b) 3 semester hours (or the equivalent) of academic credit in an accredited school of nursing, and sufficient supervised clinical practice until determined competent in SANE practice & Combination Adolescent/Adult/Pediatric 64 hours of course work and a clinical component. (Drawn from the IAFN SANE Certification Brochure, available at [www.iafn.org](http://www.iafn.org).) A National Protocol of Sexual Assault Medical Forensic Examinations (Adults/Adolescent), 2004; IANF SANE Educational Guidelines

\*\*Pediatric examiner certification through the IAFN is available to registered nurses and advanced practice nurses trained as sexual assault nurse examiners (SANEs). A National Protocol for Sexual Assault Medical Forensic Examinations Pediatric, April 2016.

### **WHERE TO OBTAIN THE SEXUAL ASSAULT FORENSIC MEDICAL EXAMINATION**

Your local Protocol should include where the forensic medical exam and/or sexual assault medical forensic examination is conducted. This will be dependent on the local resource(s) available. Potential places where the examination is conducted include:

1. There are ten (10) dual Child Advocacy Center/Sexual Assault Centers in Georgia where the sexual assault examination is conducted under the same roof as many other services provided to the child including the forensic interview and counseling.
2. Many local Child Advocacy Centers now also provide sexual assault examinations by trained pediatric sexual assault nurse examiners (SANE-P) and/or pediatric doctors.
3. Sexual Assault Centers perform the sexual assault examination by SANEs and also have a SA Victim Advocate present to provide support. This resource is available after hours in acute (ie. immediate) situations.
4. Pediatric doctors who have been trained to conduct the examination and/or perform the examination through telemedicine with CHOA as described above.
5. Some hospitals have a pediatric SANE who are either employed by the hospital or respond from the community to conduct the sexual assault examination.
6. Other hospitals may conduct the examination by trained hospital staff who are not SANEs. However, these hospitals may not be routinely conduct sexual assault examinations or utilize a child victim centered approach.

### **3.5 Payment for Sexual Assault Examinations (O.C.G.A. § 17-15-15)**

When a forensic medical examination is conducted, the cost of such examination shall be paid for by the Georgia Crime Victim's Emergency fund in an amount not to exceed \$1,000.00. The fund shall be responsible for payment of such cost notwithstanding if the person receiving such forensic medical examination has health insurance or any other health care coverage.

In instances where DFCS or law enforcement requests a Forensic Medical Examination for allegations of child sexual assault/molestation, and there is limited collection and evaluation of evidence (e.g. no rape kit used), official documentation is required from law enforcement requesting the exam. DFCS or the investigative agency must submit to the provider or CVCP a completed Forensic Medical Examination DFCS or Law Enforcement Verification Form

**See the [cjcc.ga.gov](http://cjcc.ga.gov) website or call 404-657-2222 or (800) 547-0060 for the Application for Payment and Fee Schedule.**

## **5 Counseling for Child Abuse**

For sexual and physical abuse cases staffed by the MDT, the MDT will assist to determine if there is a need of referral for treatment. If a treatment referral is indicated, the Child Advocacy Center (CAC), **Sexual Assault Center (SAC), or other trained child therapists at local agencies will provide treatment.** Many providers utilize Trauma-Focused Cognitive Behavioral Therapy (TF-CBT), in addition to other treatment modalities that are trauma focused.

TF-CBT is widely regarded as the most effective treatment with sexually abused and traumatized children. This therapy emphasizes the importance of parent involvement during the course of therapy; it includes individual sessions with the child, individual sessions with the parent as well as family sessions with the parent and child together.

Therapy specifically helps children (and parents) to:

- Learn about trauma and child sexual abuse as well as healthy sexuality
- Develop effective coping and body safety skills

- Overcome problematic thoughts, feelings, and behaviors
- Therapeutically process traumatic memories

In addition to TF-CBT, some Child Advocacy Centers and **Sexual Assault Centers** have Play Therapists **who are state licensed clinical mental health practitioners** who have been specially trained in Play Therapy, a model of treatment and treatment techniques that emphasize utilization of the child’s natural world—Play—to facilitate healing. These techniques are often essential to treatment of abused children. Play therapists can use art, games, puppets, etc. as well as talk therapy to enable a child to communicate about, and heal from, their abuse experiences.

If there is not a local CAC or SAC, the primary involved agency will provide the family with a list of local behavioral health providers known to have experience and expertise with child sexual and/or physical abuse. The primary involved agency will provide additional assistance in selecting a provider based on the needs of the child, the financial resources of the family, and the availability of the provider. It is recommended that the provider be a **licensed** clinician trained and experienced in the treatment of child sexual abuse and trauma. For sexual exploitation cases, Georgia Cares should be contacted to assist in the identification of appropriate service resources .

**As part of the referral, the referring agency will complete demographic information and release of information** to provide to the behavioral health provider treating the child. If, after beginning treatment, the family refuses further treatment or becomes uncooperative, or the behavioral health provider suspects that this lack of cooperation is endangering the child, a referral to DFCS will be made as with any case involving mandatory reporting.

When a state licensed clinician is not available, regional referrals should be provided.

Referrals for perpetrator treatment by state licensed clinicians will be coordinated by Adult Probation and Parole for Superior Court cases, and the Department of Juvenile Justice for Juvenile Court cases.

### **Sexually Exploited Children**

Commercially Sexually Exploited Children often have extensive histories of multiple traumas and high rates of trauma symptoms; therefore therapists must be knowledgeable about trauma and skilled in the delivery of trauma-focused treatment and be well-informed about Commercial Sexual Exploitation.

#### **Resources:**

The Criminal Justice Coordinating Council (CJCC) offers formal CSEC awareness training for behavioral health providers.

#### California Evidence-based Clearinghouse:

To learn more about Evidence-based practices and the strength of specific interventions, go to the California Evidence-Based Clearinghouse (<http://www.cebc4cw.org>)

#### Project Intersect:

For a list of therapists in Georgia trained in TF-CBT and CSEC go to the Project Intersect “Find a Provider” searchable database.

