

O.C.G.A. TITLE 19 Chapter 9

GEORGIA CODE

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*** Current Through the 2010 Regular Session ***
*** Annotations Current Through September 24, 2010 ***

TITLE 19. DOMESTIC RELATIONS
CHAPTER 9. CHILD CUSTODY PROCEEDINGS
ARTICLE 3 (2010) UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT

PART 1. GENERAL PROVISIONS

§ 19-9-40. Short title

This article may be cited as the “Uniform Child Custody Jurisdiction and Enforcement Act.”

HISTORY: Code 1981, § 19-9-40, enacted by Ga. L. 2001, p. 129, § 1.

§ 19-9-41. Definitions

In this article:

- (1) “Abandoned” means left without provision for reasonable and necessary care or supervision.
- (2) “Child” means an individual who has not attained 18 years of age.
- (3) “Child custody determination” means a judgment, decree, or other order of a court providing for the legal custody, physical custody, or visitation with respect to a child. The term includes a permanent, temporary, initial, and modification order. The term does not include an order relating to child support or other monetary obligations of an individual.
- (4) “Child custody proceeding” means a proceeding in which legal custody, physical custody, or visitation with respect to a child is an issue. The term includes a proceeding for divorce, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights, and protection from family violence, in which the issue may appear. The term does not include a proceeding involving juvenile delinquency, contractual emancipation, or enforcement under Part 3 of this article.
- (5) “Commencement” means the filing of the first pleading in a proceeding.
- (6) “Court” means an entity authorized under the law of a state to establish, enforce, or modify a child custody determination.
- (7) “Home state” means the state in which a child lived with a parent or a person acting as a parent for at least six consecutive months immediately before the commencement of a child

custody proceeding. In the case of a child less than six months of age, the term means the state in which the child lived from birth with any of the persons mentioned. A period of temporary absence of any of the mentioned persons is part of the period.

(8) “Initial determination” means the first child custody determination concerning a particular child.

(9) “Issuing court” means the court that makes a child custody determination for which enforcement is sought under this article.

(10) “Issuing state” means the state in which a child custody determination is made.

(11) “Modification” means a child custody determination that changes, replaces, supersedes, or is otherwise made after a previous determination concerning the same child, whether or not it is made by the court that made the previous determination.

(12) “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government; governmental subdivision, agency, or instrumentality; public corporation; or any other legal or commercial entity.

(13) “Person acting as a parent” means a person, other than a parent, who:

(A) Has physical custody of the child or has had physical custody for a period of six consecutive months, including any temporary absence, within one year immediately before the commencement of a child custody proceeding; and

(B) Has been awarded legal custody by a court or claims a right to legal custody under the law of this state.

(14) “Physical custody” means the physical care and supervision of a child.

(15) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(16) “Tribe” means an Indian tribe or band or Alaskan Native village which is recognized by federal law or formally acknowledged by a state.

(17) “Warrant” means an order issued by a court authorizing law enforcement officers to take physical custody of a child.

HISTORY: Code 1981, § 19-9-41, enacted by Ga. L. 2001, p. 129, § 1.

§ 19-9-42. Article inapplicable to adoptions or authorizations for emergency care

This article does not govern an adoption proceeding or a proceeding pertaining to the authorization of emergency medical care for a child.

HISTORY: Code 1981, § 19-9-42, enacted by Ga. L. 2001, p. 129, § 1.

§ 19-9-43. Proceeding pertaining to Indian child exempted from article

(a) A child custody proceeding that pertains to an Indian child as defined in the Indian Child Welfare Act, 25 U.S.C. Section 1901 et seq., is not subject to this article to the extent that it

is governed by the Indian Child Welfare Act.

(b) A court of this state shall treat a tribe as if it were a state of the United States for the purpose of applying this part and Part 2 of this article.

(c) A child custody determination made by a tribe under factual circumstances in substantial conformity with the jurisdictional standards of this article must be recognized and enforced under Part 3 of this article.

HISTORY: Code 1981, § 19-9-43, enacted by Ga. L. 2001, p. 129, § 1.

§ 19-9-44. Child custody determinations of foreign country

(a) A court of this state shall treat a foreign country as if it were a state of the United States for the purpose of applying this part and Part 2 of this article.

(b) Except as otherwise provided in subsection (c) of this Code section, a child custody determination made in a foreign country under factual circumstances in substantial conformity with the jurisdictional standards of this article must be recognized and enforced under Part 3 of this article.

(c) A court of this state need not apply this article if the child custody law of a foreign country violates fundamental principles of human rights.

HISTORY: Code 1981, § 19-9-44, enacted by Ga. L. 2001, p. 129, § 1.

§ 19-9-45. Binding authority of child custody determination

A child custody determination made by a court of this state that had jurisdiction under this article binds all persons who have been served in accordance with the laws of this state or notified in accordance with Code Section 19-9-47 or who have submitted to the jurisdiction of the court, and who have been given an opportunity to be heard. As to those persons, the determination is conclusive as to all decided issues of law and fact except to the extent the determination is modified.

HISTORY: Code 1981, § 19-9-45, enacted by Ga. L. 2001, p. 129, § 1.

