

**ARTICLE 10**  
**ACCESS TO HEARINGS AND RECORDS**

**~~§ 15-11-78.~~ 15-11-1001. ~~Exclusion from and a~~ Admission to hearings of general public**

- (a) Except as otherwise provided by subsection (b) of this Code section, the general public shall be excluded from hearings involving delinquency, deprivation, or a child in need of services. Only the parties, their counsel, witnesses, persons accompanying a party for his or her assistance, and any other persons as the court finds have a proper interest in the proceeding or in the work of the court may be admitted by the court. The court may temporarily exclude the child from the hearing except while allegations of his or her delinquency or allegations that the child is in need of services are being heard.
- (b) The general public shall be admitted to:
- (1) An adjudication~~ory~~ hearing involving an allegation of a designated felony pursuant to Code Section ~~15-11-63~~;
  - (2) An adjudication~~ory~~ hearing involving an allegation of delinquency brought in the interest of any child who has previously been adjudicated delinquent; provided, however, the court shall close any delinquency hearing on an allegation of sexual assault or any delinquency hearing at which any party expects to introduce substantial evidence related to matters of deprivation;
  - (3) Any child support hearing;
  - (4) Any hearing in a legitimation action filed pursuant to Code ~~S~~section 19--7-22; or
  - (5) At the court's discretion, any disposition hearing involving any proceeding ~~under this article.~~

**Comments**

The provisions in article 10 include all of the provisions regarding access to hearings and records found in Article 1 Part 8 of the current juvenile code. The original provisions have been reorganized and generally revised for clarity and stylistic consistency with the rest of the proposed model code. However, comments to individual provisions note where more substantive revisions have been made.

There is an ongoing debate over whether to open all juvenile court proceedings and allow greater access to the public. Permanency Planning for Children Dept., Nat'l Council of Juvenile and Family Court Judges, To Open or Not to Open: The Issue of Public Access in Child Protection Hearings (2004); See also Amanda George Donnelly, Nat'l Assoc. of Counsel for Children, Confidentiality of Juvenile Court Proceedings and Records, Child Welfare Law and Practice, 303 (Marvin Ventrell and Donald N. Duquette

eds. 2005)(stating the NACC’s decision “to take a ‘middle ground’ position which allows for integration of the best elements of a fully confidential system and a fully open system....’). The arguments are centered on whether opening court proceedings will be in the best interests of the child, whether open courts will provide greater public awareness of the system, and whether there are economic or procedural consequences. Nat’l Council of Juvenile and Family Court Judges, To Open or Not to Open, at 3. Because this issue remains so unsettled, we elected not to revise the current provisions to allow greater access than currently available. Rather, we recommend that the Minnesota experience be reviewed and considered and that an extensive pilot study on open hearings be conducted to determine the best direction for Georgia. See Minnesota Supreme Court and Nat’l Ctr. For State Courts, Key Findings From the Evaluation of Open Hearings and Court Records in Juvenile Protection Matters, v. 1-3 (2001) available at <http://www.mncourts.gov/?page=519>; See also Donnelly, Confidentiality of Juvenile Court Proceedings and Records, at 304 (“The NACC supports efforts to study the impacts of release of information...[and] independent evaluations of court systems to help ensure accountability....”)

This provision is current O.C.G.A. § 15-11-78 and is revised for clarity and consistency in keeping with the rest of the proposed model code.

