

Senate Bill 28

By: Senators Hatchett of the 50th, Strickland of the 17th, Dixon of the 45th, Payne of the 54th and Cowsert of the 46th

AS PASSED SENATE

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 11 of Title 15 and Title 19 of the Official Code of Georgia Annotated,
2 relating to the Juvenile Code and domestic relations, so as to strengthen, clarify, and update
3 provisions relating to the protection of children; to require annual training for juvenile court
4 intake officers; to provide for the consideration of evidence, including hearsay evidence, in
5 certain juvenile proceedings; to revise provisions relative to the Juvenile Code and the
6 reporting of child abuse; to provide for related matters; to repeal conflicting laws; and for
7 other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

10 Chapter 11 of Title 15 of the Official Code of Georgia Annotated, relating to the Juvenile
11 Code, is amended by revising paragraphs (41) and (73.1) of Code Section 15-11-2, relating
12 to definitions, as follows:

13 "(41) 'Juvenile court intake officer' means the juvenile court judge, associate juvenile
14 court judge, court service worker, DJJ staff member serving as an intake officer in a
15 delinquency or child in need of services proceeding, or person employed as a juvenile
16 probation or intake officer designated by the juvenile court judge or, where there is none,

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17 the superior court judge, who is on duty for the purpose of determining whether any child
 18 taken into custody should be released or detained and, if detained, the appropriate place
 19 of detention."

20 "(73.1) 'Temporary alternatives to foster care' means measures that a juvenile court may
 21 order in lieu of removal of or placement of a child or children alleged to be dependent in
 22 protective custody which will prevent or reduce the trauma ~~or~~ of removal; allow a child
 23 to be cared for by persons with whom the child has an existing bond or attachment; or
 24 that ensure the safety of the child pending further action by the court on the dependency
 25 complaint or petition."

26

SECTION 2.

27 Said chapter is further amended by revising subsection (c) of Code Section 15-11-68, relating
 28 to duties of juvenile court intake officers and training, as follows:

29 "(c) Each juvenile court intake officer exercising the authority to remove a child pursuant
 30 to the provisions of Articles 1 and 3 of this chapter shall:

31 (1) First ~~first~~ successfully complete, ~~each year,~~ an initial eight hours of appropriate
 32 training; and

33 (2) Annually thereafter complete a minimum of two hours of training each year during
 34 which he or she serves as a juvenile court intake officer.

35 Such initial and annual training shall be relevant to the performance of such
 36 determinations, including, but not limited to, training concerning contrary to the welfare
 37 determinations, reasonable efforts to prevent removal of a child and diligent search
 38 requirements consistent with Article 3 of this chapter, reasonable alternatives to foster care,
 39 and DFCS policies and procedures related to the removal of a child and placement of such
 40 child in foster care."

41

SECTION 3.

42 Said chapter is further amended by revising Code Section 15-11-133.1, relating to temporary
43 alternatives to foster care, as follows:

44 "15-11-133.1.

45 (a) Temporary alternatives to foster care may be ordered by the court ex parte, prior to a
46 preliminary protective hearing, or may be ordered following a preliminary protective
47 hearing. A temporary alternative to foster care may include one or more of the following:

48 (1) A temporary order authorizing or continuing any voluntary agreement between the
49 parent, guardian, or legal custodian and DFCS ~~the child to be cared for by a relative or~~
50 ~~fictive kin;~~

51 (2) A temporary protective order ~~pursuant to the provisions of Code Section 15-11-29~~
52 imposing conditions or limitations on the conduct of the parent, guardian, or legal
53 custodian, including requiring the parent to:

54 (A) Prohibit access to the child by an individual;

55 (B) Comply with any existing visitation agreement associated with the voluntary
56 placement;

57 (C) Abstain from offensive conduct against a child or his or her parent;

58 (D) Give proper attention to the care of his or her home;

59 (E) Cooperate in good faith with DFCS;

60 (F) Refrain from acts of commission or omission that may render a home an improper
61 place for a child;

62 (G) Ensure that a child attends school pursuant to any valid law relating to compulsory
63 attendance;

64 (H) Participate with a child in any counseling or treatment deemed necessary after
65 consideration of employment and other family needs; or

66 (I) Enter into and successfully complete any program approved by the court; or

67 (3) An order that the DFCS investigate and report to the court whether removal is
68 necessary.

