



# Kids Matter

Child Protection and Advocacy Law Section

Fall 2020

## From the Chair

By John Paul Berlon



Welcome to the Fall 2020 issue of KIDS MATTER.

As of October 14, 2020, there were 488 members of this Section. The Executive Committee meets monthly. Since the last publication, the Executive Committee Representatives from Judicial Circuits 1 and 10 hosted a webinar on August 11, 2020, on “RIPPING OFF THE BAND-AID: Creating Precedent in Unprecedented Times”. Judicial Circuit 2 representative, Michael Waller is planning a training for advocates and parents on how to advocate for student school supports and interventions, e.g., special education, behavioral health and student support teams. Michael Waller also presented a local CASA program with monetary support as part of the Back-To-School supplies drive. The Executive Committee has annually supported an organization’s efforts in assisting children with school supplies. This contribution was also representative of the committee’s efforts over the past several years in reaching out to all parts of the state. The Section provided financial support to an update on the *Georgia Public Defender Training Manual*. The Section has committed financial support to updating the *Representing Students in School Tribunals in Georgia Attorney Training Manual*.

We welcome your thoughts and ideas on how this section can work to improve your knowledge and skill in child welfare and advocacy. I also hope that this finds you and your loved ones in good health.

## Case Law Update

By John Paul Berlon

### DELINQUENCY CASES

In the interest of A.G., a child A20A0054 (06-24-20; Glynn County). Judgment reversed/Physical precedent only. Trial court finds child committed delinquent act of Theft by Taking and Financial Transaction Fraud. Evidence that child has teacher’s wallet in book bag. Trial court held that there must have been some evidence that the child committed the acts. Trial court order stated that “it is hereby found that the allegations of the petition are true..., that the acts attributed to or admitted by the child were, in fact, committed by that child, and that such acts constitute acts of delinquency... within the meaning of the law.” Trial court applied the incorrect test of “some evidence” versus the standard of proof beyond a reasonable doubt. Chief McFadden dissents that the case should be reversed but does not concur in remanding for further proceedings. State’s circumstantial evidence did not exclude reasonable hypothesis.

In the interest of T.P., a child A20A1167 (08-27-20; DeKalb County). Judgement reversed. Child found delinquent of Simple Assault. School resource officer saw child and assistant principal. The child’s hands were clenched, child was sweaty and breathing heavily, and began cursing. Officer asked child to accompany officer to office and the officer put

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his hand on the child's back. Child cursed and told officer he wasn't going nowhere and told the officer not to touch the child. To support simple assault adjudication, there must be a "demonstration of violence." Court provides examples of apprehension of injury assaults: driving vehicle at victim, charging the victim, forcing way into victim's car, driving the car with victim in the vehicle and telling victim he had a gun, refusing victim's direction to leave and then blocking victim from leaving, entering victim's home uninvited and struggling with victim as she attempted to pass him, retrieving bleach and threatening to throw liquid at victim's face, angry and screaming at victim while holding a pot of hot water and other examples. There was no evidence that T.P. made any threatening gesture to find a demonstration of violence.

State v. Walker, A20A0544 (07-02-20; Cherokee County). Judgment vacated and remanded. Defendant arrested for DUI. Case was called for a bench trial outside of the two-year statute of limitation for misdemeanor offenses (OCGA 17-3-1). At bench trial, defense announces ready and State moves for a continuance because an officer under subpoena did not appear. Trial court has authority to dismiss criminal accusations without prejudice and lacks the authority to dismiss with prejudice.

Valles v. State, A20A1465; De La Cruz v. State A20A1466 (10-15-20; Coweta County). Judgment reversed and remanded. Motions to suppress evidence during traffic stop. Officer testified that average shopper goes into stores whereas someone breaking into vehicles jump from parking lot to parking lot. The driver moved to several parking spots in 30-40 minutes of time. Trial court cited Proctor v. State where law enforcement may stop a vehicle for observed traffic offense. Officer did not provide specific, articulable facts that rose to the level of reasonable suspicion of criminal activity. Mere presence in a high crime area does not give rise to reasonable suspicion of criminal activity, even if police observe conduct which they believe is consistent with a general pattern of activity (Atkinson v. State).

Glenn v. State S19G1236 (10-05-20; Supreme Court Decision). Whether a person has a common-law right to resist an unlawful arrest and detention and, if so, whether a person may damage government property in such an attempt. Supreme Court held that there is a common-law right to resist an unlawful arrest includes the right to use proportionate force against government property to escape an unlawful detention following the arrest. Defendant was walking nearby a school in the afternoon and found walking inside a line of shrubbery and trees. Officer gets out of car without matching description of person given by the 911 caller. Officer asked to talk to the defendant. Defendant asked if he was detained. Officer replied yes. Defendant told officer name and that he was walking home. Officer stated to defendant he was conducting an investigation and that if defendant moved he would be charged with obstruction and officer reported that he would use force. Defendant put in back of police car and then asked what he was being detained for. Another officer replied "for suspicion of a

crime. A sexual assault crime against a minor." Defendant evaluated by medical staff. Officers pulled defendant off ambulance and defendant flung himself toward officers and hit law enforcement. Defendant kicked out back window of police car. Defendant was charged with loitering and prowling, obstruction of law enforcement, and interference with government property. At a revocation hearing, trial court found no probable cause for loitering and prowling but found no justification in damaging the government's property. The 46-page opinion covers the history of the common law right. The case overrules the Court of Appeals decision.