§ 19-9-46. Priority given question of existence or exercise of jurisdiction

If a question of existence or exercise of jurisdiction under this article is raised in a child custody proceeding, the question, upon request of a party, must be given priority on the calendar and handled expeditiously.

HISTORY: Code 1981, § 19-9-46, enacted by Ga. L. 2001, p. 129, § 1.

§ 19-9-47. Notice and proof of service on persons outside the state

(a) Notice required for the exercise of jurisdiction when a person is outside this state may be given in a manner prescribed by the law of this state for service of process or by the law of the state in which the service is made. Notice must be given in a manner reasonably calculated to give actual notice but may be by publication if other means are not effective.

(b) Proof of service may be made in the manner prescribed by the law of this state or by the law of the state in which the service is made.

(c) Notice is not required for the exercise of jurisdiction with respect to a person who submits to the jurisdiction of the court.

HISTORY: Code 1981, § 19-9-47, enacted by Ga. L. 2001, p. 129, § 1.

§ 19-9-48. Personal jurisdiction not obtained in other matters; service of process

(a) A party to a child custody proceeding, including a modification proceeding, or a petitioner or respondent in a proceeding to enforce or register a child custody determination is not subject to personal jurisdiction in this state for another proceeding or purpose solely by reason of having participated, or of having been physically present for the purpose of participating, in the proceeding.

(b) A person who is subject to personal jurisdiction in this state on a basis other than physical presence is not immune from service of process in this state. A party present in this state who is subject to the jurisdiction of another state is not immune from service of process allowable under the laws of that state.

(c) The immunity granted by subsection (a) of this Code section does not extend to civil litigation based on acts unrelated to the participation in a proceeding under this article committed by an individual while present in this state.

HISTORY: Code 1981, § 19-9-48, enacted by Ga. L. 2001, p. 129, § 1.

§ 19-9-49. Communication between court of this state and other states; “record” defined

(a) A court of this state may communicate with a court in another state concerning a proceeding arising under this article and concerning any proceeding or court order in another state relating to family violence. A court of this state may consult any state or national registry of court orders relating to family violence with regard to any party.

(b) The court may allow the parties to participate in the communication. If the parties are not able to participate in the communication, they must be given the opportunity to present facts and legal arguments before a decision on jurisdiction is made.

(c) Communication between courts on schedules, calendars, court records, and similar matters may occur without informing the parties. A record need not be made of the communication.

(d) Except as otherwise provided in subsection (c) of this Code section, a record must be made of any communication under this Code section. The parties must be informed promptly of the communication and granted access to the record.

(e) For the purposes of this Code section, “record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

HISTORY: Code 1981, § 19-9-49, enacted by Ga. L. 2001, p. 129, § 1.

§ 19-9-50. Testimony by deposition; electronic deposition; evidence transmitted by technological means not to be excluded

(a) In addition to other procedures available to a party, a party to a child custody proceeding may offer testimony of witnesses who are located in another state, including testimony of the parties and the child, by deposition or other means allowable in this state for testimony taken in another state. The court on its own motion may order that the testimony of a person be taken in another state and may prescribe the manner in which and the terms upon which the testimony is taken.

(b) A court of this state may permit an individual residing in another state to be deposed or to testify by telephone, audiovisual means, or other electronic means before a designated court or at another location in that state. A court of this state shall cooperate with courts of other states in designating an appropriate location for the deposition or testimony.

(c) Documentary evidence transmitted from another state to a court of this state by technological means that do not produce an original writing may not be excluded from evidence on an objection based on the means of transmission.

HISTORY: Code 1981, § 19-9-50, enacted by Ga. L. 2001, p. 129, § 1.

§ 19-9-51. Hearings and studies in another state; costs

(a) A court of this state may request the appropriate court of another state to:

- (1) Hold an evidentiary hearing;
- (2) Order a person to produce or give evidence pursuant to procedures of that state;
- (3) Order that an evaluation be made with respect to the custody of a child involved in a pending proceeding;
- (4) Forward to the court of this state a certified copy of the transcript of the record of the hearing, the evidence otherwise presented, and any evaluation prepared in compliance with the request; and
- (5) Order a party to a child custody proceeding or any person having physical custody of the child to appear in the proceeding with or without the child.

(b) Upon request of a court of another state, a court of this state may hold a hearing or enter an order described in subsection (a) of this Code section.

(c) Travel and other necessary and reasonable expenses incurred under subsections (a) and (b) of this Code section may be assessed against the parties according to the law of this state.

(d) A court of this state shall preserve the pleadings, orders, decrees, records of hearings, evaluations, and other pertinent records with respect to a child custody proceeding until the child attains 18 years of age. Upon appropriate request by a court or law enforcement official of another state, the court shall forward a certified copy of those records.

HISTORY: Code 1981, § 19-9-51, enacted by Ga. L. 2001, p. 129, § 1.

