

1 SB24
2 214785-1
3 By Senator Butler
4 RFD: Judiciary
5 First Read: 11-JAN-22
6 PFD: 01/05/2022

8 SYNOPSIS: Under existing law, a grandparent may file
9 an action to establish visitation rights with his
10 or her grandchild in certain circumstances.

11 Under existing law, there is a rebuttable
12 presumption that a fit parent's decision not to
13 allow visitation to a grandparent, in certain
14 circumstances, is in the best interest of the
15 child.

16 This bill would provide that in cases of the
17 divorce or death of a parent or parents of the
18 child, there is a rebuttable presumption that a fit
19 grandparent's ability to exercise visitation with
20 the child is in the best interest of the child.

21 This bill would provide for temporary orders
22 granting visitation to a grandparent in instances
23 of the divorce or death of the parent or parents,
24 pending a final order.

25 This bill would prohibit courts from
26 enforcing a grandparent visitation order issued by

1 a court of a foreign state in certain
2 circumstances.

3 This bill would revise existing definitions
4 regarding custody to be consistent with terminology
5 used in case law and specify that joint physical
6 custody means frequent, substantial, and maximized
7 contact with both parents.

8 This bill would specify that there is a
9 rebuttable presumption that joint custody is in the
10 best interest of the child.

11 This bill would establish factors to be
12 considered when determining any custody arrangement
13 that does not award joint custody.

14 Existing law requires the parties in a child
15 custody matter to submit a parenting plan only in
16 cases where the parties request joint custody.

17 This bill would require the parties to
18 submit a parenting plan in all cases. This bill
19 would also authorize the court to establish a
20 parenting plan when the parties are unable to agree
21 upon one.

22 This bill would also specify that it is the
23 public policy of this state that a court with
24 competent jurisdiction shall enforce all parenting
25 time orders, custody orders, and child support
26 orders giving equal importance to each.

1 Section 2. Sections 30-3-4.2, 30-3-150, 30-3-151,
2 30-3-152, and 30-3-153 of the Code of Alabama 1975, are
3 amended to read as follows:

4 "§30-3-4.2.

5 "(a) For the purposes of this section, the following
6 words have the following meanings:

7 "(1) GRANDPARENT. The parent of a parent, whether
8 the relationship is created biologically or by adoption.

9 "(2) HARM. A finding by the court, by clear and
10 convincing evidence, that without court-ordered visitation by
11 the grandparent, the child's emotional, mental, or physical
12 well-being has been, could reasonably be, or would be
13 jeopardized.

14 "(b) A grandparent may file an original action in a
15 circuit court where his or her grandchild resides or any other
16 court exercising jurisdiction with respect to the
17 grandchild or file a motion to intervene in any action when
18 any court in this state has before it any issue concerning
19 custody of the grandchild, including a domestic relations
20 proceeding involving the parent or parents of the grandchild,
21 for reasonable visitation rights with respect to the
22 grandchild if any of the following circumstances exist:

23 "(1) An action for a divorce or legal separation of
24 the parents has been filed, or the marital relationship
25 between the parents of the child has been severed by death or
26 divorce.

1 "(2) The child was born out of wedlock and the
2 petitioner is a maternal grandparent of the child.

3 "(3) The child was born out of wedlock, the
4 petitioner is a paternal grandparent of the child, and
5 paternity has been legally established.

6 "(4) An action to terminate the parental rights of a
7 parent or parents has been filed or the parental rights of a
8 parent has been terminated by court order; provided, however,
9 the right of the grandparent to seek visitation terminates if
10 the court approves a petition for adoption by an adoptive
11 parent, unless the visitation rights are allowed pursuant to
12 Section 26-10A-30.

13 "(c) (1) ~~There~~ Except as provided in subsection (d),
14 there is a rebuttable presumption that a fit parent's decision
15 to deny or limit visitation to the petitioner is in the best
16 interest of the child.

17 "(2) To rebut the presumption, the petitioner shall
18 prove by clear and convincing evidence, both of the following:

19 "a. The petitioner has established a significant and
20 viable relationship with the child for whom he or she is
21 requesting visitation.

22 "b. Visitation with the petitioner is in the best
23 interest of the child.