## **DEPENDENCY CASES**

In the interest of L.B., a child A20A0851 (08-27-20; Clarke County). Judgment affirmed. Mother stipulated to dependency based upon mental illness and domestic violence. After three years of not completing case plan designed to reunify the mother with the child, a termination of parental rights was filed. Mother conceded that there is clear and convincing evidence that the child was dependent due to the lack of proper parental control because of the mother's overwhelming mental health needs. Mother argued that there was insufficient evidence to show that the dependency is likely to continue because the Department did not make reasonable efforts to address the mother's mental health diagnosis and her decreased mental capacity. However, court found that appropriate referrals were made for the mother.

Denmark v. Department of Family and Children Services; Interest of M.M.D., a child A20A0893 (09-11-20; Glynn County). Judgment affirmed. Putative father appeals trial court order contending incarceration alone was insufficient to support termination; lack of appointed counsel in time to file petition for legitimacy; not appointed counsel or served with process; expert testified to the ultimate issue; and evidence of harm to child was insufficient. Disposition order directed Department to prepare a case plan for father but unclear if he received one. Father was serving an eleven-year sentence. Hearing was continued several times as the father received a substitute appointed attorney. DFCS wrote monthly letters to father but no response. Department's expert was county director who has been in child welfare for 28 years, master's degree in social work, a professor, and research on bonding and attachment. As to bias, Court recognized that expert was state employee and responded "I am going to give [her testimony] the weight that's appropriate due to her being a state employee."

## **OTHER CASES OF INTEREST**

Skipper et. al. v. Paul, A20A0521 (07-02-20; Bulloch County). Judgment reversed/Physical Precedent Only. Biological parent appeals trial court's denial of order setting aside the final decree of adoption. Nonamenable defects in forms submitted by biological father as forms were not supported by an affidavit by mother. Pleadings made no claim for third party adoption when in fact existed.

Adopting parents also failed to file statutory forms. Justice Doyle dissents stating lack of timely appeal in an adoption proceeding and mother did not show a nonamenable defect.

Ross v. Small, A20A0372 (06-11-20; Cobb County). Affirm, vacate in part, and remand. Mother filed petition for legitimation and child support. Putative father served but files no answer. Trial court establishes paternity, awarded custody to mother, establishes child support and arrears, and award of attorney fees. 19-7-47 defines statutory period for opening default. 19-7-43 allows court to complete DNA testing but does not require the Court to order prior to ruling on issue of paternity. Trial court failed to cite authority or facts to support awarding attorney fees.

Dessalines v. Department of Human Services, A20A1006 (09-30-20; Gwinnett County). Judgment reversed. Parent refused Department to assess or aid mother and her 17-year-old autistic child after an incident at school. This resulted in a substantiated report of child abuse and warranted that the mother's name be placed on the child abuse registry. Mother appealed to Superior Court in accordance with OCGA 49-5-183. SAAG filed response stating although attorney received a copy of the request for judicial review, the Department did not receive personal service. Superior Court granted motion to dismiss under OCGA 9-11-4(e)(5), and electronic service was not consented to until after the petition for review was filed. Georgia Administrative Procedure Act right for judicial review of administrative law judge's determination and filed within 30 days. The procedures for the appeal shall be substantially the same as those for review of contested cases under OCGA 50-13-19 versus OCGA 49-2-15. Cites Shuman case when construing this section where service by mail is sufficient.

McManus v. Johnson, A20A1185 (10-05-20; Columbia County). Judgment affirmed. Mother appeals two temporary orders modifying custody to father. Parents withdrew child from daycare and the father's wife began caring for child. This change caused more parenting time by father who subsequently filed a modification and was awarded more time with the child. Trial court has discretion in ordering a change in custody while a modification is pending (see Massey v. Massey, 227 Ga. App. 906).

Davis v. Cicala, A20A1116 (10-5-20; Gwinnett County). Judgment affirmed. Parents appeal granting of grandparents visitation under OCGA 19-7-3. Parents divorced and mother filed modification action. Grandparent Cicala filed a motion to intervene and requested reasonable visitation. Father lived with grandparent for two years and grandparent took care of child. Trial court made detailed findings and found harm would result if grandparent denied independent visitation. A parent's wishes on grandparents visitation is not conclusive when failure to visit would result in harm.

