

SENATE SUBSTITUTE TO HB 369

AS PASSED SENATE

A BILL TO BE ENTITLED
AN ACT

1 To provide for legislative findings; to amend Article 2 of Chapter 6 of Title 5, Code Section
2 9-11-133, and Chapter 9 of Title 19 of the Official Code of Georgia Annotated, relating to
3 appellate practice, forms meeting requirements for civil case filing and disposition, and child
4 custody proceedings, respectively, so as to provide for changes in child custody proceedings;
5 to provide for direct appeals in certain domestic relations cases; to change certain provisions
6 relating to cases requiring application for appeal; to add information to filing and
7 dispositional forms in domestic relations cases; to provide for a parenting plan in child
8 custody cases and the procedure therefor; to provide factors in determining the best interests
9 of the child; to provide for written findings of fact in child custody proceedings; to provide
10 for attorney's fees and expenses of litigation in child custody proceedings; to provide for
11 binding arbitration; to amend Code Section 19-7-22 of the Official Code of Georgia
12 Annotated, relating to petition for legitimation of child, so as to correct a cross-reference; to
13 amend Chapter 5 of Title 19 of the Official Code of Georgia Annotated, relating to divorce,
14 so as to require certain divorcing parents to participate in education classes that focus on the
15 effect of divorce and separation on children; to provide for who can provide the education
16 and exceptions to the education classes; to change provisions relating to the time limit for
17 granting certain divorces; to provide for related matters; to provide for an effective date and
18 applicability; to repeal conflicting laws; and for other purposes.

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

SECTION 1.

20
21 The General Assembly of Georgia declares that it is the policy of this state to assure that
22 minor children have frequent and continuing contact with parents who have shown the ability
23 to act in the best interests of their children and to encourage parents to share in the rights and
24 responsibilities of rearing their children after the parents have separated or dissolved their
25 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,

1 however, that this provision shall not apply to decisions of the Public Service
 2 Commission and probate courts and to cases involving ad valorem taxes and
 3 condemnations;

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

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

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

13 (5) Appeals from orders revoking probation;

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

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

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

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

21 (10) Appeals from awards of attorney's fees or expenses of litigation under Code Section
 22 9-15-14; ~~and~~

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

26 (12) Appeals from orders terminating parental rights."

27 SECTION 4.

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

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

2 DOMESTIC RELATIONS CASE FILING
3 INFORMATION FORM

4 Court

5 ___ Superior County _____ Date filed _____
6 mm-dd-yyyy

7 Docket no. _____

8 Plaintiff(s) Defendant(s)
9 (last, suffix, first, middle initial, maiden) (last, suffix, first, middle initial, maiden)
10 1. _____ 1. _____
11 2. _____ 2. _____

12 Plaintiff/Petitioner's attorney
13 _____ ___ Pro Se

14 Bar #
15 _____

16 CONTEMPT

17 ___ Contempt - Custody,
18 and/or Visitation, or
19 Parenting Time
20 ___ Contempt - Child
21 Support and Alimony
22 ___ Contempt - Child Support
23 ___ Contempt - Alimony
24 ___ Other Domestic Contempt

19 CHECK CASE TYPE:
20 (one or more)

21 ___ Divorce (includes
22 annulment)
23 Contested? Yes No
24 Child Custody
25 issue? Yes No
26 Child Support
27 issue? Yes No

28 ___ Separate Maintenance
29 ___ Adoption
30 ___ Paternity (includes
31 legitimation)
32 ___ Interstate Support
33 Enforcement Action

Additional information -
Ex Parte Relief

Did the initial pleading
include a request for
relief:

1 Reporting party _____
 2 (Name) (Title)

3 Name of plaintiff/petitioner(s)
 4 _____

5 Plaintiff/petitioner's attorney
 6 _____ Pro Se

7 Bar #
 8 _____

9 Name of defendant/respondent(s)
 10 _____

11 Defendant/respondent's attorney
 12 _____ Pro Se

13 Bar #
 14 _____

RELIEF GRANTED (Check all that apply)

