

1 **'No Parent Left Behind'**

2

3 **SYNOPSIS:** Existing law provides any type of child
4 custody arrangement ordered without any finding of
5 parental unfitness or written findings of fact.

6 This bill will replace existing divorce and
7 custody law providing equality and accountability
8 consistent with fundamental Constitutional law. This
9 bill is also consistent with current creditable child
10 development research related to custody and divorce.
11 This bill requires use of a parenting plan in every
12 case.

13

14 **A BILL**
15 **TO BE ENTITLED**
16 **AN ACT**
17

18 Code of Alabama Annotated, Section 30-2-50 to 30-2-52, 30-
19 2-54, 30-2-55, and 30-3-1 to 30-3-2, and 30-3-8 is deleted in
20 its entirety. Section 30-3-150 to Section 30-3-159, is amended
21 by deleting the current language in its entirety, and by
22 substituting the following:

23

24 **BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:**
25
26

27 **Section 30-3-150**

28

29

State Policy

30

31 It is the public policy of this state that children have the
32 right to equal access with fit parents, the right to be guided
33 and nurtured by both parents, the right to have major decisions
34 made by the application of parents' wisdom, judgment and
35 experience. Both parents and the children have a fundamental
36 constitutional right to share in the parent-child relationship
37 unless one parent is proven unfit by clear and convincing
38 evidence. A divorce from a spouse is not a divorce from their
39 children. Therefore, there is a fundamental importance of the
40 parent-child relationship to the welfare of the child, and the
41 relationship between the child and each parent.

42

43 **Section 30-3-151**

44

Definitions

45

46 For the purposes of this article the following words shall
47 have the following meanings:

48

49 (1) **SHARED LEGAL CUSTODY.** Concurrent shared legal
50 custody. Unless the parents, by fair agreement, agree

51 otherwise, both parents shall have equal rights and
52 responsibilities for major decisions concerning the
53 child, including, but not limited to, selecting
54 residential parenting times, the education of the
55 child, health care, religious training and extra-
56 curricular activities.

57

58 (2) SHARED PHYSICAL CUSTODY. Concurrent shared physical
59 custody. Both parents shall have equal physical
60 custody, unless the parents, by fair agreement, agree
61 otherwise.

62

63 (3) SOLE LEGAL CUSTODY. One parent has sole rights and
64 responsibilities to make major decisions concerning
65 the child, including, but not limited to, the
66 education of the child, health care, and religious
67 training. This parent has primary physical custody and
68 the other parent has rights to parenting time as
69 determined by the court.

70

71 (4) RESIDENTIAL PARENTING TIME. The allotment of time a
72 child spends in the physical care and control of a
73 parent.

74

75 (5) PARENTAL UNFITNESS. A parent that fails to properly
76 care for the child and maintain for the child's
77 emotional health and overall well-being that such
78 failure will seriously harm the child. Also
79 reference: Section 26-14-1; and Section 25-15-1 to 25-
80 15-4; and Section 26-18-1 to 26-18-11.

81

82 (6) PARENTING PLAN. A written parenting plan outlining
83 parenting responsibilities regarding major decisions
84 concern the children, and residential parenting times
85 including, but not limited to, residential times for
86 major holidays, birthdays, summer vacation, fall
87 school break, spring school break, etc.

88

89 **Section 30-3-152**

90

91 **Considerations by the Court.**

92

93 Consistent with equality as mandated by the United States
94 Constitution and the Alabama Constitution, in every filing for
95 divorce or custody modification, absent a finding of parental
96 unfitness by clear and convincing evidence, the court has no
97 jurisdiction to decide divorce, property or child custody

98 issues. Absent a fair agreement between the parties in all
99 contested cases the court shall:

100

101 (a) In making an order or judgment relative to the custody of
102 children, the rights of both parents shall be held to be
103 equal.

104

105 (b) In making an order or judgment relative to parenting time
106 of said children, the rights of residential parenting time
107 shall be held to be equal.

108

109 (c) In making an order or judgment relative to all marital
110 property, said property shall be sold with proceeds from
111 said sale split equally between the parties.

