

1 SB505
2 140560-1
3 By Senator Bussman
4 RFD: Children, Youth Affairs, and Human Resources
5 First Read: 12-APR-12

2
3
4
5
6
7
8 SYNOPSIS: Under existing law, joint custody may
9 include both joint legal and physical custody, only
10 joint legal custody or only joint physical custody.

11 This bill would make the following
12 legislative findings: (1) It is in the best
13 interest of a child for the child to have a
14 substantial and meaningful parent-child
15 relationship with each parent. (2) A parent is
16 presumed to act in the best interest of his or her
17 child; therefore, child-rearing decisions should be
18 made by the application and wisdom of both parents,
19 absent clear convincing evidence of compelling
20 reasons otherwise.

21 This bill would require a parenting plan in
22 every case involving children with parents who are
23 no longer living together. This bill would require
24 the parenting plan to contain certain provisions
25 including a designation of which parent may

1 exercise primary parenting times and authority in
2 making child-rearing decisions at designated times.

3 This bill would require reasonable and
4 equitable parenting time when the parents are in
5 disagreement, as to custody, absent written
6 findings by the court of clear and convincing
7 evidence that equitable parenting time would be
8 detrimental to the child's best interest.

9
10 A BILL

11 TO BE ENTITLED

12 AN ACT

13
14 Relating to child custody; to make legislative
15 findings; to require a parenting plan in all cases involving
16 custody of a child; to provide requirements for parenting
17 plans; to provide further for release to a parent of records
18 and information regarding a minor child; and to provide
19 remedies where a parent refuses to abide by a parenting plan.

20 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

21 Section 1. (a) The Legislature finds that the
22 relationship between a minor child and his or her parents
23 involves important rights, duties, and responsibilities that
24 deserve protection by the state. One aspect of these combined
25 rights, duties, and responsibilities is that every minor child
26 deserves the opportunity to be as fully nurtured by each

1 parent as is reasonable given the circumstances of the
2 relationship of each parent to the other parent, including
3 geographical location, ability to work with the other parent
4 to makes decisions regarding the minor child, and the past
5 existence of or present threat of domestic violence by one
6 parent against the other parent or towards the minor child.

7 (b) The Legislature further finds that the past use
8 of terms joint custody and shared custody have placed too much
9 emphasis on the parents' perceptions of who wins battles over
10 keeping or controlling their children versus the importance of
11 the role of each parent in loving, nurturing, and supporting
12 the minor child. For the above reasons, the legislature adopts
13 this parenting plan statute to define the state's interests in
14 furthering the best interests of each minor child of the
15 state.

16 (c) Upon passage of this act, there shall be only
17 one form of custody determination, provided, however, that the
18 passage of this act shall not, simply by virtue of such
19 passage, serve as a material change of circumstances upon
20 which to base a modification of any pre-existing joint or
21 shared child custody arrangements.

22 Section 2. For purposes of this act, the following
23 terms have the following meanings:

24 (1) CHILD CUSTODY. The term custody when used
25 regarding the placement of a minor child under this act
26 involves a determination by a court of both the physical

1 residence of the minor child as well as the rights and
2 obligations of the person receiving custody to the child and
3 the rights and responsibilities of the minor child to the
4 person receiving custody.

5 (2) PARENTING PLAN. A plan regarding a minor child,
6 that provides for the physical residence of the minor child,
7 the times, dates, and occasions when others shall have rights
8 of access with the minor child, a time-sharing schedule, and a
9 determination of who will make decisions regarding the minor
10 child. A parenting plan is a child custody determination for
11 the purposes of the Uniform Child Custody Jurisdiction and
12 Enforcement Act, the International Child Abduction Remedies
13 Act, 42 U.S.C. Sections 11601 et seq., the Parental Kidnapping
14 Prevention Act, and the Convention on the Civil Aspects of
15 International Child Abduction enacted at The Hague on October
16 25, 1980, and for all other state and federal laws.

17 (3) TIME-SHARING SCHEDULE. A component of a
18 parenting plan, which, with as much specificity as the court
19 or the parties believe is desirable and appropriate, sets out
20 the times and occasions each parent shall spend with a child.

21 Section 3. (a) In light of the legislative findings
22 that every minor child deserves the opportunity to be as fully
23 nurtured by each parent as is reasonable given the
24 circumstances of the relationship of each parent to the other
25 parent, the best interest of the child shall be the primary

1 consideration for a court in establishing or modifying a
2 parenting plan.

