

ARTICLE 4
TERMINATION OF PARENTAL RIGHTS

15-11-401. Purpose and construction

- (a) The purpose of this article is:
- (1) To protect a child whose parent is unwilling or unable to provide safety and care adequate to meet his or her physical, emotional, and mental health needs, by providing a judicial process for the termination of all parental rights and responsibilities;
 - (2) To eliminate the need for a child to wait unreasonable periods of time for his or her parent to correct the conditions which prevent a return to the family;
 - (3) To ensure that the continuing needs of a child for proper physical, mental, and emotional growth and development are the decisive considerations in all proceedings;
 - (4) To ensure that the constitutional rights of all parties are recognized and enforced in all proceedings conducted pursuant to this article while ensuring that the fundamental needs of a child are not subjugated to the interests of others;
 - (5) To ensure that all proceedings are conducted expeditiously to avoid delays in resolving the status of the parent and in achieving permanency for a child.
- (b) Nothing in this article shall be construed as affecting the rights of a parent other than the parent who is the subject of the proceedings.

Comments

This is a new provision that aims to identify the overriding principles in an involuntary termination of parental rights proceeding. The provision makes clear that constitutional protections apply to all parties while emphasizing that the child's health and welfare is the focus of the proceeding as well as the child's right to a prompt resolution of his or her status. The provision is drafted by combining provisions from the purpose statements of several jurisdictions' termination statutes including the District of Columbia, Louisiana, and Maine. D.C. Code Ann. § 16-2351; La. Children's Code Ann. art. 1001; and Me. Rev. Stat. Ann. tit. 22 § 4050.

Subsection (b) which is current O.C.G.A. § 15-11-105, was included to complete this provision, rather than have it stand alone.

15-11-402. Scope, effect, and duration of order

- (a) An order terminating the parental rights of a parent is without limit as to duration and divests the parent and the child of all legal rights, powers, privileges, immunities, duties and obligations with respect to each other, except:
- (1) The right of the child to receive child support from his or her parent until a final order of adoption is entered;
 - (2) The right of the child to inherit from and through his or her parent. The right of inheritance of the child shall be terminated only by a final order of adoption;
 - (3) The right of the child to benefits due to him or her from any third person, agency, state, or the United States based on the child's status as a child of his or her parent. This right shall be terminated only by a final order of adoption;
 - (4) The right of the child to pursue any civil action against his or her parent.
- (b) When an order terminating the parent and child relationship has been issued, the parent whose right has been terminated shall not thereafter be entitled to notice of proceedings for the adoption of the child by another, nor has the parent any right to object to the adoption or otherwise to participate in the proceedings.

Comments

One of the main goals of a termination statute is to protect the interests of a child. Paragraph 1 of subsection (a) is included to ensure the termination statute serves to benefit rather than disadvantage the child and is modeled after Arizona and Oklahoma. Ariz. Rev. Stat. § 8-529; Okla. Stat. tit. 10 § 7006-1.3(B); See also See Richard L. Brown, *Disinheriting the "Legal Orphan": Inheritance Rights of Children After Termination of Parental Rights*, 70 Mo. L. Rev. 125, 139-140 (2005).

By not providing for clear language regarding a child's right to inheritance, the child, in effect remains a legal orphan. See Brown, *Disinheriting the "Legal Orphan."* This provision is modeled after states that expressly protect the child's right to inherit from his or her biological parent until adoption. See Arizona Rev. Stat. § 8-539; District of Columbia Code Ann. § 16-2361; Idaho Code § 16-2011; Louisiana Children's Code Ann. art. 1038(1); New Mexico Stat. Ann. § 32A-4-29(L); Oklahoma Stat. Ann. tit. 10 § 7006-1.3(A); Texas Fam. Code Ann. § 161.206(b); Utah Code Ann. § 78-3a-413(1); and Wyoming Stat. Ann. § 14-2-317(a)(ii).

15-11-403. Right to counsel and appointment of guardian ad litem

- (a) A party has the right to be represented by qualified and independent counsel at all stages of the proceedings under this article.
- (b) The court shall appoint an attorney to represent the child as the child's counsel and may appoint a separate guardian ad litem. The article 3 provisions regarding the rights and responsibilities of counsel and guardians ad litem shall apply.
- (c) If the parent of the child desires to be represented by counsel but is indigent, the court shall appoint an attorney for the parent. The costs shall be a charge upon the funds of the county upon certification thereof by the court in the same manner as authorized for other expenses under Code section 15-11-130.

