

HB524 INTRODUCED



1 WWLY59-1

2 By Representatives Paschal, Brown, Rehm, Harrison, Whorton

3 RFD: Judiciary

4 First Read: 01-Jun-23

5 2023 Regular Session



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4 SYNOPSIS:

5 Existing law specifies that it is the policy of
6 this state that parents who are divorced or separated
7 have frequent and continuing contact with their
8 children. Existing law also specifies that joint
9 custody does not necessarily mean equal physical
10 custody.

11 This bill would remove existing code language
12 that provides for custody of a child to be granted to a
13 husband in cases of abandonment by the wife only after
14 the child reaches seven years of age.

15 This bill would revise existing definitions
16 regarding custody to be consistent with terminology
17 used in case law.

18 Existing law defines "joint physical custody" as
19 frequent and substantial contact with each parent, but
20 does not define what frequent and substantial contact
21 means.

22 This bill would define frequent and substantial
23 contact to mean that the child has equal or
24 approximately equal time with both parents.

25 This bill would create a rebuttable presumption
26 that joint custody is in the best interest of the child
27 and establish uniform guidelines for a court to
28 consider when determining any custody arrangement other

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29 than joint custody.

30 Existing law does not require a court to
31 document that the court considered and rejected joint
32 custody and the reasons for the rejection.

33 This bill would require a court to document its
34 reasons for deviating from the presumption that joint
35 custody is in the best interest of the child.

36 Existing law requires the parties in a child
37 custody matter to submit a parenting plan only in cases
38 where the parties request joint custody.

39 This bill would require the parties to submit a
40 parenting plan in all cases, and in the case of a
41 contested divorce, follow a joint custody model; if a
42 parent believes joint custody is not in the best
43 interest of his or her child whose custody is at issue,
44 he or she may file a motion for temporary relief.

45 This bill would require the courts to expedite a
46 motion for temporary relief, and provide certain
47 penalties if a motion for temporary relief is filed in
48 bad faith or without factual support.

49 This bill would authorize the court to establish
50 a parenting plan when the parties are unable to agree
51 upon one.

52 This bill would specify additional remedies to a
53 party when a parent, without proper cause, fails to
54 adhere to the time-sharing schedule in a parenting
55 plan, including makeup parenting time and reimbursement
56 for costs and attorney fees.



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57 This bill would set requirements for the
58 modification of physical custody in certain
59 circumstances.

60 This bill would also specify that this act does
61 not limit domestic or family abuse laws.

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65 A BILL

66 TO BE ENTITLED

67 AN ACT

68
69 Relating to child custody; to amend Sections 30-3-1,
70 30-3-150, 30-3-151, 30-3-152, 30-3-153, and 30-3-157 of the
71 Code of Alabama 1975, and to add Section 30-3-158 to the Code
72 of Alabama 1975, relating to child custody; to remove existing
73 code language that provides for custody of a child to be
74 granted to a husband in cases of abandonment by the wife only
75 after the child reaches seven years of age; to provide further
76 for the policy of this state regarding child custody; to
77 provide further for definitions; to provide that there is a
78 rebuttable presumption that joint custody is in the best
79 interest of the child, which can be overcome only by evidence;
80 to establish factors for a court to consider when determining
81 any custody arrangement other than joint custody; to require a
82 parenting plan and to authorize the court to establish a
83 parenting plan in certain situations; to specify remedies when
84 a party fails to adhere to certain provisions in a parenting



85 plan; to set requirements for the modification of physical
86 custody in certain circumstances; to allow a parent to file a
87 petition for temporary relief if he or she believes joint
88 custody is not in the best interest of the child; to provide
89 certain remedies if an unsupported or bad faith petition for
90 temporary relief is filed; and to provide that nothing in this
91 act shall be construed to limit domestic or family abuse
92 provisions of the law.

93 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

94 Section 1. This act shall be known and may be cited as
95 the Best Interest of the Child Protection Act of 2023.

96 Section 2. Sections 30-3-1, 30-3-150, 30-3-151,
97 30-3-152, 30-3-153, and 30-3-157, Code of Alabama 1975, are
98 amended to read as follows:

99 "§30-3-1

100 Upon granting a divorce, the court may give the custody
101 and education of the children of the marriage to either father
102 or mother, ~~as may seem right and proper~~, having regard to the
103 moral character and prudence of ~~the parents~~ each parent and
104 the age and sex of the children~~s~~, and pending the action, may
105 make ~~such~~ orders in respect to the custody of the children~~as~~
106 in the best interest of their safety and well-being~~may~~
107 ~~require. But in cases of abandonment of the husband by the~~
108 ~~wife, he shall have the custody of the children after they are~~
109 ~~seven years of age, if he is a suitable person to have such~~
110 ~~charge.~~"

