

House Bill 153 (AS PASSED HOUSE AND SENATE)

By: Representatives Loudermilk of the 14th, Oliver of the 83rd, Lewis of the 15th, Franklin of the 43rd, Setzler of the 35th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 1 of Chapter 11 of Title 15 of the Official Code of Georgia Annotated,
2 relating to juvenile proceedings, so as to change certain provisions relating to hearings in
3 juvenile court; to change provisions relating to disposition of a deprived child; to provide for
4 certain requirements when changing placement of children who are in the custody of the
5 Division of Family and Children Services; to provide for procedure; to amend Article 1 of
6 Chapter 5 of Title 49 of the Official Code of Georgia Annotated, relating to children and
7 youth services, so as to provide new definitions and a cross-reference; to provide for related
8 matters; to repeal conflicting laws; and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 **SECTION 1.**

11 Article 1 of Chapter 11 of Title 15 of the Official Code of Georgia Annotated, relating to
12 juvenile proceedings, is amended by revising subsection (c) of Code Section 15-11-21,
13 relating to associate juvenile court judges, appointment and compensation, qualifications,
14 conduct of hearings, and rehearing, as follows:

15 "~~(c) The judge may direct that hearings in~~ In any case or class of cases involving alleged
16 delinquent, unruly, or deprived children, ~~the judge shall determine whether such case~~ shall
17 be conducted ~~in the first instance~~ by the judge or by the associate juvenile court judge in
18 the manner provided by this article. ~~If a party so requests, the hearing shall be conducted~~
19 ~~by the judge except for detention hearings or probable cause hearings, which shall be~~
20 ~~conducted by the associate juvenile court judge if directed to do so by the judge."~~

21 **SECTION 2.**

22 Said article is further amended by revising Code Section 15-11-55, relating to the disposition
23 of a deprived child, as follows:

1 "15-11-55.

2 (a) If the child is found to be a deprived child, the court may make any of the following
3 orders of disposition best suited to the protection and physical, mental, and moral welfare
4 of the child:

5 (1) Permit the child to remain with his or her parents, guardian, or other custodian,
6 including a putative father, subject to conditions and limitations as the court prescribes,
7 including supervision as directed by the court for the protection of the child;

8 (2) Subject to conditions and limitations as the court prescribes, transfer temporary legal
9 custody to any of the persons or entities described in this paragraph. Without limiting the
10 generality of the foregoing, such conditions and limitations shall include a provision that
11 the court shall approve or direct the retransfer of the physical custody of the child back
12 to the parents, guardian, or other custodian either upon the occurrence of specified
13 circumstances or in the discretion of the court. Any such retransfer of physical custody
14 may be made subject to such further conditions and limitations as the court prescribes,
15 including supervision for the protection of the child. The persons or entities to whom or
16 which temporary legal custody may be transferred shall include the following:

17 (A) Any individual including a putative father who, after study by the probation officer
18 or other person or agency designated by the court, is found by the court to be qualified
19 to receive and care for the child;

20 (B) An agency or other private organization licensed or otherwise authorized by law
21 to receive and provide care for the child;

22 (C) Any public agency authorized by law to receive and provide care for the child;
23 provided, however, that for the purpose of this Code section, the term 'public agency'
24 shall not include the Department of Juvenile Justice; or

25 (D) An individual in another state with or without supervision by an appropriate officer
26 under Code Section 15-11-89.

27 Except for dispositions pursuant to paragraph (1) of subsection (a) of Code Section
28 15-11-66 and Code Section 15-11-67, before transferring temporary legal custody in an
29 order of disposition under this paragraph a reasonably diligent search for a parent or
30 relative of the child or other persons who have demonstrated an ongoing commitment to
31 the child shall be conducted by the court and the Department of Human Resources. Such
32 search shall be completed within 90 days from the date on which the child was removed
33 from the home, the results of such search documented in writing and filed with the court
34 at the time of the first review. During such 90 day period, the child may be placed in the
35 temporary legal custody of the Department of Human Resources or any other appropriate
36 entity or person; or

1 (3) Without making any of the orders specified in paragraphs (1) and (2) of this
2 subsection, transfer custody of the child to the court of another state exercising
3 jurisdiction over children if authorized by and in accordance with Code Section 15-11-87
4 if the child is or is about to become a resident of that state.

5 (b) Unless a child found to be deprived is found also to be delinquent, such child shall not
6 be committed to or confined in an institution or other facility designed or operated for the
7 benefit of delinquent children.