Comments

This provision is drawn from current O.C.G.A. § 15-11-98 and is revised for clarity and consistency with the rest of the proposed model code.

15-11-404. Physical or mental examinations

- (a) Upon motion of any party or the court, the court may require a physical or mental evaluation of any parent, stepparent, guardian, legal custodian or child.
- (b) The cost of any ordered evaluation shall be paid by the moving party unless apportioned by the court, in its discretion, to any other party or parties.

Comments

This provision is drawn from O.C.G.A. § 15-11-100 and is revised for clarity.

15-11-405. Discovery

The Civil Practice Act and the Georgia Rules of Civil Procedure govern discovery in proceedings except that:

- (1) Upon presentation by the child's attorney and guardian ad litem, if any, of the order of appointment, any state or local agency, department, authority or institution and any school, hospital, physician or other health or mental health care provider shall permit the child's attorney and guardian ad litem to inspect and copy any records relating to the child involved in the case without the consent of the child or the child's parent, guardian, or legal custodian;
- (2) Unless a shorter time period is ordered by the court, a party receiving a written request for discovery shall comply with the written request within ten days or provide a written explanation of the reasons for non-compliance to the parties and the court; and
- (3) No deposition shall be taken of a child unless the court orders the deposition, under such conditions as the court may specify, on the ground that the deposition would further the purposes of this chapter.

Comments

This provision is the same as P.M.C. § 15-11-335 regarding discovery in deprivation proceedings. It has been included in this article to avoid cross-references and to create individual stand-alone articles to the extent possible.

15-11-406. Suspension of right of voluntary surrender of parental rights

Once a petition to terminate parental rights has been filed, the parent is thereafter without authority to execute an act of surrender or otherwise to affect the custody of the child except:

- (1) The parent may execute an act of surrender in favor of the Division.
- (2) The parent may consent to a judgment terminating his or her parental rights.

Comments

This provision is modeled after Louisiana Children's Code Ann. art. 1030. The purpose of a termination proceeding could be entirely frustrated if the parent were able to transfer his or her parental rights to anyone selected by that parent. With the exceptions defined in paragraphs (1) and (2), this provision intends to preserve the legal status of the child pending the resolution of the termination proceeding. See Children's Code art. 1030 cmts.

15-11-407. Venue

- (a) A proceeding under this article may be commenced in the county in which the child legally resides.
- (b) For the convenience of the parties, the court may transfer the proceeding to the county in which the parent legally resides. If the proceeding is transferred, certified copies of all legal and social documents and records pertaining to the proceeding on file with the clerk of court shall accompany the transfer.

Comments

This provision is new and is drawn from O.C.G.A. § 15-11-29 but includes language only relevant to termination proceedings.

15-11-408. Petition

- (a) The petition to terminate parental rights and all subsequent court documents in the proceeding shall be entitled "In the interest of _____, a child.", except upon appeal, in which event the anonymity of the child shall be preserved by use of appropriate initials. The petition shall be in writing.
- (b) The petition shall be made, verified, and endorsed by the court as provided in article 3 of this chapter for a petition alleging deprivation.
- (c) The petition shall:
 - (1) State clearly that an order for termination of parental rights is requested and that the effect of the order will be as stated in Code section 15-11-402;
 - (2) State the statutory ground on which the petition is based; and
 - (3) Set forth in ordinary and concise language the facts required by Code section 15-11-329.
- (d) When a petition seeks termination of the rights of a biological father who is not the legal father and who has not surrendered his rights to the child, the petition shall be amended to include a certificate from the putative father registry disclosing the name, address, and social security number of any registrant acknowledging paternity of the child or indicating the possibility of paternity of a child of the child's mother for a period beginning no later than two years immediately preceding the child's date of birth. The certificate shall document a search of the registry on or after the date of the filing of the petition and shall include a statement that the registry is current as to filings of registrants as of the date of the petition or as of a date later than the date of the petition.
- (e) A copy of any voluntary surrender or written consent, if any, previously executed by the parent shall be attached to the petition.

Comments

This provision is current O.C.G.A. § 15-11-95 and is revised for clarity and consistency in keeping with the rest of the proposed model code. Paragraph 2 of subsection (c) was included based upon recommendations in the Resource Guidelines. See Resource Guidelines, at 89. Subsection (e) was modeled after Arizona Rev. Stat. § 8-534(C).

