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## COURTS Juvenile Proceedings, Parental Rights: Provide That a Physician May Retain Temporary Protective Custody of a Child Without a Court Order and Without Parental Consent in Certain Situations; Provide a Short Title; Provide for Procedures; Provide for Authority and Duties of the Department of Human Resources; Provide for Immunity from Liability

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## COURTS

*Juvenile Proceedings, Parental Rights: Provide That a Physician May Retain Temporary Protective Custody of a Child Without a Court Order and Without Parental Consent in Certain Situations; Provide a Short Title; Provide for Procedures; Provide for Authority and Duties of the Department of Human Resources; Provide for Immunity from Liability*

CODE SECTIONS: O.C.G.A. §§ 15-11-15, 15-11-17.2 (new)  
BILL NUMBER: SB 315  
ACT NUMBER: 493  
GEORGIA LAWS: 2000 Ga. Laws 231  
SUMMARY: The Act, known as the "Terrell Peterson Act," adds two sections to the Georgia Code. These sections allow a physician to retain temporary protective custody of a child without a court order or parental consent if the physician has reasonable cause to believe the child's life or health is in imminent danger as a result of suspected abuse or neglect.  
EFFECTIVE DATE: July 1, 2000

### *History*

On January 15, 1998, five-year-old Terrell Peterson died as a result of severe abuse inflicted over a significant period of time by his grandmother, aunt, and his aunt's boyfriend.<sup>1</sup> After the news of Terrell's death was publicized, the Fulton County Department of Family and Children Services (DFACS), which had opened four cases on the child between 1995 and 1998, came under immediate scrutiny for "dropping the ball."<sup>2</sup>

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1. See Sandra Eckstein & Lyda Longa, *Fulton Agency Denies Blame in Boy's Death*, ATLANTA J. & CONST., June 3, 1998, at B6; Lyda Longa, *Fulton Charges Aunt with Murder*, ATLANTA J. & CONST., Jan. 30, 1998, at C1.

2. See Eckstein & Longa, *supra* note 1.

Unfortunately, the abuse Terrell Peterson endured during the years leading up to his death is shared by many other Georgia children.<sup>3</sup> Forty children die each year in Georgia as the result of confirmed abuse or neglect.<sup>4</sup> Approximately thirty additional children die each year in Georgia from suspected abuse.<sup>5</sup>

The Georgia General Assembly reacted to the public outcry over Terrell Peterson's tragic death with an Act named after the young victim.<sup>6</sup> The passage of SB 315 was a collaborative effort led by Senator Nadine Thomas of the 10th District.<sup>7</sup> To address the complex issues involved in this bill, Senator Thomas also worked with several Georgia organizations, including the Georgia Chapter for the American Academy of Pediatrics, the Georgia Medical Association, the Child Abuse Council, and the Hospital Association.<sup>8</sup>

### *SB 315*

Senators Nadine Thomas, David Scott, and Vincent Fort, of the 10th, 36th, and 39th Districts, respectively, sponsored SB 315.<sup>9</sup> Senator Thomas introduced the bill on the Senate floor on January 13, 2000.<sup>10</sup> The Senate assigned the bill to its Judiciary Committee, which favorably reported the bill, as substituted, on February 8, 2000.<sup>11</sup> The Senate adopted the Judiciary Committee substitute and passed the bill unanimously on February 16, 2000.<sup>12</sup> On February 17, 2000, the bill was read in the House and assigned to the House Judiciary Committee, which favorably reported the bill, as substituted, on February 29, 2000.<sup>13</sup> The House adopted the Judiciary

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3. See Audio Recording of Senate Proceedings, Feb. 16, 2000 (remarks by Sen. Nadine Thomas) <<http://www.ganet.org/services/leg/audio/2000archive.html>> [hereinafter Senate Audio].

4. See *id.*

5. See *id.*

6. See Ron Martz, *Safety Net for Children Passes; Bill Gives Physicians Power To Rescue Kids*, ATLANTA J. & CONST., Mar. 15, 2000, at A1.

