

1 HB314
2 216231-1
3 By Representative Robbins
4 RFD: Judiciary
5 First Read: 08-FEB-22

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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.

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13 A BILL
14 TO BE ENTITLED
15 AN ACT

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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 require a parenting plan and to authorize the
26 court to establish a parenting plan in certain situations; to
27 specify the contents of the parenting plan; to specify the

1 factors the court may consider in establishing a parenting
2 plan; to specify remedies when a party fails to adhere to
3 certain provisions in a parenting plan, and to set
4 requirements for the modification of physical custody in
5 certain circumstances.

6 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

7 Section 1. Sections 30-3-1, 30-3-150, 30-3-151,
8 30-3-152, 30-3-153, and 30-3-157 of the Code of Alabama 1975,
9 are amended to read as follows:

10 "§30-3-1.

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

22 "§30-3-150.

23 ~~"Joint Custody.~~ It is the policy of this state to
24 assure that minor children have frequent and continuing
25 contact with parents who have shown the ability to act in the
26 best interest of their children and to encourage parents to
27 share in the rights and responsibilities of rearing their

1 children after the parents have separated or dissolved their
2 marriage. ~~Joint custody does not necessarily mean equal~~
3 ~~physical custody.~~

4 "§30-3-151.

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

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

9 "(2) JOINT LEGAL CUSTODY. ~~Both~~ A custody arrangement
10 where both parents have equal rights and responsibilities for
11 major decisions concerning the child, including, but not
12 limited to, the education of the child, health care, and
13 religious training and the responsibility to discuss those
14 decisions and consider the wishes and concerns of each parent
15 and the child. ~~The court may designate one parent to have sole~~
16 ~~power to make certain decisions while both parents retain~~
17 ~~equal rights and responsibilities for other decisions~~ The
18 court may designate one parent to have tie-breaking authority
19 to make certain major decisions; however, that designation
20 does not negate the responsibility of that parent to discuss
21 those decisions with the other parent and to consider the
22 other parent's wishes and concerns. In the event of an impasse
23 and in the absence of an express award of tie-breaking
24 authority, the primary physical custodian shall have
25 tie-breaking authority for those decisions.

26 "(3) JOINT PHYSICAL CUSTODY. ~~Physical~~ A custody
27 arrangement where physical custody is shared by the parents in

1 a way that assures the child frequent and substantial contact
2 with each parent. ~~Joint physical custody~~ This term does not
3 necessarily mean physical custody of equal durations of time.

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

14 "(5) PARENTING PLAN. A plan specifying the time
15 which a minor child will spend with each parent and which may
16 include provisions for progressive periods of time-sharing
17 within the court ordered time-sharing schedules based on the
18 increasing age and developmental considerations of the child,
19 the need of the child to be reunited with a parent, or any
20 other consideration pertaining to the child's best interest.
21 The inclusion of a progressive provision in a parenting plan
22 or a custody order does not alter the type of physical custody
23 ordered by the court or the burden of proof required to modify
24 custody.

25 ~~"(5) SOLE (6) PRIMARY PHYSICAL CUSTODY. One parent~~
26 ~~has sole physical custody and the other parent has rights of~~
27 ~~visitation except as otherwise provided by the court. A status~~

1 of custody making one parent the predominant physical
2 custodian of the child and granting the other parent the
3 status of the nonresidential custodial parent, unless the
4 judge specifically grants the other parent the status of
5 restricted physical custody. The parent with primary physical
6 custody has the primary authority and responsibility for the
7 day-to-day care and decisions related to the raising of the
8 child and to establish where the child will live.

9 "(7) RESTRICTED PHYSICAL CUSTODY. A status of
10 custody where a parent's physical access to a child is limited
11 to supervised custody, no overnight custody, a suspension of
12 physical contact, or any other restrictions on custody
13 determined by the court to be in the best interest of the
14 child.

15 "~~(4)~~(8) SOLE LEGAL CUSTODY. ~~One~~ A status of custody
16 where ~~one~~ parent has sole rights and responsibilities to make
17 major decisions concerning the child, including, but not
18 limited to, the education of the child, health care, ~~and~~
19 religious training, ~~and the civil, cultural, and athletic~~
20 activities of the child.

21 "§30-3-152.

22 "(a) The court shall in every case consider joint
23 custody but may award any form of custody which is determined
24 to be in the best interest of the child. In determining
25 whether joint custody is in the best interest of the child,
26 the court shall consider the same factors considered in
27 awarding ~~sole legal and physical~~ other forms of custody

1 arrangements and all of the ~~following~~ factors in this
2 subsection. The court may weigh various factors differently
3 based on the facts presented and the best interest of the
4 child:

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

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

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

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

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

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

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

26 "(d) If joint custody is not awarded by the court,
27 all of the following factors shall be considered by the court

1 when determining which other custody arrangement is in the
2 best interest of the child. The court may weigh various
3 factors differently based on the facts presented and the best
4 interest of the child:

5 "(1) The relationship between each parent and the
6 child.

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

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

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

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

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

19 "(7) The preferences of the parents.

20 "(8) The moral, mental, and physical fitness of each
21 parent.

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

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

25 "(11) The history of cooperation between the
26 parents, including the past and present history and the

1 capacity of each parent to facilitate or encourage a
2 continuing parent-child relationship with both parents.

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

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

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

8 "(15) Military considerations.

9 "(16) Characteristics of those seeking custody,
10 including age, character, stability, and mental and physical
11 health.

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

14 "(18) Any other relevant factors.

15 "§30-3-153.

16 "(a) ~~In order to implement joint custody, the~~ The

17 court shall require ~~the parents to submit, as part of their~~

18 ~~agreement,~~ each parent, separately or together, to submit a

19 parenting plan with provisions covering matters relevant to

20 the care and custody of the child, including, but not limited

21 to, all of the following:

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

23 that the parents will share tasks and be responsible for the

24 daily upbringing of the child.

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

26 parenting plan that establishes the amount of time the child

27 will spend with each parent.

1 "~~(3) Holidays and vacations. A designation of who is~~
2 responsible for any and all forms of health care and
3 school-related matters, including the address to be used for
4 school residential determinations and registration and other
5 activities.

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

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

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. The division of any
21 expenses in addition to child support as provided by Rule 32
22 of the Rules of Judicial Administration.

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

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

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

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

13 "§30-3-157.

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

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

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

26 "(2) That the child's best interest will be
27 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 2. 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.

1 (3) Order the parent who did not provide
2 time-sharing, or did not properly exercise time-sharing under
3 the time-sharing schedule, to attend a parenting course
4 approved by the court.

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

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

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

16 Section 3. This act shall apply only to custody
17 orders entered on or after January 1, 2023.

18 Section 4. This act shall become effective January
19 1, 2023, following its passage and approval by the Governor,
20 or its otherwise becoming law.