

House Bill 887 (AS PASSED HOUSE AND SENATE)

By: Representatives Efstration of the 104th, Ballinger of the 23rd, Quick of the 117th, Caldwell of the 131st, Abrams of the 89th, and others

A BILL TO BE ENTITLED
AN ACT

1 To provide for the placement of children under certain circumstances; to amend Articles 3
2 and 4 of Chapter 11 of Title 15 of the Official Code of Georgia Annotated, relating to
3 dependency proceedings and termination of parental rights, respectively, so as to prioritize
4 the placement of a child with an adult who is a relative or fictive kin when such individual
5 is qualified to care for such child and it is in the best interests of the child; to amend Title 19
6 of the Official Code of Georgia Annotated, relating to domestic relations, so as to provide
7 for the creation, authorization, procedure, revocation, rescission, and termination of a power
8 of attorney from a parent, guardian, or legal custodian of a child to a kinship caregiver for
9 the temporary delegation of certain power and authority for the care and custody of a child;
10 to provide a short title; to provide for and correct a definition; to provide for procedure; to
11 provide for legislative findings; to provide for related matters; to repeal conflicting laws; and
12 for other purposes.

13 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

14 PART I
15 SECTION 1-1.

16 Article 3 of Chapter 11 of Title 15 of the Official Code of Georgia Annotated, relating to
17 dependency proceedings, is amended by revising subsection (e) of Code Section 15-11-135,
18 relating to placement in eligible foster care, as follows:

19 "(e) In any case in which a child is taken into protective custody of DFCS, ~~such child shall~~
20 ~~be placed together;~~

21 (1) DFCS shall give preference for placement to an adult who is a relative or fictive kin
22 over a nonrelated caregiver, provided that the such relative or fictive kin has met all
23 requirements for a DFCS relative or fictive kin placement and such placement is in the
24 best interests of the child; and

25 (2) Such child shall be placed together with his or her siblings who are also in protective
 26 custody or DFCS shall include a statement in its report and case plan of continuing efforts
 27 to place the siblings together or document why such joint placement would be contrary
 28 to the safety or well-being of any of the siblings. If siblings are not placed together,
 29 DFCS shall provide for frequent visitation or other ongoing interaction between siblings,
 30 unless DFCS documents that such frequent visitation or other ongoing interaction would
 31 be contrary to the safety or well-being of any of the siblings."

32 SECTION 1-2.

33 Said article is further amended by revising paragraph (3) of subsection (b) of Code Section
 34 15-11-146, relating to preliminary protective hearing and findings, as follows:

35 "(3) On finding that the complainant has met the burden prescribed in subsection (a) of
 36 this Code section, may place the child before the court in the temporary custody of DFCS
 37 pending the hearing on the dependency petition. DFCS shall prioritize temporary
 38 placement with an adult who is a relative or fictive kin, provided that such individual has
 39 met DFCS's requirements for relative placement and such temporary placement is in the
 40 best interests of such child."

41 SECTION 1-3.

42 Said article is further amended by revising subparagraph (a)(2)(A) of Code Section
 43 15-11-212, relating to disposition of a dependent child, as follows:

44 "(A) Any individual, including a biological parent, who, after study by the probation
 45 officer or other person or agency designated by the court, is found by the court to be
 46 qualified to receive and care for such child, provided that priority for placement is given
 47 to an adult who is a relative or fictive kin;"

48 SECTION 1-4.

49 Article 4 of Chapter 11 of Title 15 of the Official Code of Georgia Annotated, relating to
 50 termination of parental rights, is amended by revising subsection (a) of Code Section
 51 15-11-321, relating to custody of child following termination proceedings or surrender of
 52 parental rights, as follows:

53 "(a) When a court enters an order terminating the parental rights of a parent or accepts a
 54 parent's voluntary surrender of parental rights, or a petition for termination of parental
 55 rights is withdrawn because a parent has executed an act of surrender in favor of the
 56 department, a placement may be made only if the court finds that such placement is in the
 57 best interests of the child and in accordance with such child's court approved permanency
 58 plan created pursuant to Code Sections 15-11-231 and 15-11-232. In determining which

59 placement is in a child's best interests, the court shall initially attempt to place the child
 60 with an adult who is a relative or fictive kin, if such individual is willing and found by the
 61 court to be qualified to receive and care for such child. In determining which placement
 62 is in a child's best interests, the court shall enter findings of fact reflecting its consideration
 63 of the following:

- 64 (1) Such child's need for a placement that offers the greatest degree of legal permanence
 65 and security;
 66 (2) The least disruptive placement for such child;
 67 (3) Such child's sense of attachment and need for continuity of relationships;
 68 (4) The value of biological and familial connections; and
 69 (5) Any other factors the court deems relevant to its determination."

