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COURTS

Termination of Parental Rights; Certain Termination: Amend Provisions Relating to Juvenile Proceedings and Parental Rights

CODE SECTIONS:	O.C.G.A. §§ 15-11-81, -90, 19-8-4 to -7, -10 to -11, -23, -26 (amended)
BILL NUMBER:	HB 218
ACT NUMBER:	159
GEORGIA LAWS:	1999 Ga. Laws 252
SUMMARY:	The Act changes provisions relating to termination of parental rights when the child is not in the parent's custody. The Act makes the adoption of children easier by terminating parental rights in appropriate cases. The Act makes it more difficult for parents to circumvent termination by attempting to contact a child before the statutory time period for termination lapses. The Act ties together Title 15 and Title 19 of the Code so that the standards for adoption will be the same regardless of whether the case is heard in Juvenile or Superior Court. Finally, the Act updates adoption forms to match the General Assembly's changes over the past twenty years.
EFFECTIVE DATE:	July 1, 1999

History

In 1996, the Georgia General Assembly passed SB 611, which provided guidance to courts and the Division of Family and Children Services (DFACS) on termination of parental rights.[1] The legislation required parents to maintain proper communication with their children to preserve their parental rights and allowed for termination of parental rights more quickly.[2] This legislation added the

1. *See Review of Selected 1996 Georgia Legislation*, 13 GA. ST. U. L. REV. 91 (1996) [hereinafter *Selected 1996 Legislation*].
2. *See id.* at 91, 93; *see also* 1996 Ga. Laws 474, § 3, at 480-81 (formerly found at

"meaningful, supportive, parental manner" language to Code sections 15-11-81(b)(4) and 19-8-10(b),[3] amended Code section 15-11-90(a) to allow placement of a child with a relative only if it is in the best interest of the child,[4] and added a communication provision to Code section 19-8-11(a)(3).[5]

In 1997, Congress passed the Adoption and Safe Families Act (ASFA) to promote the adoption of children in foster care.[6] The ASFA amended the Assistance and Child Welfare Act of 1980 amidst concern that children's lives were being sacrificed for the sake of "preserving the family."[7] Section 103 of the ASFA required states to initiate or join proceedings to terminate parental rights for certain children in foster care.[8] The ASFA also declared that a child's health and safety should be the paramount concern in determining what reasonable efforts are required to reunify a family.[9]

In 1997, then-Senator Mary Margaret Oliver of the 42nd District introduced legislation that would change the grounds for termination of parental rights as well as the scope of the search for suitable family members for placement in Georgia.[10] The 1997 bill was the result of the work of a Senate Study Committee on Adoption and Foster Care.[11] The bill passed the Senate and the House Judiciary Committees, but the addition of a House Floor Amendment, which would have prevented same-sex couples from adopting children, caused the bill to fail in the 1997 General Assembly.[12]

O.C.G.A. § 15-11-81(b)(4)(B)-(C) (Supp. 1998)).

3. 1996 Ga. Laws 474, §§ 3, 5, at 481 (formerly found at O.C.G.A. § 15-11-81 (1998)).

4. *See id.* § 4, at 482 (formerly found at O.C.G.A. § 15-11-81(b)(4)(C) (Supp. 1998)).

5. *See id.* § 6, at 482-83 (formerly found at O.C.G.A. § 19-8-11(a)(3) (Supp. 1998)); *see also Selected 1996 Legislation, supra* note 1, at 96-97.

6. *See* Adoption and Safe Families Act of 1997, Pub. L. No. 105-89, 111 Stat. 2115 (codified as amended in scattered sections of 42 U.S.C. (Supp. 1997)).

7. *See* Ernestine Steward Gray, *The Adoption and Safe Families Act of 1997: Confronting an American Tragedy*, 46 LA. B. J. 477, 478 (1999).

8. *See* 42 U.S.C. § 675 (Supp. 1997). For children in foster care for 15 of the most recent 22 months, the State is required to initiate termination proceedings unless the child is being cared for by a relative or a compelling reason exists that would make termination not in the child's best interest. *See id.* § 675(5)(E).

