

House Bill 369

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

1 To provide for legislative findings; to amend Article 2 of Chapter 6 of Title 5 and Chapter  
2 9 of Title 19 of the Official Code of Georgia Annotated, relating to appellate practice and  
3 child custody proceedings, respectively, so as to provide for changes in child custody  
4 proceedings; to provide for direct appeals in all domestic relations cases; to provide for a  
5 parenting plan in child custody cases and the procedure therefor; to provide factors in  
6 determining the best interests of the child; to provide for written findings of fact in child  
7 custody proceedings; to remove the right of a 14 year old to select a custodial parent; to  
8 provide for attorney's fees and expenses of litigation in child custody proceedings; to provide  
9 for binding arbitration; to amend Code Section 19-7-22 of the Official Code of Georgia  
10 Annotated, relating to petition for legitimation of child, so as to correct a cross-reference; to  
11 provide for related matters; to provide for an effective date and applicability; to repeal  
12 conflicting laws; and for other purposes.

13 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

14 **SECTION 1.**

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

20 **SECTION 2.**

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

24 "(a) Appeals may be taken to the Supreme Court and the Court of Appeals from the  
25 following judgments and rulings of the superior courts, the constitutional city courts, and

1 such other courts or tribunals from which appeals are authorized by the Constitution and  
2 laws of this state:

3 (1) All final judgments, that is to say, where the case is no longer pending in the court  
4 below, except as provided in Code Section 5-6-35;

5 (2) All judgments involving applications for discharge in bail trover and contempt cases;

6 (3) All judgments or orders directing that an accounting be had;

7 (4) All judgments or orders granting or refusing applications for receivers or for  
8 interlocutory or final injunctions;

9 (5) All judgments or orders granting or refusing applications for attachment against  
10 fraudulent debtors;

11 (6) Any ruling on a motion which would be dispositive if granted with respect to a  
12 defense that the action is barred by Code Section 16-11-184;

13 (7) All judgments or orders granting or refusing to grant mandamus or any other  
14 extraordinary remedy, except with respect to temporary restraining orders;

15 (8) All judgments or orders refusing applications for dissolution of corporations created  
16 by the superior courts;

17 (9) All judgments or orders sustaining motions to dismiss a caveat to the probate of a  
18 will; ~~and~~

19 (10) All judgments or orders entered pursuant to subsection (c) of Code Section  
20 17-10-6.2; and

21 (11) All judgments or orders in divorce, alimony, child custody, and other domestic  
22 relations cases including, but not limited to, granting or refusing a divorce or temporary  
23 or permanent alimony, awarding or refusing to change child custody, or holding or  
24 declining to hold persons in contempt of such alimony or child custody judgment or  
25 orders."

### 26 SECTION 3.

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

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

30 (1) Appeals from decisions of the superior courts reviewing decisions of the State Board  
31 of Workers' Compensation, the State Board of Education, auditors, state and local  
32 administrative agencies, and lower courts by certiorari or de novo proceedings; provided,  
33 however, that this provision shall not apply to decisions of the Public Service  
34 Commission and probate courts and to cases involving ad valorem taxes and  
35 condemnations;

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

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

8 ~~(4)~~(3) Appeals from cases involving garnishment or attachment, except as provided in  
 9 paragraph (5) of subsection (a) of Code Section 5-6-34;

10 ~~(5)~~(4) Appeals from orders revoking probation;

11 ~~(6)~~(5) Appeals in all actions for damages in which the judgment is \$10,000.00 or less;

12 ~~(7)~~(6) Appeals, when separate from an original appeal, from the denial of an  
 13 extraordinary motion for new trial;

14 ~~(8)~~(7) Appeals from orders under subsection (d) of Code Section 9-11-60 denying a  
 15 motion to set aside a judgment or under subsection (e) of Code Section 9-11-60 denying  
 16 relief upon a complaint in equity to set aside a judgment;

17 ~~(9)~~(8) Appeals from orders granting or denying temporary restraining orders;

18 ~~(10)~~(9) Appeals from awards of attorney's fees or expenses of litigation under Code  
 19 Section 9-15-14; and

20 ~~(11)~~(10) Appeals from decisions of the state courts reviewing decisions of the magistrate  
 21 courts by de novo proceedings so long as the subject matter is not otherwise subject to  
 22 a right of direct appeal."

#### 23 SECTION 4.

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

#### 27 "ARTICLE 1

28 19-9-1.