70 **PART II**

71 **SECTION 2-1.**

72 The General Assembly finds that:

- 73 (1) From time to time, parents experience short-term difficulties that impair their ability
 74 to perform the regular and expected functions to provide care and support to their
 75 children;
 76 (2) Parents need a means to confer to a relative or fictive kin the temporary authority to
 77 act on behalf of a child without the time and expense of a court proceeding or the
 78 involvement of the Division of Family and Children Services of the Department of
 79 Human Services; and
 80 (3) Providing a statutory mechanism for granting such authority enhances family
 81 preservation and stability.

82 **SECTION 2-2.**

83 Title 19 of the Official Code of Georgia Annotated, relating to domestic relations, is
 84 amended by adding a new article to Chapter 9, relating to child custody proceedings, to read
 85 as follows:

86 "ARTICLE 5

87 19-9-140.

88 This article shall be known and may be cited as the 'Supporting and Strengthening Families
 89 Act.'

90 19-9-141.

91 As used in this article, the term:

92 (1) 'Child' means an unemancipated individual who is under 18 years of age.

93 (2) 'Fictive kin' shall have the same meaning as provided in Code Section 15-11-2.

94 (3) 'Guardian' means an individual appointed pursuant to a court order establishing a
 95 permanent guardianship for a child.

96 (4) 'Kinship caregiver' means a grandparent, step-grandparent, aunt, uncle, great aunt,
 97 great uncle, cousin, or sibling of a child or a fictive kin who resides in this state.

98 (5) 'Legal custodian' shall have the same meaning as provided in Code Section 15-11-2.

99 (6) 'Parent' shall have the same meaning as provided in Code Section 19-3-37.

100 19-9-142.

101 (a) A parent, guardian, or legal custodian of a child may delegate caregiving authority
 102 regarding such child to a kinship caregiver for a period not to exceed one year, except as
 103 provided in Code Section 19-9-150, by executing a power of attorney that substantially
 104 complies with this article. A parent, guardian, or legal custodian of a child may delegate
 105 to an agent in such power of attorney any power and authority regarding the care and
 106 custody of such child, except the power to consent to the marriage or adoption of such
 107 child, the performance or inducement of an abortion on or for such child, or the termination
 108 of parental rights to such child. Such power and authority may be delegated without the
 109 approval of a court, provided that such delegation of power and authority shall not operate
 110 to change or modify any parental or legal rights, obligations, or authority established by an
 111 existing court order, including a standing order, or deprive a parent, guardian, or legal
 112 custodian of a child of any parental or legal rights, obligations, or authority regarding the
 113 custody, visitation, or support of such child. Such delegation of power and authority shall
 114 not deprive or limit any support for a child that should be received by such child pursuant
 115 to a court order or for any other reason. When support is being collected for the child by
 116 the Child Support Enforcement Agency of the Department of Human Services, such agency
 117 shall be authorized to redirect support payments to the agent until such time as the child
 118 returns to the individual executing a power of attorney under this article. No power of
 119 attorney shall be executed during the pendency of a divorce or custody action.

120 (b) Except as limited by federal law, this article, or the direction of a parent, guardian, or
 121 legal custodian of a child as expressed in the power of attorney, an agent shall have the
 122 same rights, duties, and responsibilities that would otherwise be exercised by such parent,
 123 guardian, or legal custodian of a child pursuant to the laws of this state.