### TF-CBT National Certification:

For a list of therapists who have achieved national certification in TF-CBT go to the TF-CBT Therapist Certification Program webpage “(Find a Therapist,” sort by state)

### **Safe Harbor Legislation: Services for Sexually Exploited Children**

DFCS, in consultation with the OCA, CJCC, and law enforcement officials, shall develop a plan for the delivery of services to sexually exploited children, victims of trafficking of persons for labor servitude, and such children and persons who are at risk of becoming victims of such offenses.

In developing such plan, the department shall work with state and federal agencies, public and private entities, and other stakeholders as it deems appropriate and shall periodically review such plans to ensure appropriate services are being delivered

### **Such plan shall include:**

- (A) Identifying children who need services;
- (B) Providing assistance with applications for federal and state benefits, compensation, and services;
- (C) Coordinating the delivery of physical and mental health, housing, education, job training, child care, legal, and other services;
- (D) Preparing and disseminating educational and training materials to increase awareness of available services;
- (E) Developing and maintaining community based services;
- (F) Providing assistance with family reunification or repatriation to a country of origin; and
- (G) Providing law enforcement officials assistance in identifying children in need of such services.

## **4 Judicial Procedures**

### **4.1 Juvenile Court**

Juvenile court judges hear cases alleging child abuse and neglect (Dependency), Delinquency, and CHINs (Children in Need of Services) cases.

A child has many definitions depending on the proceeding. Under the Juvenile code, a child is defined as:

- Any individual who is
- Under the age of 18 years
- Under the age of 17 years when alleged to have committed a delinquent act
- Under the age of 22 years and in the care of DFCS
- Under the age of 23 years and eligible for and receiving independent living services through DFCS
- 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 purposes of enforcing orders of the court.

(O.C.G.A. § 15 -11-2 (10))

During the criminal pendency of cases, the child may also be involved in the Juvenile Court process providing intervention for the safety and wellbeing of the child. The interplay between the Juvenile and Criminal process requires coordinated efforts between Child Protective Services (CPS) caseworkers, law enforcement, other courts including the Magistrate, Probate and Superior Courts and prosecutors. For

example, if the Magistrate Court issues a Bond in a criminal case with 'No Contact' conditions, the Juvenile court needs to know this to ensure the child is not placed back in the home or make it a further condition of placement that the alleged perp is not allowed contact with the child. A Probate Court may issue **temporary guardianship that can be transferred to the Juvenile Court**. The prosecutor needs to be informed of the status of the child abuse and neglect case, where the child is placed in order to contact the child for interviews or testimony, the case plan, and how the prosecution can utilize that case plan in potential plea negotiations.

The Juvenile court accords both parents and children certain legal rights depending on the type of proceeding in which they are involved, including:

- The right to notice of the proceedings;
- The right to a hearing;
- The right to counsel O.C.G.A. §15-11-103;
- The right to a Guardian ad Litem &/or court-appointed special advocate.

Parents and children must not only be informed of their rights, but they also must understand the protections those rights afford them. Court representatives and CPS caseworkers can educate families about their rights.

### **Burdens of Proof**

- Standard of proof is clear and convincing evidence in Dependency, CHINS and Termination of Parental Rights (TPR) proceedings
- Standard is beyond a reasonable doubt in Delinquency proceedings.

### **Dependency Proceedings**

A Dependency proceeding is initiated by filing a petition alleging either neglect or abuse which covers physical injury, emotional abuse, sexual abuse, sexual exploitation, prenatal abuse or the commission of an act of family violence in the presence of a child. (O.C.G.A. 15-11-2) (A Petition must be filed within 30 days if the child is not kept in DFCS custody)

### **A "dependent child" is 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. (O.C.G.A. §15-11-2 (22))

### **Burden of Proof is on the CPS caseworker**

It is imperative that the caseworker is well prepared with knowledge of the case and documented reports. Meeting with the attorney prior to the hearing will help ensure that the attorney can present enough evidence to meet the burden.

The attorney needs to present enough evidence to convince the judge that the maltreatment of the child alleged in the petition occurred. The judge will take into account the quantity, quality, credibility, and convincing force of the evidence. If the judge determines that CPS has met its burden, that determination justifies continuing CPS intervention and further court involvement. On the other hand, if the judge determines that the evidence presented by CPS fails to satisfy the burden of proof, the case will be dismissed, and CPS will have no authority to continue its involvement with the family without the family's consent.

### **When testifying, caseworkers should:**

- Be on time;
- Listen carefully to the question and answer it directly;
- Ask that a question be repeated if it is difficult to hear or understand, but not make a habit of doing so;
- State facts, not opinions or conclusions (e.g., instead of saying that the mother was uncooperative and rude, state exactly what she said or did);
- State whether an answer is unknown or cannot be recalled;
- Speak clearly, distinctly, and loudly enough to be heard;
- Make eye contact with the questioner and the judge;
- Refer to the case file only as necessary in order to recall information.

When an attorney objects to a question or moves to strike an answer, the caseworker should wait until the judge rules on the motion before speaking.

(Working with the Courts in Child Protection, Child Abuse & Neglect User Manual Series, U.S. Department of Health and Human Services Administration for Children and Families Administration on Children, Youth and Families Children's Bureau Office on Child Abuse and Neglect, The Honorable William G. Jones, 2006.)

### **Reasonable Efforts**

In Dependency cases, CPS caseworkers must also make 'reasonable efforts' to preserve and reunify families under O.C.G.A. §15-11-102. Juvenile court judges decide at each critical stage of an abuse or neglect case whether the agency has complied with the 'reasonable efforts' requirement.

Factors that the Juvenile Judge considers for Reasonable Efforts include:

- Were the services offered relevant to safety and protection of child?
- Were services adequate to meet the needs of the child and family?
- Were the services culturally and linguistically appropriate?
- Were the services available and accessible?
- Were the services consistent and timely?
- Were the services realistic under the circumstances?

