

Senate Bill 236

By: Senators Stephens of the 51st, Lee of the 29th and Zamarripa of the 36th

A BILL TO BE ENTITLED  
AN ACT

1 To amend Chapter 11 of Title 15 of the Official Code of Georgia Annotated, relating to  
2 juvenile proceedings, so as to provide for additional placement options; to change certain  
3 provisions regarding definitions; to change certain provisions regarding reunification efforts;  
4 to change certain provisions regarding child placement following termination orders; to  
5 provide for related matters; to provide an effective date; to repeal conflicting laws; and for  
6 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 juvenile  
10 proceedings, is amended by striking paragraph (5) of Code Section 15-11-2, relating to  
11 definitions, and inserting in its place the following:

12 "(5) 'Custodian' means:

13 (A) A person a person, other than a parent or legal guardian, who stands in loco  
14 parentis to the child or a person to whom legal custody of the child has been given by  
15 order of a court, ~~and who has the rights and duties provided in Code Section 15-11-13;~~

16 or

17 (B) A public or private agency or other private organization licensed or otherwise  
18 authorized by law to receive and provide care for a child to which legal custody of the  
19 child has been given by order of a court."

20 **SECTION 2.**

21 Said chapter is further amended by striking subsections (b), (i), and (o) of Code Section  
22 15-11-58, relating to reunification efforts, and inserting in their place new subsections (b),  
23 (i), and (o), respectively, to read as follows:

24 "(b) Within 30 days of the date a child who is placed in the custody of the Department of  
25 Human Resources is removed from the home and at each subsequent review of the

1 disposition order, the Division of Family and Children Services of the Department of  
 2 Human Resources must submit a written report to the court which shall either include a  
 3 case plan for a reunification of the family or include a statement of the factual basis or  
 4 bases for determining that a plan for reunification is not appropriate. Such report shall  
 5 become a discrete part of the case record in a format determined by the Division of Family  
 6 and Children Services of the Department of Human Resources and shall be made available  
 7 to the parents or guardian of the foster child. The contents of the report shall be determined  
 8 at a meeting to be held by the Division of Family and Children Services of the Department  
 9 of Human Resources in consultation with the judicial citizen review panel, if one is  
 10 designated by the court for such purpose, and the parents and children, when available.  
 11 The court shall ensure that written notice of the meeting is provided to the parents shall be  
 12 given written notice of the meeting at least five days in advance and shall be advised advise  
 13 the parents that the report will be submitted to become an order of the court. The report  
 14 submitted to the court shall also contain any dissenting recommendations of the judicial  
 15 citizen review panel, if applicable, and any recommendations of the parents, if such are  
 16 available. In advance of any review or hearing to be held with respect to the child, the  
 17 court shall ensure that written notice of such review or hearing, including their right to be  
 18 heard at such review or hearing, is provided to the custodian or to the foster parents, or  
 19 both, if any, of the child, and to any preadoptive parents or relatives providing care for the  
 20 child, consistent with the form and timing of notice to parties; provided, however, that this  
 21 provision shall not be construed to require a foster parent, custodian, preadoptive parent,  
 22 or relative caring for the child to be made a party to the hearing solely on the basis of such  
 23 notice and opportunity to be heard. At each judicial review, the court in its discretion,  
 24 based upon the evidence, may enter an order accepting, rejecting, or modifying the report  
 25 of the Division of Family and Children Services of the Department of Human Resources,  
 26 ordering an additional evaluation, appointing a guardian ad litem, or undertaking such other  
 27 review as it deems necessary and appropriate to determine the disposition that is in the  
 28 child's best interest. The court in its order shall include findings of fact which reflect the  
 29 court's consideration of the oral and written testimony offered by the parents, the custodian  
 30 or the foster parents, or both, if any, of the child, any preadoptive parents or relatives  
 31 providing care for the child, and the Division of Family and Children Services of the  
 32 Department of Human Resources."

33 "(i)(A) If, after a judicial hearing, ~~in which~~ the court finds that reunification is not in the  
 34 best interests of the child and custody is granted to a relative, including a biological father  
 35 who is not the legal father of the child, who, after study by the probation officer or other  
 36 person or agency designated by the court, is found by the court to be qualified to receive  
 37 and care for the child, the custody order shall remain in effect until the child's eighteenth

1 birthday unless modified following a petition for modification by a party pursuant to  
 2 Code Section 15-11-40. Within 36 months of the custody order and every 36 months  
 3 thereafter, a probation officer, judicial citizen review panel established by the court, or  
 4 other person or agency designated by the court shall, after study or review, submit a  
 5 report to the court addressing whether the relative with custody continues to be qualified  
 6 to receive and care for the child. A copy of the report shall be mailed to the parents at  
 7 their last known address.