**~~15-11-79.2.~~ 15-11-1002. Sealing of files and records**

- (a) Upon dismissal of a petition or complaint alleging delinquency or that a child is a child in need of services ~~or unruly~~, or completion of the process, in a case handled through informal adjustment, mediation, or other non-adjudicatory procedure, ~~following completion of the informal adjustment~~, the court shall order the sealing of the files and records in the case, ~~including those specified in Code Sections 15-11-82 and 15-11-83.~~
- (b) On application of a person who has been adjudicated delinquent ~~or unruly~~ or a child in need of services or on the court's own motion, and after a hearing, the court shall order the sealing of the files and records in the proceeding, ~~including those specified in Code Sections 15-11-82 and 15-11-83~~, if the court finds that:
- (1) Two years have elapsed since the final discharge of the person;
  - (2) Since the final discharge of the person he or she has not been convicted of a felony or of a misdemeanor involving moral turpitude or adjudicated a delinquent child or a child in need of services ~~or unruly child~~ and no proceeding is ~~pending against the person~~ seeking conviction or adjudication is pending against the person; and
  - (3) The person has been rehabilitated.
- (c) Reasonable notice of the hearing required by subsection (b) of this Code section shall be given to:
- (1) The district attorney;
  - (2) The authority granting the discharge if the final discharge was from an institution or from parole; and
  - (3) The law enforcement officers or department having custody of the files and records if the files and records specified in Code ~~Sections 15-11-82~~ 15-11-1003 and ~~15-11-83~~ 15-11-1009 are included in the application or motion.
- (d) Upon the entry of the order the proceeding shall be treated as if it had never occurred. All index references shall be deleted and the person, the court, the law enforcement officers, and the departments shall properly reply that no record exists with respect to the person upon inquiry in any matter. Copies of the order shall be sent to each agency or designated official ~~therein named~~ and shall also be sent to the deputy director of the Georgia Crime Information Center. Inspection of the sealed files and records thereafter may be permitted by an order of the court upon petition by the person who is the subject of the records and otherwise only by those persons named in the order or to criminal justice officials upon petition to the court for official judicial enforcement or criminal justice purposes.

- (e) Except as otherwise provided by the court, no order sealing files and records ~~under this Code section~~ may be issued regarding any proceeding in which the general public may not be excluded from the hearing ~~under subsection (a) or (b) of Code Section 15-11-78.~~

### **Comments**

This provision is current O.C.G.A. § 15-11-79.2 and is revised for clarity and consistency with the rest of the proposed model code. The references to an “unruly” child are stricken to reflect the change under the proposed model code designating “unruly” children as children in need of services.

**15-11-83. 15-11-1003. Children's fingerprints, photographs, and names**

(a) (1) Every child charged with an act which would be a felony if committed by an adult, ~~other than those status offender crimes as defined in Code Section 15-11-2,~~ shall be fingerprinted and photographed upon being taken into custody. ~~Fingerprints and photographs of children shall be taken and filed separately from those of adults by law enforcement officials to be used in investigating the commission of crimes and to be made available as provided in this article and as may be directed by the court.~~

(2) Law enforcement agencies may photograph a child who for any reason has been placed in the custody and control of the Department of Juvenile Justice and who has absconded and subsequently returned to such custody. Photographs shall be maintained in accordance with paragraph (1) of this subsection.

(3) Fingerprints and photographs of children shall be taken and filed separately from those of adults by law enforcement officials to be used in investigating the commission of crimes and to be made available as provided in this chapter and as may be directed by the court.

~~(b) All children sentenced to the custody of the Department of Corrections shall be fingerprinted. The fingerprinting of child inmates will be processed in accordance with the Department of Corrections' policies for adult inmates.~~

(b) ~~(e)~~ Fingerprint files and photographs of children may be inspected by law enforcement officers when necessary for criminal justice purposes and for the discharge of their official duties. ~~The names and addresses of children who have been fingerprinted or photographed and the offense or offenses charged shall be made available in the discretion of the court to the appropriate department of family and children services and school superintendent. This information may be disseminated by the appropriate school superintendent to the child's teachers and counselors in the superintendent's discretion. Other inspections may be authorized by the court in individual cases upon a showing that it is necessary in the public interest.~~

