

House Bill 1040 (AS PASSED HOUSE AND SENATE)

By: Representatives Lindsey of the 54th, Oliver of the 83rd, Tumlin of the 38th, Teilhet of the 40th, and Forster of the 3rd

A BILL TO BE ENTITLED
AN ACT

1 To amend Part 3 of Article 1 of Chapter 11 of Title 15 of the Official Code of Georgia
2 Annotated, relating to jurisdiction and venue of juvenile court proceedings, so as to grant
3 jurisdiction to juvenile courts for the appointment of a permanent guardian for a deprived
4 child under certain circumstances; to provide for required findings; to provide for duration
5 of orders; to provide for modification, vacation, or revocation of orders; to provide for notice
6 and a hearing; to provide for rights and duties of the permanent guardians; to provide for an
7 oath; to provide for related matters; to repeal conflicting laws; and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

10 Part 3 of Article 1 of Chapter 11 of Title 15 of the Official Code of Georgia Annotated,
11 relating to jurisdiction and venue of juvenile court proceedings, is amended by revising Code
12 Section 15-11-30.1, relating to appointment of guardian and transfer of custody and child
13 support questions from superior court, as follows:

14 "15-11-30.1.

15 (a)(1) The court is vested with jurisdiction to appoint a guardian of the person or
16 property of any child and with jurisdiction over proceedings involving any child whose
17 custody is the subject of controversy. Any such appointment shall be made pursuant to
18 the same requirements of notice and hearing as are provided for appointments of
19 guardians of the persons and properties of minors by the judge of the probate court.

20 (2)(A) In addition to the jurisdiction to appoint guardians pursuant to paragraph (1) of
21 this subsection, the juvenile court shall be vested with jurisdiction to appoint a
22 permanent guardian for a child whose custody is a subject of controversy before the
23 court as a result of an adjudication that the child is deprived in accordance with Part 6
24 of this article. Prior to the entry of such an order, the court shall:

25 (i) Find that reasonable efforts to reunify the child with his or her parent would be
26 detrimental to the child in accordance with subsection (h) of Code Section 15-11-58

1 or find that the living parents or parent of the child have consented to the permanent
2 guardianship;

3 (ii) Find that termination of parental rights and adoption and, if the proposed
4 guardian is not a relative of the child, that placement with a fit and willing relative,
5 is not in the best interest of the child;

6 (iii) Find that the proposed permanent guardian can provide a safe and permanent
7 home for the child;

8 (iv) Find that the appointment of a permanent guardian for the child is in the best
9 interest of the child and that the individual chosen as the child's permanent guardian
10 is the individual most appropriate to be the child's permanent guardian taking into
11 consideration the best interest of the child; and

12 (v) If the child is 14 years of age or older, find that the appointment of a permanent
13 guardian for the child is in the best interest of the child and that the individual chosen
14 by such child as the child's permanent guardian is the individual most appropriate to
15 be the child's permanent guardian taking into consideration the best interest of the
16 child.

17 (B) The court may enter an order of support on behalf of the child against the parents
18 of the child in accordance with paragraph (2) of subsection (c) of Code Section
19 15-11-28.

20 (C) Orders under subparagraph (A) of this paragraph shall:

21 (i) Remain in effect until the child reaches the age of 18 or becomes emancipated;

22 (ii) Not be subject to review by the court except as provided in subparagraph (D) of
23 this paragraph; and

24 (iii) Establish a reasonable visitation schedule which allows the child to maintain
25 meaningful contact with his or her parents through personal visits, telephone calls,
26 letters, or other forms of communication or specifically include any restriction on a
27 parent's right to visitation.

28 (D) The court shall retain jurisdiction over a guardianship action under this paragraph
29 for the sole purpose of entering an order following the filing of a petition to modify,
30 vacate, or revoke the guardianship and to appoint a new guardian. The superior courts
31 shall have concurrent jurisdiction for enforcement or modification of any child support
32 or visitation order entered pursuant to this Code section. The guardianship shall be
33 modified, vacated, or revoked based upon a finding, by clear and convincing evidence,
34 that there has been a material change in the circumstances of the child or the guardian
35 and that such modification, vacation, or revocation of the guardianship order and the
36 appointment of a new guardian is in the best interest of the child. Appointment of a
37 new guardian shall be subject to the provisions of this paragraph.

