

## XXII. PROTECTIVE ORDERS

A. **Code Section: O.C.G.A. §15-11-11**

B. **Uniform Juvenile Court Rule: None**

C. **Procedure**

1. Persons affected. A protective order application may be made by any party to a case or on the court's own motion at any time that the court is disposing of a case or is about to dispose of a case. The purpose of a protective order is to restrain or otherwise control the conduct of a person. The person who is the subject of the application need not be a party to the case at the time of the application but the person's conduct in question must affect a party's success in complying with a juvenile court order.
2. Notice and hearing. The person who is the subject of the application should be served with a copy of the application that may be in the form of a motion and should clearly state the grounds therein. The person should be given notice of a hearing date and time and must be given an opportunity to be heard on the matter. The person has the right to be represented by counsel at the hearing. After hearing evidence from the parties and the person, the court must decide by a preponderance of the evidence if the best interests of the child and the public require that the protective order issue.
3. Waiver. Upon being informed of the application for a protective order, the person may waive the right to notice, representation and hearing or any one of these rights and elect to proceed expeditiously. The person may also consent to the order.
4. Conduct that may be controlled. The Code lists an evolving set of situations that may be appropriate for a protective order. In 1996, the Legislature amended the list to include requiring a parent to enter into and successfully complete a substance abuse treatment program approved by the court. Several of the criteria are very broad in wording and the court should not feel unduly constrained by the shortness of the list. The conduct to be controlled must be reasonably related to the issues that bring the child to the court's attention, and the order may not impose unreasonable conditions on the person. In re: A.S., 185 Ga. App. 11 (1987).
5. Form of hearing. After the person has notice and adequate time to prepare, the court should call the case at the noticed time and place. The court should notify the person of the right to be represented by counsel. The parties to the motion and the person who is the subject to the motion should be given an opportunity to make an opening statement and to put up appropriate evidence. Each party and the person should be given a right to make a closing argument. Upon the close of evidence and argument, the court must issue findings of fact and conclusions of law as part of its order. The court should always inform the person of the fact that the order may be enforced by a contempt of court citation.

6. Variations in the form of hearing. The need for a protective order may become apparent during a dispositional hearing or at the end of an adjudication. Typically, it may be apparent that the court should inquire into the advisability of a protective order to control the behavior of a parent or other person who is presently in the courtroom. As an example, in a truancy adjudication involving a 12 year old child, the court may hear evidence that the child has been habitually truant. One of the reasons for the truancy is the parent's habit of sleeping late and expecting the child to get himself out of bed, prepare breakfast, and get to the school bus. The court may inform the parent of the court's intent to inquire into the advisability of a protective order requiring the parent to wake the child up, feed the child an adequate breakfast, and walk the child to the bus stop each school morning. The court should inform the parent of the right to have legal representation and a written copy of the application and timely notice of the hearing. The parent may waive any or all of these rights or may insist on the rights. If the parent waives the rights, the court may ask if the parent consents to be bound by an order consistent with the application. Absent consent, the court may open the hearing then, or if there is no waiver of written notice, at a later time, to listen to the evidence regarding the application. Upon the close of the evidence and argument, the court must issue findings of fact and conclusions of law as a part of its order. The court should always inform the person of the fact that the order may be enforced by a contempt of court citation.

7. Enforcement of protective order. Any party, or the court on its own motion, may seek a citation for contempt of court. The court may want to appoint a guardian ad litem to investigate the advisability of seeking a contempt citation and to prosecute the motion if it is in the best interests of the child. The motion should set out the facts of the alleged contempt and state the sanction sought. The motion should be attached to a rule nisi setting the matter for a hearing on a date certain. The court may issue an arrest warrant for the alleged violator if the welfare of the child requires it. The burden of proof at the hearing is on the person seeking the citation for contempt. (See Benchbook Chapter on Contempt of Court)

8. Expiration of protective order. If a protective order does not internally state the date of expiration, it will automatically expire when the underlying delinquency, unruly, or deprivation case expires. A protective order cannot continue to control the behavior of a person when that behavior is no longer related to someone who is subject to the jurisdiction of the juvenile court. After notice and opportunity for a hearing, a protective order may be modified and/or extended for a further specified period, or may be terminated if the court finds that the best interests of the child and the public will be served thereby.