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Juvenile Proceedings, Parental Rights: Provide Guidance for Reunification or Termination of Parental Rights

CODE SECTIONS:	O.C.G.A. §§ 15-11-41, -57, -81, -90, 19-8-10 to -11 (amended)
BILL NUMBER:	SB 611
ACT NUMBER:	749
GEORGIA LAWS:	1996 Ga. Laws 474
SUMMARY:	The Act provides guidance to the courts and the Department of Family and Children Services for reunification and termination of parental rights. The Act grants juvenile court judges the authority to appoint a guardian ad litem to determine if termination of parental rights is appropriate. The Act specifies a review system for children in the foster care program. The Act defines and requires proper communication by the parent in order to bar termination of parental rights.
EFFECTIVE DATE:	July 1, 1996

History

Since elected Lieutenant Governor in 1990, Pierre Howard "has sponsored far-reaching child protection legislation" in an attempt to be a voice for Georgia's children.[1] Lieutenant Governor Howard is on a crusade to toughen laws against parents who are reunified with their children and then abuse them.[2] Many foster parents believe scarce resources are "wasted on futile efforts at family reunification."[3] They believe that incompetent parents who receive multiple opportunities to correct their actions yet refuse to assume parental responsibilities, rob children of the "chance to grow in a healthy, loving family environment."[4]

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1. Editorial, *Our Opinion: Fighting for our Children*, VALDOSTA DAILY TIMES, Feb. 1, 1996.
2. Telephone Interview with Martha Wigton, Office of the Lieutenant Governor (Apr. 15, 1996).
3. William H. Matthews, *Remembering the Children's Place*, ATLANTA J. & CONST., Feb. 5, 1996, at A10 (letter to the editor).
4. *Id.*

In January 1996, nineteen-month-old Austin Sparks was beaten to death.[5] The autopsy revealed not only the blows that caused his death, but also an untreated broken leg, burns and bruises.[6] His mother had been previously reported four times to the Department of Family and Children Services (DFACS) for neglecting Austin's sister.[7] The mother was charged with felony child abuse; the babysitter was charged with murder.[8] Soon after that tragic incident, the body of a three-year-old girl from Macon County was found in the Flint River.[9] Authorities reportedly believe that her mother, who had a history of mental illness, threw the child and her twin brother from a bridge.[10] Growing publicity of children killed by parents known to have histories of abusive behavior prompted Lieutenant Governor Howard and the Georgia General Assembly to propose legislation to protect these children.[11]

The state provides reunification services for families when a child has been removed from the home for deprivation.[12] Unfortunately, reunification can never be accomplished for some families.[13] Prior to enactment of this legislation, children caught in this situation would float in the foster care system for years, never experiencing a stable home life.[14] Moreover, too many renewals were made without critical questions being asked about long-term care.[15] According to Senator Mary Margaret Oliver, many Georgia legislators agreed this policy needed improvement.[16] According to Lieutenant Governor Howard, "[s]ecuring the safety and stability of Georgia's most precious resource, our children, should be our number one commitment . . ., [a]nd I can think of no better way to accomplish this than to insure that all of Georgia's children have a safe, happy and permanent home in which to grow."[17]

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5. Editorial, *First, Protect the Children*, ATLANTA CONST., Jan. 30, 1996, at A8.
6. *Id.*
7. *Id.*
8. *Id.*
9. *Id.*
10. *Id.*
11. *Id.*
12. Office of Lieutenant Governor, Press Release, *Howard's Legislation to Provide for Neglected and Abused Children Clears the Senate* (Feb. 12, 1996) [hereinafter Press Release] (available in Georgia State University College of Law Library).
13. *Id.*
14. *Id.*
15. Telephone Interview with Sen. Mary Margaret Oliver, Senate District No. 42 (May 7, 1996) [hereinafter Oliver Interview].
16. *Id.*
17. Press Release, *supra* note 12.

