

House Bill 1508

By: Representatives Wiedower of the 119th, Gunter of the 8th, Gravley of the 67th, Gaines of the 117th, and Ehrhart of the 36th

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 11 of Title 15 of the Official Code of Georgia Annotated, relating to the
2 Juvenile Code, so as to expedite and prioritize processes for the termination of parental rights
3 in certain cases involving parental incapacity and child maltreatment; to revise and to provide
4 for definitions; to revise circumstances for when reasonable efforts by DFCS are not
5 required; to revise requirements for nonreunification hearings; to provide for legislative
6 findings; to provide for related matters; to provide for an effective date; to provide for
7 applicability; to repeal conflicting laws; and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

10 The General Assembly finds that although the efforts of this state's child welfare
11 professionals to engage with families and resolve issues of maltreatment through the use of
12 appropriate services is proper and fit, there are certain situations in which the child's right to
13 grow and thrive in a safe, loving environment and to be cared for by a responsible,
14 trustworthy adult must take precedence. The General Assembly therefore finds it necessary,
15 in appropriate situations, to expedite safe, stable, and permanent placement with relatives or

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16 adoptive families for those children who have suffered significant and chronic abuse at the
17 hands of a parent.

18 **SECTION 2.**

19 Chapter 11 of Title 15 of the Official Code of Georgia Annotated, relating to the Juvenile
20 Code, is amended by revising paragraphs (1) and (5) of and adding a new paragraph to Code
21 Section 15-11-2, relating to definitions, as follows:

22 "(1) 'Abandonment' or 'abandoned' means any conduct on the part of a parent, guardian,
23 or legal custodian showing an intent to forgo parental duties or relinquish parental claims.

24 Intent to forgo parental duties or relinquish parental claims may be evidenced by:

25 (A) Failure, for a period of at least six months, to communicate meaningfully with a
26 child;

27 (B) Failure, for a period of at least six months, to maintain regular visitation with a
28 child;

29 (C) Leaving a child with another person without provision for his or her support for a
30 period of at least six months;

31 (D) Failure, for a period of at least six months, to ~~participate in~~ fully comply with any
32 court ordered plan or program designed to reunite a child's parent, guardian, or legal
33 custodian with his or her child;

34 (E) Leaving a child without affording means of identifying such child or his or her
35 parent, guardian, or legal custodian and:

36 (i) The identity of such child's parent, guardian, or legal custodian cannot be
37 ascertained despite diligent searching; and

38 (ii) A parent, guardian, or legal custodian has not come forward to claim such child
39 within three months following the finding of such child;

40 (F) Being absent from the home of his or her child for a period of time that creates a
41 substantial risk of serious harm to a child left in the home;

42 (G) Failure to respond, for a period of at least six months, to notice of child protective
43 proceedings; or

44 (H) Any other conduct indicating an intent to forgo parental duties or relinquish
45 parental claims."

46 "(5) 'Aggravated circumstances' means the parent has:

47 (A) Abandoned a child;

48 (B) Aided or abetted, attempted, conspired, or solicited to commit murder or voluntary
49 manslaughter of another child of such parent;

50 (C) Subjected a child or his or her sibling to torture, chronic abuse or neglect, sexual
51 abuse, or sexual exploitation;

52 (D) Committed the murder or voluntary manslaughter of his or her child's other parent
53 or has ~~been convicted of aiding or abetting, attempting, conspiring, or soliciting~~
54 attempted, conspired, or solicited the murder or voluntary manslaughter of his or her
55 child's other parent;

56 (E) Committed the murder or voluntary manslaughter of another child of such parent;

57 (F) Committed an assault that resulted in serious bodily injury to his or her child or
58 another child of such parent; ~~or~~

59 (G) Caused his child to be conceived as a result of having nonconsensual sexual
60 intercourse with the mother of his child or when the mother is less than ten years of age;
61 or

62 (H) Subjected a child to prenatal abuse involving alcohol or illegal drugs, where the
63 parent has a history of chronic unrehabilitated substance abuse and the court finds such
64 substance abuse is likely to continue and will not likely be remedied in the reasonably
65 foreseeable future."