PART 2. JURISDICTION

§ 19-9-61. Jurisdiction requirements for initial child custody determinations; physical presence alone insufficient

(a) Except as otherwise provided in Code Section 19-9-64, a court of this state has jurisdiction to make an initial child custody determination only if:

(1) This state is the home state of the child on the date of the commencement of the proceeding, or was the home state of the child within six months before the commencement of the proceeding and the child is absent from this state but a parent or person acting as a parent continues to live in this state;

(2) A court of another state does not have jurisdiction under paragraph (1) of this subsection, or a court of the home state of the child has declined to exercise jurisdiction on the ground that this state is the more appropriate forum under Code Section 19-9-67 or 19-9-68 and:

(A) The child and the child's parents, or the child and at least one parent or a person acting as a parent, have a significant connection with this state other than mere physical presence; and

(B) Substantial evidence is available in this state concerning the child's care, protection, training, and personal relationships;

(3) All courts having jurisdiction under paragraph (1) or (2) of this subsection have declined to exercise jurisdiction on the ground that a court of this state is the more appropriate forum to determine the custody of the child under Code Section 19-9-67 or 19-9-68; or

(4) No court of any other state would have jurisdiction under the criteria specified in paragraph (1), (2), or (3) of this subsection.

(b) Subsection (a) of this Code section is the exclusive jurisdictional basis for making a child custody determination by a court of this state.

(c) Physical presence of, or personal jurisdiction over, a party or a child is not necessary or sufficient to make a child custody determination.

HISTORY: Code 1981, § 19-9-61, enacted by Ga. L. 2001, p. 129, § 1.

§ 19-9-62. Prerequisites for termination of exclusive, continuing jurisdiction

(a) Except as otherwise provided in Code Section 19-9-64, a court of this state which has made a child custody determination consistent with Code Section 19-9-61 or 19-9-63 has exclusive, continuing jurisdiction over the determination until:

(1) A court of this state determines that neither the child nor the child's parents or any person acting as a parent has a significant connection with this state and that substantial evidence is no longer available in this state concerning the child's care, protection, training, and personal relationships; or

(2) A court of this state or a court of another state determines that neither the child nor the child's parents or any person acting as a parent presently resides in this state.

(b) A court of this state which has made a child custody determination and does not have exclusive, continuing jurisdiction under this Code section may modify that determination only if it has jurisdiction to make an initial determination under Code Section 19-9-61.

HISTORY: Code 1981, § 19-9-62, enacted by Ga. L. 2001, p. 129, § 1.

§ 19-9-63. Prerequisites for modifying custody determination from foreign court

Except as otherwise provided in Code Section 19-9-64, a court of this state may not modify a child custody determination made by a court of another state unless a court of this state has jurisdiction to make an initial determination under paragraph (1) or (2) of subsection (a) of Code Section 19-9-61 and:

(1) The court of the other state determines it no longer has exclusive, continuing jurisdiction under Code Section 19-9-62 or that a court of this state would be a more convenient forum under Code Section 19-9-67; or

(2) A court of this state or a court of the other state determines that neither the child nor the child's parents or any person acting as a parent presently resides in the other state.

HISTORY: Code 1981, § 19-9-63, enacted by Ga. L. 2001, p. 129, § 1.

§ 19-9-64. Temporary emergency jurisdiction; continuing effect; communicating with other courts

(a) A court of this state has temporary emergency jurisdiction if the child is present in this state and the child has been abandoned or it is necessary in an emergency to protect the child because the child or a sibling or parent of the child is subjected to or threatened with mistreatment or abuse.

(b) If there is no previous child custody determination that is entitled to be enforced under this article and a child custody proceeding has not been commenced in a court of a state having jurisdiction under Code Sections 19-9-61 through 19-9-63, a child custody determination made under this Code section remains in effect until an order is obtained from a court of a state having jurisdiction under Code Sections 19-9-61 through 19-9-63. If a child custody proceeding has not been or is not commenced in a court of a state having jurisdiction under Code Sections 19-9-61 through 19-9-63, a child custody determination made under this Code section becomes a final determination, if it so provides and this state becomes the home state of the child.

(c) If there is a previous child custody determination that is entitled to be enforced under this article, or a child custody proceeding has been commenced in a court of a state having jurisdiction under Code Sections 19-9-61 and 19-9-63, any order issued by a court of this state under this Code section must specify in the order a period that the court considers adequate to allow the person seeking an order to obtain an order from the state having jurisdiction under Code Sections 19-9-61 through 19-9-63. The order issued in this state remains in effect until an order is obtained from the other state within the period specified or the period expires.

(d) A court of this state which has been asked to make a child custody determination under this Code section, upon being informed that a child custody proceeding has been commenced in, or a child custody determination has been made by, a court of a state having jurisdiction

under Code Sections 19-9-61 through 19-9-63, shall immediately communicate with the other court. A court of this state which is exercising jurisdiction pursuant to Code Sections 19-9-61 through 19-9-63, upon being informed that a child custody proceeding has been commenced in, or a child custody determination has been made by, a court of another state under a statute similar to this Code section, shall immediately communicate with the court of that state to resolve the emergency, protect the safety of the parties and the child, and determine a period for the duration of the temporary order.

HISTORY: Code 1981, § 19-9-64, enacted by Ga. L. 2001, p. 129, § 1.

