

Senate Bill 131

By: Senators Tillery of the 19th, Hatchett of the 50th, Dugan of the 30th, Harbin of the 16th, Cowsert of the 46th and others

AS PASSED

A BILL TO BE ENTITLED

AN ACT

1 To amend Part 13 of Article 3 of Chapter 11 of Title 15 of the Official Code of Georgia
2 Annotated, relating to permanent guardianship, so as to provide for service by publication;
3 to update permanent guardianship proceedings; to provide for an exception for parties who
4 have terminated their parental rights; to provide for a waiver of service; to provide for notice
5 and service of permanent guardianship; to provide for notice of guardianship petition; to
6 provide for objection to appointment of guardianship; to provide for a rebuttable presumption
7 for nonentitlement to notice in guardianship proceedings; to amend Article 1 of Chapter 9
8 of Title 19 of the Official Code of Georgia Annotated, relating to general provisions
9 regarding child custody proceedings, so as to provide judicial discretion in determining the
10 right of a surviving parent to custody of a child when such surviving parent is criminally
11 charged with the murder or voluntary manslaughter of the other parent; to amend Code
12 Section 19-7-1 of the Official Code of Georgia Annotated, relating to in whom parental
13 power lies, how such power lost, and recovery for homicide of child or unborn child, so as
14 to provide for the automatic termination of parental rights upon conviction of certain
15 offenses; to provide for related matters; to repeal conflicting laws; and for other purposes.

16 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

17 **SECTION 1.**

18 Part 13 of Article 3 of Chapter 11 of Title 15 of the Official Code of Georgia Annotated,
 19 relating to permanent guardianship, is amended by revising Code Section 15-11-243, relating
 20 to notice and permanent guardianship hearing, as follows:

21 "15-11-243.

22 ~~(a) Notice of a guardianship petition pursuant to this part shall be given to a parent of the~~
 23 ~~child who was adjudicated as a dependent child and shall also be given in accordance with~~
 24 ~~subsection (c) of Code Section 29-2-17 except that, if the parents have consented to the~~
 25 ~~guardianship, notice of the petition shall not be required to be given to:~~

26 ~~(1) The adult siblings of the child who was adjudicated as a dependent child;~~

27 ~~(2) The grandparents of the child who was adjudicated as a dependent child; or~~

28 ~~(3) The nearest adult relatives of the child who was adjudicated as a dependent child as~~
 29 ~~determined in accordance with Code Section 53-2-1.~~

30 ~~(b) The A guardianship petition hearing shall be conducted in accordance with Code~~
 31 ~~Section 29-2-18 to determine the best interests of the child who was adjudicated as a~~
 32 ~~dependent child, and in reaching its determination the court shall consider Code~~
 33 ~~Section 15-11-240."~~

34 **SECTION 2.**

35 Said part is further amended by adding new Code sections to read as follows:

36 "15-11-243.1.

37 (a) The court shall direct the issuance of a summons to the legal mother, legal father,
 38 biological father, legal custodian, attorney, and guardian ad litem, if any, of the child who
 39 was adjudicated as a dependent child and any other persons who appear to the court to be
 40 proper or necessary parties to the proceeding. A copy of such petition shall accompany the
 41 summons unless the summons is served by publication, in which case the published

42 summons shall indicate the general nature of the allegations and where a copy of such
43 petition can be obtained.

44 (b) No service of summons shall be required for any parent whose parental rights have
45 been terminated or voluntarily surrendered.

46 (c) The court shall direct notice and a copy of the petition be provided to the child named
47 in the petition if the child is 14 years of age or older.

48 (d) The court may endorse upon the summons an order directing the parent, guardian, or
49 legal custodian of the child named in the petition to appear personally at the hearing or
50 directing the person having the physical custody or control of such child to bring such child
51 to the hearing.

52 (e) A party other than the child named in the petition may waive service of summons by
53 written stipulation or by voluntary appearance at the hearing.

54 15-11-243.2.

55 (a) If a party to be served with a summons is within this state and can be found, the
56 summons shall be served upon him or her personally as soon as possible and at least 14
57 days before the permanent guardianship hearing.

58 (b) If a party to be served is within this state and cannot be found, but his or her address
59 is known or can be ascertained with due diligence, the summons shall be served upon such
60 party at least 14 days before the permanent guardianship hearing by mailing him or her a
61 copy by registered or certified mail or statutory overnight delivery, return receipt requested.

62 (c) If a party to be served is outside this state but his or her address is known or can be
63 ascertained with due diligence, service of the summons shall be made at least 14 days
64 before the permanent guardianship hearing either by delivering a copy to such party
65 personally or by mailing a copy to him or her by registered or certified mail or statutory
66 overnight delivery, return receipt requested.

67 (d)(1) If, after due diligence, a party to be served with a summons cannot be found and
68 such party's address cannot be ascertained whether he or she is within or outside this
69 state, the court may order service of the summons upon him or her by publication. The
70 permanent guardianship hearing shall not be earlier than 15 days after the date of the last
71 publication.

72 (2) Service by publication shall be made once a week for two consecutive weeks in the
73 legal organ of the county where the petition for permanent guardianship has been filed.
74 Service shall be deemed complete upon the date of the last publication.

