

1 **Alabama Shared Parent-Child Relationship Act**

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, and addresses custody modifications when
13 parents are mobilized in the military.

14

15 **A BILL**
16 **TO BE ENTITLED**
17 **AN ACT**
18

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

24

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

27

28 **Section 30-3-150**

29

30

State Policy

31

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

43

44 **Section 30-3-151**

45

Definitions

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

49

50 (1) SHARED LEGAL CUSTODY. Concurrent shared legal
51 custody. Unless the parents, by fair agreement, agree
52 otherwise, both parents shall have equal rights and
53 responsibilities for major decisions concerning the
54 child, including, but not limited to, selecting
55 residential parenting times, the education of the
56 child, health care, religious training and extra-
57 curricular activities.

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

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

71

- 72 (4) RESIDENTIAL PARENTING TIME. The allotment of time a
73 child spends in the physical care and control of a
74 parent.
75
- 76 (5) PARENTAL UNFITNESS. A parent that fails to properly
77 care for the child and maintain for the child's
78 emotional health and overall well-being that such
79 failure will seriously harm the child. Also
80 reference: Section 26-14-1; and Section 25-15-1 to 25-
81 15-4; and Section 26-18-1 to 26-18-11.
82
- 83 (6) PARENTING PLAN. A written parenting plan outlining
84 parenting responsibilities regarding major decisions
85 concern the children, and residential parenting times
86 including, but not limited to, residential times for
87 major holidays, birthdays, summer vacation, fall
88 school break, spring school break, etc.
89
- 90 (7) ARMED FORCES. The National Guard and the Reserve
91 Components of the Armed Forces, the United States
92 Army, the United States Navy, the United States Marine
93 Corps, the United States Coast Guard, and the United
94 States Air Force, and any other branch of the military

95 and naval forces or auxiliaries of the United States
96 or this state.

97

98 (8) MOBILIZED PARENT. A parent who:

99

100 (a) Is a member of the armed forces; and

101

102 (b) Is called to active duty or receives

103 orders for duty that is outside the state or

104 country.

105

106 **Section 30-3-152**

107

108 **Considerations by the Court.**

109

110 Consistent with equality as mandated by the United States

111 Constitution and the Alabama Constitution, in every filing for

112 divorce or custody modification, absent a finding of parental

113 unfitness by clear and convincing evidence, the court has no

114 jurisdiction to decide divorce, property or child custody

115 issues. Absent a fair agreement between the parties in all

116 contested cases the court shall:

117

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

121
122 (b) In making an order or judgment relative to parenting time
123 of said children, the rights of residential parenting time
124 shall be held to be equal.

125
126 (c) In making an order or judgment relative to all marital
127 property, said property shall be sold with proceeds from
128 said sale split equally between the parties.

129
130 (d) Upon the filing of an action in accordance with the
131 provisions of this Act and until a judgment on the merits
132 is rendered, the parents shall have temporary shared legal
133 custody and temporary shared physical custody of any minor
134 child of the marriage; provided, however, the judge may
135 enter an order for temporary sole legal and/or physical
136 custody to one parent if the parents, by fair agreement,
137 have agreed otherwise; or following an evidentiary hearing,
138 the court finds one parent is unfit for shared custody
139 consistent with this Act, and written findings are made
140 accordingly.

141

142 (e) The court shall in every case, when making a determination
143 of parental unfitness, enter an order with written findings
144 of fact.

145

146 **Section 30-3-153**

147

148 **Implementation; required provisions; parenting plan**

149

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

154

155 (1) A residential parenting time schedule;

156

157 (2) Designating the exercise primary authority
158 and responsibility regarding involvement of
159 the minor child in academic, religious,
160 civic, cultural, athletic, and other
161 activities, and medical and dental care;

162

163 (3) The exercise of primary authority, unless by
164 fair agreement otherwise, is with the parent
165 that has the child in their physical care at

166 that given time. In cases of disagreement
167 after implementation of the parenting plan,
168 absent such disagreement would seriously
169 harm the child, the father has primary
170 authority in even years, and the mother has
171 primary authority in odd years. Primary
172 authority is not intended to negate the
173 responsibility of the parties to notify and
174 communicate with each other as provided in
175 this Act;

176

177 (4) The care and education of the child;

178

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

180

181 (6) Holidays and vacations;

182

183 (7) Other necessary factors that affect the
184 well-being of the child.

