

1 HB316
2 126775-1
3 By Representatives Wallace, Henry, Baughn, Moore (B), Melton,
4 Grimsley, McMillan, Williams (D), Williams (P), Brown, Davis,
5 McClurkin, McClendon, Johnson (W), McCutcheon, Hill, Beech,
6 Ball, Hammon, Merrill, Shiver, Faust, Mask, Oden, Greeson,
7 Love, Ison and Patterson
8 RFD: Judiciary
9 First Read: 22-MAR-11

SYNOPSIS: Under existing law, there is a presumption that joint custody is in the best interest of the child when each parent requests it in a divorce or other proceeding involving child custody, but as a matter of practice, each parent may not share equally in the rearing of the child when joint custody of a child is ordered by a court.

This bill would state the intent of the Legislature to make Alabama law regarding child custody and support consistent with current social science data and federal welfare reform laws, to safeguard due process, equal protection, and liberty interest rights found in the U.S. Constitution and the Alabama Constitution, and to ensure that Alabama children have freedom of association with each of the two fit parents.

This bill would require a parenting plan in every case involving the custody of a child. This bill would require the plan to contain certain provisions including a designation of which parent

1 may exercise primary authority in making
2 childrearing decisions regarding custody of a child
3 at designated times.

4 This bill would require the court to order
5 equal parenting time with each of the two fit
6 parents unless one or both parents is determined to
7 be unfit, or absent a fair agreement between the
8 parents not to adopt an equal parenting time
9 arrangement.

10 This bill would require a finding by a court
11 that a parent is unfit to be made in writing and
12 supported by clear and convincing evidence.

13 This bill would require the court to apply
14 Rule 32 of Judicial Administration regarding child
15 support.

16
17 A BILL

18 TO BE ENTITLED

19 AN ACT

20
21 Relating to child custody; to amend Sections
22 30-3-150 to 30-3-155, inclusive, and 30-3-157, Code of Alabama
23 1975, to require a parenting plan in all cases involving
24 custody of a child; to provide requirements for parenting
25 plans; to provide requirements for a finding by a court that a
26 parent is unfit; to require written findings; to provide for
27 exercise of primary parental decision-making authority by a

1 parent pursuant to a parenting plan; to provide standards for
2 appellate review of custody and support determinations; to add
3 Section 30-3-158 to the Code of Alabama 1975; and to repeal
4 Sections 30-3-1 and 30-3-2, Code of Alabama 1975.

5 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

6 Section 1. Sections 30-3-150 to 30-3-155, inclusive,
7 and Section 30-3-157, Code of Alabama 1975, are amended to
8 read as follows:

9 "§30-3-150.

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

18 "(a) This article shall be known and may be cited as
19 the Alabama Children's Family Act.

20 "(b) The Legislature finds that it is the public
21 policy of this state that children with two fit parents have
22 liberty interest rights protected by the U.S. Constitution and
23 the Alabama Constitution and each child shall have a
24 fundamental right to freedom of association and equal access
25 with each of the two fit parents and the respective families,
26 the right to be guided and nurtured by each fit parent, the
27 right to have major decisions made by the application of the

1 wisdom, judgment, and experience of each fit parent regardless
2 of marital status. Each of the two fit parents and each child
3 have a fundamental constitutional right to a parent-child
4 relationship unless one or both parents is proven unfit by
5 clear and convincing evidence. A divorce from a spouse is not
6 a divorce from the child. Likewise, if unwed parents separate
7 from each other that is not a separation from parent and
8 child. Therefore, there is a fundamental importance of the
9 parent-child relationship to the welfare of the child to each
10 fit parent with the child, and the relationship between a
11 child and each fit parent. Any parental decision, unless
12 clearly harmful to the child, should be a parental
13 determination made by each of the two fit parents.

14 "§30-3-151.