69 (b) An order pursuant to paragraph (1) of subsection (a) of this Code section requiring
70 authorizing or continuing any voluntary agreement between the parent, guardian, or legal
71 custodian and DFCS for the child to be cared for by a relative or fictive kin shall be based
72 upon a finding by the court that continuation of the child in his or her home would be
73 contrary to his or her welfare. Such findings shall be made on an individualized basis and
74 shall be documented in the court's written order.

75 (c) When entering an order pursuant to paragraph (1) of subsection (a) of this Code section
76 authorizing or continuing any voluntary agreement between the parent, guardian, or legal
77 custodian and DFCS for the child to be cared for by a relative or fictive kin, the court shall
78 order a preliminary assessment of the person who is to provide care for the child by a
79 probation officer, or such other individual or agency as the court may designate, which
80 shall include, at a minimum:

81 (1) A walk-through of such person's residence to identify safety hazards;

82 (2) An in-state criminal record check, pursuant to subsection (a) or (c) of Code Section
83 35-3-34, of such person and all other adults living in such person's residence;

84 (3) A search of the Georgia Sex Offender Registry for the name of such person and all
85 other adults living in such person's residence; and

86 (4) A search of data provided electronically to the public by the Department of
87 Community Supervision and the Department of Corrections for information concerning
88 such person and all adults living in such person's residence.

89 Such preliminary assessment shall be completed no later than 72 hours after the time such
90 order is entered except that if such order is entered on a weekend, such preliminary
91 assessment may be completed no later than five days after the order is entered.

92 (d) Upon issuance of an order for a temporary alternative to foster care, a preliminary
93 protective hearing shall be completed as provided in Code Section 15-11-145; ~~except that~~

94 ~~such preliminary protective hearing shall be held within five days of the order for a~~
95 ~~temporary alternative to foster care.~~

96 (e) ~~Unless modified by the court, temporary~~ Temporary alternatives to foster care ordered
97 by the court in accordance with this Code section shall remain in effect until modified by
98 the court or until the court has held the preliminary protective hearing. If probable cause
99 exists, DFCS shall file a petition alleging dependency in accordance with subsection (b)
100 of Code Section 15-11-151 following the preliminary protective hearing. The court may
101 continue to impose the temporary alternatives to foster care after the preliminary protective
102 hearing in accordance with subsection (b) of Code Section 15-11-146."

103

SECTION 4.

104 Said chapter is further amended by adding a new subsection to Code Section 15-11-145,
105 relating to preliminary protective hearings, to read as follows:

106 "(h) The court may consider any evidence, including hearsay evidence, that the court finds
107 to be relevant, reliable, and necessary to determine the needs of an alleged dependent child
108 or to make determinations or findings required by Code Section 15-11-146."

109

SECTION 5.

110 Said chapter is further amended by revising subsection (c) of Code Section 15-11-146,
111 relating to preliminary protective hearings and findings, as follows:

112 "(c) A court's order removing a child from his or her home or ordering a temporary
113 alternative to foster care ~~in accordance with~~ authorizing or continuing any voluntary
114 agreement between the parent, guardian, or legal custodian and DFCS for the child to be
115 cared for by a relative or fictive kin pursuant to paragraph (1) of subsection (a) of Code
116 Section 15-11-133.1 shall be based upon a finding that:

117 (1) Continuation in his or her home would be contrary to such child's welfare; or

118 (2) Removal is in such child's best interests."

119

SECTION 6.

120 Said chapter is further amended by revising Code Section 15-11-215, relating to notice of
121 change in placement hearings and presumptions, as follows:

122 "15-11-215.

