

House Bill 460

By: Representatives Ballinger of the 23rd, Camp of the 135th, Reeves of the 99th, and Silcox of the 53rd

A BILL TO BE ENTITLED
AN ACT

1 To Chapter 11 of Title 15 of the Official Code of Georgia Annotated, relating to the juvenile
2 code, so as to provide for a child's right to legal representation in legitimation cases; to
3 provide for a child's right to legal representation in permanent guardianship cases; to provide
4 for a right to legal representation for guardians and respondents in dependency proceedings;
5 to provide for the filing of a complaint in exceptional circumstances during removal
6 proceedings; to provide for permanent guardianship proceedings; to provide for a right to
7 legal representation for children in foster care; to amend Title 24 of the Official Code of
8 Georgia Annotated, relating to evidence, so as to provide that children be deemed competent
9 to testify in termination proceedings without taking a sworn oath; to provide that the medical
10 narrative hearsay exception be used in dependency and termination proceedings; to provide
11 for related matters; to repeal conflicting laws; and for other purposes.

12 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

13 **SECTION 1.**

14 Chapter 11 of Title 15 of the Official Code of Georgia Annotated, relating to the juvenile
15 code, is amended by adding a new Code section to read as follows:

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16 "15-11-11.1.
17 A dependent child who is represented by court appointed counsel and who is the subject
18 of a legitimation petition pursuant to Code Section 15-11-11 may be represented by the
19 same appointed counsel in the legitimation matter."

20 **SECTION 2.**

21 Said chapter is further amended by revising subsection (a) of Code Section 15-11-14, relating
22 to transfers from probate court, as follows:

23 "(a) The court shall hold a hearing within 30 days of receipt of a case transferred from the
24 probate court pursuant to subsection (f) of Code Section 29-2-6 or subsection (b) of Code
25 Section 29-2-8. A child may obtain a court appointed attorney for the hearing to determine
26 whether continuation or termination of the temporary guardianship is in the best interests
27 of the child."

28 **SECTION 3.**

29 Said chapter is further amended by revising subsections (a) and (b) of Code Section
30 15-11-103, relating to right to attorney, as follows:

31 "(a) A child and any custodian or guardian subject to a sworn complaint or affidavit and
32 any other party respondent to a proceeding under this article shall have the right to an
33 attorney at all stages of the proceedings under this article.

34 (b) The court shall appoint an attorney for an alleged dependent child and any child
35 receiving extended care youth services from DFCS at all stages of the proceedings under
36 this article. The appointment shall be made as soon as practicable to ensure adequate
37 representation of such child and, in any event, before the first court hearing that may
38 substantially affect the interests of such child."

39 **SECTION 4.**

40 Said chapter is further amended by revising subsection (b) of Code Section 15-11-132,
41 relating to verbal custody order, as follows:

42 "(b) When a child is taken into custody under exceptional circumstances, an affidavit or
43 sworn complaint containing the information previously relayed orally, including
44 telephonically, shall be filed with the clerk of the court the next business day, and a written
45 order shall be issued if not previously issued. Only when a child is taken into custody
46 under exceptional circumstances can an affidavit or sworn complaint be filed. The written
47 order shall include the court's findings of fact supporting the necessity for such child's
48 removal from the custody of his or her parent, guardian, or legal custodian in order to
49 safeguard such child's welfare and shall designate a child's legal custodian."

50 **SECTION 5.**

51 Said chapter is further amended by revising Code Section 15-11-243, relating to notice and
52 permanent guardianship hearing, as follows:

53 "15-11-243.

54 ~~(a) Notice of a guardianship petition pursuant to this part shall be given to a parent of the~~
55 ~~child who was adjudicated as a dependent child and shall also be given in accordance with~~
56 ~~subsection (c) of Code Section 29-2-17 except that, if the parents have consented to the~~
57 ~~guardianship, notice of the petition shall not be required to be given to:~~

58 ~~(1) The adult siblings of the child who was adjudicated as a dependent child;~~

59 ~~(2) The grandparents of the child who was adjudicated as a dependent child; or~~

60 ~~(3) The nearest adult relatives of the child who was adjudicated as a dependent child as~~
61 ~~determined in accordance with Code Section 53-2-1. The court shall direct the issuance~~
62 ~~of a summons to the legal mother or biological mother, legal father or biological father,~~
63 ~~guardian, legal custodian, attorney, and guardian ad litem, if any, of the child named in~~
64 ~~the petition to appoint a permanent guardian and any other persons who appear to the~~

65 court to be proper or necessary parties to the proceeding, requiring them to appear before
66 the court to answer the allegations of the petition. A copy of such petition shall
67 accompany the summons unless the summons is served by publication, in which case the
68 published summons shall indicate the general nature of the allegations and where a copy
69 of such petition can be obtained.

