

House Bill 321

By: Representatives Efration of the 104<sup>th</sup>, Prince of the 127<sup>th</sup>, Beskin of the 54<sup>th</sup>, Abrams of the 89<sup>th</sup>, and Caldwell of the 131<sup>st</sup>

A BILL TO BE ENTITLED  
AN ACT

To amend Title 19 of the Official Code of Georgia Annotated, relating to domestic relations, so as to provide for de facto custodians custody arrangements; to provide for joint child custody arrangements between a parent and a de facto custodian of a child; to provide for de facto custodian visitation rights; to provide that a court may determine that an award of joint custody with a parent and a de facto custodian is for the best interest of a child or children and will best protect the child's health or welfare where parental decisions would otherwise result in harm to the child; to provide for and revise definitions; to revise procedures concerning investigation of abuse, neglect, or other acts which adversely affect the health of a child in a custody dispute to account for the home environment of a de facto custodian who is a party in such custody dispute; to revise procedures for presenting to the judge a child custody agreement to account for such agreement between a parent and a de facto custodian; to provide for related matters; to provide for an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

**SECTION 1.**

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

“(b.1) Notwithstanding subsections (a) and (b) of this Code section or any other law to the contrary, in any action involving the custody of a child between the parents or either parent and a third party limited to grandparent, great-grandparent, aunt, uncle, great aunt, great uncle, sibling, ~~or~~ adoptive parent, or de facto custodian, parental power may be lost by the parent, parents, or any other person if the court hearing the issue of custody, in the exercise of its sound discretion and taking into consideration all the circumstances of the case, determines that an award of custody to such third party is for the best interest of the child or children and will best promote their welfare and happiness; provided, however, that in

any action involving the custody of a child between a parent and a de facto custodian as provided for in Code Section 19-9-3.1, the court may determine that an award of joint custody with such parent and such de facto custodian is for the best interest of the child or children and will best protect the child's health or welfare where parental decisions would otherwise result in harm to the child. Except as provided for in Code Section 19-9-3, there  
~~There~~ shall be a rebuttable presumption that it is in the best interest of the child or children for custody to be awarded to the parent or parents of such child or children, but this presumption may be overcome by a showing that an award of custody, or joint custody as provided for by law, to such third party is in the best interest of the child or children. The sole issue for determination in any such case shall be what is in the best interest of the child or children. As used in this subsection, the term 'de facto custodian' shall have the same meaning as provided for in Code Section 19-7-3."

## SECTION 2.

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

"19-7-3.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) In no case shall the granting of visitation rights to a family member interfere with a child's school or regularly scheduled extracurricular activities.

(5) Visitation time awarded to a family member shall not be less than 24 hours in any one-month period; provided, however, that when more than one individual seeks visitation under this Code section, the court shall determine the amount of time to award to each petitioner which shall not be less than 24 hours in any one-month period in the aggregate.

(d) Notwithstanding the provisions of subsections (b) and (c) of this Code section, if one of the parents of a minor child dies, is incapacitated, or is incarcerated, the court may award the parent of the deceased, incapacitated, or incarcerated parent of such minor child reasonable visitation to such child during his or her minority if the court in its discretion finds that such visitation would be in the best interests of the child. The custodial parent's judgment as to the best interests of the child regarding visitation shall be given deference by the court but shall not be conclusive.

(e) If the court finds that the family member can bear the cost without unreasonable financial hardship, the court, at the sole expense of the petitioning family member, may:

(1) Appoint a guardian ad litem for the minor child; and

(2) Assign the issue of visitation rights of a family member for mediation.

(f) In the event that the court does not order mediation or upon failure of the parties to reach an agreement through mediation, the court shall fix a time for the hearing of the issue of visitation rights of the family member.

(g) Whether or not visitation is awarded to a family member, the court may direct a custodial parent, by court order, to notify such family member of every performance of the minor child to which the public is admitted, including, but not limited to, musical concerts, graduations, recitals, and sporting events or games.

(h) When more than one family member files an action pursuant to this Code section, the court shall determine the priority of such actions."

### SECTION 3.

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

"19-9-3.

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

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

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

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

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

what will best promote the child's welfare and happiness and to make his or her award accordingly.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) In all custody cases in which the child has reached the age of 14 years, the child shall have the right to select ~~the parent~~ an individual as provided for in paragraph (1) of this subsection with whom he or she desires to live. The child's selection for purposes of custody shall be presumptive unless the ~~parent party~~ individual so selected is determined not to be in the best interests of the child. The ~~parental~~ custodial selection by a child who has reached the age of 14 may, in and of itself, constitute a material change of condition or circumstance in any action seeking a modification or change in the custody of that child; provided, however, that such selection may only be made once within a period of two years from the date of the previous selection and the best interests of the child standard shall apply.

(6) In all custody cases in which the child has reached the age of 11 but not 14 years, the judge shall consider the desires and educational needs of the child in determining which ~~parent~~ individual as provided for in paragraph (1) of this subsection shall have custody. The judge shall have complete discretion in making this determination, and the child's desires shall not be controlling. The judge shall further have broad discretion as to how the child's desires are to be considered, including through the report of a guardian ad litem. The best interests of the child standard shall be controlling. The ~~parental~~ custodial selection of a child who has reached the age of 11 but not 14 years shall not, in and of itself, constitute a material change of condition or circumstance in any action seeking a modification or change in the custody of that child. The judge may issue an order

granting temporary custody to the selected ~~parent~~ individual for a trial period not to exceed six months regarding the custody of a child who has reached the age of 11 but not 14 years where the judge hearing the case determines such a temporary order is appropriate.

