

1 HB314
2 216231-2
3 By Representative Robbins
4 RFD: Judiciary
5 First Read: 08-FEB-22

1 Section 1. Sections 30-3-1, 30-3-150, 30-3-151,
2 30-3-152, 30-3-153, and 30-3-157 of the Code of Alabama 1975,
3 are amended to read as follows:

4 "§30-3-1.

5 "Upon granting a divorce, the court may give the
6 custody and education of the children of the marriage to
7 either father or mother, ~~as may seem right and proper,~~ having
8 regard to the moral character and prudence of ~~the parents~~ each
9 parent and the age and sex of the children, ~~and~~ and pending the
10 action, may make ~~such~~ orders in respect to the custody of the
11 children ~~as~~ in the best interest of their safety and
12 well-being ~~may require. But in cases of abandonment of the~~
13 ~~husband by the wife, he shall have the custody of the children~~
14 ~~after they are seven years of age, if he is a suitable person~~
15 ~~to have such charge.~~

16 "§30-3-150.

17 ~~"Joint Custody.~~ It is the policy of this state to
18 assure that minor children have frequent and continuing
19 contact with parents who have shown the ability to act in the
20 best interest of their children and to encourage parents to
21 share in the rights and responsibilities of rearing their
22 children after the parents have separated or dissolved their
23 marriage. ~~Joint custody does not necessarily mean equal~~
24 ~~physical custody.~~

25 "§30-3-151.

26 "For the purposes of this article the following
27 words shall have the following meanings:

1 "(1) JOINT CUSTODY. Joint legal custody and joint
2 physical custody.

3 "(2) JOINT LEGAL CUSTODY. ~~Both~~ A custody arrangement
4 where both parents have equal rights and responsibilities for
5 major decisions concerning the child, including, but not
6 limited to, the education of the child, health care, and
7 religious training and the responsibility to discuss those
8 decisions and consider the wishes and concerns of each parent
9 and the child. ~~The court may designate one parent to have sole~~
10 ~~power to make certain decisions while both parents retain~~
11 ~~equal rights and responsibilities for other decisions~~ The
12 court may designate one parent to have tie-breaking authority
13 to make certain major decisions; however, that designation
14 does not negate the responsibility of that parent to discuss
15 those decisions with the other parent and to consider the
16 other parent's wishes and concerns. In the event of an impasse
17 and in the absence of an express award of tie-breaking
18 authority, the primary physical custodian shall have
19 tie-breaking authority for those decisions.

20 "(3) JOINT PHYSICAL CUSTODY. ~~Physical~~ A custody
21 arrangement where physical custody is shared by the parents in
22 a way that assures the child frequent and substantial contact
23 with each parent. ~~Joint physical custody~~ This term does not
24 necessarily mean physical custody of equal durations of time.

25 "(4) NONRESIDENTIAL CUSTODIAL PARENT. The parent
26 with whom the child does not live the majority of the time and
27 who does not have the primary authority and responsibility for

1 the day-to-day care and decisions relating to the raising of a
2 child or the authority to establish where a child will live,
3 but does have the authority and responsibility for the
4 day-to-day care and decisions related to the raising of a
5 child when the child is in his or her physical custody and not
6 in the physical custody of the parent with primary physical
7 custody.

8 "(5) PARENTING PLAN. A plan specifying the time
9 which a minor child will spend with each parent and which may
10 include provisions for progressive periods of time-sharing
11 within the court ordered time-sharing schedules based on the
12 increasing age and developmental considerations of the child,
13 the need of the child to be reunited with a parent, or any
14 other consideration pertaining to the child's best interest.
15 The inclusion of a progressive provision in a parenting plan
16 or a custody order does not alter the type of physical custody
17 ordered by the court or the burden of proof required to modify
18 custody.

19 ~~"(5) SOLE (6) PRIMARY PHYSICAL CUSTODY. One parent~~
20 ~~has sole physical custody and the other parent has rights of~~
21 ~~visitation except as otherwise provided by the court. A status~~
22 ~~of custody making one parent the predominant physical~~
23 ~~custodian of the child and granting the other parent the~~
24 ~~status of the nonresidential custodial parent, unless the~~
25 ~~judge specifically grants the other parent the status of~~
26 ~~restricted physical custody. The parent with primary physical~~
27 ~~custody has the primary authority and responsibility for the~~

1 day-to-day care and decisions related to the raising of the
2 child and to establish where the child will live.

3 "(7) RESTRICTED PHYSICAL CUSTODY. A status of
4 custody where a parent's physical access to a child is limited
5 to supervised custody, no overnight custody, a suspension of
6 physical contact, or any other restrictions on custody
7 determined by the court to be in the best interest of the
8 child.

9 "~~(4)~~(8) SOLE LEGAL CUSTODY. ~~One~~ A status of custody
10 where ~~one~~ parent has sole rights and responsibilities to make
11 major decisions concerning the child, including, but not
12 limited to, the education of the child, health care, ~~and~~
13 religious training, ~~and the civil, cultural, and athletic~~
14 activities of the child.

