

1 HB239
2 181644-2
3 By Representative Hill
4 RFD: Judiciary
5 First Read: 16-FEB-17

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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 move away from the concept
17 that one parent has sole physical custody, while
18 the other parent has visitation rights.

19 Existing law requires the parties in a child
20 custody matter to submit a parenting plan only in
21 cases where the parties request joint custody.

22 This bill would require the parties to
23 submit a parenting plan in all cases. This bill
24 would also authorize the court to establish a
25 parenting plan when the parties are unable to agree
26 upon one. This bill would specify additional
27 remedies to a party when a parent, without proper

1 cause, fails to adhere to the time sharing schedule
2 in a parenting plan including makeup parenting time
3 and reimbursement for costs and attorney fees.
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5 A BILL
6 TO BE ENTITLED
7 AN ACT
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9 To amend Sections 30-3-150, 30-3-151, 30-3-152, and
10 30-3-153 of the Code of Alabama 1975, and to add Section
11 30-3-158 to the Code of Alabama 1975, relating to child
12 custody; to clarify the policy of this state regarding child
13 custody; to provide definitions; to require a parenting plan
14 and to authorize the court to establish a parenting plan in
15 certain situations; to specify the contents of the parenting
16 plan; to specify the factors the court may consider in
17 establishing a parenting plan; and to specify remedies when a
18 party fails to adhere to certain provisions in a parenting
19 plan.

20 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

21 Section 1. Sections 30-3-150, 30-3-151, 30-3-152,
22 and 30-3-153 of the Code of Alabama 1975, are amended to read
23 as follows:

24 "§30-3-150.

25 "~~Joint Custody.~~ It is the policy of this state to
26 assure that minor children have frequent and continuing
27 contact with parents who have shown the ability to act in the

1 best interest of their children and to encourage parents to
2 share in the rights and responsibilities of rearing their
3 children after the parents have separated or dissolved their
4 marriage. ~~Joint custody does not necessarily mean equal~~
5 ~~physical custody.~~

6 "§30-3-151.

7 "For the purposes of this article the following
8 words shall have the following meanings:

9 "(1) JOINT CUSTODY. Joint legal custody and joint
10 physical custody.

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

23 "(3) JOINT PHYSICAL CUSTODY. ~~Physical~~ When physical
24 custody is shared by the parents in a way that assures the
25 child frequent and substantial contact with each parent. Joint
26 physical custody does not necessarily mean physical custody of
27 equal durations of time.

1 "(4) NONRESIDENTIAL CUSTODIAL PARENT. The parent
2 with whom the child does not live the majority of the time and
3 who does not have the primary authority and responsibility for
4 the day-to-day care and decisions relating to the raising of a
5 child or the authority to establish where a child will live,
6 but does have the authority and responsibility for the
7 day-to-day care and decisions related to the raising of a
8 child when the child is in his or her physical custody and not
9 in the physical custody of the parent with primary physical
10 custody.

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

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

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

25 ~~"(4)(8) SOLE LEGAL CUSTODY. One~~ When one parent has
26 sole rights and responsibilities to make major decisions

1 concerning the child, including, but not limited to, the
2 education of the child, health care, and religious training.

3 "§30-3-152.

4 "(a) The court shall in every case consider joint
5 custody but may award any form of custody which is determined
6 to be in the best interest of the child. In determining
7 whether joint custody is in the best interest of the child,
8 the court shall consider the same factors considered in
9 awarding ~~sole legal and physical~~ other forms of custody
10 arrangements and all of the ~~following~~ factors below. The court
11 may weigh various factors differently based on the facts
12 presented and the best interests of the child:

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

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

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

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

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

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

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

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

12 "(1) The relationship between each parent and the
13 child.

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

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

20 "(4) Each parent's knowledge and familiarity with
21 the child and pre- and post-separation involvement in the
22 child's life.

23 "(5) The effect on the child of disrupting or
24 continuing an existing custodial status.

25 "(6) Each parent's home environment.

26 "(7) The preferences of the parents.

1 "(8) Moral, mental, and physical fitness of each
2 parent.

3 "(9) The child's age and any special needs.

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

6 "(11) The history of cooperation between the
7 parents, including the past and present history and the
8 capacity of each parent to facilitate or encourage a
9 continuing parent-child relationship with both parents.

10 "(12) Each parent's criminal history or evidence of
11 violence, sexual, mental, or physical abuse.

12 "(13) Evidence of substance abuse by either parent.

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

15 "(15) Military considerations.

16 "(16) Characteristics of those seeking custody,
17 including age, character, stability, and mental and physical
18 health.

19 "(17) The report and recommendation of any expert
20 witnesses or other independent investigator.

21 "(18) Any other relevant factors.

22 "§30-3-153.

23 ~~"(a) In order to implement joint custody, the~~ The
24 court shall require each parent to submit, as part of their
25 ~~agreement~~ separately or together, provisions covering matters
26 relevant to the care and custody of the child, including, but
27 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 and dental care if the
8 parents are unable to agree on these decisions.

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

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

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

21 §30-3-158.

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

26 (1) After calculating the amount of time sharing
27 improperly denied, award the parent denied time a sufficient

1 amount of extra time sharing to compensate for the time
2 sharing missed, and such time sharing shall be ordered as
3 expeditiously as possible in a manner consistent with the best
4 interests of the child and scheduled in a manner that is
5 convenient for the parent deprived of time sharing. In
6 ordering any makeup time sharing, the court shall schedule the
7 time sharing in a manner that is consistent with the best
8 interests of the child or children and that is convenient for
9 the nonoffending parent and at the expense of the noncompliant
10 parent.

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

16 (3) Order the parent who did not provide time
17 sharing or did not properly exercise time sharing under the
18 time sharing schedule to attend a parenting course approved by
19 the court.

20 (4) Order the parent who did not provide time
21 sharing or did not properly exercise time sharing under the
22 time sharing schedule to pay the actual cost incurred by the
23 other parent because of the failure to provide time sharing or
24 the failure to properly exercise time sharing as provided by
25 the court order.

26 (5) Impose any other reasonable remedies as a result
27 of noncompliance.

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

3 Section 3. This act shall become effective January
4 1, 2018, following its passage and approval by the Governor,
5 or its otherwise becoming law.