124 (c) An agent shall acknowledge in writing his or her acceptance of the responsibility for
 125 caring for a child for the duration of the power of attorney. An agent shall certify that he

126 or she is not currently on the state sexual offender registry of this state or the sexual
127 offender registry for any other state, a United States territory, the District of Columbia, or
128 any Indian Tribe nor has he or she ever been required to register for any such registry.
129 Such certification shall include a criminal background check if requested by the individual
130 executing the power of attorney.

131 (d) The agent under a power of attorney shall act in the best interests of the child. Such
132 agent shall not be liable to the individual executing the power of attorney for consenting
133 or refusing to consent to medical, dental, or mental health care for a child when such
134 decision is made in good faith and is exercised in the best interests of the child.

135 (e)(1) The agent under a power of attorney shall have the right to enroll the child in a
136 public school serving the area where the agent resides and may enroll the child in a
137 private school, pre-kindergarten program, or home study program.

138 (2) A public school shall allow such agent with a power of attorney executed under this
139 article to enroll a child.

140 (3) At the time of enrollment, the agent shall provide to such public school such
141 residency documentation as is customary in that school system.

142 (4) A public school shall not unreasonably deny enrollment of a child. If a public school
143 denies enrollment of a child by an agent, such denial may be appealed and shall be treated
144 as any other denial of enrollment of a child in that school system, including all of the
145 remedies otherwise available when enrollment is denied to a child.

146 19-9-143.

147 (a) At least 30 days prior to executing a power of attorney under this article:

148 (1) An individual with sole custody of a child who intends to execute such power of
149 attorney shall provide written notice of such intention to the noncustodial parent by
150 certified mail or statutory overnight delivery, return receipt requested. Such notice shall
151 constitute a change in material conditions or circumstances for the purpose of a child
152 custody modification proceeding; and

153 (2) An individual who is a guardian or legal custodian of a child who intends to execute
154 such power of attorney shall provide written notice to the child's parents by certified mail
155 or statutory overnight delivery, return receipt requested.

156 (b) An individual receiving the notice set forth in subsection (a) of this Code section may
157 object to the execution of such power of attorney within 21 days of the delivery of such
158 notice and shall serve his or her objection on the individual intending to execute such
159 power of attorney by certified mail or statutory overnight delivery, return receipt requested.
160 An objection shall prohibit the execution of a power of attorney under this article.

161 (c) In addition to the notice provided in subsection (a) of this Code section, a parent with
162 sole custody of a child who executes a power of attorney under this article shall comply
163 with any applicable relocation notice requirements under subsection (f) of Code
164 Section 19-9-3.

165 19-9-144.

166 Nothing in this article shall preclude a parent, guardian, legal custodian, or agent from
167 granting temporary written permission to seek emergency medical treatment or other
168 services for a child while such child is in the custody of an adult who is not the parent,
169 guardian, legal custodian, or agent and who is temporarily supervising the child at the
170 request of such parent, guardian, legal custodian, or agent.

171 19-9-145.

172 (a) Except as may be permitted by the federal Every Student Succeeds Act (P.L. 114-95),
173 an individual executing a power of attorney under this article shall swear or affirm under
174 penalty of law that such action is not being taken for the purpose of enrolling the child in
175 a school to participate in the academic or interscholastic athletic programs provided by that
176 school or for any other unlawful purpose. Violation of this subsection shall be punishable
177 in accordance with state law and may require, in addition to any other remedies, repayment
178 by such parent, guardian, or legal custodian of all costs incurred by the school as a result
179 of the violation.

180 (b) An individual shall not execute a power of attorney under this article for the purpose
181 of subverting an investigation of the child's welfare initiated by the Division of Family and
182 Children Services of the Department of Human Services and shall not execute such power
183 of attorney so long as the Division of Family and Children Services of the Department of
184 Human Services has an open child welfare and youth services case with regard to the
185 parent, guardian, or legal custodian, the child, or another child of the parent.

186 19-9-146.

187 A power of attorney executed under this article shall be signed and acknowledged before
188 a notary public by the parent, guardian, or legal custodian executing such power of attorney
189 and by the agent accepting such delegation.

190 19-9-147.

