

**GUIDE TO THE IMPLEMENTATION OF
SENATE BILL 236**

**Prepared by the SB 236 Workgroup,
a Project of the Georgia Model Courts Committee,
a Joint Project of the CJCJ Permanency Planning Committee
and the Child Placement Project**

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The passage of Senate Bill 236 during the 2003 Session of the Georgia General Assembly led to significant changes in O.C.G.A. §15-11-58 and other Code sections related to cases involving deprived children. In an attempt to identify issues and provide recommendations for best practices related to those changes, a workgroup of the Model Courts Committee, under the direction of the Permanency Planning Committee, has developed this "Guide to the Implementation of Senate Bill 236". The Workgroup hopes that you will find this discussion helpful and informative.

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PART A. NOTICE AND OPPORTUNITY TO BE HEARD UNDER REVISED O.C.G.A. SECTION 15-11-58

There is perhaps no more passionate group of people within the child welfare system than foster parents and others with whom children live while in state foster care. Because of at least a perceived notion that the voices of these people, who arguably know more about the children's needs and circumstances while in care than anyone else, were not being heard, Congress included within the Adoption and Safe Families Act of 1997 (hereinafter referred to as "ASFA") the right for these people to have notice of, and an opportunity to be heard at, certain hearings and reviews. That provision was enacted as Section 104 of ASFA and provides that each state's foster care review system must provide that:

(T)he foster parents (if any) of a child and any preadoptive parent or relative providing care for the child are provided with notice of, and an opportunity to be heard in, any review or hearing to be held with respect to the child, except that this subparagraph shall not be construed to require that any foster parent, preadoptive parent, or relative providing care for the child be made a party to such review or hearing solely on the basis of such notice and opportunity to be heard.

While that provision appears to be fairly simple and straightforward, when read alone, it leaves questions and, when incorporated into state law, it has created some confusion.

As required by ASFA, the notice and opportunity to be heard provision was enacted under Georgia law by an amendment to O.C.G.A. Section 15-11-58. The Code provision relative to the right to notice and opportunity to be heard applicable to the custodian of the child, the foster parents of the child, and any preadoptive parents or relatives providing care for the child (hereinafter referred to as "Caregivers") was revised significantly under SB 236. Although the intent of the proponents of the bill was to clarify the notice provision so as to strengthen the rights of Caregivers, in some ways the bill scaled back some of their rights. Specifically, but not by way of limitation, the bill changed the "each review or hearing" language contained in the former bill, to "each review or hearing held with respect to a child pursuant to this Code section", which, as discussed in the next section, limits the hearings to which the notice and opportunity to be heard provision applies. The bill also contains some other provisions relative to notice that are of great importance to the Juvenile Courts and to DFCS. Following is a discussion of the notice and opportunity to be heard provision contained in SB 236 in question and answer format. We are certain that there are other questions that are out there, or that will arise in the future. As you encounter new issues, or as you find new answers, please share those with us so that we can update this guide to SB 236.

1. Who is Entitled to Notice and an Opportunity to be Heard?

SB 236 is relatively straightforward as to who is entitled to notice of, and an opportunity to be heard at, reviews and hearings. Specifically, the list, repeated throughout the bill, includes: the custodian of the child, the foster parents of the child, and any preadoptive parents or relatives providing care for the child. Following are several points about this portion of SB 236:

(a) The notice and opportunity to be heard provision seemingly applies only to the current Caregivers, because it uses the present participle “providing”. Certainly, most Caregivers with whom the child has resided can offer valuable information about the child and about the child’s welfare, and any party, or the court, can always subpoena former Caregivers. However, it is pretty clear that only current Caregivers have a right to notice and an opportunity to be heard. That is consistent with the federal regulations, which, when interpreting the same language in ASFA, provide that, “In addition, requiring that a State provide notice of an opportunity to be heard to previous caregivers goes beyond the statutory language. The statute requires only that notice be given to caregivers ‘providing care’ for the child.” The Final Rule, 65 Fed. Reg. 4065.

(b) The “custodian” is new to the list of persons or entities that are entitled to notice and an opportunity to be heard. The definition of the term “custodian” was expanded under SB 236 to include a “public or private agency or other private organization licensed or otherwise authorized by law to receive and provide care for a child to which legal custody of the child has been given by order of a court”. O.C.G.A. Section 15-11-2(5)(B). Previously, the term “custodian” included only a “person, other than a parent or legal guardian, who stands in loco parentis to the child or a person to whom legal custody of the child has been given by order of a court”.

(c) This provision apparently does not apply to a group home or other placement with which the child is placed while in the custody of DFCS, although it is unclear as to whether this omission was intentional or just an oversight. Again, this does not mean that these caregivers do not have valuable information, or that they should not be subpoenaed to court. It just means that they are not entitled to notice and an opportunity to be heard under this Code Section.

2. To Which Hearings, Reviews, or Process Does the Notice and Opportunity to be Heard Provision Apply?

Although the notice and opportunity to be heard provision is repeated throughout SB 236, and thereby throughout O.C.G.A. Section 15-11-58, the operative provision is Subsection (p), which provides, in relevant part, as follows:

In advance of each review or hearing to be held with respect to a child pursuant to this Code section, the court shall provide written notice of such review or hearing, including their right to be heard at such review or hearing.... (emphasis added)

Compare the new language with the old language, which appeared in O.C.G.A. 15-11-58(k) and which required that notice of and an opportunity to be heard be provided “in any review or hearing to be held with respect to the child.” Note the addition of the phrase “pursuant to this Code section”. The term “Code section”, in context, can only mean Code Section 15-11-58. Although it is most likely a result of drafting rather than legislative, or sponsor, intent, this language is significantly narrower than the previous language relative to the hearings to which Caregivers are entitled to notice and an opportunity to be heard. The only hearings or reviews held pursuant to O.C.G.A. §15-11-58 are periodic reviews held by the court or by the Panel, appeals from, or hearings arising out of, reviews by the judicial citizen review panels, hearings held pursuant to O.C.G.A. §15-11-58(i)(3) following the revocation of the license of an agency or organization to which permanent custody has been granted pursuant to O.C.G.A. §15-11-

58(i), permanency hearings, and motions to extend. Notably missing are shelter care hearings, adjudicatory hearings, dispositional hearings following adjudication of deprivation, termination of parental rights hearings, dispositional hearings following termination of parental rights, and post-termination reviews, all of which involve significant permanency issues (except for shelter care hearings and adjudicatory hearings), and all of which are held pursuant to other Code sections.

So, what does all of this mean? Are we to comply strictly with this provision? It was the consensus of the Workgroup that: (a) the intent was to make the rights of the Caregivers to notice and an opportunity to be heard more meaningful; and (b) we should recognize that the current Caregiver often has the most knowledge about the welfare of the child, i.e. what is really going on with the child. Therefore, the Workgroup concluded as follows:

(a) The notice and opportunity to be heard provision applies to every hearing that arises under O.C.G.A. §15-11-58, which includes periodic reviews held by the court or by the judicial citizen review panel, appeals from, or hearings arising out of, reviews by the panel, permanency hearings, motions to extend, and hearings held pursuant to O.C.G.A. §15-11-58(i)(3) following the revocation of the license of an agency or organization to which permanent custody has been granted pursuant to O.C.G.A. §15-11-58(i).

(b) Specifically, the notice and opportunity to be heard provision applies to any hearing requested by the parents under O.C.G.A. §15-11-58(d) within five days following service of the 30-day case plan. Therefore, if the parents request a hearing before the court to review the 30-day case plan following service of a copy by DFCS, Subsection (p) applies.

