

07 HB369/AP

House Bill 369 (AS PASSED HOUSE AND SENATE)

By: Representatives Rice of the 51<sup>st</sup>, Lindsey of the 54<sup>th</sup>, Ehrhart of the 36<sup>th</sup>, Manning of the 32<sup>nd</sup>, Butler of the 18<sup>th</sup>, and others

A BILL TO BE ENTITLED

AN ACT

To provide for legislative findings; to amend Article 2 of Chapter 6 of Title 5, Code Section 9-11-133, and Chapter 9 of Title 19 of the Official Code of Georgia Annotated, relating to appellate practice, forms meeting requirements for civil case filing and disposition, and child custody proceedings, respectively, so as to provide for changes in child custody proceedings; to provide for direct appeals in certain domestic relations cases; to change certain provisions relating to cases requiring application for appeal; to add information to filing and dispositional forms in domestic relations cases; to provide for a parenting plan in child custody cases and the procedure therefor; to provide factors in determining the best interests of the child; to provide for written findings of fact in child custody proceedings; to provide for attorney's fees and expenses of litigation in child custody proceedings; to provide for binding arbitration; to amend Code Section 19-7-22 of the Official Code of Georgia Annotated, relating to petition for legitimation of child, so as to correct a cross-reference; to provide for related matters; to provide for an effective date and applicability; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

**SECTION 1.**

The General Assembly of Georgia declares that it is the policy of this state to assure that minor children have frequent and continuing contact with parents who have shown the ability to act in the best interests of their children and to encourage parents to share in the rights and responsibilities of rearing their children after the parents have separated or dissolved their marriage or relationship.

**SECTION 2.**

Article 2 of Chapter 6 of Title 5 of the Official Code of Georgia Annotated, relating to appellate practice, is amended by revising subsection (a) of Code Section 5-6-34, relating to judgments and rulings deemed directly appealable, as follows:

"(a) Appeals may be taken to the Supreme Court and the Court of Appeals from the following judgments and rulings of the superior courts, the constitutional city courts, and such other courts or tribunals from which appeals are authorized by the Constitution and laws of this state:

- (1) All final judgments, that is to say, where the case is no longer pending in the court below, except as provided in Code Section 5-6-35;
- (2) All judgments involving applications for discharge in bail trover and contempt cases;
- (3) All judgments or orders directing that an accounting be had;
- (4) All judgments or orders granting or refusing applications for receivers or for interlocutory or final injunctions;

- (5) All judgments or orders granting or refusing applications for attachment against fraudulent debtors;
- (6) Any ruling on a motion which would be dispositive if granted with respect to a defense that the action is barred by Code Section 16-11-184;
- (7) All judgments or orders granting or refusing to grant mandamus or any other extraordinary remedy, except with respect to temporary restraining orders;
- (8) All judgments or orders refusing applications for dissolution of corporations created by the superior courts;
- (9) All judgments or orders sustaining motions to dismiss a caveat to the probate of a will; ~~and~~
- (10) All judgments or orders entered pursuant to subsection (c) of Code Section 17-10-6.2; and
- (11) All judgments or orders in child custody cases including, but not limited to, awarding or refusing to change child custody or holding or declining to hold persons in contempt of such child custody judgment or orders."

### **SECTION 3.**

Said article is further amended by revising subsection (a) of Code Section 5-6-35, relating to cases requiring application for appeal, as follows:

"(a) Appeals in the following cases shall be taken as provided in this Code section:

- (1) Appeals from decisions of the superior courts reviewing decisions of the State Board of Workers' Compensation, the State Board of Education, auditors, state and local administrative agencies, and lower courts by certiorari or de novo proceedings; provided, however, that this provision

shall not apply to decisions of the Public Service Commission and probate courts and to cases involving ad valorem taxes and condemnations;

(2) Appeals from judgments or orders in divorce, alimony, ~~child custody,~~ and other domestic relations cases including, but not limited to, granting or refusing a divorce or temporary or permanent alimony, ~~awarding or refusing to change child custody,~~ or holding or declining to hold persons in contempt of such alimony ~~or child custody~~ judgment or orders;

(3) Appeals from cases involving distress or dispossessory warrants in which the only issue to be resolved is the amount of rent due and such amount is \$2,500.00 or less;

(4) Appeals from cases involving garnishment or attachment, except as provided in paragraph (5) of subsection (a) of Code Section 5-6-34;

