

House Bill 497

By: Representatives Efration of the 104th, Willard of the 51st, Prince of the 127th, Abrams of the 89th, and Lumsden of the 12th

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 6 of Chapter 11 of Title 15 of the Official Code of Georgia Annotated,
2 relating to delinquency, so as to automatically extend the period for filing a petition for
3 delinquency when informal adjustment or other nonadjudicatory procedures are being used,
4 until such informal adjustment or procedures have failed; to amend Title 19 of the Official
5 Code of Georgia Annotated, relating to domestic relations, so as to provide for de facto
6 custodians custody arrangements; to provide for joint child custody arrangements between
7 a parent and a de facto custodian of a child; to provide for de facto custodian visitation rights;
8 to provide that a court may determine that an award of joint custody with a parent and a de
9 facto custodian is for the best interest of a child or children and will best protect the child's
10 health or welfare where parental decisions would otherwise result in harm to the child; to
11 provide for and revise definitions; to revise procedures concerning investigation of abuse,
12 neglect, or other acts which adversely affect the health of a child in a custody dispute to
13 account for the home environment of a de facto custodian who is a party in such custody
14 dispute; to revise procedures for presenting to the judge a child custody agreement to account
15 for such agreement between a parent and a de facto custodian; to provide for related matters;
16 to provide for an effective date; to repeal conflicting laws; and for other purposes.

17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

18 **SECTION 1.**

19 Article 6 of Chapter 11 of Title 15 of the Official Code of Georgia Annotated, relating to
20 delinquency, is amended by revising paragraph (1) of subsection (c) of Code Section
21 15-11-472, relating to delinquency case time limitations, as follows:

22 "(1) Any petition alleging delinquency shall be filed within 30 days of the filing of the
23 complaint or within 30 days after such child is released from preadjudication custody;
24 provided, however, that when informal adjustment or other nonadjudicatory procedures
25 are being utilized in accordance with Code Section 15-11-515, such 30 day period shall
26 not commence until such informal adjustment or nonadjudicatory procedure has failed.

27 If a complaint was not filed, the complaint shall be filed within the statute of limitations
28 as provided by Chapter 3 of Title 17;"

29 **SECTION 2.**

30 Said article is further amended by revising subsection (d) of Code Section 15-11-510,
31 relating to intake and informal adjustment, as follows:

32 "(d) If a case is to be prosecuted further and handled other than by informal adjustment or
33 other nonadjudicatory procedure, a referral shall be made to the prosecuting attorney and
34 a petition for delinquency shall be filed within 30 days of the filing of a complaint;
35 provided, however, that when informal adjustment or other nonadjudicatory procedures are
36 being utilized in accordance with Code Section 15-11-515, such 30 day period shall not
37 commence until such informal adjustment or nonadjudicatory procedure has failed."

38 **SECTION 3.**

39 Said article is further amended by revising subsection (b) of Code Section 15-11-521,
40 relating to the time limitations for filing a delinquency petition, as follows:

41 "(b) If a child is not in detention prior to adjudication, a petition alleging delinquency shall
42 be filed within 30 days of the filing of the complaint alleging violation of a criminal law
43 or within 30 days of such child's release pursuant to a determination that detention is not
44 warranted; provided, however, that when informal adjustment or other nonadjudicatory
45 procedures are being utilized in accordance with Code Section 15-11-515, such 30 day
46 period shall not commence until such informal adjustment or nonadjudicatory procedure
47 has failed. Upon a showing of good cause and notice to all parties, the court may grant an
48 extension of time for filing a petition alleging delinquency. The court shall issue a written
49 order reciting the facts justifying any extension."

50 **SECTION 4.**

51 Said article is further amended by revising subsection (d) of Code Section 15-11-560,
52 relating to concurrent and original jurisdiction of superior court, as follows:

53 "(d) At any time before indictment, the district attorney may, after investigation and for
54 cause, decline prosecution in the superior court of a child 13 to 17 years of age alleged to
55 have committed an offense specified in subsection (b) of this Code section. Upon declining
56 such prosecution in the superior court, the district attorney shall cause a petition to be filed
57 in the appropriate juvenile court for adjudication within 72 hours if the child is in detention
58 or 30 days if the child is not in detention; provided, however, that when informal
59 adjustment or other nonadjudicatory procedures are being utilized in accordance with Code
60 Section 15-11-515, such 30 day period shall not commence until such informal adjustment

61 or nonadjudicatory procedure has failed. Except as provided in paragraph (8) of subsection
 62 (b) of Code Section 15-11-602, any case transferred by the district attorney to the juvenile
 63 court pursuant to this subsection shall be subject to the class A designated felony act
 64 provisions of Code Section 15-11-602, and the transfer of the case from superior court to
 65 juvenile court shall constitute notice to such child that such case is subject to the class A
 66 designated felony act provisions of Code Section 15-11-602."

