**South Carolina General Assembly**

123rd Session, 2019-2020

**H. 3295**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. Elliott, Magnuson, Long, Hill, Burns, Loftis, G.R. Smith, Mace, Trantham, Morgan, Jones, McGinnis, Stringer and Huggins

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Introduced in the House on January 8, 2019

Currently residing in the House Committee on **Judiciary**

Summary: Child custody

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

12/18/2018 House Prefiled

12/18/2018 House Referred to Committee on **Judiciary**

1/8/2019 House Introduced and read first time ([House Journal‑page 160](file:///h:\hj\20190108.docx))

1/8/2019 House Referred to Committee on **Judiciary** ([House Journal‑page 160](file:///h:\hj\20190108.docx))

1/9/2019 House Member(s) request name added as sponsor: Hill

1/15/2019 House Member(s) request name added as sponsor: Burns

1/29/2019 House Member(s) request name added as sponsor: Loftis, G.R.Smith

1/30/2019 House Member(s) request name added as sponsor: Mace

1/31/2019 House Member(s) request name added as sponsor: Trantham

2/14/2019 House Member(s) request name added as sponsor: Morgan

1/14/2020 House Member(s) request name added as sponsor: Jones, McGinnis

2/25/2020 House Member(s) request name added as sponsor: Stringer

3/3/2020 House Member(s) request name added as sponsor: Huggins

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**VERSIONS OF THIS BILL**

[12/18/2018](file:///p:\pprever\2019-20\3295_20181218.docx)

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTIONS 63‑15‑225 AND 63‑15‑235 SO AS TO CREATE A REBUTTABLE PRESUMPTION THAT JOINT CUSTODY AND EQUALLY SHARED PARENTING TIME ARE IN THE BEST INTEREST OF THE CHILD, WITH EXCEPTIONS, AT ALL STAGES OF THE CUSTODY DETERMINATION PROCESS; AND TO AMEND SECTIONS 63‑15‑220, 63‑15‑230, AND 63‑15‑240, RELATING TO PARENTING PLANS, FINAL CUSTODY DETERMINATIONS, AND CUSTODY ORDERS RESPECTIVELY, SO AS TO MAKE CONFORMING CHANGES.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Article 2, Chapter 15, Title 63 of the 1976 Code is amended by adding:

“Section 63‑15‑225. (A) The court shall make all temporary custody determinations in the best interest of the child and based on the pleadings, affidavits, parenting plan, and financial declarations submitted in accordance with all applicable South Carolina rules of court and court orders. Provided, the court may upon good cause shown allow additional evidence or testimony as may be necessary.

(B) There is a presumption, rebuttable by clear and convincing evidence, that joint custody and equally shared parenting time are in the best interest of the child. If a deviation from equal parenting time is warranted, the court shall construct a parenting time schedule which maximizes the time each parent or de facto custodian has with the child and is consistent with ensuring the child’s welfare. The court shall weigh all relevant factors set forth in Section 63‑15‑240(B) in determining the best interest of the child.

Section 63‑15‑235. If a court modifies an order for custody affecting the rights and responsibilities of the parents, there is a presumption, rebuttable by clear and convincing evidence, that joint custody and equally shared parenting time are in the best interest of the child. If a deviation from equal parenting time is warranted, the court shall construct a parenting time schedule which maximizes the time each parent or de facto custodian has with the child and is consistent with ensuring the child’s welfare. The court shall weigh all relevant factors set forth in Section 63‑15‑240(B) in determining the best interest of the child.”

SECTION 2. Section 63‑15‑220 of the 1976 Code is amended to read:

“Section 63‑15‑220. (A)(1) At all temporary hearings where custody is contested, each parent must prepare, file, and submit to the court a parenting plan, which reflects parental preferences, the allocation of parenting time to be spent with each parent, and major decisions~~,~~ including, but not limited to, the child’s education, medical and dental care, extracurricular activities and religious training. However, the parties may elect to prepare, file, and submit a joint parenting plan.

(2) There is a presumption, rebuttable by clear and convincing evidence, that equally shared parenting time is in the best interest of the child. If a deviation from equal parenting time is warranted, the court shall construct a parenting time schedule which maximizes the time each parent or de facto custodian has with the child and is consistent with ensuring the child’s welfare. The court shall weigh all relevant factors set forth in Section 63‑15‑240(B) in determining the best interest of the child.

