

1 SB266
2 196921-2
3 By Senators Stutts, Chesteen, Coleman-Madison, Barfoot,
4 Sessions, Williams, Price, Butler, Allen, Waggoner and
5 Shelnutt
6 RFD: Children, Youth and Human Services
7 First Read: 09-APR-19

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8 SYNOPSIS: Existing law specifies that it is the policy
9 of this state that parents who are divorced or
10 separated have frequent and continuing contact with
11 their children. Existing law also specifies that
12 joint custody does not necessarily mean equal
13 physical custody.

14 This bill would revise existing definitions
15 regarding custody to be consistent with terminology
16 used in case law and to specify that joint physical
17 custody means frequent, substantial, and maximized
18 contact with both parents in a manner in which both
19 parents share all aspects of parenting.

20 This bill would specify that there is a
21 rebuttable presumption that joint custody is in the
22 best interest of the child, and this rebuttable
23 presumption may be overcome only by clear and
24 convincing evidence, set forth in written findings
25 of fact, that joint custody is not in the best
26 interest of the child.

1 This bill would establish factors to be
2 considered when determining any custody arrangement
3 that does not award joint custody.

4 Existing law requires the parties in a child
5 custody matter to submit a parenting plan only in
6 cases where the parties request joint custody.

7 This bill would require the parties to
8 submit a parenting plan in all cases. This bill
9 would also authorize the court to establish a
10 parenting plan when the parties are unable to agree
11 upon one. This bill would specify additional
12 remedies to a party when a parent, without proper
13 cause, fails to adhere to the time sharing schedule
14 in a parenting plan including make-up parenting
15 time and reimbursement for costs and attorney fees.

16 This bill would also specify that it is the
17 public policy of this state that a court with
18 competent jurisdiction shall enforce all parenting
19 time orders, custody orders, and child support
20 orders giving equal importance to each.

21
22 A BILL
23 TO BE ENTITLED
24 AN ACT

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26 To amend Sections 30-3-150, 30-3-151, 30-3-152, and
27 30-3-153 of the Code of Alabama 1975, and to add Section

1 30-3-158 to the Code of Alabama 1975, relating to child
2 custody; to clarify the policy of this state regarding child
3 custody; to provide definitions; to require a parenting plan
4 and to authorize the court to establish a parenting plan in
5 certain situations; to specify the contents of the parenting
6 plan; to specify the factors the court may consider in
7 establishing a parenting plan; and to specify remedies when a
8 party fails to adhere to certain provisions in a parenting
9 plan.

10 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

11 Section 1. This act shall be known and may be cited
12 as the Children's Equal Access Act.

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

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 parents have equal
4 rights and responsibilities for major decisions concerning the
5 child, including, but not limited to, the education of the
6 child, health care, and religious training, and the
7 responsibility to discuss those decisions and consider the
8 wishes and concerns of each parent and the child. The court
9 may designate one parent to have sole power to make certain
10 decisions while both parents retain equal rights and
11 responsibilities for other decisions; however, that
12 designation does not negate the responsibility of that parent
13 to discuss those decisions with the other parent and to
14 consider the other parent's wishes and concerns.

15 "(3) JOINT PHYSICAL CUSTODY. Physical custody is
16 shared by the parents in a way that assures the child frequent
17 and substantial contact with each parent. ~~Joint physical~~
18 ~~custody does not necessarily mean physical custody of equal~~
19 ~~durations of time.~~ Frequent and substantial contact means that
20 the child has equal or approximately equal time with both
21 parents.

22 "(4) NONRESIDENTIAL CUSTODIAL PARENT. The parent
23 with whom the child does not live the majority of the time and
24 who does not have the primary authority and responsibility for
25 the day-to-day care and decisions relating to the raising of a
26 child or the authority to establish where a child will live,
27 but does have the authority and responsibility for the

1 day-to-day care and decisions related to the raising of a
2 child when the child is in his or her physical custody and not
3 in the physical custody of the parent with primary physical
4 custody.

5 "(5) PARENTING PLAN. A plan that specifies the time
6 which a minor child will spend with each parent.

7 ~~"(5)(6) SOLE PRIMARY PHYSICAL CUSTODY. One parent~~
8 ~~has sole physical custody and the other parent has rights of~~
9 ~~visitation except as otherwise provided by the court. When one~~
10 ~~parent has the authority and responsibility for the day-to-day~~
11 ~~care and decisions related to the raising of a child and to~~
12 ~~establish where a child will reside, which will be the address~~
13 ~~of the child for determinations as to school and residence.~~

14 "(7) RESTRICTED PHYSICAL CUSTODY. When a parent's
15 physical access to a child is limited to supervised custody,
16 no overnight custody, a suspension of physical contact, or any
17 other restrictions on custody determined by the court to be in
18 the best interest of the child.

19 ~~"(4)(8) SOLE LEGAL CUSTODY. One~~ When one parent has
20 sole rights and responsibilities to make major decisions
21 concerning the child, including, but not limited to, the
22 education of the child, health care, and religious training.

23 "§30-3-152.

24 ~~"(a) The court shall in every case consider joint~~
25 ~~custody but may award any form of custody which is determined~~
26 ~~to be~~ There shall be a rebuttable presumption that joint
27 custody is in the best interest of the child. This rebuttable

1 presumption may be overcome only by clear and convincing
2 evidence, set forth in written findings of fact, that joint
3 custody is not in the best interest of the child. In
4 determining whether joint custody is in the best interest of
5 the child, the court shall consider the same factors
6 considered in awarding ~~sole legal and physical~~ other forms of
7 custody arrangements and all of the ~~following~~ factors below.
8 The court may weigh various factors differently based on the
9 facts presented and the best interests of the child:

10 "(1) The agreement or lack of agreement of the
11 parents on joint custody.