7. See SB 315, as introduced, 2000 Ga. Gen. Assem.

8. See Senate Audio, *supra* note 3.

9. See SB 315, as introduced, 2000 Ga. Gen. Assem.

10. See State of Georgia Final Composite Status Sheet, Mar. 22, 2000.

11. See *id.*

12. See Georgia Senate Voting Record, SB 315 (Feb. 16, 2000); State of Georgia Final Composite Status Sheet, Mar. 22, 2000.

13. See State of Georgia Final Composite Status Sheet, Mar. 22, 2000.

Committee substitute and passed the bill on March 14, 2000.<sup>14</sup> The House returned the bill to the Senate on March 15, 2000, and the Senate concurred with the House version.<sup>15</sup> The Senate forwarded the bill to Governor Roy Barnes, who signed SB 315 into law on April 6, 2000.<sup>16</sup>

*Consideration by the Senate Judiciary Committee*

Upon introduction, the Senate assigned SB 315 to its Judiciary Committee, which favorably reported the bill, as substituted, on February 16, 2000.<sup>17</sup> The Judiciary Committee substitute changed new Code section 15-11-17.2, as proposed in SB 315, as introduced.<sup>18</sup> In the original version of the bill, Code section 15-11-17.2 provided that a physician may retain temporary custody of a child without a court order or parental consent when the physician has reasonable cause to believe the child's life or health is in imminent danger as a result of suspected abuse or neglect.<sup>19</sup> The Committee substitute added that the treating physician must be licensed to practice medicine in the State of Georgia in accordance with Article 2 of Chapter 34 of Title 43.<sup>20</sup>

In addition, the substitute added more detail to the physician's duties once a child is taken into temporary protective custody.<sup>21</sup> The physician must make a diligent effort to inform the child's parents, guardian, or custodian of the child's whereabouts.<sup>22</sup> Furthermore, the physician must report the suspected abuse or neglect to a child welfare agency

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14. See Georgia House of Representatives Voting Record, SB 315 (Mar. 14, 2000); State of Georgia Final Composite Status Sheet, Mar. 22, 2000.

15. See Georgia Senate Voting Record, SB 315 (Mar. 15, 2000); State of Georgia Final Composite Status Sheet, Mar. 22, 2000.

16. See 2000 Ga. Laws 231, § 5, at 236.

17. See State of Georgia Final Composite Status Sheet, Mar. 22, 2000.

18. Compare SB 315, as introduced, 2000 Ga. Gen. Assem., with SB 315 (SCS), 2000 Ga. Gen. Assem.

19. See SB 315, as introduced, 2000 Ga. Gen. Assem.

20. Compare SB 315, as introduced, 2000 Ga. Gen. Assem., with SB 315 (SCS), 2000 Ga. Gen. Assem.

21. Compare SB 315, as introduced, 2000 Ga. Gen. Assem., with SB 315 (SCS), 2000 Ga. Gen. Assem.

22. Compare SB 315, as introduced, 2000 Ga. Gen. Assem., with SB 315 (SCS), 2000 Ga. Gen. Assem.

designated by the Department of Human Resources (DHR).<sup>23</sup> Finally, within twenty-four hours of detaining the child, the physician must either inform a juvenile court intake officer that the child is in imminent danger or contact a law enforcement officer who shall then take the child into custody.<sup>24</sup>

The substitute also added a requirement that a hospital retain custody of a child who qualifies for inpatient admission until that child is ready for discharge.<sup>25</sup> If a physician takes custody of a child who is ineligible for inpatient admission or is medically ready for discharge, the DHR will take physical custody of the child within six hours of notification.<sup>26</sup>

The substitute further added that if the intake officer concludes that the child should be detained, the court must notify three parties: (1) the child's parents, guardian, or custodian; (2) the physician; and (3) the Department of Human Resources.<sup>27</sup> The court must also notify all three parties of a detention hearing within seventy-two hours.<sup>28</sup> If the intake officer determines that the child should not be detained, the child will be released according to the guidelines set forth in Code section 15-11-21.<sup>29</sup> Finally, the substitute provided language to ensure that Code section 15-11-17.2 is not construed to impose any additional duties on hospitals or physicians not already imposed by law.<sup>30</sup>

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23. *Compare* SB 315, as introduced, 2000 Ga. Gen. Assem., *with* SB 315 (SCS), 2000 Ga. Gen. Assem.

