

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

Facts and Questions

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? A superior court has jurisdiction unless a juvenile court order is in effect. The fact that a child is in a foreign jurisdiction 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? The Georgia Uniform Child Custody Jurisdiction Enforcement Act, which can be found at O.C.G.A. § 19-9-40 *et. seq.*

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

**IN THE SUPERIOR 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.

The Respondent is subject to the jurisdiction of this Court and may be served with a copy of this Petition and Writ at _____.

2.

The Petitioner is the legal custodian of the minor child(ren), _____

_____,
age(s) _____-_____, by virtue of a final
decree of _____ entered by the Superior Court of _____
County, Civil Action No. _____.

3.

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

4.

The Respondent has no cause or 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 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*

Sworn to and subscribed before me
this _____ day of _____, 20 _____.

Notary Public, State of Georgia

My Commission Expires: _____

**IN THE SUPERIOR 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 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 _____, _____ (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 _____, 20_____.

 JUDGE, Superior Courts
 _____ Judicial Circuit