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SENATE DRS45335-LU-83 (03/11)

Short Title: Presumption of Shared Parenting. (Public)

Sponsors: Senator Bryant (Primary Sponsor).

Referred to:

1 A BILL TO BE ENTITLED  
2 AN ACT TO AMEND THE LAWS PERTAINING TO CHILD CUSTODY TO  
3 INCORPORATE A PRESUMPTION OF SHARED PARENTING STANDARD.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. G.S. 50-13.2 reads as rewritten:

6 "§ 50-13.2. Who entitled to custody; presumption of shared parenting; terms of custody;  
7 visitation rights of grandparents; taking child out of State.State; visitation by  
8 electronic communication.

9 (a) ~~An order for custody of a minor child entered pursuant to this section shall award~~  
10 ~~the custody of such child to such person, agency, organization or institution as will best~~  
11 ~~promote the interest and welfare of the child. In making the determination, the court shall~~  
12 ~~consider all relevant factors including acts of domestic violence between the parties, the safety~~  
13 ~~of the child, and the safety of either party from domestic violence by the other party and shall~~  
14 ~~make findings accordingly. An order for custody must include findings of fact which support~~  
15 ~~the determination of what is in the best interest of the child. Between the mother and father,~~  
16 ~~whether natural or adoptive, no presumption shall apply as to who will better promote the~~  
17 ~~interest and welfare of the child. Joint custody to the parents shall be considered upon the~~  
18 ~~request of either parent. It shall be the policy of this State to:~~

19 (1) Encourage child-centered joint parenting agreement to reduce litigation over  
20 child custody matters.

21 (2) Encourage both parents to share equally in the rights and responsibilities of  
22 raising their child.

23 (3) Encourage the maximum participation of the child in both parents' lives  
24 regardless of the parents' marital status, subject to laws regarding abuse and  
25 neglect.

26 (4) Ensure that the child will have maximum contact with both parents through a  
27 presumption of shared responsibility unless it has been established based on  
28 a preponderance of the evidence that one of the parents is unfit or obstructs a  
29 healthy relationship with the other parent.

30 (5) Presume that both parents are fit and that fit parents act in their child's best  
31 interest.

32 (6) Not consider the parents' inability to cooperate with one another as a  
33 determinative factor in making custody decisions contrary to the  
34 presumption of shared parenting.

35 (a1) For purposes of this section, the following definitions apply:



\* D R S 4 5 3 3 5 - L U - 8 3 \*

- 1           (1) Joint parenting agreement. – A plan crafted and mutually agreed upon by  
2           parents addressing matters concerning legal and physical custody of a child.  
3           (2) Presumption of shared parenting. – The presumption that each parent will  
4           share as close as possible to an equal amount of time with the child, but not  
5           less than thirty-five percent (35%) of the amount of time with the child as  
6           research currently suggests.

7           (a2) An order for custody of a minor child entered pursuant to this section shall award  
8 the custody of the child to the person, agency, organization, or institution as will best promote  
9 the interest and welfare of the child. The best interest of the child shall always be the primary  
10 consideration of the court in determining the issues of custody of and access to the minor child.  
11 In making the determination, the court shall consider all relevant factors, including the  
12 presumption that shared parenting is in the best interest of the child. The presumption may be  
13 rebutted by proof of abuse or neglect. The court shall also consider other relevant factors, such  
14 as acts of domestic violence between the parties, the safety of the child, and the safety of either  
15 party from domestic violence by the other party and shall make findings accordingly. An order  
16 for custody must include findings of fact that support the determination of what is in the best  
17 interest of the child. Notwithstanding the presumption of shared parenting, as between the  
18 mother and father, whether natural or adoptive, no presumption shall apply as to who will  
19 better promote the interest and welfare of the child. Joint custody to the parents shall be  
20 considered upon the request of either parent.

21           (b) ~~An~~ After considering all relevant factors, including the presumption of shared  
22 parenting as described under subsection (a2) of this section, an order for custody of a minor  
23 child may grant joint custody to the parents, exclusive custody to one person, agency,  
24 organization, or institution, or grant custody to two or more persons, agencies, organizations, or  
25 institutions. Any order for custody shall include such terms, including visitation, as will best  
26 promote the interest and welfare of the child. ~~child based in part on the presumption of the~~  
27 shared parenting. If the court finds that domestic violence has occurred, the court shall enter  
28 such orders that best protect the children and party who were the victims of domestic violence,  
29 in accordance with the provisions of G.S. 50B-3(a1)(1), (2), and (3). If a party is absent or  
30 relocates with or without the children because of an act of domestic violence, the absence or  
31 relocation shall not be a factor that weighs against the party in determining custody or  
32 visitation. Absent an order of the court to the contrary, each parent shall have equal access to  
33 the records of the minor child involving the health, education, and welfare of the child.