70 (b) The court shall direct that notice and a copy of the petition be provided to the child
71 named in the petition if the child is 14 years of age or older.

72 (c) The summons shall include a notice of the effect of the court appointing a permanent
73 guardian as provided in Code Section 15-11-242 and shall state that a party is entitled to
74 an attorney in the proceedings and that the court will appoint an attorney if the party is an
75 indigent person.

76 (d) The court may endorse upon the summons an order directing the parent, guardian, or
77 legal custodian of the child named in the petition to appear personally at the hearing or
78 directing the person having physical custody or control of such child to bring such child
79 to the hearing.

80 (e) A party other than the child named in the petition may waive service of summons by
81 written stipulation or by voluntary appearance at the hearing.

82 (f) If a party to be served with a summons is within this state and can be found, the
83 summons shall be served upon him or her personally as soon as possible and at least 30
84 days before the permanent guardianship hearing.

85 (g) If a party to be served is within this state and cannot be found but his or her address is
86 known or can be ascertained with due diligence, the summons shall be served upon such
87 party at least 30 days before the permanent guardianship hearing by mailing him or her a
88 copy by registered or certified mail or statutory overnight delivery, return receipt requested.

89 (h) If a party to be served is outside this state but his or her address is known or can be
90 ascertained with due diligence, service of the summons shall be made at least 30 days
91 before the permanent guardianship hearing either by delivering a copy to such party

92 personally or by mailing a copy to him or her by registered or certified mail or statutory
93 overnight delivery, return receipt requested.

94 (i) If, after due diligence, a party to be served with a summons cannot be found and such
95 party's address cannot be ascertained, whether he or she is within or outside this state, the
96 court may order service of the summons upon him or her by publication. The permanent
97 guardianship hearing shall not be held earlier than 31 days after the date of last publication.

98 (j)(1) Service by publication shall be made once a week for four consecutive weeks in
99 the legal organ of the county where the petition for appointment of a permanent
100 guardianship has been filed and of the county of the biological father's last known
101 address. Service shall be deemed complete upon the date of last publication.

102 (2) When served by publication, the notice shall contain the names of the parties, except
103 that the anonymity of a child shall be preserved by the use of appropriate initials, and the
104 date the petition for appointment of a permanent guardianship was filed. The notice shall
105 indicate the general nature of the allegations and where a copy of the petition for
106 appointment of a permanent guardianship can be obtained and require the party to be
107 served by publication to appear before the court at the time fixed to answer the
108 allegations of the petition for appointment of a permanent guardianship.

109 (3) The petition for appointment of a permanent guardianship shall be available to the
110 parties, except for the petitioner, free of charge from the court during business hours or,
111 upon request, shall be mailed to such party.

112 (4) Within 15 days after the filing of the order of service by publication, the clerk of
113 court shall mail a copy of the notice, a copy of the order of service by publication, and
114 a copy of the petition for appointment of a permanent guardianship to the absent party's
115 last known address.

116 (k) Service of the summons may be made by any suitable person under the direction of the
117 court.

118 (l) The court may authorize the payment from county funds of the costs of service and of
 119 necessary travel expenses incurred by persons summoned or otherwise required to appear
 120 at the hearing.

121 (m) The court shall hold a hearing and the standard for determination for all matters at
 122 issue shall be the best interests of ~~The hearing shall be conducted in accordance with Code~~
 123 ~~Section 29-2-18 to determine the best interests of the child who was adjudicated as a~~
 124 ~~dependent child, and in reaching its determination the court shall consider Code Section~~
 125 ~~15-11-240."~~

126 **SECTION 6.**

127 Said chapter is further amended by adding a new Code Section to read as follows:

128 "15-11-243.1.

129 (a) Unless he has surrendered all parental rights to his child, a summons shall be served
 130 in the same manner as provided in Code Section 15-11-282 on the biological father:

131 (1) Whose paternity has been previously established in a judicial proceeding to which
 132 the father was a party;

133 (2) Whose identity is known to the petitioner or the petitioner's attorney;

134 (3) Who is a registrant on the putative father registry and has acknowledged paternity of
 135 the child named in the petition brought pursuant to this article;

136 (4) Who is a registrant on the putative father registry who has indicated possible
 137 paternity of the child named in the petition brought pursuant to this article that was born
 138 to such child's mother during a period beginning no more than two years immediately
 139 preceding such child's date of birth; or

