

HB147 INTRODUCED



1 HB147
2 XD9DLZ7-1
3 By Representative Paschal
4 RFD: Judiciary
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4 SYNOPSIS:

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

11 Existing law defines "joint physical custody" as
12 frequent and substantial contact with each parent but
13 does not define what frequent and substantial contact
14 means.

15 This bill would define frequent and substantial
16 contact to mean that the child has equal or
17 approximately equal time with both parents and would
18 revise existing definitions regarding custody to be
19 consistent with terminology used in case law.

20 This bill would create a rebuttable presumption
21 that joint custody is in the best interest of the
22 child, except in cases of domestic or family abuse, and
23 establish uniform guidelines for a court to consider
24 when determining any custody arrangement other than
25 joint custody.

26 Existing law does not require a court to
27 document that the court considered and rejected joint
28 custody and the reasons for the rejection.



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29 This bill would require a court to document its
30 reasons for deviating from the presumption that joint
31 custody is in the best interest of the child.

32 Existing law requires the parties in a child
33 custody matter to submit a parenting plan only in cases
34 where the parties request joint custody.

35 This bill would require the parties to submit a
36 parenting plan that follows a joint custody model.

37 In cases where the court has determined that
38 domestic or family abuse occurred, this bill would
39 authorize the court to: (i) allow for parenting plans
40 to be submitted which do not reflect joint custody;
41 (ii) suspend the requirement that the perpetrator of
42 domestic or family abuse submit a parenting plan; or
43 (iii) set the plan.

44 This bill would provide that, if a parent
45 believes joint custody is not in the best interest of
46 his or her child whose custody is at issue, he or she
47 may file a motion for temporary relief, which the court
48 must expedite.

49 This bill would provide certain penalties if a
50 motion for temporary relief is filed in bad faith or
51 without factual support.

52 This bill would authorize the court to establish
53 a parenting plan when the parties are unable to agree
54 upon the plan.

55 This bill would specify additional remedies to a
56 party when a parent, without proper cause, fails to



57 adhere to the time-sharing schedule in a parenting
58 plan, including makeup parenting time and reimbursement
59 for costs and attorney fees.

60 This bill would also specify that this act does
61 not limit domestic or family abuse laws.

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64 A BILL

65 TO BE ENTITLED

66 AN ACT

67

68 Relating to child custody; to amend Sections 30-3-150,
69 30-3-151, 30-3-152, and 30-3-153 of the Code of Alabama 1975,
70 and to add Sections 30-3-158 and 30-3-159 to the Code of
71 Alabama 1975, relating to child custody; to provide further
72 for the policy of this state regarding child custody; to
73 provide further for definitions; to provide that there is a
74 rebuttable presumption that joint custody is in the best
75 interest of the child, which can be overcome only by evidence;
76 to provide an exception in cases of domestic or family abuse;
77 to establish factors for a court to consider when determining
78 any custody arrangement other than joint custody; to require a
79 parenting plan and to authorize the court to establish a
80 parenting plan in certain situations; to specify remedies when
81 a party fails to adhere to certain provisions in a parenting
82 plan; to allow a parent to file a petition for temporary
83 relief if he or she believes joint custody is not in the best
84 interest of the child; to provide certain remedies if an



85 unsupported or bad faith petition for temporary relief is
86 filed; and to provide that nothing in this act shall be
87 construed to limit domestic or family abuse provisions of the
88 law.

89 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

90 Section 1. This act shall be known and may be cited as
91 the Best Interest of the Child Protection Act of 2026.

92 Section 2. Sections 30-3-150, 30-3-151, 30-3-152, and
93 30-3-153, Code of Alabama 1975, are amended to read as
94 follows:

95 "§30-3-150

96 Joint Custody. It is the policy of this state to assure
97 that minor children have frequent and continuing contact with
98 parents who have shown the ability to act in the best interest
99 of their children and to encourage parents to share in the
100 rights and responsibilities of rearing raising their children
101 after the parents have separated or dissolved their marriage.

102 Joint custody does not necessarily mean equal physical
103 custody. It is the intent of the Legislature that this chapter
104 be implemented in a manner that recognizes the importance of
105 family and the fundamental rights of parents and children. The
106 social science research indicates it is in the best interest
107 of children to have consistent and maximized contact with
108 parents. In custody hearings, courts are encouraged to keep
109 this in mind when determining the best interest of the child."

