**South Carolina General Assembly**

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**S. 905**

**STATUS INFORMATION**

General Bill

Sponsors: Senators Shealy, Turner, S. Martin, Bright and Bryant

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Introduced in the Senate on January 14, 2014

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

Summary: Child custody orders

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

12/17/2013 Senate Prefiled

12/17/2013 Senate Referred to Committee on **Judiciary**

1/14/2014 Senate Introduced and read first time ([Senate Journal‑page 68](file:///H:\SJ%20Archive\2014\01-14-14.docx))

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3/17/2014 Senate Referred to Subcommittee: Coleman (ch), Shealy, Turner

**VERSIONS OF THIS BILL**

[12/17/2013](file:///p:\pprever\2013-14\905_20131217.docx)

**A** **BILL**

TO AMEND SECTION 63‑15‑30 OF THE 1976 CODE, RELATING TO CONSIDERATION OF A CHILD’S PREFERENCE IN A CUSTODY ORDER, TO PROVIDE THAT IN DETERMINING THE BEST INTERESTS OF THE CHILD, THE COURT MUST CONSIDER THE CHILD’S REASONABLE PREFERENCE FOR PARENTING TIME; TO AMEND SECTION 63‑15‑210, RELATING TO TERMS APPLICABLE TO COURT‑ORDERED CUSTODY, TO DEFINE “SHARED CUSTODY”; TO AMEND ARTICLE 2, CHAPTER 15, TITLE 63, RELATING TO COURT‑ORDERED CUSTODY, BY ADDING SECTION 63‑15‑215, TO PROVIDE THAT IN A SHARED CUSTODY ORDER, THERE SHALL BE A PRESUMPTION THAT, ABSENT PROOF OF ABUSE OR NEGLECT, OR AN AGREEMENT TO THE CONTRARY, THE PARENTS SHALL HAVE SHARED LEGAL DECISION‑MAKING AUTHORITY AND SHARE APPROXIMATELY EQUALLY IN THE PARENTING TIME OF A CHILD; TO AMEND SECTION 63‑15‑220, RELATING TO PARENTING PLANS, TO PROVIDE THAT THE COURT SHALL PROVIDE PARENTS, AT NO ADDITIONAL COST, MEDIATION SERVICES, TO DEVELOP A PARENTING PLAN OR SHARED PARENTING PLAN; TO AMEND ARTICLE 2, CHAPTER 15, TITLE 63, RELATING TO COURT‑ORDERED CUSTODY, BY ADDING SECTION 63‑15‑225, TO PROVIDE THAT THE COURT MAY ORDER ANY PERSON SEEKING LEGAL DECISION‑MAKING AUTHORITY OR PARENTING TIME TO UNDERGO TESTING FOR THE ILLEGAL USE OF CONTROLLED SUBSTANCES OR ABUSE OF ALCOHOL; TO AMEND ARTICLE 2, CHAPTER 15, TITLE 63, RELATING TO COURT‑ORDERED CUSTODY, BY ADDING SECTION 63‑15‑227, TO PROVIDE THAT IF A PARTY IS ABSENT OR RELOCATES, THE COURT SHALL NOT CONSIDER IT AS A FACTOR IN DETERMINING LEGAL DECISION‑MAKING AUTHORITY OR PARENTING TIME IF THE ABSENCE OR RELOCATION IS OF SHORT DURATION OR THE PARTY IS ABSENT OR RELOCATES BECAUSE OF SAFETY REASONS; TO AMEND SECTION 63‑15‑230, RELATING TO CONSIDERATIONS IN A FINAL CUSTODY DETERMINATION, TO PROVIDE THAT THE COURT SHALL CONSIDER A SHARED CUSTODY AWARD IN THE BEST INTERESTS OF THE CHILD; TO AMEND SECTION 63‑15‑240, RELATING TO CONTENTS OF AN ORDER FOR CUSTODY AFFECTING THE RIGHTS AND RESPONSIBILITIES OF PARENTS, TO PROVIDE THAT IN ISSUING OR MODIFYING AN ORDER FOR CUSTODY, THE ORDER MAY INCLUDE THE AWARD OF SHARED CUSTODY, IN WHICH CASE THE ORDER MUST INCLUDE RESIDENTIAL ARRANGEMENTS, MAJOR DECISIONS CONCERNING THE CHILD, AND THAT EACH CHILD MUST SPEND AN EQUAL AMOUNT OF PARENTING TIME BUT NOT LESS THAN THIRTY‑FIVE PERCENT OF CUSTODY TIME WITH EACH PARENT; AND TO AMEND SECTION 63‑15‑250, RELATING TO TELEPHONIC AND ELECTRONIC COMMUNICATION BETWEEN A MINOR CHILD AND A PARENT, TO PROVIDE THAT WHEN A COURT ORDERS JOINT CUSTODY OR SHARED CUSTODY TO BOTH PARENTS, EACH PARENT SHOULD FACILITATE OPPORTUNITIES FOR REASONABLE TELEPHONIC AND ELECTRONIC COMMUNICATION BETWEEN THE MINOR CHILD AND THE OTHER PARENT.

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

SECTION 1. Section 63‑15‑30 of the 1976 Code is amended to read:

“Section 63‑15‑30. (A) In determining the best interests of the child, the court must consider the child’s reasonable preference for custody. The court shall place weight upon the preference based upon the child’s age, experience, maturity, judgment, and ability to express a preference.

(B) In determining the best interests of the child, the court must consider the child’s reasonable preference for parenting time. The court shall place weight upon the preference based upon the child’s age, experience, maturity, judgment and ability to reason to express a reasonable preference in making an order granting or modifying parenting time.

