

1 SB226  
2 217569-1  
3 By Senator Whatley  
4 RFD: Judiciary  
5 First Read: 16-FEB-22

SYNOPSIS: This bill would require courts to prioritize custody determinations when divorcing parents can not agree upon custody arrangements.

This bill would require courts to consider the home and living situation of each parent before granting sole legal custody to one parent.

This bill would also allow the court to order the Department of Human Resources to conduct a pre-placement investigation before granting sole legal custody to one parent in certain circumstances.

A BILL  
TO BE ENTITLED  
AN ACT

Relating to child custody; to amend Sections 30-3-1 and 30-3-152, Code of Alabama 1975; to prioritize certain custody determinations; to require courts to consider the living situation of each parent in certain custody

1 determinations; and to allow the court to order a  
2 pre-placement investigation before granting sole legal  
3 custody.

4 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

5 Section 1. Sections 30-3-1 and 30-3-152, Code of  
6 Alabama 1975, are amended to read as follows:

7 "§30-3-1.

8 "Upon granting a divorce, the court may give the  
9 custody and education of the children of the marriage to  
10 either father or mother, as may seem right and proper, having  
11 regard to the moral character and prudence of the parents and  
12 the age and sex of the children; and pending the action, may  
13 make such orders in respect to the custody of the children as  
14 their safety and well-being may require. But in cases of  
15 abandonment of the husband by the wife, he shall have the  
16 custody of the children after they are seven years of age, if  
17 he is a suitable person to have such charge. If the divorcing  
18 parents cannot agree upon custody arrangements for their  
19 children, the custody determination shall have priority over  
20 all other cases and shall be expedited by the court to the  
21 extent practicable.

22 "§30-3-152.

23 "(a) The court shall in every case consider joint  
24 custody but may award any form of custody which is determined  
25 to be in the best interest of the child. In determining  
26 whether joint custody is in the best interest of the child,  
27 the court shall consider the same factors considered in

1       awarding sole legal and physical custody and all of the  
2       following factors:

3               "(1) The agreement or lack of agreement of the  
4       parents on joint custody.

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

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

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

12              "(5) The geographic proximity of the parents to each  
13       other as this relates to the practical considerations of joint  
14       physical custody.

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

18              "(c) If both parents request joint custody, the  
19       presumption is that joint custody is in the best interest of  
20       the child. Joint custody shall be granted in the final order  
21       of the court unless the court makes specific findings as to  
22       why joint custody is not granted.

23              "(d) The court may decline to grant joint custody  
24       and grant one parent sole physical custody in the following  
25       circumstances:

26              "(1) Based on the evidence presented regarding the  
27       home, living situation, and fitness of each parent, the court

1 determines that sole physical custody is in the best interest  
2 of the child.

3 "(2) If the court determines that the evidence  
4 presented regarding the home and living situation of each  
5 parent is not enough to make an informed decision regarding  
6 the best interest of the child, the court may order the  
7 Department of Human Resources to conduct a pre-placement  
8 investigation, pursuant to Section 26-20A-19, of each parent.  
9 After reviewing the results of the investigation, the court  
10 may grant sole physical custody to one parent if doing so is  
11 in the best interest of the child."

12 Section 2. This act shall become effective on the  
13 first day of the third month following its passage and  
14 approval by the Governor, or its otherwise becoming law.