

# Georgia Divorce Laws

## Title 19 Domestic Relations

### Chapter 1 Domestic Relations Action

#### 19-1-1.

(a) As used in this Code section, the term 'domestic relations action' shall include any action for divorce, alimony, equitable division of assets and liabilities, child custody, child support, legitimation, annulment, determination of paternity, termination of parental rights in connection with an adoption proceeding filed in a superior court, any contempt proceeding relating to enforcement of a decree or order, a petition in respect to modification of a decree or order, an action on a foreign judgment based on alimony or child support, and adoption. The term 'domestic relations action' shall also include any direct or collateral attack on a judgment or order entered in any such action.

(b) Upon the filing of any domestic relations action, the court may issue a standing order in such action which:

- (1) Upon notice, binds the parties in such action, their agents, servants, and employees, and all other persons acting in concert with such parties;
  - (2) Enjoins and restrains the parties from unilaterally causing or permitting the minor child or children of the parties to be removed from the jurisdiction of the court without the permission of the court, except in an emergency which has been created by the other party to the action;
  - (3) Enjoins and restrains each party from doing or attempting to do or threatening to do any act which injures, maltreats, vilifies, molests, or harasses or which may, upon judicial determination, constitute threats, harassment, or stalking the adverse party or the child or children of the parties or any act which constitutes a violation of other civil or criminal laws of this state; and
  - (4) Enjoins and restrains each party from selling, encumbering, trading, contracting to sell, or otherwise disposing of or removing from the jurisdiction of the court, without the permission of the court, any of the property belonging to the parties except in the ordinary course of business or except in an emergency which has been created by the other party to the action.
- (c) Upon written motion of a party, the standing order provided for in this Code section shall be reviewed by the court at any rule nisi hearing.

### Chapter 3 Marriage

#### 19-3-1.

To constitute a valid marriage in this state there must be:

- (1) Parties able to contract;
- (2) An actual contract; and
- (3) Consummation according to law.

#### 19-3-1.1.

No common-law marriage shall be entered into in this state on or after January 1, 1997. Otherwise valid common-law marriages entered into prior to January 1, 1997, shall not be affected by this Code section and shall continue to be recognized in this state.

#### 19-3-2.

To be able to contract marriage, a person must:

- (1) Be of sound mind;
- (2) Be at least 16 years of age. If either applicant is under the age of majority, parental consent shall be required, as provided in Code Section 19-3-3719-3-3.

(a) Any person who marries a person to whom he knows he is related, either by blood or by marriage, as follows:

- (1) Father and daughter or stepdaughter;
- (2) Mother and son or stepson;
- (3) Brother and sister of the whole blood or the half blood;
- (4) Grandparent and grandchild;
- (5) Aunt and nephew; or
- (6) Uncle and niece

shall be punished by imprisonment for not less than one nor more than three years.  
(b) Marriages declared to be unlawful under subsection (a) of this Code section shall be void from their inception.

However, the age limitations contained in this paragraph shall not apply upon proof of pregnancy on the part of the female or in instances in which both applicants are the parents of a living child born out of wedlock, in which case the parties may contract marriage regardless of age;

(3) Have no living spouse of a previous undissolved marriage. The dissolution of a previous marriage in divorce proceedings must be affirmatively established and will not be presumed. Nothing in this paragraph shall be construed to affect the legitimacy of children; and  
(4) Not be related to the prospective spouse by blood or marriage within the prohibited degrees.

**19-3-3.1.**

(a) It is declared to be the public policy of this state to recognize the union only of man and woman. Marriages between persons of the same sex are prohibited in this state.

(b) No marriage between persons of the same sex shall be recognized as entitled to the benefits of marriage. Any marriage entered into by persons of the same sex pursuant to a marriage license issued by another state or foreign jurisdiction or otherwise shall be void in this state. Any contractual rights granted by virtue of such license shall be unenforceable in the courts of this state and the courts of this state shall have no jurisdiction whatsoever under any circumstances to grant a divorce or separate maintenance with respect to such marriage or otherwise to consider or rule on any of the parties' respective rights arising as a result of or in connection with such marriage.

**19-3-4.**

To constitute an actual contract of marriage, the parties must consent thereto voluntarily without any fraud practiced upon either. Drunkenness at the time of marriage, brought about by art or contrivance to induce consent shall be held as fraud.

**19-3-5.**

(a) Marriages of persons unable to contract, unwilling to contract, or fraudulently induced to contract shall be void. However, the issue of such a marriage born before the marriage is annulled and declared void by a competent court shall be legitimate.

(b) In the case of persons unwilling to contract or fraudulently induced to do so, a subsequent consent and ratification of the marriage, freely and voluntarily made, accompanied by cohabitation as husband and wife shall render the marriage valid. In the case of a marriage void on one of the grounds specified in paragraphs (1) through (3) of Code Section 19-3-2, after removal of the impediment to marriage, a subsequent free and voluntary consent and ratification of the marriage accompanied by cohabitation as husband and wife shall likewise render the marriage valid.

**19-3-6.**

Marriage is encouraged by the law. Every effort to restrain or discourage marriage by contract, condition, limitation, or otherwise shall be invalid and void, provided that prohibitions against marriage to a particular person or persons or before a certain reasonable age or other prudential provisions looking only to the interest of the person to be benefited and not in general restraint of marriage will be allowed and held valid.

**19-3-7.**

The policy of the law being opposed equally to restrictions on marriage and to marriages not the result of free choice, all contracts or bonds made to hinder or to force marriage are deemed fraudulent and void.

**19-3-9.**

The separate property of each spouse shall remain the separate property of that spouse, except as provided in Chapters 5 and 6 of this title and except as otherwise provided by law.

**Chapter 4 Annulments of Marriages**

**19-4-1.**

Annulments of marriages declared void by law may be granted by the superior court, except that annulments may not be granted in instances where children are born or are to be born as a result of the marriage.

**19-4-2.**

Parties who enter into a marriage which is declared void by law shall have the right to file:

- (1) A petition for annulment; or
- (2) A petition for divorce, if grounds for divorce exist.

**19-4-3.**

A petition for annulment may be filed by next friend for minors or persons of unsound mind.

**19-4-4.**

All matters of service, jurisdiction, procedure, residence, pleading, and practice for obtaining an annulment of marriage shall be the same as those provided by law for obtaining a divorce, with the exception that a decree of annulment may be ordered at any time, in open court or in chambers, when personal service is had at least 30 days beforehand and no contest or answer is filed.

**19-4-5.**

A decree of annulment, when rendered, shall have the effect of a total divorce between the parties of a void marriage and shall return the parties thereto to their original status before marriage. However, a decree of annulment shall not operate to relieve the parties to a marriage of criminal charges or responsibilities occasioned by the marriage.

**Chapter 5 Divorce**

**19-5-1.**

(a) Total divorces may be granted in proper cases by the superior court. Unless an issuable defense is filed as provided by law and a jury trial is demanded in writing by either party on or before the call of the case for trial, in all petitions for divorce and permanent alimony the judge shall hear and determine all issues of law and of fact and any other issues raised in the pleadings.

(b) In any county in which there has been established an alternative dispute resolution program pursuant to Chapter 23 of Title 15, known as the 'Georgia Court-annexed Alternative Dispute Resolution Act,' the judge may, prior to trial, refer all contested petitions for divorce or permanent alimony to the appropriate alternative dispute resolution method. In counties in which an alternative dispute resolution program has not been established, a judge may nonetheless refer any disputed divorce case to an appropriate alternative dispute resolution method if a method is reasonably available without additional cost to the parties.

**19-5-2.**

No court shall grant a divorce to any person who has not been a bona fide resident of this state for six months before the filing of the petition for divorce, provided that any person who has been a resident of any United States army post or military reservation within this state for one year next preceding the filing of the petition may bring an action for divorce in any county adjacent to the United States army post or military reservation; and provided, further, that a nonresident of this state may file a petition for divorce, in the county of residence of the respondent, against any person who has been a resident of this state and of the county in which the action is brought for a period of six months prior to the filing of the petition.

**19-5-3.**

The following grounds shall be sufficient to authorize the granting of a total divorce:

- (1) Intermarriage by persons within the prohibited degrees of consanguinity or affinity;
- (2) Mental incapacity at the time of the marriage;
- (3) Impotency at the time of the marriage;
- (4) Force, menace, duress, or fraud in obtaining the marriage;
- (5) Pregnancy of the wife by a man other than the husband, at the time of the marriage, unknown to the husband;
- (6) Adultery in either of the parties after marriage;
- (7) Willful and continued desertion by either of the parties for the term of one year;
- (8) The conviction of either party for an offense involving moral turpitude, under which he is sentenced to imprisonment in a penal institution for a term of two years or longer;
- (9) Habitual intoxication;
- (10) Cruel treatment, which shall consist of the willful infliction of pain, bodily or mental, upon the

complaining party, such as reasonably justifies apprehension of danger to life, limb, or health;

(11) Incurable mental illness. No divorce shall be granted upon this ground unless the mentally ill party has been adjudged mentally ill by a court of competent jurisdiction or has been certified to be mentally ill by two physicians who have personally examined the party; and he has been confined in an institution for the mentally ill or has been under continuous treatment for mental illness for a period of at least two years immediately preceding the commencement of the action; and the superintendent or other chief executive officer of the institution and one competent physician appointed by the court, after a thorough examination, make a certified statement under oath that it is their opinion that the party evidences such a want of reason, memory, and intelligence as to prevent the party from comprehending the nature, duties, and consequences of the marriage relationship and that, in the light of present day medical knowledge, recovery of the party's mental health cannot be expected at any time during his life. Notice of the action must be served upon the guardian of the person of the mentally ill person and upon the superintendent or other chief executive officer of the institution in which the person is confined. In the event that there is no guardian of the person, then notice of the action shall be served upon a guardian ad litem, who shall be appointed by the court in which the divorce action is filed, and upon the superintendent or chief executive officer of the institution in which the person is confined. The guardian and superintendent shall be entitled to appear and be heard upon the issues. The status of the parties as to the support and maintenance of the mentally ill person shall not be altered in any way by the granting of the divorce;

(12) Habitual drug addiction, which shall consist of addiction to any controlled substance as defined in Article 2 of Chapter 13 of Title 16;

(13) The marriage is irretrievably broken. Under no circumstances shall the court grant a divorce on this ground until not less than 30 days from the date of service on the respondent.

**19-5-4.**

(a) No divorce shall be granted under the following circumstances:

(1) The adultery, desertion, cruel treatment, or intoxication complained of was occasioned by the collusion of the parties, with the intention of causing a divorce;

(2) The party complaining of the adultery, desertion, cruel treatment, or intoxication of the other party was consenting thereto;

(3) Both parties are guilty of like conduct; or

(4) There has been a voluntary condonation and cohabitation subsequent to the acts complained of, with notice thereof.

(b) In all such cases, the respondent may plead in defense the conduct of the party bringing the action and the jury may, on examination of the whole case, refuse a divorce.

**19-5-5.**

(a) The action for divorce shall be brought by written petition and process, the petition being verified by the petitioner.