8 (B) If, after a judicial hearing, the court finds that reunification is not in the best  
 9 interests of the child, the court may transfer custody to:

10 (i) Any nonrelative individual who, after study by the probation officer or other  
 11 person or agency designated by the court, is found by the court to be qualified to  
 12 receive and care for the child;

13 (ii) An agency or other private organization licensed or otherwise authorized by law  
 14 to receive and provide care for the child, where the court finds a compelling reason  
 15 to place the child in another planned permanent living arrangement; or

16 (iii) A suitable custodian in another state pursuant to the provisions of Code Section  
 17 15-11-89.

18 Within 12 months of the custody order and every 12 months thereafter, a probation  
 19 officer, judicial citizen review panel established by the court, or other person or agency  
 20 designated by the court shall, after study or review, submit a report to the court  
 21 addressing whether the person or agency with custody continues to be qualified to  
 22 receive and care for the child. A copy of the report shall be mailed to the parents at  
 23 their last known address. Whenever the child is placed in another planned permanent  
 24 living arrangement with an agency or other private organization licensed or otherwise  
 25 authorized by law to receive and provide care for the child, such agency or other private  
 26 organization shall be charged with the responsibility of notifying the court within ten  
 27 days in the event its license is placed on probation, suspended, revoked, or surrendered,  
 28 and in any such instance the court shall conduct a judicial review within 30 days to  
 29 determine whether another placement should be made for the child."

30 "(o)(1) With respect to each child in the custody of the Department of Human Resources,  
 31 a permanency hearing shall be held no later than 30 days after the Division of Family and  
 32 Children Services of the Department of Human Resources has submitted a written report  
 33 to the court which does not contain a plan for reunification services as provided in  
 34 subsection (j) of this Code section, or no later than 12 months after the child is considered  
 35 to have entered foster care, whichever comes first. Thereafter, a permanency hearing  
 36 shall be held not less frequently than every 12 months during the time the child continues  
 37 in the custody of the Department of Human Resources. A permanency hearing may be

1 held by the court at the time of the hearing on a motion to extend custody permitted by  
2 subsection (n) of this Code section.

3 ~~(1)~~(2) At the time of the permanency hearing, the Division of Family and Children  
4 Services of the Department of Human Resources shall submit for the court's  
5 consideration a report recommending a permanency plan for the child which shall include  
6 whether and, if applicable, when the child shall be returned to the parent or parents;  
7 referred for termination of parental rights and adoption; referred for legal guardianship;  
8 placed permanently with a fit and willing relative; or, in the case where the division has  
9 provided a compelling reason that one of the foregoing options would not be in the best  
10 interest of the child, placed in another planned permanent living arrangement. The report  
11 shall include documentation of the steps to be taken by the Division of Family and  
12 Children Services of the Department of Human Resources to finalize the permanent  
13 placement of the child. When the permanency plan recommended is referral for  
14 termination of parental rights and adoption, such report shall include child specific  
15 recruitment efforts such as the use of state, regional, and national adoption exchanges,  
16 including electronic exchange systems.

17 (3) In advance of any permanency hearing to be held with respect to the child, the court  
18 shall ensure that written notice of such hearing, including their right to be heard at such  
19 hearing, is provided to the custodian or to the foster parents, or both, if any, of the child,  
20 and to any preadoptive parents or relatives providing care for the child, consistent with  
21 the form and timing of notice to parties; provided, however, that this provision shall not  
22 be construed to require a foster parent, custodian, preadoptive parent, or relative caring  
23 for the child to be made a party to the hearing solely on the basis of such notice and  
24 opportunity to be heard. At each permanency hearing, the court in its discretion, based  
25 upon the evidence, may enter an order accepting, rejecting, or modifying the report of the  
26 Division of Family and Children Services of the Department of Human Resources,  
27 ordering additional evaluation, appointing a guardian ad litem, or undertaking such other  
28 review as it in its sole discretion deems necessary and appropriate to determine the  
29 disposition that is in the child's best interest. The court in its order shall include findings  
30 of fact which reflect the court's consideration of the oral and written testimony offered  
31 by the parents, the custodian or the foster parents, or both, if any, of the child, any  
32 preadoptive parents or relatives providing care for the child who are required to be  
33 provided with notice and a right to be heard in such hearing to be held with respect to the  
34 child, and the Division of Family and Children Services of the Department of Human  
35 Resources.