There are certain situations when Reasonable Efforts are not required (O.C.G.A. §15-11-203):

- Where a child is subjected to aggravated circumstances
- Conviction for murder of another child of such parent
- Conviction of voluntary manslaughter of another child of such parent;
- Conviction for aiding, abetting, etc. to commit murder or involuntary manslaughter of child of such parent;
- Convicted of felony assault with serious bodily injury to child or another child of said parent;
- Convicted of rape, sodomy, aggravated sodomy, child molestation, aggravated child molestation, incest, sexual battery, aggravated sexual battery or child or another child of the parent;
- Registered as sex offender and preservation of parent-child relationship is not in child's best interests
- Rights to a sibling were involuntarily terminated and circumstances leading to termination have not resolved.

A court can find that CPS has failed to make "reasonable efforts" to:

- Avoid a child’s removal from the home;
- Reunite a child with the family from which the child was removed;
- Secure an adoptive home or other permanent placement for a child.

### **Dependency Proceedings – Different Steps in the Process**

Shelter Care Request: Child is in Imminent Risk and requires immediate removal.

Removal Authorization: A Juvenile Intake Officer can provide a “verbal” order for removal but Judge has to sign Order within 24 hours. (Local Procedures vary on calling the Juvenile intake officer or the Judge directly.)

Complaint (O.C.G.A. 15-11-2(14)): The initial document setting out the circumstances that resulted in a child being brought before the court and is filed the next day. (Local procedures vary as to whether the case manager or SAGG fills out complaint.)

Preliminary Protective hearing (PPH): Held within 72 hours of removal unless 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. O.C.G.A. §15-11-102 (a).

Court determines whether (1) reasonable grounds exist to believe the allegations in the “complaint” are true and the child is dependent; (2) a “petition” should issue; and (3) a child should be removed from the home (left in DFCS custody) pending adjudication. Court findings for removal include continuation in home contrary to welfare; return to home contrary to welfare of the child; or reasonable efforts made to avoid removal. (O.C.G.A. §15-11-202) (See O.C.G.A. §15-11-134)

A CPS caseworker must make a diligent search for relatives or others who have shown an ongoing commitment to the child. It must be filed with the court within thirty (30) days of the child being removed from home. (O.C.G.A. § 15 -11-2 (27) and § 15-11-211)

Adjudication: Formal trial within 10 days of filing the Petition or 60 days if the child is not kept in DFCS custody to determine whether there is clear and convincing evidence of the facts listed in the Petition that the child is presently dependent and continued protective custody is necessary. If there are new facts (or allegations), a new Petition must be filed.

Note: Under the Indian Child Welfare Act (ICWA) there is a higher standard of proof and DFCS must notify the tribe if the child falls within the blood line and the tribe can come to court and take the child.

Disposition: determines how the case will proceed and to identify all relatives who could serve as a resource for the child. It determines (1) what services are needed by the family & child; (2) where the child will be placed following the adjudication; and (3) the best long term or permanency plan for the child.

A Case plan is presented to determine whether the following is in the best interest of the child:

- Reunification or

- Non-Reunification (termination of parental rights (TPR), ie. the permanent severance of the parent-child relationship) ((non-reunification hearing required within 30 days)
  - Adoption
  - Permanent Guardianship
  - Another Planned Permanent Living Arrangement (APPLA)
  - Other Permanent Plan Approved by Court

(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. The same time frame applies whether or not the child was taken into DFCS custody at the PPH)

Initial Periodic Review (75 days from removal) are conducted for the purpose of determining:

- if the child still dependent
- if the case plan is still appropriate
- if the parties are complying with the case plan (to give child(ren) back
- Approval of completion of the relative search is done
- Appropriateness of placement change recommendations
- Progress on permanency plan
- Are services being provided
- Appropriateness of visitation
- Are transition services being provided to 14 & older
- Whether reasonable efforts to eliminate removal and reunify are being made

Permanency Plan Hearing: To achieve the permanent plan and determine whether reasonable efforts have been made to finalize the permanent plan, ie. reunification, TPR/Adoption, Non reunification/Permanent Guardianship, APPLA, other permanency approved by Court.

### **Foster Care Considerations**

Relative Foster Care is residential care provided by a relative to a child who is the subject of dependency proceedings.

Additional training should be provided to foster parents to prepare them for the special needs and considerations of sexually exploited children. For example, fosters parents need to be aware of the high potential for these children to run away and how to limit their unsupervised and/or overnight activities.

Periodic Reviews are required for children in foster care and they must take place at least every four months. The first periodic review that is held within seventy-five (75) days following the adjudicatory hearing must be conducted by the court. Subsequent periodic reviews may be conducted by the court or citizen review panel. Every party has the right to have periodic reviews conducted by a judge. Reviews of children who are available for adoption must be conducted by a Judge every 6 months. (O.C.G.A. § 15 -11-216)

Foster parents have a Foster Parent Bill of Rights under O.C.G.A. §49-5-280-281.

Foster parents may file a grievance through a 3 step process under DFCS Policy 14.17. Step 1

grievances are submitted to the County Director, Step 2 grievances are submitted to the State DFCS Division Director and Step 3 Grievances are handled through the Office of the Child Advocate for the Protection of Children.

**NOTE:** If a child is removed, the Case Manager or other designated DFCS staff shall contact the school where the child attends or changes to, within (2) workdays of the child's initial entry/re-entry into care, placement in foster care or placement change by providing the school with information regarding (1) Change in the custody or caregiver; (2) Emergency contacts and; (3) Individuals authorized to act on behalf of the child and DFCS. (DFCS Policy Number 1011.7.3 & 1011.7.10)

The Interstate Compact on the Placement of Children (ICPC) also can play an important role in caseworker practice. ICPC is an agreement among all 50 States, the District of Columbia, and the U.S. Virgin Islands regarding placement (e.g., kinship care, adoption, foster care) across State lines. The placement must be approved by the ICPC offices of each of the affected States before it can occur.