(b) The petition shall show:

(1) The residence or last known address of the respondent;

(2) That the applicant meets the residence requirements for bringing an action for divorce or that the applicant is bringing a counterclaim and is not required to meet the residence requirements;

(3) The date of the marriage and the date of the separation;

(4) Whether or not there are any minor children of the parties and the name and age of each minor child;

(5) The statutory ground upon which a divorce is sought; and

(6) Where alimony or support or division of property is involved, the property and earnings of the parties, if such is known.

(c) The respondent, at any time before trial, may file with the court a written demand for a detailed statement of the facts on which the grounds in the petition are predicated. The respondent shall cause a copy of the demand to be served upon the petitioner or upon the petitioner's counsel of record and the facts demanded shall be added to the petition in the form of an amendment thereto.

**19-5-6.**

When a petition for divorce is filed, the respondent may recriminate in his answer and ask a divorce in his favor. If, at the trial, the court or jury believes that the respondent rather than the petitioner is entitled to a divorce, they may so find upon legal proof.

**19-5-7.**

After a petition for divorce has been filed, no transfer of property by either party, except a bona fide transfer in payment of preexisting debts, shall pass title so as to avoid the vesting thereof according to the final verdict of the jury in the case; provided, however, that the title to real property shall not be affected by the filing of an action for divorce unless a notice of lis pendens, as provided for by Code Section 44-14-610, is filed in the office of the clerk of the superior court of the county in which the real property is situated and is recorded by the clerk in a book kept by him for that purpose.

**19-5-8.**

The same rules of pleading and practice applicable to ordinary civil actions shall apply to actions for divorce, alimony, and custody of minor children, except as otherwise specifically provided in this chapter. No verdict or judgment by default shall be taken in any such case but the allegations of the pleadings shall be established to the satisfaction of the court by the verified pleadings, by affidavit, by evidentiary hearing, or otherwise, as provided in Code Section 19-5-10.

**19-5-9.**

A juror who has conscientious scruples as to the granting of divorces shall be incompetent to serve in divorce cases. At the request of either party, the court may question the panel concerning such scruples.

**19-5-10.**

(a) In divorce cases which are not defended by the responding party, the judge shall determine that the asserted grounds for divorce are legal and sustained by proof or shall appoint an attorney of the court to discharge that duty for him. An evidentiary hearing for the determination of the existence of the grounds for divorce and for the determination of issues of alimony, child support, and child custody and other issues is authorized but not required. If no evidentiary hearing is held, the determination of such matters may be made upon the verified pleadings of either party, one or more affidavits, or such other basis or procedure as the court may deem proper in its discretion. (b) The provisions of subsection (a) of this Code section shall apply to proceedings pending on July 1, 1987, as well as to proceedings filed on or after that date. (c) Any motion to set aside or other proceeding to attack a judgment which attacks a judgment entered in a divorce case prior to July 1, 1987, and which is based upon an alleged failure to properly establish evidence supporting the judgment must be commenced prior to July 1, 1988, or thereafter be totally barred. The bar established by this subsection is in addition to and not in lieu of any other statute or rule of law which would operate as a bar to such a motion or other proceeding; and this subsection shall not operate to revive any otherwise barred right to prosecute any such motion or other proceeding.

**19-5-11.**

The confessions of a party to acts of adultery or cruel treatment shall be received with great caution; if unsupported by corroborating circumstances and if made with a view to be evidence in the case, such confessions shall not be deemed sufficient to grant a divorce.

**19-5-12.**

(a) A final judgment of divorce shall be prepared so as to conform to the pleadings and the evidence and may restore a maiden or prior name, if requested. It shall be prepared in form substantially as follows:

**FINAL JUDGMENT AND DECREE**

Upon consideration of this case, upon evidence submitted as provided by law, it is the judgment of the court that a total divorce be granted, that is to say, a divorce a vinculo matrimonii, between the parties to the above stated case upon legal principles.

It is considered, ordered, and decreed by the court that the marriage contract heretofore entered into between the parties to this case, from and after this date, be and is set aside and dissolved as fully and effectually as if no such contract had ever been made or entered into.

Petitioner and Respondent in the future shall be held and considered as separate and distinct persons altogether unconnected by any nuptial union or civil contract whatsoever and both shall have the right to remarry.

Decree and order entered this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Judge, Superior Court

(b) Where applicable, any one or more of the following clauses shall be included in the form of the judgment:

The court restores to (Petitioner/Respondent) his/her prior or maiden name, to wit: \_\_\_\_\_.

The court awards custody of the children of the parties as follows: \_\_\_\_\_.

The court fixes alimony as follows: \_\_\_\_\_.

(c) In any case which involves the determination of child support and only in such cases, the form of the judgment shall also include provisions substantially identical to the following:

In determining child support, the court finds as follows:

The gross income of the father is \_\_\_\_\_ dollars monthly.

The gross income of the mother is \_\_\_\_\_ dollars monthly.

In this case child support is being determined for \_\_\_\_\_ children.

The applicable percentage of gross income to be considered is:

Number of

Children

Percentage Range of Gross Income

1 17 percent to 23 percent

2 23 percent to 28 percent

3 25 percent to 32 percent

4 29 percent to 35 percent

5 or more 31 percent to 37 percent

Thus, \_\_\_\_\_ percent of \_\_\_\_\_ (gross income of obligor) equals \_\_\_\_\_ dollars per month.

The court has considered the existence of special circumstances and has found the following special circumstances marked with an 'X' to be present in this case:

\_\_\_\_\_ 1. Ages of the children.  
\_\_\_\_\_

\_\_\_\_\_ 2. A child's extraordinary medical costs or needs in addition to accident and sickness insurance, provided that all such costs or needs shall be considered if no insurance is available.

\_\_\_\_\_ 3. Educational costs.

\_\_\_\_\_ 4. Day-care costs.

\_\_\_\_\_ 5. Shared physical custody arrangements, including extended visitation.

\_\_\_\_\_ 6. A party's other support obligations to another household.

\_\_\_\_\_ 7. Income that should be imputed to a party because of suppression of income.

\_\_\_\_\_ 8. In-kind income for the self-employed, such as reimbursed meals or a company car.

\_\_\_\_\_ 9. Other support of party is providing or will be providing, such as payment of a mortgage.

\_\_\_\_\_ 10. A party's own extraordinary needs, such as medical expenses.

\_\_\_\_\_ 11. Extreme economic circumstances including but not limited to:

\_\_\_\_\_ (A) Unusually high debt structure; or

\_\_\_\_\_ (B) Unusually high income of either party or both parties, which shall be construed as individual gross income of over \$75,000.00 per annum.

\_\_\_\_\_ 12. Historical spending in the family for children which varies significantly from the percentage table.

\_\_\_\_\_ 13. Considerations of the economic cost-of-living factors of the community of each party, as determined by the trier of fact.

\_\_\_\_\_ 14. In-kind contribution of either parent.

\_\_\_\_\_ 15. The income of the custodial parent.

\_\_\_\_\_ 16. The cost of accident and sickness insurance coverage for dependent children included in the order.

\_\_\_\_\_ 17. Extraordinary travel expenses to exercise visitation or shared physical custody.  
\_\_\_\_\_

18. Any other factor which the trier of fact deems to be required by the ends of justice, as described below:  
\_\_\_\_\_.

19. Having found that no special circumstances exist, or special circumstances numbered \_\_\_\_\_ exist (delete the phrase which does not apply), the final award of child support which \_\_\_\_\_ shall pay to \_\_\_\_\_ for support of the child or children is \_\_\_\_\_ dollars per week/month other period (delete those which do not apply and insert as necessary) per child, beginning on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, and payable thereafter on the \_\_\_\_\_ day of \_\_\_\_\_ until the child becomes 18 years of age, dies, marries, or otherwise becomes emancipated, except that if the child becomes 18 years of age while enrolled in and attending secondary school on a full-time basis, then such support shall continue until the child completes secondary school, provided that such support shall not be required after the child attains 20 years of age. \_\_\_\_\_ is ordered to provide accident and sickness insurance for the child or children for so long as he or she is obligated by this order to provide support (insert name of party or delete this sentence if the order does not include provision for insurance).

(d) Where applicable, the court shall also include in the order the provisions of Code Section 19-6-30 concerning continuing garnishment for support and language in compliance with Code Section 19-6-32 concerning income deduction orders.

**19-5-13.**

The verdict of the jury disposing of the property in a divorce case shall be carried into effect by the court by entering such judgment or decree or taking such other steps as are usual in the exercise of the court's equitable powers to execute effectually and fully the jury's verdict.

**19-5-14.**

New trials may be granted in actions for divorce as in other cases.

**19-5-15.**

A total divorce annuls a marriage from the time of the rendition of the decree, unless the divorce is granted for a cause rendering the marriage void originally, in which case the divorce serves to annul the marriage from its inception. However, the issue of the marriage shall not be rendered born out of wedlock by a divorce, except in cases of pregnancy of the wife by a man other than the husband at the time of the marriage, unknown to the husband.

**19-5-16.**

In all divorce actions, a party may pray in his pleadings for the restoration of a maiden or prior name. If a divorce is granted, the judgment or decree shall specify and restore to the party the name so prayed for in the pleadings.

**19-5-17.**

When a divorce is granted, the jury or the judge, as the case may be, shall determine the rights of the parties. No person shall be placed under a disability that would prevent remarriage.

**Chapter 6 Alimony**

**19-6-1.**

(a) Alimony is an allowance out of one party's estate, made for the support of the other party when living separately. It is either temporary or permanent.

(b) A party shall not be entitled to alimony if it is established by a preponderance of the evidence that the separation between the parties was caused by that party's adultery or desertion. In all cases in which alimony is sought, the court shall receive evidence of the factual cause of the separation even though one or both of the parties may also seek a divorce, regardless of the grounds upon which a divorce is sought or granted by the court.

(c) In all other cases in which alimony is sought, alimony is authorized, but is not required, to be awarded to either party in accordance with the needs of the party and the ability of the other party to pay. In determining whether or not to grant alimony, the court shall consider evidence of the conduct of each party toward the other.

(d) Should either party die prior to the court's order on the issue of alimony, any rights of the other party to alimony shall survive and be a lien upon the estate of the deceased party.

(e) Pending final determination by the court of the right of either party to alimony, neither party shall make any substantial change in the assets of the party's estate except in the course of ordinary business affairs and except for bona fide transfers for value.

**19-6-2.**

(a) The grant of attorney's fees as a part of the expenses of litigation, made at any time during the pendency of the litigation, whether the action is for alimony, divorce and alimony, or contempt of court arising out of either an alimony case or a divorce and alimony case, including but not limited to contempt of court orders involving property division, child custody, and child visitation rights, shall be:

(1) Within the sound discretion of the court, except that the court shall consider the financial circumstances of both parties as a part of its determination of the amount of attorney's fees, if any, to be allowed against either party; and

(2) A final judgment as to 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.

(b) Nothing contained in this Code section shall be construed to mean that attorney's fees shall not be awarded at both the temporary hearing and the final hearing.

(c) An attorney may bring an action in his own name to enforce a grant of attorney's fees made to him pursuant to this Code section.