29 ~~(a)(1) In all cases in which a divorce is granted, the party not in default shall be entitled~~  
 30 ~~to the custody of the minor children of the marriage. However, in all cases in which a~~  
 31 ~~divorce is granted, an application for divorce is pending, or a change in custody of a~~  
 32 ~~minor child is sought, the court, in the exercise of a sound discretion, may look into all~~  
 33 ~~the circumstances of the parties, including improvement of the health of a party seeking~~  
 34 ~~a change in custody provisions, and, after hearing both parties, may make a different~~

1 ~~disposition of the children, placing them, if necessary, in possession of guardians~~  
2 ~~appointed by the judge of the probate court.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 (a) In all cases in which the custody of any minor child is at issue between the parents,  
31 each parent shall prepare a parenting plan or the parties may jointly submit a parenting  
32 plan. It shall be in the judge's discretion as to when a party shall be required to submit a  
33 parenting plan to the judge. A parenting plan shall be required for permanent custody and  
34 modification actions and in the judge's discretion may be required for temporary hearings.  
35 The final decree in any legal action involving the custody of a minor child, including  
36 modification actions, shall incorporate a permanent parenting plan.

37 (b) A parenting plan shall include, but not be limited to:

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

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

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

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

10 (5) A recognition that the child's needs will change and grow as the child matures and  
11 demonstrating that the parents are making an effort to develop a plan that takes this issue  
12 into account so that future modifications to the parenting plan are minimized;

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

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

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

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

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

28 19-9-1.1.

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

1 19-9-2.

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

5 19-9-3.

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

13 (2) The ~~court~~ judge hearing the issue of custody, ~~in exercise of its sound discretion,~~ shall  
14 make a determination of custody of a child and such matter shall not be decided by a jury.  
15 The judge may take into consideration all the circumstances of the case, including the  
16 improvement of the health of the party seeking a change in custody provisions, in  
17 determining to whom custody of the child ~~or children~~ should be awarded. The duty of  
18 the ~~court~~ judge in all such cases shall be to exercise its discretion to look to and determine  
19 solely what is for the best interest of the child ~~or children~~ and what will best promote  
20 ~~their~~ the child's welfare and happiness and to make its his or her award accordingly.

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

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

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

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

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

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

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

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

3 (H) The mental and physical health of each parent;

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

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

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

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

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

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

16 (O) Any evidence of domestic violence or sexual, mental, or physical child abuse or  
 17 criminal history of either parent; and

18 (P) Any evidence of substance abuse by either parent.

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

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

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

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

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

35 ~~(4) In all custody cases in which the child has reached the age of 14 years, the child shall~~  
 36 ~~have the right to select the parent with whom he or she desires to live. The child's~~

1 ~~selection shall be controlling unless the parent so selected is determined not to be a fit and~~  
2 ~~proper person to have the custody of the child.~~

3 ~~(4.1)(5) In all custody cases in which the child has reached the age of at least 11 but not~~  
4 ~~14 years, the court judge shall consider the desires and educational needs of the child in~~  
5 ~~determining which parent shall have custody. The child's selection shall not be~~  
6 ~~controlling. The best interests of the child standard shall apply. The judge shall have~~  
7 ~~complete discretion in making this determination, and the child's desires shall not be~~  
8 ~~controlling. The judge shall further have broad discretion as to how the child's desires~~  
9 ~~are to be considered, including through the report of a guardian ad litem. The best~~  
10 ~~interests of the child standard shall be controlling. The desire of a child who has reached~~  
11 ~~the age of 11 years shall not, in and of itself, constitute a material change of conditions~~  
12 ~~or circumstances in any action seeking a modification or change in the custody of that~~  
13 ~~child. The judge may issue an order granting temporary custody to the selected parent~~  
14 ~~for a trial period not to exceed six months regarding the custody of a child who has~~  
15 ~~reached the age of 11 years where the judge hearing the case determines such a temporary~~  
16 ~~order is appropriate.~~

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

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

26 ~~(7) Unless otherwise agreed upon by the parties, any permanent court order awarding~~  
27 ~~child custody shall set forth specific findings of fact as to the basis for the judge's~~  
28 ~~decision in making an award of custody including any relevant factor relied upon by the~~  
29 ~~judge as set forth in paragraph (3) of this subsection. Such order shall set forth in detail~~  
30 ~~why the court awarded custody in the manner set forth in the order and, if joint legal~~  
31 ~~custody is awarded, a manner in which final decision making on matters affecting the~~  
32 ~~child's education, health, extracurricular activities, religion, and any other important~~  
33 ~~matter shall be divided. Such order shall be filed within 30 days of the final hearing in~~  
34 ~~the case.~~

35 (b) In any case in which a judgment awarding the custody of a minor has been entered, on  
36 the motion of any party or on the motion of the court judge, that portion of the judgment  
37 effecting visitation rights between the parties and their minor children child may be subject

1 to review and modification or alteration without the necessity of any showing of a change  
2 in any material conditions and circumstances of either party or the minor, provided that the  
3 review and modification or alteration shall not be had more often than once in each  
4 two-year period following the date of entry of the judgment. However, this subsection  
5 shall not limit or restrict the power of the court judge to enter a judgment relating to the  
6 custody of a minor in any new proceeding based upon a showing of a change in any  
7 material conditions or circumstances of a party or the minor.