(c) Likewise, Subsection (p) applies to any hearing on the proposed revised case plan that is held pursuant to the request of a parent made within five days following service of DFCS's proposed revised case plan, or upon the court's own motion, after a panel review. O.C.G.A. §15-11-58(k) and (l).

(d) If DFCS files a case plan that does not contain a plan for reunification, the court must conduct a permanency hearing and Subsection (p) specifically applies to this hearing, as is stated throughout the subsection relative to permanency hearings. O.C.G.A. §15-11-58(o).

(e) This narrow scope of SB 236 relative to the types of reviews and hearings to which the notice and opportunity to be heard is actually in accord with the ASFA regulations, which provide that the state must provide Caregivers "timely notice of and an opportunity to be heard in permanency hearings and six-month reviews held with respect to the child during the time the child is in the care of such" Caregiver. 45 CFR 1356.21(o). Neither the regulations nor the Final Rule mention any other hearings where permanency or the welfare of the child is an issue. Notwithstanding that regulatory provision, the Workgroup believes that good practice dictates that the custodian, foster parents, preadoptive parents and relative caretakers be given notice of, and an opportunity to be heard at, any hearing or review where the case plan or permanency is an issue. We believe that this expansive view gives the court the best and most complete information relative to the welfare of the child.

The bare language of the statute clearly permits a more narrow interpretation of the notice provision. However, the Workgroup believes that the children are best served by a more expansive view.

3. Does the Caregiver have the Right to Receive other Reports and Information?

Though not specifically dealing with notice and opportunity to be heard, SB 236 does add some provisions related to providing information to Caregivers, which is important because it makes their right to be heard more meaningful by ensuring that the Caregivers are better informed about the case. Specifically, SB 236 requires DFCS to provide Caregivers with information regarding the permanency goal and the services to be provided to the child. Following are the relevant provisions:

(a) When the court enters a supplemental order following the filing of the thirty day case plan, DFCS is required to provide the Caregiver with a copy of “those portions of the court approved case plan that involve the permanency goal and the services to be provided to the child.” Subsection (d).

(b) DFCS is also required to provide the Caregiver with a copy of those portions of the report of the judicial citizen review panel that involve the recommended permanency goal and the recommended services to be provided to the child. Subsection (k).

(c) Generally, when the court enters a supplemental order following a review, the Caregiver is NOT entitled to a copy of the order. However, if the court concludes that the current plan is no longer appropriate for the child’s needs, directs DFCS to submit another plan, and subsequently enters an order incorporating the revised plan, DFCS shall provide to the Caregiver a copy of those portions of the court approved revised plan that involve the permanency goal and the services to be provided to the child. O.C.G.A. §15-11-58(1)(3)

Again, these provisions place no burden on the court, but the courts need to be aware of these requirements, and certainly DFCS should be aware of, and timely comply with, these requirements.

4. What are the Notice Requirements?

The notice requirement under SB 236 is one of the more troubling provisions. Perhaps it would be instructive to note that the Workgroup included some of the proponents and authors of SB 236, so, even though there is no formal “legislative history” in Georgia, the Workgroup was able to hear first hand what the proponents of SB 236 were trying to accomplish.

Going back to pre-ASFA days, foster parents believed that they had a vested interest in the children placed with them and that they had current, meaningful information about the children placed with them, but that they were disenfranchised from being part of the decision making process relative to the children who were placed with them. They successfully lobbied for a voice in the process. The states, including Georgia, adopted the notice and opportunity to be heard provision of ASFA along with everything else. However, in practice, surveys and anecdotal information suggested that foster parents were not consistently being given notice of, and an opportunity to be heard at, reviews or hearings. A study conducted by the Barton Clinic found that 25% of the more than 150 foster parents surveyed said that they had never received notice of any hearing involving their foster child. Hence, the new provisions under SB 236. All the Caregivers wanted was a written notice of any hearings or reviews held with respect to children in their care where information was going to be received, or decisions made, about the case plan or permanency issues with respect to children in their care. They also wanted an

opportunity to be heard on those issues. They did not seek to be elevated to party status in any real way, including the formality of the notice to which they would be entitled. Now let's talk about what worked its way into the Code notwithstanding the intent of the proponents.

The relevant portion of Subsection (p) provides that:

In advance of each review or hearing to be held with respect to a child pursuant to this Code section, the court shall provide written notice or shall direct that a party shall provide written notice of such review or hearing, including their right to be heard at such review or hearing, to the [Caregivers] consistent with the form and timing of notice to parties... [Emphasis added.]

One could read this provision literally to provide that the term “form” means the identical form and manner of service as provided to parties. However, it was the consensus of the Workgroup, which included proponents and drafters of SB 236, that there is a difference in “form” and “manner”, and that the term “form” was not intended to include the manner of service to the extent that, where a party was required to be served with a summons or where personal service was required on a party, the Caregiver would have to be served with a summons or personally served. It was the consensus of the Workgroup that the phrase “consistent with the form” means that the notice to the Caregivers should include the same information as to the type of hearing, time, place, etc., as the notice to the parents. Accordingly, the Workgroup offers the following points as to the form and timing of the notice:

(a) The notice must be given in advance of the hearing. As obvious as that is, it is restated here because that was one of the primary goals of the legislation.

(b) The notice must be in writing.

(c) The notice must be consistent with the notice provided to the parents. The use of the term “consistent” suggests that it does not have to be in the exact form as the notice to the parents, but it must include at least the same information as is contained in the notice to the parents. There are a couple of suggested forms submitted with this report, and the Workgroup welcomes any other suggested forms.

(d) The notice does not have to be served in the same manner as service on the parties. Service of the notice of a hearing or review may be made in person or by mail, without regard for the manner of service required for the parents, or opted for by the court. It is not uncommon for the court to require personal service on a party of a notice of a hearing or review, even when service by mail on the party or the party's attorney would be legally sufficient, just to increase the likelihood that the parent will appear for the hearing or review. Certainly, under those circumstances, there would be no requirement to serve the Caregiver in the same manner.

(e) The notices must be given consistent with the timing of the notice to the parents. Taking a common sense, practical approach to the issue of timing, that does not mean that service of the notice has to be made at the exact same time as service on the parents. Oftentimes parents are served in court for the next hearing and the foster parents are not even present to be served. At a minimum, the Caregivers have a right to be served with the notice of the hearing or review at a time that is consistent with the minimum time limits provided by law for the parents.

(f) Specifically, the Caregivers are entitled, as are the parents, to notice at least five days in advance of a permanency hearing. O.C.G.A. §15-11-58(o)(4).

(g) The court may give the notice, or it may order a party (presumably DFCS) to give the notice. Where the court gives the notice, it may require DFCS, as a condition of the court giving the notice rather than requiring DFCS to give it, to provide the names and addresses of the Caregivers within time frames that make it possible for the court to give timely notice. One way to do that, and to accomplish other positive goals at the same time, would be to issue a standing order requiring DFCS to notify the court, the CASA and the attorney guardian ad litem of the name and address of any new Caregiver not later than the next working day following any change that is made in placement of a child in care. That way, the court will always have current information in order to comply with the notice provision.

(h) If the court is going to require DFCS to give the notice, then safeguards will need to be put in place to ensure that, where there is a new Caregiver after the notice has been given to a previous Caregiver, DFCS gives proper and timely notice to the new Caregiver. This is particularly important in those cases where the court serves the parties with a notice of all future hearings and reviews at the dispositional hearing.

Because of the many and variant ways courts do business in Georgia, it is impossible to come up with a one size fits all way to comply with these notice requirements. The courts and local DFCS are encouraged to understand the requirements as set forth herein, to take advantage of the suggested notices and orders provided with this report, and to tailor them to meet the needs of each given court.

