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COURTS Juvenile Proceedings, Parental Rights: Provide Guidance for Family Reunification, Termination of Parental Rights, and Permanent Placement of Children Removed from the Home

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COURTS

Juvenile Proceedings, Parental Rights: Provide Guidance for Family Reunification, Termination of Parental Rights, and Permanent Placement of Children Removed from the Home

CODE SECTION:	O.C.G.A. § 15-11-41 (amended)
BILL NUMBER:	HB 1585
ACT NUMBER:	872
GEORGIA LAWS:	1998 Ga. Laws 908
SUMMARY:	The Act brings state law into compliance with federal guidelines and qualifies the state for funding under the federal Adoption and Safe Families Act of 1997. It establishes that the safety and welfare of a child is the paramount consideration in a court's decision to remove a child from an allegedly abusive or neglectful parent. The Act identifies certain aggravated circumstances under which a court may remove a child from the home without the need for a finding of reasonable efforts by the Georgia Department of Human Resources to reunify the family. It encourages courts and government agencies to assure the expeditious placement of the child in a permanent home through adoption or other means, and allows for the termination of parental rights when in the best interest of the child. Further, the Act promotes aggressive efforts to place the child in an adoptive home and establishes certain procedural safeguards for children placed in out-of-state homes. Finally, the Act allows foster parents, preadoptive parents, or relatives providing care for the child to participate in any hearing or review involving the child.
EFFECTIVE DATE:	July 1, 1998

History

Over the last eight years, the Georgia General Assembly has substantially revised the state's child welfare statutes. For example, in 1990, extensive media coverage of dozens of children who died as a result of parental neglect or abuse prompted the legislature to mandate more intensive reporting and aggressive investigation of alleged instances of child abuse.[1] In 1996, another series of widely reported cases of children who died at the hands of parents with a history of abusive behavior spurred the legislature to enact further reforms.[2] The 1996 legislation streamlined the procedures for the placement of children in permanent homes and provided for a more equitable and efficient process for determining the appropriateness of terminating the rights of incorrigibly irresponsible or abusive parents.[3]

In 1998, the General Assembly revisited the issue of child welfare. Despite earlier child welfare reforms, critics argued that then existing state law continued to reflect an inordinate emphasis on family reunification, even in those cases when evidence of the parent providing a safe and stable home environment did not exist.[4] As a result, the state was expending considerable public resources on futile attempts to rehabilitate irreparably broken families.[5] More importantly, children too often were returned to parents only to suffer further abuse and neglect.[6] Other children became long-term wards of a foster care system that was intended to provide only a temporary haven.[7]

While local critics urged further reform at the state level, the real impetus for the introduction and passage of HB 1585 came from Washington, D.C.[8] In 1997, United States Congress passed the

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1. *See Selected 1990 Georgia Legislation,* 7 GA. ST. U. L. REV. 268 (1990).
2. *See Review of Selected 1996 Georgia Legislation,* 13 GA. ST. U. L. REV. 91 (1996).
3. *See* 1996 Ga. Laws 474.
4. *See* Daniel Bloom & Lynda Carter Cajoleas, *Urgent Reform Needed for Georgia's Abused, Neglected, Foster and Adopted Children* (visited Oct. 6, 1998) <http://www.gppf.org/childagenda.htm> (article from the Georgia Public Policy Foundation).
5. *See id.*
6. *See id.*
7. *See id.*
8. *See* Telephone Interview with Rep. Arnold Ragas, House District No. 64 (May 29, 1998) [hereinafter Ragas Interview]; Telephone Interview with Alan Essig, Georgia Department of Human Resources (May 17, 1998) [hereinafter Essig Interview].