67 **SECTION 5.**

68 Title 19 of the Official Code of Georgia Annotated, relating to domestic relations, is
 69 amended in Code Section 19-7-1, relating to in whom parental power lies, how such power
 70 lost, and recovery for homicide of child, by revising subsection (b.1) as follows:

71 "(b.1) Notwithstanding subsections (a) and (b) of this Code section or any other law to the
 72 contrary, in any action involving the custody of a child between the parents or either parent
 73 and a third party limited to grandparent, great-grandparent, aunt, uncle, great aunt, great
 74 uncle, sibling, ~~or~~ adoptive parent, or de facto custodian, parental power may be lost by the
 75 parent, parents, or any other person if the court hearing the issue of custody, in the exercise
 76 of its sound discretion and taking into consideration all the circumstances of the case,
 77 determines that an award of custody to such third party is for the best interest of the child
 78 or children and will best promote their welfare and happiness; provided, however, that in
 79 any action involving the custody of a child between a parent and a de facto custodian as
 80 provided for in Code Section 19-9-3.1, the court may determine that an award of joint
 81 custody with such parent and such de facto custodian is for the best interest of the child or
 82 children and will best protect the child's health or welfare where parental decisions would
 83 otherwise result in harm to the child. Except as provided for in Code Section 19-9-3, there
 84 ~~There~~ shall be a rebuttable presumption that it is in the best interest of the child or children
 85 for custody to be awarded to the parent or parents of such child or children, but this
 86 presumption may be overcome by a showing that an award of custody, or joint custody as
 87 provided for by law, to such third party is in the best interest of the child or children. The
 88 sole issue for determination in any such case shall be what is in the best interest of the child
 89 or children. As used in this subsection, the term 'de facto custodian' shall have the same
 90 meaning as provided for in Code Section 19-7-3."

91 **SECTION 6.**

92 Said title is further amended by revising Code Section 19-7-3, relating to actions by
 93 grandparents or other family members for visitation rights or intervention, revocation or
 94 amendment of visitation rights, appointment of guardian ad litem, mediation, hearing, and
 95 notification to family members of child's participation in events, as follows:

96 "19-7-3.

97 (a) As used in this Code section, the term:

98 (1) 'De facto custodian' means an individual who has shown by clear and convincing
 99 evidence to have accepted full and permanent responsibilities of a child as if he or she
 100 were a parent of the child without expectation of financial compensation for the child and
 101 where the child:

102 (A) Has resided with such individual for a period of six months or more, if the child
 103 is under three years of age; or

104 (B) Has resided with such individual for a period of one year or more, if the child is
 105 three years of age or older; and

106 (C) Has developed a bonded and dependent relationship with such individual where
 107 such relationship has been fostered or supported by either parent of the child;

108 provided, however, that any period of time after a legal proceeding has been commenced
 109 by a parent seeking to regain custody of the child shall not be included in determining
 110 whether the child has resided with such individual for the required minimum period of
 111 time.

112 (1) 'Family member' means a grandparent, great-grandparent, or sibling, or de facto
 113 custodian.

114 (2) 'Grandparent' means the parent of a parent of a minor child, the parent of a minor
 115 child's parent who has died, and the parent of a minor child's parent whose parental rights
 116 have been terminated.

117 (3) 'Great-grandparent' means the parent of the parent of a parent of a minor child, the
 118 parent of the parent of a minor child's parent who has died, and the parent of the parent
 119 of a minor child's parent whose parental rights have been terminated.

120 (4) 'Sibling' means the brother or sister of a parent of a minor child, the brother or sister
 121 of a minor child's parent who has died, and the brother or sister of a minor child's parent
 122 whose parental rights have been terminated.

123 (b)(1) Except as otherwise provided in paragraph (2) of this subsection:

124 (A) Any grandparent or de facto custodian shall have the right to file an original action
 125 for visitation rights to a minor child; and

126 (B) Any family member shall have the right to intervene in and seek to obtain
 127 visitation rights in any action in which any court in this state shall have before it any
 128 question concerning the custody of a minor child, a divorce of the parents or a parent
 129 of such minor child, a termination of the parental rights of either parent of such minor
 130 child, or visitation rights concerning such minor child or whenever there has been an
 131 adoption in which the adopted child has been adopted by the child's blood relative or
 132 by a stepparent, notwithstanding the provisions of Code Section 19-8-19.

