

MODIFICATION OF CHILD CUSTODY AND THE *McLendon* BURDEN

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Modifications of child custody require application of the standard set out in *Ex Parte McLendon*, 455 So.2d 863 (Ala. 1984): A parent seeking to change custody bears the burden of proof to show the change of custody materially promotes the child's best interest and welfare, sufficient to overcome the inherently disruptive effect caused by uprooting the child.

The *McLendon* standard is a two-pronged burden of proof: (1) The party seeking a change in custody must first show substantially changed circumstances, and (2) prove that those substantially changed circumstances will materially benefit the best interest and welfare of the child such that the positive benefits to change outweigh the inherently disruptive effects caused by uprooting the child. *McLendon* requires showing the positive factors for a change in custody. Substantially changed circumstances, without a showing of the material benefits to the child, will not accomplish a change in custody.¹

The *McLendon* standard applies when one party has sole custody, or the parties have joint legal custody but one party has primary physical custody². The *McLendon* standard applies whether the prior custody order was entered based on an agreement of the parties or pursuant to litigation. However, *McLendon* does not apply when parents have joint legal and physical custody, and neither parent is designated the primary legal or physical custodian. In such situations, the best interest standard still applies.³ The burden of proof does not shift by entry of a *pendente lite* order or temporary change by agreement of the parties that is not ratified by a court order.⁴

Applying the theory that disruptions in a child's life are to be discouraged, some cases subsequent to *McLendon* have attempted to strengthen the burden of proof and require a party to "present evidence so substantial as to disclose an obvious and overwhelming necessity for a change."⁵ The following are indicative of when the courts found reasons for custody to be modified. Note that despite *McLendon* and the "obvious and overwhelming" line of cases, custody is frequently changed not because of positive factors attendant to change, but based on the negative aspects of the custodial parent:

1. A custodial parent's decision to relocate the child. This has now been addressed by the new Alabama Parent-Child Relationship Protection Act but a history of the cases is important if a proposed move is the primary reason to seek a change in custody. *Ex parte Roberts*, 796 So.2d 349 (Ala. 2001) (custody changed to father based, *inter alia*, on mother's move to another city to attend college and fact child was left with maternal grandmother); *Ex parte Murphy*, 670 So.2d 51 (Ala. 1995) (custodial mother's proposed move to Texas was only one of the factors considered; the disruptive effect of a change of custody to father would be minimal.)

But cases also have denied a change of custody when there is a proposed move. *Cox v. Ratcliff*, 753 So.2d 535 (Ala.Civ.App. 1999) (Father had not paid child support since 1996 and he voluntarily had no contact with the child for two years. Mother's impending move to Texas did not justify a change in custody.) *Scacca v. Scacca*, 694 So.2d 1 (Ala.Civ.App. 1997) (Mother failed to meet her burden of proving that proposed change in custody, based on father's move out of county, would materially promote child's best interests and that it would outweigh inherently disruptive effect of change in custody.)

2. Interference in visitation that shows an intent to destroy the parent-child relationship. *Fricks v. Wood*, 807 So.2d 561 (Ala.Civ.App. 2001) (mother frequently denied visitation, omitted father's name from school records, plus mother contemplated moving to Germany). *England c.*

England, 650 So.2d 888 (Ala.Civ.App. 1994) (change of custody to father appropriate when mother had prevented father from knowing where child lived, she blocked visitation, and effectively prevented the father's relationship with the child).

Mere interference with visitation, however, is not sufficient to change custody. *Ex parte Peppers*, 703 So.2d 299 (Ala. 1997) (mother had provided stable home, child was thriving, and mother's lack of cooperation for father to exercise visitation did not warrant change of custody); *Kelley v. Akers*, 793 So.2d 821 (Ala.Civ.App. 2001) (problems in exercising visitation, taken alone, are not sufficient to necessitate a change of custody), *citing Vick v. Vick*, 688 So.2d 852 (Ala.Civ.App. 1997). In *Vick* the court noted that changing custody to punish the parent for interfering with visitation defeats the very purpose of *McLendon* in that it disrupts the children.

3. Abuse. *G.R.V. v. M.V.*, 825 So.2d 116 (Ala.Civ.App. 2001) (Father alleged child was physically and sexually abused in mother's care; there was substantial evidence that leaving custody with the mother was contrary to the child's safety and well-being); *Williams v. Williams*, 812 So.2d 352 (Ala.Civ.App. 2001) (a finding that abuse has occurred constitutes a finding of a change of circumstances). *E.M.C. v. K.C.Y.*, 735 So.2d 1225 (Ala.Civ.App. 1999) (Divorce agreement was for joint custody with primary physical custody with father. Father was violent, abusive, and custody change was based on father's domestic violence and abuse to child and stepmother. Here the stepmother contacted mother to tell mother about the abuse and demanded child be removed from stepmother's home)).

4. Drug or alcohol abuse. *S.F. v. B.L.T.*, 667 So.2d 130 (Ala.Civ.App. 1995) (custodial mother admitted to using and selling drugs, and a marijuana possession arrest).

But in *Hanners v. Hanners*, 698 So.2d 787 (Ala.Civ.App. 1997), the father did not meet the *McLendon* standard for a change of custody even though evidence showed the mother consumed alcohol and had been arrested for criminal mischief and harassment of father, because the father had

also been arrested for marijuana and two DUIs.

5. Homosexuality. *Ex parte J.M.F.*, 730 So.2d 1190 (Ala. 1998) (father awarded custody when mother established a live-in, lesbian relationship. The mother chose to expose the child to a life style that is not legal in this state, nor moral in the eyes of most of its citizens.) *See, also, Ex parte H.H.*, 830 So.2d 21 (Ala. 2002) (mother's move to California was a major factor in this case, but especially see Chief Justice Moore's 13-page concurring opinion discussing the impact of the mother's homosexuality).

6. Health issues. In *Skidmore-Shafer v. Shafer*, 770 So.2d 1097 (Ala.Civ.App. 1999) custody was changed from mother to father because child had severe upper-respiratory problems most of his life, and the mother continued to smoke in the child's presence. *See also, Calloway v. Mitchell*, 718 So.2d 65 (Ala.Civ.App. 1998), in which custody was changed to the mother after she proved the child was not receiving medical care in the father's custody. The child who was 11 years old was infected with impetigo, lice, mice bites, and did not know proper hygiene.

7. Moral issues. *Ex parte Patronas*, 693 So.2d 473 (Ala. 1997) (change of custody to father because mother was addicted to prescription drugs and lived with a man without marriage.)

However, a change of custody requires a showing that the custodial parent's behavior has a detrimental effect on the child. *Taylor v. Taylor*, 563 So.2d 1049 (Ala.Civ.App. 1990) (Mother's "indiscreet conduct occurring" was not enough to remove custody. A parent seeking to modify custody based on indiscreet conduct must prove that the conduct has a detrimental effect on the child.)

Practical considerations: In preparing a modification case, obtain and establish expert psychological testimony in your client's favor, either for or against a modification. Be prepared to show the changes, or lack thereof, in the basics of the child's life including, but not limited to:

- (1) the number of residential changes or moves since the prior custody determination, and

the relative stability in the competing parents' residences;

(2) the number of changes in the child's school or day care;

(3) the changes in significant adults in the child's life, such as a parent's stable re-marriage or a parent's serial marriages;

(4) the competing parents' employment stability;

(5) the competing parents' cooperation with visitation and cooperation with fostering an ongoing relationship with the other parent;

(6) whether the non-custodial parent has fulfilled monetary obligations;

(7) the child's preferences, if the child is sufficiently mature and understands the nature of the proceedings, although a child's preference alone does not determine custody;

(8) the child's physical, emotional and mental health, and whether the child's health is in danger or at risk in the custody of either parent, and whether the child has received proper medical and mental health treatment;

(9) the moral standards in the competing parents' homes, such as living with members of the opposite sex without being married, alcohol or drug use, religious upbringing, etc.

(10) the competing parents' ability to meet the needs of the child, their willingness to adjust their life styles to meet the child's needs, and the time the parent has to spend with the child;

(11) whether there are siblings, half-siblings or step-siblings that are close to and important to the child's life;

(12) findings of or convictions for violence, including domestic violence, or issues of abuse in either of the competing parents' homes; and

(13) whether the child will be able to maintain the same standard of living, the same school and activities, the same peers or friendships, and the same contact with relatives if custody is changed.