(5) Appeals from orders revoking probation;

(6) Appeals in all actions for damages in which the judgment is \$10,000.00 or less;

(7) Appeals, when separate from an original appeal, from the denial of an extraordinary motion for new trial;

(8) Appeals from orders under subsection (d) of Code Section 9-11-60 denying a motion to set aside a judgment or under subsection (e) of Code Section 9-11-60 denying relief upon a complaint in equity to set aside a judgment;

(9) Appeals from orders granting or denying temporary restraining orders;

(10) Appeals from awards of attorney's fees or expenses of litigation under Code Section 9-15-14; ~~and~~

(11) Appeals from decisions of the state courts reviewing decisions of the magistrate courts by de novo proceedings so long as the subject matter is not otherwise subject to a right of direct appeal; and

(12) Appeals from orders terminating parental rights."

**SECTION 4.**

Code Section 9-11-133 of the Official Code of Georgia Annotated, relating to forms meeting requirements for civil case filing and disposition, is amended by revising subsections (c) and (e) as follows:

*"(c) Domestic Relations Case Filing Information Form.*

DOMESTIC RELATIONS CASE FILING  
INFORMATION FORM

Court

County \_\_\_\_\_ Date filed \_\_\_\_\_

mm-dd-yyyy

Docket no. \_\_\_\_\_

Plaintiff(s)  
(last, suffix, first, middle initial, maiden)

Defendant(s)  
(last, suffix, first, middle initial, maiden)

1. \_\_\_\_\_

1. \_\_\_\_\_

2. \_\_\_\_\_

2. \_\_\_\_\_

Plaintiff/Petitioner's attorney

\_\_\_\_ Pro Se

Bar #

\_\_\_\_\_

CONTEMPT

\_\_\_ Contempt - Custody,  
and/or Visitation, or

Parenting Time

\_\_\_ Contempt - Child

Support and Alimony

\_\_\_ Contempt - Child Support

CHECK CASE TYPE:

(one or more)

\_\_\_ Divorce (includes  
annulment)

Contested?    Yes    No

Child Custody

issue?    Yes    No

Child Support

issue?    Yes    No

\_\_\_ Separate Maintenance

\_\_\_ Adoption

\_\_\_ Paternity (includes  
legitimation)

\_\_\_ Interstate Support

Enforcement Action

\_\_\_ Domestication of

Foreign Custody Decree

\_\_\_ Family Violence Act

Petition

\_\_\_ Contempt - Alimony

\_\_\_ Other Domestic Contempt

FAMILY VIOLENCE

Additional information -

Ex Parte Relief

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Did the initial pleading

include a request for

relief:

1. From alleged family

violence? \_\_\_ Yes \_\_\_ No

2. Was ex parte relief

requested? \_\_\_ Yes \_\_\_ No

3. Was ex parte relief

granted? \_\_\_ Yes \_\_\_ No

MODIFICATION

\_\_\_ Modification - Custody,

~~and/or~~ Visitation, or

Parenting Time

Does the modification

include a parent

selection by a child

who is at least 14

years of age?    Yes    No

\_\_\_ Modification - Child

Support and Alimony

\_\_\_ Modification - Child

Support

OTHER

Have the parties agreed to

binding arbitration?    Yes    No

Have the parties reached

a custodial agreement?    Yes    No

If yes, is custody:

\_\_\_ Joint custody

\_\_\_ Joint legal custody

\_\_\_ Joint physical custody

\_\_\_ Sole custody to: \_\_\_\_\_

Financial affidavit

submitted?    Yes    No

Child support forms

\_\_ Modification - Alimony

submitted? Yes No

"(e) Domestic Relations Case Final Disposition Information form.