Edvalson v. State, S19G1516 (09-29-20). Defendant was in possession of 11 images depicting a minor in sexually explicit conduct. Defendant appealed trial court's error in not merging convictions to a single count. OCGA 16-12-

100 is unambiguous and permits only one prosecution and conviction for a single act of possession of child pornography regardless of the number of images depicted. Reversed Court of Appeals decision.

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## **New Protections for Tenants Facing Eviction for Nonpayment**

The Centers for Disease Control and Prevention (CDC) issued an Order which protects tenants from eviction due to nonpayment of rent between September 4 and December 31, 2020. The CDC took this action because evictions pose a health hazard during a pandemic. This Order protects tenants who rent a house, apartment unit, mobile home, or land in a mobile home park.

To be protected from eviction, you must sign and complete a Declaration form and give it to your landlord, the property owner, or the property manager. Every adult listed on the lease must complete a Declaration. If there is not a written lease, every adult living in the household should sign and complete a Declaration and give it to the landlord. You must keep a copy of the Declaration and proof that it was provided to the landlord.

The Declaration is a special form created by the CDC which tenants must use. It is important to read and understand the Declaration. By signing the Declaration, you are swearing that every statement in it is true. A tenant that makes a false or misleading statement could be prosecuted for perjury and have to pay a fine or even go to jail. In the Declaration, you will be stating that the following statements are true:

1. That you tried to get help to pay the rent by contacting and filing applications with agencies that help pay rent using State or Federal money. Tenants should keep a record of the organizations they contact, the date, and what they are told.
2. That at least one of the following statements is true:
  - a. You expect to earn no more than \$99,000 in 2020 or \$198,000 if you filed a joint tax return with another adult;

- b. You were not required to file a tax return in 2019 because your income was low, OR

- c. You received an Economic Impact Payment (stimulus check) under the CARES Act.

3. You are unable to pay the full amount of the monthly rent because the household has less income as a result of one of the following:

- a. A source of income stopped – someone in the household lost their job or their benefits, such as unemployment payments;

- b. Someone in the household is working but is now earning less than they once did; OR

- c. You have to pay medical bills likely to exceed 7.5% of your income for the year.

4. You are doing your best to make timely partial rent payments, and

5. You have no other housing options and, if evicted, would likely become homeless, need to move into a homeless shelter, or need to move in with another household that would then be crowded.

Once you complete the Declaration and give it to your landlord, you should not be evicted because of nonpayment of rent or other charges. A tenant should not wait until their landlord takes court action to evict them before completing and delivering the Declaration. The Declaration can be given to the landlord at any time.

Once the Declaration is delivered to the landlord you cannot be evicted for nonpayment of rent. You should offer to pay the landlord whatever part of the rent you can afford. If the landlord refuses to accept the rent, keep a record of the amount offered and what the landlord said and did when it was offered. When the CDC's Order expires on December 31, 2020, you

will be responsible for paying all past due rent and may be evicted if you are unable to pay.

Landlords can evict tenants for reasons other than nonpayment even if the tenant delivered the completed Declaration. Tenants are still required to follow all the other terms of their lease and other rules. A tenant is not protected from eviction for a lease violation.

**The Georgia Legal Service Program provides free legal assistance to eligible persons with income up to 200% of the federal poverty level and limited assets. GLSP provides free interpretation to applicants and clients. If you meet these requirements and live in a Georgia county OTHER THAN Fulton, Clayton, Cobb, DeKalb, or Gwinnet, you can apply for legal assistance online at [www.glsp.org](http://www.glsp.org) or by phone at 833-GLSP-LAW. Applicants who live within the metro-Atlanta counties listed should contact the Atlanta Legal Aid Society for legal assistance at 404-524-5811.**

**This flyer is meant as general information and does not constitute specific legal advice or create an attorney/client relationship.**

**9.2020**

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# Declaration Under Penalty of Perjury for the Centers for Disease Control and Prevention's Temporary Halt in Evictions to Prevent Further Spread of COVID-19

This declaration is for tenants, lessees, or residents of residential properties who are covered by the CDC's order temporarily halting residential evictions (not including foreclosures on home mortgages) to prevent the further spread of COVID-19. Under the CDC's order you must provide a copy of this declaration to your landlord, owner of the residential property where you live, or other person who has a right to have you evicted or removed from where you live. Each adult listed on the lease, rental agreement, or housing contract should complete this declaration. Unless the CDC order is extended, changed, or ended, the order prevents you from being evicted or removed from where you are living through December 31, 2020. You are still required to pay rent and follow all the other terms of your lease and rules of the place where you live. You may also still be evicted for reasons other than not paying rent or making a housing payment. **This declaration is sworn testimony, meaning that you can be prosecuted, go to jail, or pay a fine if you lie, mislead, or omit important information.**

I certify under penalty of perjury, pursuant to 28 U.S.C. 1746, that the foregoing is true and correct:

