

House Bill 349

By: Representatives McLeod of the 105<sup>th</sup>, Hutchinson of the 107<sup>th</sup>, Kennard of the 102<sup>nd</sup>,  
Scott of the 76<sup>th</sup>, Mitchell of the 106<sup>th</sup>, and others

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 revise certain definitions; to codify best practices; to remove  
3 inconsistencies; to provide for the timing of certain hearings and filings; to provide for the  
4 provision of certain reports; to provide for the appointment of guardians ad litem and their  
5 powers, duties, and responsibilities; to provide for related matters; to repeal conflicting laws;  
6 and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Chapter 11 of Title 15 of the Official Code of Georgia Annotated, relating to the juvenile  
10 code, is amended by revising paragraph (5) of Code Section 15-11-2, relating to definitions,  
11 as follows:

12 "(5) 'Aggravated circumstances' means the parent, putative father, or caregiver has:

13 (A) Abandoned a child;

14 (B) Aided or abetted, attempted, conspired, or solicited to commit murder or voluntary  
15 manslaughter of another child of such parent, putative father, or caregiver;

16 (C) Subjected a child, ~~or his or her sibling,~~ or any child under the care, custody, or  
17 control of such parent, putative father, or caregiver to torture, chronic abuse, sexual  
18 abuse, or sexual exploitation;

19 (D) Committed the murder or voluntary manslaughter of his or her child's other parent,  
20 putative father, or caregiver or has been convicted of aiding or abetting, attempting,  
21 conspiring, or soliciting the murder or voluntary manslaughter of his or her child's other  
22 parent, putative father, or caregiver;

23 (E) Committed the murder or voluntary manslaughter of another child of such parent,  
24 putative father, or caregiver;

25 (F) Committed an assault that resulted in serious bodily injury to his or her child or  
26 another child of such parent, putative father, or caregiver; or

27 (G) Caused his child to be conceived as a result of having nonconsensual sexual  
28 intercourse with the mother of his child or when the mother is less than ten years of  
29 age."

30 **SECTION 2.**

31 Said chapter is further amended by revising paragraph (33) of Code Section 15-11-2, relating  
32 to definitions, as follows:

33 "(33) 'Fictive kin' means a person who is not related to the child by blood, marriage, or  
34 adoption but who ~~prior to his or her placement in foster care~~ is known to the family, has  
35 a substantial and positive relationship with the child, and is willing and able to provide  
36 a suitable home for the child."

37 **SECTION 3.**

38 Said chapter is further amended by revising paragraph (35) of Code Section 15-11-2, relating  
39 to definitions, as follows:

40 ~~“(35) 'Guardian ad litem' means an individual appointed to assist the court in determining~~  
41 ~~the best interests of a child by the court to represent the best interests of a child or an~~  
42 ~~incompetent adult who is a party in a proceeding before the court. The court may appoint~~  
43 ~~a guardian ad litem for a child if the child has no parent, guardian, or custodian appearing~~  
44 ~~on the child's behalf or if the interests of the parent, guardian, or custodian appearing on~~  
45 ~~the child's behalf conflict with the child's interests or in any other case in which the~~  
46 ~~interests of the child require a guardian. If a guardian ad litem is appointed to represent~~  
47 ~~the best interests of a dependent child, then the court shall make all efforts to appoint an~~  
48 ~~individual who is an attorney.”~~

49 **SECTION 4.**

50 Said chapter is further amended by revising paragraph (54) of Code Section 15-11-2, relating  
51 to definitions, as follows:

52 “(54) 'Permanent placement' means:

53 (A) Return of the legal custody of a child to his or her parent, guardian, or legal  
54 custodian;

55 (B) Placement of a child with an adoptive parent pursuant to a final order of adoption;  
56 or

57 (C) Placement of a child with a permanent guardian.”

58 **SECTION 5.**

59 Said chapter is further amended by revising paragraphs (60), (60.1), and (60.2) of Code  
60 Section 15-11-2, relating to definitions, and adding a new paragraph to read as follows:

61 “(60) 'Putative father' means an individual who is alleged or claims to be the biological  
62 father of a child who is born to a woman to whom such individual is not married at the  
63 time of the child's birth or thereafter and whose paternity has not been established.

64 (60.1) 'Putative father registry' means the registry established and maintained pursuant  
65 to subsections (d) and (e) of Code Section 19-11-9.

66 ~~(60.1)~~(60.2) 'Qualified individual' means a trained professional or licensed clinician who  
67 is not an employee of the department and who is not connected to, or affiliated with, any  
68 placement setting in which children are placed by the department.