SB 611

Introduction

The purpose of the Act is to improve the systematic review of children in Georgia's foster care system.[18] Senator Oliver, along with many juvenile court judges in Georgia and Lieutenant Governor Howard, recognized a serious problem in the interaction between the foster care system and the courts.[19] Under certain circumstances, efforts to reunify a deprived child with his or her natural parents can be detrimental to the child, making reunification services inappropriate.[20] The Act provides guidelines for use by the courts and DFACS for determining when reunification should not be sought or should be stopped.[21] The aim of the Act is to urge DFACS and the courts to consider the best interest of the child.[22] While the primary goal in the past has been reunification, the Act amends Georgia law by combining different aspects of parental rights termination and the foster care review system and, when necessary, allowing termination of parental rights more quickly than has been available in past years.[23] This new process and enhanced court authority is designed to prevent children from being caught in the system for years.[24] Under the Act, judges are able to "more quickly provide children from backgrounds of neglect and abuse with a permanent, stable adoptive home."[25]

The original bill was patterned after a Utah law.[26] That law, however, failed to provide any specific standards or guidance.[27] As a result, the original bill was not specific enough to operate smoothly in Georgia's system.[28] As introduced, the bill was too broad and could have infringed upon the constitutional rights of parents to raise their children.[29] The General Assembly referred the bill to the Senate Judiciary Committee, but the first committee version was not introduced on the Senate floor.[30] Instead, Senator Oliver and Senator

18. Oliver Interview, *supra* note 15.
19. Interview with Will Wingate, Special Assistant, Office of Lieutenant Governor (Apr. 18, 1996) [hereinafter Wingate Interview].
20. *Id.*
21. *See id.*
22. *Id.*
23. Telephone Interview with Eric John, Executive Director, Council of Juvenile Court Judges of Georgia (Apr. 15, 1996) [hereinafter John Interview].
24. Telephone Interview with Sen. Charles C. Clay, Senate District No. 37 (Apr. 18, 1996) [hereinafter Clay Interview].
25. Press Release, *supra* note 12.
26. Clay Interview, *supra* note 24; Oliver Interview, *supra* note 15.
27. Oliver Interview, *supra* note 15.
28. *Id.*
29. *See* Wingate Interview, *supra* note 19.
30. *Id.; see* SB 611 (SCS), 1996 Ga. Gen. Assem.

Clay Land rewrote the bill entirely in order to provide standards and eliminate confusion caused by splicing the Utah law into Georgia's current Code provisions.[31]

Dispositional Orders of a Juvenile Court

Section one of the Act revises Code section 15-11-41.[32] The Act requires DFACS to submit a report containing either a reunification plan or a statement of the factual basis for determining that reunification is inappropriate.[33] Previously, the Code required only the submission of a reunification plan.[34] Under the Act, the DFACS report must be completed within thirty days of the child's removal from the home.[35] The contents of the report are to be determined at a meeting among DFACS, a court appointed citizen review panel, the parents, and the child.[36] Additionally, the report must contain any available dissenting recommendations made by the citizen review panel and any recommendations made by the parents.[37]

The Act sets out the mandatory contents of a report recommending reunification and provides that the plan will be adopted by the court as its dispositional court order if no hearing is requested by the parents.[38] Once adopted by the court, the order will instruct the parents in achieving reunification.[39] If, however, reunification is not appropriate, as determined by DFACS, the Act instructs the court, upon proper notice to all parties, to hold a hearing within thirty days of the filing of the DFACS report to review that determination.[40] Additionally, the Act sets out what the report must contain if it states that reunification is inappropriate.[41] Under the Act, the report must address: (1) the reason the child was removed from the home; (2) the reason reunification efforts would be detrimental to the child; and (3) any potential grounds for termination of parental rights.[42]

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31. Oliver Interview, *supra* note 15.
32. O.C.G.A. § 15-11-41 (Supp. 1996).
33. *Id.* § 15-11-41(c).
34. 1990 Ga. Laws 1765, § 1, at 1766 (formerly found at O.C.G.A. § 15-11-41(c) (1995)).
35. O.C.G.A. § 15-11-41(c) (Supp. 1996).
36. *Id.*
37. *Id.*
38. *Id.* § 15-11-41(d) to (e).
39. *Id.*
40. *Id.* § 15-11-41(f).
41. *Id.* § 15-11-41(g).
42. *Id.* This section is a catch-all to ensure there is justification for removal. Wingate Interview, *supra* note 19.