**19-6-3.**

(a) Whenever an action for divorce or for permanent alimony is pending, either party may apply at any time to the presiding judge of the court in which the same is pending, by petition, for an order granting the party temporary alimony pending the issuance of a final judgment in the case. After hearing both parties and the evidence as to all the circumstances of the parties and as to the fact of marriage, the court shall grant an order allowing such temporary alimony, including expenses of litigation, as the condition of the parties and the facts of the case may justify.

(b) In arriving at a decision, the judge shall consider the peculiar necessities created for each party by the pending litigation and any evidence of a separate estate owned by either party. If the separate estate of the party seeking alimony is ample as compared with that of the other party, temporary alimony may be refused.

(c) At a hearing on the application for temporary alimony, the merits of the case are not in issue; however, the judge, in fixing the amount of alimony, may inquire into the cause and circumstances of the separation rendering the alimony necessary and in his discretion may refuse it altogether.

(d) On application, an order allowing temporary alimony shall be subject to revision by the court at any time and may be enforced either by writ of fieri facias or by attachment for contempt.

(e) A failure to comply with the order allowing temporary alimony shall not deprive a party of the right either to prosecute or to defend the case.

**19-6-4.**

(a) Permanent alimony may be granted in the following cases:

(1) In cases of divorce;

(2) In cases of voluntary separation; or

(3) Where one spouse, against the will of that spouse, is abandoned or driven off by the other spouse.

(b) A grant of permanent alimony may be enforced either by writ of fieri facias or by attachment for contempt.

**19-6-5.**

(a) The finder of fact may grant permanent alimony to either party, either from the corpus of the estate or otherwise. The following shall be considered in determining the amount of alimony, if any, to be awarded:

(1) The standard of living established during the marriage;

- (2) The duration of the marriage;
  - (3) The age and the physical and emotional condition of both parties;
  - (4) The financial resources of each party;
  - (5) Where applicable, the time necessary for either party to acquire sufficient education or training to enable him to find appropriate employment;
  - (6) The contribution of each party to the marriage, including, but not limited to, services rendered in homemaking, child care, education, and career building of the other party;
  - (7) The condition of the parties, including the separate estate, earning capacity, and fixed liabilities of the parties; and
  - (8) Such other relevant factors as the court deems equitable and proper.
- (b) All obligations for permanent alimony, however created, the time for performance of which has not arrived, shall terminate upon remarriage of the party to whom the obligations are owed unless otherwise provided.

**19-6-6.**

- (a) When permanent alimony is granted, the party liable for alimony shall cease to be liable for any debt or contract of the former spouse of the liable party.
- (b) Upon the grant of permanent alimony, the property of the liable party set apart for the support of the former spouse shall not be subject to the liable party's debts or contracts as long as the former spouse of the liable party shall live.

**19-6-7.**

After permanent alimony is granted, upon the death of the party liable for the alimony the other party shall not be entitled to any further interest in the estate of the deceased party by virtue of the marriage contract between the parties; however, such permanent provision shall be continued to the other party or a portion of the deceased party's estate equivalent to the permanent provision shall be set apart to the other party.

**19-6-8.**

In cases of voluntary separation or in cases where one spouse, against the will of that spouse, is abandoned or driven off by the other spouse, a party voluntarily, by contract or other written agreement made with his spouse, may make an adequate provision for the support and maintenance of such spouse, consistent with the means of the party and the former circumstances of the spouse. Such an agreement shall be a bar to the right of the spouse to permanent alimony.

**19-6-9.**

Absent the making of a voluntary contract or other agreement, as provided in Code Section 19-6-8, and on the application of a party, the court, exercising its equitable powers, may compel the spouse of the party to make provision for the support of the party and such minor children as may be in the custody of the party.

**19-6-10.**

When spouses are living separately or in a bona fide state of separation and there is no action for divorce pending, either party, on the party's own behalf or on the behalf of the minor children in the party's custody, if any, may institute a proceeding by petition, setting forth fully the party's case. Upon three days' notice to the other party, the judge may hear the same and may grant such order as he might grant were it based on a pending petition for divorce, to be enforced in the same manner, together with any other remedy applicable in equity, such as appointing a receiver and the like. Should the petition proceed to a hearing before a jury, the jury may render a verdict which shall provide the factual basis for equitable relief as in Code Section 19-6-9. However, such proceeding shall be held in abeyance when a petition for divorce is filed bona fide by either party and the judge presiding has made his order on the motion for alimony. When so made, the order shall be a substitute for the aforesaid decree in equity as long as the petition is pending and is not finally disposed of on the merits.

**19-6-11.**

A judgment of the superior court in a case brought under Code Section 19-6-10 shall be appealable on the same terms as are prescribed in divorce cases.

**19-6-12.**

The subsequent voluntary cohabitation of spouses, where there has been no total divorce between them, shall annul and set aside all provision made either by deed or decree for permanent alimony; provided, however, that the rights of children under any deed of separation or voluntary provision or decree for alimony shall not be affected by such subsequent voluntary cohabitation of the spouses.

**19-6-13.**

Until otherwise provided voluntarily or by decree or order of a court, each party shall be liable to third persons for the board and support and for all necessaries furnished to or for the benefit of the parties' children.

**19-6-14.**

Pending a final judgment in an action for divorce, the judge presiding may grant as alimony a sum sufficient for the support of the children of the parties. The judge may also hear and determine who shall be entitled to the care and custody of the children until the final judgment in the case. If a sum is awarded for the support of the children, the party who is required to pay the support shall not be liable to third persons for necessaries furnished to the children.

**19-6-15.**

(a) The provisions of this Code section shall not apply with respect to any divorce case in which there are no minor children, except to the limited extent expressly authorized in subsection (e) of this Code section; and in a divorce case in which there are no minor children the requirements of this Code section for findings of fact and inclusion of findings in the verdict or decree shall not apply. In the final verdict or decree, the trier of fact shall specify in what amount and from which party the minor children are entitled to permanent support. The final verdict or decree shall further specify as required by Code Section 19-5-12 in what manner, how often, to whom, and until when the support shall be paid. The final verdict or decree shall further include a written finding of the gross income of the father and the mother and the presence or absence of special circumstances in accordance with subsection (c) of this Code section. The trier of fact must also determine whether the accident and sickness insurance for the child or the children involved is reasonably available at reasonable costs through employment related or other group health insurance policies to an obligor. For purposes of this Code section, accident and sickness coverage shall be deemed available if the obligor has access to any policy of insurance authorized under Title 33 through an employer or other group health insurance plan. If the accident and sickness insurance is deemed available at reasonable cost, the court shall order the obligor to obtain the coverage; provided, however, if the obligee has accident and sickness insurance for the child or children reasonably available at reasonable costs through employment related or other group health insurance policies, then the court may order that the child or children be covered under such insurance and the obligor contribute as part of the child support order such part of the cost of providing such insurance or such part of any medical expenses incurred on behalf of the child or children not covered by such insurance as the court may deem equitable or appropriate. If currently unavailable or unreasonable in cost, the court shall order the obligor to obtain coverage when it becomes available at a reasonable cost, unless such insurance is provided by the obligee as provided in this subsection. When support is awarded, the party who is required to pay the support shall not be liable to third persons for necessaries furnished to the children embraced in the verdict or decree. In any contested case, the parties shall submit to the court their proposed findings regarding the gross income of the father and the mother and the presence or absence of special circumstances. In any case in which child support is determined by a jury, the court shall charge the provisions of this Code section and the jury shall be required to return a special interrogatory similar to the form of the order contained in Code Section 19-5-12 regarding the gross income of the father and the mother and the presence or absence of special circumstances. Furthermore, nothing contained within this Code section shall prevent the parties from entering into an enforceable agreement to the contrary which may be made the order of the court pursuant to the review by the court of child support amounts contained in this Code section; provided, however, any such agreement of the parties shall include a written statement regarding the gross income of the father and the mother and the presence or absence of special circumstances in accordance with subsection (c) of this Code section.

(b) The child support award shall be computed as provided in this subsection:  
(1) Computation of child support shall be based upon gross income;

- (2) For the purpose of determining the obligor's child support obligation, gross income shall include 100 percent of wage and salary income and other compensation for personal services, interest, dividends, net rental income, self-employment income, and all other income, except need-based public assistance;
- (3) The earning capacity of an asset of a party available for child support may be used in determining gross income. The reasonable earning potential of an asset may be determined by multiplying its equity by a reasonable rate of interest. The amount generated by that calculation should be added to the obligor's gross monthly income;
- (4) Allowable expenses deducted to calculate self-employment income that personally benefit the obligor, or economic in-kind benefits received by an employed obligor, may be included in calculating the obligor's gross monthly income; and
- (5) The amount of the obligor's child support obligation shall be determined by multiplying the obligor's gross income per pay period by a percentage based on the number of children for whom child support is being determined. The applicable percentages of gross income to be considered by the trier of fact are:

<u>Number of Children</u>	<u>Percentage Range of Gross Income</u>
1	17 percent to 23 percent
2	23 percent to 28 percent
3	25 percent to 32 percent
4	29 percent to 35 percent
5 or more	31 percent to 37 percent

Application of these guidelines shall create a rebuttable presumption that the amount of the support awarded is the correct amount of support to be awarded. A written finding or specific finding on the record for the award of child support that the application of the guidelines would be unjust or inappropriate in a particular case shall be sufficient to rebut the presumption in that case. Findings that rebut said presumption must state the amount of support that would have been required under the guidelines and include justification of why the order varies from the guidelines. These guidelines are intended by the General Assembly to be guidelines only and any court so applying these guidelines shall not abrogate its responsibility in making the final determination of child support based on the evidence presented to it at the time of trial.

(c) The trier of fact shall vary the final award of child support, up or down, from the range enumerated in paragraph (5) of subsection (b) of this Code section upon a written finding that the presence of one or more of the following special circumstances makes the presumptive amount of support either excessive or inadequate:

- (1) Ages of the children;
- (2) A child's extraordinary medical costs or needs in addition to accident and sickness insurance, provided that all such costs or needs shall be considered if no insurance is available;
- (3) Educational costs;
- (4) Day-care costs;
- (5) Shared physical custody arrangements, including extended visitation;
- (6) A party's other support obligations to another household;
- (7) Income that should be imputed to a party because of suppression of income;
- (8) In-kind income for the self-employed, such as reimbursed meals or a company car;
- (9) Other support a party is providing or will be providing, such as payment of a mortgage;
- (10) A party's own extraordinary needs, such as medical expenses;
- (11) Extreme economic circumstances including but not limited to:
  - (A) Unusually high debt structure; or
  - (B) Unusually high income of either party or both parties, which shall be construed as individual gross income of over \$75,000.00 per annum;
- (12) Historical spending in the family for children which varies significantly from the percentage table;
- (13) Considerations of the economic cost-of-living factors of the community of each party, as determined by the trier of fact;
- (14) In-kind contribution of either parent;
- (15) The income of the custodial parent;
- (16) The cost of accident and sickness insurance coverage for dependent children included in the

order;

(17) Extraordinary travel expenses to exercise visitation or shared physical custody; and  
(18) Any other factor which the trier of fact deems to be required by the ends of justice.

