

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

FILED SENATE
Apr 2, 2013
S.B. 610
PRINCIPAL CLERK

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SENATE DRS85147-LU-50D (03/15)

Short Title: Presumed Shared Parenting. (Public)

Sponsors: Senator Clodfelter (Primary Sponsor).

Referred to:

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

4 The General Assembly of North Carolina enacts:

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

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

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

19 It shall be the policy of this State to:

- 20 (1) Encourage focused, good faith, best interest, and child-centered joint
21 parenting agreement development while reducing needless litigation over
22 child custody matters.
- 23 (2) Allow and encourage parents to take responsibility for their child by setting
24 the expectation that parenthood will be a significant and ongoing
25 responsibility requiring the creation of a joint parenting agreement.
- 26 (3) Establish laws, programs, and court practices that encourage and support the
27 maximum participation of a child in the parents' lives regardless of the
28 parents' present marital status, subject to laws regarding abuse, neglect, and
29 dependency.
- 30 (4) Encourage both parents to share equitably in the rights and responsibilities
31 of raising their child, even after dissolution of marriage or unwed
32 relationship.
- 33 (5) Ensure that a child will have maximum contact with both parents through a
34 presumption of shared responsibility unless it has been established based on
35 a preponderance of the evidence that one of the parents is unfit or obstructs a
36 healthy relationship with the other parent.



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

2 (1) Joint parenting agreement. – A plan crafted and mutually agreed upon by
3 parents addressing matters concerning legal and physical custody of a child.

4 (2) Presumption of shared responsibility. – The presumption that each parent
5 will share as close as possible to an equal amount of time with the child, but
6 not less than thirty-five percent (35%) of the amount of time with the child.

7 (a2) An order for custody of a minor child entered pursuant to this section shall award
8 the custody of the child to the person, agency, organization, or institution as will best promote
9 the interest and welfare of the child. The best interest of the child shall always be the primary
10 consideration of the court in determining the issues of custody of and access to the minor child.
11 In making the determination, the court shall consider all relevant factors, including each of the
12 following:

13 (1) That it is in the best interest of the child to presume both parents are fit, and
14 fit parents act in their child's best interest.

15 (2) That it is in the best interest of the child and consistent with current research
16 that the child have the maximum relationship possible with both parents.

17 (3) The best interest of the child is served when both parents retain substantial
18 decision-making responsibility for the child.

19 (4) As between the mother and father, whether natural or adoptive, no
20 presumption shall apply as to who will better promote the interest and
21 welfare of the child.

22 (5) The best interest of the child shall be presumed to be shared responsibility,
23 absent (i) a mutual written joint parenting agreement of the parties, (ii)
24 extraordinary circumstances, or (iii) a determination that one of the parents
25 is unfit based on a preponderance of the evidence. In the absence of a mutual
26 written joint parenting agreement, the court may consider any unilateral
27 written parenting agreement submitted by at least one of the parents.
28 However, if presented with two plans, the court shall presume the plan that
29 maximizes the child's involvement with both parents in the area of
30 decision-making responsibility and physical time sharing as the plan in the
31 child's best interest.

32 (6) The individual circumstances for each child as to the practicality of any
33 given custody schedule in determining how to best attain presumed shared
34 responsibility goals in accordance with this section.

35 The court shall consider other relevant factors, such as acts of domestic violence between the
36 parties, the safety of the child, and the safety of either party from domestic violence by the
37 other party and shall make findings accordingly. However, the court shall not consider the
38 inability of the parents to cooperate effectively and consistently as determinative in making
39 custody decisions contrary to the presumption of shared responsibility. An order for custody
40 must include findings of fact that support the determination of what is in the best interest of the
41 child.

42 (b) ~~An~~ After considering the presumption of shared responsibility as described under
43 subsection (a2) of this section, an order for custody of a minor child may grant joint custody to
44 the parents, exclusive custody to one person, agency, organization, or institution, or grant
45 custody to two or more persons, agencies, organizations, or institutions. Any order for custody
46 shall include such terms, including visitation, as will best promote the interest and welfare of
47 the ~~child~~ child based on the presumption of the shared responsibility standard. If the court finds
48 that domestic violence has occurred, the court shall enter such orders that best protect the
49 children and party who were the victims of domestic violence, in accordance with the
50 provisions of G.S. 50B-3(a1)(1), (2), and (3). If a party is absent or relocates with or without
51 the children because of an act of domestic violence, the absence or relocation shall not be a

1 factor that weighs against the party in determining custody or visitation. Absent an order of the
2 court to the contrary, each parent shall have equal access to the records of the minor child
3 involving the health, education, and welfare of the child.

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

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

19 (c) An order for custody of a minor child may provide for such child to be taken outside
20 of the State, but if the order contemplates the return of the child to this State, the judge may
21 require the person, agency, organization or institution having custody out of this State to give
22 bond or other security conditioned upon the return of the child to this State in accordance with
23 the order of the court.

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

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

- 30 (1) Whether electronic communication is in the best interest of the minor child.
- 31 (2) Whether equipment to communicate by electronic means is available,
32 accessible, and affordable to the parents of the minor child.
- 33 (3) Any other factor the court deems appropriate in determining whether to
34 grant visitation by electronic communication.

35 The court may set guidelines for electronic communication, including the hours in which the
36 communication may be made, the allocation of costs between the parents in implementing
37 electronic communication with the child, and the furnishing of access information between
38 parents necessary to facilitate electronic communication. Electronic communication with a
39 minor child may be used to supplement visitation with the child. Electronic communication
40 may not be used as a replacement or substitution for custody or visitation. The amount of time
41 electronic communication is used shall not be a factor in calculating child support or be used to
42 justify or support relocation by the custodial parent out of the immediate area or the State.
43 Electronic communication between the minor child and the parent may be subject to
44 supervision as ordered by the court. As used in this subsection, "electronic communication"
45 means contact, other than face-to-face contact, facilitated by electronic means, such as by
46 telephone, electronic mail, instant messaging, video teleconferencing, wired or wireless
47 technologies by Internet, or other medium of communication."

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

- 1 (1) The parties' case file number.
- 2 (2) The type of custody granted.
- 3 (3) The allocation of time-sharing award.
- 4 (4) The designation of custodial or primary residential parent.
- 5 (5) Whether one, both, or no parties were represented by counsel at the time the
- 6 form was submitted.

7 The form shall be submitted to the clerk of court in the county where the action is filed by
8 counsel or the parties to the action, if the parties are unrepresented. The clerk of court in the
9 respective county shall submit that information to the AOC. Upon collecting the data required
10 by this section, the AOC shall submit its findings in a report to the Joint Legislative
11 Commission on Governmental Operations. The first report of the AOC shall be presented 14
12 months after the date this act becomes effective covering the data collection periods for the first
13 six-month time period. Thereafter, the AOC shall issue an interim report 60 days after the
14 completion of each six-month data collection cycle and a comprehensive annual report within
15 60 days following the completion of the next 12-month data collection cycle.

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