123 (a) Not less than five days in advance of any placement change, DFCS shall, in writing,
124 notify the court; a child who is 14 years of age or older; the child's parent, guardian, or
125 legal custodian; the person or agency with physical custody of the child; the child's
126 attorney; the child's guardian ad litem, if any; and any other attorney of record of such
127 change in the location of the child's placement while the child is in DFCS custody. The
128 notice required by this subsection may include notice via email if the caregiver or other
129 party who will receive the notification has agreed to receive notice via email.

130 (b) If a child's health or welfare may be endangered by any delay in changing his or her
131 placement, the court and all attorneys of record shall be notified of such placement change
132 within 24 hours of such change.

133 (c) A child adjudicated as a dependent child who is 14 years of age or older, his or her
134 parent, guardian, or legal custodian; the person or agency with physical custody of the
135 child; such child's attorney; such child's guardian ad litem, if any; and any attorney of
136 record may request a hearing pertaining to such child's case plan or the permanency plan
137 in order for the court to consider the change in the location of such child's placement and
138 any changes to the case plan or permanency plan resulting from such child's change in
139 placement location. The hearing shall be held within five days of receiving notice of a
140 change in the location of such child's placement and prior to any such placement change,
141 unless such child's health or welfare may be endangered by any delay in changing such
142 child's placement.

143 (d) The Council of Juvenile Court Judges shall by rule provide for methods by which
144 persons entitled to notice, including those not represented by counsel, may electronically
145 file an objection to the placement change. Such rule shall provide for the use of a standard

146 form that the objector may file electronically with the clerk of court and which upon filing
147 shall be distributed electronically to all parties and others entitled to notice.

148 (e) At the hearing to consider the case plan and permanency plan of a child adjudicated as
149 a dependent child's case plan and permanency plan, the court shall consider the case plan
150 and permanency plan recommendations made by DFCS, including a recommendation as
151 to the location of the placement of such child, and shall make findings of fact upon which
152 the court relied in determining to reject or accept the case plan or permanency plan and the
153 recommendations made by DFCS, including the location of such child's placement. The
154 court shall specifically consider any objections filed to the change of placement and shall
155 consider evidence pertaining to such objections, including, but not limited to, evidence
156 from the child and the foster parent, relative, or caregiver.

157 (f) The court may consider any evidence, including hearsay evidence, that the court finds
158 to be relevant, reliable, and necessary to determine the needs of a child adjudicated as a
159 dependent child and the most appropriate case plan and permanency plan.

160 ~~(f)~~(g) If the court rejects DFCS recommendations, the court shall demonstrate that DFCS
161 recommendations were considered and explain why it did not follow such
162 recommendations. If the court rejects the DFCS case plan and permanency plan
163 recommendations, including the change in the location of the placement of a child
164 adjudicated as a dependent child, the court may order DFCS to devise a new case plan and
165 permanency plan recommendation, including a new recommendation as to the location of
166 such child within the resources of the department, or make any other order relative to
167 placement or custody outside the department as the court finds to be in the best interests
168 of such child and consistent with the policy that children in DFCS custody should have
169 stable placements.

170 ~~(g)~~(h) If the court finds that the child has been living in a stable home environment with
171 his or her current caregivers for the past 12 months and that removal of the child from such
172 caregivers would be detrimental to the child's emotional well-being, the court may presume

173 that continuation of the child's placement with his or her current caregivers is in the child's
174 best interests and shall enter a finding that a change of placement is a failure by DFCS to
175 make reasonable efforts to finalize the permanency plan which is in effect at the time of the
176 hearing; provided, however, that such presumption shall not apply to prevent the return of
177 the child to his or her parent, guardian, or legal custodian.

178 ~~(h)~~(i) Placement or a change of legal custody by the court outside DFCS shall relieve
179 DFCS of further responsibility for a child adjudicated as a dependent child except for any
180 provision of services ordered by the court to ensure the continuation of reunification
181 services to such child's family when appropriate.