140 (5) Who, if the court finds from the evidence including but not limited to the affidavit
 141 of the mother of a child named in the petition brought pursuant to this article, has
 142 performed any of the following acts:

143 (A) Lived with such child;

- 144 (B) Contributed to such child's support;
145 (C) Made any attempt to legitimate such child; or
146 (D) Provided support or medical care for such mother either during her pregnancy or
147 during her hospitalization for the birth of such child.
- 148 (b) The notice shall advise the biological father who is not the legal father that the effect
149 of the petition for appointment of a permanent guardianship is that the child will remain
150 with the guardian until the child reaches the age of 18 or becomes emancipated, that the
151 court may enter an order of support on behalf of the child against the biological father, and
152 that the father may not be entitled to object to the termination of his rights to such child
153 unless, within 30 days of receipt of notice, he files:
- 154 (1) A petition to legitimate such child; and
155 (2) Notice of the filing of the petition to legitimate with the court in which the petition
156 for appointment of a permanent guardianship is pending.
- 157 (c) If the identity of the biological father is not known to the petitioner or the petitioner's
158 attorney and the biological father would not be entitled to notice in accordance with
159 subsection (a) of this Code section, then it shall be rebuttably presumed that he is not
160 entitled to notice of the proceedings. The court shall be authorized to require the mother
161 to execute an affidavit supporting the presumption or show cause before the court if she
162 refuses. Absent evidence rebutting the presumption, no further inquiry or notice shall be
163 required by the court.
- 164 (d) The court may enter an order for permanent guardianship over the objection of a
165 biological father:
- 166 (1) Who fails to file a timely petition to legitimate the child named in a petition brought
167 pursuant to this article and notice in accordance with subsection (b) of this Code section;
168 (2) Whose petition to legitimate is subsequently dismissed for failure to prosecute; or
169 (3) Whose petition to legitimate does not result in a court order finding that he is the
170 legal father of the child named in a petition brought pursuant to this article."

171 **SECTION 7.**

172 Said chapter is further amended by adding a new subsection to Code Section 15-11-340,
173 relating to criteria for receiving services, development of transition plan, and termination, to
174 read as follows:

175 "(f) The trial court may appoint an attorney for a child at all stages of the proceedings
176 under this article with the child's consent. If a child does not have an attorney, a child shall
177 be informed prior to any hearing of their right to have legal representation and shall be
178 given an opportunity to:

179 (1) Obtain an attorney of his or her own choice;

180 (2) Obtain a court appointed attorney in the court's discretion; or

181 (3) Waive the right to an attorney."

182 **SECTION 8.**

183 Title 24 of the Official Code of Georgia Annotated, relating to evidence, is amended by
184 revising subsection (b) of Code Section 24-6-603, relating to oath or affirmation relative to
185 witnesses, as follows:

186 "(b) Notwithstanding the provisions of subsection (a) of this Code section, in all
187 proceedings involving dependency as defined by Code Section 15-11-2, in all proceedings
188 involving termination of parental rights under Article 4 of Chapter 11 of Title 15, and in
189 all criminal proceedings in which a child was a victim of or witness to any crime, the child
190 shall be competent to testify, and the child's credibility shall be determined as provided in
191 this chapter."

192 **SECTION 9.**

193 Said title is further amended by revising subsection (b) and adding two new subsections to
194 Code Section 24-8-826, relating to medical reports in narrative form, to read as follows:

195 "(b) In all juvenile dependency proceedings under Article 3 of Chapter 11 of Title 15
196 involving injury or disease, any medical report in narrative form as described in subsection
197 (a) of this Code section, and notice of intention to introduce such report, shall first be
198 provided to the adverse party at least five days prior to the adjudication hearing. Any
199 adverse party may object to the admissibility of any portion of the report, other than on the
200 ground that it is hearsay, within three days of being provided with the report. All other
201 provisions of subsection (a) of this Code section concerning medical reports in narrative
202 form are applicable to juvenile dependency proceedings.

203 (c) In all termination of parental rights proceedings under Article 4 of Chapter 11 of Title
204 15 involving injury or disease, any medical report in narrative form as described in
205 subsection (a) of this Code section, and notice of intention to introduce such report, shall
206 first be provided to the adverse party at least 15 days prior to the adjudication hearing. Any
207 adverse party may object to the admissibility of any portion of the report, other than on the
208 ground that it is hearsay, within seven days of being provided with the report. All other
209 provisions of subsection (a) of this Code section concerning medical reports in narrative
210 form are applicable to termination of parental rights proceedings.

211 (d) The medical narrative shall be presented to the jury as depositions are presented to the
212 jury and shall not go out with the jury as documentary evidence."

213

SECTION 10.

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