**South Carolina General Assembly**

125th Session, 2023-2024

**H. 5113**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. Elliott, T. Moore, Guest, Brittain and Crawford

Document Path: LC-0398VR24.docx

Introduced in the House on February 15, 2024

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

Summary: Joint Custody

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

2/15/2024 House Introduced and read first time ([House Journal‑page 14](h:\hj\20240215.docx))

2/15/2024 House Referred to Committee on **Judiciary** ([House Journal‑page 14](h:\hj\20240215.docx))

2/28/2024 House Member(s) request name added as sponsor: Guest,
Brittain, Crawford

3/20/2024 House Committee report: Favorable with amendment **Judiciary** ([House Journal‑page 12](h:\hj\20240320.docx))

3/26/2024 House Debate adjourned until Tues., 4-9-24 ([House Journal‑page 37](h:\hj\20240326.docx))

4/9/2024 House Recommitted to Committee on **Judiciary** ([House Journal‑page 40](h:\hj\20240409.docx))

View the latest  [legislative information](https://www.scstatehouse.gov/billsearch.php?billnumbers=5113&session=125&summary=B)  at the website

**VERSIONS OF THIS BILL**

[02/15/2024](https://www.scstatehouse.gov/sess125_2023-2024/prever/5113_20240215.docx)

[03/20/2024](https://www.scstatehouse.gov/sess125_2023-2024/prever/5113_20240320.docx)

Indicates Matter Stricken

Indicates New Matter

Committee Report

March 20, 2024

H. 5113

Introduced by Reps. Elliott, T. Moore, Guest, Brittain and Crawford

S. Printed 03/20/24--H.

Read the first time February 15, 2024

\_\_\_\_\_\_\_\_

The committee on House Judiciary

To whom was referred a Bill (H. 5113) to amend the South Carolina Code of Laws by amending Sections 63‑3‑30 and 63‑15‑230, both relating to joint custody orders, so as to clarify that there is no requirement, etc., respectfully

Report:

That they have duly and carefully considered the same, and recommend that the same do pass with amendment:

Amend the bill, as and if amended, by striking all after the enacting words and inserting:

SECTION 1. Section 63-3-530(A)(42) of the S.C. Code is amended to read:

(42) to order sole or joint or divided custody where the court finds it is in the best interests interest of the child;

SECTION 2. Section 63-15-210 of the S.C. 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. Regardless, a judge may designate one parent to have sole authority to make specific, identified decisions concerning the child.

(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, 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) “Parenting time” means the time during which the child is in the care of a parent.

SECTION 3. Section 63-15-220 of the S.C. 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. 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.

(A) A parenting plan is a document submitted by a party to the family court which identifies the type of custody, the parenting time for each parent with the child, and the manner and terms by which major decisions, including, but not limited to, the child’s education, medical and dental care, extracurricular activities, and religious training, shall be made.

(B) At any hearing where custody, parenting time, or decision making is contested, a party may submit a proposed parenting plan. The court shall consider any submitted parenting plan prior to issuing temporary and final custody orders.

SECTION 4. Section 63-15-230 of the S.C. Code is amended to read:

Section 63-15-230. (A) The court shall make the final every 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. The only type of custody which may be ordered by the family court is either sole custody or joint custody. There is no presumption for or against either type of custody. There is no requirement on the court to find exceptional circumstances to award either type of custody.

(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, in its final order, the court shall state its determination as to custody and shall state its reasoning for that decision. Every custody order shall:

(1) determine and specify the schedule of parenting time for each parent with the child; and

(2) in the event of joint custody, provide for how major decisions including, but not limited to, the child’s education, medical and dental care, extracurricular activities, and religious training regarding the child shall be made.

(D) Notwithstanding the custody determination, the court may allocate parenting time in the best interest of the child.

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

Renumber sections to conform.

Amend title to conform.

W. NEWTON for Committee.

statement of estimated fiscal impact

Explanation of Fiscal Impact

State Expenditure

This bill clarifies that there is no requirement for the court to find the existence of exceptional circumstances to award joint or divided custody in a child custody proceeding. Further, this bill states that the court shall make the custody determination that is in the best interest of the child based on the evidence presented.

Judicial anticipates that this bill will not result in additional hearings or causes of action. Therefore, this bill will result in no expenditure impact.

Frank A. Rainwater, Executive Director

Revenue and Fiscal Affairs Office

\_\_\_\_\_\_\_\_

A bill

TO AMEND THE SOUTH CAROLINA CODE OF LAWS BY AMENDING SECTIONS 63‑3‑30 AND 63‑15‑230, BOTH RELATING TO JOINT CUSTODY ORDERS, SO AS TO CLARIFY THAT THERE IS NO REQUIREMENT FOR EXCEPTIONAL CIRCUMSTANCES TO AWARD JOINT CUSTODY IN A CHILD CUSTODY PROCEEDING.

Whereas, the South Carolina Supreme Court historically has generally disfavored the award of joint custody in child custody determinations, dating back at least one‑half of a century to the case of Mixson v. Mixson, 171 S.E.2d 581 (1969), and approving of joint custody only under a finding of exceptional circumstances; and

Whereas, in 1996, the General Assembly amended Section 63‑3‑530 to allow family courts to award joint custody in child custody determinations when in the best interest of the child without any requirement for exceptional circumstances; and

Whereas, in 2012, the General Assembly enacted Article 2, Chapter 15, Title 63 to establish statutory requirements for court‑ordered child custody, which, like Section 63‑3‑530, allows for the award of joint custody when in the best interest of the child without any requirement for exceptional circumstances; and

Whereas, the state’s appellate courts continue to rely on judicial precedence citing the requirement for exceptional circumstances to justify the award of joint custody, despite the plain meaning of the relevant statutory provisions. Now, therefore,

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

SECTION 1. Section 63‑3‑530(A)(42) of the S.C. Code is amended to read:

(42) to order joint or divided custody where the court finds it is in the best interests interest of the child. There is no requirement for the court to find the existence of exceptional circumstances to award joint or divided custody. Nor is there a presumption that joint or divided custody is or is not in the best interest of the child. The court shall make the custody determination that is in the best interest of the child based on the evidence presented;

SECTION 2. Section 63‑15‑230 of the S.C. 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. There is no presumption that joint or sole custody is in the best interest of the child.

(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, in its final order, the court shall state its determination as to custody and shall state its reasoning for that decision. The court shall not be required to make a finding of exceptional circumstances to award joint custody.

(D) Notwithstanding the custody determination, the court may allocate parenting time in the best interest of the child.

SECTION 3. This act takes effect upon approval by the Governor.

‑‑‑‑XX‑‑‑‑