

1 SB408
2 148425-1
3 By Senator Sanford
4 RFD: Children, Youth Affairs, and Human Resources
5 First Read: 04-APR-13

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8 SYNOPSIS: Under existing law, joint custody may
9 include both joint legal and physical custody, only
10 joint legal custody, or only joint physical
11 custody.

12 This bill would require a parenting plan in
13 every case involving children with parents who are
14 no longer living together. This bill would specify
15 the required contents of a parenting plan.

16 This bill would provide for a presumption
17 that both parents are fit to make parenting
18 decisions absent clear and convincing evidence to
19 the contrary. This bill would specify what factors
20 the court must consider in determining whether a
21 parent is fit.

22 This bill would require reasonable and
23 equitable parenting time when the parents are in
24 disagreement as to custody, absent written findings
25 by the court of clear and convincing evidence that
26 equitable parenting time would be detrimental to
27 the child's best interest.

1
2 A BILL
3 TO BE ENTITLED
4 AN ACT
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6 Relating to child custody; to specify factors the
7 court must consider when determining the fitness of a parent;
8 to require a parenting plan in all cases involving custody of
9 a child; to provide requirements for parenting plans; to
10 provide further for release to a parent of records and
11 information regarding a minor child; and to provide remedies
12 where a parent refuses to abide by a parenting plan.

13 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

14 Section 1. Upon passage of this act, this act shall
15 apply to all custody, visitation, and parenting determinations
16 made on or after the effective date of this act.

17 Notwithstanding the foregoing, passage of this act shall not,
18 simply by virtue of such passage, serve as a material change
19 of circumstances upon which to base a modification of any
20 preexisting joint or child custody arrangement. Sections
21 30-3-1, 30-3-2, 30-3-151, 30-3-152, 30-3-153, and 30-3-154,
22 and any other law inconsistent with this act shall apply to
23 any court order or custody, visitation, or parenting agreement
24 entered into before the effective date of this act.

25 Section 2. It is the policy of this state there
26 shall be a rebuttable presumption that fit parents act in the
27 best interest of their children, and the best interest of

1 children is to assure that minor children have equal and
2 continuing contact with each of their parents, and to
3 encourage parents to share equally in the rights and
4 responsibilities of rearing their children after the parents
5 have separated or dissolved their marriage, unless the parents
6 have agreed otherwise. Therefore, the courts shall defer to
7 each of the two fit parents childrearing decisions absent a
8 judicial determination of parental unfitness. Children shall
9 have a fundamental right to co-equal access with each of their
10 two parents, the right to be guided and nurtured by each
11 parent, the right to have major decisions made by the
12 application of the wisdom, judgment, and experience of each
13 parent, regardless of martial status or gender of the parent.
14 The parent-child relationship is critical to the welfare of
15 the child and to each parent having a relationship with the
16 child, and the relationship between a child and each parent is
17 a fundamental right and should be fostered, supported, and
18 encouraged by the state. Any parental decision, unless one or
19 both parents have been judicially determined unfit, should be
20 a parental determination made by each of the two parents.
21 Courts of this state shall defer to parental decisions made by
22 fit parents unless substantial harm to a child is shown by
23 clear and convincing evidence. In all contested situations
24 with two fit parents there shall be a rebuttable presumption
25 that equal custody is in the best interest of the children.

26 Section 3. For the purposes of this act, the
27 following words shall have the following meanings:

1 (1) JOINT CUSTODY. Co-equal legal and co-equal
2 physical custody of a minor child.

3 (2) JOINT LEGAL CUSTODY. Absent an agreement by the
4 parents otherwise, both parents have equal rights and
5 responsibilities for major decisions concerning the child,
6 including, but limited to, the education of the child, health
7 care, and religious training.

8 (3) JOINT PHYSICAL CUSTODY. Absent an agreement by
9 the parents otherwise, both parents have co-equal physical
10 custody.

11 (4) PARENTING PLAN. A written document, created by
12 the parents, designating responsibility for the care, control,
13 and well-being of their minor child and providing a detailed
14 plan for the future care and control of their minor child. The
15 parenting plan shall set out parenting times including, but
16 not limited to, residential times, residential times for major
17 holidays, birthdays, and school vacation times. The parenting
18 plan should cover the matters relevant to the care and custody
19 of the minor child as set forth in this act. A parenting plan
20 is a child custody determination for the purposes of the
21 Uniform Child Custody Jurisdiction and Enforcement Act, the
22 International Child Abduction Remedies Act, 42 U.S.C. Actions
23 11601 et seq., the Parental Kidnapping Prevention Act, and the
24 Convention on the Civil Aspects of International Child
25 Abduction enacted at The Hague on October 25, 1980, and for
26 all other state and federal laws.

1 (5) PARENTAL TIME. The allotment of time the
2 children spend in the care, custody, and control of each
3 parent.