1. I have used best efforts to obtain all available government assistance for rent or housing.<sup>1</sup>
2. I either expect to earn no more than \$99,000 in annual income for Calendar Year 2020 (or no more than \$198,000 if filing a joint tax return), was not required to report any income in 2019 to the U.S. Internal Revenue Service, or received an Economic Impact Payment (stimulus check) pursuant to Section 2201 of the CARES Act.
3. I am unable to pay my full rent or make a full housing payment due to substantial loss of household income, loss of compensable hours of work or wages, lay-offs, or extraordinary<sup>2</sup> out-of-pocket medical expenses
4. I am using best efforts to make timely partial

payments that are as close to the full payment as the individual's circumstances may permit, taking into account other nondiscretionary expenses

5. If evicted I would likely become homeless, need to move into a homeless shelter, or need to move into a new residence shared by other people who live in close quarters because I have no other available housing options.<sup>3</sup>
6. I understand that I must still pay rent or make a housing payment and comply with other obligations that I may have under my tenancy, lease agreement, or similar contract. I further understand that fees, penalties, or interest for not paying rent or making a housing payment on time as required by my tenancy, lease agreement, or similar contract may still be charged or collected.
7. I further understand that at the end of this temporary halt on evictions on December 31, 2020, my housing provider may require payment in full for all payments not made prior to and during the temporary halt and failure to pay may make me subject to eviction pursuant to State and local laws. I understand that any false or misleading statements or omissions may result in criminal and civil actions for fines, penalties, damages, or imprisonment.

\_\_\_\_\_  
Signature of Declarant

\_\_\_\_\_  
Date

**Endnotes**

1. “Available government assistance” means any governmental rental or housing payment benefits available to the individual or any household member.
2. An “extraordinary” medical expense is any unreimbursed medical expense likely to exceed 7.5% of one’s adjusted gross income for the year.
3. “Available housing options” means any available, unoccupied residential property, or other space for occupancy in any seasonal or temporary housing, that would not violate Federal, State, or local occupancy standards and that would not result in an overall increase of housing cost to you.



## Judicial Circuit Chairs

The Executive Committee has established representatives throughout the State of Georgia. The goal this year has been to conduct at least one event in each judicial circuit. Some events have taken place already and some are in the planning stage. Please feel free to reach out the district representatives with ideas on how this Section can best support you.

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# Language Access and Interpreters in Georgia Courts: Challenges for Access to Justice During COVID-19

By Maria Ceballos-Wallis and Paul D. Panusky

During the COVID-19 Judicial Emergency, courts have been forced to institute drastic alterations to court processes and completely rethink how the community interacts with the court. With safety at the forefront, the typical court gatherings, packed benches, and extensive dockets have been replaced with remote proceedings, minimal in-person engagements with only the relevant parties present, and hybrid models where some individuals are remote and a skeleton crew is in person. These changes drastically impact many aspects of the court system and create new questions such as how to conduct jury trials; what it means to “confront witnesses who testify against you”; and how to address the impact of socio-economics and lack of access to technology on access to justice. All these new challenges are compounded when an individual and the court require an interpreter.

As members of the interpreting profession and the Bar, we are deeply concerned about language access services during the current Judicial Emergency. We are concerned for litigants, witnesses and others with limited English proficiency (LEP) or who are Deaf or hard of hearing (Dhh) and their families. Key to these concerns are the safety and use of qualified judiciary interpreters and how a lack of proper protocols and procedures could impact the outcomes of proceedings and the rights of Georgians during the pandemic. Our work as Chairs of the Sign and Spoken Language Subcommittees advising the Interpreter/ Court Reporters Committee of the Judicial COVID-19 Task Force has allowed us to address areas of concern and potential pitfalls that changes to pre-COVID-19 proceedings have on interpreters and the interpreting process which ultimately impact the courts and Georgians who interact with the courts.

Typically, requesting an interpreter has always added an additional layer of complexity to an already stressful situation. The requirement to meet the timely demand for qualified legal and court interpreters, however critical, places an added administrative and financial burden to the legal system. However, the current emergency creates additional challenges, from technological concerns (e.g., increased audio and visual complications and distractions) to concerns at

the heart of access to justice (e.g., the use of quality interpreters; client-attorney meetings; accuracy of messages relayed between the parties and the court). For these reasons, remote interpreting, including Video Remote Interpreting (VRI), important as they are, should be “last-resort methods to be used in limited circumstances,” according to a joint letter issued in March 2020, by the National Association of Judiciary Interpreters and Translators (NAJIT), Advocacy, and Bench & Bar Committees.

We began by requesting valuable input from representatives of fully licensed Georgia Certified Spoken Language Interpreters and Nationally Certified Legal Interpreters, as well as LEP stakeholders, court administrators, attorneys, and judges. We found consensus among the parties that it was necessary to urge all court systems to ensure that interpreters working in or with the court, whether on-site or virtually, be appropriately vetted. This resonates particularly here in Georgia, where in *Ramos v. Terry*, 279 Ga. 889 (2005) the court decided it would “be an abuse of discretion to appoint someone to serve as an interpreter who is neither certified nor registered as an interpreter without ensuring that the person appointed is qualified to serve as an interpreter...”

