

1 HB365
2 214931-3
3 By Representatives Paschal, Holmes, Pettus, Ball, Mooney,
4 Wingo and Alexander
5 RFD: Judiciary
6 First Read: 16-FEB-22

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 Additionally, existing law requires the
15 parties in a child custody matter to submit a
16 parenting plan only in cases where the parties
17 request joint custody.

18 This bill would provide uniform guidelines
19 for child custody determinations consistent with
20 social science data and research regarding child
21 lifetime success and best outcomes and revise
22 existing definitions consistent with terminology
23 used in case law.

24 This bill would specify that there is a
25 rebuttable presumption that joint custody is in the
26 best interest of the child, and this rebuttable
27 presumption may be overcome only by evidence, set

1 forth in written findings of fact, that joint
2 custody is not in the best interest of the child.

3 This bill would specify that nothing in this
4 act shall be construed to limit the domestic or
5 family abuse provisions provided in Article 6 of
6 Chapter 3, Title 30, Code of Alabama 1975.

7 This bill would establish factors for a
8 court to consider when determining any custody
9 arrangement other than joint custody.

10 This bill would require the parties to
11 submit a parenting plan in all child custody cases
12 and authorize the court to establish a parenting
13 plan when the parties are unable to agree upon one.

14 This bill would specify additional remedies
15 to a party when a parent, without proper cause,
16 fails to adhere to the schedule set forth in a
17 parenting plan.

18 This bill would also specify that a court
19 with competent jurisdiction shall enforce all child
20 custody and child support orders.

21
22 A BILL
23 TO BE ENTITLED
24 AN ACT

25
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 provide that there is a
4 rebuttable presumption that joint custody is in the best
5 interest of the child, which can be overcome only by evidence;
6 to provide that nothing in this act shall be construed to
7 limit the domestic or family abuse provisions provided in
8 Article 6 of Chapter 3, Title 30, Code of Alabama 1975; to
9 establish factors for a court to consider when determining any
10 custody arrangement other than joint custody; to require a
11 parenting plan and to authorize the court to establish a
12 parenting plan in child custody cases; to specify the contents
13 of the parenting plan; to specify the factors the court may
14 consider in establishing a parenting plan; to specify remedies
15 when a party fails to adhere to certain provisions in a
16 parenting plan; and to specify that a court with competent
17 jurisdiction shall enforce all child custody and child support
18 orders.

19 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

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

25 "§30-3-150.

26 "~~Joint Custody.~~ It is the policy of this state to
27 assure that minor children have frequent and continuing

1 contact with parents who have shown the ability to act in the
2 best interest of their children and to encourage parents to
3 share in the rights and responsibilities of rearing their
4 children after the parents have separated or dissolved their
5 marriage. It is the intent of the Legislature that this act be
6 implemented in a manner that recognizes the importance of
7 family and the fundamental rights of parents and children.
8 ~~Joint custody does not necessarily mean equal physical~~
9 ~~custody.~~

10 "§30-3-151.

11 "For the purposes of this article the following
12 words shall have the following meanings:

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

15 "(2) JOINT LEGAL CUSTODY. Both parents have equal
16 rights and responsibilities for major decisions concerning the
17 child, including, but not limited to, the education of the
18 child, health care, ~~and~~ religious training, and the
19 responsibility to discuss the decisions, considering the
20 wishes and concerns of each parent and the child. The court
21 may designate one parent to have sole power to make certain
22 decisions while both parents retain equal rights and
23 responsibilities for other decisions; however, the designation
24 does not negate the responsibility of the designated parent to
25 discuss the decisions with the other parent, considering the
26 wishes and concerns of the other parent.

1 "(3) JOINT PHYSICAL CUSTODY. Physical custody is
2 shared by the parents in a way that assures the child frequent
3 and substantial contact with each parent. ~~Joint physical~~
4 ~~custody does not necessarily mean physical custody of equal~~
5 ~~durations of time.~~ Frequent and substantial contact means that
6 the child has equal or approximately equal time with both
7 parents.