15-11-409. Issuance of summons

- (a) The court shall direct the issuance of a summons to the child if the child is 14 years of age or older, the child's mother, legal father or biological father, guardian, legal custodian, or on any other person presently having physical custody of the child, and any other persons who appear to the court to be proper or necessary parties to the proceeding, requiring them to appear before the court at the time fixed to answer the allegations of the petition. A copy of the petition shall accompany the summons unless the summons is served by publication, in which case, the published summons shall indicate the general nature of the allegations and where a copy of the petition can be obtained.
- (b) The summons shall include the Notice of Effect of a Termination Judgment as set forth in Code section 15-11-412 and shall state that a party is entitled to counsel in the proceedings and that the court will appoint counsel if the party is unable without undue financial hardship to employ counsel.
- (c) The court may endorse upon the summons an order directing the parent, guardian, or other legal custodian of the child to appear personally at the hearing or directing the person having the physical custody or control of the child to bring the child to the hearing. The court may excuse the presence of the child if it deems it is in the child's best interests that he or she not be brought before the court.
- (d) A party other than the child may waive service of summons by written stipulation or by voluntary appearance at the hearing.
- (e) If the child is present at the hearing and is 14 years of age or older, the child may waive service of summons only if the child has consulted with counsel and the court finds such waiver to be knowing and voluntary and in the child's best interests. The court shall personally address the child and the child's counsel before making such a finding.

Comments

This provision largely mirrors P.M.C. § 15-11-331 regarding the issuance of summons in deprivation proceedings with the exception that this provision includes biological fathers and includes additional language in subsection (b) regarding the Notice of Effect of a Termination Judgment.

15-11-410. Service of summons

- (a) If a party to be served with a summons is within this state and can be found, the summons shall be served upon him or her personally as soon as possible and at least 30 days before the termination of parental rights hearing.
- (b) If a party to be served is within this state and cannot be found but his or her address is known or can be ascertained with reasonable diligence, the summons shall be served upon such party at least 30 days before the termination of parental rights hearing by mailing him or her a copy by registered or certified mail or statutory overnight delivery with a return receipt to be signed by the addressee only.
- (c) If a party to be served is outside this state but his or her address is known or can be ascertained with reasonable diligence, service of the summons shall be made at least 30 days before the termination of parental rights hearing either by delivering a copy to such party personally or by mailing a copy to him or her by registered or certified mail or statutory overnight delivery with a return receipt to be signed by the addressee only.
- (d) If, after reasonable effort, a party to be served with a summons cannot be found and such party's address cannot be ascertained, whether he or she is within or outside this state, the court may order service of the summons upon him or her by publication. The termination of parental rights hearing shall not be earlier than 31 days after the date of the last publication.
 - (1) Service by publication shall be made once a week for four consecutive weeks in the official organ of the county where the petition has been filed. Service shall be deemed complete upon the date of the last publication.
 - (2) When served by publication, the notice shall contain the names of the parties, except that the anonymity of the child shall be preserved by the use of appropriate initials, and the date the petition was filed. The notice shall indicate the general nature of the allegations, where a copy of the petition can be obtained, and require the party to be served by publication to appear before the court at the time fixed to answer the allegations of the petition.
 - (3) A free copy of the petition shall be available to the parent from the court during business hours, or upon request, shall be mailed to the parent.
 - (4) Within 15 days after the filing of the order of service by publication, the clerk of court shall mail a copy of the notice, a copy of the order of service by publication, and a copy of the petition to the absent parent's last known address.

- (e) Service of the summons may be made by any suitable person under the direction of the court.
- (f) The court may authorize the payment from county funds of the costs of service and of necessary travel expenses incurred by persons summoned or otherwise required to appear at the hearing.

Comments

This provision largely mirrors P.M.C. § 15-11-332 regarding service of summons in deprivation proceedings with the exception of the inclusion of modifications relevant to termination proceedings such as requiring service at least 30 days before the termination hearing. This 30-day requirement is drawn from O.C.G.A. § 15-11-96(c). Subsection (d) states that the hearing cannot be held earlier than 31 days after the date of the last publication to account for the 30 days from receipt of notice the biological father is granted to file a legitimation petition in accordance with P.M.C. § 15-11-411(c)(current O.C.G.A. § 15-11-96(h)). Paragraph 3 of subsection (d) is drawn from current O.C.G.A. § 15-11-96(b). Paragraph 4 of subsection (d) is drawn from O.C.G.A. § 9-11-4(f)(1)(C).