§ 19-9-65. Notice required; intervention

(a) Before a child custody determination is made under this article, notice and an opportunity to be heard in accordance with the standards of Code Section 19-9-47 must be given to all persons entitled to notice under the law of this state as in a child custody proceeding between residents of this state, any parent whose parental rights have not been previously terminated, and any person having physical custody of the child.

(b) This article does not govern the enforceability of a child custody determination made without notice or an opportunity to be heard.

(c) The obligation to join a party and the right to intervene as a party in a child custody proceeding under this article are governed by the law of this state as in child custody proceedings between residents of this state.

HISTORY: Code 1981, § 19-9-65, enacted by Ga. L. 2001, p. 129, § 1.

§ 19-9-66. Procedure where proceedings pending in another state

(a) Except as otherwise provided in Code Section 19-9-64, a court of this state may not exercise its jurisdiction under this part if, at the time of the commencement of the proceeding, a proceeding concerning the custody of the child has been commenced in a court of another state having jurisdiction substantially in conformity with this article; unless the proceeding has been terminated or is stayed by the court of the other state because a court of this state is a more convenient forum under Code Section 19-9-67.

(b) Except as otherwise provided in Code Section 19-9-64, a court of this state, before hearing a child custody proceeding, shall examine the court documents and other information supplied by the parties pursuant to Code Section 19-9-69. If the court determines that a child custody proceeding has been commenced in a court in another state having jurisdiction substantially in accordance with this article, the court of this state shall stay its proceeding and communicate with the court of the other state. If the court of the state having jurisdiction substantially in accordance with this article does not determine that the court of this state is a more appropriate forum, the court of this state shall dismiss the proceeding.

(c) In a proceeding to modify a child custody determination, a court of this state shall determine whether a proceeding to enforce the determination has been commenced in another state. If a proceeding to enforce a child custody determination has been commenced in another state, the court may:

(1) Stay the proceeding for modification pending the entry of an order of a court of the

other state enforcing, staying, denying, or dismissing the proceeding for enforcement;

- (2) Enjoin the parties from continuing with the proceeding for enforcement; or
- (3) Proceed with the modification under conditions it considers appropriate.

HISTORY: Code 1981, § 19-9-66, enacted by Ga. L. 2001, p. 129, § 1.

§ 19-9-67. Finding of inconvenient forum; conditions

(a) A court of this state which has jurisdiction under this article to make a child custody determination may decline to exercise its jurisdiction at any time if it determines that it is an inconvenient forum under the circumstances and that a court of another state is a more appropriate forum. The issue of inconvenient forum may be raised upon motion of a party, the court's own motion, or request of another court.

(b) Before determining whether it is an inconvenient forum, a court of this state shall consider whether it is appropriate for a court of another state to exercise jurisdiction. For this purpose, the court shall allow the parties to submit information and shall consider all relevant factors, including:

(1) Whether family violence has occurred and is likely to continue in the future and which state could best protect the parties and the child;

(2) The length of time the child has resided outside this state;

(3) The distance between the court in this state and the court in the state that would assume jurisdiction;

(4) The relative financial circumstances of the parties;

(5) Any agreement of the parties as to which state should assume jurisdiction;

(6) The nature and location of the evidence required to resolve the pending litigation, including testimony of the child;

(7) The ability of the court of each state to decide the issue expeditiously and the procedures necessary to present the evidence; and

(8) The familiarity of the court of each state with the facts and issues in the pending litigation.

(c) If a court of this state determines that it is an inconvenient forum and that a court of another state is a more appropriate forum, it shall stay the proceedings upon condition that a child custody proceeding be promptly commenced in another designated state and may impose any other condition the court considers just and proper.

(d) A court of this state may decline to exercise its jurisdiction under this article if a child custody determination is incidental to an action for divorce or another proceeding while still retaining jurisdiction over the divorce or other proceeding.

HISTORY: Code 1981, § 19-9-67, enacted by Ga. L. 2001, p. 129, § 1.

§ 19-9-68. Wrongfully obtained jurisdiction; actions to prevent repetition of unjustifiable conduct; expenses

(a) Except as otherwise provided in Code Section 19-9-64 or by any other law of this state, if a court of this state has jurisdiction under this article because a person seeking to invoke its jurisdiction has engaged in unjustifiable conduct, the court shall decline to exercise its jurisdiction unless:

(1) The parents and all persons acting as parents have acquiesced in the exercise of jurisdiction;

(2) A court of the state otherwise having jurisdiction under Code Sections 19-9-61 through 19-9-63 determines that this state is a more appropriate forum under Code Section 19-9-67; or

(3) No court of any other state would have jurisdiction under the criteria specified in Code Sections 19-9-61 through 19-9-63.

(b) If a court of this state declines to exercise its jurisdiction pursuant to subsection (a) of this Code section, it may fashion an appropriate remedy to ensure the safety of the child and prevent a repetition of the unjustifiable conduct, including staying the proceeding until a child custody proceeding is commenced in a court having jurisdiction under Code Sections 19-9-61 through 19-9-63.

(c) If a court dismisses a petition or stays a proceeding because it declines to exercise its jurisdiction pursuant to subsection (a) of this Code section, it shall assess against the party seeking to invoke its jurisdiction necessary and reasonable expenses including costs, communication expenses, attorney's fees, investigative fees, expenses for witnesses, travel expenses, and child care during the course of the proceedings, unless the party from whom fees are sought establishes that the assessment would be clearly inappropriate. The court may not assess fees, costs, or expenses against this state unless authorized by law other than this article.