#### **4.2B CHILDREN IN NEED OF SERVICES (CHINS) (f/k/a UNRULY)**

The "Children in Need of Services" or "CHINS" framework represents a new approach to court involvement with children who have committed status offenses (an act prohibited by law which would not be an offense if committed by an adult), and their families. CHINS replaces Georgia's current approach to children who are deemed "unruly" (having ten or more days of unexcused absences from school in the current academic year) and those who have been adjudicated status offenders and provides for court intervention with essentially the same class of children. CHILDREN IN NEED OF SERVICES: A Guide to Cases under Article 5 of Georgia's New Juvenile Code, Prepared by: Kirsten Widner Barton Child Law and Policy Center Emory University School of Law.

#### **PURPOSE OF CHINS (O.C.G.A. § 15-11-380):**

- (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.

#### **A Child in Need of Services: Defined (O.C.G.A. § 15 -11-2(11))**

A child who is under the age of 18

- Adjudicated to be in need of care, guidance, counseling, structure, supervision, treatment, or rehabilitation; and
- Is found by the court to have been one or more of the following:

Required by mandatory school attendance laws to attend school but habitually truant;

(In Georgia, school attendance is mandatory for all children age 6 to age 16.)

(Truant is having 10 or more unexcused absences in the current school year.)

Habitually disobedient to his/her parent, ungovernable or places self in unsafe circumstances;

A runaway, meaning that the child has been away from his/her parent, guardian or legal custodian for more than 24 hours without permission and without “just cause;”

Out in public between midnight and 5am;

Present in a bar without his/her parent, guardian or legal custodian, or in possession of alcoholic beverages;

In violation of a court order from a previous CHINS case;

Someone who has committed an offense that is only applicable to a child (This covers any other status offense that might not be specifically captured by the list.)

Someone who has committed a delinquent act\* who is in need of supervision but not treatment or rehabilitation.

**\*"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.

### **CHINS PROCESS**

A CHINS Complaint is an initial pleading describing the circumstances believed to require the court's intervention. (O.C.G.A. § 15-11-390)

#### **Who can file a CHINS Complaint:**

A complaint can be filed by the child's parent, guardian, or legal custodian, or by a DFCS employee, a school official, a law enforcement officer **who has knowledge of the facts alleged or is informed and believes such facts are true**, a prosecuting attorney, a guardian ad litem, or an attorney. The juvenile court intake officer is responsible for receiving complaints.

#### **Law Enforcement can take a child into temporary custody if:**

1. Reasonable grounds to believe child has run away (a parent can request that a first time run away complaint be dismissed);
2. Child's health or welfare is in danger from his/her circumstances unless immediate action is taken; or
3. Officer is acting pursuant to a court order

**A law enforcement officer who has taken a child into custody must take the child directly to a medical facility if the child has an injury or other condition that needs treatment. The officer must also make every effort to contact the child's parent, guardian, or legal custodian right away. Law enforcement may not keep the child in temporary custody for longer than 12 hours; by that point they must either release the child to his or her parent, guardian, or legal custodian, or contact juvenile court. (O.C.G.A. 15-11-411)**

#### **Venue: Where to file Complaint**

A CHINS complaint can be filed in the county where the act is alleged to occur or where the child legally resides. If filed where act occurred, then the Juvenile Court must transfer it to where the child resides.

O.C.G.A. §15-11-401

Upon filing the CHINS Complaint, the case should be reviewed to determine if a DFCS referral is appropriate or if the child is currently under the supervision of DFCS or DJJ or has a pending delinquency case.

If the child is placed with DFCS or is already under the supervision of DFCS or DJJ the respective agencies should be notified.

If a Delinquency case is pending, the District Attorney and DJJ should be notified of the CHINS complaint.

#### **Placement of the child:**

##### **The Juvenile Court determines placement**

If Law Enforcement notifies Juvenile Court, the Court will select least restrictive placement consistent with child's need for protection or control and should consider:

1. Placement with parent, guardian or legal custodian with that person's promise to bring child to court upon request,
2. Placement in custody of DFCS for foster care,
3. In limited circumstances, placement in a DJJ facility\* (Never in an adult jail)
  - O.C.G.A. §15-11-411,412

##### **\* DJJ Detention-24 hour time limit**

One of the following circumstances must apply for DJJ placement:

The Child must be alleged to be:

1. a runaway
2. habitually disobedient to parent(s) and ungovernable or
3. previously failed to appear for a scheduled hearing

The court must also administer and consider a detention assessment

A Continued Custody Hearing (see below) must happen in 72 hours but in practice should happen in 24 hours to coincide with the 24 hour DJJ placement limit.

#### **CONTINUED CUSTODY HEARING**

Regardless of where the child is placed, once the court finds there is probable cause that the child is in need of services, the other determination that must be at the continued custody hearing is what should happen next in the case.

The court may either:

Refer the child to a community-based risk reduction program which is an alternatives to formal court proceedings; O.C.G.A. 15-11-414 (c) (1).

**The purpose of community-based risk reduction programs is to use existing community resources for assessment and intervention with children and families in CHINS, delinquency, or dependency cases. (O.C.G.A. § 15-11-38(a), O.C.G.A. § 15-11-38, O.C.G.A. § 15-11-39, O.C.G.A. § 15-11-40 and O.C.G.A. § 15-11-10))**

OR

Order a CHINS petition be filed and set a date for an adjudication hearing. O.C.G.A. 15-11-414 (c) (2).

The Petition must be filed within: 5 days of continued custody hearing if child in custody or 30 days from release to parents or 30 days of filing Complaint if never taken into custody.

If Continued Custody Warranted: Court can place with DFCS for foster care OR DJJ facility for up to 72 hours after continued custody hearing but only for purpose of allowing time to arrange for another appropriate placement for the child

If Continued Custody is Not warranted: the child will be return to parents but can set conditions for child's release and may order services to support child's safe return home

**CHINS ADJUDICATION** must be held 10 days from filing Petition if child not released at continued custody hearing or 60 days from filing Petition if child released at continued custody hearing or never taken into State custody.