- 1. Ex Parte Relief
- 2. Temporary Relief
- 3. Final Relief

19 TYPE OF DISPOSITION

20 1. Dismissed Without
 21 Final Order

22 A. Voluntary (by
 23 parties)

24 B. Involuntary (by
 25 court)

26 2. Pretrial Settlement

27 3. Judgment on the
 28 Pleadings

29 4. Summary Judgment

30 5. Trial

31 A. Bench Trial

32 B. Jury Trial

33 1. Dismissal after
 34 jury selected

35 2. Settlement

A. Divorce/Annulment/
 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

1 during trial of parenting time per
2 3. ___ Judgment on year (or number of days)
3 Verdict for: Mother Father
4 4. ___ Directed Parenting time was
5 Verdict or contested? Yes No
6 JNOV D. ___ Child Support
7 (i) Forms attached? Yes No
8 E. ___ Legitimation/
9 Paternity
10 F. ___ Alimony
11 ADR G. ___ Contempt
12 1. Was mediation utilized? H. ___ Equitable Division
13 ___ Yes ___ No I. ___ Restraining Protective Order
14 2. If yes, was it (check if ___ Person ___ Property
15 applicable): Finding of family
16 ___ court annexed? violence? Yes No
17 ___ court mandated? J. ___ Adoption
18 3. Was there an agreement to K. Attorney's fees? Yes No
19 binding arbitration? Yes No If yes, in what amount: \$
20 If yes, what matters were and to whom:
21 subject to binding arbitration? ~~K.~~ L. ___ Other (specify) _____
22 Child custody _____
23 Visitation or Parenting Time 4. ___ Dismissed prior to
24 Parenting Plan granting of relief.
25 _____"

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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

36 (F) What, if any, limitations will exist while one parent has physical custody of the
37 child in terms of the other parent contacting the child and the other parent's right to

1 access education, health, extracurricular activity, and religious information regarding
 2 the child.

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

7 19-9-1.1.

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

16 19-9-1.2.

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

20 19-9-2.

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

24 19-9-3.

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

32 (2) The ~~court~~ judge hearing the issue of custody, ~~in exercise of its sound discretion, may~~
 33 shall make a determination of custody of a child and such matter shall not be decided by

1 a jury. The judge may take into consideration all the circumstances of the case, including
 2 the improvement of the health of the party seeking a change in custody provisions, in
 3 determining to whom custody of the child ~~or children~~ should be awarded. The duty of
 4 the ~~court~~ judge in all such cases shall be to exercise its discretion to look to and determine
 5 solely what is for the best interest of the child ~~or children~~ and what will best promote
 6 ~~their~~ the child's welfare and happiness and to make ~~its~~ his or her award accordingly.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 ~~(4)~~(5) In all custody cases in which the child has reached the age of 14 years, the child
 22 shall have the right to select the parent with whom he or she desires to live. The child's
 23 selection for purposes of custody shall be controlling presumptive unless the parent so
 24 selected is determined not to be a fit and proper person to have the custody of the child
 25 in the best interests of the child. The parental selection by a child who has reached the
 26 age of 14 may, in and of itself, constitute a material change of condition or circumstance
 27 in any action seeking a modification or change in the custody of that child; provided,
 28 however, that such selection may only be made once within a period of two years from
 29 the date of the previous selection and the best interests of the child standard shall apply.

30 ~~(4.1)~~(6) In all custody cases in which the child has reached the age of at least 11 but not
 31 14 years, the court judge shall consider the desires and educational needs of the child in
 32 determining which parent shall have custody. ~~The child's selection shall not be~~
 33 ~~controlling. The best interests of the child standard shall apply. The judge shall have~~
 34 complete discretion in making this determination, and the child's desires shall not be
 35 controlling. The judge shall further have broad discretion as to how the child's desires
 36 are to be considered, including through the report of a guardian ad litem. The best
 37 interests of the child standard shall be controlling. The parental selection of a child who

1 has reached the age of 11 but not 14 years shall not, in and of itself, constitute a material
 2 change of condition or circumstance in any action seeking a modification or change in
 3 the custody of that child. The judge may issue an order granting temporary custody to
 4 the selected parent for a trial period not to exceed six months regarding the custody of a
 5 child who has reached the age of 11 but not 14 years where the judge hearing the case
 6 determines such a temporary order is appropriate.

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

11 ~~(6)~~(7) The court judge is authorized to order a psychological custody evaluation of the
 12 family or an independent medical evaluation. In addition to the privilege afforded a
 13 witness, neither a court appointed custody evaluator nor a court appointed guardian ad
 14 litem shall be subject to civil liability resulting from any act or failure to act in the
 15 performance of his or her duties unless such act or failure to act was in bad faith.

