

II. DETENTION HEARING DELINQUENCY

A. **Code Sections: O.C.G.A. § 15-11-46, 15-11-46.1, 15-11-47, 15-11-48**

B. **Uniform Juvenile Court Rule 8.1 - 8.6, Form JUV-13**

C. **Procedure**

1. **Purpose:** To determine whether a child who has been taken into custody shall be released or detained pending further court proceedings and if reasonable grounds exist to believe that the allegations in the Complaint or Petition are true. UJCR 8.1

2. **Present in Court:** Judge/Associate Judge¹, child, parent(s), intake officer, attorney for child and/or parent(s)², court reporter/recorder, and court clerk.

3. **Step-by-Step Procedure:**

a. The hearing shall be held within 72 hours after the child is placed in detention. O.C.G.A. §15-11-49(c)(1). If the 72 hour time period expires on a Saturday, Sunday, or legal holiday, the hearing shall be held on the next day which is not a Saturday, Sunday, or legal holiday.

If the case is transferred from superior court by the district attorney pursuant to O.C.G.A. §15-11-28(b)(2)(C), the 72-hour period begins to run when the petition is filed. In the Interest of T.C.S., 220 Ga. App. 545 (1996).

b. Prior to commencing the detention hearing, the court shall inform the parties of their right to counsel, right to appointed counsel, and the right to remain silent. UJCR 8.3. If the party is unrepresented and requests counsel, the detention hearing may be continued for a *reasonable* period, but the court must still make an appropriate order for detention or release during the continuance. The party should be notified that such a request for continuance waives the right to hearing with the appropriate time limits if the hearing cannot be rescheduled within the time limits. UJCR 8.6.

c. The hearing is "informal" and hearsay is admissible. The court may require testimony either from an arresting officer, victim, intake officer or other person with information and belief as to the facts, or may proceed on the information contained in the sworn complaint.

d. The court shall determine if there are reasonable grounds to believe the allegations of the complaint or petition are true. This determination looks to the sufficiency of the allegations in the complaint or petition, as well as probable cause to believe facts supporting the allegations. If the court finds there is not probable cause, the court shall issue an order

¹ A detention hearing is not a hearing from which the child may seek a rehearing by the judge, nor may the child require that the hearing be conducted by the judge in the first instance.

² The child is entitled to counsel at the informal detention hearing. A.C.G. v. State, 131 Ga. App. 156 (1974).

dismissing the complaint and releasing the child from custody.

e. Detention, Conditional Release, or Release.

(1) *Detention or interim control (conditional release) is authorized if there is clear and convincing evidence that the juvenile's freedom should be restrained.* O.C.G.A. § 15-11-46.1. The court, upon determining that interim control is authorized, may execute an order placing conditions upon the child's release and provide for revocation of the release upon the violation of those conditions (note that due process rights apply). The court upon authorizing detention shall execute an order of detention placing the child in a RYDC until the scheduled adjudicatory hearing.

(a) Permitted interim control or detention:

- (i) to protect the jurisdiction and process of the Court;
- (ii) to reduce the likelihood that the child may inflict serious bodily harm on others in the interim period; or
- (iii) to protect the accused juvenile from imminent bodily harm *upon his or her request*

(b) Interim control or detention **shall not** be imposed:

- (i) to punish, treat, or rehabilitate the juvenile;
- (ii) to allow the parents to avoid their legal responsibilities;
- (iii) to satisfy demands of a victim, police or their community;
- (iv) to permit more convenient administrative access to the juvenile; or
- (v) to facilitate further interrogation or investigation.

(2) Court Orders:

- (a) Dismissal of Complaint or Petition - Release child from custody.
- (b) Conditional Release - Note under UJCR 8.5, any court officer who finds that the child has violated the conditions of release may take the child into custody and return the child to detention, but must file a complaint stating what the child did to violate the conditional release. The child shall then be given a hearing on whether the conditions were violated, presumably within 72 hours.
- (c) Order for Detention in RYDC. *See Uniform Form JUV-13 for suggested Order for Detention.*

**DETENTION HEARING
UNRULY**

A. Code Sections: O.C.G.A. § 15-11-46, 15-11-46.1, 15-11-47, 15-11-48, 15-11-49

B. Uniform Juvenile Court Rules 8.1 - 8.6, Form JUV-13

C. Place of Detention

1. A child who is taken into custody on suspicion of being an unruly child, or in violation of a curfew law, may be held by the officer for no more than 12 hours. During that time the child should be released to the child's parents, taken to a shelter for unruly children, brought before the juvenile court, or have been subject to a detention review decision by an Intake Officer. If none of the above have happened, the child should be released. O.C.G.A. §15-11-47 (e)(1).