24 "(d) (1) There is a rebuttable presumption that a fit
25 grandparent's ability to exercise visitation with the child is
26 in the best interest of the child when any of the following
27 are true:

1 "a. An action for a divorce or legal separation of
2 the parents has been filed.

3 "b. The marital relationship between the parents of
4 the child has been severed by death or divorce.

5 "c. An action to establish paternity, custody,
6 visitation, or support has been filed by or on behalf of a
7 parent.

8 "d. Regardless of marital status, either parent has
9 failed to offer financial support or emotional support for the
10 child or has otherwise failed to maintain a significant
11 parental relationship with the child for a period of six
12 months or more.

13 "e. A grandparent has had primary custody of the
14 child for more than one calendar year.

15 "(2) To rebut the presumption, the respondent shall
16 prove by clear and convincing evidence that visitation with
17 the child by the petitioner is not in the best interest of the
18 child.

19 "(e) To establish a significant and viable
20 relationship with the child, the petitioner shall prove by
21 clear and convincing evidence any of the following:

22 "(1) a. The child resided with the petitioner for at
23 least six consecutive months with or without a parent present
24 within the ~~three~~ five years preceding the filing of the
25 petition.

1 "b. The petitioner was the caregiver to the child on
2 a regular basis for at least six consecutive months within the
3 ~~three~~ five years preceding the filing of the petition.

4 "c. The petitioner had frequent or regular contact
5 with the child for at least 12 consecutive months that
6 resulted in a strong and meaningful relationship with the
7 child within the ~~three~~ five years preceding the filing of the
8 petition.

9 "(2) Any other facts that establish the loss of the
10 relationship between the petitioner and the child is likely to
11 harm the child.

12 "~~(e)~~ (f) To establish that visitation with the
13 petitioner is in the best interest of the child, the
14 petitioner shall prove by clear and convincing evidence all of
15 the following:

16 "(1) The petitioner has the capacity to give the
17 child love, affection, and guidance.

18 "(2) The loss of an opportunity to maintain a
19 significant and viable relationship between the petitioner and
20 the child has caused or is reasonably likely to cause harm to
21 the child.

22 "(3) The petitioner is willing to cooperate with the
23 parent or parents if visitation with the child is allowed.

24 "~~(f)~~ (g) The court shall make specific written
25 findings of fact in support of its rulings.

26 "~~(g)~~ (h) (1) A grandparent or grandparents who are
27 married to each other may not file a petition seeking an order

1 for visitation more than once every 24 months absent a showing
2 of good cause. The fact that a grandparent or grandparents who
3 are married to each other have petitioned for visitation shall
4 not preclude another grandparent from subsequently petitioning
5 for visitation within the 24-month period. After an order for
6 grandparent visitation has been granted, the parent, guardian,
7 or legal custodian of the child may file a petition requesting
8 the court to modify or terminate a grandparent's visitation
9 time with a grandchild.

10 "(2) The court may modify or terminate visitation
11 upon proof that a material change in circumstances has
12 occurred since the award of grandparent visitation was made
13 and a finding by the court that the modification or
14 termination of the grandparent visitation rights is in the
15 best interest of the child.

16 "~~(h)~~ (i) The court may award any party reasonable
17 expenses incurred by or on behalf of the party, including
18 costs, communication expenses, attorney's fees, guardian ad
19 litem fees, investigative fees, expenses for court-appointed
20 witnesses, travel expenses, and child care during the course
21 of the proceedings.

22 "~~(i)~~ (j) (1) Notwithstanding any provisions of this
23 section to the contrary, a petition filed by a grandparent
24 having standing under Chapter 10A of Title 26, seeking
25 visitation shall be filed in probate court and is governed by
26 Section 26-10A-30, rather than by this section if either of
27 the following circumstances exists:

1 "a. The grandchild has been the subject of an
2 adoption proceeding other than the one creating the
3 grandparent relationship.

4 "b. The grandchild is the subject of a pending or
5 finalized adoption proceeding.

6 "(2) Notwithstanding any provisions of this section
7 to the contrary, a grandparent seeking visitation pursuant to
8 Section 12-15-314 shall be governed by that section rather
9 than by this section.

