

PETITION FOR WRIT OF HABEAS CORPUS AND EMERGENCY RETURN OF CHILD PACKET

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FAQs

When is a writ of habeas corpus appropriate? It is used when a child is being wrongfully detained. The court will decide based on the best interests of the child who should have custody. However, a writ of habeas corpus **cannot** be brought to *modify* custody. The petition for writ of habeas corpus in Georgia is governed by O.C.G.A. § 9-14-2.

Who can bring a petition for writ of habeas corpus? A person who has legal right to custody of the child or children may bring a petition for writ of habeas corpus. However, the court may grant custody to one other than the legal custodian if the legal custodian is proved to be unfit by clear and satisfactory evidence.

What court has jurisdiction to hear a motion for writ of habeas corpus? The Superior Court or the Probate Court has jurisdiction unless a Juvenile Court order is in effect. The fact that a child is not in Georgia at the time the petition is filed does not deprive the court of jurisdiction.

What other laws relate to the wrongful detention of a child?

- Uniform Child Custody Jurisdiction Act (UCCJA), 9(1A) U.L.A. 271 (1999);.
- Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), 9(1A)U.L.A. 657 (1999); O.C.G.A. § 19-9-40 *et. seq*
- Parental Kidnapping Prevention Act of 1980 (PKPA), 28 U.S.C.

Are the wishes of a minor over age 14 controlling in this situation? No, although the child's wishes will be considered.

What else can I do to deal with a family abduction? You can file a criminal charge of "Interference with Custody."

What are some other sources of information about family abduction?

- The National Center for Missing & Exploited Children, at www.missingkids.com
- The ABA Center on Children and the Law, at <http://www.abanet.org/child/abduction.shtml>
- Parents Advocating for Return by Networking Together, at <http://www.parentinternational.com/>

If you need specific help and advice, please speak to a family law attorney!

**IN THE SUPERIOR/ PROBATE COURT OF _____ COUNTY
STATE OF GEORGIA**

)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. _____
)	
)	
)	
Defendant.)	

**PETITION FOR WRIT OF HABEAS CORPUS
AND EMERGENCY MOTION FOR RETURN OF CHILD**

The Petitioner, _____, brings this petition for a writ of habeas corpus against and emergency motion for return of child against the Respondent, _____, upon the following grounds:

1.

Petitioner is a resident of _____ County, residing at the following address: _____
Street Address County State

2.

The Respondent is a resident of _____ County, residing at the following address: _____
Street Address County State

3.

The relationship of the Petitioner and the Respondent is as follows:

For example, husband and wife, ex-husband and ex wife, ex-boyfriend and girlfriend, etc.

4.

The Petitioner is the child(ren)'s mother, father, other _____.

5.

The Respondent is the child(ren)'s mother, father, other _____.

6.

The Petitioner is the legal custodian of the minor child(ren), _____, _____, age(s) _____, because [check only one: a or b]

a) The Superior Court of _____ County, _____ [State] issued a final decree of _____ on the ____ day of _____, _____ [year], Civil Action No. _____; or

b) The Defendant father and I were never married, and he has never legitimated the child(ren). O.C.G.A. § 19-7-25 states “Only the mother of a child born out of wedlock is entitled to his custody, unless the father legitimates him as provided in Code Section 19-7-22. Otherwise, the mother may exercise all parental power over the child.”

7.

The child(ren) currently live with the Petitioner at the address listed in Paragraph 1.

8.

The Respondent is illegally detaining and withholding custody of the minor child(ren) from the Petitioner at the following address: _____.

9.

The Petitioner has repeatedly demanded that the Respondent surrender to Petitioner the child(ren), but Respondent refuses to return the child(ren).

10.

The Respondent has no legal justification for withholding the minor child(ren) from the custody and control of the Petitioner.

THEREFORE, Petitioner demands:

(a) That a writ of habeas corpus issue requiring the Respondent to appear and produce the minor child(ren) before this Court and to otherwise show cause why custody should not be restored to the Petitioner.

