

08 LC 28 3943

Senate Bill 415

By: Senators Schaefer of the 50th, Williams of the 19th, Pearson of the 51st, Murphy of the 27th, Douglas of the 17th and others

A BILL TO BE ENTITLED

AN ACT

To amend Chapter 11 of Title 15 of the Official Code of Georgia Annotated, relating to juvenile proceedings, so as to reduce the time allowed for the Department of Human Resources to provide emergency care and supervision to a child without a court order; to remove certain immunities; to require a court order to enter the residence of a parent or guardian to seize a child under certain circumstances; to provide that juvenile deprivation hearings shall not be closed except upon the written application of the parents or guardians of the child or children who are the subject of the hearing; to provide that efforts shall be made to place children with relatives prior to transferring custody of such children to the Department of Human Resources; to provide for notices and procedures; to provide for a limitation on certain actions to terminate parental rights; to provide for discovery in termination proceedings; to provide for sanctions for failure to provide discovery; to amend Chapter 8 of Title 19 of the Official Code of Georgia Annotated, relating to adoptions, to prohibit the state from applying for, obtaining, receiving, or accepting any adoption incentive payments under the federal Adoption and Safe Families Act of 1997, P.L. 105-89, 42 U.S.C. Section 673b, or any similar federal legislation providing incentive funds to the states for promoting adoptions; to provide for related matters; to repeal conflicting laws; and for other

purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Chapter 11 of Title 15 of the Official Code of Georgia Annotated, relating to juvenile proceedings, is amended by revising Code Section 15-11-14, relating to emergency care and supervision of child by Department of Human Resources, as follows:

"15-11-14.

(a) Notwithstanding Code Section 15-11-45 or any other provision of law, the Department of Human Resources is authorized to provide emergency care and supervision to any child without seeking a court order for a period not to exceed ~~seven days~~ 72 hours when:

(1) As a result of an immediate emergency or illness, the person who has physical and legal custody of the child or children is unable to provide for the care and supervision of the child or children, and such person or a law enforcement officer, emergency personnel employed by a licensed ambulance provider, fire rescue personnel, or a hospital administrator or his or her designee requests that the department exercise such emergency custody; and

(2) The child or children are not at imminent risk of abuse or neglect, other than the risks arising from being without a caretaker.

During such period, the department shall endeavor to place the child or children with a relative of the parent or guardian, in shelter care, or in emergency foster care or shall make other appropriate placement arrangements. The department shall have the same rights and powers with regard to the child or children as does the custodial parent or other legal custodian.

(b) Immediately upon receiving custody of the child or children, the department shall

begin a diligent search for a relative or other designee of the parent who can provide for the care and supervision of the child or children.

(c) At any time during such ~~seven-day~~ 72 hour period, upon the parent or guardian's notification to the department that the parent or guardian, or a relative or designee thereof, is able to provide care to and exercise control over the child or children, the department shall release the child or children to the person having custody of the child or children at the time the child or children were taken into the custody of the department or to such person's relative or designee except as provided in subsection (d) of this Code section.

(d) Upon the expiration of such ~~seven-day~~ 72 hour period, if the child or children have not been released pursuant to subsection (c) of this Code section or if the department determines that there is an issue of neglect, abandonment, or abuse, the department shall promptly contact a juvenile court intake officer or bring the child or children before the juvenile court pursuant to Code Section 15-11-47 or 15-11-49. If, upon making an investigation, the intake or other authorized officer of the court finds that shelter care is warranted for the child or children, then, for purposes of this chapter, the child or children shall be deemed to have been placed in shelter care at the time such finding was made. The department may take such other and further actions under this article and all other provisions of law, as are authorized and appropriate, with regard to the child or children.

(e) During the period when a child is in the care and supervision of the department pursuant to this Code section, the department shall have the same authority to consent to medical treatment for the child as does the child's custodial parent or other legal custodian; provided, however, that no medication shall be administered to the child over the objection of the custodial parent or legal custodian.

(f) The department and its successors, agents, assigns, and employees shall be immune from any and all liability for providing care and supervision for a child pursuant to

subsection (a) of this Code section, for consenting to medical treatment for the child pursuant to subsection (e) of this Code section, and for releasing the child pursuant to subsection (c) of this Code section. This immunity shall not extend to seizures of children that are found to be in violation of this article nor to the administration of medication to a child over the objection of the custodial parent or legal custodian."