110 "§30-3-151

111 For the purposes of this article the following words
112 shall have the following meanings:



113 (1) JOINT CUSTODY. Joint legal custody and joint
114 physical custody.

115 (2) JOINT LEGAL CUSTODY. ~~Both~~ A custody arrangement
116 where both parents have equal rights and responsibilities for
117 major decisions concerning the child, including, but not
118 limited to, the education of the child, health care, ~~and~~
119 religious training, and the responsibility to discuss those
120 decisions and consider the wishes and concerns of each parent
121 and the child. The court may designate one parent to have ~~sole~~
122 ~~power to make certain decisions while both parents retain~~
123 ~~equal rights and responsibilities for other decisions~~final
124 decision-making authority to make certain major decisions;
125 provided, however, that designation does not negate the
126 responsibility of that parent to discuss those decisions with
127 the other parent and to consider the other parent's wishes and
128 concerns. In the event of an impasse and in the absence of an
129 express award of final decision-making authority, the primary
130 physical custodian shall have final decision-making authority
131 for those decisions.

132 (3) JOINT PHYSICAL CUSTODY. ~~Physical~~ A custody
133 arrangement where physical custody is shared by the parents in
134 a way that assures the child frequent and substantial contact
135 with each parent. ~~Joint physical custody does not necessarily~~
136 ~~mean physical custody of equal durations of time~~ For purposes
137 of this subdivision, "frequent and substantial contact" means
138 that the child has equal or approximately equal time with both
139 parents.

140 (4) NONRESIDENTIAL CUSTODIAL PARENT. The parent with



141 whom the child does not live the majority of the time and who
142 does not have the primary authority and responsibility for the
143 day-to-day care and decisions relating to the raising of a
144 child or the authority to establish where a child will live,
145 but who does have the authority and responsibility for the
146 day-to-day care and decisions related to the raising of a
147 child when the child is in his or her physical custody and not
148 in the physical custody of the parent with primary physical
149 custody as outlined in the parenting plan.

150 (5) PARENTING PLAN. A plan specifying the time that a
151 minor child will spend with each parent and which may include
152 provisions for progressive periods of time-sharing within the
153 court ordered time-sharing schedules based on the increasing
154 age and developmental considerations of the child, the need of
155 the child to be reunited with a parent, or any other
156 consideration pertaining to the child's best interest. The
157 inclusion of a progressive provision in a parenting plan or a
158 custody order does not alter the type of physical custody
159 ordered by the court or the burden of proof required to modify
160 custody.

161 (6) PRIMARY PHYSICAL CUSTODY. A status of custody
162 making one parent the predominant physical custodian of the
163 child and granting the other parent the status of the
164 nonresidential custodial parent, unless the judge specifically
165 grants the other parent the status of restricted physical
166 custody. The parent with primary physical custody has the
167 primary authority and responsibility for the day-to-day care
168 and decisions related to the raising of the child and to



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169 establish where the child will live.

170 (7) RESTRICTED PHYSICAL CUSTODY. A status of custody
171 where a parent's physical access to a child is limited to
172 supervised custody, no overnight custody, a suspension of
173 physical contact, or any other restrictions on custody
174 determined by the court to be in the best interest of the
175 child.

176 ~~(4)~~ (8) SOLE LEGAL CUSTODY. ~~One~~ A status of custody
177 where one parent has sole rights and responsibilities to make
178 major decisions concerning the child, including, but not
179 limited to, the education of the child, health care, and
180 religious training, and the civil, cultural, and athletic
181 activities of the child.

182 ~~(5) SOLE PHYSICAL CUSTODY.~~ ~~One parent has sole physical~~
183 ~~custody and the other parent has rights of visitation except~~
184 ~~as otherwise provided by the court."~~

185 "§30-3-152

186 (a) ~~The court shall in every case consider joint~~
187 ~~custody but may award any form of custody which is determined~~
188 ~~to be~~ Except as provided in Article 6 of this chapter, there
189 shall be a rebuttable presumption that joint custody is in the
190 best interest of the child. This rebuttable presumption may be
191 overcome by a preponderance of the evidence, set forth in
192 written findings of fact, that joint custody is not in the
193 best interest of the child. In the event the presumption is
194 rebutted, the court shall enter an order that includes all of
195 the following:

196 (1) The court's reason for deviating from the joint



197 custody arrangement.