DOMESTIC RELATIONS CASE FINAL  
DISPOSITION INFORMATION FORM

Court

nty \_\_\_\_\_ Date \_\_\_\_\_

disposed mm-dd-yyyy

Docket no. \_\_\_\_\_

Reporting party \_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Title)

Name of plaintiff/petitioner(s)  
\_\_\_\_\_

Plaintiff/petitioner's attorney  
\_\_\_\_\_

\_\_\_ Pro Se

Bar #  
\_\_\_\_\_

Name of defendant/respondent(s)  
\_\_\_\_\_

Defendant/respondent's attorney  
\_\_\_\_\_

\_\_\_ Pro Se

Bar #  
\_\_\_\_\_

RELIEF GRANTED (Check all that apply)

- 1. \_\_\_ Ex Parte Relief
- 2. \_\_\_ Temporary Relief
- 3. \_\_\_ Final Relief
- A. \_\_\_ Divorce/Annulment/

TYPE OF DISPOSITION

1. Dismissed Without

Final Order

- A.  Voluntary (by parties)
- B.  Involuntary (by court)
  - 2.  Pretrial Settlement
  - 3.  Judgment on the Pleadings
  - 4.  Summary Judgment
  - 5.  Trial
    - A. Bench Trial
    - B. Jury Trial
      - 1.  Dismissal after jury selected
      - 2.  Settlement during trial
      - 3.  Judgment on Verdict
      - 4.  Directed Verdict or JNOV

ADR

- 1. Was mediation utilized?  
 Yes  No
- 2. If yes, was it (check if applicable):  
 court annexed?  
 court mandated?
- 3. Was there an agreement to

Separate Maintenance

- B.  Child Custody
  - (i) Parenting plan included?  Yes  No
  - (ii) Custodial arrangement:
    - Joint custody
    - Joint legal custody
    - Joint physical custody
    - Sole custody
  - to: \_\_\_\_\_
  - (iii) Fourteen year old made parental selection?  Yes  No
- C. Visitation or parenting time  
Approximate percentage of parenting time per year (or number of days) for:  Mother  Father  
Parenting time was contested?  Yes  No
- D.  Child Support
  - (i) Forms attached?  Yes  No
- E.  Legitimation/  
Paternity
- F.  Alimony
- G.  Contempt
- H.  Equitable Division
- I.  Restraining Protective Order  
 Person  Property  
Finding of family violence?  Yes  No
- J.  Adoption
- K. Attorney's fees?  Yes  No



binding arbitration?      Yes      No

If yes, what matters were  
subject to binding arbitration?

    Child custody  
    Visitation or Parenting Time  
    Parenting Plan

If yes, in what amount: \$ \_\_\_\_\_  
and to whom: \_\_\_\_\_

~~K.~~ L. \_\_\_ Other (specify) \_\_\_\_\_

4. \_\_\_ Dismissed prior to  
granting of relief.

”

**SECTION 5.**

Chapter 9 of Title 19 of the Official Code of Georgia Annotated, relating to child custody proceedings, is amended by revising in its entirety Article 1, relating to general provisions, as follows:

"ARTICLE 1

19-9-1.

~~(a)(1) In all cases in which a divorce is granted, the party not in default shall be entitled to the custody of the minor children of the marriage. However, in all cases in which a divorce is granted, an application for divorce is pending, or a change in custody of a minor child is sought, the court, in the exercise of a sound discretion, may look into all the circumstances of the parties, including improvement of the health of a party seeking a change in custody provisions, and, after hearing both parties, may make a different disposition of the children, placing them, if necessary, in possession of guardians appointed by the judge of the probate court.~~

~~(2) In addition to other factors that a court may consider in a proceeding in which the custody of a child or visitation by a parent is at issue and in which the court has made a finding of family violence:~~

~~(A) The court shall consider as primary the safety and well-being of the child and of the parent who is the victim of family violence;~~

~~(B) The court shall consider the perpetrator's history of causing physical harm, bodily injury, assault, or causing reasonable fear of physical harm, bodily injury, or assault to another person;~~

~~(C) If a parent is absent or relocates because of an act of domestic violence by the other parent, such absence or relocation for a reasonable period of time in the circumstances shall not be deemed an abandonment of the child or children for the purposes of custody determination; and~~

~~(D) The court shall not refuse to consider relevant or otherwise admissible evidence of acts of family violence merely because there has been no previous finding of family violence. The court may, in addition to other appropriate actions, order supervised visitation pursuant to Code Section 19-9-7.~~

~~(3)(A) In all cases in which the child has reached the age of 14 years, the child shall have the right to select the parent with whom he or she desires to live. The child's selection shall be controlling, unless the parent so selected is determined not to be a fit and proper person to have the custody of the child.~~

~~(B) In all cases in which the child has reached the age of at least 11 but not 14 years, the court shall consider the desires, if any, and educational needs of the child in determining which parent shall have custody. The court shall have complete discretion in making this determination, and the child's desires are not controlling. The court shall further have broad~~