Georgia licensed interpreters have received the State-mandated orientation from the Georgia Commission on Interpreters and have been explicitly tested regarding their familiarity with Georgia courts, i.e., system, proceedings, regulations, the Code of Ethics and Professional Responsibility, all of which applies specifically to court interpreters. The State has also vetted them through criminal background checks and verification of employment status and qualifications. Sign language interpreters have specialty certifications from the Registry of Interpreters for the Deaf that qualify them to work in court and/or legal proceedings. However, in this unprecedented time, there were and still are no national model protocols from the National Center for State Courts or Council for Language Access Coordinators regarding guidelines for VRI. No statewide protocols exist through the Georgia Supreme Court’s Commission on Interpreters.



Sign language interpreters have specialty certifications from the Registry of Interpreters for the Deaf that qualify them to work in court and/or legal proceedings. However, in this unprecedented time, there were and still are no national model protocols from the National Center for State Courts or Council for Language Access Coordinators regarding guidelines for VRI. No statewide protocols exist through the Georgia Supreme Court's Commission on Interpreters.

We believed that the lack of guidelines for the usage of licensed Georgia court interpreters/nationally certified legal interpreters in remote proceedings would impact the quality of interpretation services, the short and long-term availability of Georgia interpreters, and the potential outcome of court proceedings, opening up the possibility of infringement on Georgians' rights and challenges to the courts' decisions.

Before the pandemic, spoken language interpreters rarely used remote interpreting, and this was often limited to telephone interpretation for languages of lesser diffusion. Moreover, while American sign language interpreters and Dhh individuals used it all the time, familiarity did not transition to VRI for court proceedings any easier. Dhh individuals use VRI the same way hearing individuals use the telephone for daily tasks such as ordering pizza, scheduling appointments, processing banking transactions, etc. This longstanding familiarity with VRI as an informal way of communicating with the world creates dissonance and awkwardness that makes the use of VRI for court proceedings even more difficult.

Under normal circumstances, there exist challenges in ensuring the implementation of long-established rules and statutes that dictate the court shall provide a court interpreter to persons who are unable to hear, speak, or otherwise communicate in the English language, are involved in a proceeding as a party or witness, or is the parent of a person who is under the age of 18 when that person is a party or witness, for the non-English speaker to participate in the proceeding meaningfully.<sup>1</sup> Further, when Deaf and hard of hearing participants meet with appointed counsel, the court shall provide counsel with an interpreter, and said interpreter is required to be present at all meetings.<sup>2</sup> Keeping this in mind, our committee's recommendations addressed ways to ensure the needs of LEP individuals, Deaf/hard of hearing, and non-native English speakers were met and the courts' emergency policies pursuant to implemented state protocol.

Remote interpreting and VRI are inherently more challenging and create more significant issues in the process requiring extensive court/interpreter collabora-

tion. The ability of the interpreter to manage the proceeding with support from the judge is paramount. Furthermore, a lack of proper equipment and bandwidth, individuals' demeanor on screen, and even lighting (specifically when dealing with Deaf and hard of hearing participants) can lead to issues with interpreters' ability to understand the message entirely. Additionally, over or underexposed images and busy backgrounds create "noise" and interference for those who speak a visual language.

Remote proceedings also raise issues of confidentiality and privilege. Additional sessions may be required for attorneys or court staff to meet with LEP stakeholders. Further, when Deaf and hard of hearing participants meet with appointed counsel, the court shall provide counsel with an interpreter, and said interpreter is required to be present at all meetings.<sup>3</sup> If those meetings are held remotely, proper procedures for procuring the interpreters must ensure no conflicts. Again, proper vetting of the interpreter by the attorney should be followed.

As the courts move to reopen, changes to courtroom layout to promote social distancing can create communication and privacy issues. The use of masks can impact the LEP's ability to hear or understand the interpreter, particularly in modalities that rely on facial expressions and speech reading. Increased social distancing makes it challenging to speak in low voices in private consults with attorneys or court staff; it also creates a spectrum of increased difficulty for Deaf individuals with vision problems and Deafblind individuals. Spoken language interpreters may be able to circumvent some of these drawbacks by using remote interpreting equipment (transmitters, receivers, and easily sanitized headsets for distribution in the courtroom to allow for an increase in social distancing). Still, such equipment will not rectify issues for Deaf individuals with low vision requirements or who are Deafblind, who rely on a tactile form of sign language—that is where the individuals use physical touch to communicate.

Hybrid proceedings where parties connect either remotely or appearing in person are likely to be more common after the Judicial Emergency is completely lifted. There are several scenarios to be considered when using a hybrid approach depending on the location of each party. Having the LEP present in the courtroom while the interpreter is remote, having the interpreter present and the LEP individual remote, and having the non-LEP party present while the LEP party is remote all require different considerations for effective communication. While each combination of hybrid approaches has its difficulties, having the

interpreter be the only remote individual has the most impact on the interpreter's ability to render a message seamlessly and accurately.