111 "§30-3-150

112 ~~Joint Custody.~~ It is the policy of this state to assure



113 that minor children have frequent and continuing contact with
114 parents who have shown the ability to act in the best interest
115 of their children and to encourage parents to share in the
116 rights and responsibilities of rearing their children after
117 the parents have separated or dissolved their marriage. ~~Joint~~
118 ~~custody does not necessarily mean equal physical custody. It is~~
119 the intent of the Legislature that this act be implemented in
120 a manner that recognizes the importance of family and the
121 fundamental rights of parents and children. The social science
122 research indicates it is in the best interest of children to
123 have consistent and maximized contact with parents. In custody
124 hearings, courts are encouraged to keep this in mind when
125 determining the best interest of the child."

126 "§30-3-151

127 For the purposes of this article the following words
128 shall have the following meanings:

129 (1) JOINT CUSTODY. Joint legal custody and joint
130 physical custody.

131 (2) JOINT LEGAL CUSTODY. ~~Both~~A custody arrangement
132 where both parents have equal rights and responsibilities for
133 major decisions concerning the child, including, but not
134 limited to, the education of the child, health care, and
135 religious training, and the responsibility to discuss those
136 decisions and consider the wishes and concerns of each parent
137 and the child. The court may designate one parent to have ~~sole~~
138 ~~power to make certain decisions while both parents retain~~
139 ~~equal rights and responsibilities for other~~
140 ~~decisions~~tiebreaking authority to make certain major



141 decisions; however, that designation does not negate the
142 responsibility of that parent to discuss those decisions with
143 the other parent and to consider the other parent's wishes and
144 concerns. In the event of an impasse and in the absence of an
145 express award of tiebreaking authority, the primary physical
146 custodian shall have tiebreaking authority for those
147 decisions.

148 (3) JOINT PHYSICAL CUSTODY. ~~Physical~~ A custody
149 arrangement where physical custody is shared by the parents in
150 a way that assures the child frequent and substantial contact
151 with each parent. ~~Joint physical custody does not necessarily~~
152 ~~mean physical custody of equal durations of time. For purposes~~
153 ~~of this subdivision, "frequent and substantial contact" means~~
154 ~~that the child has equal or approximately equal time with both~~
155 ~~parents.~~

156 (4) NONRESIDENTIAL CUSTODIAL PARENT. The parent with
157 whom the child does not live the majority of the time and who
158 does not have the primary authority and responsibility for the
159 day-to-day care and decisions relating to the raising of a
160 child or the authority to establish where a child will live,
161 but does have the authority and responsibility for the
162 day-to-day care and decisions related to the raising of a
163 child when the child is in his or her physical custody and not
164 in the physical custody of the parent with primary physical
165 custody as outlined in the parenting plan.

166 (5) PARENTING PLAN. A plan specifying the time which a
167 minor child will spend with each parent and which may include
168 provisions for progressive periods of time-sharing within the



169 court ordered time-sharing schedules based on the increasing
170 age and developmental considerations of the child, the need of
171 the child to be reunited with a parent, or any other
172 consideration pertaining to the child's best interest. The
173 inclusion of a progressive provision in a parenting plan or a
174 custody order does not alter the type of physical custody
175 ordered by the court or the burden of proof required to modify
176 custody.

177 (6) PRIMARY PHYSICAL CUSTODY. A status of custody
178 making one parent the predominant physical custodian of the
179 child and granting the other parent the status of the
180 nonresidential custodial parent, unless the judge specifically
181 grants the other parent the status of restricted physical
182 custody. The parent with primary physical custody has the
183 primary authority and responsibility for the day-to-day care
184 and decisions related to the raising of the child and to
185 establish where the child will live.

186 (7) RESTRICTED PHYSICAL CUSTODY. A status of custody
187 where a parent's physical access to a child is limited to
188 supervised custody, no overnight custody, a suspension of
189 physical contact, or any other restrictions on custody
190 determined by the court to be in the best interest of the
191 child.

192 (4) (8) SOLE LEGAL CUSTODY. ~~One~~ A status of custody
193 where one parent has sole rights and responsibilities to make
194 major decisions concerning the child, including, but not
195 limited to, the education of the child, health care, and
196 religious training, and the civil, cultural, and athletic



197 activities of the child.

198 ~~(5) SOLE PHYSICAL CUSTODY. One parent has sole physical
199 custody and the other parent has rights of visitation except
200 as otherwise provided by the court."~~

201 "§30-3-152

202 ~~(a) The court shall in every case consider joint
203 custody but may award any form of custody which is determined
204 to be~~ There shall be a rebuttable presumption that joint
205 custody is in the best interest of the child. This rebuttable
206 presumption may be overcome by a preponderance of the
207 evidence, set forth in written findings of fact, that joint
208 custody is not in the best interest of the child. In the event
209 the presumption is rebutted, the court shall enter an order
210 that includes all of the following:

211 (1) The court's reason for deviating from the joint
212 custody arrangement.