(3) The court shall issue temporary and final custody orders only after considering these parenting plans; however, the failure by a party to submit a parenting plan to the court does not preclude the court from issuing a temporary or final custody order.

(B) At the final hearing, either party may file and submit an updated parenting plan for the court’s consideration.

(C) The South Carolina Supreme Court shall develop rules and forms for the implementation of the parenting plan.”

SECTION 3. Section 63‑15‑230 of the 1976 Code is amended to read:

“Section 63‑15‑230. (A) The court shall make the final custody determination in the best interest of the child based upon the evidence presented.

(B) The court may award joint custody to both parents or sole custody to either parent.

(C) If custody is contested or if either parent seeks an award of joint custody, the court shall consider all custody options, including, but not limited to, joint custody~~, and,~~. There is a presumption, rebuttable by clear and convincing evidence, that joint custody is in the best interest of the child. The court shall weigh all relevant factors set forth in Section 63‑15‑240(B) in determining the best interest of the child and, in its final order, the court shall state its determination as to custody and shall state its reasoning for that decision.

(D) Notwithstanding the custody determination, the court ~~may~~ shall allocate parenting time in the best interest of the child pursuant to Section 63‑15‑220. A parent not granted custody of the child and not awarded shared parenting time pursuant to the presumption established in Section 63‑15‑220, is entitled to reasonable visitation rights unless the court finds in a written order, after a hearing, that visitation would endanger seriously the child’s safety and wellbeing. Upon request of either party, the court shall issue orders which are specific as to the frequency, timing, duration, conditions, and method of scheduling visitation and which reflect the development age of the child.”

SECTION 4. Section 63‑15‑240 of the 1976 Code is amended to read:

“Section 63‑15‑240. (A) In issuing or modifying an order for custody affecting the rights and responsibilities of the parents, the order may include, but is not limited to:

(1) the approval of a parenting plan in accordance with Section 63‑15‑220;

(2) ~~the award of sole custody to one parent with appropriate parenting time for the noncustodial parent;~~

~~(3)~~ the award of joint custody, in which case the order must include:

(a) residential arrangements with each parent in accordance with the needs of each child; and

(b) how consultations and communications between the parents will take place, generally and specifically, with regard to major decisions concerning the child’s health, medical and dental care, education, extracurricular activities, and religious training;

(3) the award of sole custody to one parent with appropriate parenting time for the noncustodial parent; and

(4) other custody arrangements as the court may determine to be in the best interest of the child.

(B) In issuing or modifying a custody order, the court ~~must~~ shall consider the best interest of the child, which may include, but is not limited to:

(1) the temperament and developmental needs of the child;

(2) the capacity and the disposition of the parents to understand and meet the needs of the child;

(3) the preferences of each child;

(4) the wishes of the parents as to custody;

(5) the past and current interaction and relationship of the child with each parent, the child’s siblings, and any other person, including a grandparent, who may significantly affect the best interest of the child;

(6) the actions of each parent to encourage the continuing parent‑child relationship between the child and the other parent, as is appropriate, including compliance with court orders;

(7) the manipulation by or coercive behavior of the parents in an effort to involve the child in the parents’ dispute;

(8) any effort by one parent to disparage the other parent in front of the child;

(9) the ability of each parent to be actively involved in the life of the child;

(10) the child’s adjustment to his or her home, school, and community environments;

(11) the stability of the child’s existing and proposed residences;

(12) the mental and physical health of all individuals involved, except that a disability of a proposed custodial parent or other party, in and of itself, must not be determinative of custody unless the proposed custodial arrangement is not in the best interest of the child;

(13) the child’s cultural and spiritual background;

(14) whether the child or a sibling of the child has been abused or neglected;

(15) whether one parent has perpetrated domestic violence or child abuse or the effect on the child of the actions of an abuser if any domestic violence has occurred between the parents or between a parent and another individual or between the parent and the child;

(16) whether one parent has relocated more than one hundred miles from the child’s primary residence in the past year, unless the parent relocated for safety reasons; and

(17) other factors as the court considers necessary.”

SECTION 5. This act takes effect upon approval by the Governor.

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