Interpreter/ Court Reporters Committee recommended best practices for remote, in-person, and hybrid approaches to court proceedings are outlined in the Judicial COVID-19 Task Force Report: Guidelines, Best Practices, and Resources. To ensure effective and efficient communication between LEP stakeholders and the Court, even more advanced coordination will be required before the proceedings' beginning. In the report, the committee also sought to address additional concerns such as the availability of translated documents and ensuring proper procurement, vetting, and qualifying interpreters as outlined in Uniform Rule 7.3. Continuing guidance and support must be provided to all stakeholders, including training for court staff, clerks, interpreters, etc. on best practices for procuring and working with interpreters.

In an effort to address ongoing concerns, the committee also recommended the creation of an Advisory Council to the Georgia Commission on Interpreters to spearhead a number of other initiatives, including a hotline for clarification of best practices for Language Access Services when working with interpreters; advisory opinions from expert entities regarding possible drawbacks, costs, and liabilities of not using a qualified interpreter; study a proposal for the Georgia Commission on Interpreters ("COI") and the Administrative Office of the Courts ("AOC") to exercise oversight over American Sign Language ("ASL") interpreters and interpreting firms to facilitate vetting of these interpreters given the multiple available credentials in this field, and develop and offer specific VRI Training for Georgia Licensed interpreters/nationally certified court interpreters and a VRI endorsement to the interpreters' license.

As officers of the court we must all make certain that the new COVID-19 safety protocols do not alter the currently required services necessary to ensure effective communication by and with LEP or Dhh participants (litigants, witnesses, and spectators). However, safety considerations must be balanced with the specific situation surrounding each proceeding and the needs of the LEP and the Court. Understanding the interpreters' roles ensures that courts and interpreters work together cohesively and allow all parties, including English speakers, LEP, and Deaf/hard of hearing, to communicate and have access to justice effectively.

#### **For additional resources, please consult:**

- Judicial COVID-19 Task Force Report: Guide

#### lines, Best Practices, and Resources

- Use of Interpreters for Non-English Speaking and Hearing-Impaired Persons

- Model Administrative Protocol for the Provision of Language Assistance Services to Limited English Proficient and Deaf and Hard of Hearing Persons in the Georgia Courts

- Georgia Commission on Interpreters

- GCOI Bench Cards:

1. Bench Card - Working with Limited English Proficient Persons and Foreign-Language Interpreters in the Courtroom

2. Bench Card - Working with Deaf or Hard of Hearing Persons and Sign Language Interpreters in the Courtroom

- NAJIT Position Paper: Telephone Interpreting in Legal Settings

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#### **Endnotes**

1. 7.3(D): TITLE VI of the Civil Rights Act of 1964; O.C.G.A. § 24-6-652. (emphasis added)
2. O.C.G.A. § 24-6-654.
3. O.C.G.A. § 24-6-654.

## **Judicial COVID-19 Task Force Report: Guidelines, Best Practices and Resources**

### **Procedures and Interpreter Protocols p. 16**

### **Addressing Issues of Language Access and Interpretation p. 44**



## **Language Access and Accommodations**

Limited English Proficient (LEP) and Deaf/hard of hearing (Dhh)

***Courts should establish protocols for procuring, vetting, and scheduling interpreters as well as informing interpreters of the courts safety policies.***

### **REVIEW AND IDENTIFY LEP AND DHH STAKEHOLDER NEEDS IN ADVANCE**

- Consider designating a Language Access Coordinator to proactively oversee language access needs and services and evaluate and monitor compliance with your jurisdiction's Language Access Plan.
- Use a standardized form where the individual requesting an interpreters can include language, type of proceeding, role of the participant (party, witness, parent/guardian, observer) anticipated duration of the LEP/Dhh individual's involvement.
- Courts should consider the use of scheduling, calendaring, and other strategies to maximize the use of interpreters, whether on-site or remote. Consult with the Georgia Commission on Interpreters for the [Model Administrative Protocol and Language Access Plan Template](#).

### **PROCURING SPOKEN AND SIGN LANGUAGE INTERPRETERS**

- Gather and disseminate all relevant and required case information to provide to the interpreter.
- Ensure compliance with Georgia Commission on Interpreters protocols to appoint an in-person Certified, Conditionally Approved, or Registered foreign-language interpreter or an industry-credentialed in-person sign language or deaf interpreter for subsequent proceedings.
- If appropriately credentialed interpreters are not available, a qualified interpreter successfully examined through an appropriate and thorough voir dire may be appointed at the discretion of the Court.
- Inform parties and court staff that additional safety measures may increase the length of time for proceedings involving interpreters.

### **PROVIDING ACCESS TO LEP/DHH**

Ensure that new COVID-19 safety policies do not alter the currently required provisions of services when necessary to ensure effective communication by and with LEP or DHH participants (litigants, witnesses, and spectators).