36 ~~(2)~~(4) The permanency hearing may be conducted as the court directs by the juvenile  
37 court judge or by an associate juvenile court judge or judge pro tempore. The court may

1 also direct that the permanency hearing be conducted by a judicial citizen review panel  
 2 established by the court in the manner provided in subsection (k) of this Code section,  
 3 unless the permanency hearing is one required under subsection (j) of this Code section  
 4 as a result of a recommendation that reunification services are not appropriate. The  
 5 judicial citizen review panel may conduct its hearing in the same manner as it conducts  
 6 a case review under subsection (k) of this Code section.

7 (A) In the event that the permanency hearing is conducted by a judicial citizen review  
 8 panel, the panel shall ensure that written notice of such hearing, including their right to  
 9 be heard at such hearing, is provided in advance to the custodian or to the foster  
 10 parents, or both, if any, of the child, and any preadoptive parents or relatives providing  
 11 care for the child, consistent with the form and timing of notice to parties; provided,  
 12 however, that this provision shall not be construed to require a foster parent, custodian,  
 13 preadoptive parent, or relative caring for the child to be made a party to the hearing  
 14 solely on the basis of such notice and opportunity to be heard. The panel shall include  
 15 in its recommendation findings of fact which reflect the panel's consideration of the  
 16 oral and written testimony offered by the parents, the custodian or foster parents, if any,  
 17 of the child, any preadoptive parents or relatives providing care for the child who are  
 18 required to be provided with notice and a right to be heard in such hearing to be held  
 19 with respect to the child, and the Division of Family and Children Services of the  
 20 Department of Human Resources. The panel shall transmit its report, including its  
 21 findings and recommendations and those of the Division of Family and Children  
 22 Services, to the court and the parties within five days after such hearing. The report of  
 23 the judicial citizen review panel shall include all the elements required in paragraphs  
 24 ~~(4)~~(6) and ~~(5)~~(7) of this subsection. Any party may request a hearing on the proposed  
 25 permanency plan by submitting a request in writing within five days of receiving a copy  
 26 of such plan. If a hearing is not requested, the court shall review the proposed  
 27 permanency plan and enter a supplemental order incorporating all elements required by  
 28 paragraphs ~~(4)~~(6) and ~~(5)~~(7) of this subsection. In the event a hearing before the court  
 29 is requested on the report transmitted by the judicial citizen review panel, the court  
 30 shall, after hearing evidence, enter a supplemental order incorporating all the elements  
 31 required in paragraphs ~~(4)~~(6) and ~~(5)~~(7) of this subsection.

32 (B) If a permanency hearing is held before the court, the court shall, after hearing  
 33 evidence, enter a supplemental order incorporating all elements of the proposed  
 34 permanency plan required by paragraphs ~~(4)~~ (6) and ~~(5)~~ (7) of this subsection.  
 35 ~~(3)~~(5) The parents, the foster parents or custodian, if any, and other parties shall be given  
 36 written notice of a permanency hearing at least five days in advance and the parents, the  
 37 foster parents or custodian, if any, and other parties shall be advised that the permanency

1 plan recommended by the Division of Family and Children Services of the Department  
 2 of Human Resources will be submitted as a recommendation to ~~become an order~~ of the  
 3 court. Procedural safeguards shall be applied with respect to parental rights pertaining  
 4 to the removal of the child from the home of his or her parents, to a change in the child's  
 5 placement, and to any determination affecting visitation privileges of parents. In  
 6 addition, the court shall ensure that the foster parents or custodian, if any, of a child and  
 7 any preadoptive parent or relative providing care for the child shall receive written notice  
 8 of the permanency hearing ~~at least five days~~ in advance and shall be given an opportunity  
 9 to be heard, consistent with the form and timing of notice to parties; provided, however,  
 10 that this provision shall not be construed to require a foster parent, custodian, preadoptive  
 11 parent, or relative caring for the child to be made a party to the hearing solely on the basis  
 12 of such notice and opportunity to be heard.

13 ~~(4)~~(6) The permanency plan incorporated in the court's order shall include whether and,  
 14 if applicable, when the child shall be returned to the parent or parents, referred for  
 15 termination of parental rights and adoption, referred for legal guardianship, or placed  
 16 permanently with a fit and willing relative. If the court finds that there is a compelling  
 17 reason that it would not be in the child's best interests to be returned to the parent or  
 18 parents, referred for termination of parental rights and adoption, referred for legal  
 19 guardianship, or placed permanently with a fit and willing relative, then the court's order  
 20 shall document the compelling reason and provide that the child should be placed in  
 21 another planned permanent living arrangement, including, but not limited to, placement  
 22 with a custodian as defined in the court's order.