3 (b) In order to implement the allocation of parental
4 rights and responsibilities, the court shall approve, grant,
5 or modify a parenting plan as appropriate. A parenting plan,
6 at a minimum, shall do all of the following:

7 (1) Describe in adequate detail how the parents will
8 share and be responsible for the daily tasks associated with
9 the upbringing of the child.

10 (2) Set out a time-sharing schedule that specifies
11 the time that the minor child will spend with each parent.

12 (3) Include a designation of who will be responsible
13 for any and all decisions related to care, nurturing, and
14 activities of the minor child including health care, school
15 related matters, including the address to be used for school
16 zone determination and registration, and other activities.

17 (4) Methods and technologies that the parents will
18 use to communicate with the child.

19 (5) Designate 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 act.

1 (c) The parents shall submit a parenting plan agreed
2 to by both parties or each party may submit its proposed
3 parenting plan. All parenting plans shall be submitted to the
4 court within the time set by the court. The parents may
5 participate in or the court may order the parents to attend a
6 parenting plan conference for the purpose of creating a
7 parenting plan. The parents may enlist the assistance of
8 mental health experts or other professionals as well as
9 written resources in the development of their parenting plan.

10 (d) If the parents submit an agreed parenting plan,
11 there shall be a rebuttable presumption that the agreed
12 parenting plan is in the best interest of the child. The
13 agreed parenting plan shall be adopted by the court in the
14 final order of the court unless the court makes specific
15 written findings as to why the agreed parenting plan is not
16 adopted.

17 (e) In all court-ordered parenting plans developed
18 under this act, as opposed to a parenting plan jointly
19 submitted to the court by the parties, there shall be a
20 rebuttable presumption in favor of a division of equal time
21 between two parents with their minor children. This rebuttable
22 presumption may be overcome by a finding of facts that an
23 equal division of time with both parents would not be in the
24 best interests of the affected minor child. In determining
25 whether an equal division of time is in a minor child's best
26 interests, the court shall consider the factors listed in

1 Section 4 and shall make written findings of fact of why an
2 equal division of time is not in the minor child's best
3 interests.

4 Section 4. (a) For purposes of establishing or
5 modifying parental responsibility and creating, developing,
6 approving, or modifying a parenting plan which governs each
7 parent's relationship with his or her minor child and the
8 relationship between each parent with regard to his or her
9 minor child, the best interest of the child shall be the
10 primary consideration.

11 (b) Determination of the best interests of the child
12 shall be made by evaluating all of the factors affecting the
13 welfare and interests of the particular minor child and the
14 circumstances of that family. When the parties are not able to
15 agree on a parenting plan and the parenting plan is ordered by
16 the court, the court shall consider each of the following
17 factors for which evidence is presented. These factors are not
18 listed in a specific order of importance, and a court may
19 weigh various factors differently based on the facts presented
20 and the best interests of the child. These factors include,
21 but are not limited to, all of the following:

22 (1) The demonstrated capacity and disposition of
23 each parent to facilitate and encourage a close and continuing
24 parent-child relationship, to honor the time-sharing schedule,
25 and to be reasonable when changes are required.

1 (2) The anticipated division of parental
2 responsibilities after the litigation, including the extent to
3 which parental responsibilities will be delegated to third
4 parties.

5 (3) The demonstrated capacity and disposition of
6 each parent to determine, consider, and act upon the needs of
7 the child as opposed to the needs or desires of the parent.

8 (4) The length of time before the institution of
9 litigation the child has lived in a stable, satisfactory
10 environment and the desirability of maintaining continuity.

11 (5) The geographic viability of the parenting plan,
12 with special attention paid to the needs of school-age
13 children and the amount of time to be spent traveling to
14 effectuate the parenting plan. This factor does not create a
15 presumption for or against relocation of either parent with a
16 child.

17 (6) The moral fitness of the parents.

18 (7) The mental and physical health of the parents.

19 (8) The home, school, and community record of the
20 child.

21 (9) The reasonable preference of the child, if the
22 court deems the child to be of sufficient intelligence,
23 understanding, and experience to express a preference.

24 (10) The demonstrated knowledge, capacity, and
25 disposition of each parent to be informed of the circumstances
26 of the minor child, including, but not limited to, the child's

1 friends, teachers, medical care providers, daily activities,
2 and favorite things.