213 (2) The facts and findings concerning the basis for the
214 court's determination.

215 (3) A parenting plan that maximizes the time each
216 parent has with the child and is consistent with ensuring the
217 welfare of the child.

218 (b) In determining whether joint custody is in the best
219 interest of the child, the court shall consider the same
220 factors considered in awarding sole legal and physical any
221 other form of custody arrangement and all of the following
222 factors, but may weigh various factors differently based on
223 the factors presented and the best interest of the child:

224 (1) The agreement or lack of agreement of the parents



225 on joint custody.

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

228 (3) The ability of the parents to encourage the sharing
229 of love, affection, and contact between the child and the
230 other parent.

231 (4) Any history of or potential for child abuse, spouse
232 abuse, or kidnapping.

233 (5) The geographic proximity of the parents to each
234 other as this relates to the practical considerations of joint
235 physical custody.

236 ~~(b)~~ (c) The court may order a form of joint custody
237 without the consent of both parents, when it is in the best
238 interest of the child.

239 ~~(c)~~ (d) If both parents request joint custody, ~~the~~ there
240 is a presumption ~~is~~ that joint custody is in the best interest
241 of the child. Joint custody, when requested by both parents,
242 shall be granted in the final order of the court unless the
243 court makes specific findings as to why joint custody is not
244 granted.

245 (e) If joint custody is not awarded by the court, all
246 of the following factors shall be considered by the court when
247 determining which other custody arrangement is in the best
248 interest of the child. The court may weigh the following
249 factors differently based on the facts presented and the best
250 interest of the child:

251 (1) The preferences of the parents.

252 (2) The moral, mental, and physical fitness of each



253 parent.

254 (3) The capacity of each parent to engage in a loving
255 relationship with the child and to provide for the needs of
256 the child, including the child's emotional, social, moral,
257 material, and educational needs.

258 (4) The history of cooperation between the parents,
259 including the past and present history and the capacity of
260 each parent to facilitate or encourage a continuing
261 parent-child relationship with both parents.

262 (5) Each parent's home environment.

263 (6) Each parent's criminal history or evidence of
264 violence or sexual, mental, or physical abuse.

265 (7) Evidence of substance abuse by either parent.

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

267 (9) Characteristics of each individual seeking custody,
268 including age, character, stability, and mental and physical
269 health.

270 (10) The report and recommendation of any expert
271 witnesses or other independent investigator.

272 (11) Military considerations in accordance with state
273 and federal law.

274 (12) The child's current adjustment to or involvement
275 with his or her community.

276 (13) The relationship between each parent and the
277 child.

278 (14) The preference of the child if the child is of
279 sufficient age and maturity.

280 (15) The relationship between the child and the child's



281 peers, siblings, or other relatives.

282 (16) Each parent's knowledge and familiarity with the
283 child and level of involvement in the child's life both prior
284 to and after the separation of the parents.

285 (17) The effect on the child of disrupting or
286 continuing an existing custodial status.

287 (18) Any history or evidence of parental alienation.
288 Parental alienation in a child is the result of intentional
289 and purposeful behavior by one parent to undermine and sever
290 the child's relationship with the other parent.

291 (19) Any other relevant factors."

292 "§30-3-153

293 (a) ~~In order to implement joint custody, the~~ The court
294 shall require ~~the parents to submit, as part of their~~
295 ~~agreement, each parent, separately or together, to submit a~~
296 parenting plan with provisions covering matters relevant to
297 the care and custody of the child, including, but not limited
298 to, all of the following:

299 (1) ~~The care and education of the child. The ways in~~
300 which the parents will share tasks and be responsible for the
301 daily upbringing of the child.

302 (2) ~~The medical and dental care of the child. The amount~~
303 of time the child will spend with each parent.

304 (3) ~~Holidays and vacations. A designation of which~~
305 parent is responsible for the health care of the child and
306 school-related matters, including the address to be used to
307 establish residence for school and other activities.

308 (4) ~~Child support. Transportation arrangements for the~~



309 child, including which parent bears the costs of transporting
310 the child.

311 (5) Other necessary factors that affect the physical or
312 emotional health and well-being of the child.

313 (6) The methods and technologies that the parents
314 intend to use to communicate with the child and each other.

315 ~~(6)~~(7) Designating the parent possessing primary
316 authority and responsibility regarding involvement of the
317 minor child in academic, religious, civic, cultural, athletic,
318 and other activities, and in medical and dental care if the
319 parents are unable to agree on these decisions. The exercise
320 of this primary authority is not intended to negate the
321 responsibility of the parties to notify and communicate with
322 each other as provided in this article.