24. *Compare* SB 315, as introduced, 2000 Ga. Gen. Assem., *with* SB 315 (SCS), 2000 Ga. Gen. Assem.

25. *Compare* SB 315, as introduced, 2000 Ga. Gen. Assem., *with* SB 315 (SCS), 2000 Ga. Gen. Assem.

26. *Compare* SB 315, as introduced, 2000 Ga. Gen. Assem., *with* SB 315 (SCS), 2000 Ga. Gen. Assem.

27. *Compare* SB 315, as introduced, 2000 Ga. Gen. Assem., *with* SB 315 (SCS), 2000 Ga. Gen. Assem.

28. *Compare* SB 315, as introduced, 2000 Ga. Gen. Assem., *with* SB 315 (SCS), 2000 Ga. Gen. Assem.

29. *Compare* SB 315, as introduced, 2000 Ga. Gen. Assem., *with* SB 315 (SCS), 2000 Ga. Gen. Assem. *See also* O.C.G.A. § 15-11-21 (1999).

30. *Compare* SB 315, as introduced, 2000 Ga. Gen. Assem., *with* SB 315 (SCS), 2000 Ga. Gen. Assem.

*Consideration by the House Judiciary Committee*

The House assigned SB 315 to its Judiciary Committee on February 17, 2000.<sup>31</sup> The House Judiciary Committee favorably reported the bill, as substituted, on February 29, 2000.<sup>32</sup> The House Committee recognized a potential conflict between two bills under consideration by the General Assembly. Its own HB 1112, if signed into law, would reorganize Articles 1, 2, and 4 of Title 15, Chapter 11.<sup>33</sup> The Senate version of SB 315, which proposed to add new Code section 15-11-17.2, would not correspond well with the revisions proposed in HB 1112.<sup>34</sup> To avoid this potential conflict, the House Judiciary Committee divided SB 315 into two parts.<sup>35</sup> Part I contained Section 1, the short title of the act, and Section 2, the exact language of SB 315 as passed by the Senate, proposing new Code section 15-11-17.2.<sup>36</sup> Part II contained Sections 3 and 4, as added by the House Judiciary Committee.<sup>37</sup> Section 3 proposed new Code section 15-11-15, which was essentially identical to the language of Code section 15-11-17.2 as passed by the Senate, to better fit with the Code reorganization as proposed in HB 1112.<sup>38</sup> Section 4 provided that if HB 1112 should become law, Sections 1 and 3 of the Act, creating Code section 15-11-15, will become effective on July 1, 2000, and Section 2 of the Act, creating Code section 15-11-17.2, will be repealed.<sup>39</sup> Section 4 also provided for the reverse scenario: If HB 1112 does not become law, sections 1 and 2 of the Act will become effective July 1, 2000, and section 3 of the Act will be repealed.<sup>40</sup>

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31. *See* State of Georgia Final Composite Status Sheet, Mar. 22, 2000.

32. *See id.*

33. *See* 2000 Ga. Laws 20, § 1, at 21-107 (formerly HB 1112, 2000 Ga. Gen. Assem.).

34. *Compare* 2000 Ga. Laws 20, § 1, at 21-107, *with* SB 315 (SCS), 2000 Ga. Gen. Assem.

35. *Compare* SB 315 (SCS), 2000 Ga. Gen. Assem., *with* SB 315 (HCS), 2000 Ga. Gen. Assem.

36. *See* SB 315 (HCS), 2000 Ga. Gen. Assem.

37. *See id.*

38. *Compare* SB 315 (SCS), 2000 Ga. Gen. Assem., *with* SB 315 (HCS), 2000 Ga. Gen. Assem.