9. *See id.* § 671(a)(15)(A). If the parent has subjected the child to aggravated circumstances such as abandonment or chronic abuse, the courts do not have to make reasonable efforts to preserve and reunify families. *See id.* § 671(a)(15)(D)(i) (Supp. 1998).

10. *See* Telephone Interview with Alan Essig, Georgia Department of Human Resources (Apr. 20, 1999) [hereinafter Essig Interview].

11. *See id.*

12. *See* SB 27 (HCSFA), 1997 Ga. Gen. Assem. The amendment added the language relating to hearings and adoption decrees to the end of Code section 19-8-18. *See id.* The

Versions of the 1997 bill have been reintroduced each year so that Georgia law would comply with Federal law under the ASFA.[13] In 1998, the General Assembly brought Georgia law into compliance with the ASFA, thus qualifying Georgia for federal funding, by passing HB 1585.[14] HB 1585 identified certain aggravated circumstances under which a court may remove a child from the home without undertaking reasonable efforts to reunify the family; it also encouraged the speedy placement of children in permanent homes through adoption.[15] HB 1585 originally included additional provisions relating to adoption and termination of parental rights, but a House floor substitute deleted most of these provisions because foster care legislation was deemed more important than the adoption legislation because of the need to comply with the ASFA and to keep Georgia's federal funding for foster care.[16]

HB 218

Introduction

Representative Arnold Ragas of the 46th updated and reintroduced the bill Senator Oliver backed in 1997 on January 26, 1999.[17] HB 218 was introduced to comply with the ASFA and clear up discrepancies between the Juvenile Code and the Adoption Code.[18] Additionally, the

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language declared that it is not in the best interests of the child and an adoption decree should not be granted if: (1) both petitioners for adoption are of the same sex; or (2) the child will remain in custody of a biological parent who is of the same sex as the person petitioning to become the child's adoptive parent. *See id.*

13. *See* Essig Interview, *supra* note 10. The federal government conditions state receipt of federal child welfare money upon strict compliance with the ASFA. *See* Gray, *supra* note 7, at 480.

14. *See* 1998 Ga. Laws 908, § 1, at 908-16 (codified at O.C.G.A. § 15-11-41 (Supp. 1998)); Essig Interview, *supra* note 10.

15. *See* 1998 Ga. Laws 908, § 1, at 908-16 (codified at O.C.G.A. § 15-11-41 (Supp. 1998)); *Review of Selected 1998 Georgia Legislation*, 15 GA. ST. U. L. REV. 54 (1998) [hereinafter *Selected 1998 Legislation*].

16. *See* Essig Interview, *supra* note 10; *Selected 1998 Legislation, supra* note 15, at 56-57 n.18.

17. *See* State of Georgia Final Composite Status Sheet, May 3, 1999; *see also* Telephone Interview with Rep. Arnold Ragas, House District No. 46 (Apr. 20, 1999) [hereinafter Ragas Interview]; Interview with Ruth Claiborne (Apr. 23, 1999) [hereinafter Claiborne Interview]; Essig Interview, *supra* note 10. Ruth Claiborne is an Adoption Attorney in private practice. *See* Essig Interview, *supra* note 10. She was a member of the original Senate Study Committee on Adoption and Foster Care. *See id.* Ms. Claiborne helped write the 1997, 1998, and 1999 legislation. *See id.*

18. *See* Claiborne Interview, *supra* note 17; Ragas Interview, *supra* note 17.

bill makes it easier to terminate parental rights so that families may adopt abandoned and neglected children.[19]