15-11-411. Notice to biological fathers

- (a) Unless he has surrendered all parental rights to the child, a summons shall be served on:
 - (1) A biological father who is the legal father of the child;
 - (2) A biological father whose paternity has been previously established in a judicial proceeding to which the father was a party;
 - (3) A biological father whose identity is known to the petitioner or the petitioner's counsel;
 - (4) A biological father who is a registrant on the putative father registry and has acknowledged paternity of the child;
 - (5) A biological father who is a registrant on the putative father registry who has indicated possible paternity of a child born to the child's mother during a period beginning two years immediately preceding the child's date of birth;
 - (6) A biological father who, if the court finds from the evidence including but not limited to the affidavit of the child's mother, has performed any of the following acts:
 - (A) Lived with the child;
 - (B) Contributed to the child's support;
 - (C) Made any attempt to legitimate the child; or
 - (D) Provided support or medical care for the mother either during her pregnancy or during her hospitalization for the birth of the child.
- (b) Notice shall be given to a biological father by the following methods:
 - (1) If a biological father is within this state and can be found, the summons shall be served upon him personally as soon as possible and least 30 days before the termination of parental rights hearing;
 - (2) If a biological father is outside this state but his address is known or can be ascertained with reasonable diligence, service of summons shall be made at least 30 days before the termination of parental rights hearing either by delivering a copy to him personally or by mailing a copy to him by registered or certified mail or statutory overnight delivery with a return receipt to be signed by the addressee only; or

- (3) If, after reasonable effort, a biological father to be served with summons cannot be found and his address cannot be ascertained, whether he is within or outside this state, the court may order service of summons upon him by publication. The termination of parental rights hearing shall not be earlier than 31 days after the date of the last publication.
 - (A) Service by publication shall be made once a week for four consecutive weeks in the official organ of the county where the petition has been filed and of the county of the biological father's last known address. Service shall be deemed complete upon the date of the last publication.
 - (B) When served by publication, the notice shall contain the names of the parties, except that the anonymity of the child shall be preserved by the use of appropriate initials, and the date the petition was filed. The notice shall indicate the general nature of the allegations, where a copy of the petition can be obtained, and require the biological father to appear before the court at the time fixed to answer the allegations of the petition.
 - (C) A free copy of the petition shall be available to the biological father from the court during business hours, or upon request, shall be mailed to the biological father.
 - (D) Within 15 days after the filing of the order of service by publication, the clerk of court shall mail a copy of the notice, a copy of the order of service by publication, and a copy of the petition to the biological father's last known address.
- (c) The notice shall advise the biological father who is not the legal father that he loses all rights to the child and will not be entitled to object to the termination of his rights to the child unless, within 30 days of receipt of notice, he files:
 - (1) A petition to legitimate the child; and
 - (2) Notice of the filing of the petition to legitimate with the court in which the termination of parental rights proceeding is pending.
- (d) If the identity of the biological father is not known to the petitioner or the petitioner's counsel and the biological father would not be entitled to notice in accordance with subsection (a) of this code section, then it shall be rebuttably presumed that he is not entitled to notice of the proceedings. The court is authorized to require the mother to execute an affidavit supporting the presumption or show cause before the court if she refuses. Absent evidence rebutting the presumption, no further inquiry or notice shall be required by the court, and the court shall enter an order terminating the rights of the father.
- (e) The court shall enter an order terminating all the parental rights of a biological father, including any right to object thereafter to these proceedings:

- (1) Who fails to file a timely petition to legitimate the child and notice in accordance with subsection (c) of this code section;
- (2) Whose petition to legitimate is subsequently dismissed for failure to prosecute; or
- (3) Whose petition to legitimate does not result in a court order finding that he is the legal father of the child.