The Act provides that DFACS must notify the court of any intention to commence proceedings to terminate parental rights at the hearing.[43] If DFACS does not intend to do so, the court may appoint a guardian ad litem to consider that option.[44] According to the Act, the court must use the "clear and convincing" evidence standard for determining whether reunification services would be detrimental to the child, and therefore, that the services should not be provided.[45]

The disposition order that places a child in foster care lasts twelve months from the date of placement.[46] Within ninety days of the disposition order but no later than 180 days from the original placement, the child's case will be reviewed.[47] At this initial review and at each subsequent review, DFACS is required to state whether it intends to proceed to terminate parental rights at that time.[48] If DFACS does not intend to do so, the court is authorized to appoint a guardian ad litem to determine whether terminating parental rights would be appropriate.[49] Each time a foster care case is reviewed, the court is required to enter a supplemental order.[50] The Act further provides that if a citizen review panel recommends termination of parental rights because a parent unreasonably failed to comply with a reunification plan, the court may appoint a guardian ad litem to determine whether termination proceedings would be appropriate.[51]

Section two of the Act amends Code section 15-11-57, which contains a list of requirements that courts may impose on parents if an order of

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43. O.C.G.A. § 15-11-41(h) (Supp. 1996).

44. *Id.* Previously, if DFACS decided not to attempt to terminate parental rights, the juvenile court judge lacked the authority to terminate parental rights, even if in the best interest of the child, and could only *recommend* termination. John Interview, *supra* note 23. The judges' only option was to place the child in foster care. *Id.* Under the Act, judges have significantly more discretion because of their ability to appoint a guardian ad litem to initiate the parental rights petition. *Id.* In the past, a guardian ad litem could not recommend termination because then the guardian ad litem would have to remove him or herself. *Id.* The Act allows the system to terminate parental rights and attain permanent results for the child, rather than forcing the child to spend one or two years in foster care. *Id.*

45. O.C.G.A. § 15-11-41(i) (Supp. 1996). This subsection states that there must be clear and convincing evidence that leaving the child in the home would be detrimental to the child. Wingate Interview, *supra* note 19. This requires more than the "best interest of the child," which could allow a child to be placed in foster care merely because it was "better" than the child's home, even though the child's home is acceptable. *Id.*

46. O.C.G.A. § 15-11-41(j) (Supp. 1996). Previously, the disposition order lasted eighteen months. 1990 Ga. Laws 1765, § 1, at 1768 (formerly found at O.C.G.A. § 15-11-41(d) (1995)).

47. O.C.G.A. § 15-11-41(j) (Supp. 1996).

48. *Id.*

49. *Id.*

50. *Id.* § 15-11-41(k).

51. *Id.*

disposition of a child has been or is about to be made.[52] The Act adds to the list a provision giving courts the authority to require parents to enter and complete a substance abuse program.[53] Prior to the passage of the Act, a loophole existed in the law, as the courts had little power to deter parents' drug use.[54]

Termination of Parental Rights

Section three of the Act amends subsections (B) and (C) of Code section 15-11-81(b)(4), which provide a list of specific grounds for determining whether a child is without proper parental care and control.[55] Previously, the state provided that the court shall consider a parent's failure to communicate for more than a year with his or her child in foster care in its determination.[56] The Act adds the requirement that communication with the child be done in a "meaningful, supportive, parental manner."[57]

Similarly, section five of the Act amends Code section 19-8-10(b), relating to the circumstances under which the surrender of parental rights is not a prerequisite to the filing of a petition for adoption.[58] Prior to the Act, a failure to communicate with the child was one of the circumstances under which the surrender of parental rights prerequisite was waived.[59] The Act adds the requirement that parents' communication with their children in foster care be done in a

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52. *See id.* § 15-11-57(a)(9). This section was added as a result of the Clay Amendment. *See* SB 611 (SFA), 1996 Ga. Gen. Assem.; Clay Interview, *supra* note 24. This amendment began as a separate bill and was later combined into SB 611. Clay Interview, *supra* note 24.