HISTORY: Code 1981, § 19-9-68, enacted by Ga. L. 2001, p. 129, § 1.

§ 19-9-69. Information required as part of pleading or affidavit; continuing duty; sealing of information; children residing in family violence shelters

(a) In a child custody proceeding, each party, in its first pleading or in an attached affidavit, shall give information, if reasonably ascertainable, under oath as to the child's present address or whereabouts, the places where the child has lived during the last five years, and the names and present addresses of the persons with whom the child has lived during that period. The pleading or affidavit must state whether the party:

(1) Has participated, as a party or witness or in any other capacity, in any other proceeding concerning the custody of or visitation with the child and, if so, identify the court, the case number, and the date of the child custody determination, if any;

(2) Knows of any proceeding that could affect the current proceeding, including proceedings for enforcement and proceedings relating to family violence, protective orders, termination of parental rights, and adoptions and, if so, identify the court, the case number,

and the nature of the proceeding; and

(3) Knows the names and addresses of any person not a party to the proceeding who has physical custody of the child or claims rights of legal custody or physical custody of, or visitation with, the child and, if so, the names and addresses of those persons.

(b) If the information required by subsection (a) of this Code section is not furnished, the court, upon motion of a party or its own motion, may stay the proceeding until the information is furnished.

(c) If the declaration as to any of the items described in paragraphs (1) through (3) of subsection (a) of this Code section is in the affirmative, the declarant shall give additional information under oath as required by the court. The court may examine the parties under oath as to details of the information furnished and other matters pertinent to the court's jurisdiction and the disposition of the case.

(d) Each party has a continuing duty to inform the court of any proceeding in this or any other state that could affect the current proceeding.

(e) If a party alleges in an affidavit or a pleading under oath that the health, safety, or liberty of a party or child would be jeopardized by disclosure of identifying information, the information must be sealed and may not be disclosed to the other party or the public unless the court orders the disclosure to be made after a hearing in which the court takes into consideration the health, safety, or liberty of the party or child and determines that the disclosure is in the interest of justice.

(f) In providing the information required by subsection (a) of this Code section, a party who is disclosing that the child is or has been a resident of a family violence shelter shall provide only the name of the shelter and the state in which the shelter is located to avoid a violation of Code Section 19-13-23. A disclosure of the name of the shelter and the state in which the shelter is located shall be sufficient for the purposes of subsection (a) of this Code section.

HISTORY: Code 1981, § 19-9-69, enacted by Ga. L. 2001, p. 129, § 1.

§ 19-9-70. Requiring appearance for in state and out of state residents; other court orders

(a) In a child custody proceeding in this state, the court may order a party to the proceeding who is in this state to appear before the court in person with or without the child. The court may order any person who is in this state and who has physical custody or control of the child to appear in person with the child.

(b) If a party to a child custody proceeding whose presence is desired by the court is outside this state, the court may order that a notice given pursuant to Code Section 19-9-47 include a statement directing the party to appear in person with or without the child and informing the party that failure to appear may result in a decision adverse to the party.

(c) The court may enter any orders necessary to ensure the safety of the child and of any person ordered to appear under this Code section.

(d) If a party to a child custody proceeding who is outside this state is directed to appear under subsection (b) of this Code section or desires to appear personally before the court with or without the child, the court may require another party to pay reasonable and

necessary travel and other expenses of the party so appearing and of the child.

HISTORY: Code 1981, § 19-9-70, enacted by Ga. L. 2001, p. 129, § 1.

PART 3. JURISDICTION AND ENFORCEMENT OF FOREIGN DECREES

§ 19-9-81. Definitions

As used in this part, the term:

(1) “Petitioner” means a person who seeks enforcement of an order for return of a child under the Hague Convention on the Civil Aspects of International Child Abduction or enforcement of a child custody determination.

(2) “Respondent” means a person against whom a proceeding has been commenced for enforcement of an order for return of a child under the Hague Convention on the Civil Aspects of International Child Abduction or enforcement of a child custody determination.

HISTORY: Code 1981, § 19-9-81, enacted by Ga. L. 2001, p. 129, § 1.

§ 19-9-82. Orders made under the Hague Convention

Under this part a court of this state may enforce an order for the return of the child made under the Hague Convention on the Civil Aspects of International Child Abduction as if it were a child custody determination.

HISTORY: Code 1981, § 19-9-82, enacted by Ga. L. 2001, p. 129, § 1.

§ 19-9-83. Recognition of foreign custody decrees; remedies

(a) A court of this state shall recognize and enforce a child custody determination of a court of another state if the latter court exercised jurisdiction in substantial conformity with this article or the determination was made under factual circumstances meeting the jurisdictional standards of this article and the determination has not been modified in accordance with this article.

(b) A court of this state may utilize any remedy available under other laws of this state to enforce a child custody determination made by a court of another state. The remedies provided in this part are cumulative and do not affect the availability of other remedies to enforce a child custody determination.