2. Counties and municipalities may create facilities for children to be informally detained after being taken into custody for unruly acts or for violation of a curfew law, but the child should not be restrained in cells or in other places apart from other children unless the child engages in disruptive or unruly behavior while at the informal holding facility. O.C.G.A. §15-11-47 (e)(2).

D. Procedure

1. General. The laws which apply to the detention hearing of unruly or status offenders derive from two conflicting sources: (1) the Georgia Code and (2) Federal Regulations governing the receipt of federal funding for Georgia's juvenile justice system. Both positions are presented here.

2. When Held.

Georgia: Within **72 hours** after **placed in detention**. O.C.G.A. §15-11-49.

Federal: Within **24 hours after placement in detention** excluding weekends and holidays.

3. Present in Court: Judge/Associate Judge³, child, parent(s), intake officer, attorney for child and/or parent(s)⁴, court reporter/recorder, and court clerk.

4. Purpose. To determine whether a child who has been taken into custody shall be released or detained pending further court proceedings and if reasonable grounds exist to believe that the allegations in the complaint or petition are true. UJCR 8.1.

³ A detention hearing is not a hearing from which the child may seek a rehearing by the judge, nor may the child request that the hearing be conducted by the judge in the first instance.

⁴ The child is entitled to counsel at the informal detention hearing. A.C.G. v. State, 131 Ga. App. 156 (1974).

5. Step-by-Step Procedure.

a. Prior to commencement of hearing, the court shall inform the parties of their right to counsel, right to appointed counsel, and the right to remain silent. UJCR 8.3. If a party is unrepresented and requests counsel, the detention hearing may be continued for a *reasonable* period, but the court must still make an appropriate order for detention or release during the continuance. The party should be notified that such a request for continuance waives the right to a hearing within the statutorily prescribed time limits. UJCR 8.6.

b. The hearing is "informal." Hearsay is admissible. The court may require some testimony, either from an arresting officer, victim, intake officer or other person(s) with information and belief as to the facts, or may proceed on the information contained in the sworn complaint.

c. The court shall determine:

(1) If there is probable cause to believe the allegations in the complaint or petition are true. The determination looks to the sufficiency of the allegations, as well as probable cause to believe facts supporting the allegations. If the court finds there is not probable cause, an order shall be issued dismissing the complaint and releasing the child from custody.

(2) Detention, Conditional Release, or Release.

(a) Georgia. The mandates of O.C.G.A. § 15-11-46.1 still apply. (See "Detention Hearing: Delinquency") Once a child has been detained 72 hours, the court, upon good cause shown, may issue an order detaining the child for an additional period not to exceed 48 hours. O.C.G.A. § 15-11-48. It is at least clear under the state statute that only a **previously adjudicated** runaway child may be held beyond the first 72 hours and then only to effect a return home or, if the child has previously failed to appear, to ensure the child's presence at a scheduled court appearance.

(b) Federal. If the child is before the court as a **first time offender** (no previous active court order on file), the child **may be detained for up to 24 hours, exclusive of weekends and legal holidays, immediately following a court appearance**. At the expiration of this time period, the child may be placed in a non-secure facility or other placement, but cannot remain in secure detention. The child may be given a conditional release; however, **the child must be warned that any violation of the stated conditions will result in detention in order for such extension to be valid under the federal mandates**.

"Valid Court Order" Exception. A valid court order is a conditional release or probation order specifically stating that the child was informed that any violation would result in detention. A detained unruly child **who is already subject to a valid court order may be detained beyond 24 hours, but only if there is "no less restrictive alternative available."** If the child is returned to a detention, a detention order should issue stating the child was subject to a valid court order and that no less restrictive alternative was available. NOTE: In order to be in compliance with federal regulations, this detention should be initiated with a new complaint

alleging a violation of a valid court order, along with a detention order stating that no less restrictive alternative is available. **Once a child is detained under the "valid court order" exception, the state statute still applies and the time restrictions set out above apply.**

(3) Court Orders.

a. Dismissal of Complaint or Petition - Release of child from custody.

b. Conditional Release. A court officer who determines the child has violated the conditions of release may take the child into custody and return to detention. However, a complaint must be filed stating the child violated the terms of a conditional release. A hearing shall be held to determine whether the conditions were violated, presumably within 24 hours.

c. Order for Detention in RYDC. (Valid Court Order Exception) *See Uniform Form JUV-13 for suggested Order for Detention.*