Comments

This provision largely mirrors P.M.C. § 15-11-332 regarding service of summons in deprivation proceedings with the exception of the inclusion of modifications relevant to termination proceedings such as requiring service at least 30 days before the termination hearing. This 30-day requirement is drawn from O.C.G.A. § 15-11-96(c). The 31-day requirement in subsection (d) accounts for the 30 days from receipt of notice a biological father is granted to file a legitimation petition in accordance with P.M.C. § 15-11-411(c)(current O.C.G.A. § 15-11-96(h)). Paragraph 3 of subsection (d) is drawn from current O.C.G.A. § 15-11-96(b). Paragraph 4 of subsection (d) is drawn from O.C.G.A. § 9-11-4(f)(1)(C).

15-11-412. Notice of effect of termination judgment

The notice required to be given to the mother, the biological father, and legal father of the child shall state:

"NOTICE OF EFFECT OF TERMINATION JUDGMENT

Georgia law provides that you can permanently lose your rights as a parent. A petition has been filed requesting the court to terminate your parental rights to your child. A copy of the petition is attached to this notice. A court hearing of your case has been scheduled for the ____ day of _____, ____ at the _____ Court of _____ County. If you fail to appear, the court can terminate your rights despite your absence. If the court at the trial finds that the facts set out in the petition are true and that termination of your rights will serve the best interests of your child, the court can enter a judgment ending your rights to your child. If the judgment terminates your parental rights, you will no longer have any rights to visit or to have custody of your child, or make any decisions affecting your child. Your child will be legally freed to be adopted by someone else. This is a very serious matter. You should contact an attorney immediately so that you can be prepared for the court hearing. You have the right to hire an attorney and to have him or her represent you. If you cannot afford to hire an attorney, the court will appoint an attorney if the court finds that you are unable to pay some or all of the costs. Whether or not you decide to hire an attorney, you have the right to attend the hearing of your case, to call witnesses on your behalf, and to question those witnesses brought against you. If you have any questions concerning this notice, you may call the telephone number of the clerk's office which is _____."

Comments

This provision was modeled after Louisiana Children's Code Ann. art. 1020. The goal is to provide information to the respondent parent in plain language to increase the likelihood that the severity of these proceedings is understood. The court is encouraged to provide an instructive guide regarding how an individual can obtain an attorney. Where an attorney has been appointed to represent a party in a previous proceeding, the court is encouraged to appoint the same attorney.

15-11-413. Sanctions for failure to obey summons

- (a) If any person named in and properly served with summons shall without reasonable cause fail to appear or, when directed in the summons, to bring the child before the court, then the court may issue a rule nisi against the person, directing the person to appear before the court to show cause why he or she should not be held in contempt of court.
- (b) If the summons cannot be served or if the person to whom the summons is directed fails to obey it, the court may issue an order to take the child into protective custody.

Comments

This provision is current O.C.G.A. § 15-11-97 and remains substantively unchanged.

15-11-414. Notice of hearings to specified nonparties

- (a) In advance of each hearing, the Division shall give written notice of the date, time, place, and purpose of the hearing to the custodian of the child, the foster parent of the child, any preadoptive parent or relative providing care for the child, including the right to be heard.
- (b) This provision shall not be construed to require a custodian, foster parent, preadoptive parent, or relative caring for the child to be made a party to the hearing solely on the basis of such notice and right to be heard.

Comments

This provision is drawn from O.C.G.A. § 15-11-104 and has been restructured and revised in keeping with the rest of the proposed model code. The language regarding the provisions of current article 1 has been stricken as superfluous.

15-11-415. Expedited hearings; orders

- (a) If no just cause has been shown for delay, all hearings contemplated by this article shall be conducted within 90 days of the date a petition to terminate parental rights is filed.
- (b) If no just cause for delay has been shown by written finding of fact by the court, an order of disposition shall be issued by the juvenile court no later than 30 days after the conclusion of the hearing on the petition to terminate parental rights.
- (c) Stenographic notes or electronic or mechanical recording of all hearings contemplated by this article shall be required. If no just cause for delay has been shown, the court reporter shall provide a transcript of the hearings no later than 30 days after the notice of appeal is filed.
- (d) This Code section shall not affect the right to request a rehearing or the right to appeal the juvenile court's order.

Comments

This provision is drawn from O.C.G.A. § 15-11-106 and is restructured and revised in keeping with the rest of the proposed model code. Subsection (c) has been added to ensure the recordation of termination hearings, particularly contested hearings, and to include a set timeframe for the delivery of transcripts. These additions are among two strategies aimed at improving the appellate process. See Ann L. Keith and Carol R. Flango, National Ctr. for State Courts, Expediting Dependency Appeals: Strategies to Reduce Delay, 12-13 (2002). Subsection (c) is modeled after Idaho Code Ann. § 16-2009.

