

Senate Bill 190

By: Senators Kennedy of the 18th, Ligon, Jr. of the 3rd, Cowsert of the 46th, Albers of the 56th, Stone of the 23rd and others

AS PASSED SENATE

A BILL TO BE ENTITLED

AN ACT

1 To amend Article 2 of Chapter 9 of Title 19 of the Official Code of Georgia Annotated,
2 relating to the Child Custody Intrastate Jurisdiction Act, so as to provide that a party may
3 bring a counterclaim for contempt or enforcement of a child custody order or for
4 modification of legal or physical custody in response to a complaint seeking a change of
5 legal or physical custody; to revise definitions; to provide that a party may make a
6 cross-motion or counterclaim for contempt or enforcement of a child custody order in
7 response to a motion for contempt or enforcement of a custody order; to provide for related
8 matters; to repeal conflicting laws; and for other purposes.

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

10

SECTION 1.

11 Article 2 of Chapter 9 of Title 19 of the Official Code of Georgia Annotated, relating to the
12 Child Custody Intrastate Jurisdiction Act, is amended by revising Code Section 19-9-22,
13 relating to definitions, as follows:

14 "19-9-22.

15 As used in this article, the term:

16 (1) ~~'Custody' includes visitation rights.~~ 'Legal custody' means the responsibilities for
17 major decisions concerning the child, including, but not limited to, the child's education,
18 health care, extracurricular activities, and religious training.

19 (2) ~~'Legal custodian' means a person, including, but not limited to, a parent, who has~~
20 ~~been awarded permanent custody of a child by a court order. A person who has not been~~
21 ~~awarded custody of a child by court order shall not be considered as the legal custodian~~
22 ~~while exercising visitation rights. Where custody of a child is shared by two or more~~
23 ~~persons or where the time of visitation exceeds the time of custody, that person who has~~
24 ~~the majority of time of custody or visitation shall be the legal custodian.~~ 'Physical
25 custody' means the custody schedule established for the child pursuant to Code Section
26 19-9-1, including, but not limited to, parenting time and visitation.

27 (3) ~~'Physical custodian' means a person, including, but not limited to, a parent, who is not~~
 28 ~~the 'legal custodian' of a child but who has physical custody of the child.'~~

29 **SECTION 2.**

30 Said article is further amended by revising Code Section 19-9-23, relating to actions to obtain
 31 change of legal custody, how and where brought, and use of certain complaints prohibited,
 32 as follows:

33 "19-9-23.

34 ~~(a) Except as otherwise provided in this Code section, after a court has determined who~~
 35 ~~is to be the legal custodian of a child, any complaint seeking to obtain a change of legal~~
 36 ~~custody of the child shall be brought as a separate action in the county of residence of the~~
 37 ~~legal custodian of the child.~~

38 ~~(b)(a)~~ A complaint by the legal custodian seeking a change of legal custody or visitation
 39 ~~rights~~ parenting time shall be brought as a separate action initiated in compliance with
 40 Article VI, Section II, Paragraph VI of the Constitution of this state.

41 ~~(c)(b)~~ No complaint specified in subsection (a) ~~or (b)~~ of this Code section shall be made
 42 in response to:

43 (1) ~~As a counterclaim or in any other manner in response to a~~ A petition for a writ of
 44 habeas corpus seeking to enforce a child custody order; or

45 (2) ~~In response to any~~ Any other action or motion seeking to enforce a child custody
 46 order, including, but not limited to, a motion for contempt.

47 ~~(d)(c)~~ The use of a complaint in the nature of habeas corpus seeking a change of child
 48 custody is prohibited.

49 (d) A party may make a cross-motion or counterclaim for contempt or enforcement of a
 50 custody order in response to a motion for contempt or enforcement of a custody order.

51 (e) A party may bring a counterclaim for contempt or enforcement of a custody order, or
 52 for modification of legal custody or physical custody in response to a complaint brought
 53 under subsection (a) of this Code section."

54 **SECTION 3.**

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