133 (2) This subsection shall not authorize an original action when the parents of the minor
134 child are not separated and the child is living with both parents.

135 (c)(1) Upon the filing of an original action or upon intervention in an existing proceeding
136 under subsection (b) of this Code section, the court may grant any family member of the
137 child reasonable visitation rights if the court finds by clear and convincing evidence that
138 the health or welfare of the child would be harmed unless such visitation is granted and
139 if the best interests of the child would be served by such visitation. The mere absence of
140 an opportunity for a child to develop a relationship with a family member shall not be
141 considered as harming the health or welfare of the child when there is no substantial
142 preexisting relationship between the child and such family member. In considering
143 whether the health or welfare of the child would be harmed without such visitation, the
144 court shall consider and may find that harm to the child is reasonably likely to result
145 when, prior to the original action or intervention:

146 (A) The minor child resided with the family member for six months or more;

147 (B) The family member provided financial support for the basic needs of the child for
148 at least one year;

149 (C) There was an established pattern of regular visitation or child care by the family
150 member with the child; or

151 (D) Any other circumstance exists indicating that emotional or physical harm would
152 be reasonably likely to result if such visitation is not granted.

153 The court shall make specific written findings of fact in support of its rulings.

154 (2) An original action requesting visitation rights shall not be filed by any grandparent
155 or de facto custodian more than once during any two-year period and shall not be filed
156 during any year in which another custody action has been filed concerning the child.
157 After visitation rights have been granted to any grandparent or de facto custodian, the
158 legal custodian, guardian of the person, or parent of the child may petition the court for
159 revocation or amendment of such visitation rights, for good cause shown, which the
160 court, in its discretion, may grant or deny; but such a petition shall not be filed more than
161 once in any two-year period.

162 (3) While a parent's decision regarding family member visitation shall be given
163 deference by the court, the parent's decision shall not be conclusive when failure to
164 provide family member contact would result in emotional harm to the child. A court may
165 presume that a child who is denied any contact with his or her family member or who is
166 not provided some minimal opportunity for contact with his or her family member when
167 there is a preexisting relationship between the child and such family member may suffer
168 emotional injury that is harmful to such child's health. Such presumption shall be a
169 rebuttable presumption.

- 170 (4) In no case shall the granting of visitation rights to a family member interfere with a
 171 child's school or regularly scheduled extracurricular activities.
- 172 (5) Visitation time awarded to a family member shall not be less than 24 hours in any
 173 one-month period; provided, however, that when more than one individual seeks
 174 visitation under this Code section, the court shall determine the amount of time to award
 175 to each petitioner which shall not be less than 24 hours in any one-month period in the
 176 aggregate.
- 177 (d) Notwithstanding the provisions of subsections (b) and (c) of this Code section, if one
 178 of the parents of a minor child dies, is incapacitated, or is incarcerated, the court may award
 179 the parent of the deceased, incapacitated, or incarcerated parent of such minor child
 180 reasonable visitation to such child during his or her minority if the court in its discretion
 181 finds that such visitation would be in the best interests of the child. The custodial parent's
 182 judgment as to the best interests of the child regarding visitation shall be given deference
 183 by the court but shall not be conclusive.
- 184 (e) If the court finds that the family member can bear the cost without unreasonable
 185 financial hardship, the court, at the sole expense of the petitioning family member, may:
- 186 (1) Appoint a guardian ad litem for the minor child; and
 187 (2) Assign the issue of visitation rights of a family member for mediation.
- 188 (f) In the event that the court does not order mediation or upon failure of the parties to
 189 reach an agreement through mediation, the court shall fix a time for the hearing of the issue
 190 of visitation rights of the family member.
- 191 (g) Whether or not visitation is awarded to a family member, the court may direct a
 192 custodial parent, by court order, to notify such family member of every performance of the
 193 minor child to which the public is admitted, including, but not limited to, musical concerts,
 194 graduations, recitals, and sporting events or games.
- 195 (h) When more than one family member files an action pursuant to this Code section, the
 196 court shall determine the priority of such actions."

197 **SECTION 7.**

198 Said title is further amended by revising Code Section 19-9-3, relating to discretion of judge
 199 in custody disputes, right of child 14 years old or older to select custodial parent,
 200 consideration of child's educational needs, review of visitation rights, grandparent visitation,
 201 policy, retention of jurisdiction, attorney's fees, filing of domestic relations final disposition
 202 form, and application to military parents, as follows:

203 "19-9-3.

204 (a)(.1) As used in this subsection, the term:

205 (A) 'De facto custodian' shall have the same meaning as provided for in Code Section
 206 19-7-3.