(c) ~~(d)~~ If a child has been charged with an offense that if committed by an adult would be a felony, or if the case is transferred to another court for prosecution, the child's fingerprints, personal identification data, and other pertinent information shall be forwarded to the Georgia Crime Information Center of the Georgia Bureau of Investigation. ~~The Georgia Crime Information Center shall create a juvenile fingerprint file and enter the data into the computerized criminal history files. The Georgia Bureau of Investigation shall act as the official state repository for juvenile history data and is authorized to disseminate such data for the purposes specified in Code Section 15-11-8215-11-1009.~~

(d) ~~(e)~~ Upon application of the child, fingerprints and photographs of a child shall be removed from the file and destroyed if a petition alleging delinquency is not filed

or the proceedings are dismissed after either a petition is filed or the case is transferred to the juvenile court as provided in Code Section 15-11-30.4 or the child is adjudicated not to be a delinquent child. The court shall notify the deputy director of the Georgia Crime Information Center when fingerprints and photographs are destroyed pursuant to this subsection, and the Georgia Bureau of Investigation shall treat such records in the same manner as expunged records pursuant to subsection (c) of Code Section 35-3-37.

~~(e)~~ ~~(f)~~ Except as provided in this Code section paragraphs (1) and (2) of subsection (a), without the consent of the judge, a child shall not be photographed after he or she is taken into custody unless the case is transferred to another court for prosecution.

~~(g)~~(f) (1) The name or picture of any child under the jurisdiction of the juvenile court for the first time shall not be made public by any news media, upon penalty of contempt under Code Section 15-11-5, except as otherwise provided in paragraph (2) of this subsection or as authorized by an order of the court.

(2) Upon request, ~~It shall be mandatory upon the judge of the juvenile court~~ the judge or his or her designee ~~to shall~~ release the name of any child with regard to whom a petition has been filed alleging the child committed a designated felony ~~act~~ or alleging the child committed a delinquent act if the child has previously been adjudicated delinquent or if the child has previously been before the court on a delinquency charge and adjudication was withheld. ~~No person, firm, or corporation shall be guilty of any offense by making public the name or picture of any such child.~~

### Comments

This provision is current O.C.G.A. § 15-11-83. O.C.G.A. § 15-11-83(b) was stricken to reflect the elimination of the option of placing a child with the Department of Corrections. The language in O.C.G.A. § 15-11-83(c) regarding the accessibility to fingerprints and photographs by the Division of Family and Children Services and school superintendents is stricken as redundant. In general, access to a child's records should be controlled to limit the risk of the misuse or misinterpretation of information. See IJA-ABA Juvenile Justice Standards, Standards Relating to Juvenile Records and Information Services, § 15.1 (stating that "access to and the use of juvenile records should be strictly controlled to limit the risk that disclosure will result in the misuse or misinterpretation of information, the unnecessary denial of opportunities and benefits to juveniles, or an interference with the purposes of official intervention."). Subsection (b) already provides a sufficient mechanism to allow access to appropriate and necessary individuals outside of law enforcement.

**~~15-11-79.1,15-11-1004.~~ 15-11-1004. Use of disposition and evidence**

The disposition of a child and evidence adduced in a hearing in the juvenile court may not be used against such child in any proceeding in any court other than for a proceeding for delinquency or a child in need of services ~~or unruliness~~, whether before or after reaching majority, except in the establishment of conditions of bail, plea negotiations, and sentencing in felony offenses; and, in such excepted cases, such records of dispositions and evidence shall be available to district attorneys and superior court judges and the accused and may be used in the same manner as adult records.

**Comments**

This provision is current O.C.G.A. § 15-11-79.1 and remains substantively unchanged.

