

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 SENATE

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 provide for related matters; to
8 repeal conflicting laws; and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 **SECTION 1.**

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

14 "15-11-243.

15 ~~(a) Notice of a guardianship petition pursuant to this part shall be given to a parent of the~~
16 ~~child who was adjudicated as a dependent child and shall also be given in accordance with~~

S. B. 131

- 1 -

17 ~~subsection (c) of Code Section 29-2-17 except that, if the parents have consented to the~~
18 ~~guardianship, notice of the petition shall not be required to be given to:~~

- 19 ~~(1) The adult siblings of the child who was adjudicated as a dependent child;~~
20 ~~(2) The grandparents of the child who was adjudicated as a dependent child; or~~
21 ~~(3) The nearest adult relatives of the child who was adjudicated as a dependent child as~~
22 ~~determined in accordance with Code Section 53-2-1.~~

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

27 **SECTION 2.**

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

29 "15-11-243.1.

30 (a) The court shall direct the issuance of a summons to the legal mother, legal father,
31 biological father, legal custodian, attorney, and guardian ad litem, if any, of the child who
32 was adjudicated as a dependent child and any other persons who appear to the court to be
33 proper or necessary parties to the proceeding. A copy of such petition shall accompany the
34 summons unless the summons is served by publication, in which case the published
35 summons shall indicate the general nature of the allegations and where a copy of such
36 petition can be obtained.

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

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

41 (d) The court may endorse upon the summons an order directing the parent, guardian, or
42 legal custodian of the child named in the petition to appear personally at the hearing or

43 directing the person having the physical custody or control of such child to bring such child
44 to the hearing.

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

47 15-11-243.2.

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

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

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

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

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

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

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

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

81 15-11-243.3.

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

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

86 (2) Whose identity is known to the petitioner or the petitioner's attorney;

87 (3) Who is a registrant on the putative father registry who has indicated possible
88 paternity of the child named in the petition brought pursuant to this article;

89 (4) Who is a registrant on the putative father registry who has indicated possible
90 paternity of the child named in the petition brought pursuant to this article who was born
91 to such child's mother during a period beginning no more than two years immediately
92 preceding such child's date of birth; or

93 (5) Who, if the court finds from the evidence, including, but not limited to, the affidavit
94 of the mother of a child named in the petition brought pursuant to this article, has
95 performed any of the following acts:

96 (A) Lived with such child;

97 (B) Contributed to such child's support;

98 (C) Made any attempt to legitimate such child; or

99 (D) Provided support or medical care for such mother either during her pregnancy or
100 during her hospitalization for the birth of such child.

101 (b) The notice shall advise the biological father that he will lose all rights to object to the
102 appointment of a permanent guardian for the minor if he does not file an objection with the
103 court within 14 days of the notice and file a petition to legitimate the minor within 30 days
104 of the hearing on his objection. The notice shall include the name of the individual who
105 will be the minor's permanent guardian if the petition is granted.

106 (c) If the biological father files a timely objection to the petition, the court shall hear the
107 objection and, if the biological father makes a request, shall continue the hearing for 30
108 days to allow the father to file a petition to legitimate the minor.

109 (d) If the biological father does not file a petition for legitimation within 30 days or files
110 a petition that is subsequently dismissed for failure to prosecute or files a petition and the
111 action is subsequently concluded without a court order declaring that he is the father of the
112 minor, the biological father shall have no further rights to receive notice of or object to the
113 appointment of a permanent guardian for the minor.

114 (e) If the identity of the biological father of the child for whom a permanent guardianship
115 is sought is not known to the petitioner or the petitioner's attorney and the biological father
116 would not be entitled to notice in accordance with subsection (a) of Code Section
117 15-11-243.1, then it shall be rebuttably presumed that he is not entitled to notice of the
118 proceedings. The court shall be authorized to require the mother to execute an affidavit
119 supporting the presumption or show cause before the court if she refuses. Absent evidence

120 rebutting the presumption, no further inquiry or notice shall be required by the court, and
121 the biological father shall have no further rights to receive notice of or object to the
122 appointment of a permanent guardian for the minor."

123 **SECTION 3.**

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