

*Are we embedded in the  
structure of a social system...*

post-18 services for  
undocumented youth



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CWLS Training 5/4/2023

*“We should hope not for a colorblind society but instead for a world in which we can see each other fully, learn from each other, and do what we can to respond to each other with love.*

*That was King’s dream—a society that is capable of seeing each of us, as we are, with love. That is a goal worth fighting for.”*

“Our understanding of **racism** is therefore shaped not by the most extreme expressions of individual bigotry, not by the way in which it functions naturally, almost invisibly (*and sometimes with genuinely benign intent*), **when it is embedded in the structure of a social system.**”

# We need to work together!

## Excel in our field

- ▶ CWLS
- ▶ Know your law
- ▶ Know your opponent
- ▶ Know your venue
- ▶ Advocate fiercely, even when unpopular

## Excel as a field

- ▶ Lend a hand
- ▶ Train others
- ▶ Share knowledge
- ▶ Don't in-fight
- ▶ Don't be afraid

**The fundamental purpose of the juvenile court [of Georgia] is to hear and adjudicate proceedings concerning children. O.C.G.A. §15-11-1**

- i. To secure for *each child who comes within the jurisdiction of the juvenile court* such care and guidance... as will secure his or her moral, emotional, mental and physical welfare. [emphasis added]
- ii. The intent of the General Assembly to preserve and strengthen family relationships, countenancing the removal of a child from his or her home only when state intervention is essential to protect such child and enable him or her to live in security and stability.
- iii. In every proceeding, this chapter seeks to guarantee due process of law, as required by the Constitution of the United States and the State of Georgia, through which every child... are assured fair hearings at which legal rights are recognized and enforced.
- iv. Above all, this code shall be liberally construed to reflect that the paramount child welfare policy of this state is to determine and ensure the best interests of all its children.

**Juvenile court shall have exclusive original jurisdiction over juvenile matters and shall be the sole court for initiating action concerning any child who is alleged to be a dependent child. O.C.G.A §15-11-10(1)(C)**

**A. Dependency proceedings**

- i.** Relates to cases involving children who have been abused or neglected by the adults responsible for their well-being.
- ii.** Dependency clarifies proceedings stressing timeliness, permanency and protection
- iii.** Juvenile Court should focus on the child's circumstances and not parental fault... juvenile courts primary responsibility is to consider and protect the welfare of the child whose well-being is threatened.

► “dependency” cases, instead of deprivation, under new code will stress the child's vulnerable relationship with the court.

# Subject Matter Jurisdiction exclusive for *any* child believed to be dependent.

- a. Whenever a best interest determination is required, the court shall consider and evaluate all of the factors affecting the best interest of the child in the context of the child's age and developmental needs.

- ▶ In re J.J.X.C., 318 Ga. App. 420 (2012)
- ▶ O.C.G.A. §15-11-26

# As Dependency relates to vulnerable immigrant children

U.S. Congress created relief requiring a bifurcated process to protect abused, neglected and abandoned immigrant youth in where the statute affirms the institutional competence of state courts as the appropriate forum for child welfare determinations and a child's best interest.

- ▶ Immigration and Nationality Act, 101(a)(27)(J); 8 U.S.C.A. 1101(a)(27)(J); 8 C.F.R. 204.11



# Currently DFCS argues:

***We can't help  
[illegal undocumented immigrant children]  
because it's against the law***

- ▶ DFCS Policy 13.1
- ▶ OCGA 50-36-1



**Child Advocates must argue**

- ▶ READ THE LAW
- ▶ DFCS policy is NOT the law
- ▶ Exceptions to § argument
- ▶ Separate, but equal, still isn't tolerable

# DFCS POLICY 13.1 - let's break it down

- ▶ DFCS Policy 13.1 is the “policy implementation” of how to deliver independent living programs (post 18)
  - ▶ 15-11-231 permanency, incriminates 50-36-1 verification lawful presence
  
- ▶ The Division of Family and Children Services (DFCS) shall:
  - ▶ 1. Deem youth ages 14-21 eligible for the Independent Living Program (ILP) when the following criteria are met:
    - ▶ a. The youth has been adjudicated as dependent or as a child in need of services (CHINS) by a Georgia Juvenile Court; and
    - ▶ b. The youth is or was in foster care for at least six months^ prior to reaching the age of 18;
    - ▶ c. Youth 18-21 is a citizen or a permanent legal resident of the United States and a legal resident of Georgia.
  - ▶ NOTE: If the youth is not a citizen or permanent legal resident of the United States by their 18'^ birthday, they are no longer eligible for ILP services. However, eligibility may be reassessed when the youth obtains a legal immigration status, such as Special Immigrant Juvenile Status (SIJS) (see Practice Guidance: Special Immigrant Juvenile Status (SIJS)).