207 (B) 'Party' means an individual provided for in paragraph (1) of this subsection.

208 (1) In all cases in which the custody of any child is at issue between the parents or, as
 209 provided for in Code Section 19-9-3.1, between a parent and a de facto custodian, there
 210 shall be no prima-facie right to the custody of the child in the father, ~~or~~ mother, or de
 211 facto custodian. There shall be no presumption in favor of any particular form of
 212 custody, legal or physical, nor in favor of ~~either parent~~ any of such individuals. Joint
 213 custody may be considered as an alternative form of custody by the judge, and the judge
 214 at any temporary or permanent hearing may grant sole custody; to any one of such
 215 individuals or joint custody, joint legal custody, or joint physical custody between the
 216 parents or a parent and a de facto custodian as appropriate.

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

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

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

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

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

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

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

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

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

- 242 (H) The stability of the family unit of each ~~of the parents~~ party and the presence or
 243 absence of each ~~parent's~~ party's support systems within the community to benefit the
 244 child;
- 245 (I) The mental and physical health of each ~~parent~~ party;
- 246 (J) Each ~~parent's~~ party's involvement, or lack thereof, in the child's educational, social,
 247 and extracurricular activities;
- 248 (K) Each ~~parent's~~ party's employment schedule and the related flexibility or limitations,
 249 if any, of a ~~parent~~ party to care for the child;
- 250 (L) The home, school, and community record and history of the child, as well as any
 251 health or educational special needs of the child;
- 252 (M) Each ~~parent's~~ party's past performance and relative abilities for future performance
 253 of parenting custodial responsibilities;
- 254 (N) The willingness and ability of each ~~of the parents~~ party to facilitate and encourage
 255 a close and continuing parent-child relationship between the child and his or her other
 256 parent or parents ~~the other parent~~, consistent with the best interest of the child;
- 257 (O) Any recommendation by a court appointed custody evaluator or guardian ad litem;
- 258 (P) Any evidence of family violence or sexual, mental, or physical child abuse or
 259 criminal history of ~~either parent~~ each party; and
- 260 (Q) Any evidence of substance abuse by ~~either parent~~ each party.
- 261 (4) In addition to other factors that a judge may consider in a proceeding in which the
 262 custody of a child or visitation or parenting time by a parent is at issue and in which the
 263 judge has made a finding of family violence:
- 264 (A) The judge shall consider as primary the safety and well-being of the child and of
 265 the parent who is the victim of family violence;
- 266 (B) The judge shall consider the perpetrator's history of causing physical harm, bodily
 267 injury, assault, or causing reasonable fear of physical harm, bodily injury, or assault to
 268 another person;
- 269 (C) If a parent is absent or relocates because of an act of domestic violence by the other
 270 parent, such absence or relocation for a reasonable period of time in the circumstances
 271 shall not be deemed an abandonment of the child for the purposes of custody
 272 determination; and
- 273 (D) The judge shall not refuse to consider relevant or otherwise admissible evidence
 274 of acts of family violence merely because there has been no previous finding of family
 275 violence. The judge may, in addition to other appropriate actions, order supervised
 276 visitation or parenting time pursuant to Code Section 19-9-7.
- 277 (5) In all custody cases in which the child has reached the age of 14 years, the child shall
 278 have the right to select ~~the parent~~ an individual as provided for in paragraph (1) of this

279 subsection with whom he or she desires to live. The child's selection for purposes of
280 custody shall be presumptive unless the ~~parent party~~ parent individual so selected is determined
281 not to be in the best interests of the child. The ~~parental~~ custodial selection by a child who
282 has reached the age of 14 may, in and of itself, constitute a material change of condition
283 or circumstance in any action seeking a modification or change in the custody of that
284 child; provided, however, that such selection may only be made once within a period of
285 two years from the date of the previous selection and the best interests of the child
286 standard shall apply.

287 (6) In all custody cases in which the child has reached the age of 11 but not 14 years, the
288 judge shall consider the desires and educational needs of the child in determining which
289 parent individual as provided for in paragraph (1) of this subsection shall have custody.
290 The judge shall have complete discretion in making this determination, and the child's
291 desires shall not be controlling. The judge shall further have broad discretion as to how
292 the child's desires are to be considered, including through the report of a guardian ad
293 litem. The best interests of the child standard shall be controlling. The ~~parental~~ custodial
294 selection of a child who has reached the age of 11 but not 14 years shall not, in and of
295 itself, constitute a material change of condition or circumstance in any action seeking a
296 modification or change in the custody of that child. The judge may issue an order
297 granting temporary custody to the selected parent individual for a trial period not to
298 exceed six months regarding the custody of a child who has reached the age of 11 but not
299 14 years where the judge hearing the case determines such a temporary order is
300 appropriate.