The Court of Civil Appeals and especially the Alabama Supreme Court strictly apply the *ore tenus* rule and rarely reverse the trial court in matters concerning custody. It is imperative that you make a strong showing at the trial level and create a strong record for your client.

1. *Hanners v. Hanners*, 698 So.2d 787 (Ala.Civ.App. 1997) (a mere showing that a material change of circumstances has occurred is insufficient. Petitioner must show the change materially promotes the child's best interest and offsets the inherently disruptive effect of changing custody); *Moncrief v. Gilbert*, 675 So.2d 895 (Ala.Civ.App. 1996) (a mere showing of a material change in circumstances is not enough to support a change in custody).

2. See, *Daniel v. Daniel*, ??? So.2d ??? (Ala.Civ.App 2002) (the *McLendon* standard applies to modify custody when the parties' divorce agreement provided for joint legal custody and primary physical custody with the mother); *Etheridge v. Etheridge*, 712 So.2d 1089 (Ala.Civ.App. 1997); *Berrey v. Berrey*, 622 So.2d 1316 (Ala.Civ.App. 1993).

3. *Couch v. Couch*, 521 So.2d 987 (Ala. 1988) (the divorce agreement awarded the parents joint legal and shared physical custody, thus *McLendon* did not apply); *M.S.H. v. C.A.H.*, 829 So.2d 164 (Ala.Civ.App. 2002) (the best interest standard applied in a proceeding to modify when the parties shared joint legal and physical custody).

4. *Sloane v. McQuinn*, 836 So.2d 908 (Ala.Civ.App. 2002); *Grant v. Grant*, 820 So.2d 824 (Ala.Civ.App. 2001) (a three-year delay between entry of the pendente lite order in favor of the father and the trial on the father's motion to change custody did not shift the burden of proof from the father to the mother.)

5. *Hoplamazian v. Hoplamazian*, 740 So.2d 1100 (Ala.Civ.App. 1999); *Trusty v. Newton*, 678 So.2d 1173 (Ala.Civ.App. 1996) (abuse by mother's boyfriend was not an obvious and overwhelming reason to change custody, especially since mother had terminated relationship with boyfriend); *Galloway v. Harris*, 646 So.2d 100 (Ala.Civ.App. 1994) (no obvious and overwhelming necessity for change of custody, especially when child would be separated from his half-brother); *Klapal v. Brannon*, 610 So.2d 1167 (Ala.Civ.App. 1992) ("the evidence must be so substantial as to disclose an obvious and overwhelming necessity for a change."); *Whitfield v. Whitfield*, 570 So.2d 700 (Ala.Civ.App. 1990).

THE UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT

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The Uniform Child Custody Jurisdiction and Enforcement Act ("UCCJEA" or the "Act"), was passed in the 1999 Legislative Session and became effective January 1, 2000. The Act is codified at *Ala. Code* §§ 30-3B-101 - 405. The Act repealed the Uniform Child Custody and Jurisdiction Act ("UCCJA").

The Act substantially conforms to the UCCJA, but makes a greater attempt to be in accord with the federal Parental Kidnapping and Prevention Act ("PKPA"). The Alabama Act closely follows the Uniform Act, but makes the most significant deviations in the jurisdiction and enforcement articles.

ARTICLE I - GENERAL PROVISIONS.

Section 30-3B-101. Short Title: Uniform Child Custody Jurisdiction and Enforcement Act. Although the Act does not state its general purposes, the Official Comments affirm that the purposes are (1) to avoid jurisdictional disputes in custody matters; (2) promote cooperation between courts of other states; (3) discourage interstate custody disputes; (4) deter abductions; (5) avoid relitigation of decisions of other states; and (6) facilitate enforcement of custody determinations.

Section 30-3B-102. Definitions: The 16 definitions are taken from the UCCJA or PKPA. Some particularly relevant definitions are:

(4) Child Custody Proceeding. The Act applies to court proceedings including custody, visitation, modifications of custody or visitation, domestic violence, or paternity actions that

determine visitation. The Act does not apply to juvenile delinquency, contractual emancipation, adoption, or monetary obligations, and an enforcement action is not a custody proceeding.

(7) Home State. Home state is the state in which the child lived with a parent or a person acting as a parent for six consecutive months preceding the custody proceeding.

(11) Modification. A custody determination concerning the same child that is made after a previous determination, regardless of the court that made the previous determination.

(13) Person Acting as a Parent. This includes a person who has acted as a parent for a period of six months within the year preceding the custody proceeding, or who has legal or physical custody of the child. The reference in this subsection to "law of this state" reaffirms that a court applies the substantive custody law of Alabama.

Section 30-3B-103. Proceedings Governed By Other Law: The Act does not govern adoption proceedings or proceedings regarding a child's emergency medical care, or monetary obligations.

Section 30-3B-104. Indian Tribes: The Alabama Act omits the definition of Indian tribes. The Alabama Act does not apply to tribal adjudications.

Section 30-3B-105. International Application: The Act applies to custody determinations made in another country, if the determination was made in substantial conformity with the Act and did not violate fundamental human rights.

Section 30-3B-106. Effect of Child Custody Determination: Custody determinations bind all persons who have had notice and an opportunity to be heard, and notice is governed by Alabama's substantive law.

Section 30-3B-107. Priority: A jurisdictional question must be given priority and handled expeditiously before the substantive custody issues may be heard.

Section 30-3B-108. Notice to Persons Outside State: The Alabama Act differs from the Uniform Act in that notice must be according to the Alabama Rules of Civil Procedure. The

Uniform Act permits service according to the law of the state hearing the matter or the state in which service is made.

Section 30-3B-109. Appearance and Limited Immunity: The Alabama Act requires a party to make a special appearance in an Alabama proceeding in order to be immune from personal jurisdiction for other proceedings in Alabama, such as child support or other monetary issues. However, a special appearance does not make a person immune if personal jurisdiction is otherwise proper.

Section 30-3B-110. Communication Between Courts: The Act encourages communication between courts of differing jurisdictions, and sections 204, 206 and 306 require communication. If courts communicate regarding ministerial matters, such as calendaring, the courts do not need to inform the parties or make a record of the communication. However, when courts communicate regarding substantive matters, the parties should be given an opportunity to participate, or present facts and legal arguments. A record must be made of such substantive communications.

Section 30-3B-111. Taking Testimony in Another State: Testimony may be by telephone, audio visual, or other electronic means.

Section 30-3B-112. Cooperation Between Courts; Preservation of Record: Courts are encouraged to communicate and cooperate, and an Alabama court may request another court to conduct hearings and enter orders. Travel and reasonable expenses may be assessed against the parties according to Alabama law. All court records regarding children must be maintained until the child reaches the age of 19, and our courts must produce certified copies of the record upon appropriate request.

ARTICLE 2. JURISDICTION. The Act is closer to jurisdictional requirements in the PKPA. Changes in the Act should avoid conflicts with the PKPA.

Section 30-3B-201. Initial Child Custody Jurisdiction: The Alabama Act continues to require

personal jurisdiction in order to enter a custody order the same as it requires personal jurisdiction in child support matters. Alabama's position is consistent with *Kulko v. Superior Court of California*, 436 U.S. 81 (1978) and *May v. Anderson*, 345 U.S. 528 (1953). Under Alabama's provisions for in personam jurisdiction a court may resolve issues of child support in a custody determination.

Section 201 determines the priority for initial determinations to be (1) the home state; (2) the significant connection state; (3) this state if courts having jurisdiction under (1) and (2) have declined to exercise jurisdiction because this state is the more appropriate forum; or (4) no other state would have jurisdiction under (1), (2) or (3). "Significant connection" is not defined. The Official Comments provide that the significant connection must be between the child, the child's parents, or the child and a person acting as a parent. The jurisdictional question is whether there is sufficient evidence in the state for the court to make an informed custody determination. Note that under (3) above, all states having jurisdiction would have to agree that this state is the more appropriate forum.

Emergency jurisdiction is covered in section 204.

Section 202. Continuing, Exclusive Jurisdiction: The state that makes an initial custody determination continues its exclusive jurisdiction until (1) neither the child, nor the child and at least one parent, nor the child and a person acting as a parent have a significant connection with this state, or (2) neither the child, parents, nor any person acting as a parent still reside in this state. Once Alabama loses its continuing, exclusive jurisdiction, it may modify a custody determination made in Alabama only if Alabama has jurisdiction to make an initial custody determination.