(d) The guidelines shall be reviewed by a commission appointed by the Governor to ensure that their application results in the determination of appropriate child support award amounts. The commission will complete its review and submit its report within four years following July 1, 1989, and shall continue such reviews every four years thereafter. Nothing contained in such report shall be considered to authorize or require a change in the guidelines without action by the General Assembly having the force and effect of law.

(e) The duty to provide support for a minor child shall continue until the child reaches the age of majority, dies, marries, or becomes emancipated, whichever first occurs; provided, however, that, in any temporary or final order for child support with respect to any proceeding for divorce, separate maintenance, legitimacy, or paternity entered on or after July 1, 1992, the trier of fact, in the exercise of sound discretion, may direct either or both parents to provide financial assistance to a child who has not previously married or become emancipated, who is enrolled in and attending a secondary school, and who has attained the age of majority before completing his or her secondary school education, provided that such financial assistance shall not be required after a child attains 20 years of age. The provisions for support provided in this subsection may be enforced by either parent or the child for whose benefit the support is ordered.

(f) The provisions of subsection (e) of this Code section shall be applicable only to a temporary order or final decree for divorce, separate maintenance, legitimation, or paternity entered on or after July 1, 1992, and the same shall be applicable to an action for modification of a decree entered in such an action entered on or after July 1, 1992, only upon a showing of a significant change of material circumstances.

**19-6-16.**

Orders, decrees, or verdicts, permanent or temporary, in favor of the children may be enforced as those in favor of a party.

**19-6-17.**

(a) Whenever the custody of a minor child or children has been lawfully awarded by any court having jurisdiction thereof to:

(1) Any person other than a parent of the children at any time subsequent to the rendition of a final divorce decree between the father and mother of the children; or

(2) A parent as part of the final divorce decree where the court awarding the decree was unable to obtain jurisdiction over the parent without custody for purposes of a determination as to whether the parent should be bound for support of the child or children and the court's decree contains no specific provisions binding the parent without custody for the support of the child or children, the parent or other person to whom the custody of the child or children is awarded may apply by petition to the superior court in the county where the parent without custody of the child or children resides for an order and judgment fixing the amount of support money that the parent without custody shall provide in order to fulfill the parent's natural duty to supply the necessities of life for the child or children.

(b) The procedure provided for in this Code section shall be available in cases in which the parent with custody of the children is the petitioner, notwithstanding the fact that the divorce decree and judgment may have been rendered in favor of the parent without custody.

(c) The petition shall be served upon the respondent; it shall be heard by the court, unless a jury trial is demanded by either party to the case. The judgment shall be reviewable as in other cases. The order or judgment shall likewise be subject to modification in the event of changed circumstances, under the same terms and conditions as are provided for in other cases of permanent alimony for the support of children granted in connection with the rendition of a final decree in divorce cases.

(d) The order and judgment of the court shall remain in effect, except as limited by its own restrictions and subsection (c) of this Code section, so long as the petitioner remains in lawful custody of the child or children and until they become of age. Execution may be granted to the petitioner for any sums past due under the order and judgment, in accordance with procedures in other cases of judgments for alimony.

(e) Any payment or installment of support under any child support order is, on and after the date due:

(1) A judgment by operation of law, with the full force and effect and attributes of a judgment of

this state, including the ability to be enforced;  
(2) Entitled as a judgment to full faith and credit; and  
(3) Not subject to retroactive modification.

**19-6-18.**

(a) The judgment of a court providing permanent alimony for the support of a wife or child or children, or both, rendered prior to July 1, 1977, shall be subject to revision upon petition filed by either the husband or the wife showing a change in the income and financial status of the husband. The petition shall be filed and returnable under the same rules of procedure applicable to divorce proceedings. The petition shall be filed in the proper venue provided by law in civil cases. No petition may be filed by the wife under this Code section within a period of two years from the date of the filing of a previous petition by the wife under this Code section. No petition may be filed by the husband under this Code section within a period of two years from the date of the filing of a previous petition by the husband under this Code section. After hearing both parties and the evidence, the jury, or the judge where a jury is not demanded, may modify and revise the previous judgment so as to provide for the wife or child or children, or both, in accordance with the changed income and financial status of the husband, if such a change in the income and financial status of the husband is satisfactorily proved so as to warrant the modification and revision. In the hearing upon a petition filed as provided in this Code section, testimony may be given and evidence introduced relative to the income and financial status of the wife.

(b) Upon an application as authorized in subsection (a) of this Code section, the merits of whether the wife, or child or children, or both, are entitled to alimony and support are not in issue, but only whether there has been such a substantial change in the income and financial status of the husband as to warrant either a downward or upward revision and modification of the permanent alimony judgment.

(c) An application authorized in subsection (a) of this Code section can be filed only where the husband has been ordered by the final judgment in an alimony or divorce and alimony action to pay permanent alimony in weekly, monthly, annual, or similar periodic payments, and not where the wife, or child or children, or both, have been given an award from the corpus of the husband's estate in lieu of such periodic payment.

(d) Where an application authorized in subsection (a) of this Code section is filed by the husband, the court may require the husband to pay reasonable expenses of litigation as may be incurred by the wife, either for herself or the child or children, or both, in defense thereof.

**19-6-19.**

(a) The judgment of a court providing permanent alimony for the support of a spouse rendered on or after July 1, 1977, shall be subject to revision upon petition filed by either former spouse showing a change in the income and financial status of either former spouse. The judgment of a court providing permanent alimony for the support of a child or children rendered on or after July 1, 1977, shall be subject to revision upon petition filed by either former spouse showing a change in the income and financial status of either former spouse or in the needs of the child or children. In either case a petition shall be filed and returnable under the same rules of procedure applicable to divorce proceedings. No petition may be filed by either former spouse under this subsection within a period of two years from the date of the final order on a previous petition by the same former spouse. After hearing both parties and the evidence, the jury, or the judge where a jury is not demanded by either party, may modify and revise the previous judgment, in accordance with the changed income and financial status of either former spouse in the case of permanent alimony for the support of a former spouse, or in accordance with the changed income and financial status of either former spouse or in the needs of the child or children in the case of permanent alimony for the support of a child or children, if such a change in the income and financial status is satisfactorily proved so as to warrant the modification and revision. In the hearing upon a petition filed as provided in this subsection, testimony may be given and evidence introduced relative to the income and financial status of either former spouse.

(b) Subsequent to a final judgment of divorce awarding periodic payment of alimony for the support of a spouse, the voluntary cohabitation of such former spouse with a third party in a meretricious relationship shall also be grounds to modify provisions made for periodic payments of permanent alimony for the support of the former spouse. As used in this subsection, the word 'cohabitation' means dwelling together continuously and openly in a meretricious relationship with another person, regardless of the sex of the other person. In the event the petitioner does not prevail in the petition for modification on the ground set forth in this subsection, the petitioner shall

be liable for reasonable attorney's fees incurred by the respondent for the defense of the action. (c) When an action for revision of a judgment for permanent alimony under this Code section is pending, the court in its discretion may allow, upon motion, the temporary modification of such a judgment, pending the final trial on the petition. In considering an application for temporary modification under this subsection, the court shall consider evidence of any changed circumstances of the parties and the reasonable probability of the petitioner obtaining revision upon final trial. The order granting temporary modification shall be subject to revision by the court at any time before final trial.

(d) In proceedings for the modification of alimony for the support of a spouse or child pursuant to the provisions of this Code section, the court may award attorneys' fees, costs, and expenses of litigation to the prevailing party as the interests of justice may require.

**19-6-20.**

In the trial on a petition authorized in subsection (a) of Code Section 19-6-19, the merits of whether a party, a child or children, or both, are entitled to alimony and support are not an issue. The only issue is whether there has been such a substantial change in the income and financial status of either former spouse or in the needs of the child or children, in cases of permanent alimony for the support of a child or children, or in the income and financial status of either former spouse, in cases of permanent alimony for the support of a former spouse, as to warrant either a downward or upward revision or modification of the permanent alimony judgment

**19-6-21.**

A petition authorized in subsection (a) of Code Section 19-6-19 can be filed only where a party has been ordered by the final judgment in an alimony or divorce and alimony action to pay permanent alimony in weekly, monthly, annual, or similar periodic payments and not where the former spouse of such party, the child or children, or both, have been given an award from the corpus of the party's estate in lieu of such periodic payment.

**19-6-22.**

Where a petition authorized by subsection (a) of Code Section 19-6-19 is filed by a party obligated to pay alimony, the court may require the party to pay the reasonable expenses of litigation as may be incurred by the party's former spouse, either on behalf of the former spouse, or the child or children, or both, in defense thereof.

**19-6-23.**

Code Section 19-6-18 or Code Sections 19-6-19 through 19-6-22, as applicable, shall be effective and shall apply to any judgment of a court providing permanent alimony for support, unless rendered prior to March 9, 1955, in which case Code Section 19-6-24 shall apply.

**19-6-24.**

Code Section 19-6-18 or Code Sections 19-6-19 through 19-6-22, as applicable, shall apply to all judgments for permanent alimony for the support of a wife, a child or children, or both, rendered prior to March 9, 1955, where all the following conditions are met:

- (1) Both parties to the case in which the judgment for permanent alimony was rendered consent in writing to the revision, amendment, alteration, settlement, satisfaction, or release thereof;
- (2) There are no minor children involved or, if there were minor children at the time the original judgment was rendered, the children are all of age at the time the application is filed;
- (3) The judge of the court wherein the original judgment for permanent alimony was rendered approves the revision, amendment, alteration, settlement, satisfaction, or release; and
- (4) The consent of the parties, together with the court's approval, is filed with the clerk of the court wherein the original judgment for permanent alimony was rendered.

**19-6-25.**

When any judgment for permanent alimony rendered prior to March 9, 1955, is revised, amended, altered, settled, satisfied, or released, the same shall not thereafter be subject to revision, except upon the conditions specified in Code Section 19-6-24.

**19-6-26.**

- (a) As used in this Code section, the term:
- (1) 'Child support order' means a judgment, decree, or order of a court or authorized

administrative agency requiring the payment of child support in periodic amounts or in a lump sum and includes (A) a permanent or temporary order and (B) an initial order or a modification of an order.

(2) 'Continuing, exclusive jurisdiction' means the authority and jurisdiction of a court to enter or modify a judgment, decree, or order for the payment of child support, as defined in the Full Faith and Credit for Child Support Orders Act, 28 U.S.C. Section 1738B, as amended.

(3) 'Foreign child support order' means a judgment, decree, or order of a court or authorized administrative agency of another state requiring the payment of child support in periodic amounts or in a lump sum and includes (A) a permanent or temporary order and (B) an initial order or a modification of an order.

(4) 'Modification' means a change in a child support order that affects the amount, scope, or duration of the order and modifies, replaces, supersedes, or otherwise is made subsequent to a child support order or foreign child support order.

(5) 'Moving party' means the party initiating an action for the modification of a child support order or foreign child support order.

(6) 'Nonmoving party' means the party not initiating an action for the modification of a child support order or foreign child support order.

(7) 'State' means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the territories and possessions of the United States, and Indian Country as defined in 18 U.S.C. Section 1151.