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

306 (8) If requested by any party on or before the close of evidence in a contested hearing,
307 the permanent court order awarding child custody shall set forth specific findings of fact
308 as to the basis for the judge's decision in making an award of custody including any
309 relevant factor relied upon by the judge as set forth in paragraph (3) of this subsection.
310 Such order shall set forth in detail why the court awarded custody in the manner set forth
311 in the order and, if joint legal custody is awarded, a manner in which final decision
312 making on matters affecting the child's education, health, extracurricular activities,
313 religion, and any other important matter shall be decided. Such order shall be filed within
314 30 days of the final hearing in the custody case, unless extended by order of the judge
315 with the agreement of the parties.

316 (b) In any case in which a judgment awarding the custody of a child has been entered, on
 317 the motion of any party or on the motion of the judge, that portion of the judgment
 318 effecting visitation rights between ~~the parties~~ any of the individuals provided for under
 319 paragraph (1) of subsection (a) of this Code section and ~~their~~ the child or parenting time
 320 may be subject to review and modification or alteration without the necessity of any
 321 showing of a change in any material conditions and circumstances of ~~either party~~ any of
 322 such individuals or the child, provided that the review and modification or alteration shall
 323 not be had more often than once in each two-year period following the date of entry of the
 324 judgment. However, this subsection shall not limit or restrict the power of the judge to
 325 enter a judgment relating to the custody of a child in any new proceeding based upon a
 326 showing of a change in any material conditions or circumstances of ~~a party~~ any of such
 327 individuals or the child. A military parent's absences caused by the performance of his or
 328 her deployments, or the potential for future deployments, shall not be the sole factor
 329 considered in supporting a claim of any change in material conditions or circumstances of
 330 ~~either party~~ any of such individuals or the child; provided, however, that the court may
 331 consider evidence of the effect of a deployment in assessing a claim of any change in
 332 material conditions or circumstances of ~~either party~~ any of such individuals or the child.

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

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

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

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

347 (2) In any case in which visitation rights or parenting time has been provided to ~~the~~
 348 ~~noncustodial parent~~ any other individual and the court orders that the ~~custodial parent~~
 349 individual awarded custody provide notice of a change in address of the place for pickup
 350 and delivery of the child for visitation or parenting time, the ~~custodial parent~~ individual
 351 awarded custody shall notify the ~~noncustodial parent~~ other individual, in writing, of any
 352 change in such address. Such written notification shall provide a street address or other

353 description of the new location for pickup and delivery so that the ~~noncustodial parent~~
 354 other individual may exercise ~~such parent's~~ his or her visitation rights or parenting time.

355 (3) Except where otherwise provided by court order, in any case under this subsection
 356 in which a ~~parent~~ an individual awarded custody or an individual not awarded custody
 357 changes his or her residence, he or she must give notification of such change to the other
 358 parent individual or individuals who were party to the judgment that awarded the custody
 359 of the child and, if the ~~parent~~ parent individual changing residence is the ~~custodial parent~~
 360 individual awarded custody, to any other ~~person~~ individual granted visitation rights or
 361 parenting time under this title or a court order. Such notification shall be given at least
 362 30 days prior to the anticipated change of residence and shall include the full address of
 363 the new residence.

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

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

377 (i) Notwithstanding other provisions of this article, whenever a military parent is deployed,
 378 the following shall apply:

379 (1) A court shall not enter a final order modifying ~~parental~~ custodial rights and
 380 responsibilities under an existing parenting plan earlier than 90 days after the deployment
 381 ends, unless such modification is agreed to by the deployed parent;

382 (2) Upon a petition to establish or modify an existing parenting plan being filed by a
 383 deploying parent or nondeploying parent, the court shall enter a temporary modification
 384 order for the parenting plan to ensure contact with the child during the period of
 385 deployment when:

386 (A) A military parent receives formal notice from military leadership that he or she will
 387 deploy in the near future, and such parent has primary physical custody, joint physical
 388 custody, or sole physical custody of a child, or otherwise has parenting time with a
 389 child under an existing parenting plan; and

390 (B) The deployment will have a material effect upon a deploying parent's ability to
391 exercise parental rights and responsibilities toward his or her child either in the existing
392 relationship with the other parent or individual or under an existing parenting plan;

393 (3) Petitions for temporary modification of an existing parenting plan because of a
394 deployment shall be heard by the court as expeditiously as possible and shall be a priority
395 on the court's calendar;

396 (4)(A) All temporary modification orders for parenting plans shall include a reasonable
397 and specific transition schedule to facilitate a return to the predeployment parenting
398 plan over the shortest reasonable time period after the deployment ends, based upon the
399 child's best interest.