SECTION 2.

Said chapter is further amended by revising Code Section 15-11-45, relating to when a child may be taken into custody, by adding a new subsection as follows:

"(d) Except in cases involving an immediate threat to the health or safety of a child, no person, including a law enforcement officer or duly authorized officer of the court, shall enter the residence of such child's parent or guardian to take such child into custody based upon allegations of deprivation or abuse without a court order issued after a finding of probable cause by the court authorizing such entry and taking of such child."

SECTION 3.

Said chapter is further amended by revising subsection (a) of Code Section 15-11-58, relating to reasonable efforts regarding reunification of family, as follows:

"(a) A court's order removing a child from the child's home shall be based upon a finding by that court that continuation in the home would be contrary to the welfare of the child. If the court places custody of the child in the Division of Family and Children Services of the Department of Human Resources, the court shall also determine as a finding of fact whether reasonable efforts were made by the Division of Family and Children Services of the Department of Human Resources and any other appropriate agencies to preserve and reunify families prior to the placement of a child in the custody of the Department of Human Resources, to prevent or eliminate the

need for removal of the child from that child's home, and to make it possible for the child to return safely to the child's home. Prior to being placed in foster care, the child shall be placed in a relative's care unless there is no relative who is willing and able to care for the child. The Division of Family and Children Services of the Department of Human Resources must show that a registered letter, in addition to telephone calls and e-mails, requesting family placement was provided to each and every relative that the child or the parent, guardian, or custodian of such child provided to the Division of Family and Children Services of the Department of Human Resources upon the request of the Division of Family and Children Services of the Department of Human Resources and whether reasonable efforts were made to place the child in a relative's home prior to the placement of that child in the custody of the Department of Human Resources. Such findings shall also be made at every subsequent review of the court's order under this chapter.

(1) In determining reasonable efforts to be made with respect to a child, as described in this subsection, and in making such reasonable efforts, the child's health and safety shall be the paramount concern;

(2) Except as provided in paragraph (4) of this subsection, reasonable efforts shall be made to preserve and reunify families:

(A) Prior to the placement of a child in the custody of the Department of Human Resources, to prevent or eliminate the need for removing the child from the child's home; and

(B) To make it possible for a child to return safely to the child's home;

(3) If continuation of reasonable efforts of the type described in paragraph (2) of this subsection is determined to be inconsistent with the permanency plan for the child, reasonable efforts shall be made to place the child in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of the child;

(4) Reasonable efforts of the type described in paragraph (2) of this subsection shall

not be required to be made with respect to a parent of a child if a court of competent jurisdiction has determined that:

(A) The parent has subjected the child to aggravated circumstances which may include but need not be limited to abandonment, torture, chronic abuse, and sexual abuse; or

(B) The parent has:

(i) Committed murder of another child of the parent;

(ii) ~~Been convicted of the~~ Committed murder of the other parent of the child;

(iii) Committed voluntary manslaughter of another child of the parent;

(iv) Aided or abetted, attempted, conspired, or solicited to commit murder or voluntary manslaughter of another child of the parent; or

(v) Committed a felony assault that results in serious bodily injury to the child or another child of the parent; ~~or~~

~~(C) The parental rights of the parent to a sibling have been terminated involuntarily;~~

(5) If reasonable efforts of the type described in paragraph (2) of this subsection are not made with respect to a child as a result of a determination made by a court of competent jurisdiction in accordance with paragraph (4) of this subsection:

(A) A permanency hearing in accordance with subsection (o) of this Code section shall be held for the child within 30 days after such determination; and

(B) Reasonable efforts shall be made to place the child in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of the child; and

(6) Reasonable efforts to place a child for adoption or with a legal guardian ~~may~~ shall not be made concurrently with reasonable efforts of the type described in paragraph (2) of this subsection."

SECTION 4.

Said chapter is further amended by revising Code Section 15-11-78, relating to exclusion of public from juvenile hearing and exceptions, as follows:

"15-11-78.