Section 203. Jurisdiction to Modify Determination: Alabama may modify a custody determination of another state only if Alabama has jurisdiction to make an initial determination, and (1) the other state determines it no longer has continuing, exclusive jurisdiction or (2) this state determines that the child, parents, or a person acting as a parent no longer reside in the other state.

And the requirements for personal jurisdiction must be met.

Section 204. Temporary Emergency Jurisdiction: Alabama may take jurisdiction in an emergency situation even when Alabama does not have home state or significant connection jurisdiction. An emergency is when the child, a sibling, or a child's parent is subjected to or threatened with abuse. Neglect was omitted as a basis for emergency jurisdiction. Orders under this section are temporary but may become final if there is no previous custody determination; a custody proceeding is not commenced under sections 201 or 203; Alabama becomes the child's home state, and the court's order states that it becomes final. If there is a custody determination entitled to enforcement, or one is commenced, a temporary order must state when it terminates. When a court is informed that a custody proceeding has been commenced or a determination made by another state, the court must communicate with the other court to resolve the emergency.

Section 205. Notice; Opportunity To Be Heard; Joinder: Notice must be given to all persons entitled to notice in order for a determination to be enforceable. Who is entitled to notice, joinder, and intervention is governed by Alabama law on who is entitled to notice in custody proceedings between residents of this state.

Section 206. Simultaneous Proceedings: An Alabama court cannot exercise jurisdiction if another state is the home state or another state has continuing, exclusive jurisdiction, unless the other state determines that Alabama is the more convenient forum and either stays or terminates its proceeding. If Alabama determines a proceeding has been commenced in another state, the Alabama court is required to communicate with the other state. If Alabama has a proceeding to modify a determination and there is a proceeding to enforce in another state, Alabama shall either stay the modification, enjoin the parties from proceeding, or proceed under conditions it considers appropriate.

Section 207. Inconvenient Forum: Alabama may decline to exercise jurisdiction if it

determines it is an inconvenient forum. Before making such a determination, this state shall consider whether another state is more appropriate by considering relevant factors including (1) which jurisdiction can protect the child and parties from domestic violence; (2) the length of time the child has resided in Alabama; (3) the distance between the two courts; (4) the parties' financial circumstances; (5) any agreements on jurisdiction; (6) the nature and location of evidence; (7) the ability of the different courts to act expeditiously; and (8) the familiarity of the different courts with the facts and issues. If an Alabama court determines it is an inconvenient forum it may stay the proceedings in this state or impose other conditions it deems appropriate.

Subsection (d) provides that if the custody determination is part of a divorce or other proceeding, this state may decline jurisdiction over the custody determination but retain jurisdiction over the divorce or other proceeding.

Section 208. Jurisdiction Declined by Reason of Conduct: This is a clean hands provision. If the person seeking to invoke this state's jurisdiction has engaged in unjustifiable conduct, Alabama shall refuse jurisdiction unless (1) the parties agree to Alabama having jurisdiction; (2) the state otherwise having jurisdiction determines Alabama is the more appropriate forum; or (3) no other state has jurisdiction. If Alabama declines jurisdiction it can still order an appropriate remedy to protect the child and prevent a repetition of the unjustifiable conduct. Alabama may also assess fees and costs, including travel and child care expenses, against the party guilty of unjustifiable conduct.

Section 209. Information To Be Submitted to Court: The Act requires that an initial pleading provide the child's present address, and the places where the child has lived for the past five years and with whom. However, Alabama allows information regarding the child's present whereabouts to be sealed if the health, safety, or liberty of a party or the child would be jeopardized by disclosure. The initial pleading must also contain information regarding (1) whether the party has participated in any other custody proceeding concerning this child; (2) knows of any other

proceedings concerning this child that could affect the child, even if such proceeding is not subject to this Act (such as adoption or delinquency); and (3) the names and addresses of persons who have physical custody of the child or who claim rights to custody or visitation.

Section 210. Appearance of Parties and Child: The court can order a non-party who has physical custody of the child to produce the child.

ARTICLE 3. ENFORCEMENT.

Section 301. Definitions: The only additional definitions are of petitioner and respondent.

Section 302. Enforcement Under Hague Convention: Alabama may enforce an order to return a child as if it was a custody determination.

Section 303. Duty to Enforce: A state's duty to enforce another state's order has been modified by the Act to be consistent with the PKPA. The Act mandates that a state enforce a determination made in "substantial conformity" with this Act. Thus if another state entered an order based on significant connection jurisdiction when there was a home state, the order would not be in substantial conformity with this Act and not entitled to enforcement. An Alabama court may use any remedy that is available to enforce a custody order made by this state.

Section 304. Temporary Visitation: Under the Act, Alabama has the authority to enforce a visitation order entered by another jurisdiction, but only the state with continuing, exclusive jurisdiction has the authority to modify the order. The Alabama Act added subsection (a)(3) which permits a temporary order for makeup or substitute visitation. The order shall specify the period of time for which it is effective.

Section 305. Registration of Child Custody Determination: A child custody determination from another jurisdiction may be registered in Alabama according to the procedures in §305. The court for registration in each Alabama county may vary and be either the circuit, district, or juvenile courts. All other parties to the order sought to be registered are entitled to notice and an

opportunity to contest registration. A hearing to contest registration must be requested within 30 days. If there is no contest the order is registered. If there is a contest this state must conduct a hearing and confirm the order unless the respondent establishes (1) the issuing state did not have jurisdiction; or (2) the order has been vacated, stayed or modified; or (3) that he/she was entitled to notice in the issuing state but did not receive notice.

Section 306. Enforcement of Registered Determination: Alabama shall enforce custody determinations from other states that have been registered and confirmed.

Section 307. Simultaneous Proceedings: If an Alabama court commences an enforcement proceeding and there is a pending modification proceeding, this state must communicate with the modifying state and may continue, stay or dismiss the enforcement proceeding. The decision whether Alabama should proceed with enforcement should lie with the state that has continuing, exclusive jurisdiction, or if there is none then with the modifying state.

Section 308. Expedited Enforcement of Child Custody Determination: Enforcement proceedings are treated expeditiously. An enforcement petition must be verified and include six facts. (See §308(b)(1) through (b)(6)). As soon as a petition is filed an order must be served on the respondent directing the respondent to appear for a hearing. The hearing shall be on the first judicial day after service on the respondent unless that date is impossible, in which case the hearing must be on the first possible judicial date. At a hearing the court will order the child delivered to the petitioner unless the respondent establishes (1) that the order is not registered and (a) the issuing court did not have jurisdiction; (b) the order sought to be enforced has been vacated, stayed, or modified; and (c) the respondent did not have notice in the issuing court proceedings; or (2) that the order sought to be enforced was registered and confirmed but has been vacated, stayed, or modified by the issuing court. The enforcement court may award fees, costs and expenses.

Section 309. Service of Petition and Order: The respondent and any person having physical

custody of the child must be given notice according to the Alabama Rules of Civil Procedure. However, see section 311 for service in an emergency situation.

Section 310. Hearing and Order: Unless Alabama takes emergency jurisdiction according to section 204, at an enforcement hearing an Alabama court shall deliver the child to the petitioner unless the respondent establishes (1) that the order sought to be enforced has not been registered and confirmed and (a) the issuing court did not have jurisdiction; (b) the order sought to be enforced has been vacated, stayed, or modified; and (c) the respondent did not have notice in the issuing court proceedings; or (2) that the order was registered and confirmed but has since been vacated, stayed, or modified by a court having jurisdiction under Article 2. These are the only defenses to an enforcement action. The court may award fees, costs and expenses.

Subsections (c) and (d) regarding self-incrimination, and spousal privileges and immunities are derived from UIFSA.

Section 311. Warrant to Take Physical Custody of Child: Once an enforcement petition has been filed, this state may issue an order to take physical custody of a child if the petitioner verifies that the child will suffer imminent physical harm or be removed from the state. If a warrant to take immediate physical custody is issued, the court shall immediately serve the respondent and shall conduct a hearing within 72 hours from service of the warrant. A warrant must state the facts of imminent physical harm or removal, direct law enforcement to take the child, provide for placement of the child pending the hearing, and if the warrant authorizes law enforcement to make a forcible entry then the warrant must also state the exigent circumstances in subsection (e).