- LEP/Dhh individuals cannot be required to arrange or pay for their own interpreters.
- All individuals who require an interpreter must be provided an interpreter for any criminal or civil proceeding, including LEP/Dhh parents even if the child/juvenile does not require an interpreter.
- Individuals do not waive their right to an interpreter simply because they do not request an interpreter.
- Courts should be proactive in providing an interpreter if the judge or court staff suspects and individual would benefit from such assistance.
- LEP/Dhh individuals do not lose the right to an appointed interpreter because they speak or understand some English.
- Ensure that court has a supply of masks/face shields to provide to LEP/Dhh individuals when interacting with the court through an interpreter.
- Ensure courts have proper wireless interpreting equipment and assistive listening devices for use by interpreters and LEP/Dhh individuals.
- When scheduling interpreter, allow for time for interpreter to meet with LEP/Dhh individual in order to familiarize them with safety measures and court protocol. Consider booking interpreter to be present at the entrance when LEP/Dhh individual will arrive and have a sign/interpreter waiting area for LEP/Dhh individuals to meet with interpreter upon arrival.
- Collaborate with assigned interpreters or scheduling entities about the need for additional interpreters/interpreter teams.
- Provide adequate time to preconference with the interpreter to familiarize with potential issues that new COVID-19 safety measures may have on the interpreting process.



# When Adolescent Grief Gets Arrested

By Amy L. Bell

I think of children I have represented over my 15 years as an assistant public defender who have experienced deep grief. There were those who were shut down emotionally; the ones who wanted revenge when a friend had been killed; or, those who could not express the loss at all, choking back words if I got too close to asking something that might cause the tears to flow. Some would wear their grief in memorial t-shirts, or through tattoos they were too young to have—visible symbols of grief I could see, before I even had to ask, that they had experienced significant loss. I remember the child whose family hid a significant loss from a child until the child's release, and the impact that had going forward.

As we dig out of the backlog of court cases caused by the COVID-19 pandemic, and deal with families who have lost employment, housing, food, and stability; and, as we deal with children who may be behind educationally, developmentally, socially, and in every single way, we cannot forget that some of the behaviors we may be seeing now from these children may be borne of grief—whether due to family separation, separation from friends, or permanent losses of loved ones through death (and whose funerals the children were unable to attend, if there was any funeral to be held at all). As practitioners in juvenile law, we must be prepared to recognize grief responses in children and youth. Grief responses can vary based on the age and development of the child; the relationship involved; and factors unique to the child.

In studying child and adolescent grief, I found the Crossroads Hospice Charitable Foundation's, "Helping Children in Grief: Understanding Childhood Bereavement," article, published on March 31, 2016, on the Crossroads Hospice Charitable Foundation website. The article breaks down differences in age and stage grief responses; provides ways to help. A summary of the ages and stages of developmental grief reactions and recommended approaches is listed below:

## **Children 0 to 2 years old**

Pre-verbal children may crave the sensory experiences of any loved ones, and have "longing for the touch, sight, smell, and sounds of the deceased loved one." They may struggle in sleep routines, illness, endless crying and biting. The advice the article gives for helping children at this age who are struggling is: to offer patient and gentle responses; to keep a regular routine; and, to en-

courage physical contact.

## **Children 2 to 6 years old**

Children are concrete thinkers and struggle to understand the concept of death at all. They may confuse phrases adults use for death; for example, the phrase, 'rest in peace' may be interpreted as " 'sleep'. Children may express confusion, fearfulness, or a feeling abandonment. At this age, they may behave as a younger child would. They may bed-wet, have nightmares, outbursts and many questions surrounding dying and what happens after death.

The article author notes that children in this age should be encouraged to express their feelings, allowed to ask questions and behavior as a younger child might for a while, and engage in activities they previously found enjoyable.

## **Children 6 to 8 years old**

Children at this stage may begin to think not only of the physical consequences of dying, but have questions about any concept of an afterlife. They may blame themselves for their loss, feel alone, or worry about losing others. Their academic performance may slide. They may become more aggressive toward other people, or become more withdrawn. They may struggle with concentration.

At this age, honest conversations, extra-curricular activities, and physical contact are key to promoting stability. Sports and artistic activities previously enjoyed by the child are particularly important outlets for the child.

## **Pre-Adolescent Children 8 to 12 years old**

At this age, children are weighing not only how they feel but how others may view how they feel. They may experience anxiety and insecurity around similarly aged children. They feel worry about being left out and feel alone. They may begin to get angry or sad about the special moments in life they will miss with their loved ones. They may want to know specifics about any death or loss. They may pull away from things or people they once enjoyed. They may seem out of control and act unlike themselves.

What they need is patience and expectations of

their changing behavior. They need open conversations about their loss, or lost loved ones. They need to have the opportunity to express chronologically unexpected behavior. And they need the opportunity to express their emotions in creative arts and physical activity.

### **Adolescents 12 to 18 years old**

Youth at this age understand the physical aspects of death and loss, but may start deepening spiritual connections as a way to cope. Youth may wish to appear in control of their emotions so they are not perceived as weak. They may struggle with the denial and shock, and be concerned with the possibility of loss of other loved ones.