(1) The court shall control the examination of a child witness so as to protect the best interests of the child.

(2) If a child is fourteen years of age or older and wishes to address the court regarding parenting time, the child shall be permitted, unless the court determines that it is not in the child’s best interests.

(3) If the court precludes the calling of a child as a witness, the court shall provide alternative means of obtaining input from the child and other information regarding the child’s preference.”

SECTION 2. Section 63‑15‑210 of the 1976 Code is amended to read:

“Section 63‑15‑210. As used in this article:

(1) ‘Joint custody’ means both parents have equal rights and responsibilities for major decisions concerning the child, including the child’s education, medical and dental care, extracurricular activities, and religious training; however, a judge may designate one parent to have sole authority to make specific, identified decisions while both parents retain equal rights and responsibilities for all other decisions.

(2) ‘Sole custody’ means a person, including, but not limited to, a parent who has temporary or permanent custody of a child and, unless otherwise provided for by court order, has the rights and responsibilities for major decisions concerning the child, including the child’s education, medical and dental care, extracurricular activities, and religious training.

(3) ‘Shared custody’ means that both parents have equal rights and responsibilities and share, in the manner set forth in the shared parenting plan approved by the court, the major decisions concerning the child and all or part of the physical and legal care of the child. The child must spend an equal amount of parenting time but not less than thirty‑five percent of custody time with each parent.”

SECTION 3. Chapter 15, Title 63 is amended by adding:

“Section 63‑15‑215. For a shared custody order, there shall be a presumption that, absent proof of abuse or neglect of the child, or an agreement to the contrary, the parents shall have shared legal decision‑making authority and the parents shall share approximately equally in the parenting time of the child. ‘Proof of abuse or neglect’ may include an affirmative determination of abuse or neglect, as defined in Section 63‑7‑20, or a written report by authorities or courts in other states conducting child abuse and neglect investigations or proceedings or providing child welfare services having investigated a reported incident and confirming that abuse has occurred.”

SECTION 4. Section 63‑15‑220 of the 1976 Code is amended to read:

“Section 63‑15‑220. (A) 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 or shared parenting plan. 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 and shared parenting plan.

(D) The shared parenting plan shall provide that the child must spend an equal amount of parenting time but not less than thirty‑five percent of custody time with each parent.

(E) The court shall provide parents, at no additional cost, mediation services, if requested, to develop a parenting plan or shared parenting plan.”

SECTION 5. Chapter 15, Title 63 of the 1976 Code is amended by adding:

“Section 63‑15‑225. In any legal decision‑making authority or parenting time proceeding, the court may order any person who is seeking legal decision‑making authority or parenting time to undergo testing for the illegal use of controlled substances and the use of alcohol if there is a judicial determination, based upon a preponderance of evidence, that there is illegal use of controlled substances or abuse of alcohol by the parent, legal custodian, or person seeking parenting time. The parent, legal custodian, or person seeking parenting time who has undergone drug testing shall have the right to a hearing, to challenge a positive test result. A positive test result, shall not, by itself, constitute grounds for an adverse custody decision.”

SECTION 6. Chapter 15, Title 63 of the 1976 Code is amended by adding:

“Section 63‑15‑227. If a party is absent or relocates from the family residence, the court shall not consider the absence or relocation as a factor in determining legal decision‑making authority or parenting time if:

(A) the absence or relocation is of short duration and the court finds that, during the period of absence or relocation, the party:

(1) demonstrates an interest in maintaining legal decision‑making authority or parenting time;

(2) maintains, or makes reasonable efforts to maintain, regular contact with the child; and

(3) demonstrates no intent to abandon the child; or

(B) the party is absent or relocates because of safety reasons.”

SECTION 7. 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 or shared 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 or shared custody, the court shall consider all custody options, including, but not limited to, joint custody or shared custody, 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 allocate parenting time in the best interest of the child.”

SECTION 8. Section 63‑15‑240(A) 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;

(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;

(4) the award of shared custody, in which case the order must include, pursuant to the shared parenting plan:

(a) residential arrangements with each parent in accordance with the needs of each child. The court may specify one parent as the primary caretaker of the child and one residence as the primary residence of the child, to be used only for the purposes of determining eligibility for public assistance and shall not be used in any determination for child support, parenting time, or legal decision‑making authority;

(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;

(c) each child must spend an equal amount of parenting time but not less than thirty‑five percent of custody time with each parent;

(d) except as otherwise provided in the order, each parent, regardless of where a child is physically located or with whom a child is residing at a particular point in time as specified by the order, is the residential and legal parent or custodian of the child;

~~(4)~~(5) other custody arrangements as the court may determine to be in the best interest of the child.”

SECTION 9. Section 63‑15‑250 of the 1976 Code is amended to read:

“Section 63‑15‑250. In addition to all rights and duties given to parents pursuant to Section 63‑5‑30:

(A) when a court orders sole custody to one parent, the custodial parent, except in cases of abuse, neglect, or abandonment, should facilitate opportunities for reasonable telephonic and electronic communication between the minor child and the noncustodial parent, as appropriate, as provided for by court order if the court determines that this type of communication is in the best interest of the child; and

(B) when a court orders joint custody or shared custody to both parents, each parent should facilitate opportunities for reasonable telephonic and electronic communication between the minor child and the other parent, as appropriate, as provided for by court order if the court determines that this type of communication is in the best interest of the child.”

SECTION 10. This act takes effect upon approval by the Governor.

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