Section 312. Costs fees and Expenses: The Alabama Act allows the court to award fees, costs, and expenses to any party, not just a prevailing party, and gives the court discretion instead of making an award mandatory. Costs include communication, travel, child care, investigative and witness fees.

Section 313. Recognition and Enforcement: Alabama is required to enforce an enforcement order from another state that has been entered in accord with this Act.

Section 314. Appeals: An appeal of an enforcement order is taken according to Alabama law. The trial court cannot stay an enforcement order, unless it has the jurisdiction to enter an emergency order under section 204.

ARTICLE 4. MISCELLANEOUS.

Section 401. Application and Construction: This Act must be construed in a manner to promote uniformity of laws across state lines.

Section 402. Severability Clause: An invalid provision does not affect the validity of other provisions of The Act.

Section 403. Effective Date: January 1, 2000.

Section 404. Repeals: The Uniform Child Custody Jurisdiction Act, codified at *Ala. Code* §§ 30-3-20 - 30-3-44 was repealed effective January 1, 2000.

Section 405. Transitional Provisions: An action commenced prior to January 1, 2000 is governed by the law in effect at the time the proceeding was commenced.

ALABAMA PARENT-CHILD RELATIONSHIP PROTECTION ACT

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The Alabama Parent-Child Relationship Protection Act (the "Act"), was passed in the 2003 Special Legislative Session and became effective September 1, 2003. The Alabama Act is codified at *Ala. Code* §§ 30-3-210 - 229¹. The Act is generically referred to as the Relocation Act. The Act sets requirements and procedures for notice and an opportunity to object before a child's principal residence may be changed.

Section 30-3-210. The general philosophy of the Act is that children need both parents, even after a divorce.

Section 30-3-211. Definitions pertinent to this Act are:

(1) Change of Principal Residence. A change in a child's permanent residence when prior court orders have been entered regarding custody or visitation.

(3) Child Custody Determination. A judgment, decree, or other court order, whether permanent, temporary, initial or a modification order, regarding a child's legal or physical custody or visitation. The Act does not apply to court orders regarding support or other monetary obligations.

(8) Principal Residence of A Child. A child's residence for purposes of this Act includes:

(a) The residence designated by a court.

¹ The Act has been codified by Lexis-Nexis at *Ala. Code* §§30-3-216 through 229. However, the final form and location has not yet been approved by the Code Commissioner and may be changed upon publication.

(b) In the absence of a court order, the residence expressly agreed to by the parents.

(c) In the absence of a court order or express agreement, the residence where a child resided for six consecutive months with parent(s) or a person acting as a parent.

(9) Person Acting As A Parent. A person other than a parent who has had physical custody of the child for six consecutive months within the year preceding the commencement of proceedings, and has been awarded custody or claims a right to custody.

(11) Relocate or Relocation. "A change in the principal residence of a child for a period of 45 days or more. The term does not include a temporary absence from the primary residence, or an absence necessary to escape domestic violence."

Section 30-3-212. (a) The Act applies to ALL orders determining custody or visitation, even orders entered prior to the effective date of the Act. Any person entitled to custody or visitation may commence proceedings to incorporate this Act into the existing custody or visitation order. The Act does not apply to a person who is on active military service and is being relocated pursuant to a non-voluntary order.

(b) Sections 30-3-220 - 226 shall not apply to a change of a child's principal residence if the change of residence is closer to the non-relocating parent, or is less than 60 miles unless the change is across state lines.

Section 30-3-213. A person who has the right to establish the child's principal residence has an affirmative duty to provide notice to anyone entitled to custody or visitation of change in the child's residence, except as provided in § 30-3-217 (the domestic violence exception).

Section 30-3-214. A person entitled to custody or visitation shall provide notice to every other person entitled to custody or visitation of an intended change in that person's principal residence, except as provided in § 30-3-217 (the domestic violence exception).

Section 30-3-215. (a) When §§ 30-3-213 or -214 require notice, notice must be by certified mail to the last known address no later than 45 days prior to the intended change for a child, or the tenth day after the date such information becomes known, if the person did not know and could not reasonably have known such information in sufficient time to comply with the 45-day notice, and it is not reasonably possible to extend the time for the change.

(b) All of the following information MUST be in the notice, except as provided in § 30-3-217 (the domestic violence exception):

- (1) Street address of new residence;
- (2) Mailing address;
- (3) Telephone number(s) at the new residence;
- (4) Name, address and telephone number of the child's new school;
- (5) Date of intended change;
- (6) A statement of the specific reasons for the change;
- (7) A proposal for a revised schedule of custody or visitation;
- (8) A warning that an objection to the relocation of the child must be made within

30 days of receipt of notice, or the relocation will be permitted.

(c) An active member of the military who is being relocated pursuant to a non-voluntary order shall provide notice of the change of principal residence, except the notice does not need to contain the warning in § 30-3-215(b)(8).

(d) A person required to give notice has a continuing duty to provide information required by this Section as such information becomes known. Such continuing information should be furnished by certified mail within ten days such information becomes known.

Section 30-3-216. The Act requires specific language that shall be set out in every child custody determination, whether an initial determination or modification, in both Domestic Relations

and Juvenile Courts. See attached Exhibit "A" for the required language.

Section 30-3-217. (a) The Act excepts persons who are at risk for domestic violence from disclosing identifying information. When the court finds the health, safety, or liberty of a person or child would be unreasonably put at risk, the court may order any of the following:

(1) That the address and telephone number not be disclosed in the pleadings or other documents in the court file, except for in camera disclosures.

(2) Notice requirements may be waived.

(3) Any other remedial action the court considers necessary to facilitate the legitimate needs of the parties and the interests of the child.

(b) The court may conduct an *ex parte* hearing under subsection (a) above. The following instances create prima facie evidence that disclosure of identifying information would put the health, safety, or liberty of a person or child at risk: Issuance of a final order of protection under The Protection From Abuse Act; a conviction for domestic violence; or an award of custody of the child pursuant to §§ 30-3-131 - 135.

Section 30-3-218. (a) If a person required to give notice fails to do so, or fails to provide the required information, the court shall consider such failure as a factor when making any of the following determinations: a change in the child's principal residence; deciding whether custody or visitation should be modified; ordering whether the child should be returned to the former residence; deviating from the child support guidelines; transportation and communication expenses; and whether the person seeking to change the child's principal residence should be liable for attorney fees and costs of the objecting person.

(b) If a person willfully and intentionally violates notice requirements of a court order pursuant to § 30-3-216, the court may impose sanctions.

Section 30-3-219. The person entitled to determine the principal residence of a child may

change the child's residence after giving notice to the person entitled to notice, and the person entitled to notice does not file a proceeding to object within 30 days of receipt of notice.

Section 30-3-220. (a) A person entitled to custody or visitation may initiate proceedings objecting to a proposed change of residence.

(b) A non-parent entitled to visitation may initiate proceedings to obtain a revised visitation schedule, but may not object to the proposed change of residence.

(c) Proceedings under this section must be filed within 30 days of receipt of notice of the proposed change of a child's residence. This time may be extended or waived on a showing of good cause, excusable neglect, or that the notice requirements of § 30-3-215(b) were defective or insufficient to timely object.

(d) The Rules of Civil Procedure apply to this Act.

Section 30-3-221. (a) The court may grant a temporary order restraining the change of the child's residence, or order the child returned if the change of residence has taken place without compliance with the Act. The court may also consider whether:

- (1) Notice was not timely.
- (2) Notice was not accurate or was insufficient to make an objection.
- (3) The child was already relocated without notice, agreement, or court order.
- (4) The likelihood that in a final hearing a change in the child's residence will not be approved.

(b) The court may grant a temporary order permitting a change in the child's principal residence and order a revised visitation schedule pending a final hearing if the court finds notice requirements were met, and there is a likelihood that in a final hearing a change in the child's residence will be approved.

(c) If a temporary order authorizes a change in the child's residence, the court may not

give weight to the temporary change in its final decision.

Section 30-3-222. (a) Upon entry of a temporary or final order authorizing a child's change of residence, the court may consider such change as a factor to support a change in custody. Whether a change in residence should cause a change in custody, the court shall also consider: .

