

1 HB266  
2 106730-1  
3 By Representatives Mask, Irons, Curtis and Beech  
4 RFD: Judiciary  
5 First Read: 14-JAN-10

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8 SYNOPSIS: Under existing court precedent, a parent  
9 who has been charged with a crime may move to stay  
10 a custody or visitation proceeding pending the  
11 outcome of the criminal case.

12 This bill would provide a procedure and  
13 guidelines for the court to follow when considering  
14 a stay in custody or visitation proceedings pending  
15 the adjudication of a criminal charge involving the  
16 parent.

17 This bill would provide a rebuttable  
18 presumption that it is in the best interest of the  
19 child to proceed with the custody or visitation  
20 matter. This bill would require the court to  
21 appoint a guardian ad litem to represent the child  
22 in the hearing on the stay.

23 This bill would provide factors for the  
24 court to consider in determining the best interest  
25 of the child.

26 This bill would also provide that the  
27 subsequent acquittal on a criminal charge of a

1 parent who motioned for and was denied a stay may  
2 constitute a change in circumstances for purposes  
3 of seeking a modification by that parent of a  
4 custody or visitation order that was entered by the  
5 court while criminal charges were still pending.

6  
7 A BILL  
8 TO BE ENTITLED  
9 AN ACT

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11 To provide a procedure for a court to follow when a  
12 parent in a custody or visitation proceeding moves to stay the  
13 proceeding pending adjudication of a criminal charge; to  
14 require the court to consider the best interest of the child;  
15 to create a rebuttable presumption that the best interest of  
16 the child is to proceed with the custody or visitation  
17 proceeding; and to provide that an acquittal on the criminal  
18 charges may constitute a change of circumstances for purposes  
19 of a modification proceeding by certain parents.

20 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

21 Section 1. (a) When a parent moves for a stay in a  
22 custody or visitation proceeding based on the fact that the  
23 parent has been charged with a crime, the court shall appoint  
24 a guardian ad litem to represent the child in the hearing on  
25 the motion to stay the custody or visitation proceeding.

26 (b) In considering the motion to stay a custody or  
27 visitation proceeding pending the adjudication of criminal

1 charge against one of the parents, the court shall make its  
2 decision on what is in the best interest of the child. There  
3 shall exist a rebuttable presumption that it is in the best  
4 interest of the child to proceed with the custody or  
5 visitation matter.

6 (c) The court shall determine the best interest of  
7 the child based on the individual facts of the case  
8 considering the following factors:

9 (1) Potential risks to the mental and physical  
10 welfare of the child if the court stays the custody or  
11 visitation proceeding.

12 (2) The emotional, social, moral, material, and  
13 educational needs of the child.

14 (3) The nature of the criminal charges against the  
15 parent and the likelihood that the criminal case would be  
16 adjudicated within a reasonable amount of time.

17 (4) Any other relevant factors the evidence may  
18 disclose.

19 (d) Nothing in this section shall prevent a parent  
20 who has been charged with a crime from asserting during the  
21 custody or visitation proceeding his or her right against  
22 self-incrimination under the Fifth Amendment to the United  
23 States Constitution.

24 (e) A subsequent acquittal on the criminal charge  
25 against a parent who motioned for and was denied a stay in a  
26 custody or visitation proceeding may constitute a change in

1       circumstances for purposes of that parent seeking a  
2       modification of the custody or visitation order.

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