10 "(3) Notwithstanding any provisions of this section
11 to the contrary, a parent of a parent whose parental rights
12 have been terminated by a court order in which the petitioner
13 was the Department of Human Resources, shall not be awarded
14 any visitation rights pursuant to this section.

15 "~~(j)~~(k) The right of a grandparent to maintain
16 visitation rights pursuant to this section terminates upon the
17 adoption of the child except as provided by Section 26-10A-30.

18 "~~(k)~~(l) All of the following are necessary parties
19 to any action filed under this section:

20 "(1) Unless parental rights have been terminated,
21 the parent or parents of the child.

22 "(2) Every other person who has been awarded custody
23 or visitation with the child pursuant to court order.

24 "(3) Any agency having custody of the child pursuant
25 to court order.

26 "~~(l)~~(m) In addition, upon filing of the action,
27 notice shall be given to all other grandparents of the child.

1 The petition shall affirmatively state the name and address
2 upon whom notice has been given.

3 "~~(m)~~ (n) Service and notice shall be made in the
4 following manner:

5 "(1) Service of process on necessary parties shall
6 be made in accordance with the Alabama Rules of Civil
7 Procedure.

8 "(2) As to any other person to whom notice is
9 required to be given under subsection (1), notice shall be
10 given by first class mail to the last known address of the
11 person or persons entitled to notice. Notice shall be
12 effective on the third day following mailing.

13 "~~(n)~~ (o) Notwithstanding the foregoing, the notice
14 requirements provided by this section may be limited or waived
15 by the court to the extent necessary to protect the
16 confidentiality and the health, safety, or liberty of a person
17 or a child.

18 "~~(o)~~ Upon (p) (1) Except as provided in subdivision
19 (2), upon filing an action under this section, after giving
20 special weight to the fundamental right of a fit parent to
21 decide which associations are in the best interest of his or
22 her child, the court may, after a hearing, enter a pendente
23 lite order granting temporary visitation rights to a
24 grandparent, pending a final order, if the court determines
25 from the evidence that the petitioner has established a
26 significant and viable relationship with the child for whom he
27 or she is requesting visitation, visitation would be in the

1 best interest of the child, and any of the following
2 circumstances exist:

3 "~~(1)~~a. The child resided with the grandparent for at
4 least six consecutive months within the ~~three~~ five years
5 preceding the filing of the petition.

6 "~~(2)~~b. The grandparent was the caregiver of the
7 child on a regular basis for at least six consecutive months
8 within the ~~three~~ five years preceding the filing of the
9 petition.

10 "~~(3)~~c. The grandparent provided significant
11 financial support for the child for at least six consecutive
12 months within the ~~three~~ five years preceding the filing of the
13 petition.

14 "~~(4)~~d. The grandparent had frequent or regular
15 contact with the child for at least 12 consecutive months
16 within the ~~three~~ five years preceding the filing of the
17 petition.

18 "(2) Upon filing an action under this section, if
19 the petitioner is a grandparent, and any of the following are
20 true, the court, after a hearing, may enter a pendente lite
21 order granting temporary visitation rights to a grandparent,
22 pending a final order, if the court determines that the
23 presumption that a fit grandparent's ability to exercise
24 visitation with the child is in the best interest of the child
25 has not been rebutted by the respondent:

26 "a. An action for a divorce or legal separation of
27 the parents has been filed.

1 "b. The marital relationship between the parents of
2 the child has been severed by death or divorce.

3 "c. An action to establish paternity, custody,
4 visitation, or support has been filed by or on behalf of a
5 parent.

6 "d. Regardless of marital status, either parent has
7 failed to offer financial support or emotional support for the
8 child or has otherwise failed to maintain a significant
9 parental relationship with the child for a period of six
10 months or more.

11 "(g) The courts of this state may not enforce,
12 including through the power of contempt, any grandparent
13 visitation order issued by a court of a foreign state that
14 purports to apply to a child who resided in this state at the
15 time of the issuance of the foreign state court order. Any
16 grandparent seeking visitation with a child who resides in
17 this state must do so under this section.

