

1 SB266  
2 196921-3  
3 By Senators Stutts, Chesteen, Coleman-Madison, Barfoot,  
4 Sessions, Williams, Price, Butler, Allen, Waggoner and  
5 Shelnutt  
6 RFD: Children, Youth and Human Services  
7 First Read: 09-APR-19

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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 equal or approximately equal time with both  
7 parents.

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

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

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

1           Any change of the child's primary physical residence  
2 must be made in compliance with the Alabama Parent-Child  
3 Relationship Protection Act.

4           "(7) RESTRICTED PHYSICAL CUSTODY. When a parent's  
5 physical access to a child is limited to supervised custody,  
6 no overnight custody, a suspension of physical contact, or any  
7 other restrictions on custody determined by the court to be in  
8 the best interest of the child.

9           "~~(4)~~ (8) SOLE LEGAL CUSTODY. One When one parent has  
10 sole rights and responsibilities to make major decisions  
11 concerning the child, including, but not limited to, the  
12 education of the child, health care, and religious training.

13           "§30-3-152.

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

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

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

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

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

10           "(5) The geographic proximity of the parents to each  
11 other as this relates to the practical considerations of joint  
12 physical custody.

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

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

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

23           "(d) If joint custody is not awarded by the court,  
24 all of the following factors shall be considered by the court  
25 when determining which other custody arrangement is in the  
26 best interest of the child. The court may weigh various

1 factors differently based on the facts presented and the best  
2 interests of the child:

3 "(1) The preferences of the parents.

4 "(2) Moral, mental, and physical fitness of each  
5 parent.

6 "(3) The capacity of each parent to provide a loving  
7 relationship and the needs of each child, including the  
8 child's emotional, social, moral, material, and educational  
9 needs.

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

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

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

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

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

19 "(9) Characteristics of those seeking custody,  
20 including age, character, stability, and mental and physical  
21 health.

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

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

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

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

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

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

7           "(16) Any other relevant factors.

8           "§30-3-153.

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

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

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

20           "~~(3) Holidays and vacations.~~ A designation of who is  
21 responsible for any and all forms of health care,  
22 school-related matters, including the address to be used for  
23 school residential determination and registration, and other  
24 activities.

25           "~~(4) Child support.~~ Transportation arrangements for  
26 the child, including who bears the cost for transporting the  
27 child.



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

5           ~~"(6) Designating the parent possessing primary~~  
6 ~~authority and responsibility regarding involvement of the~~  
7 ~~minor child in academic, religious, civic, cultural, athletic,~~  
8 ~~and other activities, and in medical and dental care if the~~  
9 ~~parents are unable to agree on these decisions. The exercise~~  
10 ~~of this primary authority is not intended to negate the~~  
11 ~~responsibility of the parties to notify and communicate with~~  
12 ~~each other as provided in this article. Any other matter~~  
13 ~~specifically delineated by the court.~~

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

17           ~~"(8) A designation of the parent possessing primary~~  
18 ~~authority and responsibility regarding involvement of the~~  
19 ~~minor child in academic, religious, civic, cultural, athletic,~~  
20 ~~and other activities, and in medical, dental, vision, mental~~  
21 ~~health care and the like if the parents are unable to agree on~~  
22 ~~these decisions.~~

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

26           ~~"(c) If both parents submit the same parenting plan,~~  
27 ~~the presumption is that the parenting plan jointly submitted~~

1 by the parents is in the best interest of the child. The  
2 parenting plan jointly submitted by both parents shall be  
3 granted in the final order of the court unless the court makes  
4 specific findings as to why the parenting plan jointly  
5 submitted by the parties is not granted."

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

8 §30-3-158.

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

13 (1) After calculating the amount of time sharing  
14 improperly denied, award the parent denied time a sufficient  
15 amount of extra time sharing to compensate for the time  
16 sharing missed, and such time sharing shall be ordered as  
17 expeditiously as possible in a manner consistent with the best  
18 interests of the child and scheduled in a manner that is  
19 convenient for the parent deprived of time sharing. In  
20 ordering any make-up time sharing, the court shall schedule  
21 the time sharing in a manner that is consistent with the best  
22 interests of the child or children and that is convenient for  
23 the nonoffending parent and at the expense of the noncompliant  
24 parent.

25 (2) Order the parent who did not provide time  
26 sharing or did not with reasonable notice properly exercise  
27 time sharing under the time sharing schedule to pay reasonable

1 court costs and attorney's fees incurred by the nonoffending  
2 parent to enforce the time sharing schedule.

3 (3) 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 attend a  
6 parenting course approved by the court. The parenting course,  
7 among other things, shall educate the parent about the  
8 benefits of a child's relationships with both parents.

9 (4) Order the parent who did not provide time  
10 sharing or did not with reasonable notice properly exercise  
11 time sharing under the time sharing schedule to pay the actual  
12 cost incurred by the other parent because of the failure to  
13 provide time sharing or the failure to properly exercise time  
14 sharing as provided by the court order.

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

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

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

22 (b) As a matter of public policy, it is the intent  
23 of the Legislature that this act be implemented in a manner  
24 that recognizes the importance of family and the fundamental  
25 rights of parents and children.

26 (c) This act shall apply to parenting time orders,  
27 custody orders, and child support orders issued on or after

1 January 1, 2020, and the provisions of this act may not be  
2 construed to assert a material change of circumstances for  
3 purposes of modifying an order in place before January 1,  
4 2020.

5 Section 5. The provisions of this act are severable.  
6 If any part of this act is declared invalid or  
7 unconstitutional, that declaration shall not affect the part  
8 which remains.

9 Section 6. This act shall become effective on the  
10 first day of the third month following its passage and  
11 approval by the Governor, or its otherwise becoming law.

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Senate

Read for the first time and referred to the Senate  
committee on Children, Youth and Human Services .. 09-APR-19

Read for the second time and placed on the calen-  
dar..... 18-APR-19

Read for the third time and passed as amended .... 02-MAY-19

Yeas 25  
Nays 4

Patrick Harris,  
Secretary.