Adoption and Safe Families Act (ASFA) of 1997.[9] The purpose of the ASFA is to protect the welfare of the nation's children by ensuring that children are quickly separated from abusive or neglectful parents and by speeding their placement in permanent homes.[10] While the legislation does not mandate state compliance, it does include powerful financial incentives for states to adopt and adhere to federal guidelines.[11] For example, states are awarded a $4000 bonus for each adoption that exceeds the level of placement in previous years.[12] The legislation also provides a $6000 bonus for each successful adoption of a child with physical disabilities or special emotional needs.[13] HB 1585 closely tracked the language of the ASFA and legislators designed it to bring Georgia into compliance with federal guidelines.[14]

HB 1585

Introduction

Representative Arnold Ragas introduced HB 1585 on February 6, 1998 at the urging of the Georgia Department of Human Resources (DHR).[15] The Act revises Code section 15-11-41 in order to bring Georgia law into conformity with federal law.[16] HB 1585, as introduced and subsequently passed by the House Judiciary Committee, included a number of additional provisions relating to adoption and termination of parental rights.[17] However, the House offered a floor substitute to HB 1585 on February 27, 1998, which stripped all provisions from the bill except those designed to bring Georgia law into compliance with federal guidelines.[18] The House unanimously

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9. *See* Adoption and Safe Families Act of 1997, Pub. L. No. 105-89, 111 Stat. 2115 (1998).

10. *See* 143 CONG. REC. S12,668-03 (daily ed. Nov. 13, 1997) (statement of Sen. Dewine).

11. *See* Adoption and Safe Families Act of 1997, Pub. L. No. 105-89, 111 Stat. 2115 (1998).

12. *See id.* at 2122.

13. *See id.* The Department of Human Resources (DHR) estimated that failure to comply with federal law could result in a loss to the state of up to $39 million in federal funding. *See* Department of Human Resources Adoption Bill Summary (undated) (available in Georgia State University College of Law Library).

14. *See* Adoption and Safe Families Act of 1997, Pub. L. No. 105-89, 111 Stat. 2115 (1998); Telephone Interview with Rep. Jim Martin, House District No. 47 (June 2, 1998); Ragas Interview, *supra* note 8.

15. *See* Ragas Interview, *supra* note 8.

16. *See* O.C.G.A. § 15-11-41 (Supp. 1998).

17. *See* HB 1585, as introduced, 1998 Ga. Gen Assem.

18. *Compare* HB 1585, as introduced, 1998 Ga. Gen. Assem., *with* HB 1585 (HFS), 1998

passed the floor substitute on February 27, 1998 and sent the bill to the Senate.[19] There, the Senate Judiciary Committee offered a substitute that made minor corrections to the House substitute.[20] The Committee sent its substitute with a recommendation of "do pass by substitute" to the Senate where it was approved unanimously on March 18, 1998.[21] The following day the House concurred in the Senate amendments.[22] The Governor signed the bill into law on April 14, 1998.[23]

Modifying the "Reasonable Efforts" Requirements

To bring Georgia law into compliance with the 1997 federal legislation, HB 1585 modified the requirement for the exercise of "reasonable efforts" by the Division of Family and Children Services (DFACS) of the DHR to reunify the family.[24] Georgia, like most states,

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Ga. Gen. Assem. The language of sections 2 through 6 of HB 1585 was taken from SB 27, which failed to gain passage in the 1997 legislative session after members of the House amended the bill to prohibit adoption by same sex couples. *See* SB 27 (HCSFA), 1997 Ga. Gen. Assem. Bill sponsors feared that HB 1585 might become a vehicle for similarly controversial and potentially fatal amendments. *See* Ragas Interview, *supra* note 8. The House leadership agreed to rule any such amendments not germane if all provisions of the bill were removed except those necessary to comply with the ASFA. *See* Telephone Interview with Eric John, Executive Director, Council of Juvenile Court Judges of Georgia (July 30, 1998) [hereinafter John Interview]. Thus, the decision to strike sections 2 through 6 from the original bill was a "tactical" decision that reflected a recognition of the funding implications of failing to pass a bill that adhered to federal guidelines. Ragas Interview, *supra* note 8; *see* Essig Interview, *supra* note 8; John Interview, *supra*.