5. What is meant by Opportunity to be Heard?

Because of evidentiary issues, this is also a troublesome area. However, it is at the heart of the notice and opportunity to be heard provision, so workable solutions must be found. Depending on the specific hearing or review being conducted, there are evidentiary implications involved in this issue. Obviously, the custodian, foster parents, preadoptive parents, and relative caretakers have a lot to offer in terms of: how the child is doing in the placement; special needs of the child; how the child acts immediately prior, and subsequent, to visits with parents; what the child talks about after visits; if, and to what extent, the child appears to feel secure in the current placement; whether the home may be considered as a permanent home; what the foster parent or relative caretaker is doing to support reunification; and other similar information. All of this depends on the nature and scope of the particular hearing or review. The Workgroup's suggestion that the right to be heard does not apply to adjudicatory hearings regarding deprivation or termination of parental rights eliminates some of the evidentiary problems. Further, because dispositional hearings and reviews are not typically as formal as adjudicatory hearings, it is easier to accommodate the Caregivers' right to be heard.

While Georgia law is not instructive on the issue of whether the Caregiver has a right to appear in person, ASFA provides some guidance. It is clear that, under Section 1356.21(o) of the Final Rule, there is no right to be heard in person. The comments provide as follows:

The requirement that States give foster parents, preadoptive parents and relative caretakers notice of and an opportunity to be heard affords these individuals with

a right to provide input to these reviews and hearings. However, it does not confer a right to appear in person at the review or hearing. The requirement can be met as the State sees fit, such as by notification to the individuals that they have an opportunity to attend the review or hearing and provide input, or notification that they can provide written input for consideration at the review or hearing. Since this provision does not make these individuals a legal party to the case and does not give them a right to appear at the review or hearing, it is up to the State to determine what documentation, if any, to provide, consistent with Federal and State confidentiality laws.

Taking into account all of the foregoing, and considering the value in giving Caregivers a meaningful opportunity to be heard and the practical problems of getting that done, the Workgroup drew the following conclusions about the opportunity to be heard provision:

(a) The Workgroup felt strongly that the court has the burden of ensuring that the Caregivers have an opportunity to be heard. The courts need to make that happen and the fact that it happened needs to be reflected in the order issuing from that hearing and in the findings and recommendations from the panels. In fact, Subsection (p) requires that, “the court’s order shall include findings of fact which reflect the court’s consideration of the oral and written testimony offered by the parents, the custodian of the child, the foster parents of the child, any preadoptive parents or relatives of the child providing care for the child who are required to be provided with notice and a right to be heard at any review or hearing” held under the Notice and Opportunity to be Heard Provision.

(b) The Caregiver should be able to be heard in as informal and non-threatening a manner as possible.

(c) Where the Caregiver does not want to be heard in person, he or she should be given the opportunity to be heard in some other way, preferably in a writing submitted to the court after the parties have had an opportunity to review the writing and to object. If an objection is made, the Caregiver should then be given the option of being heard on a different day if he or she is not present, and must be made subject to cross-examination. Forms are submitted with this report that facilitate the opportunity to be heard in writing if that is the pleasure of the Caregiver.

(d) The information from the Caregiver should be presented directly to the court. The opportunity to be heard should never be presented in such a manner as to allow the information to be filtered by any other person, such as by the casemanager or a guardian ad litem. Even where screening does not actually take place, it is harmful to the system for there to be even a perception that information is screened. However, caution should be exercised to ensure that information that is counter productive or inflammatory, with no probative value, is not presented, or is not presented in such a manner as to be disruptive to process or to the relationship between the Caregiver and the parents.¹

¹ At least one commenter argued that it is not possible to exclude inappropriate and inflammatory information without some form of screening, and that screening entails less potential for harm than unfiltered statements by the Caregiver.

PART B. THE RELATIVE (AND OTHER PERSON) SEARCH PURSUANT TO REVISED O.C.G.A. SECTION 15-11-55(a)(2)

The revisions to O.C.G.A. Section 15-11-55(a)(2) (or the “Relative Search Provision) originated as HB 41, and ended up considerably different in form than the original bill. The Relative Search Provision was driven by people who had meaningful relationships with children before they came within the child welfare system, but who believed that they were inadvertently or systematically excluded from consideration as placement resources for the children. The Relative Search Provision, although being only two sentences long, raises a lot of questions, some of which are addressed in this Part of this report. For ease of reference, throughout this report, the terms “relative search” and “relative” are used to refer to all persons for whom the search must be conducted.

1. What is the Effective Date of the Relative Search Provision, and how does that impact O.C.G.A. Section 15-11-103?

SB 236 added the new provision to Section 15-11-55 and deleted the existing provision in the termination statute, O.C.G.A. Section 15-11-103, which provided that, following termination of parental rights, “the court shall first attempt to place the child with a person related to the child by blood or marriage or with a member of the child’s extended family. A thorough search for a suitable family member shall be made by the court and the Department of Human Resources in attempting to effect this placement”. There were other significant changes relative to post-termination placement and custody options, which will be discussed in another section of this report. The issue for now is, what is the effective date of the Relative Search Provision, and how does that impact Section 15-11-103 relative to the responsibility of the court and DHR to search for relatives?

The effective date of SB 236 is July 1, 2003. The net effect of adding the new front-end relative search provision (within the first 90 days the child is in care), and deleting the tail end relative search provision (part of the termination procedure) is considerable confusion as to when relative searches have to be conducted in pending cases. That is the subject of the next two questions and discussions.

2. Within What Time Frame Must the Relative Search be Completed in Cases Arising on or after July 1, 2003?

The required search shall be completed within 90 days from the date on which the child was removed from the home. The phrase “removed from the home” means the date that the child is physically removed from the home, but also includes the date on which the child is constructively removed from the home, such as when a child is taken into protective custody while the child is hospitalized.

3. Within What Time Frames Must the Relative Search be Completed in Cases pending on July 1, 2003?

As noted earlier, that is not an easy question, and actually presents a number of questions because there are number of postures in which cases can be found on July 1st. Following are some of the scenarios with which courts and DFCS can expect to be confronted, together with the thoughts of the Workgroup:

(a) Termination of parental rights cases where there has been no finding under the revised Section 15-11-55 as to the relative search. Dealing with the easiest question first, even though the relative search provision has been deleted from O.C.G.A. §15-11-103, the thorough relative search must be conducted and documented in a court order. If, in any termination case, there is no documentation in the court record confirming that the relative search has been completed, then the court should inquire into whether the relative search has been completed, and, if so, document that fact in the court order. If the search has not been completed, then the court should order the search completed within a reasonable time certain (which should be a much shorter time period than 90 days), continue the hearing, and then make the required findings.

(b) Deprivation cases pending on July 1, 2003, in which there has been no dispositional hearing. Although the Relative Search Provision is silent on the issue, the Workgroup recommends that, in all cases pending on July 1, 2003, in which there has been no dispositional hearing, the relative search should be completed within 90 days following July 1, 2003, which is September 28th. Although this may create an initial burden on DFCS, the Workgroup believes that such a position is consistent with the spirit, if not the letter, of SB 236.

(c) Deprivation cases pending on July 1, 2003, in which there has been a dispositional hearing and transfer of legal custody pursuant to O.C.G.A. §15-11-55(a)(2). Generally, the Workgroup recommends that, in all such cases that are pending on July 1, 2003, the relative search should be completed by September 28th. Again, although this may create an initial burden on DFCS, the Workgroup believes that such a position is consistent with the spirit, if not the letter, of SB 236.

