

The House Committee on Judiciary offers the following substitute to HB 369:

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 certain domestic relations cases; to provide for
 5 a 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 or relationship.

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 child custody cases including, but not limited to,
22 awarding or refusing to change child custody or holding or declining to hold persons in
23 contempt of such child custody judgment or orders."

24 SECTION 3.

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

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

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

34 (2) Appeals from judgments or orders in divorce, alimony, ~~child custody~~, and other
35 domestic relations cases including, but not limited to, granting or refusing a divorce or
36 temporary or permanent alimony, ~~awarding or refusing to change child custody~~, or

1 holding or declining to hold persons in contempt of such alimony ~~or child custody~~
 2 judgment or orders;

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

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

7 (5) Appeals from orders revoking probation;

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

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

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

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

15 (10) Appeals from awards of attorney's fees or expenses of litigation under Code Section
 16 9-15-14; and

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

20 SECTION 4.

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

24 "ARTICLE 1

25 19-9-1.

26 ~~(a)(1) In all cases in which a divorce is granted, the party not in default shall be entitled~~
 27 ~~to the custody of the minor children of the marriage. However, in all cases in which a~~
 28 ~~divorce is granted, an application for divorce is pending, or a change in custody of a~~
 29 ~~minor child is sought, the court, in the exercise of a sound discretion, may look into all~~
 30 ~~the circumstances of the parties, including improvement of the health of a party seeking~~
 31 ~~a change in custody provisions, and, after hearing both parties, may make a different~~
 32 ~~disposition of the children, placing them, if necessary, in possession of guardians~~
 33 ~~appointed by the judge of the probate 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~~
25 ~~shall 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 ~~(D) The court may issue an order granting temporary custody to the selected parent for~~
32 ~~a trial period not to exceed six months regarding the custody of a child who has reached~~
33 ~~the age of at least 11 years where the judge hearing the case determines such a~~
34 ~~temporary order is appropriate.~~

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, that portion of the judgment effecting~~
37 ~~visitation rights between the parties and their minor children may be subject to review and~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

34 19-9-1.1.

35 In all proceedings under this article, it shall be expressly permissible for the parents of a
 36 child to agree to binding arbitration on the issue of child custody and matters relative to

1 visitation and a parenting plan. The parents may select their arbiter and decide which
 2 issues will be resolved in binding arbitration. The arbiter's decisions shall be incorporated
 3 into a final decree awarding child custody unless the judge makes specific written factual
 4 findings that under the circumstances of the parents and the child the arbiter's award would
 5 not be in the best interests of the child. In its judgment, the judge may supplement the
 6 arbiter's decision on issues not covered by the binding arbitration.

7 19-9-2.

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

11 19-9-3.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

35 (C) If a parent is absent or relocates because of an act of domestic violence by the other
 36 parent, such absence or relocation for a reasonable period of time in the circumstances

1 shall not be deemed an abandonment of the child ~~or children~~ for the purposes of
2 custody determination; and

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

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

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

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

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

34 (7) If requested by any party on or before the close of evidence in a contested hearing,
35 the permanent court order awarding child custody shall set forth specific findings of fact
36 as to the basis for the judge's decision in making an award of custody including any
37 relevant factor relied upon by the judge as set forth in paragraph (3) of this subsection.

1 Such order shall set forth in detail why the court awarded custody in the manner set forth
2 in the order and, if joint legal custody is awarded, a manner in which final decision
3 making on matters affecting the child's education, health, extracurricular activities,
4 religion, and any other important matter shall be decided. Such order shall be filed within
5 30 days of the final hearing in the case, unless extended by order of the judge with the
6 agreement of the parties.

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

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

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

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

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

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

1 pickup and delivery so that the noncustodial parent may exercise such parent's visitation
 2 rights.

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

9 (g) Except as provided in Code Section 19-6-2, and in addition to the attorney's fee
 10 provisions contained in Code Section 19-6-15, the judge may order reasonable attorney's
 11 fees and expenses of litigation, experts, and the child's guardian ad litem and other costs
 12 of the child custody action and pretrial proceedings to be paid by the parties in proportions
 13 and at times determined by the judge. Attorney's fees may be awarded at both the
 14 temporary hearing and the final hearing. A final judgment shall include the amount
 15 granted, whether the grant is in full or on account, which may be enforced by attachment
 16 for contempt of court or by writ of fieri facias, whether the parties subsequently reconcile
 17 or not. An attorney may bring an action in his or her own name to enforce a grant of
 18 attorney's fees made pursuant to this subsection.

19 19-9-4.

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

1 or persons who conducted the investigation or compiled the report if adequate and legal
2 notice is given.

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

6 19-9-5.

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

13 (b) The ~~court~~ judge shall ratify the agreement and make such agreement a part of the
14 ~~court's~~ judge's final judgment in the proceedings unless the ~~court~~ judge makes specific
15 written factual findings as a part of the final judgment that under the circumstances of the
16 parents and the child in such agreement that the agreement would not be in the best
17 interests of the child. The ~~court~~ judge shall not refuse to ratify such agreement and to make
18 such agreement a part of the final judgment based solely upon the parents' choice to use
19 joint custody as a part of such agreement.

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

22 19-9-6.

23 As used in this article, the term:

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

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

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

34 (4) 'Sole custody' means a person, including, but not limited to, a parent, has been
35 awarded permanent custody of a child by a court order. Unless otherwise provided by

1 court order, the person awarded sole custody of a child shall have the rights and
2 responsibilities for major decisions concerning the child, including the child's education,
3 health care, extracurricular activities, and religious training, and the noncustodial parent
4 shall have the right to visitation. A person who has not been awarded custody of a child
5 by court order shall not be considered as the sole legal custodian while exercising
6 visitation rights.

7 19-9-7.

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

12 (1) Order an exchange of a child to occur in a protected setting;

13 (2) Order visitation supervised by another person or agency;

14 (3) Order the perpetrator of family violence to attend and complete, to the satisfaction
15 of the court judge, a certified family violence intervention program for perpetrators as
16 defined in Article 1A of Chapter 13 of this title as a condition of the visitation;

17 (4) Order the perpetrator of family violence to abstain from possession or consumption
18 of alcohol, marijuana, or any Schedule I controlled substance listed in Code Section
19 16-13-25 during the visitation and for 24 hours preceding the visitation;

20 (5) Order the perpetrator of family violence to pay a fee to defray the costs of supervised
21 visitation;

22 (6) Prohibit overnight visitation;

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

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

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

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

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

SECTION 5.

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

"(f.1) The petition for legitimation may also include claims for visitation or custody. If such claims are raised in the legitimation action, the court may order, in addition to legitimation, visitation 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 6.

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 7.

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