

1 SB186
2 180648-2
3 By Senators Stutts, Sanford, Singleton, Whatley, Beasley,
4 Albritton, Shelnutt, Marsh, Coleman-Madison and Bussman
5 RFD: Judiciary
6 First Read: 14-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, but existing law establishes no
12 statutory definition of frequent and continuing
13 contact. Existing law also specifies that joint
14 custody does not necessarily mean equal physical
15 custody.

16 This bill would delete from existing law the
17 statement that joint custody does not necessarily
18 mean equal physical custody. This bill would revise
19 existing definitions regarding custody to be
20 consistent with terminology used in case law and to
21 specify that both parents share all aspects of
22 parenting. This bill would establish uniform
23 guidelines to be used in all child custody
24 determinations. This bill would create a rebuttable
25 presumption that both parents are fit to make
26 parenting decisions and to have maximum parenting
27 time with their child. This bill would also provide

1 that it is the public policy of this state that a
2 court with jurisdiction enforce all parenting time,
3 visitation, custody, and child support orders in
4 the same manner.

5 Existing law requires the parties in a child
6 custody matter to submit a parenting plan only in
7 cases where the parties request joint custody.

8 This bill would require the parties to
9 submit a parenting plan in all cases. This bill
10 would also authorize the court to establish a
11 parenting plan when the parties are unable to agree
12 upon one. This bill would specify additional
13 remedies to a party when a parent, without proper
14 cause, fails to adhere to the time sharing schedule
15 in a parenting plan including makeup parenting time
16 and reimbursement for costs and attorney fees.

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18 A BILL
19 TO BE ENTITLED
20 AN ACT
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22 To amend Sections 30-3-150, 30-3-151, 30-3-152, and
23 30-3-153 of, and to add Section 30-3-158 to, the Code of
24 Alabama 1975, relating to child custody; to clarify the policy
25 of this state regarding child custody; to provide definitions;
26 to require a parenting plan and to authorize the court to
27 establish a parenting plan in certain situations; to specify

1 the contents of the parenting plan; to specify the factors the
2 court may consider in establishing a parenting plan; and to
3 specify remedies when a party fails to adhere to certain
4 provisions in a parenting plan.

5 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

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

11 "§30-3-150.

12 ~~"Joint Custody.~~ It is the policy of this state to
13 assure that minor children have frequent and continuing
14 contact with parents who have shown the ability to act in the
15 best interest of their children and to encourage parents to
16 share in the rights and responsibilities of rearing their
17 children after the parents have separated or dissolved their
18 marriage. ~~Joint custody does not necessarily mean equal
19 physical custody.~~

20 "§30-3-151.

21 "For the purposes of this article the following
22 words shall have the following meanings:

23 "(1) JOINT CUSTODY. Joint legal custody and joint
24 physical custody.

25 "(2) JOINT LEGAL CUSTODY. ~~Both~~ When both parents
26 have equal rights and responsibilities for major decisions
27 concerning the child, including, but not limited to, the

1 education of the child, health care, and religious training,
2 and the responsibility to discuss those decisions and consider
3 the wishes and concerns of each parent and the child. The
4 court may designate one parent to have ~~sole power~~ tie-breaking
5 authority to make certain major decisions ~~while both parents~~
6 ~~retain equal rights and responsibilities for other decisions;~~
7 however, that designation does not negate the responsibility
8 of that parent to discuss those decisions with the other
9 parent and to consider the other parent's wishes and concerns.
10 In the event of an impasse and in the absence of an express
11 award of tie-breaking authority, the primary physical
12 custodian shall have tie-breaking authority for those
13 decisions.

14 "(3) JOINT PHYSICAL CUSTODY. ~~Physical~~ When physical
15 custody is shared by the parents in a way that assures the
16 child frequent and substantial contact with each parent. Joint
17 physical custody ~~does not necessarily mean~~ means physical
18 custody of equal or approximately equal durations of time.

19 "(4) NONRESIDENTIAL CUSTODIAL PARENT. The parent
20 with whom the child does not live the majority of the time and
21 who does not have the primary authority and responsibility for
22 the day-to-day care of a child or the authority to establish
23 where a child will live, but does have the authority and
24 responsibility for the day-to-day care of a child when the
25 child is in his or her physical custody and not in the
26 physical custody of the parent with primary physical custody.

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

3 "~~(5)(6) SOLE PRIMARY PHYSICAL CUSTODY. One parent~~
4 ~~has sole physical custody and the other parent has rights of~~
5 ~~visitation except as otherwise provided by the court. When one~~
6 ~~parent has the authority and responsibility for the day-to-day~~
7 ~~care of a child and to establish where a child will live.~~

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

13 "~~(4)(8) SOLE LEGAL CUSTODY. One~~ When one parent has
14 sole rights and responsibilities to make major decisions
15 concerning the child, including, but not limited to, the
16 education of the child, health care, and religious training.

17 "§30-3-152.

