

Georgia Custody Statutes Sections

OFFICIAL CODE OF GEORGIA ANNOTATED

*** Code Current Through October 3, 2008 ***

TITLE 19. DOMESTIC RELATIONS CHAPTER 9. CHILD CUSTODY PROCEEDINGS ARTICLE 1. GENERAL PROVISIONS

O.C.G.A. § 19-9-1 (2008)

§ 19-9-1. Parenting plans; requirements for plan

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

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

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

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

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

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

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

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

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

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

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

(E) An allocation of decision-making authority to one or both of the parents with regard

to the child's education, health, extracurricular activities, and religious upbringing, and if the parents agree the matters should be jointly decided, how to resolve a situation in which the parents disagree on resolution; and

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

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

HISTORY: Orig. Code 1863, § 1685; Code 1868, § 1728; Code 1873, § 1733; Code 1882, § 1733; Civil Code 1895, § 2452; Civil Code 1910, § 2971; Code 1933, § 30-127; Ga. L. 1957, p. 412, § 1; Ga. L. 1962, p. 713, § 1; Ga. L. 1976, p. 1050, § 1; Ga. L. 1978, p. 258, § 2; Ga. L. 1983, p. 632, § 1; Ga. L. 1984, p. 22, § 19; Ga. L. 1986, p. 1000, § 1; Ga. L. 1986, p. 1036, § 1; Ga. L. 1988, p. 1368, § 1; Ga. L. 1992, p. 1656, § 1; Ga. L. 1995, p. 863, § 5; Ga. L. 1999, p. 329, § 3; Ga. L. 2000, p. 1292, § 1; Ga. L. 007, p. 554, § 5/HB 369.

NOTES:

THE 2007 AMENDMENT, effective January 1, 2008, rewrote this Code section.

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TITLE 19. DOMESTIC RELATIONS
CHAPTER 9. CHILD CUSTODY PROCEEDINGS
ARTICLE 1. GENERAL PROVISIONS

O.C.G.A. § 19-9-3 (2008)

§ 19-9-3. Discretion of judge in custody disputes; right of child 14 years old or older to select custodial parent; consideration of child's educational needs; review of visitation rights; grandparent visitation; policy; retention of jurisdiction; attorney's fees; filing of domestic relations final disposition form

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) In all custody cases in which the child has reached the age of 14 years, the child shall have the right to select the parent with whom he or she desires to live. The child's selection for purposes of custody shall be presumptive unless the parent so selected is determined not to be in the best interests of the child. The parental selection by a child who has reached the age of 14

may, in and of itself, constitute a material change of condition or circumstance in any action seeking a modification or change in the custody of that child; provided, however, that such selection may only be made once within a period of two years from the date of the previous selection and the best interests of the child standard shall apply.

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

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

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

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

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

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

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

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

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

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

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

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

HISTORY: Ga. L. 1913, p. 110, § 1; Code 1933, § 74-107; Ga. L. 1957, p. 412, § 2; Ga. L. 1962, p. 713, § 2; Ga. L. 1976, p. 1050, § 3; Ga. L. 1978, p. 258, § 3; Ga. L. 1982, p. 3, § 19; Ga. L. 1984, p. 22, § 19; Ga. L. 1986, p. 1000, § 2; Ga. L. 1990, p. 1423, § 1; Ga. L. 1991, p. 1389, § 1; Ga. L. 1993, p. 1983, § 1; Ga. L. 1995, p. 863, § 6; Ga. L. 1999, p. 329, § 4; Ga. L. 2000, p. 1292, § 2; Ga. L. 2004, p. 780, § 3; Ga. L. 2007, p. 554, § 5/ HB 369.

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TITLE 19. DOMESTIC RELATIONS
CHAPTER 9. CHILD CUSTODY PROCEEDINGS
ARTICLE 2. CHILD CUSTODY INTRASTATE JURISDICTION ACT

O.C.G.A. § 19-9-23 (2008)

§ 19-9-23. Actions to obtain change of legal custody; how and where brought; use of certain complaints prohibited

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

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

(c) No complaint specified in subsection (a) or (b) of this Code section shall be made:

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

(2) In response to any other action or motion seeking to enforce a child custody order.

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

HISTORY: Ga. L. 1978, p. 1957, § 4; Ga. L. 1983, p. 3, § 52.