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

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

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

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

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

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

36 (g) The judge may order reasonable attorney's fees and expenses of litigation, experts, and  
37 the child's guardian ad litem and other costs of the child custody action and pretrial

1 proceedings to be paid by the parties in proportions and at times determined by the judge.  
 2 Attorney's fees may be awarded at both the temporary hearing and the final hearing. A  
 3 final judgment shall include the amount granted, whether the grant is in full or on account,  
 4 which may be enforced by attachment for contempt of court or by writ of fieri facias,  
 5 whether the parties subsequently reconcile or not. An attorney may bring an action in his  
 6 or her own name to enforce a grant of attorney's fees made pursuant to this subsection.

7 19-9-4.

8 (a) On motion of either party in any action or proceeding involving determination of the  
 9 award of child custody between parents of the child, when such motion contains a specific  
 10 recitation of actual abuse, neglect, or other overt acts which have adversely affected the  
 11 health and welfare of the child, the ~~court~~ judge may direct the appropriate family and  
 12 children services agency or any other appropriate entity to investigate the home life and  
 13 home environment of each of the parents. In any action or proceeding involving  
 14 determination of the award of child custody between parents of the child when during such  
 15 proceedings a specific recitation of actual abuse, neglect, or other overt acts which have  
 16 adversely affected the health and welfare of the child has been made the ~~court~~ judge shall  
 17 also have authority on ~~its~~ his or her own motion to order such an investigation if in the  
 18 ~~court's~~ judge's opinion the investigation would be useful in determining placement or  
 19 custody of the child. The ~~court~~ judge may also direct either party to pay to the agency the  
 20 reasonable cost, or any portion thereof, of the investigation. The report of the investigation  
 21 will be made to the ~~court~~ judge directing the investigation. Any report made at the  
 22 direction of the ~~court~~ judge shall be made available to either or both parties for a reasonable  
 23 period of time prior to the proceedings at which any temporary or permanent custody is to  
 24 be determined. Both parties shall have the right to confront and cross-examine the person  
 25 or persons who conducted the investigation or compiled the report if adequate and legal  
 26 notice is given.

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

30 19-9-5.

31 (a) In all proceedings under this article between parents, it shall be expressly permissible  
 32 for the parents of a minor child to present to the ~~court~~ judge an agreement respecting any  
 33 and all issues concerning custody of the minor child. As used in this Code section, the term  
 34 'custody' shall include, without limitation, joint custody as such term is defined in Code

1 Section 19-9-6. As used in this Code section, the term 'custody' shall not include payment  
2 of child support.

3 (b) The ~~court~~ judge shall ratify the agreement and make such agreement a part of the  
4 ~~court's~~ judge's final judgment in the proceedings unless the ~~court~~ judge makes specific  
5 written factual findings as a part of the final judgment that under the circumstances of the  
6 parents and the child in such agreement that the agreement would not be in the best  
7 interests of the child. The ~~court~~ judge shall not refuse to ratify such agreement and to make  
8 such agreement a part of the final judgment based solely upon the parents' choice to use  
9 joint custody as a part of such agreement.

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

12 19-9-6.

13 As used in this article, the term:

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

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

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

24 (4) 'Sole custody' means a person, including, but not limited to, a parent, has been  
25 awarded permanent custody of a child by a court order. Unless otherwise provided by  
26 court order, the person awarded sole custody of a child shall have the rights and  
27 responsibilities for major decisions concerning the child, including the child's education,  
28 health care, extracurricular activities, and religious training, and the noncustodial parent  
29 shall have the right to visitation. A person who has not been awarded custody of a child  
30 by court order shall not be considered as the sole legal custodian while exercising  
31 visitation rights.

32 19-9-7.

33 (a) A ~~court~~ judge may award visitation by a parent who committed one or more acts  
34 involving family violence only if the ~~court~~ judge finds that adequate provision for the

1 safety of the child and the parent who is a victim of family violence can be made. In a  
2 visitation order, a court judge may:

- 3 (1) Order an exchange of a child to occur in a protected setting;
- 4 (2) Order visitation supervised by another person or agency;
- 5 (3) Order the perpetrator of family violence to attend and complete, to the satisfaction  
6 of the court judge, a certified family violence intervention program for perpetrators as  
7 defined in Article 1A of Chapter 13 of this title as a condition of the visitation;
- 8 (4) Order the perpetrator of family violence to abstain from possession or consumption  
9 of alcohol, marijuana, or any Schedule I controlled substance listed in Code Section  
10 16-13-25 during the visitation and for 24 hours preceding the visitation;
- 11 (5) Order the perpetrator of family violence to pay a fee to defray the costs of supervised  
12 visitation;
- 13 (6) Prohibit overnight visitation;
- 14 (7) Require a bond from the perpetrator of family violence for the return and safety of  
15 the child; and
- 16 (8) Impose any other condition that is deemed necessary to provide for the safety of the  
17 child, the victim of family violence, or another family or household member.

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

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

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

## 25 SECTION 5.

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

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

## 33 SECTION 6.

34 This Act shall become effective on July 1, 2007, and shall apply to all child custody  
35 proceedings and modifications of child custody filed on or after July 1, 2007.

1

**SECTION 7.**

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