

1 SB382
2 212602-1
3 By Senators Stutts, Butler and Smitherman
4 RFD: Judiciary
5 First Read: 01-APR-21

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 that joint custody is not in
25 the best 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's
16 fees.

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

22
23 A BILL
24 TO BE ENTITLED
25 AN ACT
26

1 Relating to child custody; to amend Sections
2 30-3-150, 30-3-151, 30-3-152, and 30-3-153 of the Code of
3 Alabama 1975; to add Section 30-3-158 to the Code of Alabama
4 1975; to clarify the policy of this state regarding child
5 custody; to provide definitions; to require a parenting plan
6 and to authorize the court to establish a parenting plan in
7 certain situations; to specify the contents of the parenting
8 plan; to specify the factors the court may consider in
9 establishing a parenting plan; and to specify remedies when a
10 party fails to adhere to certain provisions in a parenting
11 plan.

12 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

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

18 "§30-3-150.

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

27 "§30-3-151.

1 "For the purposes of this article the following
2 words shall have the following meanings:

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

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

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

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

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

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

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

16 "Any change of the child's primary physical
17 residence must be made in compliance with the Alabama
18 Parent-Child Relationship Protection Act.

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

24 "~~(4)~~(8) SOLE LEGAL CUSTODY. ~~One~~ When one parent has
25 sole rights and responsibilities to make major decisions
26 concerning the child, including, but not limited to, the
27 education of the child, health care, and religious training.

1 "§30-3-152.

2 "~~(a) The court shall in every case consider joint~~
3 ~~custody but may award any form of custody which is determined~~
4 ~~to be~~ There shall be a rebuttable presumption that joint
5 custody is in the best interest of the child. This rebuttable
6 presumption may be overcome only by clear and convincing
7 evidence that joint custody is not in the best interest of the
8 child. In determining whether joint custody is in the best
9 interest of the child, the court shall consider the same
10 factors considered in awarding ~~sole legal and physical~~ other
11 forms of custody arrangements and all of the ~~following~~ factors
12 below. The court may weigh various factors differently based
13 on the facts presented and the best interests of the child:

14 "(1) The agreement or lack of agreement of the
15 parents on joint custody.

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

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

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

23 "(5) The geographic proximity of the parents to each
24 other as this relates to the practical considerations of joint
25 physical custody.

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

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

4 "(c) If both parents request joint custody, the
5 presumption is that joint custody is in the best interest of
6 the child. Joint custody shall be granted in the final order
7 of the court unless the court makes specific findings as to
8 why joint custody is not granted.

9 "(d) If joint custody is not awarded by the court,
10 all of the following factors shall be considered by the court
11 when determining which other custody arrangement is in the
12 best interest of the child. The court may weigh various
13 factors differently based on the facts presented and the best
14 interests of the child:

15 "(1) The preferences of the parents.

16 "(2) Moral, mental, and physical fitness of each
17 parent.

18 "(3) The capacity of each parent to provide a loving
19 relationship and the needs of each child, including the
20 child's emotional, social, moral, material, and educational
21 needs.

22 "(4) The history of cooperation between the parents,
23 including the past and present history and the capacity of
24 each parent to facilitate or encourage a continuing
25 parent-child relationship with both parents.

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

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

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

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

5 "(9) Characteristics of those seeking custody,
6 including age, character, stability, and mental and physical
7 health.

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

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

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

14 "(13) The relationship between each parent and the
15 child.

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

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

20 "(16) Any other relevant factors.

21 "§30-3-153.

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

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

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

7 ~~"(3) Holidays and vacations. A designation of who is~~
8 ~~responsible for any and all forms of health care,~~
9 ~~school-related matters, including the address to be used for~~
10 ~~school residential determination and registration, and other~~
11 ~~activities.~~

12 ~~"(4) Child support. Transportation arrangements for~~
13 ~~the child, including who bears the cost for transporting the~~
14 ~~child.~~

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

19 ~~"(6) Designating the parent possessing primary~~
20 ~~authority and responsibility regarding involvement of the~~
21 ~~minor child in academic, religious, civic, cultural, athletic,~~
22 ~~and other activities, and in medical and dental care if the~~
23 ~~parents are unable to agree on these decisions. The exercise~~
24 ~~of this primary authority is not intended to negate the~~
25 ~~responsibility of the parties to notify and communicate with~~
26 ~~each other as provided in this article. Any other matter~~
27 ~~specifically delineated by the court.~~

1 "(7) The division of any expenses in addition to
2 child support as provided by Rule 32 of the Rules of Judicial
3 Administration.

4 "(8) A designation of the parent possessing primary
5 authority and responsibility regarding involvement of the
6 minor child in academic, religious, civic, cultural, athletic,
7 and other activities, and in medical, dental, vision, mental
8 health care and the like, if the parents are unable to agree
9 on these decisions.

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

13 "(c) If both parents submit the same parenting plan,
14 the presumption is that the parenting plan jointly submitted
15 by the parents is in the best interest of the child. The
16 parenting plan jointly submitted by both parents shall be
17 granted in the final order of the court unless the court makes
18 specific findings as to why the parenting plan jointly
19 submitted by the parties is not granted."

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

22 §30-3-158.

23 (a) When a parent refuses to adhere to the time
24 sharing schedule in the parenting plan ordered by the court
25 without proper cause, the court may take any of the following
26 actions:

1 (1) After calculating the amount of time sharing
2 improperly denied, award the parent denied time a sufficient
3 amount of extra time sharing to compensate for the time
4 sharing missed, and the time sharing shall be ordered as
5 expeditiously as possible in a manner consistent with the best
6 interests of the child and scheduled in a manner that is
7 convenient for the parent deprived of time sharing. In
8 ordering any make-up time sharing, the court shall schedule
9 the time sharing in a manner that is consistent with the best
10 interests of the child or children and that is convenient for
11 the nonoffending parent and at the expense of the noncompliant
12 parent.

13 (2) Order the parent who did not provide time
14 sharing or did not, with reasonable notice, properly exercise
15 time sharing under the time sharing schedule, to pay
16 reasonable court costs and attorney's fees incurred by the
17 nonoffending parent to enforce the time sharing schedule.

18 (3) Order the parent who did not provide time
19 sharing or did not, with reasonable notice, properly exercise
20 time sharing under the time sharing schedule, to attend a
21 parenting course approved by the court. The parenting course,
22 among other things, shall educate the parent about the
23 benefits of a child's relationship, with both parents.

24 (4) Order the parent who did not provide time
25 sharing or did not, with reasonable notice, properly exercise
26 time sharing under the time sharing schedule, to pay the
27 actual cost incurred by the other parent because of the

1 failure to provide time sharing or the failure to properly
2 exercise time sharing as provided by the court order.

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

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

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

10 (b) As a matter of public policy, it is the intent
11 of the Legislature that this act be implemented in a manner
12 that recognizes the importance of family and the fundamental
13 rights of parents and children.

14 (c) This act shall apply to parenting time orders,
15 custody orders, and child support orders issued on or after
16 January 1, 2022, and the provisions of this act may not be
17 construed to assert a material change of circumstances for
18 purposes of modifying an order in place before January 1,
19 2022.

20 Section 5. The provisions of this act are severable.
21 If any part of this act is declared invalid or
22 unconstitutional, that declaration shall not affect the part
23 which remains.

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