

1 HB757
2 141475-1
3 By Representative Patterson
4 RFD: Judiciary
5 First Read: 26-APR-12

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8 SYNOPSIS: Under existing law, there is a presumption
9 that joint custody is in the best interest of the
10 child when each parent requests it in a divorce or
11 other child custody proceeding. Under existing law,
12 joint custody may include both joint legal and
13 joint physical custody, only joint legal custody,
14 or only physical custody.

15 This bill would state the intent of the
16 Legislature as follows: (1) to safeguard a child's
17 best interests to a fundamental right to a
18 maximized, substantial, and meaningful parent-child
19 relationship with each parent when the parents are
20 no longer living together; (2) that fit, natural
21 parents are presumed to act in the best interests
22 of their children, and just because the parents are
23 divorcing, or are no longer in a relationship
24 together, does not automatically make them unfit.
25 Therefore, parental child rearing decisions should
26 be made by the application and wisdom of both

1 parents, absent clear and convincing evidence of
2 compelling reasons otherwise.

3 This bill would require a parenting plan in
4 every case involving children with parents that are
5 no longer living together. This bill would require
6 the parenting plan to contain certain provisions
7 including a designation of which parent may
8 exercise primary parenting times and authority in
9 making child rearing decisions at designated times.

10 This bill would require a rebuttable
11 presumption in favor of equal parenting times when
12 the parents are in disagreement as to parenting
13 time, and would require a court not ordering equal
14 parenting time to make written findings that clear
15 and convincing evidence indicates that equal
16 parenting times would not be in the child's best
17 interests.

18 This bill would require a court deviating
19 from this act to provide written findings to
20 support its judgment, absent an agreement between
21 the parents not to adopt an equal parenting time
22 arrangement.

23
24 A BILL
25 TO BE ENTITLED
26 AN ACT
27

1 Relating to child custody; to require a parenting
2 plan in all cases involving parenting times of a child; to
3 provide requirements for parenting plans; to provide a
4 rebuttable presumption that each parent is acting in the
5 child's best interests when creating a parenting plan, unless
6 a proposed parenting plan unduly restricts parenting times
7 with the other parent without just cause by clear and
8 convincing evidence; to provide a rebuttable presumption a
9 court shall order equal parenting times; to require written
10 findings; to provide for exercise of primary parental decision
11 making authority by a parent pursuant to a parenting plan; to
12 provide standards for appellate review of custody
13 determinations; and to repeal Sections 30-3-1 and 30-3-2, Code
14 of Alabama 1975.

15 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

16 Section 1. (a) This act shall be known and may be
17 cited as the Alabama Children's Family Act.

18 (b) The Legislature finds that it is the public
19 policy of this state that children have a fundamental right to
20 equal access with each of their two parents, the right to be
21 guided and nurtured by each parent, the right to have major
22 decisions made by the application of the wisdom, judgment, and
23 experience of each parent, regardless of marital status. There
24 is a fundamental importance of the parent-child relationship
25 to the welfare of the child to each parent with the child, and
26 the relationship between a child and each parent. Any parental
27 decision, unless clearly harmful to the child, should be a

1 parental determination made by each of the two parents. Courts
2 of this state should defer to fit parental decisions unless
3 substantial harm to a child is shown by clear and convincing
4 evidence.

5 Section 2. For the purposes of this act, the
6 following words shall have the following meanings:

7 (1) CHILD CUSTODY. The term custody when used
8 regarding the placement of a minor child under this act
9 involves a determination by a court of both the physical
10 residence of the minor child as well as the rights and
11 obligations of the person receiving custody to the child and
12 the rights and responsibilities of the minor child to the
13 person receiving custody.