18 "(a) The court shall in every case ~~consider~~ presume
19 joint custody but may award any form of custody which is
20 determined to be in the best interest of the child. In
21 determining whether joint custody is in the best interest of
22 the child, the court shall consider the same factors
23 considered in awarding sole legal and physical custody and all
24 of the following factors This presumption may only be overcome
25 by clear and convincing evidence that the parent not receiving
26 joint custody is unfit as a result of abuse, neglect, or
27 abandonment of the child or children. In determining how to

1 award joint custody, the court shall consider all of the
2 following factors:

3 "(1) The agreement or lack of agreement of the
4 parents on joint custody.

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

7 "(3) The ability of the parents to encourage the
8 sharing of love, affection, and contact between the child and
9 the other parent.

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

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

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

18 "(c) If both parents request joint custody, the
19 presumption is that joint custody is in the best interest of
20 the child. Joint custody shall be granted in the final order
21 of the court unless the court makes specific findings ~~as to~~
22 ~~why joint custody is not granted~~ of abuse, neglect, or
23 abandonment.

24 "If joint custody is not awarded by the court,
25 all of the following factors shall be considered by the court
26 when determining which other custody arrangement is in the
27 best interest of the child. The court may weigh various

1 factors differently based on the facts presented and the best
2 interests of the child:

3 "(1) The preferences of the parents.

4 "(2) Moral, mental, and physical fitness of each
5 parent.

6 "(3) The capacity of each parent to provide a loving
7 relationship and the needs of each child, including the
8 child's emotional, social, moral, material, and educational
9 needs.

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

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

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

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

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

19 "(9) Characteristics of those seeking custody,
20 including age, character, stability, and mental and physical
21 health.

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

24 "(11) Each parent's knowledge and familiarity with
25 the child and pre- and post-separation involvement in the
26 child's life.

27 "(12) Military considerations.

1 "(13) The effect on the child of disrupting or
2 continuing an existing custodial status.

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

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

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

9 "(17) The relationship between the child, the
10 child's peers, siblings, or other relatives.

11 "(18) Any other relevant factors.

12 "§30-3-153.

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

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

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

24 ~~"(3) Holidays and vacations. A designation of who is~~
25 responsible for any and all forms of health care,
26 school-related matters, including the address to be used for

1 school residential determination and registration, and other
2 activities.

3 "(4) ~~Child support.~~ Transportation arrangements for
4 the child, including who bears the cost for transporting the
5 child.

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

10 "(6) ~~Designating the parent possessing primary~~
11 authority and responsibility regarding involvement of the
12 minor child in academic, religious, civic, cultural, athletic,
13 and other activities, and in medical and dental care if the
14 parents are unable to agree on these decisions. The exercise
15 of this primary authority is not intended to negate the
16 responsibility of the parties to notify and communicate with
17 each other as provided in this article. Any other matter
18 specifically delineated by the court.

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

22 "(8) A designation of the parent possessing primary
23 authority and responsibility regarding involvement of the
24 minor child in academic, religious, civic, cultural, athletic,
25 and other activities, and in medical and dental care if the
26 parents are unable to agree on these decision.

1 "(b) The Administrative Office of Courts shall post
2 on its website a copy of any sample or model parenting plans
3 provided by the Alabama Law Institute. If the parties are
4 unable to reach an agreement as to the provisions in
5 subsection (a), the court shall set the plan.

6 "(c) If both parents submit the same parenting plan,
7 the presumption is that the parenting plan jointly submitted
8 by the parents is in the best interest of the child. The
9 parenting plan jointly submitted by both parents shall be
10 granted in the final order of the court unless the court makes
11 specific findings as to why the parenting plan jointly
12 submitted by the parties is not granted."

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

15 §30-3-158.

16 (a) When a parent refuses to adhere to the time
17 sharing schedule in the parenting plan ordered by the court
18 without proper cause, the court may take any of the following
19 actions:

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 time
23 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
27 ordering any makeup time sharing, the court shall schedule the

1 time sharing in a manner that is consistent with the best
2 interests of the child or children and that is convenient for
3 the nonoffending parent and at the expense of the noncompliant
4 parent.

5 (2) Order the parent who did not provide time
6 sharing to pay reasonable court costs and attorney's fees
7 incurred by the nonoffending parent to enforce the time
8 sharing schedule.

9 (3) Order the parent who did not provide time
10 sharing to attend a parenting course approved by the court.

11 (4) Order the parent who did not provide time
12 sharing to pay the actual cost incurred by the other parent
13 because of the failure to provide time sharing as provided by
14 the court order.

15 (5) Impose any other reasonable remedies as a result
16 of noncompliance.

17 (b) The remedies provided in this section are in
18 addition to existing remedies, including, but not limited to,
19 contempt.

20 Section 4. As a matter of public policy, a court
21 with jurisdiction shall enforce all parenting time,
22 visitation, custody, and child support orders in the same
23 manner.

24 Section 5. This act shall become effective January
25 1, 2018, following its passage and approval by the Governor,
26 or its otherwise becoming law.