191 (a)(1) An agent shall have the authority to act on behalf of the minor child on a
192 continuous basis, without compensation, and shall not be subject to any provision
193 concerning the licensing or regulation of foster care homes for the duration of the power

194 of attorney so long as the duration does not exceed the length of time authorized in Code
195 Sections 19-9-142 and 19-9-150 or until the individual who executed the power of
196 attorney revokes the power of attorney in writing and provides notice of the revocation
197 to the agent as provided in this Code section.

198 (2) An agent shall have the authority to act on behalf of the child until a copy of the
199 revocation of the power of attorney is received by certified mail or statutory overnight
200 delivery, return receipt requested, and upon receipt of the revocation, the agent shall
201 cease to act as agent.

202 (3) The individual revoking the power of attorney shall send a copy of the revocation of
203 the power of attorney to the agent within five days of the execution of the revocation by
204 certified mail or statutory overnight delivery, return receipt requested. If an individual
205 revokes the power of attorney, the child shall be returned to the custody of the individual
206 who granted the power of attorney as soon as reasonably possible.

207 (4) The revoking individual shall notify the school, health care providers, and others
208 known to the revoking individual to have relied upon such power of attorney.

209 (b) The power of attorney executed under this article may also be terminated by any order
210 of a court of competent jurisdiction.

211 (c) The agent shall notify the school, health care providers, and others known to the agent
212 to have relied upon such power of attorney.

213 (d) An agent may resign by notifying the individual who appointed the agent in writing by
214 certified mail or statutory overnight delivery, return receipt requested.

215 (e) Upon the death of the authorizing individual, the agent shall notify the parents of the
216 child, if possible, as soon as practicable.

217 (f) The authority to designate an agent to act on behalf of a minor child is in addition to
218 any other lawful action an individual may take for the benefit of such minor child.

219 (g) A parent shall continue to have the right to medical, dental, mental health, and school
220 records pertaining to the minor child, even when a power of attorney has been executed
221 under this article.

222 19-9-148.

223 The execution of a power of attorney under this article shall not constitute abandonment
224 under Code Section 19-10-1 nor be reportable as child abuse or neglect under Code Section
225 19-7-5 unless the individual who executed such power of attorney fails to take custody of
226 the child or execute a new power of attorney under this article after the expiration or
227 revocation of the power of attorney.

228 19-9-149.

229 (a) A child subject to a power of attorney executed under this article shall not be
230 considered placed in foster care under Chapter 5 of Title 49, and the parties to the power
231 of attorney shall not be subject to any of the requirements or licensing regulations for foster
232 care or other regulations relating to community care for children.

233 (b) An agent who has been delegated caregiving authority under this article shall not be
234 subject to the requirements of any other child care facility or foster care licensing
235 provisions, and such delegation shall not constitute an out-of-home child placement.

236 (c) This article shall not be construed to exempt a person from the requirements of
237 Chapter 5 of Title 49 regarding the licensing and inspection of child welfare agencies if
238 such person fails to have evidence of a power of attorney executed under this article.

239 19-9-150.

240 Except as limited by or in conflict with federal law regarding the armed forces of the
241 United States, a parent who is a member of the armed forces of the United States, including
242 any reserve component thereof, or the commissioned corps of the National Oceanic and
243 Atmospheric Administration or the Public Health Service of the United States Department
244 of Health and Human Services detailed by proper authority for duty with the armed forces
245 of the United States, or who is required to enter or serve in the active military service of
246 the United States under a call or order of the President of the United States or to serve on
247 state active duty, may delegate caregiving authority for a period longer than one year if
248 such parent is deployed as defined in Code Section 19-9-6. Such term of delegation,
249 however, shall not exceed the term of deployment plus 30 days.

250 19-9-151.

251 (a) The power of attorney contained in this Code section may be used for the temporary
252 delegation of caregiving authority to an agent. The form contained in this Code section
253 shall be sufficient for the purpose of creating a power of attorney under this article,
254 provided that nothing in this Code section shall be construed to require the use of this
255 particular form.

256 (b) A power of attorney shall be legally sufficient if the form is properly completed and
257 the signatures of the parties are notarized.