53. O.C.G.A. § 15-11-57(a)(9) (Supp. 1996).

54. Clay Interview, *supra* note 24.

55. O.C.G.A. § 15-11-81(b)(4) (Supp. 1996). Originally, SB 611 amended Code section 15-11-81(b)(4)(B) by adding a consideration for termination of parental rights. SB 611, as introduced, 1996 Ga. Gen. Assem. The added portion required the court to consider "[a]ny other circumstances creating a presumption that reunification services should not be provided, as specified in subsection (c) of Code Section 15-11-41." *Id.* This language, which was included to give judges room for interpretation, was deleted from the final version because it was deemed to be too broad. Wingate Interview, *supra* note 19.

56. 1986 Ga. Laws 1017, § 4, at 1022-23 (formerly found at O.C.G.A. § 15-11-81(b)(4)(c) (1995)).

57. O.C.G.A. § 15-11-81(b)(4)(C) (Supp. 1996). This section was amended to redefine and require proper communication. Wingate Interview, *supra* note 19. The communication must be substantive rather than simply a last minute ploy to avoid termination of parental rights. *Id.* A parent who sends a card the last week of the year, but who does nothing during that year to support the child or act as a parent, has not communicated with the child within the meaning of the Act. *Id.*

58. O.C.G.A. §§ 19-8-10, -11 (Supp. 1996).

59. 1990 Ga. Laws 1572, § 5, at 1590 (formerly found at O.C.G.A. § 19-8-10(b) (1995)).

"meaningful, supportive, parental manner."[60] If a parent fails to make a meaningful effort to communicate with the child for more than a year, then the parent's surrender of parental rights is not necessary to allow a petition for adoption to go forward.[61]

Section six of the Act amends Code section 19-8-11(a)(3) to provide that when one parent has surrendered parental rights or the court terminates one parent's rights, the parental rights of the second parent may be terminated if he or she has failed to communicate with the child in a meaningful manner.[62] This section previously listed three circumstances under which the second parent's rights could terminate, but failure to communicate with the child was not one of them.[63] This section adds the communication provision and, consistent with the other sections, requires the communication between the child and the second parent to be meaningful and supportive.[64] Once both parents' rights are terminated, the petition for adoption may go forward.[65]

Finally, the Act amends Code section 15-11-90(a), relating to the placement of a child with a family member after parental rights have been terminated.[66] The Act adds a provision that, in the event all parental rights are terminated, a child will be placed with a relative only if it is in the best interest of the child.[67]

Camilla Camp Williams

60. O.C.G.A. §§ 19-8-10(b), -11(a)(3) (Supp. 1996); Wingate Interview, *supra* note 19.
61. O.C.G.A. §§ 19-8-10(b), -11(a)(3) (Supp. 1996); Wingate Interview, *supra* note 19.
62. O.C.G.A. § 19-8-11(a)(3) (Supp. 1996).
63. 1990 Ga. Laws 1572, § 5, at 1591 (formerly found at O.C.G.A. § 19-8-11(a)(3) (1995)).
64. O.C.G.A. § 19-8-11(a)(3) (Supp. 1996).
65. *See id.*
66. *Id.* § 15-11-90(a)(1). This section was added by the Clay Amendment. SB 611 (SFA), 1996 Ga. Gen. Assem. This amendment began as a separate bill and was later combined into SB 611. Clay Interview, *supra* note 24.
67. O.C.G.A. § 15-11-90(a)(1) (Supp. 1996). Previously, after parental rights were terminated, the court was encouraged to place the child with any "suitable family member," regardless of that person's relationship with the child or the child's interest. *See* 1991 Ga. Laws 602 (formerly found at O.C.G.A. § 15-11-90(a)(1) (1995)); Clay Interview, *supra* note 24. The standard of care and overriding factor is now the best interest of the child. Clay Interview, *supra* note 24; *see* O.C.G.A. § 15-11-90(a)(1) (Supp. 1996).