18 "(r) The courts of this state may not enforce,
19 including through the power of contempt, a visitation order
20 issued by a court of a foreign state that does not include
21 specific written findings of fact based on clear and
22 convincing evidence sufficient to rebut the respective
23 presumptions provided for in this section. To be enforced, the
24 foreign state order must provide specific written findings of
25 fact based on clear and convincing evidence that both of the
26 following are true:

1 "(1) The petitioner has established a significant
2 and viable relationship with the child for whom the foreign
3 state court issued an order of visitation.

4 "(2) Visitation with the petitioner is in the best
5 interest of the child.

6 ~~"(p)(s)~~ As a matter of public policy, this section
7 recognizes the importance of family and the fundamental rights
8 of parents and children. In the context of grandparent
9 visitation under this section, a fit parent's decision
10 regarding whether to permit grandparent visitation is entitled
11 to special weight due to a parent's fundamental right to make
12 decisions concerning the rearing of his or her child.
13 Nonetheless, a parent's interest in a child must be balanced
14 against the long-recognized interests of the state as *parens*
15 *patriae*. Thus, as applied to grandparent visitation under this
16 section, this section balances the constitutional rights of
17 parents and children by imposing an enhanced standard of
18 review and consideration of the harm to a child caused by the
19 parent's limitation or termination of a prior relationship of
20 a child to his or her grandparent.

21 "§30-3-150.

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

1 marriage. ~~Joint custody does not necessarily mean equal~~
2 ~~physical custody.~~

3 "§30-3-151.

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

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

8 "(2) JOINT LEGAL CUSTODY. ~~Both~~ When both parents
9 have equal rights and responsibilities for major decisions
10 concerning the child, including, but not limited to, the
11 education of the child, health care, and religious training,
12 and the responsibility to discuss those decisions and consider
13 the wishes and concerns of each parent and the child. The
14 court may designate one parent to have sole power to make
15 certain decisions while both parents retain equal rights and
16 responsibilities for other decisions; however, that
17 designation does not negate the responsibility of that parent
18 to discuss those decisions with the other parent and to
19 consider the other parent's wishes and concerns.

20 "(3) JOINT PHYSICAL CUSTODY. Physical custody is
21 shared by the parents in a way that assures the child frequent
22 and substantial contact with each parent. ~~Joint physical~~
23 ~~custody does not necessarily mean physical custody of equal~~
24 ~~durations of time.~~ Frequent and substantial contact means that
25 the child has equal or approximately equal time with both
26 parents.

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

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

13 ~~"(5)(6) SOLE PRIMARY PHYSICAL CUSTODY. One parent~~
14 ~~has sole physical custody and the other parent has rights of~~
15 ~~visitation except as otherwise provided by the court. When one~~
16 ~~parent has the authority and responsibility for the day-to-day~~
17 ~~care and decisions related to the raising of a child and to~~
18 ~~establish where a child will reside, which will be the address~~
19 ~~of the child for determinations as to school and residence.~~

20 "Any change of the child's primary physical
21 residence must be made in compliance with the Alabama
22 Parent-Child Relationship Protection Act.

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

1 "~~(4)~~(8) SOLE LEGAL CUSTODY. ~~One~~ When one parent has
2 sole rights and responsibilities to make major decisions
3 concerning the child, including, but not limited to, the
4 education of the child, health care, and religious training.

5 "§30-3-152.

6 "~~(a) The court shall in every case consider joint~~
7 ~~custody but may award any form of custody which is determined~~
8 ~~to be~~ There shall be a rebuttable presumption that joint
9 custody is in the best interest of the child. This rebuttable
10 presumption may be overcome only by clear and convincing
11 evidence that joint custody is not in the best interest of the
12 child. In determining whether joint custody is in the best
13 interest of the child, the court shall consider the same
14 factors considered in awarding ~~sole legal and physical~~ other
15 forms of custody arrangements and all of the ~~following~~ factors
16 below. The court may weigh various factors differently based
17 on the facts presented and the best interests of the child:

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

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

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

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

1 "(5) The geographic proximity of the parents to each
2 other as this relates to the practical considerations of joint
3 physical custody.

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

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

9 "(c) If both parents request joint custody, the
10 presumption is that joint custody is in the best interest of
11 the child. Joint custody shall be granted in the final order
12 of the court unless the court makes specific findings as to
13 why joint custody is not granted.

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

20 "(1) The preferences of the parents.

21 "(2) Moral, mental, and physical fitness of each
22 parent.