258 (c) The power of attorney delegating caregiving authority of a child shall be in
259 substantially the following form:

260 FORM FOR POWER OF ATTORNEY TO DELEGATE
261 PARENTAL, GUARDIAN, OR LEGAL CUSTODIAN
262 POWER AND AUTHORITY FOR THE CARE OF A MINOR CHILD

263 NOTICE:

264 (1) THE PURPOSE OF THIS POWER OF ATTORNEY IS TO GIVE THE
265 INDIVIDUAL WHO YOU DESIGNATE (THE AGENT) POWERS TO CARE FOR
266 YOUR MINOR CHILD, INCLUDING THE POWER TO: ENROLL THE CHILD IN
267 SCHOOL AND IN EXTRACURRICULAR SCHOOL ACTIVITIES; HAVE ACCESS
268 TO SCHOOL RECORDS AND DISCLOSE THE CONTENTS TO OTHERS;
269 ARRANGE FOR AND CONSENT TO MEDICAL, DENTAL, AND MENTAL
270 HEALTH TREATMENT FOR THE CHILD; HAVE ACCESS TO RECORDS
271 RELATED TO SUCH TREATMENT OF THE CHILD AND DISCLOSE THE
272 CONTENTS OF THOSE RECORDS TO OTHERS; PROVIDE FOR THE CHILD'S
273 FOOD, LODGING, RECREATION, AND TRAVEL; AND HAVE ANY
274 ADDITIONAL POWERS AS SPECIFIED BY THE INDIVIDUAL EXECUTING THIS
275 POWER OF ATTORNEY.

276 (2) THE AGENT IS REQUIRED TO EXERCISE DUE CARE TO ACT IN THE
277 CHILD'S BEST INTERESTS AND IN ACCORDANCE WITH THE GRANT OF
278 AUTHORITY SPECIFIED IN THIS FORM.

279 (3) A COURT OF COMPETENT JURISDICTION MAY REVOKE THE POWERS OF
280 THE AGENT IF IT FINDS THAT THE AGENT IS NOT ACTING PROPERLY.

281 (4) THE AGENT MAY EXERCISE THE POWERS GIVEN IN THIS POWER OF
282 ATTORNEY FOR THE CARE OF A MINOR CHILD FOR THE PERIOD SET FORTH
283 IN THIS FORM UNLESS THE PARENT REVOKES THIS POWER OF ATTORNEY
284 AND PROVIDES NOTICE OF THE REVOCATION TO THE AGENT OR UNTIL A
285 COURT OF COMPETENT JURISDICTION TERMINATES THIS POWER OF
286 ATTORNEY.

287 (5) THE AGENT MAY RESIGN AS AGENT AND MUST IMMEDIATELY
288 COMMUNICATE SUCH RESIGNATION TO THE INDIVIDUAL EXECUTING THIS
289 POWER OF ATTORNEY.

290 (6) THIS POWER OF ATTORNEY MAY BE REVOKED IN WRITING. IF THIS
291 POWER OF ATTORNEY IS REVOKED, THE REVOKING INDIVIDUAL SHALL
292 NOTIFY THE AGENT, SCHOOL, HEALTH CARE PROVIDERS, AND OTHERS
293 KNOWN TO THE INDIVIDUAL EXECUTING THIS POWER OF ATTORNEY TO
294 HAVE RELIED UPON SUCH POWER OF ATTORNEY.

295 (7) IF THERE IS ANYTHING ABOUT THIS FORM THAT YOU DO NOT
296 UNDERSTAND, YOU SHOULD ASK A LAWYER TO EXPLAIN IT TO YOU.

297 POWER OF ATTORNEY FOR THE CARE OF A MINOR CHILD

298 made this _____ day of _____, 20____.

299 1. I certify that I am the parent, guardian, or legal custodian of:

300 _____
301 (Full name of child) (Date of birth)

302 2. I designate _____,

303 (Full name of agent)

304 _____
305 (Street address, city, state, and ZIP Code of agent)

306 _____
307 (Home and work phone numbers of agent)

308 as the agent of the child named above.

309 3. Sign by the statement you wish to choose (you may only choose one):

310 (A) _____ (Signature) I delegate to the agent all my power
311 and authority regarding the care and custody of the child named above, including but
312 not limited to the right to enroll the child in school, inspect and obtain copies of
313 education records and other records concerning the child, attend school activities and
314 other functions concerning the child, and give or withhold any consent or waiver with
315 respect to school activities, medical and dental treatment, and any other activity,
316 function, or treatment that may concern the child. This delegation shall not include the
317 power or authority to consent to the marriage or adoption of the child, the performance
318 or inducement of an abortion on or for the child, or the termination of parental rights
319 to the child.

