

House Bill 1039

By: Representative Poag of the 6th

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 1 of Chapter 9 of Title 19 of the Official Code of Georgia Annotated,
2 relating to general provisions relative to child custody proceedings, so as to provide that the
3 court shall grant joint physical custody where custody of a child is at issue between the
4 parents; to repeal the provision allowing courts to consider the desires of children between
5 the ages of 11 and 14; to require courts to state which parent is the custodial parent; to
6 provide for an effective date and applicability; to repeal conflicting laws; and for other
7 purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

10 Article 1 of Chapter 9 of Title 19 of the Official Code of Georgia Annotated, relating to
11 general provisions relative to child custody proceedings, is amended by striking subsection
12 (a) of Code Section 19-9-1, relating to the custody of children, and inserting in its place the
13 following:

14 "(a)(1) In all cases in which a divorce is granted and the custody of minor children is at
15 issue between the parents, joint physical custody shall be awarded unless the court finds
16 that a parent is not a fit and proper person to have custody of the minor children. For all
17 such other divorce actions, the party not in default shall be entitled to the custody of the
18 minor children of the marriage. However, in all cases in which ~~a divorce is granted, an~~
19 ~~application for divorce is pending, or~~ a change in custody of a minor child is sought, the
20 court, in the exercise of a sound discretion, may look into all the circumstances of the
21 parties, including improvement of the health of a party seeking a change in custody
22 provisions, and, after hearing both parties, may make a different disposition of the children,
23 placing them, if necessary, in possession of guardians appointed by the judge of the probate
24 court.

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

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

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

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

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

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

21 ~~(B) In all cases in which the child has reached the age of at least 11 but not 14 years,~~
22 ~~the court shall consider the desires, if any, and educational needs of the child in~~
23 ~~determining which parent shall have custody. The court shall have complete discretion~~
24 ~~in making this determination, and the child's desires are not controlling. The court shall~~
25 ~~further have broad discretion as to how the child's desires are to be considered,~~
26 ~~including through the report of a guardian ad litem. The best interest of the child~~
27 ~~standard shall be controlling.~~

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

31 (B)(D) The court may issue an order granting temporary custody to the selected parent
32 for a trial period not to exceed six months regarding the custody of a child who has
33 reached the age of at least ~~11~~ 14 years where the judge hearing the case determines such
34 a temporary order is appropriate."

SECTION 2.

Said article is further amended by striking paragraphs (1), (2), (4.1), and (5) of subsection (a) of Code Section 19-9-3, relating to custody decisions and judicial discretion in such, and inserting in their place the following:

"(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~~ joint physical custody shall be awarded unless the court finds that a parent is not a fit and proper person to have custody of the child or children.

(2) In all cases in which a change in custody of a minor child is sought, ~~The the court hearing the issue of custody,~~ in exercise of its sound discretion, 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~~ and, after hearing both parties, may make a different disposition of the child. The duty of the court 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 welfare and happiness and to make its award accordingly."

~~"(4.1) In all custody cases in which the child has reached the age of at least 11 but not 14 years, the court 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.~~

(5) Joint custody, as defined by Code Section 19-9-6, ~~may~~ shall be considered as an ~~alternative~~ a 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. However, when the custody of minor children is at issue between the parents, joint physical custody shall be awarded unless the court finds that a parent is not a fit and proper person to have custody of the minor children."

SECTION 3.

Said article is further amended by striking paragraph (1) of Code Section 19-9-6, relating to definitions, and inserting in its place the following:

"(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 may order joint legal custody without ordering joint physical custody or order joint physical custody without ordering joint legal custody. In ordering joint custody, the court shall state which parent is the custodial parent for the purpose of establishing the domicile of

1 a minor child pursuant to Code Section 19-2-4 and for all other purposes under this Code."

2 **SECTION 4.**

3 This Act shall become effective on July 1, 2002, and shall apply to all proceedings in which
4 child custody is an issue between parents of a child or children on or after July 1, 2002.

5 **SECTION 5.**

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