(b) A court of this state may exercise continuing, exclusive jurisdiction for purposes of entering a child support order if the court has subject matter and personal jurisdiction to make such a child support order, and no previous support order has been entered by a court of competent jurisdiction with respect to the child or children named in the support order.

(c) A court of this state may exercise continuing, exclusive jurisdiction for purposes of entering a modification of a child support order issued by a court of this state if the child or children named in the child support order or any party to the action resides in this state.

(d) A court of this state may exercise continuing, exclusive jurisdiction for purposes of entering a modification of a foreign child support order if:

(1) The court has subject matter and personal jurisdiction over the nonmoving party; and

(2) The court of the state issuing the order sought to be modified no longer has continuing, exclusive jurisdiction to modify said order as defined in the Full Faith and Credit for Child Support Orders Act, 28 U.S.C. Section 1738B, as amended.

(3) The parties file a written consent allowing the court to assume continuing, exclusive jurisdiction. This Code section shall be interpreted to effectuate the provisions of Article 3 of Chapter 11 of this title.

(e) Jurisdiction within this state to enforce a child support order entered by or registered with a court of this state shall be vested concurrently in the court issuing such order, the court in the county where the person owing the duty of support may be found or is employed, and the court in the county where property may be found which is subject to seizure, sale, foreclosure, or other process for application toward the support obligation.

#### **19-6-27.**

(a) Whenever, in any foreign country or any other state of the United States, any person obtains a divorce from such person's spouse, which spouse at the time of the filing of the divorce action was a resident of this state, and in the divorce action the spouse was not personally served with petition and process but was served constructively and did not appear, plead, or otherwise waive jurisdiction of the foreign court, the spouse, at any time subsequent to the granting of the foreign divorce decree, may apply to the superior court for an order and judgment for permanent alimony for the support of such spouse and the child or children of the parties, if any. The permanent alimony action shall be filed, pleaded, and tried as if no divorce decree had been entered, even though the foreign decree may be entitled to full faith and credit in dissolving the marriage. If the person who obtained the divorce has become a resident of this state, the action for alimony shall be brought in the county of the person's residence; otherwise, the action shall be brought in the county in which the spouse applying for alimony resides.

(b) The procedure provided for in subsection (a) of this Code section shall not be available for the support of any child or children whose custody and support was legally adjudicated in the foreign court unless custody of the child or children is subsequently changed by a court having jurisdiction of the parties.

(c) A petition brought under this Code section shall be served upon the person who obtained the

divorce, as in actions for permanent alimony, and shall be heard by the judge unless a jury trial is demanded by either party to the case. The judgment shall be reviewable as in other cases. The order or judgment shall be subject to modification upon a change of condition, in the same manner that other orders or judgments for permanent alimony are subject to modification.

**19-6-28.**

(a) In addition to other powers specified in this chapter, the court shall have the power to subject the respondent to such terms and conditions as the court may deem proper to assure compliance with its orders and, in particular, shall have the power to punish the respondent who violates any order of the court to the same extent as is provided by law for contempt of the court in any other action or proceeding cognizable by the court. Any proceeding for compliance pursuant to this authority shall be a part of the underlying action, and a motion for such enforcement shall not constitute the filing of a new action or require the payment of a new filing fee.

(b) In any proceeding to enforce a temporary or permanent grant of alimony or child support by attachment for contempt, the petitioner may serve the motion and rule nisi by mailing a copy of the motion and rule nisi by first-class mail, postage prepaid, to the respondent at the respondent's last known address together with two copies of a notice and acknowledgment conforming substantially to the form specified in subsection (c) of this Code section and a return envelope, postage prepaid, addressed to the sender. If service is perfected by acknowledgment of service in this manner, the petitioner shall file with the court the acknowledgment of the respondent; and such filing shall constitute a return of service. If no acknowledgment of service under this subsection is received by the petitioner within ten days after the date of such mailing, the petitioner shall notify the clerk of court and deposit the costs of service and service of such summons shall be made as provided in Code Section 9-11-4. The costs of such service shall be charged by the clerk of court to the respondent unless the respondent after motion and hearing establishes to the court that there is good reason why such person should not be so charged. A child support contempt motion shall be served upon a respondent with a notice that contains a date certain for hearing which shall be no later than 30 days from the date of service of the motion, unless good cause for a later date is found by the court, in which event the time for a hearing may be extended for up to 30 days.

(c) The form for notice and acknowledgment under subsection (b) of this Code section shall be substantially as follows:

IN THE SUPERIOR COURT OF \_\_\_\_\_ COUNTY  
 STATE OF GEORGIA )  
 \_\_\_\_\_ )  
 Plaintiff )  
 )  
 v. ) Civil action  
 ) File no. \_\_\_\_\_ )  
 \_\_\_\_\_ )  
 Defendant )

**RULE NISI NOTICE AND  
 ACKNOWLEDGMENT**

To: (insert the name and address of the person to be served)  
 The enclosed motion and rule nisi are served pursuant to Official Code of Georgia Annotated Section 19-6-28.

You must complete the acknowledgment part of this form and mail one copy of the completed form to the sender within ten days of the date of mailing to you, which date is set out below. You must sign and date the acknowledgment. If you are served on behalf of another person and you are authorized to receive process, you must indicate under your signature your authority. If you do not complete and return this form to the sender within ten days, you or the party on whose behalf you are being served will be required to pay any expenses incurred in serving a summons and complaint in any other manner permitted by law unless good and sufficient cause is shown to the contrary. If you do complete and mail this form, you or the party on whose behalf you are being served must appear and show cause why you should not be attached for contempt at the time required by the

enclosed rule nisi.  
I declare, under penalty of perjury, that this Notice and Acknowledgment of Receipt will have been  
mailed on the date set out below.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date of mailing

ACKNOWLEDGMENT OF RECEIPT  
OF SUMMONS AND COMPLAINT

I declare, under penalty of perjury, that I received a copy of the motion and of the rule nisi in the  
above-captioned manner at (insert address).

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed name of signer

\_\_\_\_\_  
Authority to receive  
service of process

\_\_\_\_\_  
Date of mailing  
(d) Service in accordance with subsections (b) and (c) of this Code section is in addition to any  
other method of service provided by law.

**19-6-28.1.**

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

(1) 'License' means a certificate, permit, registration, or any other authorization issued by the Department of Public Safety or any other licensing entity that allows a person to operate a motor vehicle, to engage in a profession, business, or occupation, or to hunt or fish.

(2) 'Licensing entity' means any state agency, department, or board of this state which issues or renews any license, certificate, permit, or registration to authorize a person to drive a motor vehicle, to hunt or fish, or to engage in a profession, business, or occupation including those under Article 3 of Chapter 7 of Title 2, the 'Georgia Pesticide Use and Application Act of 1976'; Article 13 of Chapter 1 of Title 7, relating to mortgage lenders and mortgage brokers; Chapter 5 of Title 10, the 'Georgia Securities Act of 1973,' relating to securities salespersons and investment adviser representatives; Part 2 of Article 1 of Chapter 6 of Title 12, relating to foresters; Chapter 4 of Title 26, relating to pharmacists; Chapter 23 of Title 33, relating to insurance agents, counselors, and other personnel; Chapter 1 of Title 43, relating to professions and businesses; Chapter 39A of Title 43, relating to real estate appraisers; or Chapter 40 of Title 43, relating to real estate brokers and salespersons.

(b) In any proceeding for enforcement of a judgment or order to pay child support, if the court is satisfied by competent proof that the respondent has accumulated support arrears equivalent to or greater than the current support due for 60 days and that the respondent is licensed to conduct a trade, business, profession, or occupation, licensed to hunt or fish, licensed to drive a motor vehicle, owns a motor vehicle which is registered in this state in his or her name, or is applying for the renewal or issuance of any such license or registration, the court may order the appropriate licensing or registering entity to suspend the license or registration or deny the application for such license and to inform the court of the actions it has taken pursuant to such proceedings. Evidence relating to the ability and willingness of the respondent to comply with an order of child support shall be considered by the court prior to the entry of any order under this Code section.

(c) The court shall inform the respondent that competent proof for purposes of proving to a licensing or registering entity that the respondent is in compliance with the order for child support shall be written proof of payment by cash or a certified check, notice issued by the court, or notice from a child support receiver, if such receiver has been appointed.

**19-6-29.**

(a) In any case before the court involving child support, the court may inquire into the availability

of accident and sickness insurance coverage to any person obligated to support and, if such coverage is reasonably available, may include in the order of support provision for such coverage. (b) Any order of support of a child entered or modified on or after July 1, 1992, which includes provision for accident and sickness insurance may include a provision for payroll deduction of an amount which is sufficient to provide for the payment of premiums of such accident and sickness insurance.

(c) An order for payroll deduction entered pursuant to subsection (b) of this Code section shall be consistent with the provisions of Code Sections 19-6-30 through 19-6-33.

**19-6-30.**

(a) Any order of support of a child entered or modified on or after July 1, 1985, shall contain the following provision:

'Whenever, in violation of the terms of this order there shall have been a failure to make the support payments due hereunder so that the amount unpaid is equal to or greater than the amount payable for one month, the payments required to be made may be collected by the process of continuing garnishment for support.'

(b) Any order of support entered or modified prior to July 1, 1985, shall be construed as a matter of law to contain the provision set forth in subsection (a) of this Code section.

(c) All Title IV-D (child support recovery) cases involving orders of support of a child or spouse entered or modified prior to July 1, 1989, or thereafter shall be subject to income deduction as defined in Code Sections 19-6-31, 19-6-32, and 19-6-33.

**19-6-31.**

As used in Code Sections 19-6-32 and 19-6-33, the term:

(1) 'Accruing on a daily basis' means the amount of support computed by conversion of the periodic amount to an annual sum, divided by 365.

(2) 'Court' includes proceedings conducted by an appointed court referee and proceedings conducted pursuant to Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act,' as relates to the enforcement of the duty of support as defined in Chapter 11 of Title 19.

(3) 'Department' means the Department of Human Resources.

(4) 'Family member' means any minor child of the defendant or a spouse or former spouse of the defendant.

(5) 'Income' or 'earnings' means any periodic form of payment due to an individual, regardless of source, including without limitation wages, salary, commission, bonus, workers' compensation, disability, payments pursuant to a pension or retirement program, and interest.

(6) 'IV-D' means Title IV-D of the federal Social Security Act.

(7) 'IV-D agency' means the Child Support Enforcement Agency of the Department of Human Resources and its contractors.

(8) 'IV-D judgment' means any order or judgment of a court of this state, any order or judgment of a court of another state or any final administrative order issued by another state and transmitted to this state for the purpose of wage deduction pursuant to Code Section 19-6-33, any order of this state entered pursuant to a proceeding under Chapter 10 of Title 19, or any final administrative order for support issued by the department under Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.'

(8.1) 'National Medical Support Notice' means a notice as prescribed under 42 U.S.C. Section 666(a)(19), or a substantially similar notice, which is issued and forwarded by the IV-D agency to enforce the medical support provisions of a support order.