400 (B) Unless the court determines that it would not be in the child's best interest, a
401 temporary modification order for a parenting plan shall set a date certain for the
402 anticipated end of the deployment and the start of the transition period back to the
403 predeployment parenting plan. If a deployment is extended, the temporary modification
404 order for a parenting plan shall remain in effect, and the transition schedule shall take
405 effect at the end of the extension of the deployment. Failure of the nondeploying parent
406 to notify the court in accordance with this paragraph shall not prejudice the deploying
407 parent's right to return to the predeployment parenting plan once the temporary
408 modification order for a parenting plan expires as provided in subparagraph (C) of this
409 paragraph.

410 (C) A temporary modification order for a parenting plan shall expire upon the
411 completion of the transition period, and the predeployment parenting plan shall
412 establish the rights and responsibilities between ~~parents~~ the deploying parent and the
413 nondeploying parent for the child;

414 (5) Upon a petition to modify an existing parenting plan being filed by a deploying
415 parent and upon a finding that it serves the best interest of the child, the court may
416 delegate for the duration of the deployment any portion of such deploying parent's
417 parenting time with the child to anyone in his or her extended family, including but not
418 limited to an immediate family member, ~~a person~~ an individual with whom the deploying
419 parent cohabits, or another ~~person~~ individual having a close and substantial relationship
420 to the child. Such delegated parenting time shall not create any separate rights to such
421 ~~person~~ individual once the period of deployment has ended;

422 (6) If the court finds it to be in the child's best interest, a temporary modification order
423 for a parenting plan issued under this subsection may require any of the following:

424 (A) The nondeploying parent make the child reasonably available to the deploying
425 parent to exercise his or her parenting time immediately before and after the deploying

426 parent departs for deployment and whenever the deploying parent returns to or from
427 leave or furlough from his or her deployment;

428 (B) The nondeploying parent facilitate opportunities for the deployed parent to have
429 regular and continuing contact with his or her child by telephone, e-mail exchanges,
430 virtual video parenting time through the Internet, or any other similar means;

431 (C) The nondeploying parent not interfere with the delivery of correspondence or
432 packages between the deployed parent and child of such parent; and

433 (D) The deploying parent provide timely information regarding his or her leave and
434 departure schedule to the nondeploying parent;

435 (7) Because actual leave from a deployment and departure dates for a deployment are
436 subject to change with little notice due to military necessity, such changes shall not be
437 used by the nondeploying parent to prevent contact between the deployed parent and his
438 or her child;

439 (8) A court order temporarily modifying an existing parenting plan or other order
440 governing parent-child rights and responsibilities shall specify when a deployment is the
441 basis for such order and it shall be entered by the court only as a temporary modification
442 order or interlocutory order;

443 (9) A relocation by a nondeploying parent during a period of a deployed parent's absence
444 and occurring during the period of a temporary modification order for a parenting plan
445 shall not act to terminate the exclusive and continuing jurisdiction of the court for
446 purposes of later determining custody or parenting time under this chapter;

447 (10) A court order temporarily modifying an existing parenting plan or other order shall
448 require the nondeploying parent to provide the court and the deploying parent with not
449 less than 30 days' advance written notice of any intended change of residence address,
450 telephone numbers, or e-mail address;

451 (11) Upon a deployed parent's final return from deployment, either parent may file a
452 petition to modify the temporary modification order for a parenting plan on the grounds
453 that compliance with such order will result in immediate danger or substantial harm to
454 the child, and may further request that the court issue an ex parte order. The deployed
455 parent may file such a petition prior to his or her return. Such petition shall be
456 accompanied by an affidavit in support of the requested order. Upon a finding of
457 immediate danger or substantial harm to the child based on the facts set forth in the
458 affidavit, the court may issue an ex parte order modifying the temporary parenting plan
459 or other parent-child contact in order to prevent immediate danger or substantial harm to
460 the child. If the court issues an ex parte order, the court shall set the matter for hearing
461 within ten days from the issuance of the ex parte order;

462 (12) Nothing in this subsection shall preclude either party from filing a petition for
463 permanent modification of an existing parenting plan under subsection (b) of this Code
464 section; provided, however, that the court shall not conduct a final hearing on such
465 petition until at least 90 days after the final return of the deploying parent. There shall
466 exist a presumption favoring the predeployment parenting plan or custody order as one
467 that still serves the best interest of the child, and the party seeking to permanently modify
468 such plan or order shall have the burden to prove that it no longer serves the best interest
469 of the child;