~~discretion as to how the child's desires are to be considered, including through the report of a guardian ad litem. The best interest of the child standard shall be controlling.~~

~~(C) The desire of a child who has reached the age of 11 years but not 14 years shall not, in and of itself, constitute a material change of conditions or circumstances in any action seeking a modification or change in the custody of that child.~~

~~(D) The court may issue an order granting temporary custody to the selected parent for a trial period not to exceed six months regarding the custody of a child who has reached the age of at least 11 years where the judge hearing the case determines such a temporary order is appropriate.~~

~~(b) In any case in which a judgment awarding the custody of a minor has been entered, on the motion of any party or on the motion of the court, that portion of the judgment effecting visitation rights between the parties and their minor children may be subject to review and modification or alteration without the necessity of any showing of a change in any material conditions and circumstances of either party or the minor, provided that the review and modification or alteration shall not be had more often than once in each two-year period following the date of entry of the judgment. However, this subsection shall not limit or restrict the power of the court to enter a judgment relating to the custody of a minor in any new proceeding based upon a showing of a change in any material conditions or circumstances of a party or the minor.~~

~~(c)(1) In any case in which a judgment awarding the custody of a minor has been entered, the court entering such judgment shall retain jurisdiction of the case for the purpose of ordering the custodial parent to notify the court of any changes in the residence of the child.~~

~~(2) In any case in which visitation rights have been provided to the noncustodial parent and the court orders that the custodial parent provide notice of a change in address of the place for pickup and delivery of the child for visitation, the custodial parent shall notify the noncustodial parent, in writing, of any change in such address. Such written notification shall provide a street address or other description of the new location for pickup and delivery so that the noncustodial parent may exercise such parent's visitation rights.~~

~~(3) Except where otherwise provided by court order, in any case under this subsection in which a parent changes his or her residence, he or she must give notification of such change to the other parent and, if the parent changing residence is the custodial parent, to any other person granted visitation rights under this title or a court order. Such notification shall be given at least 30 days prior to the anticipated change of residence and shall include the full address of the new residence.~~

~~(d) In the event of any conflict between this Code section and Article 3 of this chapter, Article 3 shall apply.~~

(a) Except when a parent seeks emergency relief for family violence pursuant to Code Section 19-13-3 or 19-13-4, in all cases in which the custody of any child is at issue between the parents, each parent shall prepare a parenting plan or the parties may jointly submit a parenting plan. It shall be in the judge's discretion as to when a party shall be required to submit a parenting plan to the judge. A parenting plan shall be required for permanent custody and modification actions and in the judge's discretion may be required for temporary hearings. The final decree in any legal action involving the custody of a child, including modification actions, shall incorporate a permanent parenting plan.

(b)(1) Unless otherwise ordered by the judge, a parenting plan shall include the following:

(A) A recognition that a close and continuing parent-child relationship and continuity in the child's life will be in the child's best interest;

(B) A recognition that the child's needs will change and grow as the child matures and demonstrate that the parents will make an effort to parent that takes this issue into account so that future modifications to the parenting plan are minimized;

(C) A recognition that a parent with physical custody will make day-to-day decisions and emergency decisions while the child is residing with such parent; and

(D) That both parents will have access to all of the child's records and information, including, but not limited to, education, health, extracurricular activities, and religious communications.

(2) Unless otherwise ordered by the judge, or agreed upon by the parties, a parenting plan shall include, but not be limited to:

(A) Where and when a child will be in each parent's physical care, designating where the child will spend each day of the year;

(B) How holidays, birthdays, vacations, school breaks, and other special occasions will be spent with each parent including the time of day that each event will begin and end;

(C) Transportation arrangements including how the child will be exchanged between the parents, the location of the exchange, how the transportation costs will be paid, and any other matter relating to the child spending time with each parent;

(D) Whether supervision will be needed for any parenting time and, if so, the particulars of the supervision;

(E) An allocation of decision-making authority to one or both of the parents with regard to the child's education, health, extracurricular activities, and religious upbringing, and if the parents agree the matters should be jointly decided, how to resolve a situation in which the parents disagree on resolution; and

(F) What, if any, limitations will exist while one parent has physical custody of the child in terms of the other parent contacting the child and the other parent's right to access education, health, extracurricular activity, and religious information regarding the child.