69 ~~(60.2)~~(60.3) 'Qualified residential treatment program' means a program that:

70 (A) Has a trauma-informed treatment model that is designed to address the needs,  
71 including clinical needs as appropriate, of children with serious emotional or behavioral  
72 disorders or disturbances and, with respect to a child, is able to implement the treatment  
73 identified for the child by the assessment to determine appropriateness of placement as  
74 provided for in Code Section 15-11-219;

75 (B) Has registered or licensed nursing staff and other licensed clinical staff who:

76 (i) Provide care within the scope of their practice; and

77 (ii) Are available 24 hours a day and seven days a week;

78 (C) To the extent appropriate, and in accordance with the child's best interests,  
79 facilitates participation of family members in the child's treatment program;

80 (D) Facilitates outreach to the family members of the child, including siblings;

81 (E) Documents how the outreach is made, including contact information, and maintains  
82 contact information for any known biological family and fictive kin of the child;

83 (F) Documents how family members are integrated into the treatment process for the  
84 child, including post-discharge, and how sibling connections are maintained;

85 (G) Provides discharge planning and family based aftercare support for at least six  
86 months post-discharge; and

87 (H) Is licensed in accordance with 42 U.S.C. Section 471(a)(10) and accredited in  
88 accordance with 42 U.S.C. Section 672(k)(4)."

89 **SECTION 6.**

90 Said chapter is further amended by revising paragraph (71) of Code Section 15-11-2, relating  
91 to definitions, as follows:

92 "(71) 'Sibling' means a person with whom a child shares a biological father, biological  
93 mother, or one or both parents in common by blood, adoption, or marriage, even if the  
94 marriage was terminated by death or dissolution."

95 **SECTION 7.**

96 Said chapter is further amended by revising subsection (a) of Code Section 15-11-102,  
97 relating to dependency case time limitations, as follows:

98 "(a) A preliminary protective hearing shall be held promptly and no later than 72 hours  
99 after a child is ~~placed in foster care~~ removed from his or her home or taken into protective  
100 custody, except as provided in Code Section 15-11-130, provided that, if the 72 hour time  
101 frame expires on a weekend or legal holiday, such hearing shall be held on the next day  
102 which is not a weekend or legal holiday."

103 **SECTION 8.**

104 Said chapter is further amended by revising subsection (c) of Code Section 15-11-102,  
105 relating to dependency case time limitations, as follows:

106 "(c) If a child is not ~~released from foster care~~ returned to the custody of such child's parent,  
107 guardian, or legal custodian at the preliminary protective hearing, the following time  
108 frames apply:

109 (1) A petition for dependency shall be filed within five days of the child's preliminary  
110 protective hearing or no later than ten days after a child is placed in foster care if the  
111 preliminary protective hearing is waived;

112 (2) Summons shall be served at least 72 hours before the dependency adjudication  
113 hearing;

114 (3) The dependency adjudication hearing shall be held no later than ten days after the  
 115 filing of a petition for dependency;

116 (4) DFCS shall submit to the court its written report within 30 days of the date a child  
 117 who is placed in the custody of DFCS is removed from the home and at each subsequent  
 118 review of the disposition order. If the DFCS report does not contain a plan for  
 119 reunification services, a nonreunification hearing shall be held no later than 30 days from  
 120 the time the report is filed; and

121 (5) If a dispositional hearing is not held in conjunction with the dependency adjudication  
 122 hearing, it shall be held and completed within 30 days after the conclusion of the  
 123 dependency adjudication hearing."

124 **SECTION 9.**

125 Said chapter is further amended by revising Code Section 15-11-104, relating to appointment  
 126 and removal of guardian ad litem and use of a CASA, as follows:

127 "15-11-104.

128 (a) The court shall appoint a guardian ad litem for an alleged dependent child at the earliest  
 129 possible stage of the proceedings, and the court shall make every effort to have an attorney  
 130 serve as such guardian ad litem. If the court has no attorney available or willing to serve  
 131 as such guardian ad litem, then the court shall appoint a CASA to serve, and the CASA  
 132 shall be considered a lay guardian ad litem.

133 (b) An attorney for an alleged dependent child ~~may~~ shall serve as such child's guardian ad  
 134 litem unless or until there is conflict of interest between the attorney's duty to such child  
 135 as such child's attorney and the attorney's considered opinion of such child's best interests  
 136 as guardian ad litem. Unless the attorney determines otherwise, there shall be a rebuttable  
 137 presumption that there is no conflict of interest for an attorney to serve as both a client  
 138 directed attorney and a guardian ad litem for an alleged dependent child if the child is

139 unable to reasonably communicate their position based on their competence, their  
140 developmental level, or their physical ability to communicate.