(d) Deprivation cases pending on July 1, 2003, in which there has been a dispositional hearing and reunification, or finalization of an alternate permanency plan other than termination and adoption, is likely to occur within three months. Given the tremendous burden placed on DFCS as to new cases and in playing catch-up on pending cases as recommended previously, the Workgroup does not recommend requiring the relative search in deprivation cases pending on July 1, 2003, if reunification, or finalization of an alternate permanency plan other than termination and adoption, is likely to occur within three months and if the alternative plan calls for placement with an already identified resource within the class of persons identified in O.C.G.A. §15-11-55.

The foregoing list of scenarios and recommendations attempts to include all of the various postures a case could be in on July 1, 2003, and to fill all of the gaps created by not having a transition provision in SB 236. To the extent that there is a scenario not covered by this report, or in applying the recommendation contained herein, the court and DFCS should find an equitable balance between interests of the children and families, the purpose and spirit of the Relative Search Provision, and finite resources with which DFCS has to accomplish its responsibilities under this new provision.

4. By Whom Must the Search be Conducted?

The Relative Search Provision states that the search shall be conducted “by the court and the Department of Human Resources”. If there was one thing on which all of the members of the Workgroup agreed, it was that the court was not going to play a primary role in conducting the

search. It was contemplated that the court would exercise oversight relative to this provision and that the court would encourage the solicitation of relative information when appropriate in court. It was agreed that, otherwise, DFCS would actually be responsible for conducting the search.

5. For Whom Must the Court and DFCS Search?

The Relative Search Provision states that the court and DFCS shall make a reasonably diligent search for “a parent or relative of the child or other persons who have demonstrated an ongoing commitment to the child.” Because O.C.G.A. §15-11-103 provides a list of person to be considered for placement following termination of parental rights, the Relative Search Provision should be read in concert with O.C.G.A. §15-11-103. Following is a list of the persons for whom the court and DFCS must search:

(a) A parent of the child. The term “parent” is defined in O.C.G.A. §15-11-2(10.3) to include the legal mother and legal father of the child. This would include a legal father who is not the biological father of the child, but would not include a putative father. However, if the putative father is the biological father of the child, he should be included in the search as a blood relative of the child (see subsection b below).

(b) A relative of the child. As noted previously, O.C.G.A. §15-11-103 provides that, following termination of parental rights, placement should be made with “a person related to the child by blood or marriage or with a member of the child’s extended family”. Reading the Relative Search Provision in concert with O.C.G.A. §15-11-103, it appears that the relative search is intended to be very broad. This would clearly include any relative by blood or marriage, although there is no express limit on the degrees of relationship. As noted in subsection (a) above, this would also include a biological father who is not the legal father, along with his relatives. It is the recommendation of the Workgroup that all relatives, by blood or marriage, be searched for within reason, without regard for the degree of kinship. Then it would be up to the court to balance the actual relationship and commitment to the child with the degree of the relationship between the relative and the child in determining whether the placement is in the best interest of the child. It would be inappropriate to overlook a distant relative of the child just because the relative and child were not related within a certain degree. Again, however, there must be some reasonable limitations on the scope of the search because some of the families are very large and scattered throughout the country.

(c) Other persons who have demonstrated an ongoing commitment to the child. This is the new provision under the Relative Search Provision, and was driven by people who had meaningful relationships with children before they came within the child welfare system, but who believed that they were inadvertently or systematically excluded from consideration as placement resources for the children. This group includes, but is not limited to, step-parents, ex-step-parents, fictive kin (i.e., a person who is known to the child as a relative, but is not, in fact, related by blood or marriage to the child), and significant others, that is people who have established parent-like relationships with the child and spouse-like relationships with the parent of the child. This could also include church members, neighbors, teachers, scout masters, parents of friends of the child, and a host of others². This provision is really wide open, but should be limited by practicality, with the focus always being on finding a placement for the

² It should be noted that DFCS does not interpret this provision as broadly as described herein, and that the inclusion of church members, neighbors, etc., raises special concern regarding confidentiality requirements.

child that, to the extent possible, will allow the child to maintain all of the positive relationships in the child's life. Although not specifically discussed in the meeting of the Workgroup, the members of the Workgroup recognize the tension between trying to preserve a child's positive relationships and trying to find a proposed custodian with an ongoing commitment to the child, against the right of the child and the families to not have their family troubles made public within the community. In addition, statutes on confidentiality may limit the extent to which a very broad based search can be conducted.

Hopefully, some clearer answers to these questions will be provided by DFCS policy when it is released in the near future.

6. What is a “Reasonably Diligent Search”?

The Relative Search Provision does not define what constitutes a reasonably diligent search. The opportunity to identify relative resources is there from the time the agency confirms abuse or neglect, and the search continues throughout the case to some extent, but certainly until the relative search is documented and filed with the court. At a minimum, the search should include:

(a) Interviews with the parents during the course of an investigation, while child protective services are provided, and while the child is in care and is supervised by the placement unit.

(b) Interviews with the child throughout the case.

(c) Interviews with relatives throughout the case. As DFCS talks with identified relatives as to their interest in being a resource for the child or parent, DFCS should also inquire as to the identity, location and interest of other relatives and other persons who have demonstrated an ongoing commitment to the child. Using this method, the search should mushroom as identified relatives continue to identify other relatives.

(d) Interviews with school teachers, counselors, day care providers, preachers, and others who may know of relatives not yet disclosed and of other persons who have demonstrated an ongoing commitment to the child.

(e) The use of data bases, including DFCS's own files and the Parent Locator Service.

(f) The First Placement/Best Placement provider, which already provides a great deal of this information.

(g) The attorney guardian ad litem and the CASA.

(h) Appropriate inquiry during the course of the hearings in the case.

(i) Any other reasonable means that are likely to identify relatives or other persons who have demonstrated a significant relationship with the child.

The difficult part is going to be reaching an appropriate balance between what is reasonable generally, and, particularly, what is reasonable given the posture of the case. By way of example, there are many cases where it is obvious up front that reunification is highly likely to be timely achieved. In such a case, one would question whether valuable casemanager time should be spent beating the bushes for relative resources when the chance of needing them is very remote. Requiring the search in cases where it is not necessary is one unfortunate side effect of moving the mandatory search for relatives to the front end in all cases. However, that may be where the “reasonably diligent” factor comes in, giving DFCS and the court some leeway on a case by case basis.

7. How and When Should the Results of the Search be Documented and Filed with the Court?

It is the understanding of the Workgroup that DFCS intends for the search to be formally documented on the Case Plan Report that is generated under CPRS, and that the Case Plan Report will be modified to provide for this documentation. This will have to be fleshed out as more information is made available. The activity involved in the search should also be reflected on Form 452's ("Contact Sheet") in the child's DFCS file, and on a cover sheet identified as a Form 450 (the "Basic Information Worksheet"), which should provide for some supporting documentation, and in the First Placement/Best Placement Assessment on Form 419 ("Background Information for State Agency Child").

Note that the search has to be documented in writing (presumably in the DFCS file as discussed before) and filed with the court. These seem to be two separate and distinct requirements. It was the consensus of the Workgroup that merely including the information in the Case Plan Report on CPRS does not meet the filing requirement. At a minimum, this portion of the Case Plan Report must be printed out and filed with the court. Of course, DFCS is required to file a proposed revised plan before the panel review, so the results of the search, if properly documented on CPRS, should be included. This is an area where there is a lot of room for inconsistency around the state. DFCS and the courts should work to find some common ground and establish mutually accepted, consistent methods for documenting and filing the results of the search.

