

House Bill 972

By: Representative Spencer of the 180th

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 1 of Chapter 9 of Title 19 of the Official Code of Georgia Annotated,
2 relating to general provisions relative to child custody proceedings, so as to make legislative
3 findings; to provide for a limitation on the definition of the term "actual harm"; to provide
4 for certain requirements for parenting plans; to provide requirements for a finding of actual
5 harm to a child; to provide for the burden of proof; to prohibit certain restrictions on parents
6 in parenting plans; to provide an effective date and applicability; to repeal conflicting laws;
7 and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 SECTION 1.

10 The General Assembly affirms and declares that it is the policy of this state:

11 (1) To assure that minor children have frequent and continuing contact with parents who
12 have shown the ability to act in the best interests of their children and to encourage
13 parents to share in the rights and responsibilities of rearing their children after the parents
14 have separated or dissolved their marriage or relationship;

15 (2) That the right of parents to participate in, have authority over, and be involved in the
16 lives of their children is a fundamental right protected by the Georgia Constitution and
17 the United States Constitution, and such fundamental right shall not be abridged absent
18 a compelling state interest and upon clear and convincing evidence of actual harm to a
19 child, whereupon such limitation or restriction as will alleviate or prevent such harm may
20 be imposed, provided that there is a direct relationship between the limitation or
21 restriction and the harm being alleviated or prevented; and

22 (3) That the provisions of Chapter 9 of Title 19 of the Official Code of Georgia
23 Annotated, as amended, shall govern the judges and the Justices of this state with respect
24 to the drafting, implementation, interpretation, and enforcement of existing orders,
25 decrees, and judgments as well pending actions or actions filed prior to July 1, 2014, and

26 the judges and Justices shall not enforce such prohibitions, limitations, and restrictions
 27 as are in violation of Section 2 of this Act, regardless of when entered.

28 **SECTION 2.**

29 Article 1 of Chapter 9 of Title 19 of the Official Code of Georgia Annotated, relating to
 30 general provisions relative to child custody proceedings, is amended by revising Code
 31 Section 19-9-1, relating to parenting plans and requirements for plan, as follows:

32 "19-9-1.

33 (a) As used in this Code section, the term 'actual harm' shall not have the meaning that a
 34 child would or may be uncomfortable, that either parent would or may be uncomfortable,
 35 or that there may be a confrontation or discord between the parents. A parent's discomfort,
 36 convenience, or claim to exclusivity shall not be considered or permitted to contribute to
 37 a finding of actual harm. The best interests of the child and the welfare and happiness of
 38 the child shall not be a sufficient basis upon which any provision of this Code section may
 39 be circumvented.

40 (b) Except when a parent seeks emergency relief for family violence pursuant to Code
 41 Section 19-13-3 or 19-13-4, in all cases in which the custody of any child is at issue
 42 between the parents, each parent shall prepare a parenting plan or the parties may jointly
 43 submit a parenting plan. ~~It shall be in the judge's discretion as to when a party shall be~~
 44 ~~required to submit a parenting plan to the judge.~~ A parenting plan shall be required for
 45 permanent custody and modification actions and in the judge's discretion may be required
 46 for temporary hearings. ~~The final decree in any legal action involving the custody of a~~
 47 ~~child, including modification actions, shall incorporate a permanent parenting plan and~~
 48 shall be incorporated into each order or decree affecting permanent custody, parenting
 49 time, or conditions affecting the parent-child relationship, whether such order or decree is
 50 temporary or permanent and whether it is entered in an original action or a modification
 51 action.

52 ~~(b)(c)~~(1) Unless otherwise ordered by the judge upon a finding by clear and convincing
 53 evidence that actual harm would come to the child or children if such terms are not
 54 included, with the burden of proving such finding resting with the party or the judge
 55 making such contention, a parenting plan shall include the following:

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

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

61 (C) A provision that the parenting time of the child shall be as the parents agree, and
 62 that only when the parents do not agree shall the parenting plan terms of physical
 63 custody govern;

64 (D) A provision that the parenting plan shall not prohibit the parents from
 65 communicating, at a minimum, by e-mail and text concerning the child unless the facts
 66 and the burden of proof are met for the issuance of an order under Chapter 13 of this
 67 title. In such event, any prohibition, limitation, or restriction shall be framed and
 68 constructed only so as to provide relief as intended under Chapter 13 of this title and,
 69 if such order is issued, that any such prohibition, limitation, or restriction shall be
 70 framed and constructed only so as to provide relief as intended under Chapter 13 of this
 71 title and shall not prohibit the parents from requesting and agreeing to adjustments to
 72 the parenting schedule to account for or accommodate illness, work, or other reasons
 73 one or both parents may wish to adjust the parenting schedule;

74 ~~(E)~~(E) A recognition that a parent with physical custody will make day-to-day
 75 decisions and emergency decisions while the child is residing with such parent; and
 76 ~~(F)~~(F) That both parents will have access to all of the child's records and information
 77 and to those of the child's teachers, medical providers, coaches, and other such
 78 individuals and organizations, including, but not limited to, education, health, health
 79 insurance, extracurricular activities, and religious ~~communications~~ upbringing.

