

Senate Bill 190

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

AS PASSED

A BILL TO BE ENTITLED
AN ACT

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

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 SECTION 1.

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

14 "19-9-22.

15 As used in this article, the term:

16 (1) 'Legal custody' means the responsibility for the care and control of a minor,
17 including, but not limited to, the power to make decisions regarding health care,
18 education, extracurricular activities, and religious upbringing.

19 (2) 'Physical custody' means the custody schedule established for the child pursuant to
20 Code Section 19-9-1, which includes parenting time.

21 ~~(1) 'Custody' includes visitation rights.~~

22 ~~(2) 'Legal custodian' means a person, including, but not limited to, a parent, who has~~
23 ~~been awarded permanent custody of a child by a court order. A person who has not been~~
24 ~~awarded custody of a child by court order shall not be considered as the legal custodian~~
25 ~~while exercising visitation rights. Where custody of a child is shared by two or more~~

26 ~~persons or where the time of visitation exceeds the time of custody, that person who has~~
 27 ~~the majority of time of custody or visitation shall be the legal custodian.~~
 28 ~~(3) 'Physical custodian' means a person, including, but not limited to, a parent, who is not~~
 29 ~~the 'legal custodian' of a child but who has physical custody of the child."~~

30 **SECTION 2.**

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

34 "19-9-23.

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

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

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

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

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

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

50 (d) A party may bring a counterclaim for modification of legal custody or physical custody
 51 in response to a complaint brought under subsection (a) of this Code section."

52 **SECTION 3.**

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