The next question is, when do the results have to be filed with the court? The Relative Search Provision states that the results must be filed “at the time of the first review”. In the first place, filing the results at the first review is not acceptable to the courts because the Program Guidelines for the Permanent Homes for Children Program, which govern the review process, provide that all required reports be filed at least five (5) working days before the scheduled review. Program Guidelines for the Permanent Homes for Children Program, Chapter 2, Sections (F)(1) and (2). Secondly, the initial review does not have to be held until a date that is the earlier of six months following the child's placement, or 90 days following the entry of the dispositional order. O.C.G.A. §15-11-58(k). That could be considerably longer than 90 days from physical removal. Surely there was no intent to provide that the search must be completed within 90 days, but need not be filed for several weeks or months thereafter.

It was the consensus of the Workgroup that the search should be expedited and completed within sixty days following removal, where possible. To the extent necessary and appropriate, the search can continue and the report can be amended up to the expiration of the ninety day period immediately following removal.

8. How do the Courts Manage the Two Temporary Custody Provisions under Section 15-11-55?

This is another confusing area of the Relative Search Provision, more from the standpoint of semantics than anything else. The term “temporary legal custody” is used to describe the form of custody that is given both before and after the search has been conducted, filed with the court, and passed on by the court. The relevant part of the Relative Search Provision states that, “before transferring temporary legal custody in an order of disposition under this paragraph”, the search must be conducted, documented in writing, and filed with the court, but in the meantime, the “child may be placed in the temporary legal custody of” DFCS or any other appropriate person or entity. What does that mean in practice?

It is clear that an order granting temporary custody cannot become “final” until the relative search is completed, documented, filed with the court, and approved by the court. Does that mean then that the initial hearing where temporary custody is given to a person or entity is not a dispositional hearing? Does it mean that a full dispositional hearing must be held after the relative search is completed, documented, filed with the court, and approved by the court? The Relative Search Provision provides no clear answers. The existing procedure most closely resembling the Relative Search Provision is found in O.C.G.A. Section 15-11-39.2, entitled “Provisional hearing where summons served by publication; interlocutory effect of findings and order; final hearing”. That Code section provides for an interlocutory order of disposition to be entered in cases where service by publication has not been perfected, and for the order to become final at the final hearing, without hearing further evidence, if the party served does not appear at the final hearing. Drawing from that procedure, following is the recommended procedure for implementing this portion of the Relative Search Provision³:

(a) All reasonable efforts should be made to conduct the relative search prior to the initial dispositional hearing. The relative search requirement should be dealt with at the shelter care hearing, at least to the extent of giving DFCS some indication of the scope of search anticipated by the court given the facts of the case as they are known at that time. Where the search is completed and filed with the court, the court can approve the relative search and conduct a single, final dispositional hearing.

(b) Where the relative search cannot be completed, documented, filed with the court, and approved by the court prior to the initial dispositional hearing, the court, after hearing all of the evidence in the case, should enter a provisional order of disposition.

(c) Where the court enters a provisional order of disposition, the court should review the results of the relative search when they are filed with the court, and make a determination as to whether there is any reason not to make the provisional order a final order of the court. Arguably that should be done at a hearing called for that limited purpose, with proper notice given.

³ Some commenters have suggested that this procedure is more complex than necessary, and that the better method would be to make a temporary placement with DFCS (or other appropriate person or entity) pending completion of the relative search and subsequent dispositional order.

(d) From a procedural standpoint, there are at least two options. The simple procedure would be to schedule and notice the dispositional hearing as if it were going to be a final hearing, and to then make a provisional disposition at the hearing if the case is not ripe for final disposition. A final hearing would then be set and noticed. A second, but more complex procedure, would be as follows: (1) at the 72-hour hearing, the court would schedule the initial adjudicatory and dispositional hearings to take place at a date certain that is scheduled in the normal course of the court's operation; (2) the order entered following the 72-hour hearing, and the summons issued pursuant thereto, would provide that, should the relative search be completed at that time, filed with the court, and approved by the court, then and in that event, the hearing shall be a final hearing on disposition, and that should the relative search not be completed, filed with the court, and approved by the court, then and in that event, the final dispositional hearing shall take place at a date certain; and (3) if a provisional hearing is entered, a final hearing will be held and an order entered after the relative search is completed and filed with the court. In the event the second option is used, both dates should be set out in the order entered following the 72-hour hearing and in the summons. The order can also provide that the results of the search may be approved by the court at the dispositional hearing.

Using the language and the slightly modified procedure provided for in O.C.G.A. Section 15-11-39.2 provides some structure and accomplishes what was intended to take place under the Relative Search Provision.

One interesting question that arises if the Relative Search Provision is read literally is, does the provision prohibit the entry of a final order of disposition during the 90 days following removal of the child from the home? The answer is no. The court simply has the option of entering a provisional order of disposition if no final order of disposition has been entered. The more interesting question is, what happens if the search is not completed, filed with the court, and approved by the court within the 90 day period following removal? The court is without authority to enter a final order of disposition because of the failure of DFCS to timely complete the search and file the results with the court, but the court also has no authority to enter a provisional order beyond the 90 day period. There may not be an answer to this question, so DFCS and the court need to make certain that this circumstance does not arise.

9. Is the Relative Search Provision Limited to Foster Care Cases, or Does it Apply to "Granny Petitions"?

Except in cases involving delinquent or unruly children, the Relative Search Provision applies in every order transferring legal custody pursuant to O.C.G.A. §15-11-55(a)(2). That clearly includes what are referred to as granny petitions, private petitions, or third-party petitions. To strictly require DFCS to conduct diligent searches for relatives and others demonstrating a commitment to the child in every case would shut the agency down. That is where the court needs to put a lot of emphasis on the "reasonably diligent" element in the Relative Search Provision, and be reasonable in its oversight responsibilities. Where a relative has petitioned the court for custody of an allegedly deprived child, and that relative has been the caretaker of the child, and often of the mother of the child, the court could conclude, based on the evidence, that no further search is reasonably required. Although this issue needs further study and discussion, there should be balance that protects the best interest of the child, but does not waste valuable, finite resources. The bill's proponents will attempt to amend O.C.G.A. §15-11-55(a)(2) to delete the relative search requirement in private petitions.

PART C. EXTENDED TEMPORARY CUSTODY UNDER O.C.G.A. SECTION 15-11-58(i)

What has generally been referred to as the “permanent relative custody” provision under O.C.G.A. Section 15-11-58(i) (hereinafter referred to as “Subsection ‘i’”) has been the source of much debate on many issues since it was originally adopted in 1998. SB 236 significantly expanded Subsection “i” and also clarified some of the disputed points. The expansion of the types of placements that qualify for “permanent” custody represents a significant philosophical shift from prior practice. Following is a discussion of the changes in Subsection “i”.

1. What Do We Call the Type of Custody Created by Subsection “i”?

Since the original Subsection “i” was enacted, most people have commonly referred to the type of custody that was created therein as “permanent relative custody”. In terms of how the subsection was supposed to operate, that was a fairly accurate description, although we all knew that it was not necessarily permanent since the order is subject to modification and review and expires when the child becomes eighteen years of age.

So, now that we know that it is not “permanent”, and certainly is not limited to just relatives anymore, what do we call it? Although all of the judges, let alone all of the partners contributing to this report, probably cannot agree on a label, “extended temporary custody” is an accurate descriptive term that will be used throughout this report. All the court is ever authorized to give is temporary custody, except in termination cases. All Subsection “i” does is allow the court to extend the term of the order beyond the one or two year normal limitation on the term of orders. It does not allow the court to change the character of the custody. In this report, the term permanent relative custody will still be used in context to refer to the pre-SB 236 provisions.