HB 218 passed the House Judiciary Committee and the House floor with little opposition.[20] On the 39th day of the legislative session, however, several Senate floor amendments threatened HB 218.[21] The amendments would have prevented gay couples from adopting children because it limited adoptions only to legally married couples, but the amendments would also have prevented unmarried relatives from adopting as well.[22] The Senate tabled the bill on March 23, 1999,[23] took the bill from the table on March 24, 1999,[24] and tabled the bill again on the same day.[25] After the author withdrew the third amendment, HB 218 passed, making it the last bill to pass the 1999 General Assembly.[26]

With the passage of HB 218, Georgia has significantly complied with the ASFA.[27] The General Assembly clarified the definitions of "abandonment" and "inability to parent" (unfitness) and ensured uniformity between the Juvenile Code and the Adoption Code.[28]

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19. *See* Claiborne Interview, *supra* note 17; Essig Interview, *supra* note 10; Ragas Interview, *supra* note 17.

20. *See* Essig Interview, *supra* note 10.

21. *See id.*

22. *See* Ragas Interview, *supra* note 17; *see also Lawmakers '99* (GPTV broadcast, Feb. 15, 1999) (remarks by Rep. Ragas) (available in Georgia State University College of Law Library).

23. The Senate tabled HB 218 after the following amendment was added: "[I]t is in the best interest of Georgia's children, to restrict the privilege of adoption in Georgia to individuals or legally married couples consisting of a husband and a wife." HB 218 (FSFA), 1999 Ga. Gen. Assem. (introduced by Sen. Eric Johnson); *see also* State of Georgia Final Composite Status Sheet, May 3, 1999.

24. The author of the first amendment withdrew it. *See* Claiborne Interview, *supra* note 17.

25. The Senate tabled HB 218 again after the following amendment was added: "It is the expressed intent of the General Assembly that the best interest of Georgia's children is to limit adoption of minors to legally married couples." HB 218 (FSFA), 1999 Ga. Gen. Assem. (introduced by Sen. Eric Johnson); *see also* State of Georgia Final Composite Status Sheet, May 3, 1999.

26. *See* State of Georgia Final Composite Status Sheet, May 3, 1999; *see also* Essig Interview, *supra* note 10.

27. *See* Ruth Claiborne, *Contested Terminations: Termination Based on Abandonment or Unfitness*, *in* PROGRAM MATERIALS: NUTS AND BOLTS OF ADOPTION LAW AND PRACTICE IN GEORGIA 09-002 (Apr. 16, 1999) [hereinafter Claiborne, *Contested Terminations*].

28. *See id.* at 09-002, -003.

Modifying Grounds for Termination of Parental Rights

Georgia Law defines abandonment as a parent's failure to: (1) communicate with the child; (2) provide for care and support; and (3) comply with a court-ordered reunification plan.[29] Prior to the Act, the communication component was expressed as the failure of a parent "to communicate or make a bona fide attempt to communicate" with the child for at least one year prior to the filing of a termination or adoption petition.[30] In the past, a parent could remedy the lack of communication with "minimal gestures such as an occasional telephone call, birthday card or perhaps even a hostile expression or threat."[31] The Act prevents a parent from using these "remedies" to circumvent termination by replacing the verbiage "communicate or to make a bona fide attempt to communicate" with "develop and maintain a parental bond."[32] "Develop and maintain" requires significantly more contact than "communicate."[33]

Relative Placements Following Termination Order

The Act struck the word "exhaustive" from Code section 15-11-90(a)(1).[34] Members of the General Assembly wanted to ensure that a child would not be placed with a distant relative who had no bond with the child and who would be so difficult to find that it would require an "exhaustive" search.[35] The Act now requires only a "thorough" search.[36] Furthermore, the Act does not presume that blood placement is the best placement if no prior contact between the child and the relative exists.[37]

Concerning where to place a child following a termination order, the Senate Health and Human Services Committee replaced "first attempt to place the child with the child's extended family" with "first attempt to place the child with a person related to the child by blood or