(1) The nature, quality, extent of involvement, and duration of the child's relationship with the person proposing to relocate the child and the non-relocating person, with siblings, and with "other significant persons or institutions in the child's life."

(2) Age, development, needs of the child, and impact of a change of residence.

(3) Increased travel time for the child or person entitled to custody or visitation.

(4) Availability and cost of communication.

(5) Preservation of the relationship between the child and non-relocating person.

(6) Preference of the child, considering the child's age and maturity.

(7) The degree to which a change in residence compares to a change in custody.

(8) Extent to which custody or visitation has been exercised.

(9) Whether the relocating person has established a pattern of thwarting the relationship between the child and non-relocating person.

(10) Whether the relocating person is likely to comply with visitation orders from this jurisdiction, and to foster a joint parenting arrangement with the non-relocating person.

(11) Whether the child's relocation will enhance the child's and relocating person's general quality of life, considering financial, emotional and educational opportunities.

(12) Whether a support system is available in the new location in the event of an emergency or disability.

(13) Whether the relocation is to a foreign country that may not enforce visitation orders, or which presents a substantial risk of specific and serious harm to the child.

- (14) The stability of the family unit of persons entitled to custody or visitation.
- (15) Reasons to change the child's principal residence.
- (16) Evidence of a history of domestic violence or child abuse.
- (17) Any other material factors.

(b) The court shall enter an order granting the objection to the relocation, denying the objection, or any other appropriate relief.

(c) If the relocation is approved, the court shall order contact and telephone access between the child and non-relocating party to assure frequent, continuing and meaningful contact, and shall apportion transportation costs to exercise visitation.

(d) Transportation costs may be considered in deviating from the child support guidelines.

(e) If the relocation is approved, the court may retain jurisdiction to insure compliance.

Section 30-3-223. Unless the court determines the party objecting to relocation has committed domestic violence or child abuse, the Act creates a rebuttable presumption that a change in the child's principal residence is not in the child's best interest.

Section 30-3-224. If relocation is approved, the court may require the relocating party to provide reasonable security guaranteeing custody or visitation will not be interrupted or obstructed.

Section 30-3-225. (a) When a party commences an action either to relocate a child or to object to relocation, without good cause or for the purpose of harassing or causing unnecessary financial or emotional hardships, after notice and an opportunity to be heard, the court may impose sanctions if the court determines the action was filed based on any of the following:

- (1) Harassment, or to cause unnecessary delay, or increased costs of litigation.
- (2) Not warranted by existing law or a frivolous argument.
- (3) Factual contentions without evidentiary support.
- (4) To elicit information protected by § 30-3-217.

(b) Sanctions shall be limited to those sufficient to deter repetitious conduct, and may include costs, attorney fees, expenses, non-monetary penalties, or a penalty payable to the court.

Section 30-3-226. If the issue of change of a child's principal residence is presented in an initial divorce action, the court shall consider, *inter alia*, the factors in §§ 30-3-221 and 222.

Section 30-3-227. The court may award any party (note not necessarily the prevailing party) necessary and reasonable expenses including expenses for communication, investigations, witnesses, travel, child care, attorney fees and costs.

Section 30-3-228. (a) If a child is relocated outside the state, the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) shall apply.

(b) If a child is relocated outside the state, and the parties have joint custody, joint legal custody, or joint physical custody, and one party continues to maintain a principal residence in this state, then Alabama shall have continuing, exclusive jurisdiction.

(c) When Alabama has continuing, exclusive jurisdiction in any proceeding to modify, interpret, or enforce an order under this Act, venue will lie in the original circuit court, or in the circuit court where the remaining Alabama resident may have resided for three consecutive years preceding the commencement of proceedings. The Alabama resident shall be able to choose the venue when more than one venue is appropriate.

Section 30-3-229. Unless the court enters a temporary order under § 30-3-221, the court may not stay an order enjoining a relocation pending appeal.

The order set out below regarding relocation requirements shall **NOT** apply to a change of principal residence of a child to a residence which is 60 miles or less from the residence of a non-relocating parent who is entitled to custody of or visitation with the child or if the change or proposed change results in the child residing nearer to the non-relocating parent than before the change or proposed change, unless such change in the principal residence of a child results in the child living in a different state:

Alabama law requires each party in this action who has either custody of or the right of visitation with a child to notify other parties who have custody of or the right of visitation with the child of any change in his or her address or telephone number, or both, and of any change or proposed change of principal residence and telephone number or numbers of a child. This is a continuing duty and remains in effect as to each child subject to the custody or visitation provisions of this decree until such child reaches the age of majority or becomes emancipated and for so long as you are entitled to custody of or visitation with a child covered by this order. If there is to be a change of principal residence by you or by a child subject to the custody or visitation provisions of this order, you must provide the following information to each other person who has custody or visitation rights under this decree as follows:

- (1) The intended new residence, including the specific street address, if known.
- (2) The mailing address, if not the same as the street address.
- (3) The telephone number or numbers at such residence, if known.
- (4) If applicable, the name, address, and telephone number of the school to be attended by the child, if known.
- (5) The date of the intended change of principal residence of a child.
- (6) A statement of the specific reasons for the proposed change of principal residence of a child, if applicable.
- (7) A proposal for a revised schedule of custody of or visitation with a child, if any.
- (8) Unless you are a member of the Armed Forces of the United States of America and are being transferred or relocated pursuant to a non-voluntary order of the government, a warning to the non-relocating person that an objection to the relocation must be made within 30 days of receipt of the notice or the relocation will be permitted.

You must give notice by certified mail of the proposed change of principal residence on or before the 45th day before a proposed change of principal residence. If you do not know and cannot reasonably become aware of such information in sufficient time to provide a 45-day notice, you must give such notice by certified mail not later than the 10th day after the date that you obtain such information.

Your failure to notify other parties entitled to notice of your intent to change the principal residence of a child may be taken into account in a modification of the custody of or visitation with the child.

If you, as the non-relocating party, do not commence an action seeking a temporary or permanent order to prevent the change of principal residence of a child within 30 days after receipt of notice of the intent to change the principal residence of the child, the change of principal residence is authorized.

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~~(9) (8) To perform such other functions and duties of the Department of Finance as may from time to time be assigned, by the Director of Finance."~~

~~Section 2. (a) The Director of the Alabama Department of Public Safety shall employ the necessary state Capitol police officers, subject to the state Merit System laws, to preserve order, to prevent and investigate crime, and protect and save from injury persons and property at the Capitol and all state buildings occupied by the state departments and agencies within the State of Alabama. The director shall prescribe the duties and responsibilities of the state Capitol police officers. All officers employed as state Capitol police officers shall meet the certification requirements as established by the Alabama Peace Officers' Standards and Training Commission prior to being granted permanent employment status.~~

~~(b) Upon the effective date of this act, all state Capitol police officers and employees shall be transferred to the Alabama Department of Public Safety. Sworn officers transferred in accordance with this section shall remain in their current Merit System classification, unless later altered or amended by the State Personnel Board. The Director of the Department of Finance shall cause to be transferred to the Department of Public Safety, the annual funding appropriation and budget for the state Capitol police officers and all individual and organizational equipment, uniforms, vehicles, and other property currently utilized by the state Capitol police officers. The Director of Finance and the Director of Public Safety may enter into an interagency agreement to facilitate this transfer of employees and property.~~

~~(c) Upon the effective date of this act, the classification of State Capitol Police Chief shall be transferred to the Department of Public Safety with no loss of pay or benefits, to be assigned duties as the Director of Public Safety or his or her designee shall designate.~~

~~(d) State Capitol police officers, when duly appointed, shall have the powers of peace officers in this state and may exercise such powers anywhere within the state.~~

~~(e) The administration of the card key security system used in state buildings and other facilities shall be transferred to the Department of Public Safety and the generated revenue shall be deposited into the Department of Public Safety general fund.~~

~~(f)(e) Any reference to the state Capitol police officers under the Department of Finance shall henceforth be considered as the State Capitol Police under the Department of Public Safety.~~

~~Section 3. Sections 36-26-66, 41-4-182, 41-4-184, and 41-4-185, Code of Alabama 1975, are repealed.~~

~~Section 4. This act shall become effective on the first day of the third month following its passage and approval by the Governor, or its otherwise becoming law.~~

~~Approved June 20, 2003.~~

CUSTODY OF CHILDREN—PARENT NOTIFICATION

Act 2003-364

H.B. No. 157

By: Representative McMillan

Enrolled, An Act, Relating to the custody of children; to require that notification be provided to a parent when the principal residence of a person entitled to custody of or visitation with a child or of a child is to be changed; to provide for procedures to object to the relocation of a child and/or to modify the custody of and visitation with a child when the principal residence of a child is changed; and to provide that the parent who is relocating has the initial burden of proof.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. This act shall be known and may be cited as the "Alabama Parent-Child Relationship Protection Act" and promotes the general philosophy in this state that children

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need both parents, even after a divorce established in Section 30-3-150, Code of Alabama 1975.