14 (2) PARENTING PLAN. A written document, created by
15 the parents, accepting responsibility for the care, control,
16 and well-being of a minor child and providing a detailed plan
17 for the future care and control of the minor child. The
18 parenting plan shall set out parenting times including, but
19 not limited to, residential times, residential times for major
20 holidays, birthdays, and school vacation times. The provisions
21 of the parenting plan should cover the matters relevant to the
22 care and custody of the minor child as set forth in this act.
23 A parenting plan is a child custody determination for the
24 purposes of the Uniform Child Custody Jurisdiction and
25 Enforcement Act, the International Child Abduction Remedies
26 Act, 42 U.S.C. Actions 11601 et seq., the Parental Kidnapping
27 Prevention Act, and the Convention on the Civil Aspects of

1 International Child Abduction enacted at The Hauge on October
2 25, 1980, and for all other state and federal laws.

3 (3) TIMESHARING SCHEDULE. A timesharing schedule is
4 a component of a parenting plan. The timesharing schedule,
5 with as much specificity as the court or the parties believe
6 is desirable and appropriate, shall set out the times and
7 occasions each parent shall spend with a child.

8 (4) PARENTAL UNFITNESS. A parent that fails to
9 properly care for his or her child and maintain the emotional
10 health and overall well-being of the child in such a manner
11 the failure will seriously harm the child.

12 (5) RESIDENTIAL PARENTING TIME. The allotment of
13 time a child spends in the physical care and control of a
14 parent.

15 (6) SHARED LEGAL PARENTING TIME. A child parenting
16 time arrangement where each of the two parents, unless the
17 parents have agreed otherwise, have equal rights and
18 responsibilities for major decisions concerning the child,
19 including, but not limited to, selecting residential parenting
20 times, the education of the child, health care, religious
21 training, and extracurricular activities.

22 (7) SHARED PHYSICAL PARENTING TIME. A child
23 parenting time arrangement where each of the two parents have
24 equal physical parenting times, unless the parents have agreed
25 otherwise.

26 (8) SOLE LEGAL PARENTING TIMES. A child parenting
27 time arrangement where one parent has sole rights and

1 responsibilities to make major decisions concerning the child,
2 including, but not limited to, the education, health care, and
3 religious training of the child. This parent has primary
4 parenting times and the other parent has rights to secondary
5 parenting times as determined by the court. This parenting
6 time arrangement shall be limited to situations where one
7 parent has been proven unfit consistent with this act or
8 otherwise by agreement of the parties.

9 Section 3. (a) The court shall consider all of the
10 following factors in making determination of parental fitness:

11 (1) Competent, material, and relevant in nature that
12 one parent has committed an act of domestic violence against
13 the other parent or to a child pursuant to Sections 30-3-130
14 to 30-3-135, inclusive, Code of Alabama 1975.

15 (2) If the court finds from clear and convincing
16 evidence, competent, material, and relevant in nature, that
17 the parent of a child is unable or unwilling to discharge his
18 or her responsibilities to and for the child, or that the
19 conduct or condition of the parent renders him or her unable
20 to properly care for the child and that the conduct or
21 condition is unlikely to change, the court may limit child
22 custody solely to one parent. In determining whether or not
23 the parent is unable or unwilling to discharge his or her
24 responsibilities to and for the child the court shall consider
25 the following factors including, but not limited to, the
26 following:

1 a. That the parent has willfully abandoned the
2 child.

3 b. Emotional illness, mental illness, or mental
4 deficiency of a parent, or use of illegal drugs, or the abuse
5 of alcohol or prescription medication, of a duration or nature
6 as to render the parent unable to care for needs of the child.

7 c. That the parent has tortured, abused, cruelly
8 beaten, or otherwise maltreated the child or the other parent,
9 or attempted to torture, abuse, cruelly beat, or otherwise
10 maltreat the child or the other parent, or the child or other
11 parent is in clear and present danger of being thus tortured,
12 abused, cruelly beaten, or otherwise maltreated.

13 d. A conviction that results in imprisonment for a
14 felony.

15 (3) Commission by a parent of any of the following:

16 a. Murder or manslaughter.

17 b. Aiding, abetting, attempting, conspiring, or
18 soliciting to commit murder or manslaughter.

19 c. A felony assault or abuse which results in
20 serious bodily injury to another person, the surviving child
21 or another child of that parent or to the other parent. The
22 term serious bodily injury shall mean bodily injury which
23 involves substantial risk of death, extreme physical pain,
24 protracted and obvious disfigurement, or protracted loss or
25 impairment of the function of a bodily member, organ, or
26 mental faculty.

1 (4) Failure by the parent to maintain consistent
2 parenting time with the child in accordance with the parenting
3 plan provided there has been no interference by the other
4 parent.