3 (11) The demonstrated capacity and disposition of
4 each parent to provide a consistent routine for the child,
5 such as discipline, and daily schedules for homework, meals,
6 and bedtime.

7 (12) The demonstrated capacity of each parent to
8 communicate with and keep the other parent informed of issues
9 and activities regarding the minor child, and the willingness
10 of each parent to adopt a unified front on all major issues
11 when dealing with the child.

12 (13) Any history or present threat of child abuse,
13 spouse abuse, or kidnapping. If the court accepts evidence of
14 prior or pending actions regarding domestic violence, sexual
15 violence, child abuse, child abandonment, or child neglect,
16 the court must specifically acknowledge in writing that such
17 evidence was considered when evaluating the best interests of
18 the child. In cases where domestic violence is indicated, the
19 court shall proceed pursuant to Section 30-6-131 to Section
20 30-6-135, inclusive, Code of Alabama 1975.

21 (14) Evidence that either parent has knowingly
22 provided false information to the court regarding any prior or
23 pending action regarding domestic violence, sexual violence,
24 child abuse, child abandonment, or child neglect.

25 (15) The particular parenting tasks customarily
26 performed by each parent and the division of parental

1 responsibilities before the institution of litigation and
2 during the pending litigation, including the extent to which
3 parenting responsibilities were undertaken by third parties.

4 (16) The demonstrated capacity and disposition of
5 each parent to participate and be involved in the child's
6 school and extracurricular activities.

7 (17) The demonstrated capacity and disposition of
8 each parent to maintain an environment for the child that is
9 free from substance abuse.

10 (18) The capacity and disposition of each parent to
11 protect the child from the ongoing litigation as demonstrated
12 by not discussing the litigation with the child, not sharing
13 documents or electronic media related to the litigation with
14 the child, and refraining from disparaging comments about the
15 other parent to the child.

16 (19) The developmental stages and needs of the child
17 and the demonstrated capacity and disposition of each parent
18 to meet the child's developmental needs.

19 (20) Any other factor that is relevant to the
20 determination of a specific parenting plan.

21 Section 5. Unless otherwise prohibited by court
22 order or statute, including any restrictions on these rights
23 as provided in a domestic violence injunction, access to
24 records and information pertaining to a minor child,
25 including, but not limited to, medical, psychological, dental,
26 and school records, shall be equally available to either

1 parent, subject to any rights of confidentiality of the child
2 protected by law or by a doctor-patient privilege. A parent
3 having rights under this section has the same rights, upon
4 request, as to form, substance, and manner of access as are
5 available to the other parent of a child, including, without
6 limitation, the right to in-person communication with medical,
7 dental, and education providers.

8 Section 6. The fact that the court has approved a
9 parenting plan with equal time-sharing by the parents with a
10 minor child shall not preclude the court from finding that one
11 parent has committed the crime of interference with custody as
12 provided in Section 13A-6-45, Code of Alabama 1975, or has
13 violated the Uniform Child Custody Jurisdiction and
14 Enforcement Act as provided in Chapter 3B of Title 30, Code of
15 Alabama 1975.

16 Section 7. When a parent refuses to honor the
17 time-sharing schedule in the parenting plan without proper
18 cause, the court, in addition to its general contempt power,
19 may do any of the following:

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
23 time-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

1 ordering any makeup time-sharing, the court shall schedule
2 such time-sharing in a manner that is consistent with the best
3 interests of the child or children and that is convenient for
4 the nonoffending parent and at the expense of the noncompliant
5 parent.

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

11 (3) Order the parent who did not provide
12 time-sharing or did not properly exercise time-sharing under
13 the time-sharing schedule to attend a parenting course
14 approved by the judicial circuit.

15 (4) Order the parent who did not provide
16 time-sharing or did not properly exercise time-sharing under
17 the time-sharing schedule to do community service if the order
18 will not interfere with the welfare of the child.

19 (5) Order the parent who did not provide
20 time-sharing or did not properly exercise time-sharing under
21 the time-sharing schedule to have the financial burden of
22 promoting frequent and continuing contact when that parent and
23 child reside further than 60 miles from the other parent.

24 (6) Consider multiple or recurring time-sharing
25 violations as a factor in modifying the division of
26 time-sharing in the parenting plan.

1 Section 8. This act shall become effective on the
2 first day of the third month following its passage and
3 approval by the Governor, or its otherwise becoming law.