182 ~~(i)~~(j) A placement change shall not include a temporary absence from the child's identified
183 and ongoing foster care placement, including, but not limited to, visitation with a friend,
184 sibling, relative, or other caretaker, including a preplacement visit to a possible foster or
185 adoptive placement; hospitalization for medical, acute psychiatric episodes or diagnosis;
186 respite care when the child is expected to return to his or her foster care placement; day or
187 overnight camp; temporary travel with the foster family or child care institution personnel,
188 church, school, or other persons or groups approved by DFCS; trial home visits with the
189 court's permission, if required by subsection (b) of Code Section 15-11-212; and runaway
190 episodes."

191

SECTION 7.

192 Said chapter is further amended by adding a new subsection to Code Section 15-11-216,
193 relating to periodic review hearing and required evidence, to read as follows:

194 "(f) The court may consider any evidence, including hearsay evidence, that the court finds
195 to be relevant, reliable, and necessary to determine the needs of a child adjudicated as a
196 dependent child and the most appropriate case plan and permanency plan."

197

SECTION 8.

198 Said chapter is further amended by adding a new subsection to Code Section 15-11-230,
199 relating to permanency plan hearing, to read as follows:

200 "(f) The court may consider any evidence, including hearsay evidence, that the court finds
201 to be relevant, reliable, and necessary to determine the needs of a child adjudicated as a
202 dependent child and the most appropriate permanency plan."

203

SECTION 9.

204 Said chapter is further amended by adding a new subsection to Code Section 15-11-321,
205 relating to custody of a child following termination proceedings or surrender of parental
206 rights, to read as follows:

207 "(a.1) The court may consider any evidence, including hearsay evidence, that the court
208 finds to be relevant, reliable, and necessary to determine the needs of a child and the
209 permanency and custody of a child whose parents have had their parental rights terminated
210 or who have surrendered their parental rights."

211

SECTION 10.

212 Said chapter is further amended by revising Code Section 15-11-322, relating to continuing
213 court review when child not adopted, as follows:

214 "15-11-322.

215 If a petition seeking the adoption of a child whose parents have had their parental rights
216 terminated or surrendered is not filed within six months after the date of the disposition
217 order, the court shall then, and at least every six months thereafter so long as such child
218 remains unadopted, review the circumstances of such child to determine what efforts have
219 been made to assure that such child will be adopted. The court shall:

220 (1) Make written findings regarding whether reasonable efforts have been made to move
221 such child to permanency;

222 (2) Evaluate whether, in light of any change in circumstances, the permanency plan for
223 such child remains appropriate; and

224 (3) Enter such orders as it deems necessary to further adoption or if appropriate, other
225 permanency options, including, but not limited to, another placement.

226 The court may consider any evidence, including hearsay evidence, that the court finds to
227 be relevant, reliable, and necessary to determine the needs of a child and the permanency
228 and custody of a child whose parents have had their parental rights terminated or who have
229 surrendered their parental rights."

230

SECTION 11.

231 Title 19 of the Official Code of Georgia Annotated, relating to domestic relations, is
232 amended in Code Section 19-7-5, relating to the reporting of child abuse, when mandated or
233 authorized, content of report, to whom made, immunity from liability, report based upon
234 privileged communication, and penalty for failure to report, by revising subsection (b) and
235 adding a new subsection to read as follows:

236 "(b) As used in this Code section, the term:

237 (1) 'Abandonment' means any conduct on the part of a parent, guardian, or legal
238 custodian showing an intent to forgo parental duties or relinquish parental claims. Intent
239 to forgo parental duties or relinquish parental claims may be evidenced by:

240 (A) Failure, for a period of at least six months, to communicate meaningfully with a
241 child;

242 (B) Failure, for a period of at least six months, to maintain regular visitation with a
243 child;

244 (C) Leaving a child with another person without provision for his or her support for a
245 period of at least six months;