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

8 (7) SOLE LEGAL PHYSICAL CUSTODY. After a judicial
9 determination of parental unfitness, only one parent has the
10 sole right and responsibility to make major decisions
11 concerning the child, including, but limited to, the education
12 of the child, health care, and religious training.

13 (8) SOLE PHYSICAL CUSTODY. After a judicial
14 determination of parental unfitness, only one parent has sole
15 physical custody of the child and the other parent may have
16 the right of parenting time as provided by the court dependent
17 upon facts of the case.

18 Section 4. In every petition filing with regard to a
19 child's parenting time, absent written findings by the court
20 that a parent is unfit to carry out the rights and
21 responsibilities by clear and convincing evidence, in all
22 contested cases:

23 (1) The procedures specified in this act shall be
24 followed in every child custody petition filing.

25 (2) Absent a judicial determination of parental
26 unfitness, the court shall presume both parents are fit to

1 make childrearing decisions for their children, and the court
2 shall defer to the parents' childrearing decisions.

3 (3) Upon the filing of an action in accordance with
4 this act and until a judgment on the merits is rendered, there
5 shall be a rebuttable presumption the parents shall have
6 temporary joint custody of any minor child.

7 (4) The parents shall submit to the court a
8 temporary proposed parenting plan within 30 days after filing
9 a petition. Notwithstanding the foregoing, the court may enter
10 an order for temporary sole legal parenting time with rights
11 of temporary secondary parenting time, if each parent agrees,
12 or following an evidentiary hearing the court finds that one
13 parent is unfit for shared parenting time consistent with this
14 act.

15 (5) A court finding of domestic violence by clear
16 evidence raises a rebuttable presumption that it is
17 detrimental to the child to be placed in shared legal or
18 shared physical parenting time with the perpetrator of
19 domestic violence pursuant to Sections 30-3-130 to 30-3-135,
20 inclusive, Code of Alabama 1975.

21 (6) Each parent shall submit a proposed permanent
22 parenting plan outlining their respective childrearing
23 decisions for the minor children no later than 30 days after
24 the petition filing. If one parent knowingly and willfully
25 refuses to submit a plan, the plan submitted by the other
26 party shall have preference. If both parties knowingly and
27 willfully refuse to submit a plan, the court shall enter a

1 plan using the least restrictive means available consistent
2 with this act. If the parents are in agreement, the parents
3 may present to the court one signed parenting plan that
4 acknowledges their agreement. In all situations where the
5 parents are not in agreement, each parent shall submit their
6 own individual plan to the court.

7 (7) In making an order or judgment relative to
8 parenting time of a child, there shall be a rebuttable
9 presumption the parenting time of a child between each of two
10 fit parents shall be equal.

11 (8) In all cases with two fit parents, the court
12 shall enter a plan using the least restrictive means available
13 to assure minor children have equal time, as the factual
14 evidence presented to the court allows, provided that the
15 parents had equal decision making authority prior to the
16 filing of a court petition. The role of the court is to foster
17 equal parenting and involvement with both parents for children
18 of divorce and never married parents, and to foster
19 cooperative parenting planning for separating parents by
20 safeguarding the fundamental right of each parent to direct
21 the upbringing and education of their children.

22 (9) Equal parenting time as provided in this act
23 means that in all disputed cases, the court shall mandate
24 whatever is equal over the 19 years' minority of the child's
25 life, dependent upon the material factual evidence at time of
26 hearing.

1 (10) Absent a parental agreement otherwise, when
2 implementing a parenting plan consistent with this act, there
3 shall be a rebuttable presumption the child may not be removed
4 from the school district where the child lived during the
5 previous six months prior to either separation of the parties
6 or upon the filing of a court petition. When either parent
7 chooses to relocate from the child's existing school district,
8 Article 7A (commencing with Section 30-3-160) of Chapter 3 of
9 Title 30 of the Code of Alabama 1975, shall apply.

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

16 (12) Prior to holding a final hearing on the merits,
17 the court may order a minimum of four hours co-parenting
18 educational classes with costs split equally between each
19 parent.

20 (13) There shall be a rebuttable presumption that a
21 parent denying parenting time to the other parent without just
22 cause or providing false information to the court is unfit for
23 equal parenting time with the child. The non-offending parent
24 shall have primary parenting time subject to the other parent
25 having secondary parenting time as determined by the court.

26 Section 5. (a) In making a finding of parental
27 fitness, the court shall consider any evidence that is

1 competent, material, and relevant in nature that one parent
2 has committed an act of domestic violence against the other
3 parent or to a child pursuant to Sections 30-3-130 to
4 30-3-135, inclusive, Code of Alabama 1975. If the court finds
5 by clear and convincing evidence that is competent, material,
6 and relevant in nature, that a parent of a child is unable or
7 unwilling to discharge his or her responsibility to and for
8 the child or that the conduct or condition of the parent
9 renders the parent unable to properly care for the child and
10 that the conduct or condition is unlikely to change, the court
11 may limit child custody solely to one parent or neither parent
12 if both parents are judicially determined to be unfit. In
13 determining whether or not a parent is unable or unwilling to
14 discharge responsibility to and for the child the court shall
15 consider the following factors:

16 (1) That the parent has willfully abandoned the
17 child.