15 "§30-3-152.

16 "(a) The court shall in every case consider joint
17 custody but may award any form of custody which is determined
18 to be in the best interest of the child. In determining
19 whether joint custody is in the best interest of the child,
20 the court shall consider the same factors considered in
21 awarding ~~sole legal and physical~~ other forms of custody
22 arrangements and all of the ~~following~~ factors in this
23 subsection. The court may weigh various factors differently
24 based on the facts presented and the best interest of the
25 child:

26 "(1) The agreement or lack of agreement of the
27 parents on joint custody.

1 "(2) The past and present ability of the parents to
2 cooperate with each other and make decisions jointly.

3 "(3) The ability of the parents to encourage the
4 sharing of love, affection, and contact between the child and
5 the other parent.

6 "(4) Any history of or potential for child abuse,
7 spouse abuse, or kidnapping.

8 "(5) The geographic proximity of the parents to each
9 other as this relates to the practical considerations of joint
10 physical custody.

11 "(b) The court may order a form of joint custody
12 without the consent of both parents, when it is in the best
13 interest of the child.

14 "(c) If both parents request joint custody, ~~the~~
15 there is a presumption is that joint custody is in the best
16 interest of the child. Joint custody, when requested by both
17 parents, shall be granted in the final order of the court
18 unless the court makes specific findings as to why joint
19 custody is not granted.

20 "(d) If joint custody is not awarded by the court,
21 all of the following factors shall be considered by the court
22 when determining which other custody arrangement is in the
23 best interest of the child. The court may weigh various
24 factors differently based on the facts presented and the best
25 interest of the child:

26 "(1) The relationship between each parent and the
27 child.

1 "(2) The relationship between the child and the
2 child's peers, siblings, or other relatives.

3 "(3) The capacity of each parent to engage in a
4 loving relationship with the child and to provide for the
5 needs of the child, including the child's emotional, social,
6 moral, material, and educational needs.

7 "(4) Each parent's knowledge and familiarity with
8 the child and level of involvement in the child's life both
9 prior to and after the separation of the parents.

10 "(5) The effect on the child of disrupting or
11 continuing an existing custodial status.

12 "(6) Each parent's home environment.

13 "(7) The preferences of the parents.

14 "(8) The moral, mental, and physical fitness of each
15 parent.

16 "(9) The child's age and any special needs.

17 "(10) The preference of the child if the child is of
18 sufficient age and maturity.

19 "(11) The history of cooperation between the
20 parents, including the past and present history and the
21 capacity of each parent to facilitate or encourage a
22 continuing parent-child relationship with both parents.

23 "(12) Each parent's criminal history or evidence of
24 violence or sexual, mental, or physical abuse.

25 "(13) Evidence of substance abuse by either parent.

26 "(14) The child's current adjustment to or
27 involvement with his or her community.

1 "(15) Military considerations.

2 "(16) Characteristics of those seeking custody,
3 including age, character, stability, and mental and physical
4 health.

5 "(17) The report and recommendation of any expert
6 witnesses or other independent investigator.

7 (18) Any history of a parent's intentional
8 interference or attempt to damage the relationship between the
9 child and the other parent.

10 ~~"(18)~~ (19) Any other relevant factors.

11 "§30-3-153.

12 ~~"(a) In order to implement joint custody, the~~ The
13 court shall require the parents to submit, as part of their
14 ~~agreement,~~ each parent, separately or together, to submit a
15 parenting plan with provisions covering matters relevant to
16 the care and custody of the child, including, but not limited
17 to, all of the following:

18 ~~"(1) The care and education of the child. The ways~~
19 that the parents will share tasks and be responsible for the
20 daily upbringing of the child.

21 ~~"(2) The medical and dental care of the child. A~~
22 parenting plan that establishes the amount of time the child
23 will spend with each parent.

24 ~~"(3) Holidays and vacations. A designation of who is~~
25 responsible for any and all forms of health care and
26 school-related matters, including the address to be used for

1 school residential determinations and registration and other
2 activities.

3 ~~"(4) Child support.~~ Transportation arrangements for
4 the child, including which parent bears the cost for
5 transporting the child.

6 ~~"(5) Other necessary factors that affect the~~
7 ~~physical or emotional health and well-being of the child. The~~
8 ~~methods and technologies that the parents will use to~~
9 ~~communicate with the child and each other.~~

10 ~~"(6) Designating the parent possessing primary~~
11 ~~authority and responsibility regarding involvement of the~~
12 ~~minor child in academic, religious, civic, cultural, athletic,~~
13 ~~and other activities, and in medical and dental care if the~~
14 ~~parents are unable to agree on these decisions. The exercise~~
15 ~~of this primary authority is not intended to negate the~~
16 ~~responsibility of the parties to notify and communicate with~~
17 ~~each other as provided in this article. The division of any~~
18 ~~expenses in addition to child support as provided by Rule 32~~
19 ~~of the Rules of Judicial Administration.~~

20 "(7) A designation of the parent possessing primary
21 authority and responsibility regarding involvement of the
22 child in academic, religious, civic, cultural, athletic, and
23 other activities, and in medical and dental care decisions if
24 the parents are unable to agree.