(c) If the parties cannot reach agreement on a permanent parenting plan, each party shall file and serve a proposed parenting plan on or before the date set by the judge. Failure to comply with filing a parenting plan may result in the judge adopting the plan of the opposing party if the judge finds such plan to be in the best interests of the child.

#### 19-9-1.1.

In all proceedings under this article, it shall be expressly permissible for the parents of a child to agree to binding arbitration on the issue of child custody and matters relative to visitation, parenting time, and a parenting plan. The parents may select their arbiter and decide which issues will be resolved in binding arbitration. The arbiter's decisions shall be incorporated into a final decree awarding child custody unless the judge makes specific written factual findings that under the circumstances of the parents and the child the arbiter's award would not be in the best interests of the child. In its judgment, the judge may supplement the arbiter's decision on issues not covered by the binding arbitration.

19-9-1.2.

Pursuant to Code Section 9-11-3, and in addition to the filing requirements contained in Code Section 19-6-15, in all proceedings under this article the plaintiff shall file a domestic relations case filing information form as set forth in Code Section 9-11-133.

19-9-2.

Upon the death of either parent, the survivor is entitled to custody of the child; provided, however, that the ~~court~~ judge, upon petition, may exercise discretion as to the custody of the child, looking solely to the child's best interest and welfare.

19-9-3.

(a)(1) In all cases in which the custody of any ~~minor child or children~~ is at issue between the parents, there shall be no prima-facie right to the custody of the child ~~or children~~ in the father or mother. There shall be no presumption in favor of any particular form of custody, legal or physical, nor in favor of either parent. Joint custody may be considered as an alternative form of custody by the judge and the judge at any temporary or permanent hearing may grant sole custody, joint custody, joint legal custody, or joint physical custody as appropriate.

(2) The ~~court~~ judge hearing the issue of custody, ~~in exercise of its sound discretion, may~~ shall make a determination of custody of a child and such matter shall not be decided by a jury. The judge may take into consideration all the circumstances of the case, including the improvement of the health of the party seeking a change in custody provisions, in determining to whom custody of the child ~~or children~~ should be awarded.

The duty of the court judge in all such cases shall be to exercise its discretion to look to and determine solely what is for the best interest of the child ~~or children~~ and what will best promote ~~their~~ the child's welfare and happiness and to make ~~its~~ his or her award accordingly.

(3) In determining the best interests of the child, the judge may consider any relevant factor including, but not limited to:

(A) The love, affection, bonding, and emotional ties existing between each parent and the child;

(B) The love, affection, bonding, and emotional ties existing between the child and his or her siblings, half siblings, and stepsiblings and the residence of such other children;

(C) The capacity and disposition of each parent to give the child love, affection, and guidance and to continue the education and rearing of the child;

(D) Each parent's knowledge and familiarity of the child and the child's needs;

(E) The capacity and disposition of each parent to provide the child with food, clothing, medical care, day-to-day needs, and other necessary basic care, with consideration made for the potential payment of child support by the other parent;

(F) The home environment of each parent considering the promotion of nurturance and safety of the child rather than superficial or material factors;

(G) The importance of continuity in the child's life and the length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity;



(H) The stability of the family unit of each of the parents and the presence or absence of each parent's support systems within the community to benefit the child;

(I) The mental and physical health of each parent;

(J) Each parent's involvement, or lack thereof, in the child's education, social, and extracurricular activities;

(K) Each parent's employment schedule and the related flexibility or limitations, if any, of a parent to care for the child;

(L) The home, school, and community record and history of the child, as well as any health or educational special needs of the child;

(M) Each parent's past performance and relative abilities for future performance of parenting responsibilities;

(N) The willingness and ability of each of the parents to facilitate and encourage a close and continuing parent-child relationship between the child and the other parent, consistent with the best interest of the child;

(O) Any recommendation by a court appointed custody evaluator or guardian ad litem;

(P) Any evidence of family violence or sexual, mental, or physical child abuse or criminal history of either parent; and

(Q) Any evidence of substance abuse by either parent.

