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3 HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR HB365

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

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

19 This bill would revise existing definitions
20 regarding custody to be consistent with terminology
21 used in case law.

22 Existing law requires the parties in a child
23 custody matter to submit a parenting plan only in
24 cases where the parties request joint custody.

25 This bill would require the parties to
26 submit a parenting plan in all cases.

1 This bill would authorize the court to
2 establish a parenting plan when the parties are
3 unable to agree upon one.

4 This bill would specify additional remedies
5 to a party when a parent, without proper cause,
6 fails to adhere to the time-sharing schedule in a
7 parenting plan, including makeup parenting time and
8 reimbursement for costs and attorney fees.

9 This bill would also set requirements for
10 the modification of physical custody in certain
11 circumstances.

12

13 A BILL

14 TO BE ENTITLED

15 AN ACT

16

17 To amend Sections 30-3-1, 30-3-150, 30-3-151,
18 30-3-152, 30-3-153, and 30-3-157 of the Code of Alabama 1975,
19 and to add Section 30-3-158 to the Code of Alabama 1975,
20 relating to child custody; to remove existing code language
21 that provides for custody of a child to be granted to a
22 husband in cases of abandonment by the wife only after the
23 child reaches seven years of age; to clarify the policy of
24 this state regarding child custody; to provide further for
25 definitions; to provide that there is a rebuttable presumption
26 that joint custody is in the best interest of the child, which
27 can be overcome only by evidence; to provide that nothing in

1 this act shall be construed to limit the domestic or family
2 abuse provisions provided in Article 6 of Chapter 3, Title 30,
3 Code of Alabama 1975; to require a parenting plan and to
4 authorize the court to establish a parenting plan in certain
5 situations; to specify the contents of the parenting plan; to
6 specify the factors the court may consider in establishing a
7 parenting plan; to specify remedies when a party fails to
8 adhere to certain provisions in a parenting plan, and to set
9 requirements for the modification of physical custody in
10 certain circumstances; and to specify that a court with
11 competent jurisdiction shall enforce all child custody and
12 child support orders.

13 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

14 Section 1. This act shall be known and may be cited
15 as the Children's Equal Access Act.

16 Section 2. Sections 30-3-1, 30-3-150, 30-3-151,
17 30-3-152, 30-3-153, and 30-3-157 of the Code of Alabama 1975,
18 are amended to read as follows:

19 "§30-3-1.

20 "Upon granting a divorce, the court may give the
21 custody and education of the children of the marriage to
22 either father or mother, ~~as may seem right and proper~~, having
23 regard to the moral character and prudence of ~~the parents each~~
24 parent and the age and sex of the ~~children~~, and pending the
25 action, may make ~~such~~ orders in respect to the custody of the
26 children ~~as in the best interest of their safety and~~
27 ~~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 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 goal of joint custody is that the child has equal or approximately equal time with both parents, although the goal may not be fully realized in all cases.~~

"§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

1 decisions and consider the wishes and concerns of each parent
2 and the child. The court may designate one parent to have sole
3 power to make certain decisions while both parents retain
4 equal rights and responsibilities for other decisions. The
5 court may designate one parent to have tie-breaking authority
6 to make certain major decisions; however, that designation
7 does not negate the responsibility of that parent to discuss
8 those decisions with the other parent and to consider the
9 other parent's wishes and concerns. In the event of an impasse
10 and in the absence of an express award of tie-breaking
11 authority, the primary physical custodian shall have
12 tie-breaking authority for those decisions.

13 "(3) JOINT PHYSICAL CUSTODY. ~~Physical A~~ custody
14 arrangement where ~~physical~~ custody is shared by the parents in
15 a way that assures the child frequent and substantial contact
16 with each parent. ~~Joint physical custody does not necessarily~~
17 ~~mean physical custody of equal durations of time.~~

18 "(4) NONRESIDENTIAL CUSTODIAL PARENT. The parent
19 with whom the child does not live the majority of the time and
20 who does not have the primary authority and responsibility for
21 the day-to-day care and decisions relating to the raising of a
22 child or the authority to establish where a child will live,
23 but does have the authority and responsibility for the
24 day-to-day care and decisions related to the raising of a
25 child when the child is in his or her physical custody and not
26 in the physical custody of the parent with primary physical
27 custody.

1 "(5) PARENTING PLAN. A plan specifying the time
2 which a minor child will spend with each parent and which may
3 include provisions for progressive periods of time-sharing
4 within the court ordered time-sharing schedules based on the
5 increasing age and developmental considerations of the child,
6 the need of the child to be reunited with a parent, or any
7 other consideration pertaining to the child's best interest.
8 The inclusion of a progressive provision in a parenting plan
9 or a custody order does not alter the type of physical custody
10 ordered by the court or the burden of proof required to modify
11 custody.