25 "(8) Any other matter specifically delineated by the
26 court.

1 "(b) If the parties are unable to reach an agreement
2 as to the provisions in subsection (a), the court shall set
3 the plan.

4 "(c) If both parents submit the same parenting plan,
5 the presumption is that the parenting plan jointly submitted
6 by the parents is in the best interest of the child. The
7 parenting plan jointly submitted by both parents shall be
8 granted in the final order of the court, unless the court
9 makes specific findings as to why the parenting plan jointly
10 submitted by the parties should not be granted.

11 "§30-3-157.

12 "(a) This article shall not be construed as grounds
13 for modification of an existing order. ~~This article shall not~~
14 ~~be construed as affecting the standard applicable to a~~
15 ~~subsequent modification.~~

16 "(b) When a parent seeks to modify physical custody
17 of the child after a voluntary forfeiture of physical custody
18 or a prior decree awarding primary physical custody to another
19 person, the parent seeking modification must prove all of the
20 following:

21 "(1) That a material change in circumstances has
22 occurred since the voluntary forfeiture or the previous
23 judgment.

24 "(2) That the child's best interest will be
25 materially promoted by a change of physical custody.

1 "(3) That the benefits of the change will more than
2 offset the inherently disruptive effect resulting from the
3 change in physical custody."

4 Section 2. ~~Section 30-3-158 is~~ Sections 30-3-152.1
5 and 30-3-158 are added to the Code of Alabama 1975, to read as
6 follows:

7 §30-3-152.1.

8 (a) This section shall be known as and may be cited
9 as the Tate Amendment.

10 (b) A party may request a preliminary emergency
11 hearing in a filed action. If a party files a verified motion
12 for an emergency custody order that concerns health, welfare
13 or safety risks to a minor child, a trial court shall set a
14 hearing within 72 hours of the service of the motion on the
15 other party. The party seeking said motion has the duty to
16 inform the court when the other party is served. Said hearing
17 may be held virtually by video or audio methods or may be held
18 in person at the discretion of the court. The party seeking
19 the motion must provide a court reporter unless otherwise
20 provided or waived by the other party. If the court determines
21 that the motion was filed without an emergency pending that
22 concerns health, welfare, or safety risks to the minor child,
23 the trial court shall have the discretion to award attorney's
24 fees to the party that improperly brought the motion or
25 petition.

26 §30-3-158.

1 (a) When a parent refuses to adhere to the
2 time-sharing schedule in the parenting plan ordered by the
3 court without proper cause, the court may take any of the
4 following actions:

5 (1) After calculating the amount of time-sharing
6 improperly denied by a parent, issue an order awarding the
7 parent who was denied time a sufficient amount of extra
8 time-sharing to compensate for the time-sharing missed. The
9 order shall be issued as expeditiously as possible in a manner
10 consistent with the best interest of the child and scheduled
11 in a manner that is convenient for the parent deprived of
12 time-sharing. In ordering any makeup time-sharing, the court
13 shall schedule the time-sharing in a manner that is consistent
14 with the best interest of the child or children, that is
15 convenient for the nonoffending parent, and at the expense of
16 the noncompliant parent.

17 (2) Order the parent who did not provide
18 time-sharing or did not properly exercise time-sharing under
19 the time-sharing schedule to pay reasonable court costs and
20 attorney fees incurred by the nonoffending parent to enforce
21 the time-sharing schedule.

22 (3) Order the parent who did not provide
23 time-sharing, or did not properly exercise time-sharing under
24 the time-sharing schedule, to attend a parenting course
25 approved by the court.

26 (4) Order the parent who did not provide
27 time-sharing or did not properly exercise time-sharing under

1 the time-sharing schedule to pay the actual cost incurred by
2 the other parent because of the failure to provide
3 time-sharing or the failure to properly exercise time-sharing
4 as provided by the court order.

5 (5) Impose any other reasonable remedies as a result
6 of noncompliance.

7 (b) The actions described in subsection (a) are in
8 addition to existing remedies, including, but not limited to,
9 contempt.

10 Section 3. This act shall apply only to custody
11 orders entered on or after January 1, 2023.

12 Section 4. This act shall become effective January
13 1, 2023, following its passage and approval by the Governor,
14 or its otherwise becoming law.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17

House of Representatives

Read for the first time and re-
ferred to the House of Representa-
tives committee on Judiciary 08-FEB-22

Read for the second time and placed
on the calendar 1 amendment 17-MAR-22

Read for the third time and passed
as amended..... 31-MAR-22

Yeas 93, Nays 7, Abstains 1

Jeff Woodard
Clerk