

1 SB211  
2 188122-5  
3 By Senators Stutts, Sanford, Marsh, Albritton,  
4 Coleman-Madison, Shelnut, Bussman, Allen, Dunn and Pittman  
5 RFD: Judiciary  
6 First Read: 23-JAN-18

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4 ENGROSSED

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7 A BILL  
8 TO BE ENTITLED  
9 AN ACT

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11 To amend Sections 30-3-150, 30-3-151, 30-3-152, and  
12 30-3-153 of the Code of Alabama 1975, and to add Section  
13 30-3-158 to the Code of Alabama 1975, relating to child  
14 custody; to clarify the policy of this state regarding child  
15 custody; to provide definitions; to require a parenting plan  
16 and to authorize the court to establish a parenting plan in  
17 certain situations; to specify the contents of the parenting  
18 plan; to specify the factors the court may consider in  
19 establishing a parenting plan; and to specify remedies when a  
20 party fails to adhere to certain provisions in a parenting  
21 plan.

22 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

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

1                   "§30-3-150.

2                   ~~"Joint Custody.~~ It is the policy of this state to  
3 assure that minor children have frequent and continuing  
4 contact with parents who have shown the ability to act in the  
5 best interest of their children and to encourage parents to  
6 share in the rights and responsibilities of rearing their  
7 children after the parents have separated or dissolved their  
8 marriage. ~~Joint custody does not necessarily mean equal  
9 physical custody.~~

10                   "§30-3-151.

11                   "For the purposes of this article the following  
12 words shall have the following meanings:

13                   "(1) JOINT CUSTODY. Joint legal custody and joint  
14 physical custody.

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

1           "(3) JOINT PHYSICAL CUSTODY. Physical custody is  
2 shared by the parents in a way that assures the child frequent  
3 and substantial contact with each parent. ~~Joint physical~~  
4 ~~custody does not necessarily mean physical custody of equal~~  
5 ~~durations of time.~~ Frequent and substantial contact means that  
6 the child has as much time as practical with both parents.

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

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

19           "~~(5) (6) SOLE PRIMARY PHYSICAL CUSTODY. One parent~~  
20 ~~has sole physical custody and the other parent has rights of~~  
21 ~~visitation except as otherwise provided by the court.~~ When one  
22 parent has the authority and responsibility for the day-to-day  
23 care and decisions related to the raising of a child and to  
24 establish where a child will reside, which will be the address  
25 of the child for determinations as to school and residence.

26           "(7) RESTRICTED PHYSICAL CUSTODY. When a parent's  
27 physical access to a child is limited to supervised custody,

1 no overnight custody, a suspension of physical contact, or any  
2 other restrictions on custody determined by the court to be in  
3 the best interest of the child.

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

8 "§30-3-152.

9 "(a) ~~The court shall in every case consider joint~~  
10 ~~custody but may award any form of custody which is determined~~  
11 ~~to be~~ There shall be a rebuttable presumption that joint  
12 custody is in the best interest of the child. This rebuttable  
13 presumption may be overcome only by clear and convincing  
14 evidence, set forth in written findings of fact, that joint  
15 custody is not in the best interest of the child. In  
16 determining whether joint custody is in the best interest of  
17 the child, the court shall consider the same factors  
18 considered in awarding ~~sole legal and physical~~ other forms of  
19 custody arrangements and all of the ~~following~~ following factors below.  
20 The court may weigh various factors differently based on the  
21 facts presented and the best interests of the child:

22 "(1) The agreement or lack of agreement of the  
23 parents on joint custody.

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

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

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

6           "(5) The geographic proximity of the parents to each  
7 other as this relates to the practical considerations of joint  
8 physical custody.

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

12           "(c) If both parents request joint custody, the  
13 presumption is that joint custody is in the best interest of  
14 the child. Joint custody shall be granted in the final order  
15 of the court unless the court makes specific findings as to  
16 why joint custody is not granted.

17           "(d) If joint custody is not awarded by the court,  
18 all of the following factors shall be considered by the court  
19 when determining which other custody arrangement is in the  
20 best interest of the child. The court may weigh various  
21 factors differently based on the facts presented and the best  
22 interests of the child:

23           "(1) The preferences of the parents.

24           "(2) Moral, mental, and physical fitness of each  
25 parent.

26           "(3) The capacity of each parent to provide a loving  
27 relationship and the needs of each child, including the

1 child's emotional, social, moral, material, and educational  
2 needs.

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

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

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

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

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

12 "(9) Characteristics of those seeking custody,  
13 including age, character, stability, and mental and physical  
14 health.

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

17 "(11) Military considerations in accordance with  
18 state and federal law.