246 (D) Failure, for a period of at least six months, to participate in any court ordered plan
 247 or program designed to reunite a child with his or her parent, guardian, or legal
 248 custodian;

249 (E) Leaving a child without affording means of identifying such child or his or her
 250 parent, guardian, or legal custodian and:

251 (i) The identity of such child's parent, guardian, or legal custodian cannot be
 252 ascertained despite diligent searching; and

253 (ii) A parent, guardian, or legal custodian has not come forward to claim such child
 254 within three months following the finding of such child;

255 (F) Being absent from the home of his or her child for a period of time that creates a
 256 substantial risk of serious harm to a child left in the home;

257 (G) Failure to respond, for a period of at least six months, to notice of child protective
 258 proceedings; or

259 (H) Any other conduct indicating an intent to forgo parental duties or relinquish
 260 parental claims.

261 ~~(1)~~(2) 'Abortion' shall have the same meaning as set forth in Code Section 15-11-681.

262 ~~(2)~~(3) 'Abused' means subjected to child abuse.

263 ~~(3)~~(4) 'Child' means any person under 18 years of age.

264 ~~(4)~~(5) 'Child abuse' means:

265 (A) Physical injury or death inflicted upon a child by a parent, guardian, legal
 266 custodian, or other person responsible for the care of such child ~~or caretaker thereof~~ by
 267 other than accidental means; provided, however, that physical forms of discipline may
 268 be used as long as there is no physical injury to the child;

269 (B) Neglect ~~or exploitation~~ of a child by a parent, guardian, legal custodian, or other
 270 person responsible for the care of such child ~~or caretaker thereof~~;

271 (C) ~~Endangering a child~~ Emotional abuse of a child;

272 (D) Sexual abuse or sexual exploitation of a child; ~~or~~

- 273 ~~(E) Sexual exploitation of a child~~ Prenatal abuse of a child by a parent; or
 274 (F) An act or failure to act that presents an imminent risk of serious harm to the child's
 275 physical, mental, or emotional health.
 276 ~~However, no child who in good faith is being treated solely by spiritual means through~~
 277 ~~prayer in accordance with the tenets and practices of a recognized church or religious~~
 278 ~~denomination by a duly accredited practitioner thereof shall, for that reason alone, be~~
 279 ~~considered to be an abused child.~~
- 280 ~~(5)~~(6) 'Child service organization personnel' means persons employed by or volunteering
 281 at a business or an organization, whether public, private, for profit, not for profit, or
 282 voluntary, that provides care, treatment, education, training, supervision, coaching,
 283 counseling, recreational programs, or shelter to children.
- 284 ~~(6)~~(7) 'Clergy' means ministers, priests, rabbis, imams, or similar functionaries, by
 285 whatever name called, of a bona fide religious organization.
- 286 ~~(6.1)~~ 'Endangering a child' means:
 287 ~~(A) Any act described by subsection (d) of Code Section 16-5-70;~~
 288 ~~(B) Any act described by Code Section 16-5-73;~~
 289 ~~(C) Any act described by subsection (1) of Code Section 40-6-391; or~~
 290 ~~(D) Prenatal abuse, as such term is defined in Code Section 15-11-2.~~
- 291 (8) 'Emotional abuse' means acts or omissions by a person responsible for the care of a
 292 child that cause any mental injury to such child's intellectual or psychological capacity
 293 as evidenced by an observable and significant impairment in such child's ability to
 294 function within a child's normal range of performance and behavior or that create a
 295 substantial risk of impairment.
- 296 (9) 'Legal custodian' means:
 297 (A) A person to whom legal custody of a child has been given by order of a court; or

298 (B) A public or private agency or other private organization licensed or otherwise
299 authorized by law to receive and provide care for a child to which legal custody of such
300 child has been given by order of a court.

301 (10) 'Neglect' means:

302 (A) The failure to provide proper parental care or control, subsistence, education as
303 required by law, or other care or control necessary for a child's physical, mental, or
304 emotional health or morals;

305 (B) The failure to provide a child with adequate supervision necessary for such child's
306 well-being; or

307 (C) The abandonment of a child by his or her parent, guardian, or legal custodian.