29. *See* O.C.G.A. § 15-11-81 (1999).
30. *Compare id. with* 1996 Ga. Laws 474, § 3, at 480-81 (formerly found at O.C.G.A. § 15-11-81(b)(4)(C)(i) (Supp. 1998)).
31. Claiborne, *Contested Terminations, supra* note 27, at 09-003.
32. *Compare* 1996 Ga. Laws 474, § 3, at 480-81 (formerly found at O.C.G.A. § 15-11-81 (Supp. 1998)), *with* O.C.G.A. § 15-11-81(b)(4)(C)(i) (1999).
33. Claiborne Interview, *supra* note 17.
34. *Compare* 1996 Ga. Laws 474, § 4, at 482 (formerly found at O.C.G.A. § 15-11-90(a)(1) (Supp. 1998)), *with* O.C.G.A. § 15-11-90(a)(1) (1999).
35. *See* Claiborne Interview, *supra* note 17; Ragas Interview, *supra* note 17.
36. *See* Claiborne Interview, *supra* note 17; Ragas Interview, *supra* note 17.
37. *See* Claiborne Interview, *supra* note 17; Ragas Interview, *supra* note 17.

marriage or with a member of the child's extended family."[38] This language ensures that relatives, especially grandparents, get priority consideration.[39] The House Committee substitute lacked this language,[40] causing one Representative to file a Notice to Reconsider on February 15, 1999.[41]

Tying Together Title 15 and Title 19

The Act amends Code sections 19-8-10(a) and -11(a)(3) by striking and replacing Code section 19-8-11(a)(3)(D) and inserting in Code section 19-8-10(a)(4) the following language: "Parent has failed to exercise proper parental care or control due to misconduct or inability, as set out in paragraph (2), (3), or (4) of subsection (b) of Code section 15-11-81."[42] These amendments ensure consistency between the Juvenile Code (Title 15) and the Adoption Code (Title 19).[43] The amendments also add an unfitness ground for termination of parental rights to the Adoption Code.[44]

The Act amended the best interests standard in Code sections 19-8-10(a) and -11(a)(3) by adding: "after considering the physical, mental, emotional, and moral condition and needs of the child who is the subject of the proceeding, *including the need for a secure and stable home*."[45] The General Assembly added this language to place more focus on the child.[46]

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38. *Compare* HB 218 (HCS), 1999 Ga. Gen. Assem., *and* HB 218 (SCS), 1999 Ga. Gen. Assem., *with* O.C.G.A. § 15-11-90(a)(1) (1999).

39. *See* Claiborne Interview, *supra* note 17.

40. *See* HB 218 (HCS), 1999 Ga. Gen. Assem.

41. *See* State of Georgia Final Composite Status Sheet, May 3, 1999.

42. *Compare* 1996 Ga. Laws 474, §§ 5-6, at 482-83 (formerly found at O.C.G.A. § 19-8-10 to -11 (Supp. 1997)), *with* O.C.G.A. §§ 19-8-10 to -11 (1999). The old language of Code section 19-8-11(a)(3)(D) said: "That parent does not have physical custody of the child and, for period of one year or longer immediately prior to filing of the petition for adoption, without justifiable cause, has significantly failed to communicate with the child in meaningful, supportive, parental manner. . . ." 1996 Ga. Laws 474, § 6, at 483 (formerly found at O.C.G.A. § 19-8-11(a)(3)(D) (Supp. 1997)).

43. *See* Claiborne Interview, *supra* note 17.

44. *See id.* "Involuntary termination of parental rights is a difficult and sad process but it is a necessary pre-requisite in some cases to the building of a new family through adoption. The trends now favor the best interests of children, the stability of long term placements and adoptions." Claiborne, *Contested Testimonies*, *supra* note 27, at 09-004.

45. *Compare* 1996 Ga. Laws 474, §§ 5-6, at 482-83 (formerly found at O.C.G.A. § 19-8-10 to -11 (Supp. 1997)), *with* O.C.G.A. §§ 19-8-10 to -11 (1999).

46. *See* Claiborne Interview, *supra* note 17.