HISTORY: Code 1981, § 19-9-83, enacted by Ga. L. 2001, p. 129, § 1.

§ 19-9-84. Authority to enter temporary orders if lacking jurisdiction; remedy from court with jurisdiction; victims of family violence

(a) A court of this state which does not have jurisdiction to modify a child custody determination may issue a temporary order enforcing:

(1) A visitation schedule made by a court of another state; or

(2) The visitation provisions of a child custody determination of another state that does not

provide for a specific visitation schedule.

(b) If a court of this state makes an order under paragraph (2) of subsection (a) of this Code section, it shall specify in the order a period that it considers adequate to allow the petitioner to obtain an order from a court having jurisdiction under the criteria specified in Part 2 of this article. The order remains in effect until an order is obtained from the other court or the period expires.

(c) If a court of another state or a court of this state has made a finding of family violence on the part of either parent of the child, in issuing a temporary order enforcing a visitation schedule or the visitation provisions of a child custody determination of another state in accordance with subsection (a) of this Code section, a court of this state may enter any orders necessary to ensure the safety of the child and of any person who has been the victim of family violence, including but not limited to an order for supervised visitation pursuant to Code Section 19-9-7.

HISTORY: Code 1981, § 19-9-84, enacted by Ga. L. 2001, p. 129, § 1.

§ 19-9-85. Registering foreign custody determinations; requirements of registering court; contesting registration; confirmation of registered order

(a) A child custody determination issued by a court of another state may be registered in this state, with or without a simultaneous request for enforcement, by sending to the superior court in the appropriate venue in this state:

(1) A letter or other document requesting registration;

(2) Two copies, including one certified copy, of the determination sought to be registered, and a statement under penalty of perjury that to the best of the knowledge and belief of the person seeking registration the order has not been modified; and

(3) Except as otherwise provided in Code Section 19-9-69, the name and address of the person seeking registration and any parent or person acting as a parent who has been awarded custody or visitation in the child custody determination sought to be registered.

(b) On receipt of the documents required by subsection (a) of this Code section, the registering court shall:

(1) Cause the determination to be filed as a foreign judgment, together with one copy of any accompanying documents and information, regardless of their form; and

(2) Serve notice upon the persons named pursuant to paragraph (3) of subsection (a) of this Code section and provide them with an opportunity to contest the registration in accordance with this Code section.

(c) The notice required by paragraph (2) of subsection (b) of this Code section must state that:

(1) A registered determination is enforceable as of the date of the registration in the same manner as a determination issued by a court of this state;

(2) A hearing to contest the validity of the registered determination must be requested within 20 days after service of notice; and

(3) Failure to contest the registration will result in confirmation of the child custody determination and preclude further contest of that determination with respect to any matter that could have been asserted.

(d) A person seeking to contest the validity of a registered order must request a hearing within 20 days after service of the notice. At that hearing, the court shall confirm the registered order unless the person contesting registration establishes that:

(1) The issuing court did not have jurisdiction under Part 2 of this article;

(2) The child custody determination sought to be registered has been vacated, stayed, or modified by a court having jurisdiction to do so under Part 2 of this article; or

(3) The person contesting registration was entitled to notice, but notice was not given in accordance with the standards of Code Section 19-9-47 in the proceedings before the court that issued the order for which registration is sought.

(e) If a timely request for a hearing to contest the validity of the registration is not made, the registration is confirmed as a matter of law, and the person requesting registration and all persons served must be notified of the confirmation.

(f) Confirmation of a registered order, whether by operation of law or after notice and hearing, precludes further contest of the order with respect to any matter that could have been asserted at the time of registration.

HISTORY: Code 1981, § 19-9-85, enacted by Ga. L. 2001, p. 129, § 1.

§ 19-9-86. Granting relief and enforcing registered custody determinations

(a) A court of this state may grant any relief normally available under the laws of this state to enforce a registered child custody determination made by a court of another state.

(b) A court of this state shall recognize and enforce, but may not modify, except in accordance with Part 2 of this article, a registered child custody determination of a court of another state.

HISTORY: Code 1981, § 19-9-86, enacted by Ga. L. 2001, p. 129, § 1.

§ 19-9-87. Communication between enforcing court and modifying court

If a proceeding for enforcement under this part is commenced in a court of this state and the court determines that a proceeding to modify the determination is pending in a court of another state having jurisdiction to modify the determination under Part 2 of this article, the enforcing court shall immediately communicate with the modifying court. The proceeding for enforcement continues unless the enforcing court, after consultation with the modifying court, stays or dismisses the proceeding.

HISTORY: Code 1981, § 19-9-87, enacted by Ga. L. 2001, p. 129, § 1.

§ 19-9-88. Verification and petition for enforcement requirements; sealing; appearance; expenses

(a) A petition under this part must be verified. Certified copies of all orders sought to be enforced and of any order confirming registration must be attached to the petition. A copy of

a certified copy of an order may be attached instead of the original.