# DFCS VOL PLACEMENT AGREEMENT

- ▶ Mirrors OCGA 15-11-340 (law)

- ▶ Does not follow DFCS Policy 13.1 (not law)

•(a) A child may receive extended care youth services from DFCS. In order to receive such services, he or she must be between 18 and 21 years of age, sign a voluntary placement agreement with DFCS, **and meet objective eligibility criteria established by DFCS**, which shall include one or more of the following requirements:

- (1) Be completing secondary education or a program leading to an equivalent credential;
- (2) Be enrolled in an institution which provides postsecondary or vocational education;
- (3) Be a participant in a program or activity designed to promote or remove barriers to employment;
- (4) Be employed for at least 120 hours per month;
- (5) Be employed for 80 hours per month, provided that he or she is also engaged in one of the activities described in paragraphs (1) through (3) of this subsection or can only work 80 hours per month due to a medical condition; or
- (6) Be incapable of doing any of the activities described in paragraphs (1) through (5) of this subsection due to a medical condition.

# Rest of OCGA 15-11-340

- (b) When a child is receiving extended care youth services from DFCS, a DFCS case manager and staff, other representatives of such child and, as appropriate, such child shall develop a transition plan that is personalized at the direction of such child, including an option to execute a durable power of attorney for health care, health care proxy, or other similar document recognized by law with respect to health care and specific options on housing, health insurance, education, local opportunities for mentors and continuing support services, and workforce supports and employment services, and is as detailed as such child may elect. Such transition plan shall be completed within 30 days of the child agreeing to such services and shall be updated as required by this article.
- (c) A child may terminate a voluntary placement agreement and stop receiving extended care youth services at any time.
- (d) Every 60 days, a DFCS case manager shall determine if a child is still eligible for extended care youth services. If DFCS determines that a child is no longer eligible for extended care youth services, DFCS may terminate the voluntary placement agreement with such child and stop providing extended care youth services. DFCS shall provide written or electronic notice to such child regarding such termination and to the court that approved such services.
- (e) A child who is within 12 months of becoming 21 years of age shall not be permitted to sign a voluntary placement agreement with DFCS for extended care youth services.

A child may receive extended care youth services from DFCS. In order to receive such services, he or she must be between 18 and 21 years of age, sign a voluntary placement agreement with DFCS, **and meet objective eligibility criteria established by DFCS**, which shall include one or more of the following requirements:

## ob·jec·tive

*adjective*

1.1.

(of a person or their judgment) **not** influenced by personal feelings or opinions in considering and representing facts.  
"historians try to be objective and impartial"

- ▶ **What is objective and example?**
  - ▶ An objective is something you plan to achieve. A military objective is the overall plan for a mission. The objective for a bake sale is to raise money. If your objective is to learn a new word, you have succeeded. An objective is the point of something.
  - ▶ Kind of like the objective of juvenile code is to protect vulnerable children...
  
- ▶ **What is opposite? What is objective vs subjective?**
  - ▶ Subjective is based on or influenced by personal feelings, tastes, or opinions.

# POLICY sometimes includes actual law...

## PRACTICE GUIDANCE

### Fair Hearings

A fair hearing request may be completed by an individual, their representative or community based care provider when DFCS takes any action that affects participation in a federally funded service (Titles IV-E or IV-B under the Social Security Act). The fair hearing request may be based on the denial of assistance, delay in acting on a request for assistance or a reduction or termination of services provided (see policy 13.11 Independent Living Program: Post Foster Care Services).