**15-11-79. 15-11-1005. Inspection of court files and records**

- (a) Except as provided in subsection (b) of this Code section and Code sections 15-11-1006 and 15-11-1007, all files and records of the court in a proceeding under this ~~article~~ chapter are open to inspection only upon order of the court.
- (b) ~~Subject to the requirements of subsection (a) of Code Section 15-11-56, subsection (b) of Code Section 15-11-65, and Code Section 15-11-79.2, t~~The general public shall be allowed to inspect court files and records for cases arising under Code Section 15-11-73 or any complaint, petition, or order from any case any proceeding that was open to the public pursuant to subsection (b) of Code ~~S~~section ~~15-11-78~~ 15-11-1001. The general public shall be allowed to inspect court files and records for proceedings involving a legitimization petition under the jurisdiction of the juvenile court pursuant to paragraph (1) or (2) of subsection (e) of Code Section 15-11-28.
- (c) (1) The judge may permit authorized representatives of recognized organizations compiling statistics for proper purposes to inspect and make abstracts from official records under whatever conditions upon their use and distribution the judge may deem proper and may punish by contempt any violation of those conditions.
- (2) The judge may permit any school principal or any certified school guidance counselor, school social worker, or school psychologist ~~who is certified under Chapter 2 of Title 20 and who is counseling a child as a part of such counseling person's school employment duties to review official records of the court in any proceeding under this chapter~~ concerning that child, including but not limited to records of that child's controlled substance or marijuana abuse, ~~which records are protected by Code Section 49-5-41.1,~~ under whatever conditions that the judge may deem proper and may punish by contempt any violation of those conditions.
- (d) The judge shall permit authorized representatives of the Department of Juvenile Justice, ~~the Department of Corrections,~~ the Children and Youth Coordinating Council, and the Council of Juvenile Court Judges to inspect and extract data from any court files and records for the purpose of obtaining statistics on children and to make copies pursuant to the order of the court.
- (e) Notwithstanding any other provision of law, the complaint, petition, order of adjudication, and order of disposition in any delinquency case ~~in which the child has been adjudicated to be delinquent for a violation of the criminal laws of this state~~ shall be disclosed upon request of counsel for the state or the accused for use preliminarily to or in conjunction with a subsequent juvenile or criminal proceeding in a court of record.

## **Comments**

This provision is current O.C.G.A. § 15-11-79 and is revised for clarity and consistency with the rest of the proposed model code. Subsection (b) is streamlined to allow the general public access to records of only those proceedings already open in accordance with P.M.C. § 15-11-1001(b). Subsection (c)(1) and (2) are revised to eliminate unnecessary cross-references.

**15-11-1006. Child in need of services records; penalty for disclosure**

- (a) Notwithstanding any other provision of law, the court records of proceedings under article 6 shall be withheld from public inspection but shall be open to inspection by juvenile probation and parole officers, a parent, guardian, legal custodian, the child's attorney and others entrusted with the supervision of the child. Additional access to court records may be granted by court order.
- (b) Once a child in need of services reaches 18 years of age, all court and law enforcement records pertaining thereto shall be destroyed. The court shall direct the appropriate law enforcement agency having copies of these records to destroy them. The law enforcement agency shall destroy these records upon receipt of the court's directive and shall certify to the court that the records have been destroyed.
- (c) It shall be unlawful for any person to disclose court records, or any part thereof, to persons other than those entitled to access under subsection (a) of this Code section, except by court order. Any person who knowingly violates this provision shall be guilty of contempt and the court may enter any order authorized by the provisions of Code section 15-11-125.

**Comments**

This provision is new and is modeled after New Hampshire Rev. Stat. Ann. §§ 169:D-25, 169:D-26. It requires the automatic destruction of a child's records without the filing of a petition. This provision reflects the designation of "unruly" children as children in need of services and the subsequent shift to treatment of these children within a deprivation model.