(b) A petition for enforcement of a child custody determination must state:

(1) Whether the court that issued the determination identified the jurisdictional basis it relied upon in exercising jurisdiction and, if so, what the basis was;

(2) Whether the determination for which enforcement is sought has been vacated, stayed, or modified by a court whose decision must be enforced under this article and, if so, identify the court, the case number, and the nature of the proceeding;

(3) Whether any proceeding has been commenced that could affect the current proceeding, including proceedings relating to family violence, protective orders, termination of parental rights, and adoptions and, if so, identify the court, the case number, and the nature of the proceeding;

(4) The present physical address of the child and the respondent, if known, except in cases involving a parent who has been the subject of a finding of family violence by a court of this state or another state;

(5) Whether relief in addition to the immediate physical custody of the child and attorney's fees is sought, including a request for assistance from law enforcement officials and, if so, the relief sought; and

(6) If the child custody determination has been registered and confirmed under Code Section 19-9-85, the date and place of registration.

(c) If a party alleges in an affidavit or pleading under oath that the health, safety, or liberty of a party or child would be jeopardized by disclosure of information required by this Code section, the information must be sealed and may not be disclosed to the other party or the public unless the court orders the disclosure to be made after a hearing in which the court takes into consideration the health, safety, or liberty of the party or child and determines that the disclosure is in the interest of justice.

(d) Upon the filing of a petition, the court shall issue an order directing the respondent to appear in person with or without the child at a hearing and may enter any order necessary to ensure the safety of the parties and the child. The hearing must be held on the next judicial day after service of the order unless that date is impossible. In that event, the court shall hold the hearing on the first judicial day possible. The court may extend the date of hearing at the request of the petitioner.

(e) An order issued under subsection (d) of this Code section must state the time and place of the hearing and advise the respondent that at the hearing the court will order that the petitioner may take immediate physical custody of the child and the payment of fees, costs, and expenses under Code Section 19-9-92, and may schedule a hearing to determine whether further relief is appropriate, unless the respondent appears and establishes that:

(1) The child custody determination has not been registered and confirmed under Code Section 19-9-85 and that:

(A) The issuing court did not have jurisdiction under Part 2 of this article;

(B) The child custody determination for which enforcement is sought has been vacated,

stayed, or modified by a court having jurisdiction to do so under Part 2 of this article;

(C) The respondent was entitled to notice, but notice was not given in accordance with the standards of Code Section 19-9-47, in the proceedings before the court that issued the order for which enforcement is sought; or

(2) The child custody determination for which enforcement is sought was registered and confirmed under Code Section 19-9-85, but has been vacated, stayed, or modified by a court of a state having jurisdiction to do so under Part 2 of this article.

HISTORY: Code 1981, § 19-9-88, enacted by Ga. L. 2001, p. 129, § 1.

§ 19-9-89. Service of petitions and orders

Except as otherwise provided in Code Section 19-9-91, the petition and order must be served, by any method authorized by the laws of this state, upon respondent and any person who has physical custody of the child.

HISTORY: Code 1981, § 19-9-89, enacted by Ga. L. 2001, p. 129, § 1.

§ 19-9-90. Finding of immediate physical custody; awarding of fees, costs, and expenses; drawing adverse inference from refusal to testify; spousal relationship irrelevant

(a) Unless the court issues a temporary emergency order pursuant to Code Section 19-9-64, upon a finding that a petitioner is entitled to immediate physical custody of the child, the court shall order that the petitioner may take immediate physical custody of the child unless the respondent establishes that:

(1) The child custody determination has not been registered and confirmed under Code Section 19-9-85 and that:

(A) The issuing court did not have jurisdiction under Part 2 of this article;

(B) The child custody determination for which enforcement is sought has been vacated, stayed, or modified by a court of a state having jurisdiction to do so under Part 2 of this article; or

(C) The respondent was entitled to notice, but notice was not given in accordance with the standards of Code Section 19-9-47, in the proceedings before the court that issued the order for which enforcement is sought; or

(2) The child custody determination for which enforcement is sought was registered and confirmed under Code Section 19-9-85 but has been vacated, stayed, or modified by a court of a state having jurisdiction to do so under Part 2 of this article.

(b) The court shall award the fees, costs, and expenses authorized under Code Section 19-9-92 and may grant additional relief, including a request for the assistance of law enforcement officials, and set a further hearing to determine whether additional relief is appropriate.

(c) If a party called to testify refuses to answer on the ground that the testimony may be self-incriminating, the court may draw an adverse inference from the refusal.

(d) A privilege against disclosure of communications between spouses and a defense of

immunity based on the relationship of husband and wife or parent and child may not be invoked in a proceeding under this part.

HISTORY: Code 1981, § 19-9-90, enacted by Ga. L. 2001, p. 129, § 1.

§ 19-9-91. Verified application for warrant seeking physical custody; requirement for serious physical harm; warrant requirements; enforceability; conditions

(a) Upon the filing of a petition seeking enforcement of a child custody determination, the petitioner may file a verified application for the issuance of a warrant to take physical custody of the child if the child is immediately likely to suffer serious physical harm or be removed from this state.

(b) If the court, upon the testimony of the petitioner or other witness, finds that the child is imminently likely to suffer serious physical harm or be removed from this state, it may issue a warrant to take physical custody of the child. The petition must be heard on the next judicial day after the warrant is executed unless that date is impossible. In that event, the court shall hold the hearing on the first judicial day possible. The application for the warrant must include the statements required by subsection (b) of Code Section 19-9-88.