23 ~~(5)~~(7) The court or judicial citizen review panel which conducts the permanency hearing  
 24 shall determine, as a finding of fact, whether the Division of Family and Children  
 25 Services of the Department of Human Resources has made reasonable efforts to finalize  
 26 the permanency plan which is in effect at the time of the hearing, if a permanency plan  
 27 has been previously ordered by the court. Further, the court or the judicial citizen review  
 28 panel, if applicable, shall determine as a finding of fact whether, in the case of a child  
 29 placed out of the state, the out-of-state placement continues to be appropriate and in the  
 30 best interest of the child and, in the case of a child who has attained the age of 14, shall  
 31 determine the services needed to assist the child to make a transition from foster care to  
 32 independent living. Such findings of fact shall be made a part of the report of the judicial  
 33 citizen review panel to the court and any supplemental order entered by the court.

34 ~~(6)~~(8) A supplemental order of the court adopting the permanency plan must be entered  
 35 within 30 days after the court has determined that reunification efforts will not be made  
 36 by the Division of Family and Children Services of the Department of Human Resources,  
 37 if applicable, or within 12 months after the child is considered to have entered foster care,

1 whichever is first, and at least every 12 months thereafter while the child is in foster care,  
2 unless the court finds good cause why such order cannot be entered by that time."

### 3 SECTION 3.

4 Said chapter is further amended by striking Code Section 15-11-103, relating to placement  
5 of child following termination order, and inserting in its place a new Code Section 15-11-103  
6 to read as follows:

7 "15-11-103.

8 (a)(1) If, upon the entering of an order terminating the parental rights of a parent, there  
9 is no parent having parental rights, the court shall first attempt to place the child with a  
10 person related to the child by blood or marriage or with a member of the child's extended  
11 family. A thorough search for a suitable family member shall be made by the court and  
12 the Department of Human Resources in attempting to effect this placement. A placement  
13 effected under this paragraph shall be conditioned upon the family member who is given  
14 permanent custody or who is granted an adoption of the child agreeing to abide by the  
15 terms and conditions of the order of the court. A placement shall be made under the terms  
16 of this paragraph only if such a placement is in the best interest of the child.

17 (2) If no placement of the child is effected under paragraph (1) of this subsection, the  
18 court may make any of the following dispositions:

19 (i) Commit ~~commit~~ the child to the custody of the Department of Human Resources or  
20 to a licensed child-placing agency willing to accept custody for the purpose of placing  
21 the child for adoption ~~or, in;~~

22 (ii) In the absence of an adoption, commit the child to the custody of the Department  
23 of Human Resources or to a licensed child-placing agency willing to accept custody for  
24 the purpose of placing the child in a foster home; ~~or;~~

25 (iii) In the absence of an adoption, place the child with a custodian in another planned  
26 permanent living arrangement, as defined in the court's order, where the court finds a  
27 compelling reason for such placement; or

28 (iv) In the absence of an adoption, take other suitable measures for the care and welfare  
29 of the child.

30 (b) The court shall transmit a copy of every final order terminating the parental rights of  
31 a parent to the ~~Division of Family and Children Services Adoption Unit~~ Office of  
32 Adoptions of the Department of Human Resources within 15 days of the filing of such  
33 order.

34 (c) The custodian has authority to consent to the adoption of the child, the child's  
35 marriage, the child's enlistment in the armed forces of the United States, and surgical and  
36 other medical treatment for the child.

1 (d) If Except in those cases where the child was placed in another planned permanent  
2 living arrangement, if a petition seeking the adoption of the child is not filed within one  
3 year after the date of the disposition order, the court shall then, and at least yearly thereafter  
4 as long as the child remains unadopted, review the circumstances of the child to determine  
5 what efforts have been made to assure that the child will be adopted. The court may then  
6 enter such orders as it deems necessary to further the adoption, including but not limited  
7 to another placement. In those cases where the child was placed in another planned  
8 permanent living arrangement the court shall, at least yearly thereafter as long as the child  
9 remains subject to the jurisdiction of the court, review the circumstances of the child to  
10 determine that placement in the planned permanent living arrangement continues to be in  
11 the child's best interests."

12 **SECTION 4.**

13 This Act shall become effective on July 1, 2003.

14 **SECTION 5.**

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