112

113 (d) Upon the filing of an action in accordance with the
114 provisions of this Act and until a judgment on the merits
115 is rendered, the parents shall have temporary shared legal
116 custody and temporary shared physical custody of any minor
117 child of the marriage; provided, however, the judge may
118 enter an order for temporary sole legal and/or physical
119 custody to one parent if the parents, by fair agreement,
120 have agreed otherwise; or following an evidentiary hearing,
121 the court finds one parent is unfit for shared custody

122 consistent with this Act, and written findings are made
123 accordingly.

124
125 (e) The court shall in every case, when making a determination
126 of parental unfitness, enter an order with written findings
127 of fact.

128

129 **Section 30-3-153**

130

131 **Implementation; required provisions; parenting plan**

132

133 (a) Both parents, as part of their agreement, shall create
134 a parenting plan with provisions covering all matters
135 relevant to the care and custody of the child,
136 including, but not limited to, all of the following:

137

138 (1) A residential parenting time schedule;

139

140 (2) Designating the exercise primary authority
141 and responsibility regarding involvement of
142 the minor child in academic, religious,
143 civic, cultural, athletic, and other
144 activities, and medical and dental care;

145

146 (3) The exercise of primary authority, unless by
147 fair agreement otherwise, is with the parent
148 that has the child in their physical care at
149 that given time. In cases of disagreement
150 after implementation of the parenting plan,
151 absent such disagreement would seriously
152 harm the child, the father has primary
153 authority in even years, and the mother has
154 primary authority in odd years. Primary
155 authority is not intended to negate the
156 responsibility of the parties to notify and
157 communicate with each other as provided in
158 this Act;

159
160 (4) The care and education of the child;

161
162 (5) The medical and dental care of the child;

163
164 (6) Holidays and vacations;

165
166 (7) Other necessary factors that affect the
167 well-being of the child.

168
169 **Section 30-3-154**

170

171

Appellant Court Findings of Fact

172

173 The appellant courts shall be required to list findings of
174 fact and include a statement of law to support a trial court
175 decision.

176

177 **Section 30-3-155**

178

179

Ore Tenus

180

181 The ore tenus rule shall have no application in appellant
182 court review of child custody decisions.

183

184 **Section 30-3-156**

185

186

Availability of records to both parents.

187

188 Unless otherwise prohibited by court order or statute, all
189 records and information pertaining to the child, including, but
190 not limited to, medical, psychological, dental, scholastic,
191 athletic, extracurricular, and law enforcement, shall be equally
192 available to both parents, in all types of custody arrangements.

193

194 (a) Either parent, may request, in writing, that a copy of
195 the child's report card, notice of school attendance,
196 names of teachers, class schedules, standardized test
197 scores and any other records customarily available to
198 parents be furnished directly to said parent making
199 the request, and such request shall be accompanied by
200 the parent's or parents' current mailing address, and
201 the local education board or authority (LEB) shall
202 send a copy of the report card, notice of school
203 attendance, names of teachers, class schedules,
204 standardized test scores and any other records
205 customarily available within twenty (20) business days
206 of the parent's written request.

207
208 (b) A court upon proven findings of parental unfitness,
209 may deny any information concerning the residence of the child
210 to the noncustodial or nonresident parent.

211
212 **Section 30-3-157**

213
214 **Determination of child support.**

215
216 Rule 32 of the Alabama Rules of Judicial Administration
217 shall apply with the following exceptions:

218

219 (a) Health insurance provided the children should not be
220 less than the best insurance available to either
221 parent;

222

223 (b) Family health insurance premiums due either parent
224 shall not be in excess of the incremental premium
225 amounts based on the number of children of the
226 biological parent.

227

228 (c) Any support paid or material items given directly to a
229 parent or child for the direct benefit of the child,
230 with written proof of same, shall be considered same
231 as support and/or maintenance for sole benefit of the
232 child.

233

234 **Section 30-3-159**

235

236 **Applicability; modification of order.**

237

238 This Act shall be construed as grounds in initial divorce
239 and custody filings, and for modification of an existing order.
240 This article shall be construed as affecting the standard
241 applicable to a subsequent modification.

242

243 This Act is consistent with the following.

244

245 (a) Parent and child equality as mandated by Constitutional
246 law.

247

248 (b) The *Journal of Family Psychology* published in 2002 "Child
249 Adjustment in Joint-Custody Versus Sole-Custody
250 Arrangements: A Meta-Analytic Review, by the American
251 Psychological Association.

252

253

254

255 MD 2010-02-15