

I. RIGHTS OF THE CHILD

A. **Code Sections: O.C.G.A. §15-11-6, 15-11-7, 15-11-150 to 155**

B. **Uniform Juvenile Court Rule 4.7, JUV-20**

C. **Procedure**

1. Minimum Age. There is no minimum age requirement in Georgia before a child may be charged with delinquency. In contrast, common law presumes that a child under the age of seven is incapable of committing any criminal offense. Since Georgia provides no direction, juvenile court judges will have to decide on a case by case basis what the minimum age should be. Some may choose to follow the common law and refuse to find any child delinquent under the age of seven.

Note that some juvenile courts decline to find a child delinquent under the age of ten, and will convert any petition involving such a young child into a deprivation action.

2. Competency. Due process of law mandates that every child be mentally competent before being adjudicated for an offense.¹ Formerly, Georgia law made no provision for dealing with juveniles who were determined to be incompetent to stand trial. Instead, the case was dismissed, and the child's parent(s) or guardian were expected to provide any necessary services to care for the child. If the parent(s) or guardian were unable to provide care, the court could find the child deprived and obtain the necessary services through the Mental Health Department. However, during the 1999 Legislative Session, the Legislature passed House Bill 417, enacted as Code sections 15-11-150 to 155. The bill, effective July 1, 1999, provides that proceedings involving a child who is alleged to be delinquent or unruly may be stayed when it is believed that the child is not competent. During the stay, the child is to be evaluated by a qualified examiner and a competency hearing is to be held. If the hearing results in a determination that the child is not mentally competent, a competency plan is to be developed.

3. Representation. The child is entitled to representation at all stages of any proceeding alleging delinquency, unruliness, incorrigibility, or deprivation. If the child's parents are indigent, the child is entitled to have the court appoint counsel at no cost to the child or the parents. O.C.G.A. §15-11-6. In juvenile cases, the judge is required to warn the child or his or her parent(s) of the dangers of proceeding without an attorney. In re: B.M.H., 177 Ga.App. 478 (1986). The decision does not specify what those dangers are, but does require the judge to explain the possible dispositions of the case in the event the juvenile is found to have committed a delinquent act.

¹In the Interest of S.H., 220 Ga. App. 569 (1996), (a juvenile court may not adjudicate a child delinquent of an offense where it has been determined that the child is incompetent to stand trial).

4. Self-Incrimination. A child charged with committing a delinquent act is entitled to invoke the privilege against self-incrimination. O.C.G.A. §15-11-7.

5. Other basic rights. The child is entitled to cross-examine witnesses and to have illegally obtained evidence excluded from delinquency hearings. O.C.G.A. §15-11-7. The child may apply to the court for a subpoena for attendance by witnesses and for production of papers at any hearing under the juvenile code. O.C.G.A. §15-11-36. The state must follow specified procedures before detaining a child. SEE Chapter II on Detention Hearings.

6. Sample Dialogue: Rights to Read to Child in Delinquency Matters.

You have the right to be represented by an attorney at law, and if you want to have an attorney, and your parent(s) are financially able, they must hire an attorney to represent you. If they are unable to hire an attorney due to financial hardship, I will appoint an attorney to represent you at no cost to you or your parent(s). While you are not required to be represented by an attorney, you should understand the dangers that may be involved in proceeding without an attorney. An attorney is trained to understand court procedures and proceedings, knows how to conduct trials and how to properly introduce evidence and exclude improper evidence. An attorney knows how the law applies to the circumstances of your case, and knows how your rights and liberties may be affected by the court proceedings. A lawyer knows how to protect your rights and liberties and how to present your case and all matters favorable to you to the court. An attorney may be able to defend your case more expertly than you or your parent(s) can.

Do you understand that you have the right to be represented by an attorney and the possible dangers involved in proceeding without an attorney at law? *(Child may confer with parent(s) on this question, but child must answer. If the child waives an attorney, ask the parent(s) if they agree with the child's decision.)*

Both you and your parent(s) have the right to cross-examine or ask questions of any witness that the State might call to testify against you; and you have the right to produce any evidence that you might have on your own behalf, including the right to subpoena witnesses, if you have any. If you have any such witnesses, you may apply to the Clerk of this Court for subpoenas to require them to testify in your behalf.

You have the right to remain silent. You will not be required to make any statement, under oath or otherwise, that would in any way incriminate you or show that you committed this delinquent act. If you should choose to remain silent and not testify, I will not use that against you in deciding the facts of this case. That is a personal privilege, however, and if you wish to, you may waive that privilege and testify under oath like any other witness in the case. If you choose to testify, you could tell me what, if anything, you know about this charge against you. Your parent(s) or attorney can ask you questions and then the State's attorney can ask you questions or cross-examine you. If you make any statement during your testimony that tends to show that you committed the delinquent act that you are charged with, then I may use that against you in deciding the facts in the case.

In the event I make a wrong decision as to finding of facts or conclusions of law, or if on disposition I enter an order contrary to law, you then have the right to appeal my decision to an appellate court of this State, and you will have the right to a transcript of all the proceedings in this case.

Do you understand these rights?

If you should admit to having committed this delinquent act or if, after hearing the evidence, I should find that you committed it, I will next have to decide if you are a delinquent child in need of treatment or rehabilitation. If I do decide that you are a delinquent child and in need of treatment or rehabilitation, we will have a dispositional hearing now or at a later date. At that hearing, I could commit you to the State Department of Juvenile Justice for a period of two years (Note: Five years if the charge is a designated felony).

The Department could, at its discretion, place you in the Youth Development Center for the entire two-year period or they could place you in a community-based program. That decision is left up to the Department. Or I could place you on probation with this Court for up to two years. Of course, if the State does not prove the case against you beyond a reasonable doubt, then I will dismiss the case.

Do you understand the possible consequences of the charge against you?

Read the allegations in the petition as to the act of delinquency and, if necessary, explain the elements. Ask both child and parent if they understand the charge. If they understand, and if they have waived their right to an attorney and the other rights that have been explained to the parties, ask the child: Do you admit or deny that you committed that delinquent act?