(4) In addition to other factors that a court judge may consider in a proceeding in which the custody of a child or visitation or parenting time by a parent is at issue and in which the court judge has made a finding of family violence:

(A) The court judge shall consider as primary the safety and well-being of the child and of the parent who is the victim of family violence;

(B) The ~~court~~ judge shall consider the perpetrator's history of causing physical harm, bodily injury, assault, or causing reasonable fear of physical harm, bodily injury, or assault to another person;

(C) If a parent is absent or relocates because of an act of domestic violence by the other parent, such absence or relocation for a reasonable period of time in the circumstances shall not be deemed an abandonment of the child ~~or children~~ for the purposes of custody determination; and

(D) The ~~court~~ judge shall not refuse to consider relevant or otherwise admissible evidence of acts of family violence merely because there has been no previous finding of family violence. The ~~court~~ judge may, in addition to other appropriate actions, order supervised visitation or parenting time pursuant to Code Section 19-9-7.

~~(4)~~(5) In all custody cases in which the child has reached the age of 14 years, the child shall have the right to select the parent with whom he or she desires to live. The child's selection for purposes of custody shall be ~~controlling~~ presumptive unless the parent so selected is determined not to be a fit and proper person to have the custody of the child in the best interests of the child. The parental selection by a child who has reached the age of 14 may, in and of itself, constitute a material change of condition or circumstance in any action seeking a modification or change in the custody of that child; provided, however, that such selection may only be made once within a period of two years from the date of the previous selection and the best interests of the child standard shall apply.

~~(4.1)~~(6) In all custody cases in which the child has reached the age of at least 11 but not 14 years, the ~~court~~ judge shall consider the desires and educational needs of the child in determining which parent shall have custody. ~~The child's selection shall not be controlling. The best interests of~~

~~the child standard shall apply. The judge shall have complete discretion in making this determination, and the child's desires shall not be controlling. The judge shall further have broad discretion as to how the child's desires are to be considered, including through the report of a guardian ad litem. The best interests of the child standard shall be controlling. The parental selection of a child who has reached the age of 11 but not 14 years shall not, in and of itself, constitute a material change of condition or circumstance in any action seeking a modification or change in the custody of that child. The judge may issue an order granting temporary custody to the selected parent for a trial period not to exceed six months regarding the custody of a child who has reached the age of 11 but not 14 years where the judge hearing the case determines such a temporary order is appropriate.~~

~~(5) Joint custody, as defined by Code Section 19-9-6, may be considered as an alternative form of custody by the court. This provision allows a court at any temporary or permanent hearing to grant sole custody, joint custody, joint legal custody, or joint physical custody where appropriate.~~

~~(6)(7) The court judge is authorized to order a psychological custody evaluation of the family or an independent medical evaluation. In addition to the privilege afforded a witness, neither a court appointed custody evaluator nor a court appointed guardian ad litem shall be subject to civil liability resulting from any act or failure to act in the performance of his or her duties unless such act or failure to act was in bad faith.~~

~~(8) If requested by any party on or before the close of evidence in a contested hearing, the permanent court order awarding child custody shall set forth specific findings of fact as to the basis for the judge's decision in making an award of custody including any relevant factor relied upon by~~

the judge as set forth in paragraph (3) of this subsection. Such order shall set forth in detail why the court awarded custody in the manner set forth in the order and, if joint legal custody is awarded, a manner in which final decision making on matters affecting the child's education, health, extracurricular activities, religion, and any other important matter shall be decided. Such order shall be filed within 30 days of the final hearing in the custody case, unless extended by order of the judge with the agreement of the parties.

(b) In any case in which a judgment awarding the custody of a ~~minor~~ child has been entered, on the motion of any party or on the motion of the ~~court~~ judge, that portion of the judgment effecting visitation rights between the parties and their ~~minor children~~ child or parenting time may be subject to review and modification or alteration without the necessity of any showing of a change in any material conditions and circumstances of either party or the ~~minor~~ child, provided that the review and modification or alteration shall not be had more often than once in each two-year period following the date of entry of the judgment. However, this subsection shall not limit or restrict the power of the ~~court~~ judge to enter a judgment relating to the custody of a ~~minor~~ child in any new proceeding based upon a showing of a change in any material conditions or circumstances of a party or the ~~minor~~ child.

(c) In the event of any conflict between this Code section and any provision of Article 3 of this chapter, Article 3 shall apply.

(d) It is the express policy of this state to encourage that a ~~minor~~ child has continuing contact with parents and grandparents who have shown the ability to act in the best interest of the child and to encourage parents to share in the rights and responsibilities of raising their ~~children~~ child after such parents have separated or dissolved their marriage or relationship.