141 (c) A party to the proceeding, the employee or representative of a party to the proceeding,  
142 or any other individual with a conflict of interest shall not be appointed as guardian ad  
143 litem.

144 (d) In addition to an attorney who is serving as a guardian ad litem, a court shall may  
145 appoint a CASA to act as a lay guardian ad litem whenever possible, and a CASA may be  
146 appointed in addition to an attorney who is serving as a guardian ad litem at the earliest  
147 possible stage of the proceedings.

148 (e) ~~A lay guardian shall not engage in activities which could reasonably be construed as~~  
149 ~~the practice of law~~ Reserved.

150 (f) Before the appointment as a guardian ad litem, such person shall have received training  
151 appropriate to the role as guardian ad litem which is administered or approved by the  
152 Office of the Child Advocate for the Protection of Children. For attorneys, preappointment  
153 guardian ad litem training shall be satisfied within the attorney's existing continuing legal  
154 education obligations and shall not require the attorney to complete additional training  
155 hours in addition to the hours required by the State Bar of Georgia.

156 (g) Any ~~volunteer~~ guardian ad litem authorized and acting in good faith, in the absence of  
157 fraud or malice and in accordance with the duties required by this Code section, shall have  
158 immunity from any liability, civil or criminal, that might otherwise be incurred or imposed  
159 as a result of taking or failing to take any action pursuant to this Code section.

160 (h) The court may remove a guardian ad litem from a case upon finding that the guardian  
161 ad litem acted in a manner contrary to a child's best interests, has not appropriately  
162 participated in the case, or if the court otherwise deems continued service as inappropriate  
163 or unnecessary.

164 (i) ~~A guardian ad litem shall not engage in ex parte contact with the court except as~~  
165 ~~otherwise provided by law.~~

166 ~~(j) The court, a child, or any other party may compel a guardian ad litem for a child to~~  
167 ~~attend a trial or hearing relating to such child and to testify, if appropriate, as to the proper~~  
168 ~~disposition of a proceeding.~~

169 ~~(k) The court shall ensure that parties have the ability to challenge recommendations made~~  
170 ~~by the guardian ad litem or the factual basis for the recommendations in accordance with~~  
171 ~~the rules of evidence applicable to the specific proceeding.~~

172 ~~(l) A guardian ad litem's report shall not be admissible into evidence prior to the~~  
173 ~~disposition hearing except in accordance with the rules of evidence applicable to the~~  
174 ~~specific proceeding.~~

175 ~~(m) A guardian ad litem who is not also serving as attorney for a child may be called as~~  
176 ~~a witness for the purpose of cross-examination regarding the guardian ad litem's report~~  
177 ~~even if the guardian ad litem is not identified as a witness by a party."~~

178 **SECTION 10.**

179 Said chapter is further amended by revising Code Section 15-11-105, relating to powers and  
180 duties of guardian ad litem, as follows:

181 "15-11-105.

182 (a) A guardian ad litem shall advocate for a child's best interests in the proceeding for  
183 which the guardian ad litem has been appointed.

184 (b) In determining a child's best interests, a guardian ad litem shall consider and evaluate  
185 all of the factors affecting the best interests of a child in the context of a child's age and  
186 developmental needs. Such factors shall include: those enumerated in Code Section  
187 15-11-26 and

188 ~~(1) The physical safety and welfare of such child, including food, shelter, health, and~~  
189 ~~clothing;~~

190 ~~(2) The mental and physical health of all individuals involved;~~



- 191 ~~(3) Evidence of domestic violence in any current, past, or considered home for such~~  
192 ~~child;~~
- 193 ~~(4) Such child's background and ties, including familial, cultural, and religious;~~
- 194 ~~(5) Such child's sense of attachments, including his or her sense of security and~~  
195 ~~familiarity and continuity of affection for the child;~~
- 196 ~~(6) The least disruptive placement alternative for such child;~~
- 197 ~~(7) The child's wishes and long-term goals;~~
- 198 ~~(8) The child's community ties, including church, school, and friends;~~
- 199 ~~(9) The child's need for permanence, including his or her need for stability and continuity~~  
200 ~~of relationships with a parent, siblings, and other relatives;~~
- 201 ~~(10) The uniqueness of every family and child;~~
- 202 ~~(11) The risks attendant to entering and being in substitute care;~~
- 203 ~~(12) The preferences of the persons available to care for such child; and~~
- 204 ~~(13) Any any other factors considered by the guardian ad litem to be relevant and proper~~  
205 ~~to his or her determination.~~
- 206 (c) Unless a child's circumstances render the following duties and responsibilities  
207 unreasonable, a guardian ad litem shall at a minimum:
- 208 (1) Maintain regular and sufficient in-person contact with the child and, in a manner  
209 appropriate to his or her developmental level, meet with and interview such child prior  
210 to custody hearings, adjudication hearings, disposition hearings, judicial reviews, and any  
211 other hearings scheduled in accordance with the provisions of this chapter;
- 212 (2) In a manner appropriate to such child's developmental level, ascertain such child's  
213 needs, circumstances, and views;
- 214 (3) Conduct an independent assessment to determine the facts and circumstances  
215 surrounding the case;
- 216 (4) Consult with the child's attorney and guardian ad litem, if appointed separately,  
217 regarding the issues in the proceeding;