198 (2) The facts and findings concerning the basis for the
199 court's determination.

200 (3) A parenting plan that maximizes the time each
201 parent has with the child and is consistent with ensuring the
202 welfare of the child.

203 (b) In determining whether joint custody is in the best
204 interest of the child, the court shall consider the same
205 factors considered in awarding ~~sole legal and physical~~ any
206 other form of custody arrangement and all of the following
207 factors, but may weigh various factors differently based on
208 the factors presented and the best interest of the child:

209 (1) The agreement or lack of agreement of the parents
210 on joint custody.

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

213 (3) The ability of the parents to encourage the sharing
214 of love, affection, and contact between the child and the
215 other parent.

216 (4) Any history of or potential for child abuse, spouse
217 abuse, or kidnapping.

218 (5) The geographic proximity of the parents to each
219 other as this relates to the practical considerations of joint
220 physical custody.

221 (b) (c) The court may order a form of joint custody
222 without the consent of both parents, when it is in the best
223 interest of the child.

224 (c) (d) If both parents request joint custody, ~~the~~ there



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225 is a presumption ~~is~~—that joint custody is in the best interest
226 of the child. Joint custody, when requested by both parents,
227 shall be granted in the final order of the court unless the
228 court makes specific findings as to why joint custody is not
229 granted.

230 (e) If joint custody is not awarded by the court, all
231 of the following factors shall be considered by the court when
232 determining which other custody arrangement is in the best
233 interest of the child. The court may weigh the following
234 factors differently based on the facts presented and the best
235 interest of the child:

236 (1) The preferences of the parents.

237 (2) The moral, mental, and physical fitness of each
238 parent.

239 (3) The capacity of each parent to engage in a loving
240 relationship with the child and to provide for the needs of
241 the child, including the child's emotional, social, moral,
242 material, and educational needs.

243 (4) The history of cooperation between the parents,
244 including the past and present history and the capacity of
245 each parent to facilitate or encourage a continuing
246 parent-child relationship with both parents.

247 (5) Each parent's home environment.

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

250 (7) Evidence of substance abuse by either parent.

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

252 (9) Characteristics of each individual seeking custody,



253 including age, character, stability, and mental and physical
254 health.

255 (10) The report and recommendation of any expert
256 witnesses or other independent investigator.

257 (11) Military considerations in accordance with state
258 and federal law.

259 (12) The child's current adjustment to or involvement
260 with his or her community.

261 (13) The relationship between each parent and the
262 child.

263 (14) The preference of the child if the child is of
264 sufficient age and maturity.

265 (15) The relationship between the child and the child's
266 peers, siblings, or other relatives.

267 (16) Each parent's knowledge and familiarity with the
268 child and level of involvement in the child's life both prior
269 to and after the separation of the parents.

270 (17) The effect on the child of disrupting or
271 continuing an existing custodial status.

272 (18) Any history or evidence of parental alienation.

273 For the purpose of this subdivision, parental alienation
274 occurs in a child as the result of intentional and purposeful
275 behavior by one parent to undermine and sever the child's
276 relationship with the other parent.

277 (19) Any other relevant factors."

278 "§30-3-153

279 (a) In order to implement joint custody, theThe court
280 shall require the parents to submit, as part of their



281 agreement, each parent, separately or together, to submit a
282 parenting plan with provisions covering matters relevant to
283 the care and custody of the child, including, but not limited
284 to, all of the following:

285 (1) The care and education of the child. The ways in
286 which the parents will share tasks and responsibilities for
287 the daily upbringing of the child.

288 (2) The medical and dental care of the child. The amount
289 of time the child will spend with each parent.

290 (3) Holidays and vacations. A designation of which
291 parent is responsible for the health care of the child and
292 school-related matters, including the address to be used to
293 establish residence for school and other activities.

294 (4) Child support. Transportation arrangements for the
295 child, including which parent bears the costs of transporting
296 the child.

297 (5) Other necessary factors that affect the physical or
298 emotional health and well-being of the child.

299 (6) The methods and technologies that the parents
300 intend to use to communicate with the child and each other.