(e) Upon the filing of an action for a change of child custody, the ~~court~~ judge may in ~~its~~ his or her discretion change the terms of custody on a temporary basis pending final judgment on such issue. Any such award of temporary custody shall not constitute an adjudication of the rights of the parties.

(f)(1) In any case in which a judgment awarding the custody of a child has been entered, the court entering such judgment shall retain jurisdiction of the case for the purpose of ordering the custodial parent to notify the court of any changes in the residence of the child.

(2) In any case in which visitation rights or parenting time has been provided to the noncustodial parent and the court orders that the custodial parent provide notice of a change in address of the place for pickup and delivery of the child for visitation or parenting time, the custodial parent shall notify the noncustodial parent, in writing, of any change in such address. Such written notification shall provide a street address or other description of the new location for pickup and delivery so that the noncustodial parent may exercise such parent's visitation rights or parenting time.

(3) Except where otherwise provided by court order, in any case under this subsection in which a parent changes his or her residence, he or she must give notification of such change to the other parent and, if the parent changing residence is the custodial parent, to any other person granted visitation rights or parenting time under this title or a court order. Such notification shall be given at least 30 days prior to the anticipated change of residence and shall include the full address of the new residence.

(g) Except as provided in Code Section 19-6-2, and in addition to the attorney's fee provisions contained in Code Section 19-6-15, the judge

may order reasonable attorney's fees and expenses of litigation, experts, and the child's guardian ad litem and other costs of the child custody action and pretrial proceedings to be paid by the parties in proportions and at times determined by the judge. Attorney's fees may be awarded at both the temporary hearing and the final hearing. A final judgment shall include the amount granted, whether the grant is in full or on account, which may be enforced by attachment for contempt of court or by writ of fieri facias, whether the parties subsequently reconcile or not. An attorney may bring an action in his or her own name to enforce a grant of attorney's fees made pursuant to this subsection.

(h) In addition to filing requirements contained in Code Section 19-6-15, upon the conclusion of any proceeding under this article, the domestic relations final disposition form as set forth in Code Section 9-11-133 shall be filed.

19-9-4.

(a) On motion of either party in any action or proceeding involving determination of the award of child custody between parents of the child, when such motion contains a specific recitation of actual abuse, neglect, or other overt acts which have adversely affected the health and welfare of the child, the ~~court~~ judge may direct the appropriate family and children services agency or any other appropriate entity to investigate the home life and home environment of each of the parents. In any action or proceeding involving determination of the award of child custody between parents of the child when during such proceedings a specific recitation of actual abuse, neglect, or other overt acts which have adversely affected the health and welfare of the child has been made the ~~court~~ judge shall also

have authority on ~~its~~ his or her own motion to order such an investigation if in the ~~court's~~ judge's opinion the investigation would be useful in determining placement or custody of the child. The ~~court~~ judge may also direct either party to pay to the agency the reasonable cost, or any portion thereof, of the investigation. The report of the investigation will be made to the ~~court~~ judge directing the investigation. Any report made at the direction of the ~~court~~ judge shall be made available to either or both parties for a reasonable period of time prior to the proceedings at which any temporary or permanent custody is to be determined. Both parties shall have the right to confront and cross-examine the person or persons who conducted the investigation or compiled the report if adequate and legal notice is given.

(b) This Code section shall apply only with respect to actions or proceedings in which the issue of child custody is contested; and this Code section is not intended to alter or repeal Code Sections 49-5-40 through 49-5-44.

19-9-5.

(a) In all proceedings under this article between parents, it shall be expressly permissible for the parents of a ~~minor~~ child to present to the ~~court~~ judge an agreement respecting any and all issues concerning custody of the ~~minor~~ child. As used in this Code section, the term 'custody' shall include, without limitation, joint custody as such term is defined in Code Section 19-9-6. As used in this Code section, the term 'custody' shall not include payment of child support.

(b) The ~~court~~ judge shall ratify the agreement and make such agreement a part of the ~~court's~~ judge's final judgment in the proceedings unless the ~~court~~ judge makes specific written factual findings as a part of the final

judgment that under the circumstances of the parents and the child in such agreement that the agreement would not be in the best interests of the child. The ~~court~~ judge shall not refuse to ratify such agreement and to make such agreement a part of the final judgment based solely upon the parents' choice to use joint custody as a part of such agreement.

(c) In ~~its~~ his or her judgment, the ~~court~~ judge may supplement the agreement on issues not covered by such agreement.