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

17 ~~"(1) JOINT CUSTODY. Joint legal custody and joint~~
18 ~~physical custody.~~

19 ~~"(2) JOINT LEGAL CUSTODY. Both parents have equal~~
20 ~~rights and responsibilities for major decisions concerning the~~
21 ~~child, including, but not limited to, the education of the~~
22 ~~child, health care, and religious training. The court may~~
23 ~~designate one parent to have sole power to make certain~~
24 ~~decisions while both parents retain equal rights and~~
25 ~~responsibilities for other decisions.~~

26 ~~"(3) JOINT PHYSICAL CUSTODY. Physical custody is~~
27 ~~shared by the parents in a way that assures the child frequent~~

1 ~~and substantial contact with each parent. Joint physical~~
2 ~~custody does not necessarily mean physical custody of equal~~
3 ~~durations of time.~~

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

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

11 "(1) PARENTING PLAN. A written plan outlining
12 parenting responsibilities regarding major decisions that
13 concern a child and each of the two fit parents. The parenting
14 plan shall set out residential parenting times including, but
15 not limited to, residential times for major holidays,
16 birthdays, summer vacation, fall school break, spring school
17 break, and the like.

18 "(2) PARENTAL UNFITNESS. A parent who fails to
19 properly care for his or her child and maintain the emotional
20 health and overall well-being of the child in such a manner
21 the failure will seriously harm the child pursuant to Section
22 26-14-1 and Sections 26-15-1 to 26-15-4, inclusive.

23 "(3) RESIDENTIAL PARENTING TIME. The allotment of
24 time a child spends in the physical custody and control of a
25 parent.

26 "(4) SHARED LEGAL CUSTODY. A child custody
27 arrangement where each of the two fit parents, unless they

1 have, by fair agreement, with knowledge of legal ramifications
2 of the decision, agreed otherwise, have equal rights and
3 responsibilities for major decisions concerning the child,
4 including, but not limited to, selecting residential parenting
5 times, the education of the child, health care, religious
6 training, and extracurricular activities.

7 "(5) SHARED PHYSICAL CUSTODY. A child custody
8 arrangement where each of the two fit parents have equal
9 physical custody, unless the parents, by fair agreement, with
10 knowledge of legal ramifications of the decision, have agreed
11 otherwise.

12 "(6) SOLE LEGAL CUSTODY. A child custody arrangement
13 where one parent has sole rights and responsibilities to make
14 major decisions concerning the child, including, but not
15 limited to, the education, health care, and religious training
16 of the child. This parent has primary physical custody and the
17 other parent has rights to parenting time as determined by the
18 court. This custody arrangement shall be limited to situations
19 where one parent has been proven unfit or by agreement of the
20 parties where the parents have made such agreement with
21 complete knowledge of the legal ramifications for making such
22 agreement.

23 "§30-3-152.

24 ~~"(a) The court shall in every case consider joint~~
25 ~~custody but may award any form of custody which is determined~~
26 ~~to be in the best interest of the child. In determining~~
27 ~~whether joint custody is in the best interest of the child,~~

1 ~~the court shall consider the same factors considered in~~
2 ~~awarding sole legal and physical custody and all of the~~
3 ~~following factors:~~

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

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

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

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

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

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

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

24 "The Legislature finds that this article is
25 consistent with liberty interest rights and equality mandated
26 by the United States Constitution. In every petition filing
27 for divorce or for a child custody determination where the

1 divorcing or never married parents have minor children, and in
2 every filing for a child custody modification, absent a legal
3 finding by the court of parental unfitness by clear and
4 convincing evidence, or absent a fair agreement between each
5 of the two fit parents, with complete knowledge of the legal
6 ramifications of the decision, in all contested cases the
7 court shall ensure that:

8 "(1) In making an order or judgment relative to the
9 care of a child, the parental rights of each of the two fit
10 parents shall be held to be equal.

11 "(2) In making an order or judgment relative to
12 parenting time of a child, the residential parenting time
13 shall be held to be equal.

14 "(3) Upon the filing of an action in accordance with
15 this article and until a judgment on the merits is rendered,
16 the parents have temporary shared legal custody and temporary
17 shared physical custody of any minor child. Notwithstanding
18 the foregoing, the court may enter an order for temporary sole
19 legal custody, physical custody, or both, to one parent if
20 each parent, by fair agreement, with complete knowledge of the
21 legal ramifications of the decision, agree or, following an
22 evidentiary hearing, the court finds, that one parent is unfit
23 for shared custody consistent with this article, and written
24 findings are made accordingly.

25 "(4) In every case when making a determination of
26 parental unfitness, by clear and convincing evidence, enter an
27 order with written findings of fact.

1 "§30-3-153.

