

# 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,

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Petitioner *pro se*

Address

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Telephone number