Safety Net Provisions for Voluntary Surrender and Other Changes

Code section 19-8-1 defines a "biological father who is not the legal father" as a "male who impregnated the biological mother."[47] A "legal father" is married to the mother at the time of conception, pregnancy, or birth; and his final paternity has not been disproved by final court order, or he has "legitimated the child through a final court order."[48] A "biological father" becomes the "legal father" by establishing rights through acts showing "acceptance of parental responsibility."[49] Under Code section 19-8-26, the legal father does not have a form comparable to the Mother's Affidavit for Voluntary Surrender.[50] Biological fathers do not have to prove their paternity in adoption proceedings.[51]

Section 10 of the Act amends Code section 19-8-26 by inserting "alleged" in front of "biological father" throughout the section.[52] A disinterested biological father might fear that by signing the release he would be admitting paternity, and if the mother decided to keep the baby, she might attempt to use the document as evidence in a paternity action against him.[53] The addition of the term "alleged" appears redundant because the Adoption Code's internal definition distinguishes between the biological father and the legal father.[54] However, the House Judiciary Committee wanted "alleged" in the Act because the Committee thought a disinterested father would be more likely to sign the release if the release did not require him to admit paternity.[55]

The Act also "cleans up" language throughout Code section 19-8-26.[56] The Act adds relationship "to the mother" as a descriptor for the identity of the biological father as a requirement in the legal mother's

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47. Ruth Claiborne, *Biological Father Who is Not the Legal Father, in* PROGRAM MATERIALS: NUTS AND BOLTS OF ADOPTION LAW AND PRACTICE IN GEORGIA 04-003 (Apr. 16, 1999) [hereinafter Claiborne, *Biological Father*]; *see also* 1990 Ga. Laws 1512, § 5, at 1579 (codified at O.C.G.A. § 19-8-1 (Supp. 1997)).

48. Claiborne, *Biological Father, supra* note 47; *see also* 1990 Ga. Laws 1512, § 5, at 1579 (codified at O.C.G.A. § 19-8-1 (Supp. 1997)).

49. Claiborne, *Biological Father, supra* note 47; *see also* 1990 Ga. Laws 1512, § 5, at 1579-80 (codified at O.C.G.A. § 19-8-1 (Supp. 1997)).

50. *See* O.C.G.A. § 19-8-26 (1999).

51. *See* Claiborne, *Biological Father, supra* note 47, at 04-004.

52. *Compare* 1990 Ga. Laws 1572, § 5, at 1616-41 (formerly found at O.C.G.A. § 19-8-26 (1991)), *with* O.C.G.A. § 19-8-26 (1999).

53. *See* Claiborne, *Biological Father, supra* note 47, at 04-005.

54. *See id.* at 04-006.

55. *See* Claiborne Interview, *supra* note 17.

56. *See id.*

affidavit.[57] The Act amends the Mother's Affidavit by asking the following regarding acts of the biological father: "(Was) (Was not) married to me at any time during my pregnancy with this child; (Was) (Was not) married to me at the time that this child was born; (Has) (Has not) provided for my medical care during my pregnancy or hospitalization for the birth of the child."[58] Prior to the Act, Code section 19-8-26 did not contain this language.[59]

The Act combines the three forms for the surrender of rights of an alleged biological father into a single surrender form that allows for relinquishment of any rights he may have to the child.[60] Accordingly, the Act revises the cross references between Code sections 19-8-4(e)(2), -6(e)(2), -7(e)(2) and -26(d).[61] The Act also deletes former language that appeared to allow the biological father to choose the adoptive parents.[62]

Sections 4 and 10 of the Act apply to the voluntary surrender of parental rights.[63] The Senate floor amendment to HB 218 added a "Safety Net Provision" to Section 4 describing what a legal parent or guardian may do if the adoption petition is not filed or granted within sixty days from termination.[64] The legal parent may choose to have the child returned to him or her without revoking termination, place the child with the State, or place the child with a private agency.[65] The Senate Floor Amendment also revised the forms for the Surrender of Rights and the Mother's Affidavit in Section 10 to reflect the "Safety Net Provisions" in Section 4.[66] The Provision will make adoptions easier because it enables parents to choose an agency other than DFACS to handle the child's placement.[67]

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57. *Compare* 1990 Ga. Laws 1572, § 5, at 1616-41 (formerly found at O.C.G.A. § 19-8-26 (1991)), *with* O.C.G.A. § 19-8-26 (1999).