15-11-416. Confidentiality of testimony of parties

The record of the testimony of the parties adduced in any proceeding under this article shall not be admissible in any civil, criminal, or any other cause or proceedings in any court against a person named as respondent for any purpose whatsoever, except in subsequent deprivation or termination proceedings involving the same child or deprivation or termination proceedings involving the same respondent.

Comments

This provision is current O.C.G.A. § 15-11-101 and remains substantively unchanged.

15-11-417. Standard of proof

In all proceedings under this article, the standard of proof to be adduced to terminate parental rights shall be by clear and convincing evidence.

Comments

This provision is current O.C.G.A. § 15-11-99 and remains unchanged. In Santosky v. Kramer, 455 U.S. 745 (1982), the Supreme Court held that this higher burden of proof was required for deprivation proceedings which can result in a parent's loss of custody.

15-11-418. Termination of parental rights determination; grounds

- (a) In considering the termination of parental rights, the court shall first determine whether one of the following statutory grounds for termination of parental rights has been met:
- (1) The parent has given written consent to termination which has been acknowledged by the court or has voluntarily surrendered the child for adoption;
 - (2) The parent has subjected the child to aggravated circumstances as defined in Code section 15-11-302(4);
 - (3) The parent has wantonly and willfully failed to comply for a period of 12 months or longer with a decree to support the child that has been entered by a court of competent jurisdiction of this or any other state;
 - (4) The parent has abandoned the child as defined in Code section 15-11-302(1)(E); or
 - (5) The child is deprived due to lack of proper parental care or control by the parent, such cause of deprivation is likely to continue or will not likely be remedied, and the continued deprivation will cause or is likely to cause serious physical, mental, emotional or moral harm to the child.
- (b) If one of the statutory grounds for termination has been met, the court shall then consider whether termination is in the child's best interests after considering all the factors set forth in Code section 15-11-120. If the court determines that the parent has subjected the child to aggravated circumstances because the parent has committed the murder of the other parent of the child, the court shall presume that termination of parental rights is in the best interests of the child.

Comments

This provision sets out the grounds for termination of parental rights. It is drawn from O.C.G.A. § 15-11-94 but is restructured and revised in keeping with the rest of the proposed model code. This provision includes all the grounds under current O.C.G.A. § 15-11-94 with the addition of Subsection (a)(2). Paragraph 2 has been added as a ground because reunification services do not need to be provided in those circumstances. Its inclusion is recommended by the ABA to ensure that a child will not remain in limbo when reunification services are not provided. See American Bar Ass'n, *Making Sense of the ASFA Regulations*, 55 (Diane Boyd Rauber ed., 2001)

15-11-419. Determination of whether child is without proper parental care and control

- (a) In determining whether the child is without proper parental care and control, the court shall consider, without being limited to, the following:
- (1) A medically verified deficiency of the parent's physical, mental or emotional health of such duration or nature as to render the parent unable to provide adequately for the child;
 - (2) Excessive use of or history of chronic unrehabilitated abuse of intoxicating liquors or narcotic or dangerous drugs or controlled substances with the effect of rendering the parent incapable of providing adequately for the physical, mental, emotional, or moral condition and needs of the child;
 - (3) A felony conviction and imprisonment of the parent which has a demonstrably negative effect on the quality of the parent-child relationship including, but not limited to, any of the following:
 - (A) Murder of another child of the parent;
 - (B) Voluntary manslaughter of another child of the parent;
 - (C) Voluntary manslaughter of the other parent of the child;
 - (D) Aiding or abetting, attempting, conspiring, or soliciting to commit murder or voluntary manslaughter of another child of the parent;
 - (E) Aiding or abetting, attempting, conspiring, or soliciting to commit murder or voluntary manslaughter of the other parent of the child;
 - (F) Committing a felony assault that results in serious bodily injury to the child or another child of the parent.
 - (4) Egregious conduct or evidence of past egregious conduct of a physically, emotionally, or sexually cruel or abusive nature by the parent toward the child or toward another child of the parent;
 - (5) Physical, mental or emotional neglect of the child or evidence of past physical, mental, or emotional neglect by the parent of the child or another child of the parent;

- (6) Injury or death of a sibling of a child under circumstances which constitute substantial evidence that such injury or death resulted from parental neglect or abuse.
- (b) In determining whether the child who is not in the custody and care of a parent is without proper parental care and control, the court shall also consider, without being limited to, whether the parent, without justifiable cause, has failed significantly for a period of six months prior to the date of the termination hearing:
- (1) To develop and maintain a parental bond with the child in a meaningful, supportive manner;
 - (2) To provide for the care and support of the child as required by law or judicial decree; and
 - (3) To comply with a court ordered plan designed to reunite the child with the parent.