8 "(4) NONRESIDENTIAL CUSTODIAL PARENT. The parent
9 with whom the child does not live the majority of the time and
10 who does not have the primary authority and responsibility for
11 the day-to-day care and decisions related to the upbringing of
12 a child or the authority to establish the residence of a
13 child, but has the authority and responsibility for the
14 day-to-day care and decisions related to the upbringing of a
15 child when the child is in his or her physical custody.

16 "(5) PARENTING PLAN. A plan that specifies the
17 responsibilities of each parent with respect to the day-to-day
18 care and decisions related to the upbringing of a child and
19 the time which a child shall spend with each parent.

20 "~~(5)~~ (6) SOLE PRIMARY PHYSICAL CUSTODY. One parent
21 has sole physical custody and the other parent has rights of
22 visitation except as otherwise provided by the court the
23 authority and responsibility for the day-to-day care and
24 decisions related to the upbringing of a child and the
25 authority to establish the residence of a child.

26 "(7) RESTRICTED PHYSICAL CUSTODY. A parent's
27 physical access to a child is limited to supervised

1 visitation, no overnight visitation, a suspension of physical
2 contact, or any other restrictions on custody determined by
3 the court to be in the best interest of the child.

4 "~~(4)~~(8) SOLE LEGAL CUSTODY. One parent has sole
5 rights and responsibilities to make major decisions concerning
6 the child, including, but not limited to, the education of the
7 child, health care, and religious training.

8 "§30-3-152.

9 "~~(a) The court shall in every case consider joint~~
10 ~~custody but may award any form of custody which is determined~~
11 ~~to be~~ There shall be a rebuttable presumption that joint
12 custody is in the best interest of the child. This rebuttable
13 presumption may be overcome only by evidence, set forth in
14 written findings of fact, that joint custody is not in the
15 best interest of the child. In determining whether joint
16 custody is in the best interest of the child, the court shall
17 consider the same factors considered in awarding ~~sole legal~~
18 ~~and physical~~ any other custody arrangement and all of the
19 following factors:

20 "(1) The agreement or lack of agreement of the
21 parents on joint custody.

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

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

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

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

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

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

11 "(c) If both parents request joint custody, the
12 presumption is that joint custody is in the best interest of
13 the child. Joint custody shall be granted in the final order
14 of the court unless the court makes specific findings as to
15 why joint custody is not granted.

16 "(d) If joint custody is not awarded by the court,
17 the court may weigh various factors based on the facts
18 presented. When determining the custody arrangement that is in
19 the best interest of the child, the court shall consider all
20 of the following factors:

21 "(1) The preferences of the parents.

22 "(2) Moral, mental, and physical fitness of each
23 parent.

24 "(3) The capacity of each parent to provide a loving
25 relationship and meet the needs of the child, including the
26 child's emotional, social, moral, material, and educational
27 needs.

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

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

6 "(6) Each parent's criminal history, history of
7 sexual, mental, or physical abuse, and other evidence of
8 violence.

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

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

11 "(9) Characteristics of those seeking custody,
12 including age, character, stability, and mental and physical
13 health.

14 "(10) The report and recommendation of any expert
15 witness or other independent investigator.

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

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

20 "(13) The relationship between each parent and the
21 child.

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

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

26 "(16) Any other relevant factors.

27 "§30-3-153.

1 ~~"(a) In order to implement joint custody, the~~ The
2 court shall require the parents to individually or jointly
3 submit ~~, as part of their agreement~~ provisions covering
4 matters relevant to the care and custody of the child,
5 including, but not limited to, all of the following:

6 ~~"(1) The care and education of the child. The~~ The
7 division of responsibility between the parent for the
8 day-to-day care and decisions related to the upbringing of the
9 child.

10 ~~"(2) The medical and dental care of the child. A~~ A
11 schedule that specifies the time the child will spend with
12 each parent.