Section 2. As used in this act, the following words and phrases shall have the following meanings, unless the context requires a different definition:

(1) CHANGE OF PRINCIPAL RESIDENCE. A change of the residence of a child whose custody has been determined by a prior court order, whether or not accompanied by a change of the residence of a person entitled to custody of the child, with the intent that such change shall be permanent in nature and not amounting to a temporary absence of the child from his or her principal residence.

(2) CHILD. A minor child as defined by Section 30-3B-102(2), Code of Alabama 1975.

(3) CHILD CUSTODY DETERMINATION. A judgment, decree, or other order of a court providing for the legal custody, physical custody, or visitation with respect to a child. The term includes a permanent, temporary, initial, and modification order. The term does not include an order relating to child support or other monetary obligation of an individual.

(4) COMMENCEMENT. The filing of the first pleading in a proceeding.

(5) COURT. An entity authorized under the law of a state to establish, enforce, or modify a child custody determination.

(6) MODIFICATION. A child custody determination that changes, replaces, supersedes, or is otherwise made after a previous determination concerning the same child, whether or not it is made by the court that made the previous determination.

(7) PERSON ENTITLED TO CUSTODY OR VISITATION. A person so entitled to physical custody of a child as defined by Sections 30-3-1 through 30-3-4.1, inclusive, Code of Alabama 1975, or visitation with respect to a child by virtue of a child custody determination as defined by Section 30-3B-102(3), Code of Alabama 1975.

(8) PRINCIPAL RESIDENCE OF A CHILD. Any of the following:

a. The residence designated by a court to be the primary residence of the child.

b. In the absence of a determination by a court, the residence at which the parents of a child whose change of principal residence is at issue have expressly agreed that the child will primarily reside.

c. In the absence of a determination by a court or an express agreement between the parents of a child whose change of principal residence is at issue, the residence, if any, at which the child lived with the child's parents, a parent, or a person acting as a parent, for at least six consecutive months or, in the case of a child less than six months of age, the residence at which the child lived from birth with the child's parents, a parent, or a person acting as a parent. Periods of temporary absence from such residence are counted as part of the period of residence.

(9) PERSON ACTING AS A PARENT. A person, other than a parent, who has physical custody of the child or has had physical custody for a period of six consecutive months, including any temporary absence, within one year immediately before the commencement of a child custody proceeding and has been awarded legal custody by a court or claims a right to legal custody under the law of this state.

(10) PHYSICAL CUSTODY. The physical care and supervision of a child.

(11) RELOCATE or RELOCATION. A change in the principal residence of a child for a period of 45 days or more. The term does not include a temporary absence from the primary residence, or an absence necessary to escape domestic violence.

Section 3. (a) Except as provided otherwise by this act, the provisions of this act apply to all orders determining custody of or visitation with a child whether such order issued before or after the effective date of this act. To the extent that a provision of this act conflicts with an existing order determining custody of or visitation with a child or other enforceable agreement, this act does not apply to alter or amend the terms of such order or agreement which address the rights of the parties or the child with regard to change in the primary residence of a child. Any person entitled to the legal or physical custody of or visitation with a child may commence an action for modification to incorporate the provisions of this act into

an existing order determining the custody of or visitation with a child. Except as provided in subsection (c) of Section 6, the provisions of this act shall not apply to a person who is on active military service in the Armed Forces of the United States of America and is being transferred or relocated pursuant to a non-voluntary order from the government.

(b) The provisions of Sections 11 to 17, inclusive, shall not apply to a change of principal residence of a child to a residence which is 60 miles or less from the residence of a non-relocating parent who is entitled to custody of or visitation with the child or if the change or proposed change results in the child residing nearer to the non-relocating parent than before the change or proposed change, unless such change in the principal residence of a child results in the child living in a different state.

Section 4. Except as provided by Section 8, a person who has the right to establish the principal residence of the child shall provide notice to every other person entitled to custody of or visitation with a child of a proposed change of the child's principal residence as required by subsection (b) of Section 6.

Section 5. Except as provided by Section 8, a person entitled to custody of or visitation with a child shall provide notice to every other person entitled to custody of or visitation with a child of an intended change in his or her principal residence as required by subsection (b) of Section 6.

Section 6. (a) When a notice is required by either Section 4 or Section 5, except as provided by Section 8, the notice of a proposed change of principal residence of a child or the notice of an intended or proposed change of the principal residence of an adult as provided in this act must be given by certified mail to the last known address of the person or persons entitled to notification under this act not later than the 45th day before the date of the intended change of the principal residence of a child or the 10th day after the date such information required to be furnished by subsection (b) becomes known, if the person did not know and could not reasonably have known the information in sufficient time to comply with the 45-day notice, and it is not reasonably possible to extend the time for change of principal residence of the child.

(b) Except as provided by Section 8, all of the following information, if available, must be included with the notice of intended change of principal residence of a child:

- (1) The intended new residence, including the specific street address, if known.
- (2) The mailing address, if not the same as the street address.
- (3) The telephone number or numbers at such residence, if known.
- (4) If applicable, the name, address, and telephone number of the school to be attended by the child, if known.
- (5) The date of the intended change of principal residence of a child.
- (6) A statement of the specific reasons for the proposed change of principal residence of a child, if applicable.
- (7) A proposal for a revised schedule of custody of or visitation with a child, if any.
- (8) A warning to the non-relocating person that an objection to the relocation must be made within 30 days of receipt of the notice or the relocation will be permitted.

(c) A person entitled to custody of a child who is on active military service in the Armed Forces of the United States of America and is being transferred or relocated pursuant to a non-voluntary order of the government shall provide notice of change of principal residence of a child to the persons entitled to custody of or visitation with a child with the information set forth in subsection (b) of Section 6 except that such notice need not contain a warning to the non-relocating person as provided in subdivision (8) of subsection (b) that an objection to the relocation must be made within 30 days or the relocation will be permitted.

(d) A person required to give notice of a proposed change of principal residence of a child under this section has a continuing duty to provide the information required by this section as that information becomes known. Such information should be provided by certified mail to the last known address to the person or persons entitled to such notice within 10 days of the date such information becomes known.

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child. Except as provided in this section, this act shall apply to a person who is on active duty in the Armed Forces of America and is being supported by the government.

Section 7. After the effective date of this act, every child custody determination shall include the following language:

Alabama law requires each party in this action who has either custody of or the right of visitation with a child to notify other parties who have custody of or the right of visitation with the child of any change in his or her address or telephone number, or both, and of any change or proposed change of principal residence and telephone number or numbers of a child. This is a continuing duty and remains in effect as to each child subject to the custody or visitation provisions of this decree until such child reaches the age of majority or becomes emancipated and for so long as you are entitled to custody of or visitation with a child covered by this order. If there is to be a change of principal residence by you or by a child subject to the custody or visitation provisions of this order, you must provide the following information to each other person who has custody or visitation rights under this decree as follows:

(1) The intended new residence, including the specific street address, if known.

(2) The mailing address, if not the same as the street address.

(3) The telephone number or numbers at such residence, if known.

(4) If applicable, the name, address, and telephone number of the school to be attended by the child, if known.

(5) The date of the intended change of principal residence of a child.

(6) A statement of the specific reasons for the proposed change of principal residence of a child, if applicable.

(7) A proposal for a revised schedule of custody of or visitation with a child, if any.

(8) Unless you are a member of the Armed Forces of the United States of America and are being transferred or relocated pursuant to a non-voluntary order of the government, a warning to the non-relocating person that an objection to the relocation must be made within 30 days of receipt of the notice or the relocation will be permitted.