39. *See* SB 315 (HCS), 2000 Ga. Gen. Assem.

40. *See* SB 315 (HCS), 2000 Ga. Gen. Assem.

*The Act*

As anticipated by the House Judiciary Committee, Governor Barnes had already signed HB 1112 into law on March 1, 2000.<sup>41</sup> Thus, in accordance with Section 4 of the Terrell Peterson Act, Code section 15-11-15 took effect on July 1, 2000, and Code section 15-11-17.2, although created by the Act, did not take effect.<sup>42</sup>

Section 3 of the Terrell Peterson Act adds new Code section 15-11-15, which allows licensed physicians to take temporary protective custody of a child without a court order or parental consent.<sup>43</sup> Two requirements must be met before a physician can take temporary protective custody of a child.<sup>44</sup> First, the physician must have reasonable cause to believe the child's life or health is in imminent danger due to abuse or neglect.<sup>45</sup> Second, the physician does not have sufficient time to obtain a court order granting him or her temporary custody of the child.<sup>46</sup>

Once a physician obtains custody of a child, he or she must make a reasonable and diligent effort to inform the child's parents or guardian of the child's whereabouts.<sup>47</sup> The physician must also report the suspected abuse or neglect to the appropriate child welfare agency, as required by Georgia code section 19-7-5, and inform the agency that he or she has taken the child into temporary protective custody.<sup>48</sup> Finally, within twenty-four hours of detaining a child, the physician must either inform a juvenile court intake officer that the child is in imminent danger or contact a law enforcement officer, who will then take the child into custody and bring him or her before the juvenile court intake officer.<sup>49</sup>

A hospital must retain any child who is eligible for inpatient admission until he or she is medically ready for discharge.<sup>50</sup> Once a hospital notifies the Department of Human Resources

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41. *See* 2000 Ga. Laws 20, § 29, at 126.

42. *See* O.C.G.A. §§ 15-11-15, -17.2 (Supp. 2000).

43. *See id.* § 15-11-15.

44. *See id.* § 15-11-15(a).

45. *See id.* § 15-11-15(a)(1).

46. *See id.* § 15-11-15(a)(2).

47. *See id.* § 15-11-15(b)(1).

48. *See id.* § 15-11-15(b)(2).

49. *See id.* § 15-11-15(b)(3).

50. *See id.* § 15-11-15(c).

(DHR) that a physician has taken custody of a child who is either ineligible for inpatient admission or is medically ready for discharge, the DHR will take physical custody of the child within six hours of notification.<sup>51</sup>

If a juvenile intake officer determines that a child, who is in the physical custody of a physician, should be detained and the court orders the child be detained in the legal custody of the DHR, then the Department should take physical custody of the child within six hours of notification by the physician.<sup>52</sup> If the child is eligible for admission to the hospital in which he or she has been temporarily detained by the physician, then the Department will not take physical possession of the child.<sup>53</sup> If a child is brought before the juvenile court by a law enforcement officer, the DHR will immediately take physical possession of the child.<sup>54</sup>

If a child is not released, the court must notify the child's parents or guardian, the physician, and the DHR of a detention hearing, which is held within seventy-two hours.<sup>55</sup> If a juvenile intake officer determines that there is no reason for the child to be detained, the child shall be released.<sup>56</sup> If the child is not released after the detention hearing, the physician must file a petition in accordance with Georgia Code section 15-11-49 if the physician believes the child is still in danger.<sup>57</sup> A physician or hospital that acts in good faith in treating a child is immune from civil or criminal liability for taking or failing to take any action.<sup>58</sup> Furthermore, Code section 15-11-15 does not create any additional duty of care on hospitals or physicians not already imposed by law.<sup>59</sup>

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51. *See id.*

52. *See id.* § 15-11-15(d).

53. *See id.*

54. *See id.*

55. *See id.* § 15-11-15(e).

56. *See id.* § 15-11-15(f).

57. *See id.* § 15-11-15(g).

58. *See id.* § 15-11-15(h).

59. *See id.*