23 "(3) The capacity of each parent to provide a loving
24 relationship and the needs of each child, including the
25 child's emotional, social, moral, material, and educational
26 needs.

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

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

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

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

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

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

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

15 "(11) Military considerations in accordance with
16 state and federal law.

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

19 "(13) The relationship between each parent and the
20 child.

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

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

25 "(16) Any other relevant factors.

26 "§30-3-153.

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

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

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

12 ~~"(3) Holidays and vacations. A designation of who is~~
13 responsible for any and all forms of health care,
14 school-related matters, including the address to be used for
15 school residential determination and registration, and other
16 activities.

17 ~~"(4) Child support. Transportation arrangements for~~
18 the child, including who bears the cost for transporting the
19 child.

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

24 ~~"(6) Designating the parent possessing primary~~
25 authority and responsibility regarding involvement of the
26 minor child in academic, religious, civic, cultural, athletic,
27 and other activities, and in medical and dental care if the

1 ~~parents are unable to agree on these decisions. The exercise~~
2 ~~of this primary authority is not intended to negate the~~
3 ~~responsibility of the parties to notify and communicate with~~
4 ~~each other as provided in this article. The division of any~~
5 ~~expenses in addition to child support as provided by Rule 32~~
6 ~~of the Rules of Judicial Administration.~~

7 "(7) A designation of the parent possessing primary
8 authority and responsibility regarding involvement of the
9 minor child in academic, religious, civic, cultural, athletic,
10 and other activities, and in medical, dental, vision, mental
11 health care and the like, if the parents are unable to agree
12 on these decisions.

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

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

18 "(c) If both parents submit the same parenting plan,
19 the presumption is that the parenting plan jointly submitted
20 by the parents is in the best interest of the child. The
21 parenting plan jointly submitted by both parents shall be
22 granted in the final order of the court unless the court makes
23 specific findings as to why the parenting plan jointly
24 submitted by the parties is not granted."

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

27 §30-3-158.

1 (a) When a parent refuses to adhere to the time
2 sharing schedule in the parenting plan ordered by the court
3 without proper cause, the court may take any of the following
4 actions:

5 (1) After calculating the amount of time sharing
6 improperly denied, award the parent denied time a sufficient
7 amount of extra time sharing to compensate for the time
8 sharing missed, and the time sharing shall be ordered as
9 expeditiously as possible in a manner consistent with the best
10 interests of the child and scheduled in a manner that is
11 convenient for the parent deprived of time sharing. In
12 ordering any make-up time sharing, the court shall schedule
13 the time sharing in a manner that is consistent with the best
14 interests of the child or children and that is convenient for
15 the nonoffending parent and at the expense of the noncompliant
16 parent.

17 (2) Order the parent who did not provide time
18 sharing or did not, with reasonable notice, properly exercise
19 time sharing under the time sharing schedule, to pay
20 reasonable court costs and attorney's fees incurred by the
21 nonoffending parent to enforce the time sharing schedule.

22 (3) Order the parent who did not provide time
23 sharing or did not, with reasonable notice, properly exercise
24 time sharing under the time sharing schedule, to attend a
25 parenting course approved by the court. The parenting course,
26 among other things, shall educate the parent about the
27 benefits of a child's relationship with both parents.

1 (4) Order the parent who did not provide time
2 sharing or did not, with reasonable notice, properly exercise
3 time sharing under the time sharing schedule, to pay the
4 actual costs incurred by the other parent because of the
5 failure to provide time sharing or the failure to properly
6 exercise time sharing as provided by the court order.

7 (5) Impose any other reasonable remedies as a result
8 of noncompliance.

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

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

14 (b) As a matter of public policy, it is the intent
15 of the Legislature that this act be implemented in a manner
16 that recognizes the importance of family and the fundamental
17 rights of parents and children.

18 (c) This act shall apply to parenting time orders,
19 custody orders, and child support orders issued on or after
20 January 1, 2023, and the provisions of this act may not be
21 construed to assert a material change of circumstances for
22 purposes of modifying an order in place before January 1,
23 2023.

24 Section 5. The provisions of this act are severable.
25 If any part of this act is declared invalid or
26 unconstitutional, that declaration shall not affect the part
27 which remains.

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