

House Bill 1140

By: Representatives Clark of the 108<sup>th</sup>, Jones of the 25<sup>th</sup>, Burnough of the 77<sup>th</sup>, Efstoration of the 104<sup>th</sup>, and Carson of the 46<sup>th</sup>

A BILL TO BE ENTITLED  
AN ACT

1 To amend Article 1 of Chapter 9 of Title 19 of the Official Code of Georgia Annotated,  
2 relating to general provisions regarding child custody proceedings, so as to revise the  
3 presumption in cases in which the custody of any child is at issue; to revise certain  
4 requirements and processes for the establishment and review of child custody and visitation;  
5 to provide for related matters; to repeal conflicting laws; and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 Article 1 of Chapter 9 of Title 19 of the Official Code of Georgia Annotated, relating to  
9 general provisions regarding child custody proceedings, is amended by revising subsection  
10 (a) of Code Section 19-9-3, relating to the establishment and review of child custody and  
11 visitation, as follows:

12 "(a)(1) In all cases in which the custody of any child is at issue between the parents, there  
13 shall be no prima-facie right to the custody of the child in the father or mother a  
14 presumption, rebuttable by clear and convincing evidence to the contrary, that a child's  
15 interests are best served by equal or approximately equal parenting time with each parent.  
16 Alternative forms of custody may be considered by the judge at either a temporary or  
17 permanent hearing in the event that there is a finding that clear and convincing evidence  
18 exists that either parent is not fit, willing, or able to participate in such an arrangement.  
19 ~~There shall be no presumption in favor of any particular form of custody, legal or~~  
20 ~~physical, nor in favor of either parent. Joint custody may be considered as an alternative~~  
21 ~~form of custody by the judge and the judge at any temporary or permanent hearing may~~  
22 ~~grant sole custody, joint custody, joint legal custody, or joint physical custody as~~  
23 ~~appropriate.~~

24 (2) The judge hearing the issue of custody shall make a determination of custody of a  
25 child and such matter shall not be decided by a jury. The judge may take into  
26 consideration all the circumstances of the case, including the improvement of the health

27 of the party seeking a change in custody provisions, in determining to whom custody of  
 28 the child should be awarded. The duty of the judge in all such cases shall be to exercise  
 29 discretion to look to and determine solely what is for the best interest of the child and  
 30 what will best promote the child's welfare and happiness and to make his or her award  
 31 accordingly.

32 (3) In determining the best interests of the child, the judge ~~may consider any relevant~~  
 33 ~~factor~~ shall enter facts, findings, and conclusions of law regarding every factor considered  
 34 by the court in making a custody decision, including, but not limited to:

- 35 (A) The love, affection, bonding, and emotional ties existing between each parent and  
 36 the child;
- 37 (B) The love, affection, bonding, and emotional ties existing between the child and his  
 38 or her siblings, half siblings, and stepsiblings and the residence of such other children;
- 39 (C) The capacity and disposition of each parent to give the child love, affection, and  
 40 guidance and to continue the education and rearing of the child;
- 41 (D) Each parent's knowledge and familiarity of the child and the child's needs;
- 42 (E) The capacity and disposition of each parent to provide the child with food,  
 43 clothing, medical care, day-to-day needs, and other necessary basic care, ~~with~~  
 44 ~~consideration made for the potential payment of child support by the other parent~~;
- 45 (F) The home environment of each parent considering the promotion of nurturance and  
 46 safety of the child rather than superficial or material factors;
- 47 (G) The importance of continuity in the child's life and the length of time the child has  
 48 lived in a stable, satisfactory environment and the desirability of maintaining  
 49 continuity;
- 50 (H) The stability of the family unit of each of the parents and the presence or absence  
 51 of each parent's support systems within the community to benefit the child;
- 52 (I) The mental and physical health of each parent, except to the extent as provided in  
 53 Code Section 30-4-5 and paragraph (3) of subsection (a) of Code Section 19-9-3 and  
 54 such factors as provided in Code Section 15-11-26;
- 55 (J) Each parent's involvement, or lack thereof, in the child's educational, social, and  
 56 extracurricular activities;
- 57 (K) Each parent's employment schedule and the related flexibility or limitations, if any,  
 58 of a parent to care for the child;
- 59 (L) The home, school, and community record and history of the child, as well as any  
 60 health or educational special needs of the child;
- 61 (M) Each parent's past performance and relative abilities for future performance of  
 62 parenting responsibilities;