75 (3) When served by publication, the notice shall contain the names of the parties, except
76 that the anonymity of a child shall be preserved by the use of appropriate initials, and the
77 date the petition for permanent guardianship was filed. The notice shall indicate the
78 general nature of the proceedings and where a copy of the petition for permanent
79 guardianship can be obtained and require the party to file any objections in accordance
80 with paragraph (4) of this subsection.

81 (4) The notice shall state that the individual is entitled to object either to the
82 establishment of a permanent guardianship or to the selection of the proposed guardian,
83 or both. The notice shall require that any objection be filed in writing with the court
84 within ten days of the personal service, within 14 days of the mailing of the notice, or
85 within ten days of the date of the second publication of the notice.

86 (e) Service of the summons may be made by any suitable person under the direction of the
87 court.

88 15-11-243.3.

89 (a) Unless he has surrendered all parental rights to his child, a summons shall be served
90 in the same manner as set forth in Code Section 15-11-243.2 on the biological father:

91 (1) Whose paternity has been established in a judicial proceeding to which the father was
92 a party;

- 93 (2) Whose identity is known to the petitioner or the petitioner's attorney;
94 (3) Who is a registrant on the putative father registry who has indicated possible
95 paternity of the child named in the petition brought pursuant to this article;
96 (4) Who is a registrant on the putative father registry who has indicated possible
97 paternity of the child named in the petition brought pursuant to this article who was born
98 to such child's mother during a period beginning no more than two years immediately
99 preceding such child's date of birth; or
100 (5) Who, if the court finds from the evidence, including, but not limited to, the affidavit
101 of the mother of a child named in the petition brought pursuant to this article, has
102 performed any of the following acts:
103 (A) Lived with such child;
104 (B) Contributed to such child's support;
105 (C) Made any attempt to legitimate such child; or
106 (D) Provided support or medical care for such mother either during her pregnancy or
107 during her hospitalization for the birth of such child.
108 (b) The notice shall advise the biological father that he will lose all rights to object to the
109 appointment of a permanent guardian for the minor if he does not file an objection with the
110 court within 14 days of the notice and file a petition to legitimate the minor within 30 days
111 of the hearing on his objection. The notice shall include the name of the individual who
112 will be the minor's permanent guardian if the petition is granted.
113 (c) If the biological father files a timely objection to the petition, the court shall hear the
114 objection and, if the biological father makes a request, shall continue the hearing for 30
115 days to allow the father to file a petition to legitimate the minor.
116 (d) If the biological father does not file a petition for legitimation within 30 days or files
117 a petition that is subsequently dismissed for failure to prosecute or files a petition and the
118 action is subsequently concluded without a court order declaring that he is the father of the

119 minor, the biological father shall have no further rights to receive notice of or object to the
 120 appointment of a permanent guardian for the minor.
 121 (e) If the identity of the biological father of the child for whom a permanent guardianship
 122 is sought is not known to the petitioner or the petitioner's attorney and the biological father
 123 would not be entitled to notice in accordance with subsection (a) of Code Section
 124 15-11-243.1, then it shall be rebuttably presumed that he is not entitled to notice of the
 125 proceedings. The court shall be authorized to require the mother to execute an affidavit
 126 supporting the presumption or show cause before the court if she refuses. Absent evidence
 127 rebutting the presumption, no further inquiry or notice shall be required by the court, and
 128 the biological father shall have no further rights to receive notice of or object to the
 129 appointment of a permanent guardian for the minor."

130

SECTION 3.

131 Code Section 19-7-1 of the Official Code of Georgia Annotated, relating to in whom parental
 132 power lies, how such power lost, and recovery for homicide of child or unborn child, is
 133 amended by adding a new paragraph to subsection (b) to read as follows:

134 "(7) Upon conviction for the murder or voluntary manslaughter of the other parent of
 135 such child;

136 (8) A superior court order terminating parental rights in an adoption proceeding in
 137 accordance with Chapter 8 of this title; or

138 (8)(9) A superior court order terminating parental rights of the legal father or the
 139 biological father who is not the legal father of the child in a petition for legitimation, a
 140 petition to establish paternity, a divorce proceeding, or a custody proceeding pursuant to
 141 this chapter or Chapter 5, 8, or 9 of this title, provided that such termination is in the best
 142 interest of such child; and provided, further, that this paragraph shall not apply to such
 143 termination when a child has been adopted or is conceived by artificial insemination as

144 set forth in Code Section 19-7-21 or when an embryo is adopted as set forth in Article 2
145 of Chapter 8 of this title."

146 **SECTION 4.**

147 Article 1 of Chapter 9 of Title 19 of the Official Code of Georgia Annotated, relating to
148 general provisions regarding child custody proceedings, is amended by revising Code Section
149 19-9-2, relating to right of surviving parent to custody of child and discretion of judge, as
150 follows:

151 "19-9-2.

152 Upon the death of either parent, the survivor is entitled to custody of the child; provided,
153 however, that the judge, upon petition;

154 (1) May may exercise discretion as to the custody of the child, looking solely to the
155 child's best interest and welfare; and

156 (2) In the case of a surviving parent being criminally indicted for the offense of murder
157 or voluntary manslaughter of the other parent, can proceed in the court's discretion."

158 **SECTION 5.**

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