19. *See* State of Georgia Final Composite Status Sheet, Mar. 19, 1998.

20. *See* HB 1585 (SCS), 1998 Ga. Gen. Assem. In particular, the Senate substitute clarified, consistent with federal legislation, that a child was considered to have entered foster care, for purposes of the milestones established in the bill for getting children into permanent homes, on the date of the first judicial finding of abuse or neglect or 60 days after the child is removed from home, whichever is earlier. *See* John Interview, *supra* note 18; O.C.G.A. § 15-11-41(*l*) (Supp. 1998).

21. *See* State of Georgia Final Composite Status Sheet, Mar. 19, 1998.

22. *See id.*

23. *See* 1998 Ga. Laws 908, at 916.

24. O.C.G.A. § 15-11-41(b) (Supp. 1998). Criticism of the "reasonable efforts" requirement as a well-intentioned but profoundly flawed attempt by Congress to balance family preservation against the welfare of the individual child mounted steadily after the passage of the 1980 federal legislation. *See* Michael J. Bufkin, *The "Reasonable Efforts" Requirement: Does it Place Children at Increased Risk of Abuse or Neglect?*, 35 U. LOUISVILLE J. FAM. L. 355, 373 (1996-97). Because neither the statute nor federal regulations specifically defined "reasonable efforts," it was left to state courts and legislatures to interpret the requirement. *See id.* at 361. The erratic construction of the meaning of "reasonable efforts" combined with the lack of resources among state child welfare agencies and the often intractable nature of problems facing dysfunctional families frequently led to tragic results. *See id.* at 371-72.

adopted a "reasonable efforts" requirement in the early 1980s in order to qualify for federal foster care and adoption assistance under the Adoption Assistance and Child Welfare Act of 1980.[25] The Georgia Code required a dispositional order of the court removing a child from the home after a finding that DFACS had made reasonable efforts to prevent the need for removal or to make it possible for the child to return to the home.[26] Those provisions of the law, which were unchanged by the Act, set forth elaborate procedures for ensuring that every effort is made to achieve reunification.[27] DFACS is required to meet with the child, the parents, and, in some cases, a court-appointed citizen review panel.[28] After the meeting, DFACS must submit a report, which includes a recommendation either for or against reunification, to the court within thirty days of the child's removal from the home.[29] If the report recommends reunification, it must specify, inter alia, the reasons why the child was removed from the home and those actions that must be taken by the parents and DFACS to ensure that the child may be safely returned to the home.[30] If the report does not recommend reunification, it must identify: (1) the reasons the child was placed in foster care and could not be adequately protected in the home; (2) all of those reasons relied on by the agency in its finding that reunification would be detrimental to the child; and (3) any grounds for termination of parental rights.[31] The court must conduct a hearing within thirty days to review any report that recommends against reunification and must find by clear and convincing evidence that reunification would not be in the child's interests.[32]

The Act modifies the reasonable efforts requirement in two ways. First, the Act establishes that, while reasonable efforts should be made, in most cases, to prevent removal of a child from the home, the child's health and safety is the "paramount concern" in determining the appropriateness of reunification.[33] Second, the Act enumerates specific circumstances in which attempts at reunification need not be

25. 42 U.S.C. § 671 (1995).
26. *See* 1996 Ga. Laws 474, § 1, at 475 (formerly found at O.C.G.A. § 15-11-41(b) (Supp. 1997)).
27. *See id.* at 475-80 (formerly found at O.C.G.A. § 15-11-41 (Supp. 1997)).
28. *See id.* at 475-76 (codified at O.C.G.A. § 15-11-41(c) (Supp. 1998)).
29. *See id.*
30. *See id.* at 476 (formerly found at O.C.G.A. § 15-11-41(d) (Supp. 1997)).
31. *See id.* at 477 (formerly found at O.C.G.A. § 15-11-41(g) (Supp. 1997)).
32. *See id.* (formerly found at O.C.G.A. § 15-11-41(*j*) (Supp. 1997)).
33. O.C.G.A. § 15-11-41(b) (Supp. 1998).