2 "~~(a) In order to implement joint custody, the court~~
3 ~~shall require the parents to submit,~~ Each parent, as part of
4 their agreement, shall create a parenting plan with provisions
5 covering matters relevant to the care and custody of the
6 child, including, but not limited to, all of the following:

7 "~~(1) The care and education of the child.~~

8 "~~(2) The medical and dental care of the child.~~

9 "~~(3) Holidays and vacations.~~

10 "~~(4) Child support.~~

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

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

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

24 "(1) A residential parenting time schedule.

25 "(2) Designating which parent may exercise primary
26 authority and responsibility regarding involvement of the

1 minor child in academic, religious, civic, cultural, athletic,
2 and other activities, and medical and dental care.

3 "(3) Stipulating that the exercise of primary
4 parental decision-making authority, unless by fair agreement
5 otherwise, shall be with the parent who has the child in his
6 or her physical care at that given time.

7 "(4) Providing that in cases of disagreement
8 regarding major decisions after implementation of the
9 parenting plan, the father shall have primary parental
10 decision-making authority in even-numbered years, and the
11 mother shall have primary parental decision-making authority
12 in odd-numbered years, unless the decisions by the parent with
13 decision-making authority seriously harm the child. Primary
14 parental decision-making authority is not intended to negate
15 the responsibility of the parties to notify and communicate
16 with each other as provided in this article.

17 "(5) The care and education of the child.

18 "(6) The medical and dental care of the child.

19 "(7) Birthdays, holidays, and vacations.

20 "(8) Other necessary factors that affect the
21 well-being of the child.

22 "§30-3-154.

23 "(a) Unless otherwise prohibited by court order or
24 statute, all records and information pertaining to the child,
25 including, but not limited to, medical, physiological, dental,
26 scholastic, athletic, extracurricular, and law enforcement,

1 shall be equally available to both parents, in all types of
2 custody arrangements.

3 "(b) Either parent may request, in writing, that a
4 copy of the child's report card, notice of school attendance,
5 names of teachers, class schedules, standardized test scores,
6 and any other records customarily available to parents be
7 furnished directly to the parent making the request. The
8 request shall be accompanied by the parent's or parents'
9 current mailing address, and the local board of education or
10 other authority shall send a copy of the report card, notice
11 of school attendance, names of teachers, class schedules,
12 standardized test scores, and any other records customarily
13 available within 20 business days of the written request of
14 the parent.

15 "(c) A court upon proven findings by clear and
16 convincing evidence that a parent is unfit may deny any
17 information concerning the residence of the child to the
18 noncustodial or nonresident parent.

19 "§30-3-155.

20 ~~"In making a determination of child support, the~~
21 ~~court shall apply Rule 32 of the Alabama Rules of Judicial~~
22 ~~Administration.~~

23 "All courts issuing judgments, orders, or opinions,
24 whether temporary or final, shall list written findings of
25 fact and a statement of law to support the decision.

26 "§30-3-157.

1 ~~"This article shall not be construed as grounds for~~
2 ~~modification of an existing order. This article shall not be~~
3 ~~construed as affecting the standard applicable to a subsequent~~
4 ~~modification.~~

5 "Rule 32 of the Alabama Rules of Judicial
6 Administration shall apply with the following exceptions:

7 "(1) Health insurance provided the child shall not
8 be less than the best insurance available to either parent.

9 "(2) Family health insurance premiums due to be paid
10 by either parent shall not be in excess of the incremental
11 premium amounts based on the number of children of the
12 biological parent.

13 "(3) Any support paid or material items given
14 directly to a parent or child for the direct benefit of the
15 child, with written proof of same, shall be considered same as
16 support and maintenance for sole benefit of the child."

17 Section 2. Section 30-3-158 is added to the Code of
18 Alabama 1975, to read as follows:

19 §30-3-158.

20 This article shall apply in initial divorce filings,
21 all child custody filings, and in any filing seeking
22 modification of an existing child custody order. This article
23 shall be construed as affecting the standard applicable to a
24 subsequent modification.

25 Section 3. Section 30-3-1 of the Code of Alabama
26 1975, providing for custody and education of children upon
27 grant of divorce, and Section 30-3-2 of the Code of Alabama

1 1975, providing for custody and education upon voluntary
2 separation, are repealed.

3 Section 4. This act shall become effective on the
4 first day of the third month following its passage and
5 approval by the Governor, or its otherwise becoming law.