2. What is the Effect of Shifting from the “Best Interests” standard to the “Detrimental to the Child” Standard?

Prior to July 1, 2003, the threshold question was whether the court had determined that reunification is not in the best of the child. With SB 236, however, the language has been changed so that the standard is no longer a determination that reunification is not in the child’s best interest, but a finding that “reasonable efforts to reunify a child with his or her family would be detrimental to the child in accordance with subsection (h)”. The proponents of the bill say that the language was changed to make it more ASFA compliant and to make it consistent with the language in Subsection “h”. However, it is clear that the best interest standard is much broader than the detrimental to the child standard. It begs the obvious to say that the detrimental to the child standard requires a finding of actual detriment to the child resulting from reuniting the child with the parents. Notice also that in the old language, what had to be shown was that reunification itself would not be in the best interest of the child, whereas the language in Subsection “h” requires a showing that the making of reasonable efforts to reunify the child with the parents would be detrimental. Those are two separate and distinct things. Changing the standard from best interest to detrimental to the child narrows the applicability of the Subsection and requires a different and more stringent level of proof.

3. Does Tying Subsection “i” to Subsection “h” Eliminate Private Petitions for Extended Temporary Custody?

Since the enactment of the original Subsection “i”, there has been a debate as to whether what was then referred to as permanent relative custody had to arise out of a case where the agency had custody of the child, or whether permanent relative custody could be granted in purely private deprivation petitions. That issue was substantially dealt with when the agency started offering relative subsidies because a relative could qualify for the subsidy only if a determination had been made under Subsection “h” that reasonable efforts to reunify would be detrimental to the child. Thereafter, the typical scenario was that the agency would initiate the case and obtain a finding under Subsection “h”, and then the relatives would file a petition for permanent relative custody, which the agency supported. The proponents of the position that permanent relative custody must arise out of an agency case and cannot be originally filed by a relative pointed to the location of the subsection immediately following the series of subsections that culminated in a finding of detriment under Subsection “h”. The proponents of the position that permanent relative custody could be granted in a private petition if the court found that such was in the best interest of the child pointed to the substantial differences in the language between the two statutes, as discussed in the preceding section of this report, and argued that compliance with Subsection “h” could not be a condition precedent to granting permanent relative custody under Subsection “i”. SB 236 resolves this issue in short order. Not only did SB 236 make the language in the two code sections consistent, it also expressly provided that the finding of detriment be made in accordance with Subsection “h”. That change effectively eliminates private petitions for permanent relative custody, or extended temporary custody as we refer to it herein.

4. What are the Other Conditions Precedent to Granting Extended Temporary Custody?

Whereas, prior to SB 236, the court had to only find that reunification was not in the best interest of the child, the court must now find that reasonable efforts to reunify a child with his or her family would be detrimental to the child and that “referral for termination of parental rights and adoption is not in the best interest of the child”. That is a new requirement and emphasizes again the preference under ASFA for securing permanency through adoption. There is no question that the court must consider adoption as the first option other than reunification, and that adoption must be eliminated as the best option before extended temporary custody may be granted. That includes careful consideration as to whether adoption by the person seeking extended temporary custody would be in the child’s best interest rather than allowing the less legally secure, and less preferred, option of extended temporary custody. That is a significant issue that should not be overlooked by the agency, the attorney guardian ad litem, the CASA, or the court.

5. Is the Order for Extended Temporary Custody Subject to Modification?

The issue as to whether the order for extended temporary custody is subject to modification was touched on earlier, but is repeated in this separate section because of the importance of the issue. In the early days following enactment of the original Subsection “i”, the Permanency Planning Committee, in an effort to make this form of relative custody more permanent, and thereby more ASFA compliant, took the position that the custody should be

changed only if there was a change in circumstances in the home of the legal custodian adversely affecting the welfare of the child. However, that was more of a policy statement than a statement of law, because O.C.G.A. Section 15-11-40(b), which is expressly referred to in Subsection “i”, provides that the court’s order may be changed, modified, or vacated on the ground that changed circumstances so require in the best interest of the child. Although this kind of placement is not legally secure and, for other reasons, is not exactly what was contemplated by ASFA, it is probably close enough to pass federal muster as an appropriate permanency option. Courts should be cautious in modifying orders for Extended Temporary Custody, and pay special attention to the single ground for modifying the order under 15-11-40(b), which is that “changed circumstances so require in the best interest of the child.” That is not the same standard as is required to prove initial deprivation, and there is no suggestion that current deprivation needs to be proved before a court may deny the motion to modify and to keep the extended temporary order in effect. A sufficient passage of time and the resulting bonding with the family having custody may be sufficient to meet the best interest standard.

6. Who is Eligible for Extended Temporary Custody?

Whereas, prior to July 1, 2003, only relatives could be granted extended temporary custody, now qualified individuals and many agencies are eligible. The relative provision is unchanged, but now three classes of persons or agencies have been added to the list of those eligible for extended temporary custody.

Under SB 236, the court may place a child in the custody of any nonrelative individual who is found by the court to be qualified to receive and care for the child. This change was excerpted from O.C.G.A. Section 15-11-55(a)(2)(A) with the intention of broadening it primarily to provide the ability for “fictive kin” and other bonded, but legally unrelated, persons to receive custody. The bill also had the effect of allowing putative fathers to receive extended temporary custody where they are found to be qualified to receive and care for the child. Essentially, there are no limitations as to who may be eligible except that the court has to find that person “qualified”.

The second new category of persons eligible for extended temporary custody is a “suitable individual custodian in another state pursuant to the provisions Code Section 15-11-89”. Notably, here, the term “suitable” is used rather than “qualified” as it relates to relatives and nonrelatives under the first two provisions. Since Section 15-11-89, which is included in Part 9 of the Code, Interstate Proceedings, is dependent on county funds to pay for the cost of supervision, it is seldom used, and is even less likely to be used for extended temporary custody.

The third class of those who may be considered for extended temporary custody consists of, “an agency or organization licensed or otherwise authorized by law to receive and provide care for the child which is operated in a manner that provides such care, guidance, and control as would be provided in a family home as defined in the court’s order.” This class of agencies or organizations will be referred to herein as an “eligible agency”. There are several points to consider relative to this provision, as follows:

(a) Custody can be granted to an eligible agency only if the court has made a finding that a placement with a relative, nonrelative, or suitable custodian outside the state is not in the child’s best interest. Note also that the court would have already had to have made a finding that

making reasonable efforts to effect reunification would be detrimental to the child, and that termination and adoption would not be in the child's best interest. Therefore, several permanency options have to be eliminated before placement with an eligible agency under Subparagraph (i) may be considered.

(b) The agency must be "operated in a manner that provides such care, guidance, and control as would be provided in a family home as defined in the court's order".

(c) Whenever a child is placed in the custody of an eligible agency, such agency is charged with the responsibility of notifying the court within ten days in the event its license is placed on probation, suspended, revoked, or surrendered and, in such event, the court shall conduct a judicial review within ten days of such notification to determine whether another placement should be made for the child. Of course, there will be very few placements with eligible agencies, and fewer still the instances when the eligible agency has its license placed on probation, suspended, revoked or surrendered. The Workgroup recommended establishing some sort of direct link with the Office of Regulatory Services and the courts so that the court will not have to rely on self-reporting.

Before granting custody to an eligible agency under this subsection, the court should make a finding that the agency is a family home in that: (a) it is in a family-like setting in terms of the physical environment; (b) the persons responsible for the care of the child are stable and are intended to care for the child for the duration of the child's stay in the placement; (c) the placement is intended to be permanent; and (d) the placement has the capacity to meet the ongoing, life-long developmental and special needs of the child.

Not many agencies can meet this definition. Even for those homes that can meet this definition, not many will likely ever seek custody because few of them can afford to meet this level of care for the child without state assistance, which is lost once custody is granted to the eligible agency. Although a very limited number of eligible agencies will avail themselves of this option, this provision was enacted with WinShape Homes in mind. WinShape homes meets the definition and it has the financial wherewithal to care for some of the children, not only during minority, but through college and thereafter.