made, including cases in which a parent has: (1) "subjected the child to aggravated circumstances" including abandonment, torture, chronic abuse, or sexual abuse; (2) committed murder or voluntary manslaughter of a sibling of the child; (3) "aided or abetted, attempted, conspired, or solicited to commit murder or voluntary manslaughter of another child of the parent"; (4) committed felony assault resulting in serious bodily injury to the child or a sibling; or (5) had parental rights to a sibling of the child terminated involuntarily.[34]

Time Reduction Efforts and Other Changes

In addition to setting clear guidelines for identifying conditions that pose an unreasonable potential threat to a child's safety and welfare and that warrant dispensing with efforts to reunite the child with the parent, the Act endeavors to reduce the time frame for moving children out of foster care and placing them in permanent homes. If the court determines that any of the statutory "aggravating circumstances" are present, the Act requires that the court hold a permanency hearing within thirty days and that DFACS initiate efforts to place the child in a permanent and secure home.[35] Moreover, the Act permits concurrent case planning: DFACS may begin efforts to place the child with adoptive parents or a legal guardian simultaneously with efforts to reunite the child with his or her parents.[36] Thus, if reunification efforts are not successful, the child can be more quickly moved into a permanent setting.

The Act also reduces the amount of time that must pass before a child can become eligible for adoption or other permanent placement by mandating that the state file a petition for termination of parental rights. DHR must file a petition for the termination of parental rights if: (1) a child has been in foster care for fifteen of the most recent twenty-two months; (2) the child is determined to be an abandoned infant; or (3) the court determines that any of the aggravating circumstances enumerated by the Act are present.[37] Exceptions to this rule exist in only relatively narrow circumstances. The state has discretion not to petition for termination in cases in which: (1) a relative is caring for the child; (2) the case plan presents a compelling

34. *Id.*
35. *See id.*
36. *See id.*
37. *See id.* § 15-11-41(n).

reason why termination is not appropriate; or (3) DFACS has failed to supply services necessary to accomplish successful reunification.[38]

A court order placing a child in foster care continues in force for twelve months, but must be reviewed within ninety days of the order, and no later than six months after the placement.[39] For purposes of the time requirements imposed under the statute, the Act provides that the order is in force when the child is considered to have "entered the foster care system."[40] Under the Act, the child is deemed to have entered the foster care system as of the date of the first judicial finding that the child has been subject to abuse or neglect, or the date that is sixty days after the child is removed from the home, whichever is earlier.[41]

A court may extend an order for up to twelve months but only if a permanency hearing is held prior to the expiration of the order.[42] The permanency plan must state whether the child is to be returned to the parent or referred for termination of parental rights and placed for adoption or legal guardianship.[43] If the child is not to be returned to the parent, referred for termination of parental rights, or placed for adoption with a fit and willing relative or a legal guardian, the plan must provide that the child be placed in another permanent living situation.[44]

The Act also seeks to foster greater accountability by imposing additional reporting requirements on DFACS. If the agency submits a report to the court recommending adoption or other permanent placement, the report must document the specific measures that the agency will take to assure expeditious placement of the child.[45] At a minimum, these efforts must include the use of national, regional, and local adoption exchanges.[46]

Finally, the Act provides that any party can request a hearing on a revised permanency plan after receiving a copy of the plan.[47] The state must provide a foster parent, pre-adoptive parent, or relative providing care for the child with notice and an opportunity to be heard

38. *See id.*
39. *See id.* § 15-11-41(*l*)
40. *Id.*
41. *See id.*
42. *See id.* § 15-11-41(o).
43. *See id.*
44. *See id.*
45. *See id.* § 15-11-41(k).
46. *See id.*
47. *See id.* § 15-11-41(o).

in any review or hearing concerning the child.[48] The Act also sets forth procedural safeguards for determining if out-of-state placement is appropriate and in the best interest of the child.[49]

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48. *See id.*
49. *See id.*