323 (8) Child support and the division of any expenses in
324 addition to child support, as provided in Rule 32 of the
325 Alabama Rules of Judicial Administration.

326 (b) If the parties are unable to reach an agreement as
327 to the provisions in subsection (a), the court shall set the
328 plan.

329 (c) Any parenting plan submitted by the parents
330 pursuant to subsection (a) shall follow a joint custody model,
331 unless subsection (d) applies.

332 (d) If a parent believes, based upon the facts and
333 circumstances of the case or any factors to be considered by
334 the court pursuant to Section 30-3-152, that joint custody is
335 not in the best interest of a child whose custody is being
336 determined, the parent shall file, in conjunction with the



337 parenting plan, a verified motion for temporary relief,
338 pendente lite. A pendente lite motion for temporary relief
339 filed pursuant to this subsection shall state with specificity
340 sufficient allegations of fact to justify relief. The court
341 shall expeditiously consider all motions filed pursuant to
342 this section.

343 (e) If the court determines that a party filed a
344 verified pendente lite motion for temporary relief in the
345 absence of an adequate factual basis or in bad faith, the
346 court shall award reasonable attorney fees to the non-filing
347 party to be paid by the filing party. The court may also
348 impose other sanctions it deems reasonable, including, but not
349 limited to, providing that the unsupported or bad faith filing
350 may be considered as a negative factor during the custody
351 determination."

352 "§30-3-157

353 (a) This article shall not be construed as grounds for
354 modification of an existing order.~~This article shall not be~~
~~construed as affecting the standard applicable to a subsequent~~
355 ~~modification.~~

357 (b) When a parent seeks to modify physical custody of
358 the child after a prior decree awarding primary physical
359 custody to another person, the parent seeking modification
360 must prove all of the following:

361 (1) That a material change in circumstances has
362 occurred since the previous judgment.

363 (2) That the child's best interest will be materially
364 promoted by a change of physical custody.



365 (3) That the benefits of the change will more than
366 offset the inherently disruptive effect resulting from the
367 change in physical custody."

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

370 \$30-3-158

371 (a) When a parent refuses to adhere to the time-sharing
372 schedule in the parenting plan ordered by the court without
373 proper cause, the court may take any of the following actions:

374 (1) After calculating the amount of time-sharing
375 improperly denied by a parent, issue an order awarding the
376 parent who was denied time a sufficient amount of extra
377 time-sharing to compensate for the time-sharing missed. The
378 order shall be issued as expeditiously as possible in a manner
379 consistent with the best interest of the child and scheduled
380 in a manner that is convenient for the parent deprived of
381 time-sharing. In ordering any makeup time-sharing, the court
382 shall schedule the time-sharing in a manner that is consistent
383 with the best interest of the child or children, that is
384 convenient for the nonoffending parent, and at the expense of
385 the noncompliant parent.

386 (2) Order the parent who did not provide time-sharing
387 or did not properly exercise time-sharing under the
388 time-sharing schedule to pay reasonable court costs and
389 attorney fees incurred by the nonoffending parent to enforce
390 the time-sharing schedule.

391 (3) Order the parent who did not provide time-sharing,
392 or did not properly exercise time-sharing under the



393 time-sharing schedule, to attend a parenting course approved
394 by the court. The parenting course shall educate the parent
395 about the benefits of a child's relationship with both
396 parents.

397 (4) Order the parent who did not provide time-sharing
398 or did not properly exercise time-sharing under the
399 time-sharing schedule to pay the actual costs incurred by the
400 other parent because of the failure to provide time-sharing or
401 the failure to properly exercise time-sharing as provided by
402 the court order.

403 (5) Impose any other reasonable remedies as a result of
404 noncompliance.

405 (b) The actions described in subsection (a) are in
406 addition to existing remedies, including, but not limited to,
407 contempt.

408 Section 4. A court of competent jurisdiction shall
409 equally enforce all child custody and child support orders.

410 Section 5. Nothing in this act shall be construed to
411 limit the domestic or family abuse provisions provided in
412 Article 6 of Chapter 3, Title 30, Code of Alabama 1975.

413 Section 6. (a) The provisions of this act may not be
414 construed to constitute a material change of circumstances for
415 purposes of modifying an order in place before January 1,
416 2024.

417 (b) The provisions of this act are severable. If any
418 part of this act is declared invalid or unconstitutional, that
419 declaration shall not affect the part which remains.

420 Section 7. This act shall become effective January 1,

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421 2024, following its passage and approval by the Governor, or
422 its otherwise becoming law.