(9) 'Periodic support' means support required by the terms of a court order or judgment or an administrative order to be paid regularly on a daily, weekly, monthly, or similar specified frequency.

**19-6-32.**

(a)(1) Except as provided for in paragraph (1) of subsection (a.1) of this Code section, upon the entry of a judgment or order establishing, enforcing, or modifying a child support obligation or spousal support obligation through a court or an administrative process, a separate order for income deduction, if one has not been previously entered, shall be entered. If the obligee is an applicant for child support services under Title IV-D of the federal Social Security Act, the court, referee, or administrative law judge shall furnish copies of the support order and the income deduction order to the IV-D agency.

(2) For all child support orders, and spousal support orders enforced pursuant to subsection (d) of

Code Section 19-11-6, the IV-D agency shall be authorized to issue an order for income deduction without need for any amendment to the order involved or any further action by the court or entity that issued it, provided that an opportunity for a hearing before a court, a referee of the court, or an administrative law judge is afforded. The IV-D agency shall also be authorized to issue a National Medical Support Notice to enforce the medical support provisions of such orders, provided that an opportunity for a hearing pursuant to Code Section 19-11-27 is afforded. Such orders or notices may be issued electronically by the IV-D agency. The IV-D agency shall issue an order for income deduction or, when appropriate, a National Medical Support Notice within two business days after the information regarding a newly hired employee is entered into the centralized employee registry pursuant to Code Section 19-11-9.2 and matched with an obligor in a case being enforced by the IV-D agency.

(3) All child support orders issued or modified before July 1, 1997, which are not otherwise subject to income deduction shall become subject to income deduction upon the accrual of the equivalent of a 30 day arrearage, without the need for an administrative or judicial hearing or order.

(a.1)(1) All child support orders which are initially issued in this state on or after January 1, 1994, and are not at the time of issuance being enforced by the IV-D agency shall provide for the immediate withholding of such support from the income and earnings of the person required by that order to furnish support unless:

(A) The court issuing the order finds there is good cause not to require such immediate withholding;

(B) A written agreement is reached between both parties which provides for an alternative arrangement.

For purposes of this paragraph, any finding that there is good cause not to require withholding must be based on at least a written determination that implementing wage withholding would not be in the best interest of the child and proof of timely payment of previously ordered support in cases involving modification of support orders.

(2) All child support orders which are not described in subsection (a) of this Code section or in paragraph (1) of this subsection shall, upon petition of either party to revise that order under Code Section 19-6-19 or to enforce that order under Code Section 19-6-28, be revised to include provisions for withholding of such support from the wages of the person required by the order to furnish that support if arrearages equal to one month's support accrue but without the necessity of filing application for services under Code Section 19-11-6.

(3) Copies of income deduction orders issued under this subsection shall be served on the obligee, obligor, and the child support IV-D agency.

(b) The income deduction order shall:

(1) Direct a payor to deduct from all income due and payable to an obligor the amount required by the support order to meet the obligor's support obligation;

(2) State the amount of arrearage accrued, if any, under the support order and direct a payor to withhold an additional amount until the arrearage is paid in full;

(3) Direct a payor not to deduct in excess of the amounts allowed under Section 303(b) of the federal Consumer Credit Protection Act, 15 U.S.C. Section 1673(b), as amended; and

(4) Direct the payor to send income deduction payment including administrative fees authorized by law to the family support registry as provided for in Code Section 19-6-33.1.

(c) Income deduction orders shall be effective immediately unless the court upon good cause shown finds that the income deduction shall be effective upon a delinquency in an amount equal to one month's support or a written agreement is reached between both parties which provides for an alternative arrangement.

(d) The income deduction order shall be effective so long as the order of support upon which it is based is effective or until further order of the court.

(e) When the court orders the income deduction to be effective immediately, the court shall furnish to the obligor a statement of his or her rights, remedies, and duties in regard to the income deduction order. The statement shall state:

(1) All fees or interest which shall be imposed;

(2) The total amount of income to be deducted for each pay period until the arrearage, if any, is paid in full and state the total amount of income to be deducted for each pay period thereafter. The amounts deducted may not be in excess of that allowed under Section 303(b) of the federal Consumer Credit Protection Act, 15 U.S.C. Section 1673(b), as amended;

(3) That the income deduction applies to current and subsequent payors and periods of employment;

(4) That a copy of the income deduction order will be served on the obligor's payor or payors;

- (5) That the enforcement of the income deduction order may only be contested on the ground of mistake of fact regarding the amount of support owed pursuant to a support order, the arrearages, or the identity of the obligor; and
- (6) That the obligor is required to notify the obligee and, when the obligee is receiving Title IV-D services, the IV-D agency within seven days of changes in the obligor's address and payors and the addresses of his or her payors.
- (f) When the income deduction is effective upon a delinquency in an amount equal to one month's support, or when an order for spousal or child support was in effect prior to July 1, 1989, the obligee may enforce the income deduction by serving notice of delinquency on the obligor. The notice of delinquency shall state:
- (1) The terms of the support order;
  - (2) The period of delinquency and the total amount of the delinquency as of the date the notice is mailed;
  - (3) All fees or interest which may be imposed;
  - (4) The total amount of income to be deducted for each pay period until the arrearage and all applicable fees and interest are paid in full and the total amount of income to be deducted for each pay period thereafter. The amounts deducted may not be in excess of that allowed under Section 303(b) of the federal Consumer Credit Protection Act, 15 U.S.C. Section 1673(b), as amended;
  - (5) That a copy of the notice of delinquency will be served on the obligor's payor or payors, together with a copy of the income deduction order. The obligor may apply to the court to contest enforcement of the order once the notice of delinquency has been served. The application shall not affect the enforcement of the income deduction order until the court enters an order granting relief to the obligor;
  - (6) That the enforcement of the income deduction order may only be contested on the ground of mistake of fact regarding the amount of support owed pursuant to a support order, the arrearages, or the identity of the obligor; and
  - (7) That the obligor is required to notify the obligee of the obligor's current address and current payors and the address of current payors. All changes shall be reported by the obligor within seven days. If the IV-D agency is enforcing the order, the obligor shall make these notifications to the agency instead of to the obligee. The failure of the obligor to receive the notice of delinquency does not preclude subsequent service of the income deduction order on the obligor's payor. A notice of delinquency which fails to state an arrearage does not mean that an arrearage is not owed.
- (g) At any time, any party, including the IV-D agency, may apply to the court, referee of the court, or administrative law judge to:
- (1) Modify, suspend, or terminate the order for income deduction because of a modification, suspension, or termination of the underlying order for support; or
  - (2) Modify the amount of income deducted when the arrearage has been paid.

**19-6-33.**

- (a) The obligee or his or her agent shall serve an income deduction order and the notice to the payor, and in the case of a delinquency a notice of delinquency, on the obligor's payor. The obligor must be notified that withholding has commenced and how to contest the withholding.
- (b) Service of the initial income deduction order by or upon any person who is a party to a proceeding under this Code section shall be by personal service, by certified mail or statutory overnight delivery, return receipt requested, or by regular mail. Service upon an obligor's payor or successor payor under this Code section shall be by regular first-class mail.
- (c)(1) When the income deduction is effective upon a delinquency in an amount equal to one month's support, the obligor may apply to the court to contest the enforcement of the income deduction order on the ground of mistake of fact regarding the amount of support owed pursuant to a support order, the amount of arrearage of support, or the identity of the obligor. The obligor shall send a copy of the pleading to the obligee and, if the obligee is receiving IV-D services, to the IV-D agency. The filing of the pleading does not affect the enforcement of an income deduction order unless the court enters an order granting relief to the obligor. The payment of delinquent support by an obligor upon entry of an income deduction order shall not preclude service of the income deduction on the obligor's payor.
- (2) When an obligor requests a hearing to contest enforcement of an income deduction order, the court, referee, or administrative law judge after due notice to all parties and the IV-D agency, if the obligee is receiving IV-D services, shall hear the matter within 30 days after the application is filed and shall not extend the time for hearing unless good cause for a later date is found by the

court, in which event the time for a hearing may be extended for up to 30 days. The court, referee, or administrative law judge shall enter an order resolving the matter within ten days after the hearing. A copy of this order shall be served on the parties and the IV-D agency if the obligee is receiving IV-D services.

(d) When a court, court referee, or administrative law judge determines that an income deduction order is proper pursuant to subsection (c) of this Code section, the obligee or his or her agent shall cause a copy of the income deduction order and a notice to payor, and in the case of a delinquency a notice of delinquency, to be served on the obligee's payors. A copy of the notice to the payor, and in the case of a delinquency a notice of delinquency, shall also be furnished to the obligor.

(e) The notice to payor shall contain only information necessary for the payor to comply with the income deduction order. The payor shall have the duties, penalties, and rights specified in the notice.

The notice shall:

(1) Require the payor to deduct from the obligor's income the amount specified in the income deduction order, and in the case of a delinquency the amount specified in the notice of delinquency, and to pay that amount to the obligee or to a child support receiver, the IV-D agency, or other designee, as appropriate. The amount actually deducted plus all administrative charges shall not be in excess of the amount allowed under Section 303(b) of the federal Consumer Credit Protection Act, 15 U.S.C. Section 1673(b);

(2) Instruct the payor to implement the income deduction order no later than the first pay period that occurs after 14 days following the date the notice was mailed;

(3) Instruct the payor to forward, within two business days after each payment date, to the family support registry the amount deducted from the obligor's income and a statement as to whether that amount totally or partially satisfies the periodic amount specified in the income deduction order;

(4) Specify that if a payor willfully fails to deduct the proper amount from the obligor's income, the payor is liable for the amount the payor should have deducted, plus costs, interest, and reasonable attorney's fees;

(5) Provide that the payor may collect up to \$25.00 against the obligor's income to reimburse the payor for administrative costs for the first income deduction pursuant to an income deduction order and up to \$3.00 for each deduction thereafter. The payor of income may not deduct a fee for complying with any order or notice for enrollment in a health benefit plan;

(6) State that the income deduction order and the notice to payor, and in the case of a delinquency the notice of delinquency, are binding on the payor until further notice by the obligee, IV-D agency, or the court or until the payor no longer provides income to the obligor;

(7) Instruct the payor that, when the payor no longer provides income to the obligor, the payor shall notify the obligee and shall also provide the obligor's last known address and the name and address of the obligor's new payor, if known, and that, if the payor willfully violates this provision, the payor is subject to a civil penalty not to exceed \$250.00 for the first violation or \$500.00 for any subsequent violation. If the IV-D agency is enforcing the order, the payor shall make these notifications to the agency instead of to the obligee. Penalties shall be paid to the obligee or the IV-D agency, whichever is enforcing the income deduction order;

(8) State that no payor may discharge an obligor by reason of the fact that income has been subjected to an income deduction order under Code Section 19-6-32 and that a violation of this provision subjects the payor to a civil penalty not to exceed \$250.00 for the first violation or \$500.00 for a subsequent violation. Penalties shall be paid to the obligee or the IV-D agency, whichever is enforcing the income deduction order, if any support is owing. If no support is owing, the penalty shall be paid to the obligor;

(9) Inform the payor that the income deduction order has priority over all other legal processes under state law pertaining to the same income and that payment, as required by the income deduction order, is a complete defense by the payor against any claims of the obligor or his creditors as to the sum paid;

(10) Inform the payor that if the payor receives income deduction orders requiring that the income of two or more obligors be deducted and sent to the same depository, he may combine the amounts paid to the depository in a single payment as long as he identifies that portion of the payment attributable to each obligor; and

(11) Inform the payor that if the payor receives more than one income deduction order against the same obligor, he shall contact the court for further instructions. Upon being so contacted, the court shall allocate amounts available for income deduction giving priority to current child support obligations up to the limits imposed under Section 303(b) of the federal Consumer Credit Protection Act, 15 U.S.C. Section 1673(b).