13 ~~"(3) Holidays and vacations. A designation of who is~~ A designation of who is
14 responsible for the child's health care needs, school-related
15 matters, including the address to be used for school
16 residential determination and registration, and other
17 activities.

18 ~~"(4) Child support. Transportation arrangements for~~ Transportation arrangements for
19 the child, including who bears the cost for transporting the
20 child.

21 ~~"(5) Other necessary factors that affect the~~ Other necessary factors that affect the
22 physical or emotional health and well-being of the child. The
23 methods of communication that the parents will use to
24 communicate with the child and each other.

25 ~~"(6) Designating the parent possessing primary~~ Designating the parent possessing primary
26 authority and responsibility regarding involvement of the
27 minor child in academic, religious, civic, cultural, athletic,

1 ~~and other activities, and in medical and dental care if the~~
2 ~~parents are unable to agree on these decisions. The exercise~~
3 ~~of this primary authority is not intended to negate the~~
4 ~~responsibility of the parties to notify and communicate with~~
5 ~~each other as provided in this article. Child support and the~~
6 ~~division of any expenses in addition to child support as~~
7 ~~provided by Rule 32 of the Rules of Judicial Administration.~~

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

14 "(8) Any other matter specifically delineated by the
15 court.

16 ~~"(b) If the parties are unable to reach an agreement~~
17 ~~as to the provisions in subsection (a), the court shall set~~
18 ~~the plan.~~

19 "(b) If the parents jointly submit the parenting
20 plan, the presumption is that the parenting plan is in the
21 best interest of the child and shall be incorporated into the
22 final order of the court unless the court makes specific
23 findings as to why the parenting plan submitted by the parents
24 was not approved by the court.

25 (c) If the parents are unable to reach an agreement
26 as to the provisions in subsection (a), the court shall set
27 the plan."

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

3 §30-3-158.

4 (a) If a parent refuses, without proper cause, to
5 adhere to the schedule in the parenting plan ordered by the
6 court and causes the other parent to be deprived of time with
7 the child, the court may take any of the following actions:

8 (1) Calculate the amount of time improperly denied
9 and award the parent deprived of time a sufficient amount of
10 additional time to compensate for the time missed with the
11 child. In ordering any additional time, the court shall
12 schedule the additional time as soon as possible in a manner
13 that is convenient for the parent deprived of time and
14 consistent with the best interest of the child. Any additional
15 time awarded by the court shall be at the expense of the
16 noncompliant parent.

17 (2) Order the noncompliant parent to pay reasonable
18 court costs and attorney fees incurred by the parent deprived
19 of time to enforce the schedule in the parenting plan.

20 (3) Order the noncompliant parent to attend a
21 parenting course approved by the court. The parenting course
22 shall educate the parent about the benefits of a child's
23 relationship with both parents.

24 (4) Order the noncompliant parent to pay the actual
25 costs incurred by the parent deprived of time because of the
26 failure to adhere to the schedule in the parenting plan

1 ordered by the court or the failure to properly exercise
2 custody as provided by the court order.

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

5 (b) The remedies provided in subsection (a) are in
6 addition to existing remedies, including, but not limited to,
7 contempt of court.

8 Section 4. (a) A court of competent jurisdiction
9 shall equally enforce all child custody and child support
10 orders.

11 (b) The provisions of this act shall not be
12 construed to constitute a material change of circumstances for
13 purposes of modifying an order in place before January 1,
14 2023.

15 Section 5. Nothing in this act shall be construed to
16 limit the domestic or family abuse provisions provided in
17 Article 6 of Chapter 3, Title 30, Code of Alabama 1975.

18 Section 6. The provisions of this act are severable.
19 If any part of this act is declared invalid or
20 unconstitutional, that declaration shall not affect the part
21 that remains.

22 Section 7. This act shall become effective on
23 January 1, 2023, following its passage and approval by the
24 Governor, or its otherwise becoming law.