80 (2) Unless otherwise ordered by the judge upon a finding by clear and convincing
 81 evidence that actual harm would come to the child if such terms were not included, with
 82 the burden of proving such finding on the party or the judge making such contention, or
 83 agreed upon by the parties, a parenting plan shall include, but not be limited to:

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

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

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

91 (D) Whether supervision will be needed for any parenting time and, if so, the
 92 particulars of the supervision, which supervision may be ordered by the judge only:

93 (i) Upon a finding by clear and convincing evidence that actual harm would come to
 94 the child if such terms were not included, with the burden of proving such finding on
 95 the party or the judge making such contention; or

96 (ii) If the parties agree upon such supervision;

97 (E) An allocation of decision-making authority to one or both of the parents with
 98 regard to the child's education, health, extracurricular activities, and religious
 99 upbringing, and if the parents agree the matters should be jointly decided, how to
 100 resolve a situation in which the parents disagree on resolution;

101 (F) What, if any, limitations will exist while one parent has physical custody of the
 102 child in terms of the other parent contacting the child, the child contacting the parent,
 103 and the other parent's right to access education, health, extracurricular activity, and
 104 religious information regarding the child, which access to the information concerning
 105 the child and the communications between each parent and the child shall be limited
 106 only:

107 (i) Upon a finding by clear and convincing evidence that actual harm would come to
 108 the child if such limitation to such access or restriction on communications between
 109 the child and each parent was not included with the burden of proving such finding
 110 on the party or the judge making such contention; or

111 (ii) If such limitation to such access or communications was agreed upon by the
 112 parties; and

113 (G) If a military parent is a party in the case:

114 (i) How to manage the child's transition into temporary physical custody to a
 115 nondeploying parent if a military parent is deployed;

116 (ii) The manner in which the child will maintain continuing contact with a deployed
 117 parent;

118 (iii) How a deployed parent's parenting time may be delegated to his or her extended
 119 family;

120 (iv) How the parenting plan will be resumed once the deployed parent returns from
 121 deployment; and

122 (v) How divisions (i) through (iv) of this subparagraph serve the best interest of the
 123 child.

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

128 (e) A parenting plan, order, or decree shall not prohibit, limit, or restrict a parent during
 129 his or her parenting time or physical custody from accompanying the child at any place or
 130 event at which other parents are permitted to be accompanied by their children except upon
 131 a finding by clear and convincing evidence that actual harm would come to the child in the
 132 absence of such prohibition, limitation, or restriction. The burden of proving such finding
 133 shall rest with the party or the judge making such contention.

134 (f)(1) A parenting plan, order, or decree shall not prohibit, limit, or restrict a parent from:
135 (A) Attending any activity, performance, or event of the child to which the public is
136 or other parents are admitted including, but not limited to, musical concerts,
137 graduations, recitals, parent-child events, holiday events, sporting events or games,
138 practices, or rehearsals; or
139 (B) Attending or participating in parent-teacher conferences, lunch visits, reading to
140 the child's class, or other such activity or event as a parent of any other child is
141 permitted to do,
142 except upon a finding by clear and convincing evidence that actual harm would come to
143 the child in the absence of such prohibition, limitation, or restriction. The burden of
144 proving such finding shall rest with the party or the judge making such contention.
145 (2) A finding that the child would or may be uncomfortable by the presence of either
146 parent or both parents, that either parent would or may be uncomfortable by the presence
147 of the other parent, or that there may be a confrontation or discord between the parents
148 at any such activity, performance, or event shall not be sufficient to permit the court to
149 prohibit, limit, or restrict a parent from attending any such activity, performance, or event
150 of the child unless the facts and the burden of proof are met for the issuance of an order
151 under Chapter 13 of this title. In such event, any prohibition, limitation, or restriction
152 shall be framed and constructed only so as to provide relief as intended under Chapter 13
153 of this title.
154 (3) The parenting time or physical custody of one parent or that parent's discomfort,
155 convenience, or claim to exclusivity shall not act as a bar to the other parent's attendance
156 and interaction with the child at any such activity, performance, or event to which the
157 public is or other parents are admitted.
158 (g) A parenting plan, order, or decree shall not prohibit, limit, or restrict a parent during
159 his or her parenting time or physical custody from taking the child to or being with the
160 child at any place or event to which the public is or other parents are permitted to take their
161 children or be with their children except upon a finding by clear and convincing evidence
162 that actual harm would come to the child in the absence of such prohibition, limitation, or
163 restriction with the burden of proving such finding on the party or the judge making such
164 contention.
165 (h) For purposes of this chapter, any prohibition, limitation, or restriction imposed upon
166 a parent with respect to that parent's interaction, involvement, and authority as to the
167 parent's minor child shall be limited to that which alleviates or prevents the actual harm to
168 the minor child that has been found by clear and convincing evidence for such prohibition,
169 limitation, or restriction to be authorized under this Code section. The burden of proving
170 such finding rests with the party or the judge making such contention. In order to justify

171 such a prohibition, limitation, or restriction, there must be a direct causal link between the
172 actual harm being alleviated or prevented and such prohibition, limitation, or restriction.
173 The discomfort, convenience, or claim to exclusivity of either parent may not be the basis
174 for any such prohibition, limitation, or restriction."

175 **SECTION 3.**

176 This Act shall become effective on July 1, 2014, and shall apply to all child custody
177 proceedings and modifications of child custody filed on or after July 1, 2014.

178 **SECTION 4.**

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