18 (2) Emotional illness, mental illness, or mental
19 deficiency of a parent, or use of illegal drugs, or the abuse
20 of alcohol or prescription medication, of a duration or nature
21 as to render the parent unable to care for the needs of the
22 child.

23 (3) That the parent has tortured, abused, cruelly
24 beaten, or otherwise maltreated the child or the other parent,
25 or attempted to torture, abuse, cruelly beat, or otherwise
26 maltreat the child or the other parent, or the child or other

1 parent is in clear and present danger of being thus tortured,
2 abused, cruelly beaten, or otherwise maltreated.

3 (4) A conviction that results in imprisonment for a
4 felony.

5 (5) A conviction of a parent for any of the
6 following:

7 a. Murder or manslaughter.

8 b. Aiding, abetting, attempting, conspiring, or
9 soliciting to commit murder or manslaughter.

10 c. A felony assault or abuse which results in
11 serious bodily injury to another person, the surviving child
12 or another child of that parent or to the other parent. The
13 term serious bodily injury shall mean bodily injury which
14 involves substantial risk of death, extreme physical pain,
15 protracted and obvious disfigurement, or protracted loss or
16 impairment of the function of a bodily member, organ, or
17 mental faculty.

18 (6) Failure by the parent to maintain consistent
19 parenting time with the child in accordance with the parenting
20 plan provided there has been no interference by the other
21 parent.

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

25 (8) Any other factor the court claims appropriate.

26 (b) If either parent demonstrated a continued
27 pattern that without just cause, willfully prevents the child

1 from having association with the other parent, there shall be
2 a rebuttable presumption the parent denying the association is
3 unfit for equal parenting time and the non-offending parent
4 shall have sole custody of the child.

5 Section 6. The parents, prior to a divorce decree,
6 and at the time of a filing of a petition to modify child
7 parenting time, shall create a parenting plan consistent with
8 the provisions of this act, including, but not limited to, all
9 of the following:

10 (1) A detailed residential parenting time schedule
11 including, but not limited to, regular residential time,
12 residential time for holidays, birthdays, and school vacation
13 times.

14 (2) Designating which parent may exercise authority
15 and responsibility regarding involvement of the minor child in
16 academic, religious, civic, cultural, athletic, and other
17 activities, including, but not limited to, medical, vision,
18 and dental care.

19 (3) Stipulating that each parent shall make
20 decisions regarding the day-to-day care and control of each
21 child while the child is residing with that parent. Regardless
22 of the allocation of decision-making in the parenting plan,
23 either parent may make emergency decisions affection the
24 health or safety of the child while the child is in their
25 physical custody.

26 (4) Provisions for birthdays, holidays, and
27 vacation.

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

11 (6) When the parties are not able to agree on a
12 parenting plan and a parenting plan is ordered by the court,
13 the court shall consider each of the following factors for
14 which evidence is presented:

15 a. Whether a parent will facilitate and encourage a
16 close and continuing parent-child relationship and honor the
17 time-sharing schedule.

18 b. Whether there has been a prior conviction of
19 child abuse, spouse abuse, or kidnapping. In cases where
20 domestic violence is indicated, the court shall proceed
21 pursuant to Sections 30-6-131 to 30-6-135, Code of Alabama
22 1975.

23 c. Whether there is perjured evidence that either
24 parent has knowingly provided false information to the court
25 regarding any prior or pending action regarding domestic
26 violence, sexual violence, child abuse, child abandonment, or
27 child neglect.

1 d. The disposition of each parent to maintain an
2 environment for the child that is free from illegal substance
3 abuse as provided by law.

4 Section 7. (a) Unless otherwise prohibited by court
5 order or statute, all records and information pertaining to
6 the child, including, but not limited to, medical,
7 psychological, psychiatric, dental, scholastic, athletic,
8 extracurricular, and law enforcement, shall be equally
9 available to both parents, in all types of custody
10 arrangements.

11 (b) Either parent may request, in writing, that a
12 copy of the child's report card, notice of school attendance,
13 names of teachers, class schedules, standardized test scores
14 and any other records customarily available to parents be
15 furnished directly to the parent making the request. The
16 school may provide the requested information in digital or
17 electronic form if available and desired.

18 (c) The request shall be accompanied by the parents
19 or parent's current mailing address or email address. The
20 local board of education or other authority shall send a copy
21 of the report card, notice of school attendance, names of
22 teachers, class schedules, standardized test scores and any
23 other records customarily available within 20 business days of
24 the written request of the parent.

25 Section 8. This act shall become effective on the
26 first day of the third month following its passage and
27 approval by the Governor, or its otherwise becoming law.