470 (13) When the deployment of a military parent has a material effect upon his or her
471 ability to appear in person at a scheduled hearing, then upon request by the deploying
472 parent and provided reasonable advance notice is given to other interested parties, the
473 court may allow a deployed parent to present testimony and other evidence by electronic
474 means for any matter considered by the court under this subsection. For purposes of this
475 paragraph, the term 'electronic means' shall include, but not be limited to,
476 communications by telephone, video teleconference, Internet connection, or
477 electronically stored affidavits or documents sent from the deployment location or
478 elsewhere;

479 (14)(A) When deployment of a military parent appears imminent and there is no
480 existing parenting plan or other order setting forth the parent's rights and
481 responsibilities, then upon a petition filed by either the deploying parent or
482 nondeploying parent the court shall:

- 483 (i) Expedite a hearing to establish a temporary parenting plan;
484 (ii) Require that the deploying parent shall have continued access to the child,
485 provided that such contact is in the child's best interest;
486 (iii) Ensure the disclosure of financial information pertaining to both parties;
487 (iv) Determine the child support responsibilities under Code Section 19-6-15 of both
488 parents during the deployment; and
489 (v) Determine the child's best interest and consider delegating to any third parties
490 with close contacts to the child any reasonable parenting time during the deployment.
491 In deciding such request the court shall consider the reasonable requests of the
492 deployed parent.

493 (B) Any pleading filed to establish a parenting plan or child support order under this
494 paragraph shall be identified at the time of filing by stating in the text of the pleading
495 the specific facts related to the deployment and by referencing this paragraph and
496 subsection of this Code section;

497 (15) When an impending deployment precludes court expedited adjudication before
498 deployment, the court may agree to allow the parties to arbitrate any issues as allowed

499 under Code Section 19-9-1.1, or order the parties to mediation under any court
 500 established alternative dispute resolution program. For purposes of arbitration or
 501 mediation, each party shall be under a duty to provide to the other party information
 502 relevant to any parenting plan or support issues pertaining to the children or the parties;
 503 (16) Each military parent shall be under a continuing duty to provide written notice to
 504 the nondeploying parent within 14 days of the military parent's receipt of oral or written
 505 orders requiring deployment or any other absences due to military service that will impact
 506 the military parent's ability to exercise his or her parenting time with a child. If
 507 deployment orders do not allow for 14 days' advance notice, then the military parent shall
 508 provide written notice to the other parent immediately upon receiving such notice; and
 509 (17) A military parent shall ensure that any military family care plan that he or she has
 510 filed with his or her commander is consistent with any existing court orders for his or her
 511 child. In all instances any court order will be the first course of action for the care of a
 512 child during the absence of a military parent, and the military family care plan will be the
 513 alternative plan if the nondeploying parent either refuses to provide care for the child or
 514 acknowledges an inability to provide reasonable care for the child. A military parent
 515 shall not be considered in contempt of any court order or parenting plan when he or she
 516 in good faith implements his or her military family care plan based upon the refusal or
 517 claimed inability of a nondeploying parent to provide reasonable care for a child during
 518 a deployment."

519 **SECTION 8.**

520 Said title is further amended by adding a new Code section to read as follows:

521 "19-9-3.1.

522 (a) As used in this Code section, the term 'de facto custodian' shall have the same meaning
 523 as provided for in Code Section 19-7-3.

524 (b) A de facto custodian shall have the right to intervene in and seek joint custody with the
 525 other parent in any action in which any court in this state shall have before it any question
 526 concerning the custody of a child.

527 (c)(1) Upon the filing of an intervention in a proceeding, the court may grant the de facto
 528 custodian joint custody, joint legal custody, or joint physical custody with the other
 529 parent as provided for in Code Section 19-9-3 if the court finds by clear and convincing
 530 evidence that such joint custody, joint legal custody, or joint physical custody is in the
 531 best interest of the child and will best protect the child's health or welfare where parental
 532 decisions would otherwise result in harm to the child. In evaluating the filing, the court
 533 may consider the factors provided for in paragraph (3) of subsection (a) of Code Section
 534 19-9-3.

535 (2) The court shall make specific written findings of fact in support of its rulings.

536 (d) Nothing in this Code section shall be construed to prevent a de facto custodian from
 537 seeking any other form of custody or visitation under the law."

538 **SECTION 9.**

539 Said title is further amended by revising Code Section 19-9-4, relating to investigation of
 540 abuse, neglect, or other acts which adversely affect health of child in custody disputes and
 541 cost, as follows:

542 "19-9-4.