5 (5) Failure by the parent to maintain consistent
6 contact or communication with the child provided there has
7 been no interference by the other parent.

8 (6) If either parent demonstrates a continued
9 pattern that willfully prevents the child from having freedom
10 of association with the other parent without just cause, there
11 shall be a rebuttable presumption the parent denying such
12 freedom of association is unfit for equal parenting times and
13 the non-offending parent shall have sole custody of the child.

14 Section 4. In every petition filing with regard to
15 the parenting times of a child, absent written findings by the
16 court that a parent is unfit to carry out the rights and the
17 responsibilities by clear and convincing evidence, in all
18 contested cases the court shall ensure all of the following:

19 (1) Upon filing of an action in accordance with this
20 act and until a judgment on the merits is rendered, there
21 shall be a rebuttable presumption the parents shall have
22 temporary shared legal and shared physical parenting times of
23 any minor child.

24 (2) The parents shall submit to the court a
25 temporary proposed parenting plan no later than 60 days upon
26 filing an action. Notwithstanding the foregoing, the court may
27 enter an order for temporary sole legal parenting times with

1 rights of temporary secondary parenting times, if each parent
2 agrees, or following an evidentiary hearing the court finds
3 that one parent is unfit for shared parenting times consistent
4 with this act.

5 (3) A court finding of domestic violence raises a
6 rebuttable presumption that it is detrimental to the child to
7 be placed in shared legal or shared physical parenting times
8 with the perpetrator of domestic violence pursuant to Sections
9 30-3-130 to 30-3-135, inclusive, Code of Alabama 1975.

10 (4) Each parent shall submit a proposed permanent
11 parenting plan outlining his or her respective child rearing
12 decisions for the minor children no later than 60 days prior
13 to a scheduled hearing. If one parent knowingly and willfully
14 refuses to submit a plan, the plan submitted by the other
15 party shall have preference. If both parties knowingly and
16 willfully refuse to submit a plan, the court shall enter a
17 plan using the least restrictive means available consistent
18 with this act.

19 (5) In making an order or judgment relative to
20 parenting times of a child, there shall be a rebuttable
21 presumption the parenting times of a child between each of the
22 two fit parents shall be held to be equal. In all cases with
23 two fit parents, the court shall enter a plan using the least
24 restrictive means available to assure minor children have
25 equal time, or as close to equal parenting time, as the
26 factual evidence presented to the court allows.

1 (6) Equal time as outlined in this act in all
2 disputed cases shall be whatever is equal over the 19 years
3 minority of the child's life, dependent upon the material
4 factual evidence at time of hearing.

5 (7) If a child has attended one school during the
6 previous six months prior to either separation of the parties
7 or upon the filing of a court petition, there shall be a
8 rebuttable presumption the child shall continue to attend that
9 particular school when implementing a parenting plan
10 consistent with this act.

11 (8) In every case when a court is making a
12 determination a parent is unfit to carry out the rights and
13 responsibilities for parenting times of a child, the
14 determination shall be made by clear and convincing evidence,
15 and the court shall enter an order with written findings of
16 fact in support thereof.

17 (9) In every contested situation prior to holding a
18 final hearing on the merits, the court shall order a minimum
19 of four hours of co-parenting educational classes. Likewise,
20 the court shall order therapeutic mediation to help the
21 parties to reach a resolution. All mediation sessions must be
22 with a certified therapeutic mediator to assist the parents in
23 creating a permanent parenting plan and working out other
24 issues. All mediation costs shall be split equally between the
25 parties.

26 (10) If either parent demonstrates by clear and
27 convincing evidence: a. a pattern that knowingly and willfully

1 prevents the child from having parenting times with the other
2 parent without just cause, or b. has knowingly and willfully
3 provided false information to the court regarding any prior or
4 pending action regarding domestic violence, sexual violence,
5 child abuse, child abandonment, or child neglect, there shall
6 be a rebuttable presumption the parent denying such parenting
7 times or providing such false information to the court is
8 unfit for equal parenting times with the child. The
9 non-offending parent shall have primary parenting times
10 subject to the other parent having secondary parenting times
11 as determined by the court.