You must give notice by certified mail of the proposed change of principal residence on or before the 45th day before a proposed change of principal residence. If you do not know and cannot reasonably become aware of such information in sufficient time to provide a 45-day notice, you must give such notice by certified mail not later than the 10th day after the date that you obtain such information.

Your failure to notify other parties entitled to notice of your intent to change the principal residence of a child may be taken into account in a modification of the custody of or visitation with the child.

If you, as the non-relocating party, do not commence an action seeking a temporary or permanent order to prevent the change of principal residence of a child within 30 days after receipt of notice of the intent to change the principal residence of the child, the change of principal residence is authorized.

Section 8. (a) In order to protect the identifying information of persons at risk from the effects of domestic violence or abuse, on a finding by the court that the health, safety, or liberty of a person or a child would be unreasonably put at risk by the disclosure of the identifying information required by Section 4 or Section 5 in conjunction with a proposed change of principal residence of a child or change of principal residence of a person having custody of or rights of visitation with a child, the court may order any or all of the following:

(1) The specific residence address and telephone number of a child or the person having custody of or rights of visitation with a child and other identifying information shall not be disclosed in the pleadings, other documents filed in the proceeding, or in any order issued by the court, except for in camera disclosures.

(2) The notice requirements provided by this act may be waived to the extent necessary to protect confidentiality and the health, safety, or liberty of a person or a child.

(3) Any other remedial action that the court considers necessary to facilitate the legitimate needs of the parties and the interests of the child.

(b) If appropriate, the court may conduct an ex parte hearing under subsection (a) of this section. Issuance of a final order of protection under Sections 30-5-1 to 30-5-11, inclusive, Code of Alabama 1975; a conviction for domestic violence pursuant to Sections 13A-6-130 to

Section 7. After the effective date of this act, every child custody determination shall include the following language:

"Alabama law requires each party in this action who has either custody of or the right of visitation with a child to notify other parties who have custody of or the right of visitation with the child of any change in his or her address or telephone number, or both, and of any change or proposed change of principal residence and telephone number or numbers of a child. This is a continuing duty and remains in effect as to each child subject to the custody or visitation provisions of this decree until such child reaches the age of majority or becomes emancipated and for so long as you are entitled to custody of or visitation with a child covered by this order. If there is to be a change of principal residence by you or by a child subject to the custody or visitation provisions of this order, you must provide the following information to each other person who has custody or visitation rights under this decree as follows:

"(1) The intended new residence, including the specific street address, if known.

"(2) The mailing address, if not the same as the street address.

"(3) The telephone number or numbers at such residence, if known.

"(4) If applicable, the name, address, and telephone number of the school to be attended by the child, if known.

"(5) The date of the intended change of principal residence of a child.

"(6) A statement of the specific reasons for the proposed change of principal residence of a child, if applicable.

"(7) A proposal for a revised schedule of custody of or visitation with a child, if any.

"(8) Unless you are a member of the Armed Forces of the United States of America and are being transferred or relocated pursuant to a non-voluntary order of the government, a warning to the non-relocating person that an objection to the relocation must be made within 30 days of receipt of the notice or the relocation will be permitted.

"You must give notice by certified mail of the proposed change of principal residence on or before the 45th day before a proposed change of principal residence. If you do not know and cannot reasonably become aware of such information in sufficient time to provide a 45-day notice, you must give such notice by certified mail not later than the 10th day after the date that you obtain such information.

"Your failure to notify other parties entitled to notice of your intent to change the principal residence of a child may be taken into account in a modification of the custody of or visitation with the child.

"If you, as the non-relocating party, do not commence an action seeking a temporary or permanent order to prevent the change of principal residence of a child within 30 days after receipt of notice of the intent to change the principal residence of the child, the change of principal residence is authorized."

Section 8. (a) In order to protect the identifying information of persons at risk from the effects of domestic violence or abuse, on a finding by the court that the health, safety, or liberty of a person or a child would be unreasonably put at risk by the disclosure of the identifying information required by Section 4 or Section 5 in conjunction with a proposed change of principal residence of a child or change of principal residence of a person having custody of or rights of visitation with a child, the court may order any or all of the following:

(1) The specific residence address and telephone number of a child or the person having custody of or rights of visitation with a child and other identifying information shall not be disclosed in the pleadings, other documents filed in the proceeding, or in any order issued by the court, except for in camera disclosures.

(2) The notice requirements provided by this act may be waived to the extent necessary to protect confidentiality and the health, safety, or liberty of a person or a child.

(3) Any other remedial action that the court considers necessary to facilitate the legitimate needs of the parties and the interests of the child.

(b) If appropriate, the court may conduct an ex parte hearing under subsection (a) of this section. Issuance of a final order of protection under Sections 30-5-1 to 30-5-11, inclusive, Code of Alabama 1975; a conviction for domestic violence pursuant to Sections 13A-6-130 to

13A-6-135, inclusive, Code of Alabama 1975; or an award of custody of the child pursuant to Sections 30-3-131 to 30-3-135, inclusive, Code of Alabama 1975, shall be considered prima facie evidence that the health, safety, or liberty of a person or a child would be unreasonably put at risk by the disclosure of identifying information or by compliance with the notice requirements of this act.

Section 9. (a) Except as provided in Section 8, if a person required to give notice as required by Section 4 or Section 5 shall fail to provide the notice or the information required by subsection (b) of Section 6, the court shall consider the failure to provide such notice or information as a factor in making its determination regarding the change of principal residence of a child; a factor in determining whether custody or visitation should be modified; a factor for ordering the return of the child to the former residence of the child if the change of principal residence of a child has taken place without notice; a factor meriting a deviation from the child support guidelines; a factor in awarding increased transportation and communication expenses with the child; and a factor in considering whether the person seeking to change the principal residence of a child may be ordered to pay reasonable costs and attorney's fees incurred by the person objecting to the change.

(b) Additionally, the court may make a finding of contempt of court if a party willfully and intentionally violates the notice requirement of an order issued by any court pursuant to Section 7 and may impose the sanctions authorized by law or rule of court for disobedience of a court order.

Section 10. The person entitled to determine the principal residence of a child may change the principal residence of a child after providing notice as provided herein unless a person entitled to notice files a proceeding seeking a temporary or permanent order to prevent the change of principal residence of a child within 30 days after receipt of such notice.

Section 11. (a) A person entitled to custody of or visitation with a child may commence a proceeding objecting to a proposed change of the principal residence of a child and seek a temporary or permanent order to prevent the relocation.

(b) A non-parent entitled to visitation with a child may commence a proceeding to obtain a revised schedule of visitation, but may not object to the proposed change of principal residence of a child or seek a temporary or permanent order to prevent the change.

(c) A proceeding filed under this section must be filed within 30 days of receipt of notice of a proposed change of principal residence of a child, except that the court may extend or waive the time for commencing such action upon a showing of good cause, excusable neglect, or that the notice required by subsection (b) of Section 6 is defective or insufficient upon which to base an action under this act.

(d) Except as otherwise specifically provided in this act, the Alabama Rules of Civil Procedure shall apply to all proceedings under this act.

Section 12. (a) Where the ends of justice dictate, the court may grant a temporary order restraining the change of principal residence of a child or ordering return of a child to the former residence of the child if a change of principal residence has previously taken place without compliance with this act, and may consider among other factors, any of the following:

(1) The notice required by this act was not provided in a timely manner.

(2) The notice required by this act was not accurate or did not contain sufficient information upon which a person receiving the notice could base an objection.

(3) The child already has been relocated without notice, agreement of the parties, or prior court approval.

(4) The likelihood that on final hearing the court will not approve the change of the principal residence of the child.

(e) The court may grant a temporary order permitting the change of principal residence of a child and providing for a revised schedule for temporary visitation with a child pending a final hearing if the court finds that the required notice of a proposed change of principal residence of a child as provided in this act was provided in a timely manner, contained sufficient and accurate information and if the court finds from an examination of the evidence presented at a hearing for temporary relief that there is a likelihood that on final hearing the court will approve the change of the principal residence of the child.

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(f) If the court has issued a temporary order authorizing a party to change the principal residence of a child before final judgment is issued, the court may not give weight to the temporary change of principal residence as a factor in reaching its final decision.

