

HOUSE SUBSTITUTE TO SENATE BILL 331

A BILL TO BE ENTITLED
AN ACT

1 To amend Code Section 15-11-2 and Title 19 of the Official Code of Georgia Annotated,
2 relating to definitions for the Juvenile Code and domestic relations, respectively, so as to
3 provide how causing a child to be conceived as a result of rape is involved in terminating
4 parental rights; to revise a definition; to provide that causing a child to be conceived as a
5 result of rape is relevant in legitimation and adoption proceedings; to provide for a stay of
6 discovery under certain circumstances; to amend Code Section 53-2-4 of the Official Code
7 of Georgia Annotated, relating to inheritance from children born out of wedlock, so as to
8 change provisions relating to a father making a sworn statement in order to inherit from his
9 child; to provide for related matters; to repeal conflicting laws; and for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 **SECTION 1.**

12 Code Section 15-11-2 of the Official Code of Georgia Annotated, relating to definitions for
13 the Juvenile Code, is amended by revising paragraph (5) as follows:

14 "(5) 'Aggravated circumstances' means the parent has:

15 (A) Abandoned a child;

16 (B) Aided or abetted, attempted, conspired, or solicited to commit murder or voluntary
17 manslaughter of another child of such parent;

18 (C) Subjected a child or his or her sibling to torture, chronic abuse, sexual abuse, or
19 sexual exploitation;

20 (D) Committed the murder or voluntary manslaughter of his or her child's other parent
21 or has been convicted of aiding or abetting, attempting, conspiring, or soliciting the
22 murder or voluntary manslaughter of his or her child's other parent;

23 (E) Committed the murder or voluntary manslaughter of another child of such parent;

24 **or**

25 (F) Committed an assault that resulted in serious bodily injury to his or her child or
26 another child of such parent; or

27 (G) Caused his child to be conceived as a result of having nonconsensual sexual
 28 intercourse with the mother of his child or when the mother is less than ten years of
 29 age."

30 **SECTION 2.**

31 Title 19 of the Official Code of Georgia Annotated, relating to domestic relations, is
 32 amended by revising subsection (c) of Code Section 19-7-22, relating to a petition for
 33 legitimation of a child, as follows:

34 "(c)(1) Upon the presentation and filing of the a legitimation petition, the court may pass
 35 issue an order declaring the father's relationship with the child to be legitimate, and that,
 36 If the court grants such petition, the father and child shall be capable of inheriting from
 37 each other in the same manner as if born in lawful wedlock, and specifying the court shall
 38 specify the name by which the child shall be known.

39 (2)(A) If the court determines by clear and convincing evidence that the father caused
 40 his child to be conceived as a result of having nonconsensual sexual intercourse with
 41 the mother of his child or when the mother is less than ten years of age, or an offense
 42 which consists of the same or similar elements under federal law or the laws of another
 43 state or territory of the United States, it shall create a presumption against legitimation.

44 (B) Notwithstanding Code Section 53-2-3, if the court denies a legitimation petition
 45 under this paragraph, the child shall be capable of inheriting from or through his or her
 46 father. Notwithstanding Code Section 53-2-4, if the court denies a legitimation petition
 47 under this paragraph, the father shall not be capable of inheriting from or through his
 48 child.

49 (C) If there is a pending criminal proceeding in connection with an allegation made
 50 pursuant to subparagraph (A) of this paragraph, the court shall stay discovery in the
 51 legitimation action until the completion of such criminal proceeding."

52 **SECTION 3.**

53 Said title is further amended by revising subsection (a) of Code Section 19-8-10, relating to
 54 when the surrender or termination of parental rights is not required in the context of adoption,
 55 as follows:

56 "(a) Surrender or termination of rights of a parent pursuant to subsection (a) of Code
 57 Section 19-8-4, 19-8-5, 19-8-6, or 19-8-7 shall not be required as a prerequisite to the filing
 58 of a petition for adoption of a child of that parent pursuant to Code Section 19-8-13 where
 59 when the court determines by clear and convincing evidence that the:

- 60 (1) Child has been abandoned by that parent;
 61 (2) Parent cannot be found after a diligent search has been made;

62 (3) Parent is insane or otherwise incapacitated from surrendering such rights; ~~or~~
 63 (4) Parent caused his child to be conceived as a result of having nonconsensual sexual
 64 intercourse with the mother of his child or when the mother is less than ten years of age;
 65 or
 66 ~~(4)~~(5) Parent has failed to exercise proper parental care or control due to misconduct or
 67 inability, as set out in paragraph (3), (4), or (5) of subsection (a) of Code
 68 Section 15-11-310,
 69 and the court is of the opinion that the adoption is in the best interests of that child, after
 70 considering the physical, mental, emotional, and moral condition and needs of the child
 71 who is the subject of the proceeding, including the need for a secure and stable home."

72

SECTION 4.

73 Said title is further amended by revising paragraph (3) of subsection (a) of Code
 74 Section 19-8-11, relating to petitioning the superior court to terminate parental rights, as
 75 follows:

76 "(3) Parental rights may be terminated pursuant to paragraph (1) or (2) of this subsection
 77 ~~where~~ when the court determines by clear and convincing evidence that the:

78 (A) Child has been abandoned by that parent;
 79 (B) Parent of the child cannot be found after a diligent search has been made;
 80 (C) Parent is insane or otherwise incapacitated from surrendering such rights; ~~or~~
 81 (D) Parent caused his child to be conceived as a result of having nonconsensual sexual
 82 intercourse with the mother of his child or when the mother is less than ten years of age;
 83 or

84 ~~(D)~~(E) Parent has failed to exercise proper parental care or control due to misconduct
 85 or inability, as set out in paragraph (3), (4), or (5) of subsection (a) of Code
 86 Section 15-11-310,

87 and the court shall set the matter down to be heard in chambers not less than 30 and not
 88 more than 60 days following the receipt by such remaining parent of the notice under
 89 subsection (b) of this Code section and shall enter an order terminating such parental
 90 rights if it so finds and if it is of the opinion that adoption is in the best interests of the
 91 child, after considering the physical, mental, emotional, and moral condition and needs
 92 of the child who is the subject of the proceeding, including the need for a secure and
 93 stable home."

94 **SECTION 5.**

95 Code Section 53-2-4 of the Official Code of Georgia Annotated, relating to inheritance from
96 children born out of wedlock, is amended by revising paragraph (3) of subsection (b) as
97 follows:

98 "(3) The father has, during the lifetime of the child, executed a sworn statement signed
99 by the father attesting to the parent-child relationship; ~~provided, however, that when the~~
100 court determines by clear and convincing evidence that the father caused his child to be
101 conceived as a result of having nonconsensual sexual intercourse with the mother of his
102 child or when the mother is less than ten years of age, such sworn statement shall be
103 insufficient for purposes of this subsection;"

104 **SECTION 6.**

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