At this age, sudden changes may indicate additional support is needed. These children may engage in extreme risk-taking behavior; become more aggressive; withdraw from friends and similar age youth, struggle with academics, conflict, eating, and even express depressive or suicidal tendencies. Youth at this age desperately need to be encouraged to talk about their loss, know they have a trusted adult they can go to when they can open up; and they need the flexibility to direct their own grief journey.

Why does it matter to recognize child and adolescent grief at all ages if I only represent children in dependency hearings, or I only represent children in delinquency hearings?

Trauma responses can show up even years after the initial trauma. Even after we are well past the pandemic, children are likely to experience the collateral effects of the illness—the effects of job loss, the loss of a caretaker, the loss of a home, the loss of educational opportunities for a long time to come.

As child attorneys, we have to look for the child who might be at a higher risk for dropping out of school because she is the oldest and feels like she has to provide for her and her siblings' school clothes. We have to be aware of the boy who shows up to our offices with tattoos representing lost loved ones who has no dreams of the future because he does not expect to live long enough to have one.

We have to always make sure we delve into the child's history enough so that we get to the right question—as has been said by those far smarter than me, “We shouldn't be asking children, ‘what's wrong with you?’ We should be asking ‘what happened to you?’” If we don't, we will likely write off a child as ‘irreparable,’ simply because we weren't diligent enough to

ask *what happened* when we had the chance.

For more information, the full article, “Helping Children in Grief: Understanding Childhood Bereavement,” may be found at the Crossroads Hospice Charitable Foundation site at <https://crhcf.org/insights/helping-children-in-grief-understanding-childhood-bereavement/>.

**Do you know of someone who has made a positive impact in the area of Child Protection and Advocacy in Georgia?**

**If so, please send an email to [Tonya.Boga@gmail.com](mailto:Tonya.Boga@gmail.com) with the story and ask for it to run in the “Kudos!” section of the Newsletter. Remember, pictures are also welcomed and suggested.**



# Representing the Whole Child: A Georgia Juvenile Defender Training Manual

By Randee Waldman

The Barton Juvenile Defender Clinic has released the 3rd Edition of “Representing the Whole Child: A Georgia Juvenile Defender Training Manual.” The Manual provides a brief introduction of the history of juvenile court and the key U.S. Supreme Court cases before providing a comprehensive overview of the juvenile court delinquency process as it exists in Georgia. In addition, the manual provides some tips on interviewing young clients, a review of ethical considerations in juvenile court, a snapshot of juvenile delinquency motions practice, a review of policies and practices around shackling of youth in juvenile court, and an overview of the Federal Juvenile Justice and Delinquency Prevention Act. Finally, the manual concludes with a multitude of social factors and considerations to be taken into account when working with young people in juvenile court, including an overview of adolescent development, mental health issues, and education issues.

The manual can be accessed and downloaded at: [http://bartoncenter.net/uploads/publications\\_staff/Whole%20Child\\_2020\\_FINAL.pdf](http://bartoncenter.net/uploads/publications_staff/Whole%20Child_2020_FINAL.pdf)

## Upcoming Event

January 28, 2021: CPAS Annual Meeting and CLE Training



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RUBY  
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**State Bar of Georgia  
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Scholarship Application**

The Child Protection and Advocacy Section of the State Bar of Georgia will offer three (3) scholarships in the amount of up to \$500 per scholarship each year. These funds may be used for either registration fees or travel expenses for an out-of-town conference or seminar.

The scholarships will be awarded to members of the Section who demonstrate both a need for financial assistance and a demonstration of the relevance of the content area of the conference or seminar to the work conducted by the attorney.

**Commitment to Share Information:**

Scholarship recipients agree that they will write an article for the Section newsletter, Kids Matter, regarding a topic covered at the conference or seminar.

**Application Process:**

Application Periods: There will be three application periods each year, with one scholarship awarded during each application period. The application periods are as follows:

January 1 – April 30 (scholarship awarded by May 31)

May 1 – August 31 (scholarship awarded by September 30)

September 1 – December 31 (scholarship awarded by January 31)

Application: The attached application form, including a statement of need and copy of the agenda, must be completed and returned to the scholarship committee by the appropriate application period close date. Applications should be returned to [maryjos@gabar.org](mailto:maryjos@gabar.org).

**State Bar of Georgia  
Child Protection and Advocacy Section  
Scholarship Application**

Name: \_\_\_\_\_

Affiliation: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

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**Description of Program You Wish to Attend: (Please attach a copy of the program agenda, if available.)**

Program Title: \_\_\_\_\_

Program Location: \_\_\_\_\_

Program Dates: \_\_\_\_\_

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**Statement of Need: (Include any financial contributions provided by your organization, relevance of the seminar to your work, etc. You may attach a separate letter, on your organization's letterhead, with your statement of need.)**

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