#### **CHINS DISPOSITION HEARING**

The Juvenile Court determines services, supervision and placement (never DJJ facility)

Disposition Hearing can be held immediately after an Adjudication hearing or scheduled at a later date\*.

\**Later date* : O.C.G.A §15-11-400 is 30 days but under O.C.G.A. §15-11 422 it is 60 days

## **4.2 ORDERS**

### **4.2A Protective Orders- O.C.G.A. §15-11-29**

The Juvenile Court may enter a protective order restraining or otherwise controlling the conduct of a person and the 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.

If the protective order is not considered at the Disposition Hearing, where appropriate, DFCS, through its counsel, may apply for a protective order. DFCS Counsel should request a hearing within ten days after the filing of the application for a protective order.

### **4.2B Medical and Psychological Evaluation Orders When Investigating Child Abuse and Neglect (O.C.G.A. §15-11-101)**

(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

#### **4.2C - Social Study Orders**

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. O.C.G.A. § 15-11-190.

Social Study under O.C.G.A. §15-11-191 includes but is not 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.

#### **4.3 Guardian Ad Litem and the Court Appointed Special Advocate (CASA)**

In addition to the child's right to an Attorney in dependency proceedings under O.C.G.A. §15-11-103, the Court also appoints a Guardian Ad Litem

("GAL") The child's attorney may serve as GAL unless or until a conflict of interest arises.

The court shall appoint a CASA volunteer to serve as GAL whenever possible, and a CASA

may be appointed in addition to an attorney serving as the child's Guardian *ad Litem*.  
O.C.G.A. §15-11-104

#### **A. Role and Responsibility of Guardian ad Litem/CASA volunteer**

The role of a CASA in juvenile court dependency proceedings shall be to advocate for the best interests of abused and neglected children. (O.C.G.A. §15-11-106)

In determining a child's best interests, a CASA as 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 pursuant to O.C.G.A. §15-11-105

A CASA appointed as a guardian ad litem has minimum duties and responsibilities outlined in O.C.G.A. §15-11-105(c) *unless* a child's circumstances renders the duties and responsibilities unreasonable.

Some of those duties include:

1. Maintain regular and sufficient in-person contact with the child
2. Meet with and interview such child prior to hearings,
3. Conduct an independent assessment to determine the facts and circumstances surrounding the case;
4. Consult with the child's attorney, 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 and attend judicial citizen review panel or judicial review of the case;
14. If unable to attend the hearings, forward to the panel a letter setting forth such child's status during the period since the last 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; and
16. Monitor compliance with the case plan and all court orders.

As a lay guardian *ad Litem*, a CASA volunteer shall not engage in activities which could reasonably be construed as the practice of law;

Any information obtained in the CASA volunteer's assessment concerning unknown or unreported abuse shall be reported to DFCS.

#### **B. Access and Confidentiality – O.C.G.A. §15-11-105 (e), (f) and (g)**

Upon presentation of an appointment order as guardian ad litem, a CASA 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.

GAL/CASA may not have access to any records or information that:

- Identifies a reporter of child abuse and/or any other person whose life or safety is likely to be endangered if their identity was not protected;
- Involves the disposition or treatment of a delinquent child within the Department of Juvenile Justice; and
- Concerns an investigation by the Office of the Child Advocate.

All records and information acquired, reviewed or produced by a CASA volunteer during the course of his or her appointment shall be deemed confidential and shall not be disclosed except as ordered by the court.

#### **4.4 Magistrate Court**

This court is primarily involved in child abuse cases through the issuance of criminal warrants against perpetrators, the holding of probable cause hearings setting bonds and bond conditions.

- When an individual seeks to secure a warrant for any type of child abuse, the magistrate court shall inquire as to the child's whereabouts and ensure his/her safety is protected.
- The magistrate shall then notify the appropriate police agency for investigation and further proceedings.
- Setting of bonds in child abuse cases shall be the responsibility of the Magistrate or Superior Court Judge, as provided by law.
- It is unnecessary for a child abuse victim to appear at Magistrate Court probable cause hearings. Evidence of such abuse at a preliminary or bond hearing shall be by alternate means, which are consistent with the Uniform Magistrate Court Rules.
- In considering bond, the Magistrate Court should consider all the circumstances of the case paying particular attention to the safety of the child.
- In considering bond, the Magistrate Court should pay particular attention to the safety of the child, preferably prohibiting contact between the child and the accused
- In setting further bond conditions, the Magistrate Court should consider precluding contact between the accused and all children under the age of 16 in sexual abuse cases and under 18 in physical abuse cases; for the protection of both the accused and the protected classes of children alike.
- Bond conditions imposed should be made known to DFCS and the Juvenile Court.

#### **4.5 Probate Court**

Probate Court may issue temporary guardianship or transfer such petitions to the Juvenile Court under O.C.G.A. 29-2-6. The Juvenile Court has concurrent jurisdiction over these transferred petitions under O.C.G.A. 15-11-11(4). The standard for determining temporary guardianships is whether it is in the best interest of the minor.

#### **4.6 Superior Court**

- The Superior Court also issues warrants and sets bonds in certain child abuse cases.
- As a consideration of bond/bail, the Superior Court Judge considers all the circumstances of the case paying particular attention to the safety of the child.
- The Judge hearing the bond motion should impose certain restrictive conditions of bond including but not limited to an order to have no contact with the alleged child victim or

- any other child prior to finalization of the case.
- All bond conditions should be communicated to DFCS and the Juvenile Court.

The Superior Court handles the trial of criminal charges against a defendant in child abuse case. Outlined below are concerns requiring paramount consideration:

- Judges should ensure that the child is protected during the trial by conducting proceedings in a manner both protective of the child and absent of perpetrator intimidation, consistent with the defendant's Constitutional rights.
- Judges should ensure that these cases are given priority on the trial calendar.
- Continuances should generally not be given except on legal grounds and the case should be rescheduled as promptly as possible. Every effort should be made to complete the trial as soon as possible. Every effort should be made to accommodate the witnesses contributing their time.
- Sentencing should reflect the need to protect the victim from the perpetrator.