- 218 (5) Communicate with health care, mental health care, and other professionals involved  
219 with such child's case;
- 220 (6) Review case study and educational, medical, psychological, and other relevant  
221 reports relating to such child and the respondents;
- 222 (7) Review all court related documents;
- 223 (8) Attend all court hearings and other proceedings to advocate for such child's best  
224 interests;
- 225 (9) Advocate for timely court hearings to obtain permanency for such child;
- 226 (10) Protect the cultural needs of such child;
- 227 ~~(11) Contact the child prior to any proposed change in such child's placement;~~
- 228 ~~(12)~~(11) Contact the child after changes in such child's placement;
- 229 ~~(13)~~(12) Request a judicial citizen review panel or judicial review of the case;
- 230 ~~(14)~~(13) Attend judicial citizen panel review hearings concerning such child and if  
231 unable to attend the hearings, forward to the panel a letter setting forth such child's status  
232 during the period since the last judicial citizen panel review and include an assessment  
233 of the DFCS permanency and treatment plans;
- 234 ~~(15) Provide written reports to the court and the parties on the child's best interests,~~  
235 ~~including, but not limited to, recommendations regarding placement of such child,~~  
236 ~~updates on such child's adjustment to placement, DFCS's and respondent's compliance~~  
237 ~~with prior court orders and treatment plans, such child's degree of participation during~~  
238 ~~visitations, and any other recommendations based on the best interests of the child;~~
- 239 ~~(16)~~(14) When appropriate, encourage settlement and the use of any alternative forms  
240 of dispute resolution and participate in such processes to the extent permitted; and
- 241 ~~(17)~~(15) Monitor compliance with the case plan and all court orders.
- 242 (d)(1) Except as provided in Article 11 of this chapter, a guardian ad litem shall receive  
243 notices, pleadings, or other documents required to be provided to or served upon a party  
244 and shall be notified of all court hearings, judicial reviews, judicial citizen review panels,

245 and other significant changes of circumstances of a child's case which he or she is  
246 appointed to the same extent and in the same manner as the parties to the case are notified  
247 of such matters.

248 (2) A guardian ad litem shall be notified of the formulation of any case plan of a child's  
249 case which he or she is appointed and may be given the opportunity to be heard by the  
250 court about such plans.

251 (e) Upon presentation of an order appointing a guardian ad litem, such guardian ad litem  
252 shall have access to all records and information relevant to a child's case to which he or she  
253 is appointed when such records and information are not otherwise protected from  
254 disclosure pursuant to Code Section 19-7-5. Such records and information shall not  
255 include records and information provided under Article 11 of this chapter or provided  
256 under Chapter 4A of Title 49.

257 (f) All records and information acquired or reviewed by a guardian ad litem during the  
258 course of his or her appointment shall be deemed confidential and shall not be disclosed  
259 except as ordered by the court.

260 (g) Except as provided in Code Section 49-5-41, regarding access to records, any guardian  
261 ad litem who discloses confidential information obtained during the course of his or her  
262 appointment, in violation of law, shall be guilty of a misdemeanor. A guardian ad litem  
263 shall maintain all information and records regarding mental health, developmental  
264 disability, and substance abuse according to the confidentiality requirements contained in  
265 Code Section 37-3-166, 37-4-125, or 37-7-166, as applicable.

266 (h) In the event of a change of venue, the original guardian ad litem shall, as soon as  
267 possible, communicate with the appointed guardian ad litem in the new venue and shall  
268 forward all pertinent information to the new guardian ad litem.

269 (i) An attorney who is serving as a guardian ad litem shall be permitted to participate in  
270 all proceedings before the court involving the dependent child. A lay guardian shall not  
271 engage in activities which could reasonably be construed as the practice of law.

272 (j) A guardian ad litem shall not engage in ex parte contact with the court except as  
273 otherwise provided by law.

