

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



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



HB524 INTRODUCED

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.



HB524 INTRODUCED

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.

62
63
64
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



HB524 INTRODUCED

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

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

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

"§30-3-1

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

"§30-3-150

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



HB524 INTRODUCED

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

"§30-3-151

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

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

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



HB524 INTRODUCED

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



HB524 INTRODUCED

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 ~~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



HB524 INTRODUCED

activities of the child.

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

"§30-3-152

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

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

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

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

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

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



HB524 INTRODUCED

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



HB524 INTRODUCED

parent.

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

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

(5) Each parent's home environment.

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

(7) Evidence of substance abuse by either parent.

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

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

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

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

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

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

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

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



HB524 INTRODUCED

peers, siblings, or other relatives.

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

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

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

(19) Any other relevant factors."

"§30-3-153

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

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

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

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

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



HB524 INTRODUCED

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

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

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

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

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

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

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

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



HB524 INTRODUCED

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

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

"§30-3-157

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

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

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

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



HB524 INTRODUCED

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

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

§30-3-158

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

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

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

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



HB524 INTRODUCED

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

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

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

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

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

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

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

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

Section 7. This act shall become effective January 1,



HB524 INTRODUCED

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