## 5. Prosecution

**The District Attorney is the chief prosecuting officer for the State of Georgia.**

The District Attorney represents the State of Georgia, in the trial and appeal of criminal cases in the Superior Court and delinquency cases in the Juvenile Court.

Some *counties* have a Solicitor-General who is an elected *county* officer who represents the state of Georgia in trial and appeal of *misdemeanor* criminal cases in State Court. If a county does not have a Solicitor-General, the District Attorney is also responsible for misdemeanor prosecution. In either situation, the District Attorney will handle misdemeanor charges included in a felony indictment.

The difference between a felony and misdemeanor is the amount of time a sentence can carry. A misdemeanor can carry a sentence of imprisonment up to 12 months whereas a felony charge can carry a sentence of imprisonment of more than 12 months.

### **5.1 Charging Decisions & Standards of Proof**

The *charging document* for a felony is called an Indictment. Felony indictments may include misdemeanor charges but at least one felony offence must be included. The charging document for misdemeanors only is an Accusation. Both are filed with the Clerk's office and are public record.

An Indictment, like a warrant, only requires probable cause. The Prosecutor has a special responsibility to refrain from prosecuting a charge that he/she *knows* is not supported by probable cause. (Rule 3.8)

The Prosecutor has the discretion to determine whether to commence a prosecution or to discontinue one already begun. This determination is based in part on the amount and the nature of the evidence obtained from the initial investigation.

A conviction at trial requires proof beyond a reasonable doubt.

*The Criminal Code of Georgia defines what constitutes each crime. Various criminal statutes have been enacted when a child is the victim of emotional, physical and sexual abuse. Each element of each crime must be proved beyond a reasonable doubt at trial.*

Critical evidence to establish proof beyond a reasonable doubt includes but is not limited to:

- Law enforcement reports detailing the scene, evidence gathered and observations
- Witness contact information, interviews and statements
- Photographs of the scene and/or victim
- Forensic interview of the child;
- Forensic medical exam of the child;
- Child's medical records from birth.

## **5.2 Criminal Statutes Involving Children**

### **Family Violence - O.C.G.A. § 19-13-1**

"Family violence" is **defined** as the occurrence of one or more of the following acts between past or present spouses, persons who are parents of the same child, parents and children, stepparents and stepchildren, foster parents and foster children, or other persons living or formerly living in the same household:

- (1) Any felony; or
- (2) Commission of offenses of battery, simple battery, simple assault, assault, stalking, criminal damage to property, unlawful restraint, or criminal trespass.

The term "family violence" shall not be deemed to include reasonable discipline administered by a parent to a child in the form of corporal punishment, restraint, or detention.

### **Crimes against or involving children include but are not limited to:**

- Cruelty to Children (O.C.G.A. §16-5-70);
- Second Degree Murder. (O.C.G.A. §16-5-1(d))
- Statutory rape (O.C.G.A. §16-6-3);
- Child Molestation and Aggravated child molestation (O.C.G.A. §16-6-4);
- Enticing a child for indecent purposes (O.C.G.A. §16-6-5);
- Sexual assault by persons with supervisory or disciplinary authority; sexual assault by practitioner of psychotherapy against patient; consent not a defense (O.C.G.A. §16-6-5.1);
- Sexual battery (O.C.G.A. §16-6-22.1);
- Aggravated sexual battery (O.C.G.A. §16-6-22.2);
- Sexual exploitation of children (O.C.G.A. §16-12-100)
- Electronically furnishing obscene material to minors (O.C.G.A. §16-12-100.1)
- Computer or electronic pornography and child exploitation prevention (O.C.G.A. §16-12-100.2)
- Obscene telephone contact; conviction; penalties (O.C.G.A. §16-12-100.3)

### **Laws that apply to Sexual Exploitation include but are not limited to:**

- Trafficking of persons for labor or sexual servitude (O.C.G.A. §16-5-46)\*
- Keeping a place of prostitution (O.C.G.A. §16-6-10)
- Pimping (O.C.G.A. §16-6-11)
- Pandering (O.C.G.A. §16-6-12)
- Penalties for violating O.C.G.A. §16-6-9 through § 16-6-12 (O.C.G.A. §16-6-13)

- Proceeds from pimping, forfeiture and distribution (O.C.G.A. §16-6-13.3)
- Pandering by compulsion (O.C.G.A. § 16-6-14)
- Solicitation of sodomy (O.C.G.A. § 16-6-15)
- Kidnapping (O.C.G.A. § 16-5-40)
- Battery (O.C.G.A. § 16-5-23.1)
- Child Molestation (O.C.G.A. § 16-6-4)
- Enticing a child for indecent purposes (O.C.G.A. § 16-6-5)
- Aggravated assault with intent to commit rape (O.C.G.A. § 16-5-21)
- Serious violent sex crimes (O.C.G.A. § 16-6-1, § 16-6-2 and § 16-6-22.2)
- False imprisonment (O.C.G.A. § 16-6-41)
- Document fraud/forgery (O.C.G.A. § 16-9-4 & § 16-9-5)
- Extortion (O.C.G.A. § 16-8-16)

2016 Legislative changes to the definition of sexual servitude

'Sexual servitude' means any sexually explicit conduct or performance involving sexually explicit conduct (***broad range of acts from physical contact with private parts to intercourse***) for which anything of value is directly or indirectly given, promised to, or received by any individual, which conduct is induced or obtained:

- (A) By coercion or deception;
- (B) From an individual who is under the age of 18 years;
- (C) From an individual whom the accused believes to be under the age of 18 years;
- (D) From an individual who has a developmental disability; or
- (E) From an individual whom the accused believes to have a developmental disability

Safe Harbor for Sexually Exploited Children

**Affirmative Defense:** Child under 18 shall not be guilty if at time of conduct he/she was being trafficked for sexual servitude in violation of O.C.G.A. §16-5-46 (O.C.G.A. §16-3-6)

**5.3 Discovery – Constitutional, Statutory and Professional Obligation**

The prosecutor has a special responsibility as well as a legal duty to disclose to the defense all evidence or information known to the prosecutor that tends to negate the guilt of the accused or that mitigates the offense, ie. exculpatory evidence favorable to the defense. (Rule 3.8(d); Brady v. Maryland, 373 U.S. 83 (1963)) Failure to fulfill that duty can result in a reversal of conviction, court sanctions and disciplinary action by the Bar.