320 OR

321 (B) _____ (Signature) I delegate to the agent the following
322 specific powers and responsibilities (write in):

323 _____

324 This delegation shall not include the power or authority to consent to the marriage or
325 adoption of the child, the performance or inducement of an abortion on or for the child,
326 or the termination of parental rights to the child.

327 4. Initial by the statement you wish to choose (you may only choose one) and complete
328 the information in the paragraph:

329 (A) _____ (Initials) This power of attorney is effective for a period not to exceed
330 one year, beginning _____, 20____, and ending _____, 20____. I
331 reserve the right to revoke this power and authority at any time.

332 OR

333 (B) _____ (Initials) I am a parent as described in O.C.G.A. § 19-9-150. My
334 deployment is scheduled to begin on _____, 20____, and is estimated to end
335 on _____, 20____. I acknowledge that in no event shall this delegation of
336 power and authority last more than one year or the term of my deployment plus 30
337 days, whichever is longer. I reserve the right to revoke this power and authority at any
338 time.

339 5. Except as may be permitted by the federal Every Student Succeeds Act (P.L. 114-95),
340 I hereby swear or affirm under penalty of law that this power of attorney is not being
341 executed for the purpose of enrolling a child in a school so that the child may participate
342 in the academic or interscholastic athletic programs provided by that school or for any
343 other unlawful purpose.

344 6. I hereby swear or affirm under penalty of law that I provided the notice required by
345 O.C.G.A. § 19-9-143 and received no objection in the required time period.

346 By: _____
347 (Parent, guardian, or legal custodian signature)

348 _____
349 (Relationship to child)

350 _____
351 (Printed name)

352 7. I hereby accept my designation as agent for the child specified in this power of
 353 attorney and by doing so acknowledge my acceptance of the responsibility for caring for
 354 such child for the duration of this power of attorney. Furthermore, I hereby certify that:
 355 (A) I am not currently on the state sexual offender registry of this state or the sexual
 356 offender registry for any other state, a United States territory, the District of Columbia,
 357 or any Indian Tribe nor have I ever been required to register for any such registry;
 358 (B) I have provided a criminal background check to the individual designating me as
 359 an agent, if it was requested;
 360 (C) I understand that I have the authority to act on behalf of the minor child for the
 361 period set forth in this form or until the power of attorney is revoked in writing and
 362 notice is provided to me as provided in O.C.G.A. § 19-9-147;
 363 (D) I understand that if I am made aware of the death of the individual who executed
 364 the power of attorney, I must notify the parent of the child, if known, as soon as
 365 practicable; and
 366 (E) I may resign as agent by notifying the individual who executed the power of
 367 attorney in writing by certified mail or statutory overnight delivery, return receipt
 368 requested.

369 _____
 370 (Agent signature)

371 _____
 372 (Printed name)

373 State of Georgia
 374 County of _____

375 ACKNOWLEDGMENT

376 Before me, the undersigned, a Notary Public, in and for said County and State on this
 377 _____ day of _____, 20____, personally appeared _____
 378 (name of parent, guardian, or legal custodian) and _____ (name of
 379 agent), to me known to be the identical persons who executed this instrument and
 380 acknowledged to me that each executed the same as his or her free and voluntary act and
 381 deed for the uses and purposes set forth in the instrument.

382 Witness my hand and official seal the day and year above written.

383 _____
 384 (Notary Public signature)
 385 (Seal)
 386 My commission expires: _____”

387 **PART III**
 388 **SECTION 3-1.**

389 Said title is further amended by revising subparagraph (a)(2)(B) of Code Section 19-3-37,
 390 relating to parental consent to marriage of underage applicants, as follows:

391 “(B) The ~~parent~~ individual who has ~~legal~~ sole custody if the parents are divorced,
 392 separated, or widowed; or”

393 **PART IV**
 394 **SECTION 4-1.**

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