Section 13. (a) Upon the entry of a temporary order or upon final judgment permitting the change of principal residence of a child, a court may consider a proposed change of principal residence of a child as a factor to support a change of custody of the child. In determining whether a proposed or actual change of principal residence of a minor child should cause a change in custody of that child, a court shall take into account all factors affecting the child, including, but not limited to, the following:

(1) The nature, quality, extent of involvement, and duration of the child's relationship with the person proposing to relocate with the child and with the non-relocating person, siblings, and other significant persons or institutions in the child's life.

(2) The age, developmental stage, needs of the child, and the likely impact the change of principal residence of a child will have on the child's physical, educational, and emotional development, taking into consideration any special needs of the child.

(3) The increase in travel time for the child created by the change in principal residence of the child or a person entitled to custody of or visitation with the child.

(4) The availability and cost of alternate means of communication between the child and the non-relocating party.

(5) The feasibility of preserving the relationship between the non-relocating person and the child through suitable visitation arrangements, considering the logistics and financial circumstances of the parties.

(6) The preference of the child, taking into consideration the age and maturity of the child.

(7) The degree to which a change or proposed change of the principal residence of the child will result in uprooting the child as compared to the degree to which a modification of the custody of the child will result in uprooting the child.

(8) The extent to which custody and visitation rights have been allowed and exercised.

(9) Whether there is an established pattern of conduct of the person seeking to change the principal residence of a child, either to promote or thwart the relationship of the child and the non-relocating person.

(10) Whether the person seeking to change the principal residence of a child, once out of the jurisdiction, is likely to comply with any new visitation arrangement and the disposition of that person to foster a joint parenting arrangement with the non-relocating party.

(11) Whether the relocation of the child will enhance the general quality of life for both the custodial party seeking the change of principal residence of the child and the child, including, but not limited to, financial or emotional benefit or educational opportunities.

(12) Whether or not a support system is available in the area of the proposed new residence of the child, especially in the event of an emergency or disability to the person having custody of the child.

(13) Whether or not the proposed new residence of a child is to a foreign country whose public policy does not normally enforce the visitation rights of non-custodial parents, which does not have an adequately functioning legal system or which otherwise presents a substantial risk of specific and serious harm to the child.

~~(14) The stability of the family unit of the persons entitled to custody of and visitation with a child.~~

(15) The reasons of each person for seeking or opposing a change of principal residence of a child.

(16) Evidence relating to a history of domestic violence or child abuse.

~~(16)~~ (17) Any other factor that in the opinion of the court is material to the general issue or otherwise provided by law.

(b) The court making a determination of such issue shall enter an order granting the objection to the change or proposed change of principal residence of a child, denying the

objection to the change or proposed change of principal residence of a child, or any other appropriate relief based upon the facts of the case.

(c) The court, in approving a change of principal residence of a child, shall order contact between the child and the non-relocating party and telephone access sufficient to assure that the child has frequent, continuing, and meaningful contact with the non-relocating party and shall equitably apportion transportation costs of the child for visitation based upon the facts of the case.

(d) The court, in approving a change of principal residence of a child, may consider the costs of transporting the child for visitation and determine whether a deviation from the child support guidelines should be considered in light of all factors including, but not limited to, additional costs incurred for transporting the child for visitation.

(e) The court, in approving a change of principal residence of a child, may retain jurisdiction of the parties and of the child in order to supervise the transition caused by the change of principal residence of the child; to insure compliance with the orders of the court regarding continued access to the child by the non-relocating party; to insure the cooperation of the relocating party in fostering the parent-child relationship between the child and the non-relocating party; and to protect the relocating party and the child from risk of harm in those cases described in subsection (c) of Section 8.

Section 14. In proceedings under this act unless there has been a determination that the party objecting to the change of the principal residence of the child has been found to have committed domestic violence or child abuse, there shall be a rebuttable presumption that a change of principal residence of a child is not in the best interest of the child. The party seeking a change of principal residence of a child shall have the initial burden of proof on the issue. If that burden of proof is met, the burden of proof shifts to the non-relocating party.

Section 15. If on final hearing the change of principal residence of a child is permitted, the court may require the person seeking to change the principal residence of a child to provide reasonable security guaranteeing that the custody of and visitation with the child will not be interrupted or obstructed by the relocating party.

Section 16. (a) Where a party commences an action without good cause or for the purpose of harassing or causing unnecessary financial or emotional hardships to the other party, after notice and a reasonable opportunity to respond, the court may impose sanctions on a person proposing a change of principal residence of the child or objecting to a proposed change of principal residence of a child if it determines that the proposal was made or the objection was filed based upon any of the following:

- (1) To harass a person or to cause unnecessary delay or needless increase in the cost of litigation.
- (2) Without being warranted by existing law or based on frivolous argument.
- (3) Based on allegations and other factual contentions, which had no evidentiary support nor, if specifically so identified, could not have been reasonably believed to be likely to have evidentiary support after further investigation.
- (4) Designed to elicit or discover or lead to the discovery of information protected by Section 8.

(b) Sanctions imposed under this section shall be limited to those that are sufficient to deter repetition of such conduct or comparable conduct by others similarly situated. The sanction may include directives of a non-monetary nature, an order to pay a penalty into court, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the other party of some or all of the reasonable costs, attorney's fees, and expenses incurred as a direct result of the violation.

Section 17. If the issue of change of principal residence of a child is presented in a petition for divorce or dissolution of a marriage or other petition to determine custody of or visitation with a child, the court shall consider, among other evidence, the factors set forth in Sections 12 and 13 in making its initial determination.

Section 18. The court may award any party necessary and reasonable expenses incurred by or on behalf of the party, including costs, communication expenses, attorney's fees,

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investigative fees, expenses for witnesses, travel expenses, and child care during the course of the proceedings.

Section 19. (a) In those instances where the change of principal residence of a child results in the relocation of a child to a residence outside this state, the provisions of Sections 30-3B-101 to 30-3B-314, inclusive, Code of Alabama 1975, shall apply to actions commenced under this act.

(b) Where the parties have been awarded joint custody, joint legal custody or joint physical custody of a child as defined in Section 30-3-151, Code of Alabama 1975, and at least one parent having joint custody, joint legal custody, or joint physical custody of a child continues to maintain a principal residence in this state, the child shall have a significant connection with this state and a court in fashioning its judgments, orders, or decrees may retain continuing jurisdiction under Sections 30-3B-202 to 30-3B-204, inclusive, Code of Alabama 1975, even though the child's principal residence after the relocation is outside this state.

(c) In a proceeding commenced to modify, interpret, or enforce a final decree under this act, where jurisdiction exists under this section or otherwise as provided by law and where only one person having joint custody, joint legal custody, or joint physical custody of a child continues to maintain a principal residence in this state, notwithstanding any law to the contrary, venue of all proceedings under this act is changed so that venue will lie either in the original circuit court rendering the final decree or in the circuit court of the county where that person having joint custody, joint legal custody, or joint physical custody has resided for a period of at least three consecutive years immediately preceding the commencement of an action under this act. The person having joint custody, joint legal custody, or joint physical custody who continues to maintain a principal residence in this state shall be able to choose the particular venue as herein provided, regardless of which party files the petition or other action.

Section 20. An appeal may be taken from a final order in a proceeding under this act in accordance with Alabama law. Unless the court enters a temporary order under Section 12, the court may not stay an order enjoining a change in principal residence of a child pending appeal.

Section 21. If any provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

Section 22. This act shall become effective on the first day of the third month following its passage and approval by the Governor, or its otherwise becoming law.

Approved June 23, 2003.

**FRANKLIN COUNTY—WATER SERVICE AUTHORITY—
COMPENSATION AND EXPENSES**

Act 2003-365

S.B. No. 536

By: Senator Bedford (N & P) With Notice and Proof

Enrolled, An Act, Relating to Franklin County, to amend Section 5 of Act 93-376, 1993 Regular Session (Acts 1993, p. 638), relating to the Franklin County Water Service Authority; to provide that the compensation and expenses of the board of directors shall be provided in the same manner and under the same conditions as provided for water, sewer, and fire protection authorities pursuant to the general law in Section 11-88-6 of the Code of Alabama 1975.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Section 5 of Act 93-376, 1993 Regular Session (Acts 1993, p. 638), is amended to read as follows:

Additions in House Bills are indicated by underline; deletions by ~~strikeout~~