To simplify the issue, a Model Court Order of the Permanency Planning Committee makes it easy to comply with the definition requirement. The model order prompts the person who drafts the court order to find that the placement will provide a family home because:_____. The blank can be filled in adequately simply by stating the things about that home that the court concludes makes it a family home, hopefully drawing on some or all of the characteristics listed herein.

7. What Changes were Made to the Review Provisions under Subsection "i"?

Subsection (i) still provides that an order granting extended custody to a relative should be examined by "study or review" every thirty-six months, but adds a requirement that other orders of extended custody should be examined annually. In addition, SB 236 deleted the requirement that a copy of the report be mailed to the parents.

8. What Part of Subsection (i) is Likely to have the Greatest Impact?

The provision that is likely to have the greatest impact is the provision allowing nonrelatives to petition for extended temporary custody. That provision opens the door for putative fathers, families of putative fathers, former step-fathers and step-mothers, former boyfriends or girlfriends, and other persons having a relationship with the child to seek extended temporary custody.

PART D. CHANGES TO THE TERMINATION STATUTE UNDER SB 236

One significant change to the termination statute is the removal of the “thorough search for a suitable family member” provision from the termination statute, and the replacement thereof with the relative (and other caregiver) search provisions discussed in Part B of this report. One other change was the addition of language requiring a “study by the probation officer or other person or agency designated by the court” for a person who is willing and “qualified to receive and care for the child”. No such study was previously required, although no judge would have given permanent custody under the prior law without first obtaining a home evaluation by the agency. This is really not a significant change. Following is a discussion of some of the more significant changes.

1. What Classes of Persons or Agencies were Added to the List of Persons or Agencies Eligible for Permanent Custody?

Previously, the only classes of persons or agencies eligible for permanent custody under the termination statute were relatives, DHR, and licensed child-placing agencies willing to accept custody for the purpose of placing the child for adoption. The only option, then, for a child who could not be placed with DHR or a private adoption agency for the purpose of facilitating an adoption was for permanent custody to be granted to a relative. Now, however, there are several other options:

(a) If the child is not placed with a relative, DHR, or a private adoption agency, then the court may commit the child to a suitable individual on the condition that the person becomes the guardian of the child pursuant to the juvenile court’s authority under O.C.G.A. Section 15-11-30.1. The timing and mechanics of this provision are not set out in the statute. The question is whether becoming the legal guardian is a condition precedent or a condition subsequent. If becoming a legal guardian is a condition precedent, then disposition should be withheld while a petition for guardianship is filed and the dispositional hearing and the hearing on the guardianship can be handled together. If becoming a legal guardian is a condition subsequent, then the court could commit the child to the prospective guardian and then have the custodian petition the court for guardianship. Although the post-termination review provision in O.C.G.A. Section 15-11-103(e) suggests that the guardianship should already be in place at the time the placement is made, it probably does not matter which way it is done so long as there is some oversight to ensure that the guardianship is timely finalized. If the guardianship is not finalized, then the court should make another placement authorized under the termination statute.

(b) If the child is not placed with a relative, DHR, or a private adoption agency, or with an individual who has obtained, or will obtain, a guardianship over the child, then the court may commit the child to the custody of DHR or to a licensed child-placing agency willing to

accept custody of the child for the purpose of placing the child in a foster home. This is a really odd provision in that it provides for long term foster care post-termination, not only within the custody of DHR, but also with a private child-placing agency.

(c) If no placement of the child is made under any of the foregoing provisions, then the court may commit a child to the custody of an agency or organization authorized by law to receive and care for children which is operated in a manner that provides such care, guidance, and control as would be provided in a family home as defined in the court's order. Note that this is the same language used in the extended temporary custody provision, and is not likely to be used except in extraordinarily rare cases and only with well established specialized agencies with long histories of stability.

(d) If no placement of the child is effected under any of the foregoing provisions, then the court may take other suitable measures for the care and welfare of the child. This is not a new provision though it is included herein to reflect its place in the revised statute.

Having all of these new dispositional alternatives represents a huge philosophical shift from prior law, and the full range of options is not expected to be used very often. Great care should be used in moving very far down the list of options.

2. Must the Dispositional Alternatives be Considered in the Listed Order of Preference?

Unlike the extended temporary custody provision, the termination statute provides a very clear hierarchy of permanency options. Each option must be considered by the court and found to be inappropriate before the court can move to the next option.

3. To Whom Must the Court Provide a Copy of the Order Terminating the Parental Rights?

Although this is not a new requirement, the statute was changed to correctly state the name of the agency to whom the report is to be sent, which is the Office of Adoptions of the Department of Human Resources, and is included herein as a reminder of the court's obligation to send a copy of the termination order within 15 days following the filing of the order.

4. Were the Post-Termination Review Requirements Changed by SB 236?

The post-termination review provisions were not changed with respect to the pre-existing dispositional alternatives, but new requirements were created for the new alternatives in which a child may be placed with a guardian or in long-term foster care with an eligible agency or organization. In those cases where the child was placed with a guardian of the child pursuant to Paragraph (3) of Subsection (a), the guardian shall report to the court in the same manner and at the same frequency as is required for guardians of the person of minors appointed by the judge of the probate court. In those cases where the child was placed with an agency or organization authorized by law to receive and care for children, the court shall, at least yearly, review the circumstances of the child to determine that the placement continues to be in the child's best interest.

5. Are the New Classes of Individuals and Agencies that Have Been Made Eligible for Permanent Placement Under SB 236 Appropriate Permanency Options Under ASFA?

Concern was expressed by some members of the Workgroup that any option under the termination statute that does not promote either adoption or relative custody is inconsistent with at least the spirit of ASFA, if not the letter. Of particular concern is the provision that allows a child to be committed to DHR or to a private child care provider for the purpose of placing the child in long-term foster care. There may be a place for long-term foster care placement in rare cases pre-termination. However, it is difficult to imagine how it would be in a child's best interest to terminate all legal connections to the child's family, that is to make the child an orphan, and then to place the child in long-term foster care.

PART E. CONCLUSION

SB 236 represents the most significant changes to O.C.G.A. Sections 15-11-58 and 15-11-103 since the code was amended to bring it into compliance with ASFA in 1998. The number and types of permanency options have been increased, the rights of foster parents and other caregivers to notice and opportunity to be heard have been clarified, the problem of having relatives show up late in the process has been dealt with. As SB 236 has been held up to the light in the calm that can exist outside of a legislative session, the need for some technical correction has been recognized and discussed. The Workgroup has committed to work together with the Governor's Office to make those technical corrections so that the bill can accomplish what it was intended to accomplish. Any and all suggestions as to how that can happen are welcomed.

APPENDIX: SAMPLE ORDERS AND NOTICES

- A. Summary of Requirements for Notice and Opportunity to be Heard
- B. Standing Order Concerning Contact Information for Foster Parents, et. al.
- C. Standing Order Concerning Notice to Foster Parents, et. al.
- D. Notice of Review or Hearing
- E. Notice to Custodians, Foster Parents, Preadoptive Parents, and Relative Caretakers
- F. Sample Language for Use in Dispositional Orders

NOTICE AND OPPORTUNITY TO BE HEARD

As amended during the 2003 legislative session, O.C.G.A. §15-11-58 provides, in new subsection (p):

"In advance of each review or hearing to be held with respect to a child pursuant to this Code section, the court shall provide written notice or shall direct that a party shall provide written notice of such review or hearing, including their right to be heard at such review or hearing, to the custodian of the child, to the foster parents of the child, and to any preadoptive parents or relatives providing care for the child, consistent with the form and timing of notice to parties; provided, however, that this provision shall not be construed to require a custodian, foster parent, preadoptive parent, or relative caring for the child to be made a party to the hearing solely on the basis of such notice and opportunity to be heard."