16 (8) If requested by any party on or before the close of evidence in a contested hearing,
 17 the permanent court order awarding child custody shall set forth specific findings of fact
 18 as to the basis for the judge's decision in making an award of custody including any
 19 relevant factor relied upon by the judge as set forth in paragraph (3) of this subsection.
 20 Such order shall set forth in detail why the court awarded custody in the manner set forth
 21 in the order and, if joint legal custody is awarded, a manner in which final decision
 22 making on matters affecting the child's education, health, extracurricular activities,
 23 religion, and any other important matter shall be decided. Such order shall be filed within
 24 30 days of the final hearing in the custody case, unless extended by order of the judge
 25 with the agreement of the parties.

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

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

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

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

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

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

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

29 (g) Except as provided in Code Section 19-6-2, and in addition to the attorney's fee
30 provisions contained in Code Section 19-6-15, the judge may order reasonable attorney's
31 fees and expenses of litigation, experts, and the child's guardian ad litem and other costs
32 of the child custody action and pretrial proceedings to be paid by the parties in proportions
33 and at times determined by the judge. Attorney's fees may be awarded at both the
34 temporary hearing and the final hearing. A final judgment shall include the amount
35 granted, whether the grant is in full or on account, which may be enforced by attachment
36 for contempt of court or by writ of fieri facias, whether the parties subsequently reconcile

1 or not. An attorney may bring an action in his or her own name to enforce a grant of
 2 attorney's fees made pursuant to this subsection.

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

6 19-9-4.

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

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

29 19-9-5.

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

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

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

10 19-9-6.

11 As used in this article, the term:

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

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

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

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

30 19-9-7.

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

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

- 1 (2) Order visitation or parenting time supervised by another person or agency;
- 2 (3) Order the perpetrator of family violence to attend and complete, to the satisfaction
- 3 of the ~~court~~ judge, a certified family violence intervention program for perpetrators as
- 4 defined in Article 1A of Chapter 13 of this title as a condition of the visitation or
- 5 parenting time;
- 6 (4) Order the perpetrator of family violence to abstain from possession or consumption
- 7 of alcohol, marijuana, or any Schedule I controlled substance listed in Code Section
- 8 16-13-25 during the visitation or parenting time and for 24 hours preceding the visitation
- 9 or parenting time;
- 10 (5) Order the perpetrator of family violence to pay a fee to defray the costs of supervised
- 11 visitation or parenting time;
- 12 (6) Prohibit overnight visitation or parenting time;
- 13 (7) Require a bond from the perpetrator of family violence for the return and safety of
- 14 the child; and
- 15 (8) Impose any other condition that is deemed necessary to provide for the safety of the
- 16 child, the victim of family violence, or another family or household member.
- 17 (b) Whether or not visitation or parenting time is allowed, the ~~court~~ judge may order the
- 18 address of the child and the victim of family violence to be kept confidential.
- 19 (c) The ~~court~~ judge shall not order an adult who is a victim of family violence to attend
- 20 joint counseling with the perpetrator of family violence as a condition of receiving custody
- 21 of a child or as a condition of visitation or parenting time.
- 22 (d) If a ~~court~~ judge allows a family or household member to supervise visitation or
- 23 parenting time, the ~~court~~ judge shall establish conditions to be followed during visitation
- 24 or parenting time."

25 SECTION 6.

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, parenting time,

29 or custody. If such claims are raised in the legitimation action, the court may order, in

30 addition to legitimation, visitation, parenting time, or custody based on the best interests

31 of the child standard. In a case involving allegations of family violence, the provisions of

32 paragraph ~~(2)~~ (4) of subsection (a) of Code Section ~~19-9-1~~ 19-9-3 shall also apply."

33 SECTION 7.

34

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

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

10 SECTION 8.

11 Said chapter is further amended by inserting a new Code section to read as follows:

12 "19-5-1.1.

13 (a)(1) Except as otherwise provided in subsection (c) of this Code section, in proceedings
 14 pursuant to this chapter in which there are dependent children of the marriage who are
 15 younger than 18 years of age or in which the wife is pregnant, the court shall order the
 16 parties seeking legal separation or divorce to participate in education classes of their
 17 choice, focusing substantially on the potential impact of separation or divorce on
 18 children.