185

186 **Section 30-3-154**

187

188 **Appellant Court Findings of Fact**

189

190 The appellant courts shall be required to list findings of
191 fact and include a statement of law to support a trial court
192 decision.

193

194 **Section 30-3-155**

195

196 **Ore Tenus**

197

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

200

201 **Section 30-3-156**

202

203 **Availability of records to both parents.**

204

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

210

211 (a) Either parent, may request, in writing, that a copy of
212 the child's report card, notice of school attendance,
213 names of teachers, class schedules, standardized test

214 scores and any other records customarily available to
215 parents be furnished directly to said parent making
216 the request, and such request shall be accompanied by
217 the parent's or parents' current mailing address, and
218 the local education board or authority (LEB) shall
219 send a copy of the report card, notice of school
220 attendance, names of teachers, class schedules,
221 standardized test scores and any other records
222 customarily available within twenty (20) business days
223 of the parent's written request.

224

225 (b) A court upon proven findings of parental unfitness,
226 may deny any information concerning the residence of the child
227 to the noncustodial or nonresident parent.

228

229 **Section 30-3-157**

230

231 **Determination of child support.**

232

233 Rule 32 of the Alabama Rules of Judicial Administration
234 shall apply with the following exceptions:

235

236 (a) Health insurance provided the children should not be
237 less than the best insurance available to either
238 parent;

239
240 (b) Family health insurance premiums due either parent
241 shall not be in excess of the incremental premium
242 amounts based on the number of children of the
243 biological parent.

244
245 (c) Any support paid or material items given directly to a
246 parent or child for the direct benefit of the child,
247 with written proof of same, shall be considered same
248 as support and/or maintenance for sole benefit of the
249 child.

250

251 **Section 30-3-158**

252

253 **Temporary modification of decree for child custody or parenting**
254 **time for children of mobilized parent.**

255

256 (1) A court shall not permanently modify a decree for child
257 custody or parenting time solely on the basis that one (1) of
258 the parents is a mobilized parent.

259

260 (2) Any modification of a child custody decree based on the
261 active duty of a mobilized parent shall be temporary and shall
262 revert back to the previous child custody decree at the end of
263 the deployment, as appropriate.

264

265 **Section 30-3-158.1**

266

267 **Petition for assignment of parenting time rights to legal or**
268 **biological relatives while parent out of the state on active**
269 **duty military service.**

270

271 (a) If a parent has been called to active duty military service
272 and the active duty service requires the parent to be out
273 of the state for a period of at least ninety (90) days, the
274 mobilized parent may petition the court with jurisdiction
275 of the order granting parenting time for a modification of
276 that order for the temporary assignment of that parent's
277 parenting time rights to a legal or biological relative or
278 relatives. The mobilized parent shall be joined in the
279 petition by the relative or relatives to whom the parent is
280 seeking to assign parenting time rights. The petition
281 shall include a proposed parenting time schedule with the
282 relative or relatives that shall not exceed the parenting

283 time granted to the parent at the time of filing the
284 petition.

285
286 (b) If the mobilized parent does not petition the court for
287 said temporary modification within ninety days (90 days) of
288 mobilization, then the child shall remain in the primary
289 care of the non-mobilized parent, and parenting times shall
290 revert back to the previous child custody decree at the end
291 of the deployment, as appropriate.

292
293 (c) The court shall grant the petitioner's request for
294 assignment of parenting time if the court finds that said
295 parenting time is not inconsistent with this Act.

296
297 (d) An order granting an assignment of parenting time rights
298 pursuant to this section shall terminate immediately upon
299 the termination of the petitioner's term of out of state
300 active duty military service.

301
302 **Section 30-3-159**

303

304 **Applicability; modification of order.**

305

306 This Act shall be construed as grounds in initial divorce
307 and custody filings, and for modification of an existing order.
308 This article shall be construed as affecting the standard
309 applicable to a subsequent modification.

310

311 This Act is consistent with the following.

312

313 (a) Parent and child equality as mandated by Constitutional
314 law.

315

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

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321

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