Comments

This provision is taken from current O.C.G.A. § 15-11-94(4). It separates the factors necessary for a determination of proper parental care and control and includes the felony conviction factors from the circumstances that excuse reasonable efforts under federal law. This provision also strikes “death of a sibling of the child” because it is incorporated in the addition of subparagraph (3)(A) of subsection (a). To encourage the timely resolution of a child’s case, subsection (b) reduces, from one year or longer to six months, the timeframe to be reviewed to find a child is without the proper care and control of a parent. The six-month timeframe is also consistent with the timeframe in the definition of abandonment. See P.M.C. § 15-11-302(1).

15-11-420. Termination of parental rights; findings and content

- (a) When the court finds that any ground set out in Code section 15-11-418 is proved by clear and convincing evidence and that termination of parental rights is in the child's best interests, it shall order the termination of the parent's rights.
- (b) The court's order shall:
 - (1) Contain written findings on which the order is based, including that grounds for termination of parental rights exist and that termination is in the best interests of the child;
 - (2) Be conclusive and binding on all parties from the date of entry;
 - (3) Grant custody of the child in accordance with Code section 15-11-421; and
 - (4) Inform the parent of his or her right to use the services of the Georgia Adoption Reunion Registry although failure to include such information shall not affect the validity of the judgment.
- (c) If the court does not order the termination of parental rights but the court finds that there is clear and convincing evidence that the child is deprived, the court may enter a disposition order in accordance with the provisions of article 3.
- (d) The court shall transmit a copy of every final order terminating the parental rights of a parent to the Office of Adoptions of the Department of Human Resources within 15 days of the filing of such order.

Comments

This provision is new and is modeled after several states including Arizona, Iowa, Louisiana, New Hampshire, and Wisconsin. See Ariz. Rev. Stat. § 8-538; Iowa Code Ann. § 232.117; La. Children's Code Ann. art. 1037(E); N.H. Rev. Stat. § 170-C:11; Wis. Stat. Ann. § 48.43. Subsection (d) is current O.C.G.A. § 15-11-103(c) which was moved to this section for consistency.

15-11-421. Custody of child following termination proceedings

- (a) A placement may be made only if the court finds that the placement is in the best interests of the child.
- (b) A guardian or legal custodian shall submit to the jurisdiction of the court for purposes of placement.
- (c) If, upon the entering of an order terminating the parental rights of a parent, there is no parent having parental rights, the child shall be placed in the most appropriate placement for the child in the following order of priority:
 - (1) With a relative willing to adopt the child if after study by the probation officer or other designee of the court, the child's relative is found by the court to be qualified to receive and care for the child.
 - (2) In the custody of the Department of Human Resources or to a licensed child-placing agency willing to accept custody for the purpose of placing the child for adoption.
 - (3) With a relative or other suitable individual on the condition that the person becomes the guardian of the person of the child pursuant to the court's authority under Code section 15-11-112 if, after study by the probation officer or other designee of the court, the person is found by the court to be qualified to receive and care for the child.
 - (4) In the custody of the Department or to a licensed child-placing agency willing to accept custody for the purpose of placing the child in a foster home.
 - (5) In the custody of an agency or organization authorized by law to receive and provide care for children which is operated in a manner that provides such care, guidance, and control as would be provided in a family home as defined in the court's order.
- (d) In addition to its rights as a legal custodian, the Department has the authority to consent to the adoption of the child.

Comments

This provision is drawn from O.C.G.A. § 15-11-103 and has been restructured and revised for clarity in keeping with the rest of the proposed model code. The original language in subsection (d) was stricken and revised to more accurately state that, without guardianship, only the Department of Human Resources can consent to an adoption. The original language in subsection (e) was moved to a stand-alone provision and is now P.M.C. § 15-11-422.