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

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

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



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

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

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

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

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

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

(g) Except as provided in Code Section 19-6-2, and in addition to the attorney's fee provisions contained in Code Section 19-6-15, the judge may order reasonable attorney's fees and expenses of litigation, experts, and the child's guardian ad litem and other costs of the child custody action and pretrial proceedings to be paid by the parties in proportions and at times determined by the judge. Attorney's fees may be awarded at both the temporary hearing and the final hearing. A final judgment shall include the amount

granted, whether the grant is in full or on account, which may be enforced by attachment for contempt of court or by writ of fieri facias, whether the parties subsequently reconcile or not. An attorney may bring an action in his or her own name to enforce a grant of attorney's fees made pursuant to this subsection.

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

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

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

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

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

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

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

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

(B) Unless the court determines that it would not be in the child's best interest, a temporary modification order for a parenting plan shall set a date certain for the anticipated end of the deployment and the start of the transition period back to the predeployment parenting plan. If a deployment is extended, the temporary modification order for a parenting plan shall remain in effect, and the transition schedule shall take effect at the end of the extension of the deployment. Failure of the nondeploying parent to notify the court in accordance with this paragraph shall not prejudice the deploying

parent's right to return to the predeployment parenting plan once the temporary modification order for a parenting plan expires as provided in subparagraph (C) of this paragraph.

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

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

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

(A) The nondeploying parent make the child reasonably available to the deploying parent to exercise his or her parenting time immediately before and after the deploying parent departs for deployment and whenever the deploying parent returns to or from leave or furlough from his or her deployment;

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

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

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

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

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

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

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

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

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

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

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

(i) Expedite a hearing to establish a temporary parenting plan;

(ii) Require that the deploying parent shall have continued access to the child, provided that such contact is in the child's best interest;

(iii) Ensure the disclosure of financial information pertaining to both parties;

(iv) Determine the child support responsibilities under Code Section 19-6-15 of both parents during the deployment; and

(v) Determine the child's best interest and consider delegating to any third parties with close contacts to the child any reasonable parenting time during the deployment.

In deciding such request the court shall consider the reasonable requests of the deployed parent.

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

(15) When an impending deployment precludes court expedited adjudication before deployment, the court may agree to allow the parties to arbitrate any issues as allowed under Code Section 19-9-1.1, or order the parties to mediation under any court established alternative dispute resolution program. For purposes of arbitration or mediation, each party shall be under a duty to provide to the other party information relevant to any parenting plan or support issues pertaining to the children or the parties;

(16) Each military parent shall be under a continuing duty to provide written notice to the nondeploying parent within 14 days of the military parent's receipt of oral or written orders requiring deployment or any other absences due to military service that will impact the military parent's ability to exercise his or her parenting time with a child. If deployment orders do not allow for 14 days' advance notice, then the military parent shall provide written notice to the other parent immediately upon receiving such notice; and

(17) A military parent shall ensure that any military family care plan that he or she has filed with his or her commander is consistent with any existing court orders for his or her child. In all instances any court order will be the first course of action for the care of a child during the absence of a military parent, and the military family care plan will be the alternative plan if the nondeploying parent either refuses to provide care for the child or acknowledges an inability to provide reasonable care for the child. A military parent shall not be considered in contempt of any court order or parenting plan when he or she

in good faith implements his or her military family care plan based upon the refusal or claimed inability of a nondeploying parent to provide reasonable care for a child during a deployment."

#### SECTION 4.

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

"19-9-3.1.

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

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

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

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

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

#### SECTION 5.

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

"19-9-4.

(a) On motion of either party in any action or proceeding involving determination of the award of child custody between parents of the child or a parent and a de facto custodian as provided for in Code Section 19-9-3.1, when such motion contains a specific recitation of actual abuse, neglect, or other overt acts which have adversely affected the health and welfare of the child, the judge may direct the appropriate family and children services agency or any other appropriate entity to investigate the home life and home environment of ~~each of the parents~~ or the de facto custodian, as the case requires. In any action or proceeding involving determination of the award of child custody between parents of the

child or a parent and a de facto custodian of the child when during such proceedings a specific recitation of actual abuse, neglect, or other overt acts which have adversely affected the health and welfare of the child has been made the judge shall also have authority on his or her own motion to order such an investigation if in the judge's opinion the investigation would be useful in determining placement or custody of the child. The judge may also direct either party to pay to the agency the reasonable cost, or any portion thereof, of the investigation. The report of the investigation will be made to the judge directing the investigation. Any report made at the direction of the judge shall be made available to either or both parties for a reasonable period of time prior to the proceedings at which any temporary or permanent custody is to be determined. Both parties shall have the right to confront and cross-examine the person or persons who conducted the investigation or compiled the report if adequate and legal notice is given.

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

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

## SECTION 6.

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

"19-9-5.

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

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

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

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

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

538 (2) 'De facto custodian' shall have the same meaning as provided for in Code Section  
539 19-7-3."

540 **SECTION 7.**

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

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

549 (6) 'Joint physical custody' means that physical custody is shared by the parents or a  
550 parent and a de facto custodian as provided for in Code Section 19-9-3.1 in such a way  
551 as to assure the child of substantially equal time and contact with both parents, or the  
552 parent and the de facto custodian."

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

557 "(10) 'Nondeploying parent' means:

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

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

561 **SECTION 8.**

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

564 **SECTION 9.**

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