**15-11-1007. Records for cases handled through informal adjustment, mediation, or other non-adjudicatory procedure; penalty for disclosure**

- (a) When a decision is made to handle a case through informal adjustment, mediation, or other non-adjudicatory procedure, the intake officer or other officer designated by the court shall file with the court in the county in which the child legally resides all of the following information:
- (1) The child's name, address, and date of birth;
  - (2) The act or offense for which the child was apprehended;
  - (3) The diversion decision made;
  - (4) The nature of the child's compliance with an informal adjustment agreement; and
  - (5) If an informal adjustment agreement is revoked, the fact of and reasons for the revocation.
- (b) Notwithstanding, Code section 15-11-1002(a), the court in the county in which the child resides shall keep a separate record for that child which shall be open to the court or an officer designated by the court only for the purpose of deciding whether to handle a case through informal adjustment, mediation, or other non-adjudicatory procedure.
- (c) All law enforcement and court records kept in accordance with this Code section shall be destroyed once the child reaches 18 years of age.
- (d) The record shall not be used by any person for any purpose except in making a decision on whether to handle a case through informal adjustment, mediation, or other non-adjudicatory procedure. Any person who knowingly violates this provision shall be guilty of contempt and the court may enter any order authorized by the provisions of Code section 15-11-125.

**Comments**

This provision is new and is modeled after Michigan Comp. Laws §§ 722.826-722.829 regarding record-keeping in diversion cases. This provision provides a mechanism for creating a limited record of basic information documenting diversion cases. Consistent record-keeping for this narrow purpose ensures that informed decisions are made when deciding whether to divert a case and to protect against the abuse of the diversion process. See *People v. Stanaway*, 521 N.W.2d 557, 566-567 (Mich. 1994)(citing legislative history stating that diversion “should not be used to give ‘free rides’ to youths who do not take their parts under diversion agreements seriously.”).

**~~15-11-80.~~ 15-11-1008. Notice to school superintendent**

Within 30 days of any proceeding in which a child is adjudicated delinquent for a second or subsequent time or ~~any adjudicatory~~ adjudicated delinquent in a proceeding involving a designated felony, the court shall provide written notice to the school superintendent of the school in which the child is enrolled or his or her designee ~~of the school in which such child is enrolled~~ or, if the information is known, of the school in which such child plans to be enrolled at a future date. Such notice shall include the specific delinquent act or designated felony ~~act that such~~ the child committed.

**Comments**

This provision is current O.C.G.A. § 15-11-80 and remains substantively unchanged. It was revised only for clarity and consistency in keeping with the rest of the proposed model code. However, provisions that remove the cloak of confidentiality by mandating the notification of school administrators when a child is adjudicated of certain delinquent acts can often defeat the rehabilitative purpose of the juvenile court system by further stigmatizing the child and excluding the child from receiving valuable educational opportunities. See Kristin Henning, Eroding Confidentiality in Delinquency Proceedings: Should School and Public Housing Authorities Be Notified?, 79 N.Y.U. L. Rev. 520, 528-530, 557 (2004). Current law allows teachers and other personnel to review a child's file and suggests that a child can be expelled for certain felony convictions. O.C.G.A. §§ 20-2-751.2, 20-2-768. The weakening of the confidentiality provisions, when considered in conjunction with school exclusion policies can have a significant impact on crime prevention and juvenile rehabilitation. Id. at 555 (noting that a recent study by the Harvard Civil Rights Project "found that states with higher rates of school suspension are more likely to have higher rates of juvenile incarceration [and that] [s]tudents who are suspended also face greater risk of dropping out permanently and becoming further involved with the courts.")