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

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

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

19 "(5) The geographic proximity of the parents to each
20 other as this relates to the practical considerations of joint
21 physical custody.

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

25 "(c) If both parents request joint custody, the
26 presumption is that joint custody is in the best interest of
27 the child. Joint custody shall be granted in the final order

1 of the court unless the court makes specific findings as to
2 why joint custody is not granted.

3 "(d) If joint custody is not awarded by the court,
4 all of the following factors shall be considered by the court
5 when determining which other custody arrangement is in the
6 best interest of the child. The court may weigh various
7 factors differently based on the facts presented and the best
8 interests of the child:

9 "(1) The preferences of the parents.

10 "(2) Moral, mental, and physical fitness of each
11 parent.

12 "(3) The capacity of each parent to provide a loving
13 relationship and the needs of each child, including the
14 child's emotional, social, moral, material, and educational
15 needs.

16 "(4) The history of cooperation between the parents,
17 including the past and present history and the capacity of
18 each parent to facilitate or encourage a continuing
19 parent-child relationship with both parents.

20 "(5) Each parent's home environment.

21 "(6) Each parent's criminal history or evidence of
22 violence, sexual, mental, or physical abuse.

23 "(7) Evidence of substance abuse by either parent.

24 "(8) The child's age and any special needs.

25 "(9) Characteristics of those seeking custody,
26 including age, character, stability, and mental and physical
27 health.

1 "(10) The report and recommendation of any expert
2 witnesses or other independent investigator.

3 "(11) Military considerations in accordance with
4 state and federal law.

5 "(12) The child's current adjustment to or
6 involvement with his or her community.

7 "(13) The relationship between each parent and the
8 child.

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

11 "(15) The relationship between the child, the
12 child's peers, siblings, or other relatives.

13 "(16) Any other relevant factors.

14 "§30-3-153.

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

20 "~~(1) The care and education of the child.~~ How the
21 parents will share and be responsible for the daily tasks with
22 the upbringing of the child.

23 "~~(2) The medical and dental care of the child.~~ A
24 parenting plan that specifies the time the minor child will
25 spend with each parent.

26 "~~(3) Holidays and vacations.~~ A designation of who is
27 responsible for any and all forms of health care,

1 school-related matters, including the address to be used for
2 school residential determination and registration, and other
3 activities.

4 ~~"(4) Child support.~~ Transportation arrangements for
5 the child, including who bears the cost for transporting the
6 child.

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

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

20 ~~"(7) The division of any expenses in addition to~~
21 ~~child support as provided by Rule 32 of the Rules of Judicial~~
22 ~~Administration.~~

23 ~~"(8) A designation of the parent possessing primary~~
24 ~~authority and responsibility regarding involvement of the~~
25 ~~minor child in academic, religious, civic, cultural, athletic,~~
26 ~~and other activities, and in medical, dental, vision, mental~~

1 health care and the like if the parents are unable to agree on
2 these decisions.

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

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

13 Section 3. Section 30-3-158 is added to the Code of
14 Alabama 1975, to read as follows:

15 §30-3-158.

16 (a) When a parent refuses to adhere to the time
17 sharing schedule in the parenting plan ordered by the court
18 without proper cause, the court may take any of the following
19 actions:

20 (1) After calculating the amount of time sharing
21 improperly denied, award the parent denied time a sufficient
22 amount of extra time sharing to compensate for the time
23 sharing missed, and such time sharing shall be ordered as
24 expeditiously as possible in a manner consistent with the best
25 interests of the child and scheduled in a manner that is
26 convenient for the parent deprived of time sharing. In
27 ordering any make-up time sharing, the court shall schedule

1 the time sharing in a manner that is consistent with the best
2 interests of the child or children and that is convenient for
3 the nonoffending parent and at the expense of the noncompliant
4 parent.

5 (2) Order the parent who did not provide time
6 sharing or did not with reasonable notice properly exercise
7 time sharing under the time sharing schedule to pay reasonable
8 court costs and attorney's fees incurred by the nonoffending
9 parent to enforce the time sharing schedule.

10 (3) Order the parent who did not provide time
11 sharing or did not with reasonable notice properly exercise
12 time sharing under the time sharing schedule to attend a
13 parenting course approved by the court. The parenting course,
14 among other things, shall educate the parent about the
15 benefits of a child's relationships with both parents.

16 (4) Order the parent who did not provide time
17 sharing or did not with reasonable notice properly exercise
18 time sharing under the time sharing schedule to pay the actual
19 cost incurred by the other parent because of the failure to
20 provide time sharing or the failure to properly exercise time
21 sharing as provided by the court order.

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

24 (b) These remedies are in addition to existing
25 remedies, including, but not limited to, contempt.

1 Section 4. (a) A court of competent jurisdiction
2 shall enforce all parenting time orders, custody orders, and
3 child support orders giving equal importance to each.

4 (b) As a matter of public policy, it is the intent
5 of the Legislature that this act be implemented in a manner
6 that recognizes the importance of family and the fundamental
7 rights of parents and children.

8 (c) This act shall apply to parenting time orders,
9 custody orders, and child support orders issued on or after
10 January 1, 2020, and the provisions of this act may not be
11 construed to assert a material change of circumstances for
12 purposes of modifying an order in place before January 1,
13 2020.

14 Section 5. The provisions of this act are severable.
15 If any part of this act is declared invalid or
16 unconstitutional, that declaration shall not affect the part
17 which remains.

18 Section 6. This act shall become effective on the
19 first day of the third month following its passage and
20 approval by the Governor, or its otherwise becoming law.