Respectfully submitted,

Petitioner *pro se*

Address _____

Telephone number _____

IN THE SUPERIOR/ PROBATE COURT OF _____ COUNTY
STATE OF GEORGIA

_____,)
)
Plaintiff,)
)
v.) Civil Action No. _____
)
)
_____,)
Defendant.)

VERIFICATION

Personally appeared before me, the undersigned notary public duly authorized in the State of Georgia to administer oaths, _____, who after being duly sworn, deposes and states that s/he is the Petitioner in the foregoing action and that the facts contained in his/her attached **Petition for Writ of Habeas Corpus and Emergency Motion for Return of Child** are true and correct to the best of her knowledge, information and belief.

Plaintiff *pro se* [Sign in front of a Notary Public]

Sworn to and subscribed before me
this _____ day of _____, 200_.

Notary Public, State of Georgia

My Commission Expires: _____

**IN THE SUPERIOR/ PROBATE COURT OF _____ COUNTY
STATE OF GEORGIA**

)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. _____
)	
)	
)	
Defendant.)	

EX-PARTE RULE NISI ORDER

The within and foregoing Petition for Writ of Habeas Corpus and Emergency Motion for Return of Child having been read and considered, let the same be filed and a copy, together with this Rule Nisi, be served upon the Defendant as required by law.

Until further order of the Court, Petitioner shall have physical custody of the minor child(ren) _____, born _____.

Both parties are hereby restrained and enjoined from doing, or attempting to do, or threatening to do, any act of injury, maltreating, molesting, harassing, harming or abusing the other party. Both parties are hereby restrained from damaging, diminishing, or selling any of the marital assets. Both parties are further restrained from incurring any additional or further marital debt.

Because this Order is ex-parte in nature, Respondent shall be allowed a hearing on the relief granted herein if s/he so requests, provided that notice of not less than seventy-two (72) hours is provided to Plaintiff.

Let both parties appear and show cause before me on the _____ day of _____, 2009 at _____ in Room _____ of the Dougherty County courthouse in Albany, Georgia why the relief sought by Plaintiff in his Complaint for Divorce should not be granted.

SO ORDERED this _____ day of _____, 2009.

Judge
Dougherty County Superior Court

IN THE SUPERIOR/ PROBATE COURT OF _____ COUNTY
STATE OF GEORGIA

_____,)
)
Plaintiff,)
)
v.) Civil Action No. _____
)
)
_____,)

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing
_____ (type of lawsuit) upon the following
person:

- counsel for Defendant (if you know who the Defendant's attorney is)
- [OR]
- Defendant (if you do not know who the Defendant's attorney is)

by causing to be delivered by hand a copy of the

[Name of legal document]

to the name and address listed below:

This _____ day of _____, 20____.

Plaintiff *pro se*

Address _____

Telephone Number _____

IN THE SUPERIOR/ PROBATE COURT OF _____ COUNTY
STATE OF GEORGIA

_____,)
)
Plaintiff,)
)
v.) Civil Action No. _____
)
)
_____,)
Defendant.)

SUMMONS

To the above-named Defendant:

You are hereby summoned and required to file with the clerk of said court and serve upon _____, Plaintiff, whose address is

_____, an
Answer to the complaint which is herewith served upon you, within 30 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

Clerk of Court

IN THE SUPERIOR/ PROBATE COURT OF _____ COUNTY
STATE OF GEORGIA

_____,)
)
Plaintiff,)
)
v.) Civil Action No. _____
)
_____,)
)
Defendant.)

WRIT OF HABEAS CORPUS

To: _____ [Respondent]

You are hereby commanded to produce the minor child(ren), _____

_____,
alleged to be illegally detained by you, and appear before the appropriate nonjury
division of this Court on the ____ day of _____, 20____ (year), at _____
o'clock, __. M., and show cause why custody of the minor child(ren) should not be
returned to the Petitioner.

This ____ day of _____, ____ (year).

Judge, _____ Court of _____ County