**~~15-11-82.~~ 15-11-1009. Law enforcement records**

- (a) ~~Except as provided in Code Sections 15-11-79 and 15-11-83,~~ Law enforcement records and files concerning a child shall be kept separate from the records and files of arrests of adults.
- (b) Unless a charge of delinquency is transferred for criminal prosecution ~~under Code Section 15-11-30.2,~~ or the interest of national security requires, or the case is one in which the general public may not be excluded from the hearings ~~under subsection (a) or (b) of Code Section 15-11-78,~~ or the court otherwise orders in the interest of the child, the records and files shall not be open to public inspection nor shall their contents be disclosed to the public.
- (c) Inspection of the records and files is permitted by:
- (1) A juvenile court having the child before it in any proceeding;
  - (2) Counsel for a party to the proceedings, with the consent of the court;
  - (3) The officers of public institutions or agencies to whom the child is committed;
  - (4) Law enforcement officers of this state, the United States, or any other jurisdiction when necessary for the discharge of their official duties;
  - (5) A court in which the child is convicted of a criminal offense, for the purpose of a presentence report or other dispositional proceeding;
  - (6) Officials of penal institutions and other penal facilities to which the child is committed;
  - (7) A parole board in considering the child's parole or discharge or in exercising supervision over the child; or
  - (8) Any school superintendent, principal, assistant principal, certified school guidance counselor, school social worker, school psychologist ~~certified under Chapter 2 of Title 20,~~ or school law enforcement officer ~~appointed pursuant to Chapter 2, 3, or 8 of Title 20~~ when necessary for the discharge of his or her official duties.
- (d) The court shall allow authorized representatives of the Department of Juvenile Justice, ~~the Department of Corrections,~~ and the Council of Juvenile Court Judges to inspect and copy law enforcement records for the purpose of obtaining statistics on children.
- ~~(e) Any law enforcement records and files involving an offense over which the superior court shall have exclusive jurisdiction as provided in paragraph (2) of~~

~~subsection (b) of Code Section 15-11-28 shall be kept and reported in the same manner as the records and files of adults.~~

(e) ~~(f)~~ Access to fingerprint records submitted to the Georgia Bureau of Investigation pursuant to ~~Code Section 15-11-83~~ shall be limited to the administration of criminal justice purposes as defined in Code ~~S~~section ~~15-11-2~~15-11-105.

### **Comments**

This provision is current O.C.G.A. § 15-11-82 and is revised for clarity and consistency with the rest of the proposed code. O.C.G.A. § 15-11-82(e) is stricken to reflect the repeal of O.C.G.A. § 15-11-28(b).

**15-11-81. 15-11-1010. Preservation and destruction of records; computer retrieval**

- (a) ~~Records.~~ Subject to the earlier sealing of certain records pursuant to Code Section 15-11-79.2, the juvenile court shall make and keep records of all cases brought before it and shall preserve the records pertaining to a child in accordance with the common records retention schedules for courts approved by the State Records Committee pursuant to Code Section 50-18-92.
- (b) Thereafter, the court may destroy such records, except the records of cases in which a court terminates the parental rights of a parent and records of cases involving a petition for legitimation of a child shall be preserved permanently. The court shall notify the deputy director of the Georgia Crime Information Center upon the destruction of any felony records.
- (c) The juvenile court shall make official minutes consisting of all petitions and orders filed in a case and any other pleadings, certificates, proofs of publication, summonses, warrants, and other writs which may be filed and shall make social records consisting of records of investigation and treatment and other confidential information.
- (d) Identification data shall be maintained and shall be disseminated to criminal justice officials for official judicial enforcement or criminal justice purposes as provided in Code Section 35-3-33.
- (e) ~~Records, dockets, indexes, files.~~ Nothing in this chapter shall restrict or otherwise prohibit a juvenile court clerk from electing to store for computer retrieval any or all records, dockets, indexes, or files; nor shall a juvenile court clerk be prohibited from combining or consolidating any books, dockets, files, or indexes in connection with the filing for record of papers of the kind specified in this chapter or any other law, provided that any automated or computerized record-keeping method or system shall provide for the systematic and safe preservation and retrieval of all books, dockets, records, or indexes. When the clerk of a juvenile court elects to store for computer retrieval any or all records, the same data elements used in a manual system shall be used, and the same integrity and security maintained.

**Comments**

This provision is current O.C.G.A. § 15-11-81. It has been restructured for clarity and subsection (b) clarifies that records of cases in which the case orders the termination of a parental rights are not to be destroyed. The remainder of the provision remains substantively unchanged.