15-11-422. Continuing court review

- (a) Except in those cases in which the child was placed pursuant to paragraph (3) or (5) of subsection (a) of Code section 15-11-421, if a petition seeking the adoption of the child is not filed within six months after the date of the disposition order, the court shall then, and at least every six months thereafter as long as the child remains unadopted:
 - (1) Review the circumstances of the child to determine what efforts have been made to assure that the child will be adopted; and
 - (2) Enter such orders as it deems necessary to further the adoption, including but not limited to another placement.

- (b) In those cases in which the child was placed with a guardian of the child's person, within 60 days after appointment and within 60 days after each anniversary date of appointment, the guardian shall file with the court a personal status report of the child which shall include:
 - (1) A description of the child's general condition, changes since the last report, and the child's needs;
 - (2) All addresses of the child during the reporting period and the living arrangements of the child for all addresses; and
 - (3) Recommendations for any modification of the guardianship order.

Comments

This provision is current O.C.G.A. § 15-11-103(e) and has been restructured and revised for clarity. In order to avoid the vague cross-reference to the probate court's reporting requirements, they were included in subsection (b). The probate court's reporting requirements can be found at O.C.G.A. § 29-2-21(8).

15-11-423. Reinstatement of parental rights

- (a) A child who has not been adopted after the passage of at least three years from the date the court terminated parental rights and for whom the court has determined that adoption is no longer the permanent plan may petition the juvenile court to reinstate parental rights pursuant to the modification of orders procedure prescribed by Code section 15-11-126. The child may file the petition prior to the expiration of this three-year period if the Department of Human Resources or licensed adoption agency that is responsible for the custody and supervision of the child and the child stipulate that the child is no longer likely to be adopted. A child 14 years of age or older shall sign the petition in the absence of a showing of good cause as to why the child could not do so.

- (b) If it appears that the best interests of the child may be promoted by reinstatement of parental rights, the court shall order that a hearing be held and shall cause notice to be served by mail to the Division, to the child's attorney of record, guardian ad litem, if any, foster parent, and to the child's former parent whose parental rights were terminated. The parent and foster parent shall have a right to be heard at the hearing but are not parties and the hearing may be conducted in their absence. The child's motion shall be dismissed if the parent cannot be located.

- (c) The court shall grant the petition if it finds by clear and convincing evidence that the child is no longer likely to be adopted and that reinstatement of parental rights is in the child's best interests. In determining whether reinstatement is in the child's best interests the court shall consider, but is not limited to, the following:
 - (1) Whether the parent whose rights are to be reinstated is a fit parent and has remedied his or her deficits as provided in the record of the prior termination proceedings and prior termination order;
 - (2) The age and maturity of the child, and the ability of the child to express his or her preference;
 - (3) Whether the reinstatement of parental rights will present a risk to the child's health, welfare, or safety; and
 - (4) Other material changes in circumstances, if any, that may have occurred which warrant the granting of the petition.

- (d) If the court grants the petition, the case will be continued for six months. During this period, the court may order that the child be immediately placed in the custody of the parent or if the court determines that a transition period is necessary, order the Division to provide transition services to the family as appropriate.

- (e) An order granted under this section reinstates the parental rights to the child. This reinstatement is a recognition that the situation of the parent and child has changed since the time of the termination of parental rights and reunification is now appropriate.
- (f) This code section is intended to be retroactive and applies to any child who is under the jurisdiction of the court at the time of the hearing regardless of the date parental rights were terminated.

Comments

This provision is new and is included to provide a remedy for a child who is freed for adoption but never actually adopted resulting in the child being left a legal orphan. Cameryn Schmidt and Brenda Dabney, Restoring Parental Rights: Giving Legal Orphans a Chance at a Family, 25 ABA Child Law Practice, at 170-171 (2007). To alleviate concerns that a former parent whose parental rights have been terminated will attempt to derail an adoption in order to take advantage of this provision, only a child is permitted to petition for reinstatement. Id. This provision is modeled after California and Washington. Cal. Welf. & Inst. Code § 366.26(i)(2); Wash. Rev. Code § 13.34.215. Similar legislation regarding the reinstatement of parental rights was introduced during New York's 2007-2008 State Assembly session and legislation will be introduced in Louisiana in the Spring of 2008. See S. 04543, 2007-2008 Reg. Sess. (N.Y., introduced Apr. 18, 2007).