Evidence in possession of the government includes law enforcement agencies involved in the investigation of the case being prosecuted. O.C.G.A. § 17-16-1

Discovery includes but is not limited to:

- \*Copy of indictment or accusation and list of witnesses; O.C.G.A. §17-16-3
- \*Relevant written or recorded statements made by the defendant; O.C.G.A. §17-16-4(a)(1)
- \*Statement of a witness" that relates to the subject matter concerning the testimony of the witness that the party intends to call as a witness at trial; O.C.G.A. §17-16-7
- \*Copy of the defendant's criminal history O.C.G.A. §17-6-4(a)(2)
- \*Books, papers, documents, photographs, tangible objects, audio and visual tapes, films and recordings, ie. forensic interviews O.C.G.A. §17-6-4 (a)(3) (A)

\*Report of any physical or mental examinations and of scientific tests or experiments, including a summary of the basis for the expert opinion rendered in the report O.C.G.A. § 17-6-4(a)(4)

\*Lists of names and information (current locations, dates of birth, and telephone numbers ) concerning witnesses unless for good cause the judge allows an exception to this requirement, in which event the counsel shall be afforded an opportunity to interview such witnesses prior to the witnesses being called to testify. O.C.G.A. § 17-16-8

#### **5.4 Child Assistance During Trial**

The District Attorney's Office provides great care to children who are victims of crime and involved in the prosecution of a case. The District Attorney's office has a Victim Witness Program that provides services, support and information regarding the court process to the victim and the non-offending caregiver.

At trial, if the verbal testimony of the child is required, all efforts are made available to the child, including but not limited to providing a separate room, to prevent contact with the perpetrator prior to the child's testimony.

Planned disposition of the case, whether by trial or plea negotiations is discussed with the victim's guardian and/or the victim prior to disposition. The input of the victim and/or the guardian is noted in the file and taken into consideration during the decision-making process.

#### **Child Hearsay – O.C.G.A. §24-8-820**

A statement made by a child younger than 16 years of age *describing* any act of *sexual contact or physical abuse* performed *with or on* such child by another or with or on another *in the presence* of such child shall be admissible in evidence by the testimony of the person to whom made if the proponent of such statement (1) provides notice to the adverse party prior to trial of the intention to use such out-of-court statement and (2) such child testifies at the trial, *unless* the adverse party forfeits or waives such child's testimony as provided in this title, and, at the time of the testimony regarding the out-of-court statements, the person to whom the child made such statement is subject to cross-examination regarding the out-of-court statements. (Effective July 1, 2013)

Thus, the child must be called to testify at trial unless the defendant forfeits or waives the right to the child's testimony in order for the child's hearsay statements to be admissible.

The age of the child at the time of trial is irrelevant as long as the child was under 16 at the time the statement was made.

Child hearsay statements introduced at trial include testimony of family members, outcry witnesses, forensic interviewers, physicians, nurse examiners and investigators who dealt with the child during the course of the investigation.

Forensic interviewers and nurse examiners can testify as experts and give their opinion that the child's statements and demeanor were consistent with a child who has been abused. They cannot give their opinion on the ultimate issue, ie. that the offence happened, as that invades the jury's province.

#### **5.5 Victim Assistance During Trial**

It is critical for victims to understand that the prosecutor represents only the State, not the victim.

While prosecutors take the interests of the victim into account whenever possible, there is no attorney client relationship between the prosecutor and the victim. The victim is afforded many rights through the Crime Victim's Bill of Rights as set out below.

## **Crime Victim's Bill of Rights**

### **Notifications - O.C.G.A. §17-17-8**

(a) Upon initial contact with a victim, a prosecuting attorney shall give prompt notification to the victim of the following:

- (1) The procedural steps in processing a criminal case including the right to restitution;
- (2) The rights and procedures of victims under this chapter;
- (3) Suggested procedures if the victim is subjected to threats or intimidation;
- (4) The names and telephone numbers of contact persons at both the office of the custodial authority and in the prosecuting attorney's office; and
- (5) The names and telephone numbers of contact persons at the office of the investigating agency where the victim may make application for the return of any of the victim's property that was taken during the course of the investigation, as provided by O.C.G.A. § 17-5-50.

(b) If requested in writing by the victim and to the extent possible, the prosecuting attorney shall give prompt advance notification of any scheduled court proceedings and notice of any changes to that schedule. Court proceedings shall include, but not be limited to, pretrial commitment hearings, arraignment, motion hearings, trial, sentencing, restitution hearings, appellate review, and post-conviction relief. The prosecuting attorney shall notify all victims of the requirement to make such request in writing

### **Other Rights**

A victim shall have the right to refuse to submit to an interview by the accused, the accused's attorney, or an agent of the accused. It shall be the duty of the prosecuting attorney to advise a victim that he or she has the right to agree to such an interview or to refuse such an interview. (O.C.G.A. § 17-17-8.1 (a))

Protection of communications between victim assistance personnel and victims is privileged and considered attorney work product not subject to disclosure. O.C.G.A. § 17-17-9.1

Requirement by court that defense counsel not disclose victim information to accused. O.C.G.A. § 17-17-10

Right of victim to express opinion on disposition of accused's case (O.C.G.A. § 17-17-11)

The prosecuting attorney shall offer the victim the opportunity to express the victim's opinion on the disposition of an accused's case, including the views of the victim regarding:

- (1) Plea or sentence negotiations; and
- (2) Participation in pretrial or post-conviction diversion programs.