(f) At any time an income deduction order is being enforced, the obligor may apply to the court for a hearing to contest the continued enforcement of the income deduction order on the same grounds set out in subsection (c) of this Code section, with a copy to the obligee and, in IV-D cases, to the IV-D agency. The application does not affect the continued enforcement of the income deduction order until the court enters an order granting relief to the obligor. The obligee of the IV-D agency is released from liability for improper receipt of moneys pursuant to an income deduction order upon return to the appropriate party of any moneys received.

(g) An obligee, or his agent, shall enforce income deduction orders against an obligor's successor payor who is located in this state in the same manner prescribed in this Code section for the enforcement of an income deduction order against a payor.

(h) The provisions of Article 3 of Chapter 11 of this title, the 'Uniform Interstate Family Support Act,' apply to all income deduction orders originating in this state and directed to another state. In addition, the provisions of Article 3 of Chapter 11 of this title, the 'Uniform Interstate Family Support Act,' apply to all income withholding orders originating in another state and directed to this state.

(i) Certified copies of payment records maintained by a child support receiver or the IV-D agency shall, without further proof, be admitted into evidence in any legal proceeding in this state.

(j) No payor shall discharge an obligor by reason of the fact that income has been subjected to an income deduction order under Code Section 19-6-32. A payor who violates this paragraph is subject to a civil penalty not to exceed \$250.00 for the first violation or \$500.00 for any subsequent violation. Penalties shall be paid to the obligee or the IV-D agency, whichever is enforcing the income deduction order, if any support is owing. If no support is owing, the penalty shall be paid to the obligor.

(k) When a payor no longer provides income to an obligor, he shall notify the obligee and, if the obligee is an IV-D applicant, the IV-D agency and shall provide the obligor's last known address and the name and address of the obligor's new payor, if known. A payor who willfully violates this subsection is subject to a civil penalty not to exceed \$250.00 for the first violation or \$500.00 for a subsequent violation. Penalties shall be paid to the obligee or the IV-D agency, whichever is enforcing the income deduction order.

#### **19-6-33.1.**

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

(1) 'Child support enforcement agency' means the Child Support Enforcement Agency of the Department of Human Resources and its contractors.

(2) 'Family support registry' means a central registry maintained and operated pursuant to subsection (c) of this Code section, which receives, processes, disburses, and maintains a record of the payment of child support, child support when combined with spousal support, child support arrears, or child support debt made pursuant to court or administrative order.

(3) 'Income deduction order' means any income deduction order which is made pursuant to Code Section 19-6-32 and which becomes effective upon a delinquency which occurred on or after January 1, 1994, or which became effective immediately without a delinquency on or after January 1, 1994.

(b) Any term used in this Code section and defined in Code Section 19-6-31 shall have the meaning provided for such term in Code Section 19-6-31.

(c) As required by federal law, there shall be established and operated a family support registry pursuant to IV-D regulations and authority and funding provided to the child support enforcement agency. The child support enforcement agency is authorized to establish and maintain or contract for the establishment and maintenance of the family support registry. This registry shall be used for the collection and processing of payments for support orders in all cases which are enforced by the child support enforcement agency and for all other support orders not being enforced by the child support agency which are subject to income deduction order as defined by paragraph (3) of subsection (a) of this Code section.

(d) The child support agency shall as required by federal law redirect payments for support orders in all cases being enforced by the child support agency and for all other support orders not being enforced by the child support agency which are subject to an income deduction order as defined by paragraph (3) of subsection (a) of this Code section. These support payments to a court or receiver or private party by an employer shall be redirected to the family support registry.

(e) In implementing the family support registry, the child support enforcement agency is authorized to:

(1) Receive, process, and disburse payments for child support, child support when combined with

spousal support, child support arrears, or child support debt for any order;

(2) Maintain records of any payments collected, processed, and disbursed through the family support registry;

(3) Establish and maintain a separate record for payments made through the registry as a result of a judgment remedy;

(4) Answer inquiries from any parent concerning payments processed through the family support registry; and

(5) Collect a fee for the processing of insufficient funds checks and issue a notice to the originator of any insufficient funds check that no further checks will be accepted from such person and that future payments shall be required to be paid by cash or certified funds.

(f) On or after April 1, 1999, the child support enforcement agency shall begin implementing the family support registry. The commissioner of the department or the commissioner's designee shall notify the court administrator and the chief judge of each judicial circuit when new income deduction orders are to be directed to the family support registry.

(g) Upon implementation of the family support registry in any county or judicial circuit, the following procedures shall be followed in such county or circuit:

(1) All administrative orders and all court orders entered or modified which provide for income deduction orders for support payments for child support, child support when combined with spousal support, child support arrears, or child support debt shall require that such payments be made through the family support registry; and

(2) The child support enforcement agency shall send or cause to be sent a notice by first-class mail directing that all income deduction order payments shall be made to the family support registry. Orders subject to this redirection include: all support orders being enforced by the child support agency and all other orders not being enforced by the child support agency which are subject to an income deduction order as defined in paragraph (3) of subsection (a) of this Code section. The notice shall be sent to the following persons:

(A) Any obligor who is obligated to make payments for support, child support when combined with spousal support, child support arrears, or child support debt under court order or administrative order in a IV-D case where the order does not already specify paying through the family support registry; and

(B) Any employer or other payor of funds who has been deducting income under Code Section 19-6-32.

(h) Any obligor or employer who receives a notice to redirect payments as specified in subsection (g) of this Code section who fails to make the payments to the family support registry and who continues to make payments to the court or to the IV-D agency shall be sent a second notice to redirect payments. The second notice shall be sent certified mail or statutory overnight delivery, return receipt requested. Such notice shall contain all the information required to be included in the first notice to redirect payments and shall further state that the obligor or employer has failed to make the payments to the correct agency and that the payor or obligor shall redirect the payments to the family support registry at the address indicated in the notice. Failure to make payments to the family support registry after a second notice shall be grounds for contempt.

(i)(1) Any payment required to be made to the family support registry which is received by the court, receiver, or child support enforcement agency shall be forwarded to the family support registry within two business days after receipt. All income deduction payments from employers or such payments forwarded by the court, receiver, or child support enforcement agency shall be identified with the information specified by the family support registry, including but not limited to the court case number, social security number, the county where the case originated, and the name of the obligor. A copy of the notice to redirect payments described in subsection (g) of this Code section shall be mailed to the obligee and the court.

(2) Except as provided by federal law, the family support registry shall distribute all support amounts payable within two business days after receipt from the employer or other payment source.

(j) The department shall coordinate the operation of the family support registry with the state case registry created under Code Section 19-11-39 so as to reduce if not eliminate the need for duplicate reporting and information recording. The department is authorized to enter into cooperative agreements with the courts of the judicial circuits in order to implement the family support registry. The department shall be authorized to establish and collect from the income deduction order obligor or other obligor paying support through the family support registry an administrative fee. The fee shall not exceed \$2.00 per payment or 5 percent of the amount of each payment or the actual cost of processing and distributing the child support from the source to the

obligee, whichever is the lesser.  
(k) Nothing in this Code section shall allow or require any reduction of child support payments paid to any parent or guardian of a minor child.

**19-6-34.**

(a) In any case before the court involving child support, the court may include in the order of support provision for life insurance on the life of either parent or the lives of both parents for the benefit of the minor children. The court may order either parent or both parents to obtain and maintain the life insurance.

(b) The amount of the premium for such life insurance shall be counted as a part of the support ordered pursuant to the provisions of Code Section 19-6-15, provided that the court shall review the amount of the premium for reasonableness in the circumstances of the child, the parent ordered to pay support, and the other parent.

(c) Except as provided in subsection (d) of this Code section, an order for child support shall not require maintenance of life insurance for a child's benefit after the child reaches the age of majority and shall not require that the proceeds of life insurance be available for the benefit of a child after the child reaches the age of majority.

(d) The trier of fact, in the exercise of sound discretion, may direct either or both parents to maintain life insurance for the benefit of a child who has not previously married or become emancipated, who is enrolled in and attending a secondary school, and who has attained the age of majority before completing his or her secondary school education, provided that maintenance of such life insurance for the benefit of the child shall not be required after a child attains 20 years of age.

(e) Nothing in this Code section shall prevent parents from entering into an agreement for the provision of life insurance that differs from or exceeds the terms of this Code section.

**19-6-35.**

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

(1) 'Child support obligee' means an individual to whom the payment of a child support obligation is owed and includes a custodial parent or caretaker of a child to whom such support obligation is to be paid or a governmental agency entitled by law to enforce a child support obligation on behalf of such parent, caretaker, or child.

(2) 'Child support obligor' means an individual owing a duty of support to a child or children, whether or not such duty is evinced by a judgment, order, or decree.

(b) A child support obligee shall be regarded as a creditor, and a child support obligor shall be regarded as a debtor, as defined in Code Section 18-2-1, for the purposes of attacking as fraudulent a judgment, conveyance, transaction, or other arrangement interfering with the creditor's rights, either at law or in equity.

**Chapter 7**

**19-7-1.**

(a) Until he reaches the age of majority, the child shall remain under the control of his parents, who are entitled to his services and the proceeds of his labor. In the event that a court has awarded custody of the child to one parent, only the parent who has custody of the child is entitled to his services and the proceeds of his labor.

(b) Parental power shall be lost by:

(1) Voluntary contract releasing the right to a third person;

(2) Consent to the adoption of the child by a third person;

(3) Failure to provide necessaries for the child or abandonment of the child;

(4) Consent to the child's receiving the proceeds of his own labor, which consent shall be revocable at any time;

(5) Consent to the marriage of the child, who thus assumes inconsistent responsibilities; or

(6) Cruel treatment of the child.

(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, 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. 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 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.

(c)(1) In every case of the homicide of a child, minor or sui juris, there shall be some party entitled to recover the full value of the life of the child, either as provided in this Code section or as provided in Chapter 4 of Title 51.