1 (E) Notice of a guardianship petition pursuant to this paragraph shall be given in
2 accordance with subsection (c) of Code Section 29-2-17 except that, if the parents have
3 consented to the guardianship, notice of the petition shall not be required to be given
4 to the individuals listed in division (vii) of subparagraph (F) of this paragraph. The
5 hearing shall be conducted in accordance with Code Section 29-2-18, to determine the
6 best interest of the child, and in reaching its determination the court shall consider
7 subparagraph (A) of this paragraph.

8 (F) The petition for the appointment of a permanent guardian pursuant to this
9 paragraph shall set forth:

10 (i) A statement of the facts upon which the court's jurisdiction is based;

11 (ii) The name and date of birth of the child;

12 (iii) The name, address, and county of domicile of the petitioner and the petitioner's
13 relationship to the child, if any, and, if different from the petitioner, the name,
14 address, and county of domicile of the individual nominated by the petitioner to serve
15 as guardian and that individual's relationship to the child, if any;

16 (iv) A statement that:

17 (I) Reasonable efforts to reunify the child with his or her parent would be
18 detrimental to the child in accordance with subsection (h) of Code Section 15-11-58
19 or that the living parents or parent of the child have consented to the permanent
20 guardianship;

21 (II) Termination of parental rights and adoption and, if the proposed guardian is not
22 a relative of the child, that placement with a fit and willing relative is not in the best
23 interest of the child;

24 (III) The proposed guardian can provide a safe and permanent home for the child;

25 (IV) The appointment of a permanent guardian for the child is in the best interest
26 of the child and that the individual chosen as the child's guardian is the individual
27 most appropriate to be the child's permanent guardian taking into consideration the
28 best interest of the child; and

29 (V) If the child is 14 years of age or older, that the appointment of a permanent
30 guardian for the child is in the best interest of the child and that the individual
31 chosen by such child as the child's permanent guardian is the individual most
32 appropriate to be the child's permanent guardian taking into consideration the best
33 interest of the child;

34 (v) A statement of whether the child was born out of wedlock and, if so, the name
35 and address of the biological father, if known;

1 (vi) Whether, to the petitioner's knowledge, there exists any notarized or witnessed
 2 document made by a parent of the child that deals with the guardianship of the child
 3 and the name and address of any designee named in the document;

4 (vii) In addition to the petitioner and the nominated guardian and, if the parents have
 5 not consented to the permanent guardianship, the names and addresses of the
 6 following relatives of the child whose whereabouts are known:

7 (I) The adult siblings of the child; provided, however, that not more than three adult
 8 siblings need to be listed;

9 (II) If there is no adult sibling of the child, the grandparents of the child; provided,
 10 however, that not more than three grandparents need to be listed; or

11 (III) If there is no grandparent of the child, any three of the nearest adult relatives
 12 of the child determined according to Code Section 53-2-1 of the 'Revised Probate
 13 Code of 1998';

14 (viii) Whether a temporary guardian has been appointed for the child or a petition for
 15 the appointment of a temporary guardian has been filed or is being filed; and

16 (ix) The reason for any omission in the petition for appointment of a permanent
 17 guardian for the child in the event full particulars are lacking.

18 (G) A guardian of the person of a child appointed under this paragraph shall have the
 19 rights and duties of a permanent guardian as are provided in Code Sections 29-2-21,
 20 29-2-22, and 29-2-23 and shall take the oath required of a guardian as provided in Code
 21 Section 29-2-24.

22 (b) Other courts, in handling divorce, alimony, habeas corpus, or other cases involving the
 23 custody of a child or children, may transfer the question of the determination of custody,
 24 support, or custody and support to the juvenile court for investigation and a report back to
 25 the superior court or for investigation and determination. If the referral is for investigation
 26 and determination, then the juvenile court shall proceed to handle the matter in the same
 27 manner as though the action originated under this article in compliance with the order of
 28 the superior court. At any time prior to the determination of any such question, the juvenile
 29 court may transfer the jurisdiction of the question back to the referring superior court."

30 SECTION 2.

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