Temporary restraining and protective orders prohibiting harassment of a victim or witness in a criminal case (O.C.G.A. § 17-17-16)

Collection of fines and restitution in criminal cases (O.C.G.A. § 17-10-20)

## Appendix

### 6.1 - Mandated Reporter Definitions - O.C.G.A. § 19-7-5(b)

(1) "Abortion" shall have the same meaning as set forth in Code Section 15-11-681.

(2) "Abused" means subjected to child abuse.

(3) "Child" means any person under 18 years of age.

(4) "Child abuse" means:

(A) Physical injury or death inflicted upon a child by a parent or caretaker thereof by other than accidental means; provided, however, that physical forms of discipline may be used as long as there is no physical injury to the child;

(B) Neglect or exploitation of a child by a parent or caretaker thereof;

(C) Endangering a child;

(D) Sexual abuse of a child; or

(E) Sexual exploitation of a child.

However, no child who in good faith is being treated solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination by a duly accredited practitioner thereof shall, for that reason alone, be considered to be an abused child.

(5) "Child service organization personnel" means persons employed by or volunteering at a business or an organization, whether public, private, for profit, not for profit, or voluntary, that provides care, treatment, education, training, supervision, coaching, counseling, recreational programs, or shelter to children.

(6) "Clergy" means ministers, priests, rabbis, imams, or similar functionaries, by whatever name called, of a bona fide religious organization.

(6.1) "Endangering a child" means:

(A) Any act described by subsection (d) of Code Section 16-5-70;

(B) Any act described by Code Section 16-5-73;

(C) Any act described by subsection (l) of Code Section 40-6-391; or

(D) Prenatal abuse, as such term is defined in Code Section 15-11-2.

(7) "Pregnancy resource center" means an organization or facility that:

(A) Provides pregnancy counseling or information as its primary purpose, either for a fee or as a free service;

(B) Does not provide or refer for abortions;

(C) Does not provide or refer for FDA approved contraceptive drugs or devices; and

(D) Is not licensed or certified by the state or federal government to provide medical or health care services and is not otherwise bound to follow the federal Health Insurance Portability and Accountability Act of 1996, P.L. 104-191, or other state or federal laws relating to patient confidentiality.

(8) "Reproductive health care facility" means any office, clinic, or any other physical location that provides abortions, abortion counseling, abortion referrals, or gynecological care and services.

(9) "School" means any public or private pre-kindergarten, elementary school, secondary school, technical school, vocational school, college, university, or institution of postsecondary education.

(10) "Sexual abuse" means a person's employing, using, persuading, inducing, enticing, or coercing any minor who is not such person's spouse 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) 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.

Sexual abuse shall include consensual sex acts when the sex acts are between minors if any individual is less than 14 years of age; provided, however, that it shall not include consensual sex acts when the sex acts are between a minor and an adult who is not more than four years older than the minor. This provision shall not be deemed or construed to repeal any law concerning the age or capacity to consent.

(11) "Sexual exploitation" means conduct by any person who allows, permits, encourages, or requires a child to engage in:

(A) Prostitution, as defined in Code Section 16-6-9; or

(B) Sexually explicit conduct for the purpose of producing any visual or print medium depicting such conduct, as defined in Code Section 16-12-10.

*\*Compare with Juvenile Code definition of "Sexual Abuse & Sexual Exploitation" which limits the "conduct" to a caregiver or other person responsible for the care of a child. (O.C.G.A. §15-11-2(69)(70))*

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## Appendix 6.2 – Sample Protocol Committee Annual Report

### PROTOCOL COMMITTEE - ANNUAL REPORT

County:

Judicial Circuit:

Date of Submission:

Pursuant OCGA § 19-15-2(i) the protocol committee shall issue an annual report no later than the first day of July.

The report shall include the following:

1. Evaluate the extent to which the child abuse investigations during the 12 months prior to the report have complied with the child abuse protocol:
2. Recommend measure to improve compliance:
3. Describe which measures taken within the county to prevent child abuse have been successful:

Activities/Concerns:

---

Chair - Printed Name and Title  
Address  
Phone  
Email

**The report shall be submitted to the:**

1. County governing authority
2. Fall term grand jury of the judicial circuit
3. Office of Child Advocate, 7 Martin Luther King, Jr. Drive, Suite 347, Atlanta, GA 30334
4. Chief superior court judge

### APPENDIX 6.3

#### O.C.G.A. §49-5-41. Persons and agencies permitted access to records (effective July 1, 2016) (Pertinent portion of Statute relating to CAC forensic interview records)

(11) A court, **by subpoena that is filed contemporaneously with a motion** seeking records and requesting an in camera inspection of such records, may make such records available to a party seeking such records when:

(A) Such motion is filed;

(B) Such motion is served:

(i) On all parties to the action;

(ii) On the department or other entity that has possession of such records, as applicable; and

(iii) In matters other than a dependency proceeding or a civil proceeding wherein there is no related pending criminal investigation or prosecution of criminal or unlawful activity, on the prosecuting attorney, as applicable; and

(C) **After an in camera inspection of such records**, the court finds that access to such records appears reasonably calculated to lead to the discovery of admissible evidence.

(g) (1) A subpoena authorized under paragraph (11) of subsection (a) of this Code section shall be served on the prosecuting attorney who has jurisdiction over a pending investigation or prosecution of criminal or unlawful activity, if such information is known to the individual seeking such access or disclosure.

(2) A prosecuting attorney may intervene in an action involving a motion filed under paragraph (11) of subsection (a) of this Code section.

(3) (A) When a court issues an order pursuant to paragraph (11) of subsection (a) of this Code section, **the court shall issue a protective order** to ensure the confidentiality of such records. Such protective order may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense and may include one or more of the following:

(i) That the records not be reproduced except as authorized by court order;

(ii) That the records be viewed or disclosed only on specified terms and conditions;

(iii) That the records be sealed and only opened by court order;

(iv) That the order be applicable to all parties, their counsel, and any agent or representative of a party; or

(v) That records released pursuant to such order be returned to the court upon completion of the matter that caused the production of such records.

(B) Any person who fails to obey a protective order issued under this subsection shall be punished

as contempt by the court

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