19 (2) The parties shall commence such education classes within 30 days after the filing of
 20 the answer to the petition for legal separation or divorce.

21 (3) The education classes shall be provided to parties in each judicial circuit by one or
 22 more of the following:

23 (A) A marriage and family therapist, social worker, or professional counselor licensed
 24 pursuant to Chapter 10A of Title 43 or psychologist licensed pursuant to Chapter 39 of
 25 Title 43;

26 (B) An unlicensed therapist acting under the supervision of a licensed marriage and
 27 family therapist, licensed psychologist, licensed social worker, or licensed professional
 28 counselor;

29 (C) A qualified member of the clergy; or

30 (D) A qualified person acting under the supervision of a member of the clergy.

31 (4) Persons providing the education classes may use the curriculum developed by the
 32 Georgia Board of Professional Counselors, Social Workers, and Marriage and Family
 33 Therapists or such other curriculum that focuses specially on the impact of legal
 34 separation and divorce on children.

35 (5) The education classes shall commence within 30 days after the filing of the answer
 36 to the petition for legal separation or divorce and shall consist of a minium total of four

1 hours after the filing of the answer to the petition, unless the parties reconcile prior to
2 completion of the education classes. Counseling in which the parties have participated
3 at any time within six months prior to the filing of the answer to the petition shall also
4 count toward the hourly requirements set forth in this paragraph, if such counseling
5 focused substantially on the potential impact on children of separation or divorce. The
6 parties may elect to participate in the education classes together or separately. Whether
7 the parties participate in the education classes together or separately, each party shall
8 participate for a total of four hours.

9 (6) After a party has successfully completed the education classes, the person providing
10 the education classes shall provide the participating party with a certificate of completion
11 or a letter of verification or some other written documentation indicating successful
12 completion of the education classes. The person providing education classes shall also
13 provide to the party a list of resources for mental health counseling, marital counseling,
14 child counseling, and other support services that may be available in the community to
15 the party and the party's children.

16 (7) The court shall either provide payment for indigent parties to complete the education
17 classes required by this Code section or shall waive such requirement.

18 (b) The parties may elect to attend the education classes together unless one of the
19 following circumstances exist:

20 (1) A protective order has been issued against one of the parties pursuant to Article 1 of
21 Chapter 13 of this title;

22 (2) There have been allegations of violence within the marriage; or

23 (3) One of the parties prefers to attend the education class without his or her spouse.

24 (c) The court shall not require the education classes prescribed in subsection (a) of this
25 Code section if:

26 (1) Service of process was satisfied by publication and the whereabouts of one of the
27 parties cannot be determined;

28 (2) One of the parties to the marriage at the time of the action is serving a sentence in the
29 Department of Corrections;

30 (3) The youngest child of the parties is within six months of his or her eighteenth
31 birthday;

32 (4) One of the parties to the proceeding does not live in this state; or

33 (5) The parties have been living separate and apart for more than five years.

34 (d) If the petition for legal separation or divorce is not dismissed, the costs, if any,
35 associated with the education classes required by subsection (a) of this Code section shall
36 be paid by the participating parties in accordance with each party's ability to pay, as the
37 court deems appropriate."

SECTION 9.

Said chapter is further amended by striking paragraph (13) of Code Section 19-5-3, relating to grounds for divorce, and inserting in lieu thereof the following:

"(13) The marriage is irretrievably broken. Under no circumstances shall the court grant a divorce on this ground until not less than 30 days from the date of service on the respondent and as further provided in Code Section 19-5-3.1."

SECTION 10.

Said chapter is further amended by inserting a new Code section to follow Code Section 19-5-3, relating to grounds for divorce, to read as follows:

"19-5-3.1.

(a) Except as provided in subsection (b) of this Code section, a court shall grant a divorce only after 120 days from the date of service on the respondent where the parties have children who are younger than 18 years of age.

(b) The waiting periods provided by this Code section shall be waived where either party has obtained a protective order pursuant to Article 1 of Chapter 13 of this title or where either party submits a confidential affidavit to the court for in camera inspection, a verified petition, a verified answer, or a verified responsive pleading, which alleges specific facts establishing probable cause that family violence as defined by Code Section 19-13-1 has occurred in the past."

SECTION 11.

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 12.

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