34           (b1) An order for custody of a minor child may provide visitation rights for any  
35 grandparent of the child as the court, in its discretion, deems appropriate. As used in this  
36 subsection, "grandparent" includes a biological grandparent of a child adopted by a stepparent  
37 or a relative of the child where a substantial relationship exists between the grandparent and the  
38 child. Under no circumstances shall a biological grandparent of a child adopted by adoptive  
39 parents, neither of whom is related to the child and where parental rights of both biological  
40 parents have been terminated, be entitled to visitation rights.

41           (b2) Any order for custody, including visitation, may, as a condition of such custody or  
42 visitation, require either or both parents, or any other person seeking custody or visitation, to  
43 abstain from consuming alcohol and may require submission to a continuous alcohol  
44 monitoring system, of a type approved by the Division of Adult Correction of the Department  
45 of Public Safety, to verify compliance with this condition of custody or visitation. Any order  
46 pursuant to this subsection shall include an order to the monitoring provider to report any  
47 violation of the order to the court and each party to the action. Failure to comply with this  
48 condition shall be grounds for civil or criminal contempt.

49           (c) An order for custody of a minor child may provide for such child to be taken outside  
50 of the State, but if the order contemplates the return of the child to this State, the judge may  
51 require the person, agency, organization or institution having custody out of this State to give

1 bond or other security conditioned upon the return of the child to this State in accordance with  
2 the order of the court.

3 (d) If, within a reasonable time, one parent fails to consent to adoption pursuant to  
4 Chapter 48 of the General Statutes or parental rights have not been terminated, the consent of  
5 the other consenting parent shall not be effective in an action for custody of the child.

6 (e) An order for custody of a minor child may provide for visitation rights by electronic  
7 communication. In granting visitation by electronic communication, the court shall consider the  
8 following:

9 (1) Whether electronic communication is in the best interest of the minor child.

10 (2) Whether equipment to communicate by electronic means is available,  
11 accessible, and affordable to the parents of the minor child.

12 (3) Any other factor the court deems appropriate in determining whether to  
13 grant visitation by electronic communication.

14 The court may set guidelines for electronic communication, including the hours in which the  
15 communication may be made, the allocation of costs between the parents in implementing  
16 electronic communication with the child, and the furnishing of access information between  
17 parents necessary to facilitate electronic communication. Electronic communication with a  
18 minor child may be used to supplement visitation with the child. Electronic communication  
19 may not be used as a replacement or substitution for custody or visitation. The amount of time  
20 electronic communication is used shall not be a factor in calculating child support or be used to  
21 justify or support relocation by the custodial parent out of the immediate area or the State.  
22 Electronic communication between the minor child and the parent may be subject to  
23 supervision as ordered by the court. As used in this subsection, "electronic communication"  
24 means contact, other than face-to-face contact, facilitated by electronic means, such as by  
25 telephone, electronic mail, instant messaging, video conferencing, wired or wireless  
26 technologies by Internet, or other medium of communication.

27 (f) In a proceeding for custody of a minor child of a service member, a court may not  
28 consider a parent's past deployment or possible future deployment as the only basis in  
29 determining the best interest of the child. The court may consider any significant impact on the  
30 best interest of the child regarding the parent's past or possible future deployment."

31 **SECTION 2.** Regarding any action or proceeding for custody of a minor child and  
32 in accordance with G.S. 50-13.2, as enacted in Section 1 of this act, within four months from  
33 the date this act becomes law, the Administrative Office of the Courts (AOC) shall create a  
34 simple form for purposes of capturing all of the following information:

35 (1) The parties' case file number.

36 (2) The time allocated for the child with each parent.

37 (3) The rationale for the court's decision in the custody order.

38 (4) Whether one, both, or no parties were represented by counsel in the custody  
39 proceeding.

40 The form shall be submitted to the clerk of court in the county where the action is filed by  
41 counsel or the parties to the action, if the parties are unrepresented. The clerk of court in the  
42 respective county shall submit that information to the AOC. Upon collecting the data required  
43 by this section, the AOC shall submit its findings in a report to the Joint Legislative  
44 Commission on Governmental Operations. The first report of the AOC shall be presented 14  
45 months after the date this act becomes effective covering the data collection periods for the first  
46 six-month time period. Thereafter, the AOC shall issue an interim report 60 days after the  
47 completion of each six-month data collection cycle and a comprehensive annual report within  
48 60 days following the completion of the next 12-month data collection cycle.

49 **SECTION 3.** This act is effective when it becomes law and applies to cases  
50 pending or filed on or after that date.