543 (a) On motion of either party in any action or proceeding involving determination of the
 544 award of child custody between parents of the child or a parent and a de facto custodian as
 545 provided for in Code Section 19-9-3.1, when such motion contains a specific recitation of
 546 actual abuse, neglect, or other overt acts which have adversely affected the health and
 547 welfare of the child, the judge may direct the appropriate family and children services
 548 agency or any other appropriate entity to investigate the home life and home environment
 549 of ~~each of the parents~~ or the de facto custodian, as the case requires. In any action or
 550 proceeding involving determination of the award of child custody between parents of the
 551 child or a parent and a de facto custodian of the child when during such proceedings a
 552 specific recitation of actual abuse, neglect, or other overt acts which have adversely
 553 affected the health and welfare of the child has been made the judge shall also have
 554 authority on his or her own motion to order such an investigation if in the judge's opinion
 555 the investigation would be useful in determining placement or custody of the child. The
 556 judge may also direct either party to pay to the agency the reasonable cost, or any portion
 557 thereof, of the investigation. The report of the investigation will be made to the judge
 558 directing the investigation. Any report made at the direction of the judge shall be made
 559 available to either or both parties for a reasonable period of time prior to the proceedings
 560 at which any temporary or permanent custody is to be determined. Both parties shall have
 561 the right to confront and cross-examine the person or persons who conducted the
 562 investigation or compiled the report if adequate and legal notice is given.

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

566 (c) As used in this Code section, the term 'de facto custodian' shall have the same meaning
 567 as provided for in Code Section 19-7-3."

568

SECTION 10.

569 Said title is further amended by revising Code Section 19-9-5, relating to custody
570 agreements, ratification, and supplementation, as follows:

571 "19-9-5.

572 (a) In all proceedings under this article between parents or a parent and a de facto
573 custodian as provided for in Code Section 19-9-3.1, it shall be expressly permissible for the
574 ~~parents of a child parties~~ to present to the judge an agreement respecting any and all issues
575 concerning custody of the child. ~~As used in this Code section, the term 'custody' shall~~
576 ~~include, without limitation, joint custody as such term is defined in Code Section 19-9-6.~~
577 ~~As used in this Code section, the term 'custody' shall not include payment of child support.~~

578 (b) The judge shall ratify the agreement and make such agreement a part of the judge's
579 final judgment in the proceedings unless the judge makes specific written factual findings
580 as a part of the final judgment that under the circumstances ~~of the parents and the child in~~
581 ~~such agreement~~ that the agreement would not be in the best interests of the child. The
582 judge shall not refuse to ratify such agreement and to make such agreement a part of the
583 final judgment based solely upon the ~~parents'~~ choice of the parties to use joint custody as
584 a part of such agreement.

585 (c) In his or her judgment, the judge may supplement the agreement on issues not covered
586 by such agreement.

587 (d) As used in this Code section, the term:

588 (1) 'Custody' shall include, without limitation, joint custody as such term is defined in
589 Code Section 19-9-6 and shall not include payment of child support.

590 (2) 'De facto custodian' shall have the same meaning as provided for in Code Section
591 19-7-3."

592

SECTION 11.

593 Said title is further amended in Code Section 19-9-6, relating to definitions, by revising
594 paragraphs (5), (6), (8), and (10) as follows:

595 "(5) 'Joint legal custody' means both parents or a parent and a de facto custodian as
596 provided for in Code Section 19-9-3.1 have equal rights and responsibilities for major
597 decisions concerning the child, including the child's education, health care,
598 extracurricular activities, and religious training; provided, however, that the judge may
599 designate one ~~parent party~~ to have sole power to make certain decisions while both
600 ~~parents parties~~ retain equal rights and responsibilities for other decisions.

601 (6) 'Joint physical custody' means that physical custody is shared by the parents or a
602 parent and a de facto custodian as provided for in Code Section 19-9-3.1 in such a way

603 as to assure the child of substantially equal time and contact with both parents, or the
604 parent and the de facto custodian."

605 "(8) 'Military parent' means a member of the armed forces who is a legal parent, adoptive
606 parent, or guardian of a child under the age of 18, whose parental or custodial rights are
607 established either by operation of law or the process of legitimation, and who has not had
608 his or her parental or custodial rights terminated by a court of competent jurisdiction."

609 "(10) 'Nondeploying parent' means:

610 (A) A parent or a de facto custodian as provided for in Code Section 19-9-3.1 who is
611 not a member of the armed forces; or

612 (B) A military parent who is currently not also a deploying parent."

613 **SECTION 12.**

614 This Act shall become effective upon its approval by the Governor or upon its becoming law
615 without such approval.

616 **SECTION 13.**

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