(a) Except as otherwise provided by subsection (b) of this Code section, the general public shall be excluded from hearings involving delinquency, ~~deprivation~~, or unruliness. Only the parties, their counsel, witnesses, persons accompanying a party for his or her assistance, and any other persons as the court finds have a proper interest in the proceeding or in the work of the court may be admitted by the court. The court may temporarily exclude the child from the hearing except while allegations of his or her delinquency or unruly conduct are being heard.

(b) The general public shall be admitted to:

(1) An adjudicatory hearing involving an allegation of a designated felony pursuant to Code Section 15-11-63;

(2) An adjudicatory hearing involving an allegation of delinquency brought in the interest of any child who has previously been adjudicated delinquent; provided, however, the court shall close any delinquency hearing on an allegation of sexual assault ~~or any delinquency hearing at which any party expects to introduce substantial evidence related to matters of deprivation;~~

(3) Any child support hearing;

(4) Any hearing in a legitimation action filed pursuant to Code Section 19-7-22; ~~or~~

(5) At the court's discretion, any dispositional hearing involving any proceeding under this article; or

(6) Any deprivation hearing except upon the written application of the parents or guardian of the child or children who are the subject of the hearing."

SECTION 5.

Said chapter is further amended by revising Code Section 15-11-94, relating to grounds for termination of parental rights, by adding a new subsection to read as follows:

"(d) If the court does not find that a parent's parental rights should be terminated, another action to terminate such parent's parental rights shall not be brought unless the action relates to a new allegation or new information."

SECTION 6.

Said chapter is further amended by revising Code Section 15-11-95, relating to petitions for termination of parental rights, by adding a new subsection to read as follows:

"(e) In addition to the petition, a statement of rights shall be served on each parent whose parental rights are sought to be terminated which shall set forth in ordinary and concise language the rights of the parent provided pursuant to this chapter including, but not limited to, the right to discovery and to counsel. Such statement of rights shall be promulgated by the Department of Human Resources pursuant to rule and regulation."

SECTION 7.

Said chapter is further amended by revising Code Section 15-11-100, relating to physical and mental evaluations, by designating the existing matter as subsection (a) and adding a new subsection (b) to read as follows:

"(b) In all cases in which the termination of parental rights is sought, the parent whose parental rights are sought to be terminated shall, upon written request to the person or entity prosecuting the case having actual custody, control, or possession of the material to be produced, have full access to the following for inspection, copying, or photographing:

(1) The names and last known addresses and telephone numbers of each witness to

the occurrence or occurrences which form the basis of the allegations against such parent;

(2) A copy of any written statement made by any witness that relates to the subject matter concerning the testimony of the witness that the person or entity prosecuting the case intends to call as a witness;

(3) Transcriptions, recordings, and summaries of any oral statement of any witness, except the product of counsel;

(4) Any scientific or other report which is intended to be introduced at the hearing or that pertains to physical evidence which is intended to be introduced;

(5) Photographs and any physical evidence which are intended to be introduced at the hearing; and

(6) Copies of any police incident report and supplemental report, if any, regarding the occurrence which forms the basis of the allegations.

A request for discovery shall be complied with promptly and not later than 48 hours prior to the termination hearing except when later compliance is made necessary by the timing of the request. If the request for discovery is made fewer than 48 hours prior to the termination hearing, the discovery response shall be produced in a timely manner. If, subsequent to providing a discovery response in compliance with this Code section, the existence of additional evidence is found, it shall be promptly provided to the parent making the discovery request. If, at any time during the course of the proceedings, it is brought to the attention of the court that a person or entity has failed to comply with a discovery request pursuant to this subsection, the court may grant a continuance, prohibit the party from introducing in evidence the information not disclosed, or enter such other order as the court deems just under the circumstances."

SECTION 8.

Chapter 8 of Title 19 of the Official Code of Georgia Annotated, relating to adoptions, is amended by adding a new Code section to read as follows:

"19-8-27.

Neither the State of Georgia nor any of its agencies, departments, offices, authorities, or other instrumentalities shall apply for, obtain, receive, or accept any adoption incentive payments under the federal Adoption and Safe Families Act of 1997, P.L. 105-89, 42 U.S.C. Section 673b, or any similar federal legislation providing incentive funds to the states for promoting adoptions."

SECTION 9.

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

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