The following table summarizes the various hearings and reviews that may occur during a deprivation case and indicates those proceedings for which foster parents, etc., are entitled to notice and an opportunity to be heard, those for which the Workgroup has recommended notice be provided, and those for which notice is neither required nor recommended.

Proceeding	Notice and Opportunity to be heard		
	Required	Recommended	Not required
Shelter care order pursuant to 15-11-46			X
72-hour hearing pursuant to 15-11-49(c)(3)			X
Adjudicatory hearing pursuant to 15-11-39(a)			X
Dispositional hearings on adjudication of deprivation		X	
Caseplan meeting pursuant to 15-11-58(b)			X
Hearing by request under 15-11-58(d) following submission of caseplan	X		
Hearing pursuant to 15-11-58(e) following recommendation of non-reunification	X		
Review of permanent placements pursuant to 15-11-58(i)			X
Review of permanent placement pursuant to 15-11-58(i)(3) following revocation of a license	X		
Judicial or panel review pursuant to 15-11-58(k)	X		
Extension hearings pursuant to 15-11-58(n)	X		
Permanency hearings pursuant to 15-11-58(o)	X		
Termination hearings		X	
Dispositional hearings following TPR		X	
Post-TPR reviews pursuant to 15-11-103(e)		X	

Effective July 1, 2003

IN THE JUVENILE COURT OF
 _____ COUNTY, GEORGIA

**STANDING ORDER CONCERNING CONTACT INFORMATION FOR FOSTER
 PARENTS, ET. AL.**

The Court HEREBY ORDERS the _____ County Department of Family and Children Services to provide current contact information, including name and address, for the following persons or entities entitled to notice and an opportunity to be heard at reviews and hearings pursuant to O.C.G.A. §15-11-58(p): the custodian, foster parents, preadoptive parents, and relatives providing care for the child. Such information shall be provided to the court, the CASA, and the attorney guardian ad litem immediately after the Department receives the information.

This _____ day of _____ 20____.

 Judge/Associate Judge of
 _____ County Juvenile Court

IN THE JUVENILE COURT OF
 _____ COUNTY, GEORGIA

STANDING ORDER CONCERNING NOTICE TO FOSTER PARENTS, ET. AL.

Pursuant to the requirements of O.C.G.A. §15-11-58(p), the Court HEREBY DIRECTS that the _____ County Department of Family and Children Services shall provide written notice of the date and time of each review or hearing in this Court to the subject child's custodian, foster parents, preadoptive parents or relatives providing care for said child as those persons or entities become known to the Department. This written notice shall be provided on the form attached hereto and shall be delivered by hand or by regular U.S. Mail at the same time that the parties are notified of the hearing or review. Written notice concerning a permanency hearing must be provided at least five days in advance of the permanency hearing.

This _____ day of _____ 20____.

 Judge/Associate Judge of
 _____ County Juvenile Court

IN THE JUVENILE COURT OF
_____ COUNTY, GEORGIA

In the Interest of

CASE NUMBER _____

SEX _____

DOB _____ AGE _____

A Child.

NOTICE OF REVIEW OR HEARING

To: (name and address):

Status of person receiving notice:

____ Child(ren)'s Custodian

____ Child(ren)'s Foster Parent(s)

____ Child(ren)'s Preadoptive Parent(s)

____ Relative Caring for Child(ren)

Date and time of Hearing or Review:

Pursuant to O.C.G.A. §15-11-58(p), you are hereby notified that a review or hearing will be held regarding the above-named child at the above-stated date and time. The hearing or review will take place at the _____ County Juvenile Court, located at _____

_____. You have the right to be heard at such review or hearing. You are not *required* to attend unless you have been subpoenaed. If the proceeding is a permanency hearing, you are hereby advised that the permanency plan recommended by DFACS will be submitted to the Court for consideration to become an order of the Court. You are not a legal party to the case and may not be permitted to remain in the courtroom throughout the entire proceeding. However, you may present written or oral information to the Court. If you present written or oral information, you may be required to testify and be subject to cross-examination. If you choose to attend this review or hearing, please be sure that Court staff knows you are present and desire to be heard by submitting the form below to the court clerk when you arrive at court.

Thank you for taking care of a child or children under the supervision of this Court.

My name is _____

I wish to be heard in the case involving (name of child) _____

**NOTICE TO CUSTODIANS, FOSTER PARENTS,
PREADOPTIVE PARENTS, AND RELATIVE CARETAKERS**

DATE: _____ CASE NO.: _____

NAME:

ADDRESS:

The Troup County Juvenile Court will conduct _____ a hearing, _____ a review by the Citizens Review Panel, or _____ a review by the judge with respect to the following named children: _

The hearing will be in the Juvenile Court Courtroom at ___ Church Street, LaGrange, Georgia on _____, at _____ .m.

IMPORTANT NOTICE:

Your attendance at this review or hearing: ____ is, or ____ is not required.

Although you are not a party to this case, you have the right under federal and state law (or are given the right by the Court), to notice of this hearing and an opportunity to provide information to the court or citizen’s review panel, at your election, either:

_____ In person. You will be given an opportunity to talk to the judge or the panel, but you will not be allowed to be present at the hearing or review while other people testify. If you want to talk to the judge or panel in person, please check this box to the left and give the form to the bailiff, or advise the bailiff or court staff that you are present.

_____ In writing. Using the space on the back of this form, or a separate sheet or sheets of paper, you may submit in your own words anything you think the court should know about the child in your care. If you elect this option, please check the box to the left.

Please be advised that, if you submit oral or written information to the Court, you may be required to testify and be subject to cross examination.

If the hearing is a permanency hearing, you are hereby advised that the permanency plan recommended by DFCS will be submitted to the Court for consideration to become an order of the Court.

Thank you for taking care of a child or children under the supervision of this Court.

If you have any questions, please call the court at (706) 883-1735.

INFORMATION FOR THE COURT OR THE PANEL

Using the space on the back of this form, or a separate sheet or sheets of paper, you may submit in your own words anything you think the court should know about the child in your care, including how the child is doing in your home, how the child acts before and after visitation with the child's parents, what the child says about his or her parents, what you think is best for the child now and in the future, and anything else about the safety and wellbeing of the child.

SAMPLE LANGUAGE FOR USE IN DISPOSITIONAL ORDERS

3.

() Pursuant to O.C.G.A. §15-11-58(p), the child(ren)'s custodian, foster parent(s), preadoptive parent(s), or relative(s) caring for the child(ren), was/were notified of the date and time of the Hearing.

() *The child(ren)'s custodian, foster parent(s), preadoptive parent(s), or relative(s) caring for the child(ren), was not / were not notified of the date and time of the Hearing as follows: _____*

4.

Present in Court were:

() Mother _____ () Attorney _____

() Father
(Legal) _____ () Attorney _____

(Putative) _____ () Attorney _____

() DFACS _____ () SAAG _____

() Guardian ad Litem _____

() Foster Parent(s) / Preadoptive Parent(s) / Caregiving Relative _____

who was/were present outside the Courtroom / in the Courtroom.

() Other _____

The following part(y)(ies) was/were not present: _____

He/She/They was/were (not) notified of the proceedings as follows: _____

5.

Oral or written testimony or statements were offered by: the mother, the father, the custodian, the foster parent, the preadoptive parent, the relative caring for the child (specify): _____

6.

The Court makes the following findings of fact after consideration of the oral or written testimony of the child(ren)'s parent(s), custodian(s), foster parent(s), preadoptive parent(s), or the caregiving relatives: _____