12 Section 5. The parents, prior to a divorce decree,
13 and at the time of a petition to modify child parenting times,
14 shall create a parenting plan that is consistent with this act
15 and includes, but is not limited to, all of the following:

16 (1) A detailed residential parenting time schedule
17 including, but not limited to, regular residential time,
18 residential times for holidays, birthdays, and school vacation
19 times.

20 (2) Designating which parent may exercise primary
21 authority and responsibility regarding involvement of the
22 minor child in academic, religious, civic, cultural, athletic,
23 and other activities, including medical, vision, and dental
24 care.

25 (3) Stipulating that each parent shall make
26 decisions regarding the day-to-day care and control of each
27 child while the child is residing with that parent. Regardless

1 of the allocation of decision making in this parenting plan,
2 either parent may make emergency decisions affecting the
3 health or safety of the children.

4 (4) Birthdays, holidays, and vacations.

5 (5) If the parents are unable to decide on a
6 parenting plan, there shall be a rebuttable presumption the
7 court shall enter the plan using one of the plans submitted by
8 the parents, provided one of the proposed parenting plans will
9 safeguard the child's rights to equal access to each of the
10 two parents based upon clear evidentiary facts. In any fact
11 situation with two fit parents, there shall be a rebuttable
12 presumption the court shall use the least restrictive means
13 available and enter an order consistent with this act.

14 (7) When the parties are not able to agree on a
15 parenting plan and the parenting plan is ordered by the court,
16 the court shall consider each of the following factors for
17 which evidence is presented. These factors are not listed in a
18 specific order of importance, and a court may weigh various
19 factors differently based on the facts presented and giving
20 considerations that fit parents are presumed to act in the
21 best interests of the child. These factors include, but are
22 not limited to, all of the following:

23 a. Each parent to facilitate and encourage a close
24 and continuing parent-child relationship, and to honor the
25 timesharing schedule.

26 b. Any history of child abuse, spouse abuse, or
27 kidnapping. If the court accepts evidence of prior pending

1 actions regarding domestic violence, sexual violence, child
2 abuse, child abandonment, or child neglect, the court must
3 specifically acknowledge in writing that such evidence was
4 considered. In cases where domestic violence is indicated, the
5 court shall proceed pursuant to Sections 30-6-131 to 30-6-135,
6 inclusive, Code of Alabama 1975.

7 c. Evidence that either parent has knowingly
8 provided false information to the court regarding any prior or
9 pending action regarding domestic violence, sexual violence,
10 child abuse, child abandonment, or child neglect.

11 d. The disposition of each parent to maintain an
12 environment for the child that is free from substance abuse.

13 Section 6. (a) Unless otherwise prohibited by court
14 order or statute, all records and information pertaining to
15 the child, including, but not limited to, medical,
16 psychological, psychiatric, dental, scholastic, athletic,
17 extracurricular, and law enforcement shall be equally
18 available to both parents, in all types of custody
19 arrangements.

20 (b) Either parent may request, in writing, that a
21 copy of the child's report card, notice of school attendance,
22 names of teachers, class schedules, standardized test scores,
23 and any other records customarily available to parents be
24 furnished directly to the parent making the request. The
25 request shall be accompanied by the parent's or parents'
26 current mailing or email address. The local education board or
27 other authority shall send a copy of the report card, notice

1 of school attendance, names of teachers, class schedules,
2 standardized test scores, and any other records customarily
3 available within 20 business days of the written request of
4 the parent.

5 (c) A court, upon proven findings by clear and
6 convincing evidence that a parent is unfit, may deny any
7 information concerning the child to the unfit parent.

8 Section 7. All courts issuing judgments, orders, or
9 opinions, whether temporary or final, that deviate from
10 granting equal parenting times as provided in this act shall
11 list written findings of fact and a statement of law to
12 support the determination.

13 Section 8. This act shall apply to all actions filed
14 after the effective date of the act. The passage of this act
15 shall not serve, simply by virtue of such passage, as a
16 material change of circumstances upon which to base a
17 modification of any preexisting joint or shared child custody
18 arrangements.

19 Section 9. Sections 30-3-1 and 30-3-2, Code of
20 Alabama 1975, are repealed.

21 Section 10. This act shall become effective on the
22 first day of the third month following its passage and
23 approval by the Governor, or its otherwise becoming law.