

House Bill 323

By: Representatives Wiedower of the 119th, Gaines of the 117th, Reeves of the 34th, Efstration of the 104th, and Gravley of the 67th

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 findings; to
6 provide for related matters; to provide for an effective date; to provide for applicability; to
7 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

16 adoptive family 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,
21 Code 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, including the failure to pay child support once a child is
31 a dependent child;

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

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

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

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

- 41 (F) Being absent from the home of his or her child for a period of time that creates a
42 substantial risk of serious harm to a child left in the home;
- 43 (G) Failure to respond, for a period of at least six months, to notice of child protective
44 proceedings; or
- 45 (H) Any other conduct indicating an intent to forgo parental duties or relinquish
46 parental claims."
- 47 "(5) 'Aggravated circumstances' means the parent has:
- 48 (A) Abandoned a child;
- 49 (B) Aided or abetted, attempted, conspired, or solicited to commit murder or voluntary
50 manslaughter of another child of such parent;
- 51 (C) Subjected a child or his or her sibling to torture, chronic abuse, sexual abuse, or
52 sexual exploitation;
- 53 (D) Committed the murder or voluntary manslaughter of his or her child's other parent
54 or has ~~been convicted of aiding or abetting, attempting, conspiring, or soliciting~~
55 attempted, conspired, or solicited the murder or voluntary manslaughter of his or her
56 child's other parent;
- 57 (E) Committed the murder or voluntary manslaughter of another child of such parent;
- 58 (F) Committed an assault that resulted in serious bodily injury to his or her child or
59 another child of such parent; ~~or~~
- 60 (G) Caused his child to be conceived as a result of having nonconsensual sexual
61 intercourse with the mother of his child or when the mother is less than ten years of age;
62 or
- 63 (H) Subjected a child to prenatal abuse, other than which has been medically
64 prescribed to the birthing parent, and has a history of chronic substance abuse, and
65 reasonable grounds exist that the substance abuse will continue. Reasonable grounds
66 include, but are not limited to, prior reunification efforts involving treatment for
67 substance use in which the parent or parents refused to participate or did not

68 successfully complete, and as well as failure of the parents to significantly comply with
 69 efforts of medical, social work, and other professionals to remedy an ongoing substance
 70 abuse issue."

71 "(11.1) 'Chronic abuse' means the parent has subjected the child to ongoing abuse or
 72 severe neglect that has caused the child significant and ongoing emotional or physical
 73 symptoms, including, but not limited to, the following circumstances:

74 (A) Repeated physical abuse resulting in long-term physical or emotional damage to
 75 the child;

76 (B) Factitious syndrome imposed by another, Munchausen's by proxy, and similar
 77 emotional or physical abuse or exploitation of the child; and

78 (C) Unrehabilitated use of substances to the extent that such use has severely disrupted
 79 the child-parent attachment, including disrupting continuity of placement which is
 80 important to the child's well-being, and has had severe emotional or physical impact on
 81 the child; and

82 (D) Removal of a dependent child from his or her home on at least two previous
 83 occasions, resulting in continued and chronic disruption of the child's best interests as
 84 provided for in paragraphs (1) through (4) of subsection (b) of Code Section 15-11-310,
 85 which is contrary to such child's emotional and physical well-being."

86 **SECTION 3.**

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

89 "15-11-203.

90 (a) ~~The court may direct~~ There shall exist a rebuttable presumption that reasonable efforts
 91 to eliminate the need for placement of an alleged dependent child ~~shall not be~~ are not
 92 required ~~or~~ and shall cease if the court determines and makes written findings of fact that
 93 a parent of an alleged dependent child:

- 94 (1) Has subjected his or her child to aggravated circumstances;
- 95 (2) Has been found by the juvenile court or another court of competent jurisdiction to
- 96 have committed any of the following acts ~~convicted of the murder or murder in the~~
- 97 ~~second degree of another child of such parent;~~
- 98 (A) The murder or murder in the second degree of another child of such parent;
- 99 (B) The voluntary manslaughter of another child of such parent;
- 100 (C) Aiding or abetting, attempting, conspiring, or soliciting to commit murder or
- 101 voluntary manslaughter of another child of such parent;
- 102 (D) A felony assault that results in serious bodily injury to the child or another child
- 103 of such parent; and
- 104 (E) Sodomy, aggravated sodomy, child molestation, aggravated child molestation,
- 105 incest, sexual battery, or aggravated sexual battery of the alleged dependent child or
- 106 another child of the parent;
- 107 ~~(3) Has been convicted of the voluntary manslaughter of another child of such parent;~~
- 108 ~~(4) Has been convicted of aiding or abetting, attempting, conspiring, or soliciting to~~
- 109 ~~commit murder or voluntary manslaughter of another child of such parent;~~
- 110 ~~(5) Has been convicted of committing a felony assault that results in serious bodily~~
- 111 ~~injury to the child or another child of such parent;~~
- 112 ~~(6) Has been convicted of rape, sodomy, aggravated sodomy, child molestation,~~
- 113 ~~aggravated child molestation, incest, sexual battery, or aggravated sexual battery of the~~
- 114 ~~alleged dependent child or another child of the parent;~~
- 115 ~~(7)~~(3) Is required to register as a sex offender and that preservation of a parent-child
- 116 relationship is not in the alleged dependent child's best interests; or
- 117 ~~(8)~~(4) Has had his or her rights to a sibling of the alleged dependent child terminated
- 118 involuntarily and the circumstances leading to such termination of parental rights to that
- 119 sibling have not been resolved.

120 (b) In any case in which the court finds by clear and convincing evidence that any of the
121 circumstances described in subsection (a) of this Code section are present, the court shall
122 presume that reunification efforts should not be made by the DFCS and that the case should
123 proceed immediately to termination of rights, guardianship, or other permanency plan not
124 involving reunification. To overcome such presumption, a parent may present evidence
125 that:

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

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

131 (c) For each dependency case, If the court shall be required to determine and document in
132 writing at each hearing whether determines that one or more of the circumstances
133 enumerated in subsection (a) of this Code section exist or DFCS has submitted a written
134 report to the court which does not contain a plan for reunification services, If either
135 circumstance exists, the court shall within 30 days hold a nonreunification hearing pursuant
136 to Code Section 15-11-204 to determine whether reunification services should be provided;
137 then:

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

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

143 SECTION 4.

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

146 "15-11-204.

147 (a) ~~If the DFCS report does not contain a plan for reunification services,~~ Whenever a
148 circumstance described in subsection (a) of Code Section 15-11-203, the court shall hold
149 a nonreunification hearing to review the report and the determination that a plan for
150 reunification services is not appropriate.

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

157 (c) At the nonreunification hearing:

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

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

163 (d) Except in those circumstances described in subsection (b) of Code Section 15-11-203,
164 DFCS shall have the burden of demonstrating by clear and convincing evidence that a
165 reunification plan is not appropriate considering the health and safety of the child
166 adjudicated as a dependent child and such child's need for permanence. There shall be a
167 presumption that reunification is detrimental to a child adjudicated as a dependent child and
168 reunification services should not be provided if the court finds by clear and convincing
169 evidence that:

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

- 172 (2) An alleged dependent child has been removed from his or her home on at least two
173 previous occasions and reunification services were made available on those occasions;
- 174 (3) A ground for terminating parental rights exists; or
- 175 (4) Any of the circumstances set out in subsection (a) of Code Section 15-11-203 exist,
176 making it unnecessary to provide reasonable efforts to reunify.
- 177 (e) If the court has entered an order finding that reasonable efforts to reunify a child
178 adjudicated as a dependent child with his or her family are not required but the court finds
179 further that referral for termination of parental rights and adoption is not in the best
180 interests of such child, the court may, upon proper petition, place such child in the custody
181 of a permanent guardian pursuant to the provisions of this article."

182 **SECTION 5.**

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

186 **SECTION 6.**

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