66 "(11.1) 'Chronic abuse or neglect' means the parent has subjected the child to ongoing
67 abuse or neglect that has caused the child significant and ongoing emotional or physical
68 symptoms, including, but not limited to, the following circumstances:

- 69 (A) Repeated physical abuse resulting in long-term physical or emotional damage to
 70 the child;
- 71 (B) Factitious syndrome imposed on another, Munchausen syndrome by proxy, or
 72 similar emotional or physical abuse or exploitation of the child;
- 73 (C) Unrehabilitated use of substances to the extent that such use has severely disrupted
 74 the child-parent attachment, including the disruption of continuity of placement which
 75 is important to the child's well-being, and has had a severe emotional or physical impact
 76 on the child; and
- 77 (D) Removal of a dependent child from his or her home on at least two previous
 78 occasions."

79 **SECTION 3.**

80 Said chapter is further amended by revising Code Section 15-11-203, relating to when
 81 reasonable efforts by DFCS not required, as follows:

82 "15-11-203.

83 (a) The court may direct that reasonable efforts to eliminate the need for placement of an
 84 alleged dependent child ~~shall not be~~ are not required ~~or~~ and shall cease if the court
 85 determines and makes written findings of fact that a parent of an alleged dependent child:

- 86 (1) Has subjected his or her child to aggravated circumstances;
- 87 (2) ~~Has been convicted of the murder or murder in the second degree of another child of~~
 88 ~~such parent~~ found by the juvenile court or another court of competent jurisdiction, by an
 89 evidentiary standard no less stringent than clear and convincing evidence, to have
 90 committed any of the following acts:

- 91 (A) The murder or murder in the second degree of another child of such parent;
- 92 (B) The voluntary manslaughter of another child of such parent;
- 93 (C) Aiding or abetting, attempting, conspiring, or soliciting to commit murder or
 94 voluntary manslaughter of another child of such parent;

- 95 (D) A felony assault that results in serious bodily injury to the child or another child
96 of such parent; and
- 97 (E) Rape, sodomy, aggravated sodomy, child molestation, aggravated child
98 molestation, incest, sexual battery, or aggravated sexual battery of the alleged
99 dependent child or another child of such parent;
- 100 ~~(3) Has been convicted of the voluntary manslaughter of another child of such parent;~~
101 ~~(4) Has been convicted of aiding or abetting, attempting, conspiring, or soliciting to~~
102 ~~commit murder or voluntary manslaughter of another child of such parent;~~
- 103 ~~(5) Has been convicted of committing a felony assault that results in serious bodily~~
104 ~~injury to the child or another child of such parent;~~
- 105 ~~(6) Has been convicted of rape, sodomy, aggravated sodomy, child molestation,~~
106 ~~aggravated child molestation, incest, sexual battery, or aggravated sexual battery of the~~
107 ~~alleged dependent child or another child of the parent;~~
- 108 ~~(7)(3) Is required to register as a sex offender and that preservation of a parent-child~~
109 ~~relationship is not in the alleged dependent child's best interests; or~~
- 110 ~~(8)(4) Has had his or her rights to a sibling of the alleged dependent child terminated~~
111 ~~involuntarily and the circumstances leading to such termination of parental rights to that~~
112 ~~sibling have not been resolved; or~~
- 113 (5) Has had his or her rights to another child voluntarily terminated following the
114 initiation of proceedings for termination of parental rights pursuant to Article 4 of this
115 chapter and the circumstances leading to such voluntary termination of parental rights
116 have not been resolved.
- 117 (b) In any case in which the court finds by clear and convincing evidence that any of the
118 circumstances enumerated in subsection (a) of this Code section exist, the court shall
119 presume that reunification efforts should not be made by DFCS and that the case should
120 proceed immediately to termination of parental rights, guardianship, or other permanency

121 plan not involving reunification. To overcome such presumption, a parent may present
 122 evidence that:

123 (1) Such conduct was an aberration and not consistent with the parent's history and
 124 overall capacity to care for the child in an appropriate manner; and

125 (2) The parent has fully addressed any issues that caused his or her conduct to the extent
 126 that the court finds the parent to be rehabilitated and unlikely to repeat any instances of
 127 maltreatment toward the child in question.

128 (c) For each hearing, DFCS shall report to all parties and the court in writing whether there
 129 are reasonable grounds to believe one or more of the circumstances enumerated in
 130 subsection (a) of this Code section exist. If the court determines finds that one or more of
 131 the circumstances enumerated in subsection (a) of this Code section exist or if DFCS has
 132 submitted a written report to the court which does not contain a plan for reunification
 133 services, the court shall within 30 days hold a nonreunification hearing pursuant to Code
 134 Section 15-11-204 to determine whether reunification services should be provided then:

135 (1) A permanency plan hearing shall be held for a child adjudicated as a dependent child
 136 within 30 days; and

137 (2) Reasonable efforts shall be made to place a child adjudicated as a dependent child in
 138 a timely manner in accordance with the permanency plan and to complete whatever steps
 139 are necessary to finalize the permanent placement of such child."