### Special Immigrant Juvenile Status (SIJS)

The Georgia Security and Immigration Compliance Act (GSICA) provides regulations concerning immigrants in Georgia who do not have a lawful US immigration status. It is unlawful for the Division of Family and Children Services to provide federal, state, or local benefits to undocumented immigrants and these regulations can directly affect youth that are discharged from foster care. In order to ensure that a youth exiting from foster care has availability to benefits as they transition into adulthood, any youth that enters foster care without lawful US immigration status should begin the application process for a lawful US immigration status, such as the Special Immigrant Juvenile Status (SIJS) immediately upon entering foster care. The SIJS application and approval process may take up to two years to finalize and SIJS must be attained prior to a youth's 18<sup>th</sup> birthday to be eligible for continuing benefits.

### Youth Ages 18-21

Youth ages 18–21 that consent to continue to receive foster care assistance up to age 21, in the Extended Youth Support Services (EYSS) program may remain eligible to receive ILP services. When a youth reaches the age of 18 he or she may elect to remain in a foster care setting without interruption, and continue to receive independent living services if eligibility criteria was previously met. Those youth between the ages of 18-21 who have elected to exit foster care may request to return and participate in the EYSS program within six months, if the youth meets the basic months of exit but prior to age 21. Any requests beyond the six-month period for EYSS are subject to DFCS approval. Upon returning to the EYSS program eligibility criteria then they may receive ILP Services immediately. Youth between the ages of 18-21 who are not participating in the EYSS program may also be eligible for certain independent living program services, such as financial or educational supports.

# OCGA 50-36-1

## Requires verification of status for access to public benefits.. There are exceptions

(c) This Code section shall be enforced without regard to race, religion, gender, ethnicity, or national origin.

(d) Verification of lawful presence under this Code section shall not be required:

(1) For any purpose for which lawful presence in the United States is not required by law, ordinance, or regulation;

(2) For assistance for health care items and services that are necessary for the treatment of an emergency medical condition, as defined in 42 U.S.C. Section 1396b(v)(3), of the alien involved and are not related to an organ transplant procedure;

(5) For programs, services, or assistance such as soup kitchens, crisis counseling and intervention, and short-term shelter specified by the United States Attorney General, in the United States Attorney General's sole and unreviewable discretion after consultation with appropriate federal agencies and departments, which:

(A) Deliver in-kind services at the community level, including through public or private nonprofit agencies;

(B) Do not condition the provision of assistance, the amount of assistance provided, or the cost of assistance provided on the individual recipient's income or resources; and

(C) Are necessary for the protection of life or safety;

# Corresponding Federal Law

Georgia code mirrors Federal code and all exceptions



# DFCS LEGAL ARGUMENT

- ▶ We'd like to but our hands are tied
  - ▶ Our "policy" says we cannot
  - ▶ We don't recognize any exceptions
  - ▶ We've always done it this way
  - ▶ We
  - ▶ Just
  - ▶ Don't
  - ▶ care
- ▶ WHY?

LETS DISCUSS



# DFCS INDEX OF 3 VOLUME POLICY

- ▶ 3 volumes
- ▶ Download them and read them
- ▶ Use them
- ▶ Argue that POLICY is not LAW
- ▶ Use the Law
- ▶ Follow through with appeal/ fair hearings
- ▶ Advocate for Judges to hold DFCS accountable

# DFCS 15.0 , 15.2 ICPC

There is no ICPC for OTHER COUNTRY TRANSFER..

that's called deportation and a power reserved solely for the Immigration Court under Department of Homeland Security Executive Office of Immigration Review and governed under the SUPREMECY POWER

# DFCS 1.13 Sex Trafficking

1.13 Sex Trafficking Overview

## PRACTICE GUIDANCE

Sex trafficking is one form of human trafficking. Human trafficking is most commonly for the purpose of sex trafficking or sexual servitude, forced labor or for the extraction of organs or tissues, including surrogacy. It is a serious public health problem that negatively affects the well-being of individuals, families, and communities. Human trafficking occurs when a trafficker exploits an individual with force, fraud, or coercion to make them perform commercial sex or work. This type of violence exploits women, men, and children across the United States and around the world.

Perpetrators of human trafficking often target people who are poor, vulnerable, living in an unsafe situation, or searching for a better life. Many victims are women and girls, though men and boys are also impacted. Victims can come from all backgrounds, races, ethnicities, sexual orientations, gender identities, citizens, non-citizens, and income levels. Victims can become trapped in different locations and situations, and do not have to be physically transported between locations to be victimized. Victims are often controlled through assault, threats, false promises, perceived sense of protection, isolation, shaming, and debt.