308 (11) 'Person responsible for the care of a child' means:

309 (A) An adult member of a child's household;

310 (B) A person exercising supervision over a child for any part of the 24 hour day; or

311 (C) Any adult who, based on his or her relationship to the parent, guardian, or legal
312 custodian or a member of a child's household, has access to such child.

313 ~~(7)~~(12) 'Pregnancy resource center' means an organization or facility that:

314 (A) Provides pregnancy counseling or information as its primary purpose, either for a
315 fee or as a free service;

316 (B) Does not provide or refer for abortions;

317 (C) Does not provide or refer for FDA approved contraceptive drugs or devices; and

318 (D) Is not licensed or certified by the state or federal government to provide medical
319 or health care services and is not otherwise bound to follow the federal Health
320 Insurance Portability and Accountability Act of 1996, P.L. 104-191, or other state or
321 federal laws relating to patient confidentiality.

322 (13) 'Prenatal abuse' means exposure to chronic or severe use of alcohol or the unlawful
323 use of any controlled substance, as such term is defined in Code Section 16-13-21, which
324 results in:

325 (A) Symptoms of withdrawal in a newborn or the presence of a controlled substance
326 or a metabolite thereof in a newborn's body, blood, urine, or meconium that is not the
327 result of medical treatment; or

328 (B) Medically diagnosed and harmful effects in a newborn's physical appearance or
329 functioning.

330 ~~(8)~~(14) 'Reproductive health care facility' means any office, clinic, or any other physical
331 location that provides abortions, abortion counseling, abortion referrals, or gynecological
332 care and services.

333 ~~(9)~~(15) 'School' means any public or private pre-kindergarten, elementary school,
334 secondary school, technical school, vocational school, college, university, or institution
335 of postsecondary education.

336 ~~(10)~~(16) 'Sexual abuse' means a person's employing, using, persuading, inducing,
337 enticing, or coercing any minor who is not such person's spouse to engage in any act
338 which involves:

339 (A) Sexual intercourse, including genital-genital, oral-genital, anal-genital, or
340 oral-anal, whether between persons of the same or opposite sex;

341 (B) Bestiality;

342 (C) Masturbation;

343 (D) Lewd exhibition of the genitals or pubic area of any person;

344 (E) Flagellation or torture by or upon a person who is nude;

345 (F) Condition of being fettered, bound, or otherwise physically restrained on the part
346 of a person who is nude;

347 (G) Physical contact in an act of apparent sexual stimulation or gratification with any
348 person's clothed or unclothed genitals, pubic area, or buttocks or with a female's clothed
349 or unclothed breasts;

350 (H) Defecation or urination for the purpose of sexual stimulation;

351 (I) Penetration of the vagina or rectum by any object except when done as part of a
 352 recognized medical procedure; or

353 (J) Any act described by subsection (c) of Code Section 16-5-46.

354 Sexual abuse shall include consensual sex acts when the sex acts are between minors if
 355 any individual is less than 14 years of age; provided, however, that it shall not include
 356 consensual sex acts when the sex acts are between a minor and an adult who is not more
 357 than four years older than the minor. This provision shall not be deemed or construed to
 358 repeal any law concerning the age or capacity to consent.

359 ~~(H)~~(17) 'Sexual exploitation' means conduct by any person who allows, permits,
 360 encourages, or requires a child to engage in:

361 (A) Prostitution, as defined in Code Section 16-6-9; or

362 (B) Sexually explicit conduct for the purpose of producing any visual or print medium
 363 depicting such conduct, as defined in Code Section 16-12-100."

364 "(j) The treatment of a child in good faith solely by spiritual means through prayer in
 365 accordance with the tenets and practices of a recognized church or religious denomination
 366 by a duly accredited practitioner thereof shall not in and of itself be considered child
 367 abuse."

368 **SECTION 12.**

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