140 **SECTION 4.**

141 Said chapter is further amended by revising Code Section 15-11-204, relating to
 142 nonreunification hearing, as follows:

143 "15-11-204.

144 (a) ~~If the DFCS report does not contain a plan for reunification services,~~ Whenever the
 145 court finds reasonable grounds to believe one or more of the circumstances enumerated
 146 in subsection (a) of Code Section 15-11-203 exist or whenever the DFCS report does not

147 contain a plan for reunification services, the court shall hold a nonreunification hearing to
148 review the report and the determination that a plan for reunification services is not
149 appropriate.

150 (b) The nonreunification hearing shall be held no later than 30 days from the time the
151 DFCS report is filed or the court finds that a reasonable ground for nonreunification exists.
152 Notice of the nonreunification hearing shall be provided, by summons, to the child
153 adjudicated as a dependent child if he or she is 14 years of age or older; his or her parent,
154 guardian, ~~or~~ legal custodian, attorney, or guardian ad litem, if any; and specified
155 nonparties entitled to notice.

156 (c) At the nonreunification hearing:

157 (1) DFCS shall notify the court whether and when it intends to proceed with termination
158 of parental rights; and

159 (2) The court shall also hold a permanency plan hearing, at which the court shall
160 consider in-state and out-of-state permanent placement options for the child adjudicated
161 as a dependent child and shall incorporate a permanency plan for such child in its order.

162 (d) DFCS shall have the burden of demonstrating by clear and convincing evidence that
163 a reunification plan is not appropriate considering the health and safety of the child
164 adjudicated as a dependent child and such child's need for permanence. There shall be a
165 presumption that reunification is detrimental to a child adjudicated as a dependent child and
166 reunification services should not be provided if the court finds by clear and convincing
167 evidence that:

168 (1) Such child's parent has unjustifiably failed to comply with a previously ordered plan
169 designed to reunite the family;

170 (2) An alleged dependent child has been removed from his or her home on at least two
171 previous occasions and reunification services were made available on those occasions;

172 (3) A ground for terminating parental rights exists; or

173 (4) Any of the circumstances set out in subsection (a) of Code Section 15-11-203 exist,
174 making it unnecessary to provide reasonable efforts to reunify.

175 (e) If the court has entered an order finding that reasonable efforts to reunify a child
176 adjudicated as a dependent child with his or her family are not required but the court finds
177 further that referral for termination of parental rights and adoption is not in the best
178 interests of such child, the court may, upon proper petition, place such child in the custody
179 of a permanent guardian pursuant to the provisions of this article."

180 **SECTION 5.**

181 Said chapter is further amended by revising Code Section 15-11-233, relating to termination
182 of parental rights and exceptions, as follows:

183 "15-11-233.

184 (a) Except as provided in subsection (b) of this Code section, DFCS shall file a petition to
185 terminate the parental rights of a parent of a child adjudicated as a dependent child or, if
186 such a petition has been filed by another party, seek to be joined as a party to the petition,
187 and, concurrently, to identify, recruit, process, and approve a qualified family for an
188 adoption if:

189 (1) A child adjudicated as a dependent child has been in foster care under the
190 responsibility of DFCS for 15 of the most recent 22 months;

191 (2) The court has made a determination that the parent has subjected his or her child to
192 aggravated circumstances; or

193 (3) The court or another court of competent jurisdiction, by an evidentiary standard no
194 less stringent than clear and convincing evidence, has made a determination that the
195 parent of a child adjudicated as a dependent child has ~~been convicted of~~ committed any
196 of the following:

197 (A) The murder of another child of such parent;

198 (B) Murder in the second degree of another child of such parent;