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

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

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

69 (Q) Any evidence of substance abuse by either parent; and

70 (R) The desires of the child if such child is of appropriate age and discretion.

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

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

76 (B) The judge shall consider the perpetrator's history of causing physical harm, bodily  
 77 injury, assault, or causing reasonable fear of physical harm, bodily injury, or assault to  
 78 another person;

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

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

87 ~~(5) In all custody cases in which the child has reached the age of 14 years, the child shall~~  
 88 ~~have the right to select the parent with whom he or she desires to live. The child's~~  
 89 ~~selection for purposes of custody shall be presumptive unless the parent so selected is~~  
 90 ~~determined not to be in the best interests of the child. The parental selection by a child~~  
 91 ~~who has reached the age of 14 may, in and of itself, constitute a material change of~~  
 92 ~~condition or circumstance in any action seeking a modification or change in the custody~~  
 93 ~~of that child; provided, however, that such selection may only be made once within a~~  
 94 ~~period of two years from the date of the previous selection and the best interests of the~~  
 95 ~~child standard shall apply.~~

96 ~~(6) In all custody cases in which the child has reached the age of 11 but not 14 years, the~~  
 97 ~~judge shall consider the desires and educational needs of the child in determining which~~  
 98 ~~parent shall have custody. The judge shall have complete discretion in making this~~  
 99 ~~determination, and the child's desires shall not be controlling. The judge shall further~~

100 ~~have broad discretion as to how the child's desires are to be considered, including through~~  
 101 ~~the report of a guardian ad litem. The best interests of the child standard shall be~~  
 102 ~~controlling. The parental selection of a child who has reached the age of 11 but not 14~~  
 103 ~~years shall not, in and of itself, constitute a material change of condition or circumstance~~  
 104 ~~in any action seeking a modification or change in the custody of that child. The judge~~  
 105 ~~may issue an order granting temporary custody to the selected parent for a trial period not~~  
 106 ~~to exceed six months regarding the custody of a child who has reached the age of 11 but~~  
 107 ~~not 14 years where the judge hearing the case determines such a temporary order is~~  
 108 ~~appropriate.~~

109 ~~(7)~~(5) The judge is authorized to order a psychological custody evaluation of the family  
 110 or an independent medical evaluation. In addition to the privilege afforded a witness,  
 111 neither a court appointed custody evaluator nor a court appointed guardian ad litem shall  
 112 be subject to civil liability resulting from any act or failure to act in the performance of  
 113 his or her duties unless such act or failure to act was in bad faith.

114 ~~(8)~~(6) Any temporary or ~~If requested by any party on or before the close of evidence in~~  
 115 ~~a contested hearing, the~~ permanent court order awarding child custody shall set forth  
 116 specific findings of fact as to the basis for the judge's decision in making an award of  
 117 custody including any relevant factor relied upon by the judge as set forth in  
 118 paragraph (3) of this subsection. Such order shall set forth in detail why the court  
 119 awarded custody in the manner set forth in the order and, if joint legal custody is  
 120 awarded, a manner in which final decision making on matters affecting the child's  
 121 education, health, extracurricular activities, religion, and any other important matter shall  
 122 be decided. Such order shall be filed within 30 days of the final hearing in the custody  
 123 case, unless extended by order of the judge with the agreement of the parties."

124

## SECTION 2.

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