274 (k) Only a lay guardian ad litem shall be required to provide written reports to the court  
275 and the parties on the child's best interests, including, but not limited to, recommendations  
276 regarding placement of such child, updates on such child's adjustment to placement,  
277 DFCS's and respondent's compliance with prior court orders and treatment plans, such  
278 child's degree of participation during visitations, and any other recommendations based on  
279 the best interests of the child. A lay guardian ad litem's report shall not be admissible into  
280 evidence prior to the disposition hearing except in accordance with the rules of evidence  
281 applicable to the specific proceeding.

282 (l) The court, a child, or any other party may only compel a lay guardian ad litem for a  
283 child to attend a trial or hearing relating to such child and to testify, if appropriate, as to the  
284 proper disposition of a proceeding.

285 (m) The court shall ensure that parties have the ability to challenge recommendations  
286 made by the lay guardian ad litem in his or her report or the factual basis for the  
287 recommendations in accordance with the rules of evidence applicable to the specific  
288 proceeding.

289 (n) Only a lay guardian ad litem may be called as a witness for the purpose of  
290 cross-examination regarding the lay guardian ad litem's report even if the lay guardian ad  
291 litem is not identified as a witness by a party."

292 **SECTION 11.**

293 Said chapter is further amended by revising subsection (a) of Code Section 15-11-145,  
294 relating to preliminary protective hearing requirements, as follows:

295 "(a) If an alleged dependent child is removed from his or her home by court order and is  
296 not returned home, the preliminary protective hearing shall be held promptly and not later  
297 than 72 hours after such child is ~~placed in foster care~~ removed from his or her home or

298 taken into protective custody, except as provided in Code Sections 15-11-130 and  
299 15-11-133.1; provided, however, that if the 72 hour time frame expires on a weekend or  
300 legal holiday, the hearing shall be held on the next day which is not a weekend or legal  
301 holiday."

302 **SECTION 12.**

303 Said chapter is further amended by revising subsection (g) of Code Section 15-11-145,  
304 relating to preliminary protective hearing requirements, as follows:

305 "(g) ~~A If a child is not released at the preliminary protective hearing, a petition for~~  
306 ~~dependency shall be made and presented to the court~~ filed within five days of ~~such~~ the  
307 child's preliminary protective hearing or no later than ten days after a child is placed in  
308 foster care if the preliminary protective hearing is waived."

309 **SECTION 13.**

310 Said chapter is further amended by revising subsection (d) of Code Section 15-11-200,  
311 relating to DFCS report and case plan, as follows:

312 "(d) If the submitted DFCS report contains a proposed case plan for reunification services:  
313 (1) DFCS shall provide the caregiver, the foster parent, and any preadoptive parent or  
314 relative providing care for the child who was placed in DFCS custody with a copy of  
315 those portions of the court approved case plan that involve the permanency goal and the  
316 services to be provided to the child;  
317 (2) A copy of the DFCS report and case plan shall be delivered to the parent, guardian,  
318 or legal custodian; the putative father, if he is a party to the case; the child, the attorney  
319 for the parent, guardian, or legal custodian, the attorney for the putative father, if he is a  
320 party to the case; the attorney for the child, the guardian ad litem for the child; and the  
321 CASA, if one is appointed by the court, by United States mail, e-mail, or hand delivery  
322 at the same time the report and case plan are transmitted to the court, along with written

323 notice that such report will be considered by the court without a hearing unless, within  
324 five days from the date the copy of such report and case plan were delivered, the parent,  
325 guardian, or legal custodian of the child who was placed in DFCS custody or the child  
326 through his or her attorney or guardian ad litem requests a hearing before the court to  
327 review such report and case plan; and

328 (3) If no hearing is requested, the court shall enter a disposition order or supplemental  
329 order incorporating all elements of the case plan for reunification services which the court  
330 finds essential to reunification, specifying what shall be accomplished by all parties  
331 before reunification of the family can be achieved."

332 **SECTION 14.**

333 Said chapter is further amended by revising subsection (a) of Code Section 15-11-243,  
334 relating to notice and permanent guardianship hearing, as follows:

335 "(a) Notice of a guardianship petition pursuant to this part shall be given to a parent of the  
336 child who was adjudicated as a dependent child and shall also be given to the putative  
337 father in accordance with subsection (c) of Code Section 29-2-17 except that, if the parents  
338 have consented to the guardianship, notice of the petition shall not be required to be given  
339 to:

- 340 (1) The adult siblings of the child who was adjudicated as a dependent child;  
341 (2) The grandparents of the child who was adjudicated as a dependent child; or  
342 (3) The nearest adult relatives of the child who was adjudicated as a dependent child as  
343 determined in accordance with Code Section 53-2-1."

344 **SECTION 15.**

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