- 199 (C) Voluntary manslaughter of another child of such parent;
- 200 (D) Voluntary manslaughter of the other parent of such child;
- 201 (E) Aiding or abetting, attempting, conspiring, or soliciting to commit murder or
- 202 voluntary manslaughter of another child of such parent;
- 203 (F) Aiding or abetting, attempting, conspiring, or soliciting to commit murder or
- 204 voluntary manslaughter of the other parent of such child; or
- 205 (G) ~~Committing felony~~ Felony assault that has resulted in serious bodily injury to such
- 206 child or to another child of such parent.
- 207 (b) Unless a compelling reason exists pursuant to subsection (c) of this Code section, the
- 208 petition required by subsection (a) of this Code section shall be filed within 30 days of a
- 209 determination by the court that:
- 210 (1) Any of the circumstances enumerated in paragraphs (1) through (3) of subsection (a)
- 211 of this Code section exist;
- 212 (2) DFCS is not required to provide reunification services pursuant to Code
- 213 Section 15-11-203; or
- 214 (3) A parent has voluntarily surrendered his or her parental rights.
- 215 (c) If DFCS has a compelling reason for not filing a petition for termination of parental
- 216 rights, it shall file, by the deadline for filing such a petition, a written report with the court
- 217 stating that termination ~~Termination~~ of parental rights may not be in the best interests of
- 218 a child adjudicated as a dependent child when due to one or more of the following
- 219 circumstances:
- 220 (1) Such child is being cared for by his or her relative;
- 221 (2) The case plan documents a compelling reason for determining that filing such a
- 222 petition would not be in the best interests of such child. Such compelling reasons may
- 223 include, but shall not be limited to:
- 224 (A) A parent of such child is successfully participating in services that will make it
- 225 possible for his or her child to safely return home;

226 (B) Another permanency plan is better suited to meet the health and safety needs of
227 such child. Documentation that another permanent plan is better suited to meet the
228 health and safety needs of such child may include documentation that:

- 229 (i) Such child is 14 years of age or older and objects to termination of parental rights.
230 Prior to accepting a child's objection, the court shall personally question such child
231 in chambers to determine whether the objection is a voluntary and knowing choice;
- 232 (ii) Such child is 16 years of age or older and specifically requests that emancipation
233 be established as his or her permanent plan;
- 234 (iii) The parent of such child and such child have a significant bond, but such parent
235 is unable to care for such child because of an emotional or physical disability and
236 such child's caregiver has committed to raising such child to the age of majority and
237 facilitating visitation with such disabled parent; or
- 238 (iv) Such child is in a residential treatment facility that provides services specifically
239 designed to address his or her treatment needs and the court determines that his or her
240 needs could not be served by a less restrictive placement;

241 (C) Such child is living with his or her relative who is unable or unwilling to adopt
242 such child, but who is willing and capable of providing such child with a stable and
243 permanent home environment and the removal of such child from the physical custody
244 of his or her relative would be detrimental to such child's emotional well-being;

245 (D) The court or judicial citizen review panel, in a prior hearing or review, determined
246 that while the case plan was to reunify the family, DFCS did not make reasonable
247 efforts; or

248 (E) Such child is an unaccompanied refugee or there are international legal obligations
249 or foreign policy reasons that would preclude terminating parental rights; or

250 (3) DFCS has not provided to the family of such child services deemed necessary for his
251 or her safe return to his or her home, consistent with the specific time frames for the
252 accomplishment of the case plan goals.

253 (d) If DFCS elects not to proceed with a petition for termination of parental rights, any
254 party that makes a petition alleging dependency as provided for in Code Section 15-11-150
255 may file a petition for termination of parental rights; provided, however, that nothing in this
256 subsection shall bar any person legally entitled to do so from filing a petition for
257 termination of parental rights at any time.

258 ~~(c)~~(e) The recommendation by DFCS that termination of parental rights is not in the best
259 interests of a child shall be based on the present family circumstances of such child and
260 shall not preclude a different recommendation at a later date if the family circumstances
261 of a child adjudicated as a dependent child change."

262

SECTION 6.

263 Said chapter is further amended in Code Section 15-11-310, relating to grounds for
264 determining termination of parental rights, by adding a new subsection to read as follows:

265 "(d) The General Assembly finds that children have a strong biological and psychological
266 need for stable attachment to a trusted adult caregiver and that a lack of such attachment
267 is harmful to the child. Therefore, in considering whether the child will suffer serious
268 physical, mental, moral, or emotional harm under this Code section, the court shall
269 consider:

270 (1) Whether the child is attached to the parent, and the quality of any such attachment;

271 (2) Whether the child is attached to an alternative caregiver, and the quality of any such
272 attachment;

273 (3) The psychological needs of the child for secure attachment; and

274 (4) The danger of further disruptions to the child's attachments."

275

SECTION 7.

276 This Act shall become effective upon its approval by the Governor or upon its becoming law
277 without such approval and shall apply to all dependency and termination of parental rights
278 cases currently pending, and all such cases later filed, in the juvenile court.

279

SECTION 8.

280 All laws and parts of laws in conflict with this Act are repealed.