Youth who are victims of sex trafficking are often seduced, coerced or forced into trafficking. For example, youth with a history of abuse and neglect or who are homeless are more likely to be exploited. Traffickers will identify a youth's vulnerabilities and prey upon their normal desires for love, attention, or material items, and the meeting of basic needs, such as shelter or food. Many victims of sex trafficking do not see themselves as victims and will make efforts to protect their abuser. Victims of sex trafficking may have suffered significant psychological,

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1.13 Sex Trafficking Overview

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physical and sexual abuse and may exhibit anxiety, depression, and post-traumatic stress syndrome.

Consequences of sexual violence, including sex trafficking, can be immediate and long term, including physical and relationship problems, psychological concerns, and chronic health outcomes.

# DFCS 3.7 Human Trafficking

- ▶ DFCS Policy 13.1
- ▶ OCGA 50-36-1

# DFCS 3.8 Unaccompanied Homeless Youth

- ▶ DFCS Policy 13.1
- ▶ OCGA 50-36-1

# DFCS 10.17 Service Needs of an Immigrant Child

## **When seeking SIJ status for an undocumented immigrant child, the SSCM will:**

1. Determine if SIJ or another immigration status is the most appropriate for the child based on the circumstances. (See Legal Services in Practice Guidance)
2. Petition the Juvenile court (before the child reaches 18 years of age) to certify SIJ eligibility via a qualifying court order that includes the following four findings required to certify SIJ status eligibility:
  - a. The child is unmarried and dependent on the court or legally committed to or placed under the custody of either a state agency/department or an individual or entity appointed by a state or Juvenile Court. (This can include adoption or guardianship).
  - b. Reunification with one or both of the child's parents is not viable due to abuse, neglect, abandonment, or similar basis under state law.
  - c. It would not be in the child's best interest to be returned to his/her country of origin.
  - d. The child is under 21 years old.

**NOTE:** The SAAG may assist in the preparation of the court order, but is not authorized to provide immigration status relief services.

## **When an immigrant child in foster care approaches 18 years of age, the SSCM will:**

1. Schedule a transition planning meeting within six months of an immigrant child's 18<sup>th</sup> birthday. At a minimum, the child, the Independent Living Specialist (ILS), the child's placement provider, and the child's Consular official will be invited to participate.
2. Develop a transition plan that includes goals to support the child's self-sufficiency upon exiting foster care at 18 years of age.

**NOTE:** In accordance with the Georgia Immigration and Security Act, no state or local government funding is available for undocumented immigrant children once they reach 18 years of age unless/until they obtain a legal immigration status.



# DFCS 10.22 Permanency Planning

- ▶ DFCS Policy 13.1
- ▶ OCGA 50-36-1
  
- ▶ APPLIES TO UNDOCUMENTED CHILDREN

# DFCS 10.23 Case Planning

- ▶ DFCS Policy 13.1
- ▶ OCGA 50-36-1
  
- ▶ APPLIES TO UNDOCUMENTED CHILDREN

# DFCS 13.1 ILP

- ▶ DFCS Policy 13.1
- ▶ OCGA 50-36-1
  
- ▶ APPLIES TO UNDOCUMENTED CHILDREN

# DFCS VOL PLACEMENT AGREEMENT

- ▶ DFCS Policy 13.1
- ▶ OCGA 50-36-1
  
- ▶ APPLIES TO UNDOCUMENTED CHILDREN

# CASE LAW THAT SUPPORTS PROTECTING ALL VULNERABLE CHILDREN EQUALLY

- ▶ In re JJXC
- ▶ In re M.J.H

# NEW DFCS Argument on why they shouldn't even have to take these kids into care

- ▶ In the interest of A.N., 281 Ga. 58 (2006)

# *After in re A.N.*

- ▶ Georgia General Assembly enacted **O.C.G.A 15-11-215**, GA Laws 2007, p590
- ▶ Solidifies power of Juvenile Court Judges to oversee actions of state agency in decisions on placement

# So what is the Problem ...

- ▶ Love or Hate
- ▶ Fear
- ▶ ?



“racial caste systems do not require racial hostility or overt bigotry to thrive.

They need only racial indifference, as Martin Luther King Jr. warned more than forty-five years ago.”





Solution is... we need to work together to uphold the law and thwart disparate treatment!

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