301 (7) A designation of which parent possesses~~(6)~~
302 ~~Designating the parent possessing~~ primary authority and
303 responsibility regarding involvement of the minor child in
304 academic, religious, civic, cultural, athletic, and other
305 activities, and in medical and dental care if the parents are
306 unable to agree on these decisions. The exercise of this
307 primary authority is not intended to negate the responsibility
308 of the parties to notify and communicate with each other as



309 provided in this article.

310 (8) Child support and the division of any expenses in
311 addition to child support, as provided in Rule 32 of the
312 Alabama Rules of Judicial Administration.

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

316 (2) In cases in which the court determines that
317 domestic or family abuse has occurred as provided in Article
318 6, the court may set the plan or suspend the requirement that
319 the perpetrator of domestic or family abuse must submit a
320 parenting plan.

321 (c) Any parenting plan submitted by the parents
322 pursuant to subsection (a) shall follow a joint custody model,
323 unless:

324 (1) Subsection (d) applies; or

325 (2) There is a determination by the court that domestic
326 or family abuse has occurred, as provided in subdivision
327 (b) (2).

328 (d) If a parent believes, based upon the facts and
329 circumstances of the case or any factors to be considered by
330 the court pursuant to Section 30-3-152, that joint custody is
331 not in the best interest of a child whose custody is being
332 determined, the parent shall file, in conjunction with the
333 parenting plan, a verified motion for temporary relief,
334 pendente lite. A verified motion for temporary relief,
335 pendente lite, filed pursuant to this subsection shall state
336 with specificity sufficient allegations of fact to justify



337 relief. The court shall expeditiously consider all motions
338 filed pursuant to this subsection.

339 (e) If the court determines that a party filed a
340 verified motion for temporary relief, pendente lite, in the
341 absence of an adequate factual basis or in bad faith, the
342 court shall award reasonable attorney fees to the non-filing
343 party to be paid by the filing party. The court may also
344 impose other sanctions it deems reasonable, including, but not
345 limited to, providing that the unsupported or bad faith filing
346 may be considered as a negative factor during the custody
347 determination."

348 Section 3. Sections 30-3-158 and 30-3-159 are added to
349 the Code of Alabama 1975, to read as follows:

350 §30-3-158

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

354 (1) After calculating the amount of time-sharing
355 improperly denied by a parent, issue an order awarding the
356 parent who was denied time a sufficient amount of extra
357 time-sharing to compensate for the time-sharing missed. The
358 order shall be issued as expeditiously as possible in a manner
359 consistent with the best interest of the child and scheduled
360 in a manner that is convenient for the parent deprived of
361 time-sharing. In ordering any makeup time-sharing, the court
362 shall schedule the time-sharing: (i) in a manner that is
363 consistent with the best interest of the child or children;
364 (ii) which is convenient for the nonoffending parent; and



365 (iii) at the expense of the noncompliant parent. For the
366 purposes of this section, the term "noncompliant parent"
367 refers to the parent who did not provide time-sharing or did
368 not properly exercise time-sharing under the time-sharing
369 schedule.

370 (2) Order the noncompliant parent to pay reasonable
371 court costs and attorney fees incurred by the nonoffending
372 parent to enforce the time-sharing schedule.

373 (3) Order the noncompliant parent to attend a parenting
374 course approved by the court. The parenting course shall
375 educate the parent about the benefits of a child's
376 relationship with both parents.

377 (4) Order the noncompliant parent to pay the actual
378 costs incurred by the other parent because of the failure to
379 provide time-sharing or the failure to properly exercise
380 time-sharing as provided by the court order.

381 (5) Impose any other reasonable remedies as a result of
382 noncompliance.

383 (b) The actions described in subsection (a) are in
384 addition to existing remedies, including, but not limited to,
385 contempt.

386 §30-3-159

387 (a) A court of competent jurisdiction shall equally
388 enforce all child custody and child support orders.

389 (b) Nothing in this article shall be construed to limit
390 the domestic or family abuse provisions provided in Article 6
391 of Chapter 3, Title 30.

392 (c) The provisions of this act may not be construed to

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393 constitute a material change of circumstances for purposes of
394 modifying an order in place before January 1, 2027.

395 Section 4. The provisions of this act are severable. If
396 any part of this act is declared invalid or unconstitutional,
397 that declaration shall not affect the part which remains.

398 Section 5. This act shall become effective on January
399 1, 2027.