58. O.C.G.A. § 19-8-26(h) (1999).

59. *Compare id. with* 1990 Ga. Laws 1572, § 5, at 1616-41 (formerly found at O.C.G.A. § 19-8-26 (1991)).

60. *See* O.C.G.A. §§ 19-8-4, -6, -7, -26 (1999).

61. *See id.*

62. *Compare id.* § 19-8-26(d), *with* 1990 Ga. Laws 1572, § 5, at 1622-25 (formerly found at O.C.G.A. § 19-8-26 (1991)).

63. *See* O.C.G.A. §§ 19-8-5(k), -26(c) (1999).

64. *Compare* 1990 Ga. Laws 1572, § 3, at 1585 (formerly found at O.C.G.A. § 19-8-5(k) (1991)), *with* HB 218 (SCSFA), 1999 Ga. Gen. Assem.

65. *Compare* 1990 Ga. Laws 1572, § 3, at 1585 (formerly found at O.C.G.A. § 19-8-5(k) (1991)), *with* HB 218 (SCSFA), 1999 Ga. Gen. Assem.

66. *Compare* 1990 Ga. Laws 1572, § 3, at 1620-22 (formerly found at O.C.G.A. § 19-8-26(c) (1991)), *with* HB 218 (SCSFA), 1999 Ga. Gen. Assem.

67. *See* Ragas Interview, *supra* note 17.

Compliance with Indian Child Welfare Act and Soldiers' and Sailors' Civil Relief Act

The General Assembly added the questions about American Indian heritage to the Mother's Affidavit in Code section 19-8-26(h) to conform to the provisions of the federal Indian Child Welfare Act (ICWA).[68] The ICWA helps prevent Native American children from being adopted by someone other than members of their tribe without notice to the tribe.[69]

Under the Soldiers' and Sailors' Relief Act of 1940 (SSRA), if military personnel are on active duty and stationed outside the United States, a court may not enter a default judgment against them if they fail to appear in court when an action commences.[70] The General Assembly added the questions about the biological father's military status to the Mother's Affidavit in Code section 19-8-26(h) because the biological father could invoke the SSRA to delay the adoption.[71]

Adoption Reunion Registry: Fee for Search

The Act amended a provision in the Adoption Reunion Registry Provisions relating to the fee charged by the department for the cost of conducting a post-adoption search for a biological parent, a sibling, or information on behalf of an adult adoptee.[72] The provision was deleted to ensure that the cost of a search would not impact the thoroughness of an investigation.[73]

Conclusion

With the passage of HB 218, adoption will be easier for some children because their parents' rights can now be terminated more quickly than in the past. Standards for adoption are now uniform

68. *See* Claiborne Interview, *supra* note 17.
69. *See* 25 U.S.C. § 1915 (1994).
70. *See* 50 App. U.S.C. § 520 (1994).
71. *See* Claiborne Interview, *supra* note 17.
72. *See* O.C.G.A. § 19-8-23(f)(7) (1999). The Act deleted the following language: "... not to exceed a fee of $250.00 together with approved reasonable and necessary out of pocket expenses." *Compare* 1990 Ga. Laws 1572, § 3, at 1614 (formerly found at O.C.G.A. 19-8-23(f)(7) (Supp. 1997)), *with* O.C.G.A. § 19-8-23(f)(7) (1999).
73. *See* Claiborne Interview, *supra* note 17.

regardless of whether the adoption is adjudicated in juvenile court or superior court. Finally, HB 218 updated adoption forms to encompass changes made by the General Assembly over the past twenty years.

Shonah Jefferson