(c) A warrant to take physical custody of a child must:

(1) Recite the facts upon which a conclusion of imminent serious physical harm or removal from the jurisdiction is based;

(2) Direct law enforcement officers to take physical custody of the child immediately; and

(3) Provide for the placement of the child pending final relief.

(d) The respondent must be served with the petition, warrant, and order immediately after the child is taken into physical custody.

(e) A warrant to take physical custody of a child is enforceable throughout this state. If the court finds on the basis of the testimony of the petitioner or other witness that a less intrusive remedy is not effective, it may authorize law enforcement officers to enter private property to take physical custody of the child. If required by exigent circumstances of the case, the court may authorize law enforcement officers to make a forcible entry at any hour.

(f) The court may impose conditions upon placement of a child to ensure the appearance of the child and the child's custodian.

HISTORY: Code 1981, § 19-9-91, enacted by Ga. L. 2001, p. 129, § 1.

§ 19-9-92. Awarding of necessary and reasonable expenses

(a) The court shall award the prevailing party, including a state, necessary and reasonable expenses incurred by or on behalf of the party, including costs, communication expenses, attorney's fees, investigative fees, expenses for witnesses, travel expenses, and child care during the course of the proceedings, unless the party from whom fees or expenses are sought establishes that the award would be clearly inappropriate.

(b) The court may not assess fees, costs, or expenses against a state unless authorized by law other than this article.

HISTORY: Code 1981, § 19-9-92, enacted by Ga. L. 2001, p. 129, § 1.

§ 19-9-93. Full faith and credit to orders of other states

A court of this state shall accord full faith and credit to an order issued by another state and consistent with this article which enforces a child custody determination by a court of another state unless the order has been vacated, stayed, or modified by a court having jurisdiction to do so under Part 2 of this article.

HISTORY: Code 1981, § 19-9-93, enacted by Ga. L. 2001, p. 129, § 1.

§ 19-9-94. Appeals

An appeal may be taken from a final order in a proceeding under this article in accordance with expedited appellate procedures in other civil cases. Unless the court enters a temporary emergency order under Code Section 19-9-64, the enforcing court may not stay an order enforcing a child custody determination pending appeal.

HISTORY: Code 1981, § 19-9-94, enacted by Ga. L. 2001, p. 129, § 1.

§ 19-9-95. Actions by district attorney

(a) In a case arising under this article or involving the Hague Convention on the Civil Aspects of International Child Abduction, the district attorney may take any lawful action, including resort to a proceeding under this part or any other available civil proceeding to locate a child, obtain the return of a child, or enforce a child custody determination if there is:

- (1) An existing child custody determination;
- (2) A request to do so from a court in a pending child custody proceeding;
- (3) A reasonable belief that a criminal statute has been violated; or
- (4) A reasonable belief that the child has been wrongfully removed or retained in violation of the Hague Convention on the Civil Aspects of International Child Abduction.

(b) A district attorney acting under this Code section acts on behalf of the court and may not represent any party.

HISTORY: Code 1981, § 19-9-95, enacted by Ga. L. 2001, p. 129, § 1.

§ 19-9-96. Assistance by law enforcement

At the request of a district attorney acting under Code Section 19-9-95, a law enforcement officer may take any lawful action reasonably necessary to locate a child or a party and assist a district attorney with responsibilities under Code Section 19-9-95.

HISTORY: Code 1981, § 19-9-96, enacted by Ga. L. 2001, p. 129, § 1.

§ 19-9-97. Recovering expenses of district attorney and law enforcement

If the respondent is not the prevailing party, the court may assess against the respondent all direct expenses and costs incurred by the district attorney and law enforcement officers under Code Section 19-9-95 or 19-9-96.

HISTORY: Code 1981, § 19-9-97, enacted by Ga. L. 2001, p. 129, § 1.

PART 4. CONSTRUCTION

§ 19-9-101. Promotion of uniformity between states

In applying and construing this uniform Act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

HISTORY: Code 1981, § 19-9-101, enacted by Ga. L. 2001, p. 129, § 1.

§ 19-9-102. Application

A motion or other request for relief made in a child custody proceeding or to enforce a child custody determination which was commenced before July 1, 2001, is governed by the law in effect at the time the motion or other request was made.

HISTORY: Code 1981, § 19-9-102, enacted by Ga. L. 2001, p. 129, § 1.

§ 19-9-103. Construction

This article shall not be construed to repeal, amend, or impair the provisions of Code Section 19-13-23.

HISTORY: Code 1981, § 19-9-103, enacted by Ga. L. 2001, p. 129, § 1.

NOTE: Code Section 19-13-23 provides that the location of family violence shelters shall be confidential.

§ 19-9-104. “Conflicts with Child Custody Intrastate Jurisdiction Act.”

In the event of any conflict between this article and Article 2 of this chapter, the “Georgia Child Custody Intrastate Jurisdiction Act of 1978,” this article shall apply.

HISTORY: Code 1981, § 19-9-104, enacted by Ga. L. 2001, p. 129, § 1.

— End —