19-9-6.

As used in this article, the term:

(1) 'Joint custody' means joint legal custody, joint physical custody, or both joint legal custody and joint physical custody. In making an order for joint custody, the ~~court~~ judge may order joint legal custody without ordering joint physical custody.

(2) 'Joint legal custody' means both parents have equal rights and responsibilities for major decisions concerning the child, including the child's education, health care, extracurricular activities, and religious training; provided, however, that the ~~court~~ judge may designate one parent to have sole power to make certain decisions while both parents retain equal rights and responsibilities for other decisions.

(3) 'Joint physical custody' means that physical custody is shared by the parents in such a way as to assure the child of substantially equal time and contact with both parents.

(4) 'Sole custody' means a person, including, but not limited to, a parent, has been awarded permanent custody of a child by a court order. Unless otherwise provided by court order, the person awarded sole custody of a child shall have the rights and responsibilities for major decisions



concerning the child, including the child's education, health care, extracurricular activities, and religious training, and the noncustodial parent shall have the right to visitation or parenting time. A person who has not been awarded custody of a child by court order shall not be considered as the sole legal custodian while exercising visitation rights or parenting time.

19-9-7.

(a) A ~~court~~ judge may award visitation by or parenting time to a parent who committed one or more acts involving family violence only if the ~~court~~ judge finds that adequate provision for the safety of the child and the parent who is a victim of family violence can be made. In a visitation or parenting time order, a ~~court~~ judge may:

- (1) Order an exchange of a child to occur in a protected setting;
- (2) Order visitation or parenting time supervised by another person or agency;
- (3) Order the perpetrator of family violence to attend and complete, to the satisfaction of the ~~court~~ judge, a certified family violence intervention program for perpetrators as defined in Article 1A of Chapter 13 of this title as a condition of the visitation or parenting time;
- (4) Order the perpetrator of family violence to abstain from possession or consumption of alcohol, marijuana, or any Schedule I controlled substance listed in Code Section 16-13-25 during the visitation or parenting time and for 24 hours preceding the visitation or parenting time;
- (5) Order the perpetrator of family violence to pay a fee to defray the costs of supervised visitation or parenting time;
- (6) Prohibit overnight visitation or parenting time;

(7) Require a bond from the perpetrator of family violence for the return and safety of the child; and

(8) Impose any other condition that is deemed necessary to provide for the safety of the child, the victim of family violence, or another family or household member.

(b) Whether or not visitation or parenting time is allowed, the ~~court~~ judge may order the address of the child and the victim of family violence to be kept confidential.

(c) The ~~court~~ judge shall not order an adult who is a victim of family violence to attend joint counseling with the perpetrator of family violence as a condition of receiving custody of a child or as a condition of visitation or parenting time.

(d) If a ~~court~~ judge allows a family or household member to supervise visitation or parenting time, the ~~court~~ judge shall establish conditions to be followed during visitation or parenting time."

## **SECTION 6.**

Code Section 19-7-22 of the Official Code of Georgia Annotated, relating to petition for legitimization of a child, is amended by revising subsection (f.1) as follows:

"(f.1) The petition for legitimization may also include claims for visitation, parenting time, or custody. If such claims are raised in the legitimization action, the court may order, in addition to legitimization, visitation, parenting time, or custody based on the best interests of the child standard. In a case involving allegations of family violence, the provisions of paragraph ~~(2)~~ (4) of subsection (a) of Code Section ~~19-9-1~~ 19-9-3 shall also apply."

## **SECTION 7.**

Chapter 5 of Title 19 of the Official Code of Georgia Annotated, relating to divorce, is amended by striking subsection (a) of Code Section 19-5-1, relating to granting total divorces and referral for alternative dispute resolution, and inserting in lieu thereof the following:

"(a) Total divorces may be granted in proper cases by the superior court; provided, however, that the parties shall comply with Code Section 19-5-1.1 if it is applicable. Unless an issuable defense is filed as provided by law and a jury trial is demanded in writing by either party on or before the call of the case for trial, in all petitions for divorce and permanent alimony the judge shall hear and determine all issues of law and of fact and any other issues raised in the pleadings."

## **SECTION 8.**

This Act shall become effective on January 1, 2008, and shall apply to all child custody proceedings and modifications of child custody filed on or after January 1, 2008.

## **SECTION 9.**

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