19 "(12) The child's current adjustment to or  
20 involvement with his or her community.

21 "(13) The relationship between each parent and the  
22 child.

23 "(14) The preference of the child if the child is of  
24 sufficient age and maturity.

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

27 "(16) Any other relevant factors.

1                   "§30-3-153.

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

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

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

13                  "~~(3) Holidays and vacations.~~ A designation of who is  
14 responsible for any and all forms of health care,  
15 school-related matters, including the address to be used for  
16 school residential determination and registration, and other  
17 activities.

18                  "~~(4) Child support.~~ Transportation arrangements for  
19 the child, including who bears the cost for transporting the  
20 child.

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

25                  "~~(6) Designating the parent possessing primary~~  
26 ~~authority and responsibility regarding involvement of the~~  
27 ~~minor child in academic, religious, civic, cultural, athletic,~~

1 ~~and other activities, and in medical and dental care if the~~  
2 ~~parents are unable to agree on these decisions. The exercise~~  
3 ~~of this primary authority is not intended to negate the~~  
4 ~~responsibility of the parties to notify and communicate with~~  
5 ~~each other as provided in this article. Any other matter~~  
6 ~~specifically delineated by the court.~~

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

10 "(8) A designation of 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, dental, vision, mental  
14 health care and the like if the parents are unable to agree on  
15 these decisions.

16 "(b) If the parties are unable to reach an agreement  
17 as to the provisions in subsection (a), the court shall set  
18 the plan.

19 "(c) If both parents submit the same parenting plan,  
20 the presumption is that the parenting plan jointly submitted  
21 by the parents is in the best interest of the child. The  
22 parenting plan jointly submitted by both parents shall be  
23 granted in the final order of the court unless the court makes  
24 specific findings as to why the parenting plan jointly  
25 submitted by the parties is not granted."

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

1 §30-3-158.

2 (a) When a parent refuses to adhere to the time  
3 sharing schedule in the parenting plan ordered by the court  
4 without proper cause, the court may take any of the following  
5 actions:

6 (1) After calculating the amount of time sharing  
7 improperly denied, award the parent denied time a sufficient  
8 amount of extra time sharing to compensate for the time  
9 sharing missed, and such time sharing shall be ordered as  
10 expeditiously as possible in a manner consistent with the best  
11 interests of the child and scheduled in a manner that is  
12 convenient for the parent deprived of time sharing. In  
13 ordering any makeup time sharing, the court shall schedule the  
14 time sharing in a manner that is consistent with the best  
15 interests of the child or children and that is convenient for  
16 the nonoffending parent and at the expense of the noncompliant  
17 parent.

18 (2) Order the parent who did not provide time  
19 sharing or did not with reasonable notice properly exercise  
20 time sharing under the time sharing schedule to pay reasonable  
21 court costs and attorney's fees incurred by the nonoffending  
22 parent to enforce the time sharing schedule.

23 (3) Order the parent who did not provide time  
24 sharing or did not with reasonable notice properly exercise  
25 time sharing under the time sharing schedule to attend a  
26 parenting course approved by the court. The parenting course,

1 among other things, shall educate the parent about the  
2 benefits of a child's relationships with both parents.

3 (4) Order the parent who did not provide time  
4 sharing or did not with reasonable notice properly exercise  
5 time sharing under the time sharing schedule to pay the actual  
6 cost incurred by the other parent because of the failure to  
7 provide time sharing or the failure to properly exercise time  
8 sharing as provided by the court order.

9 (5) Impose any other reasonable remedies as a result  
10 of noncompliance.

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

13 Section 4. (a) A court of competent jurisdiction  
14 shall enforce all parenting time orders, custody orders, and  
15 child support orders giving equal importance to each.

16 (b) As a matter of public policy, it is the intent  
17 of the Legislature that this amendatory act be implemented in  
18 a manner that recognizes the importance of family and the  
19 fundamental rights of parents and children.

20 (c) This act shall apply to parenting time orders,  
21 custody orders, and child support orders issued on or after  
22 January 1, 2019, and the amendatory provisions of this act may  
23 not be construed to assert a material change of circumstances  
24 for purposes of modifying an order in place before January 1,  
25 2019.

1                   Section 5. This act shall become effective January  
2           1, 2019, following its passage and approval by the Governor,  
3           or its otherwise becoming law.

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Senate

Read for the first time and referred to the Senate  
committee on Judiciary..... 23-JAN-18

Read for the second time and placed on the calen-  
dar 1 amendment..... 22-FEB-18

Read for the third time and passed as amended .... 08-MAR-18

Yeas 17  
Nays 8

Patrick Harris,  
Secretary.