12 "(5) SOLE (6) PRIMARY PHYSICAL CUSTODY. One parent
13 has sole physical custody and the other parent has rights of
14 visitation except as otherwise provided by the court. A status
15 of custody making one parent the predominant physical
16 custodian of the child and granting the other parent the
17 status of the nonresidential custodial parent, unless the
18 judge specifically grants the other parent the status of
19 restricted physical custody. The parent with primary physical
20 custody has the primary authority and responsibility for the
21 day-to-day care and decisions related to the raising of the
22 child and to establish where the child will live.

23 "(7) RESTRICTED PHYSICAL CUSTODY. A status of
24 custody where a parent's physical access to a child is limited
25 to supervised custody, no overnight custody, a suspension of
26 physical contact, or any other restrictions on custody

1 determined by the court to be in the best interest of the
2 child.

3 "~~(4)~~(8) SOLE LEGAL CUSTODY. ~~One~~ A status of custody
4 where one parent has sole rights and responsibilities to make
5 major decisions concerning the child, including, but not
6 limited to, the education of the child, health care, ~~and~~
7 religious training, and the civil, cultural, and athletic
8 activities of the child.

9 "§30-3-152.

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

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

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

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

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

6 "(5) The geographic proximity of the parents to each
7 other as this relates to the practical considerations of joint
8 physical custody.

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

12 "(c) If both parents request joint custody, the
13 there is a presumption is that joint custody is in the best
14 interest of the child. Joint custody, when requested by both
15 parents, shall be granted in the final order of the court
16 unless the court makes specific findings as to why joint
17 custody is not granted.

18 "(d) If joint custody is not awarded by the court,
19 all of the following factors shall be considered by the court
20 when determining which other custody arrangement is in the
21 best interest of the child. The court may weigh various
22 factors differently based on the facts presented and the best
23 interest of the child:

24 "(1) The relationship between each parent and the
25 child.

26 "(2) The relationship between the child and the
27 child's peers, siblings, or other relatives.

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

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

8 "(5) The effect on the child of disrupting or
9 continuing an existing custodial status.

10 "(6) Each parent's home environment.

11 "(7) The preferences of the parents.

12 "(8) The moral, mental, and physical fitness of each
13 parent.

14 "(9) The child's age and any special needs.

15 "(10) The preference of the child if the child is of
16 sufficient age and maturity.

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

21 "(12) Each parent's criminal history or evidence of
22 violence or sexual, mental, or physical abuse.

23 "(13) Evidence of substance abuse by either parent.

24 "(14) The child's current adjustment to or
25 involvement with his or her community.

26 "(15) Military considerations in accordance with
27 state and federal law.

1 "(16) Characteristics of those seeking custody,
2 including age, character, stability, and mental and physical
3 health.

4 "(17) The report and recommendation of any expert
5 witnesses or other independent investigator.

6 "(18) Parental alienation, which is any behavior or
7 attitude of one parent, both parents, or a third party
8 designed to interfere with, damage, or destroy the
9 relationship a child has with his or her biological parent.

10 "(19) Any other relevant factors.

11 "§30-3-153.

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

18 "(1) ~~The care and education of the child. The ways~~
19 ~~that the parents will share tasks and be responsible for the~~
20 ~~daily upbringing of the child.~~

21 "(2) ~~The medical and dental care of the child. A~~
22 ~~parenting plan that establishes the amount of time the child~~
23 ~~will spend with each parent.~~

24 "(3) ~~Holidays and vacations. A designation of who is~~
25 ~~responsible for any and all forms of health care and~~
26 ~~school-related matters, including the address to be used for~~

school residential determinations and registration and other activities.

"(4) Child support. Transportation arrangements for the child, including which parent bears the cost for transporting the child.

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

"(6) 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. Child support and the division of any expenses in addition to child support as provided by Rule 32 of the Rules of Judicial Administration.

"(7) A designation of the parent possessing primary authority and responsibility regarding involvement of the child in academic, religious, civic, cultural, athletic, and other activities, and in medical and dental care decisions if the parents are unable to agree.

"(8) Any other matter specifically delineated by the court.

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

4 "(c) If both parents submit the same parenting plan,
5 the presumption is that the parenting plan jointly submitted
6 by the parents is in the best interest of the child. The
7 parenting plan jointly submitted by both parents shall be
8 granted in the final order of the court, unless the court
9 makes specific findings as to why the parenting plan jointly
10 submitted by the parties should not be granted.

11 "§30-3-157.

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

16 "(b) When a parent seeks to modify physical custody
17 of the child after a voluntary forfeiture of physical custody
18 or a prior decree awarding primary physical custody to another
19 person, the parent seeking modification must prove all of the
20 following:

21 "(1) That a material change in circumstances has
22 occurred since the voluntary forfeiture or the previous
23 judgment.

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

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

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

6 §30-3-158.

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

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

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

(3) Order the parent who did not provide time-sharing, or did not properly exercise time-sharing under the 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 cost 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) A court of competent jurisdiction shall equally enforce all child custody and child support orders.

(b) 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, 2023.

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. 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, 2023, following its passage and approval by the Governor, or its otherwise becoming law.