8 (c) Notwithstanding any other provision of law, the court after transferring temporary legal
9 custody of a child to the Division of Family and Children Services within the Department
10 of Human Resources may at any time conduct sua sponte a judicial review of the current
11 placement plan being provided to said child. After its review the court may order the
12 division to comply with the current placement plan, order the division to devise a new
13 placement plan within available division resources, or make any other order relative to
14 placement or custody outside the Department of Human Resources as the court finds to be
15 in the best interest of the child. Placement or a change of legal custody by the court outside
16 the Department of Human Resources shall relieve the department of further responsibility
17 for the child so placed.

18 (d) The policy of this state is that children in the custody of the Division of Family and
19 Children Services should have stable placements. Not less than five days in advance of any
20 placement change, the division shall notify the court, a child who is 14 years of age or
21 older, the child's parents, guardian, or other custodian, and any attorney of record of such
22 change in the location of the child's placement while the child is in the division's custody;
23 provided, however, that if the child's health or welfare may be endangered by any delay
24 in changing the child's placement, only the court and any attorney of record shall be
25 notified of such placement change within 24 hours of such change. A child who is 14 years
26 of age or older, the child's parents, guardian, or other custodian, and any attorney of record
27 may request a hearing with regard to the child's case plan or the permanency plan in order
28 for the court to consider the change in the location of the child's placement and any
29 changes to the case plan or permanency plan resulting from the child's change in placement
30 location. Such hearing shall be held within five days of receiving notice of a change in the
31 location of the child's placement and prior to any such placement change, unless the child's
32 health or welfare may be endangered by any delay in changing the child's placement. At
33 the hearing to consider the child's case plan and permanency plan, the court shall consider
34 the case plan and permanency plan recommendations made by the division, including a
35 recommendation as to the location of the placement of the child, and shall make findings
36 of fact upon which the court relied in determining to reject or accept the case plan or
37 permanency plan and the recommendations made by the division, including the location

1 of the child's placement. If the court rejects the recommendations of the division, the court
 2 shall demonstrate that the division's recommendations were considered and explain why
 3 it did not follow the recommendations. If the court rejects the division's case plan and
 4 permanency plan recommendations, including the change in the location of the placement
 5 of the child, the court may order the division to devise a new case plan and permanency
 6 plan recommendation, including a new recommendation as to the location of the child
 7 within the resources of the department, or make any other order relative to placement or
 8 custody outside the Department of Human Resources as the court finds to be in the best
 9 interest of the child and consistent with this subsection. Placement or a change of legal
 10 custody by the court outside the Department of Human Resources shall relieve the
 11 department of further responsibility for the child so placed.

12 ~~(d)~~(e) A juvenile court shall not be required to make an order of disposition pursuant to
 13 this Code section regarding a child who is discharged from a facility in which the child was
 14 hospitalized or habilitated pursuant to Chapter 3, 4, or 7 of Title 37 unless the child is to
 15 be discharged into the physical custody of any person who had such custody when the court
 16 made its most recent finding that such child was deprived.

17 ~~(e)~~(f) If a child is found to be a deprived child and the deprivation is found to have been
 18 the result of alcohol or other drug abuse by a parent or guardian, as specified in subsection
 19 (b) of Code Section 15-11-54, and the court orders transfer of temporary legal custody of
 20 the child, as provided in paragraph (2) of subsection (a) of this Code section, the court is
 21 authorized to further order that legal custody of the child may not be transferred back to the
 22 child's custodian or guardian whose abuse of alcohol or another drug resulted in the child's
 23 deprivation unless such person undergoes substance abuse treatment and random substance
 24 abuse screenings and those screenings remain negative for a period of no less than six
 25 consecutive months."

SECTION 3.

28 Article 1 of Chapter 5 of Title 49 of the Official Code of Georgia Annotated, relating to
 29 children and youth services, is amended by revising paragraph (12) of Code Section 49-5-3,
 30 relating to definitions, as follows:

31 "(12) 'Legal custody' means a legal status created by court order embodying the
 32 following rights and responsibilities:

33 (A) The right to have the physical possession of the child ~~or youth~~;

34 (B) The right and the duty to protect, train, and discipline ~~him~~ the child;

35 (C) The responsibility to provide ~~him~~ the child with food, clothing, shelter, education,
 36 and ordinary medical care; and

37 (D) The right to determine where and with whom ~~he~~ the child shall live,

1 provided that these rights and responsibilities shall be exercised subject to the powers,
2 rights, duties, and responsibilities of the guardian of the person of the child ~~or youth~~ and
3 subject to any residual parental rights and responsibilities. These rights shall be subject
4 to judicial oversight and review pursuant to Code Section 15-11-55."

5 **SECTION 4.**

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