(2) If the deceased child does not leave a spouse or child, the right of recovery shall be in the parent or parents, if any, given such a right by this paragraph as follows:

(A) If the parents are living together and not divorced, the right shall be in the parents jointly;

(B) If either parent is deceased, the right shall be in the surviving parent; or

(C) If both parents are living but are divorced, separated, or living apart, the right shall be in both parents. However, if the parents are divorced, separated, or living apart and one parent refuses to proceed or cannot be located to proceed to recover for the wrongful death of a child, the other parent shall have the right to contract for representation on behalf of both parents, thereby binding both parents, and the right to proceed on behalf of both parents to recover for the homicide of the child with any ultimate recovery to be shared by the parents as provided in this subsection. Unless a motion is filed as provided in paragraph (6) of this subsection, such a judgment shall be divided equally between the parents by the judgment; and the share of an absent parent shall be held for such time, on such terms, and with such direction for payment if the absent parent is not found as the judgment directs. Payment of a judgment awarded to the parent or parents having the cause of action under this subparagraph or the execution of a release by a parent or parents having a cause of action under this subparagraph shall constitute a full and complete discharge of the judgment debtor or releasee. If, after two years from the date of any recovery, the share of an absent parent has not been paid to the absent parent, the other parent can petition the court for the funds, and the recovery, under appropriate court order, shall be paid over to the parent who initiated the recovery.

(3) The intent of this subsection is to provide a right of recovery in every case of the homicide of a child who does not leave a spouse or child. If, in any case, there is no right of action in a parent or parents under the above rules, the right of recovery shall be determined by Code Section 51-4-5.

(4) In this subsection the terms 'homicide' and 'full value of the life' shall have the meaning given them in Chapter 4 of Title 51.

(5) In actions for recovery, the fact that the child was born out of wedlock shall be no bar to recovery.

(6) For cases in which the parents of a deceased child are divorced, separated, or living apart, a motion may be filed by either parent prior to trial requesting the judge to apportion fairly any judgment amounts awarded in the case. Where such a motion is filed, a judgment shall not be automatically divided. A post-judgment hearing shall be conducted by the judge at which each parent shall have the opportunity to be heard and to produce evidence regarding that parent's relationship with the deceased child. The judge shall fairly determine the percentage of the judgment to be awarded to each parent. In making such a determination, the judge shall consider each parent's relationship with the deceased child, including permanent custody, control, and support, as well as any other factors found to be pertinent. The judge's decision shall not be disturbed absent an abuse of discretion.

### **19-7-2.**

It is the joint and several duty of each parent to provide for the maintenance, protection, and education of his or her child until the child reaches the age of majority, dies, marries, or becomes emancipated, whichever first occurs, except as otherwise authorized and ordered pursuant to subsection (e) of Code Section 19-6-15 and except to the extent that the duty of the parents is otherwise or further defined by court order.

### **19-7-3.**

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

(b) Except as otherwise provided in this subsection, any grandparent shall have the right to file an original action for visitation rights to a minor child or 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. This subsection shall not authorize an original action where the parents of the minor child are not separated and the child is living with both of the parents.

(c) 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 grandparent of the child reasonable visitation rights if the court finds 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 court shall make specific written findings of fact in support of its rulings. There shall be no presumption in favor of visitation by any grandparent. An original action requesting visitation rights shall not be filed by any grandparent 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, 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.

(d) If the court finds that the grandparent or grandparents can bear the cost without unreasonable financial hardship, the court, at the sole expense of the petitioning grandparent or grandparents, may:

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

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

(e) 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 grandparent or grandparents.

#### **19-7-4.**

If a child is found under circumstances of destitution and suffering, abandonment, or exposure or if the child has been begging or if it is found that the child is being reared under immoral, obscene, or indecent influences which are likely to degrade his moral character and devote him to a vicious life and it appears to the appropriate court by competent evidence, including such examination of the child as may be practicable, that by reason of the neglect, habitual drunkenness, lewd or other vicious habits, or other behavior of the parents or guardians of the child, it is necessary for the welfare of the child to protect the child from such conditions, the court may order that the parents or guardians be deprived of custody of the child and that appropriate measures as provided by law be taken for the welfare of the child.

### **Chapter 9 Child Custody Proceedings**

#### **19-9-1.**

(a)(1) In all cases in which a divorce is granted, the party not in default shall be entitled to the custody of the minor children of the marriage. However, in all cases in which a divorce is granted, an application for divorce is pending, or a change in custody of a minor child is sought, the court, in the exercise of a sound discretion, may look into all the circumstances of the parties, including improvement of the health of a party seeking a change in custody provisions, and, after hearing both parties, may make a different disposition of the children, placing them, if necessary, in possession of guardians appointed by the judge of the probate court.

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

(A) The court 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 court 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 or children for the purposes of custody determination; and

(D) The court 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 court may, in addition to other appropriate actions, order supervised visitation pursuant to Code Section 19-9-7.

(3)(A) In all cases in which the child has reached the age of 14 years, the child shall have the right to select the parent with whom he or she desires to live. The child's selection shall be controlling, unless the parent so selected is determined not to be a fit and proper person to have the custody of the child.

(B) In all cases in which the child has reached the age of at least 11 but not 14 years, the court shall consider the desires, if any, and educational needs of the child in determining which parent shall have custody. The court shall have complete discretion in making this determination, and the child's desires are not controlling. The court 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 interest of the child standard shall be controlling.

(C) The desire of a child who has reached the age of 11 years but not 14 years shall not, in and of itself, constitute a material change of conditions or circumstances in any action seeking a modification or change in the custody of that child.

(D) The court may issue an order granting temporary custody to the selected parent for a trial period not to exceed six months regarding the custody of a child who has reached the age of at least 11 years where the judge hearing the case determines such a temporary order is appropriate.

(b) In any case in which a judgment awarding the custody of a minor has been entered, on the motion of any party or on the motion of the court, that portion of the judgment effecting visitation rights between the parties and their minor children 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 or the minor, 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 court to enter a judgment relating to the custody of a minor in any new proceeding based upon a showing of a change in any material conditions or circumstances of a party or the minor.

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

(2) In any case in which visitation rights have been provided to the noncustodial parent and the court orders that the custodial parent provide notice of a change in address of the place for pickup and delivery of the child for visitation, the custodial parent shall notify the noncustodial parent, 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 may exercise such parent's visitation rights.

(3) Except where otherwise provided by court order, in any case under this subsection in which a parent changes his or her residence, he or she must give notification of such change to the other parent and, if the parent changing residence is the custodial parent, to any other person granted visitation rights 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.

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

#### **19-9-2.**

Upon the death of either parent, the survivor is entitled to custody of the child; provided, however, that the court, upon petition, may exercise discretion as to the custody of the child, looking solely to the child's best interest and welfare.

#### **19-9-3.**

(a)(1) In all cases in which the custody of any minor child or children is at issue between the parents, there shall be no prima-facie right to the custody of the child or children in the father or mother.

(2) The court hearing the issue of custody, in exercise of its sound discretion, 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 or children should be awarded. The duty of the court in all such cases shall be to exercise its discretion to look to and determine solely what is for the best interest of the child or children and what will best promote their welfare and happiness and to make its award accordingly.

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

(A) The court 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 court 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 or children for the purposes of custody determination; and

(D) The court 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 court may, in addition to other appropriate actions, order supervised visitation pursuant to Code Section 19-9-7.

(4) 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 with whom he or she desires to live. The child's selection shall be controlling unless the parent so selected is determined not to be a fit and proper person to have the custody of the child.

(4.1) In all custody cases in which the child has reached the age of at least 11 but not 14 years, the court shall consider the desires and educational needs of the child in determining which parent shall have custody. The child's selection shall not be controlling. The best interests of the child standard shall apply.

(5) Joint custody, as defined by Code Section 19-9-6, may be considered as an alternative form of custody by the court. This provision allows a court at any temporary or permanent hearing to grant sole custody, joint custody, joint legal custody, or joint physical custody where appropriate.

(6) The court is authorized to order a psychological custody evaluation of the family 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.

(b) In any case in which a judgment awarding the custody of a minor has been entered, on the motion of any party or on the motion of the court, that portion of the judgment effecting visitation rights between the parties and their minor children 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 or the minor, 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 court to enter a judgment relating to the custody of a minor in any new proceeding based upon a showing of a change in any material conditions or circumstances of a party or the minor.

(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 minor 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 children after such parents have separated or dissolved their marriage.

(e) Upon the filing of an action for a change of child custody, the court may in its 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.

#### **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, 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 court 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. In any action or proceeding involving determination of the award of child custody between parents 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 court shall also have authority on its own motion to order such an investigation if in the court's opinion the investigation would be useful in determining placement or custody of the child. The court 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 court directing the investigation. Any report made at the direction of the court 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.

**19-9-5.**

(a) In all proceedings under this article between parents, it shall be expressly permissible for the parents of a minor child to present to the court an agreement respecting any and all issues concerning custody of the minor 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 court shall ratify the agreement and make such agreement a part of the court's final judgment in the proceedings unless the court 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 court shall not refuse to ratify such agreement and to make such agreement a part of the final judgment based solely upon the parents' choice to use joint custody as a part of such agreement.

(c) In its judgment, the court may supplement the agreement on issues not covered by such agreement.

**19-9-6.**

As used in this article, the term:

(1) 'Joint custody' means joint legal custody, joint physical custody, or both joint legal custody and joint physical custody. In making an order for joint custody, the court may order joint legal custody without ordering joint physical custody.

(2) 'Joint legal custody' means both parents have equal rights and responsibilities for major decisions concerning the child, including the child's education, health care, and religious training; provided, however, that the court may designate one parent to have sole power to make certain decisions while both parents retain equal rights and responsibilities for other decisions.

(3) 'Joint physical custody' means that physical custody is shared by the parents in such a way as to assure the child of substantially equal time and contact with both parents.

(4) 'Sole custody' means a person, including, but not limited to, a parent, has been awarded permanent custody of a child by a court order. Unless otherwise provided by court order, the person awarded sole custody of a child shall have the rights and responsibilities for major decisions concerning the child, including the child's education, health care, and religious training, and the noncustodial parent shall have the right to visitation. A person who has not been awarded custody of a child by court order shall not be considered as the sole legal custodian while exercising visitation rights.

**19-9-7.**

(a) A court may award visitation by a parent who committed one or more acts involving family violence only if the court finds that adequate provision for the safety of the child and the parent who is a victim of family violence can be made. In a visitation order, a court may:

(1) Order an exchange of a child to occur in a protected setting;

(2) Order visitation supervised by another person or agency;

(3) Order the perpetrator of family violence to attend and complete, to the satisfaction of the court, a certified family violence intervention program for perpetrators as defined in Article 1A of Chapter 13 of this title as a condition of the visitation;

(4) Order the perpetrator of family violence to abstain from possession or consumption of alcohol, marijuana, or any Schedule I controlled substance listed in Code Section 16-13-25 during the visitation and for 24 hours preceding the visitation;

(5) Order the perpetrator of family violence to pay a fee to defray the costs of supervised visitation;

(6) Prohibit overnight visitation;

(7) Require a bond from the perpetrator of family violence for the return and safety of the child; and

(8) Impose any other condition that is deemed necessary to provide for the safety of the child, the victim of family violence, or another family or household member.

(b) Whether or not visitation is allowed, the court may order the address of the child and the victim of family violence to be kept confidential.

(c) The court shall not order an adult who is a victim of family violence to attend joint counseling with the perpetrator of family violence as a condition of receiving custody of a child or as a condition of visitation.

(d) If a court allows a family or household member to supervise visitation, the court shall establish conditions to be followed during visitation.