

## Code of Ala. § 30-3-161 et seq.

### § 30-3-161. Definitions.

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

- (1) **Change of principle 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 subdivision (2) of Section 30-3B-102. As used in this article, the term may include the singular and the plural.
- (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 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.
- (8) **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or visitation.** —A person so entitled to physical custody of a child as defined by Sections 30-3-1 through 30-3-4.1[repealed], inclusive, or visitation with respect to a child by virtue of a child custody determination as defined by subdivision (3) of Section 30-3B-102.
- (9) **Physical custody.** — The physical care and supervision of a child.
- (10) **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.

**(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.

## **§ 30-3-162. Applicability.**

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- (a)** Except as provided otherwise by this article, the provisions of this article apply to all orders determining custody of or visitation with a child whether such order was issued before or after September 1, 2003. To the extent that a provision of this article conflicts with an existing order determining custody of or visitation with a child or other enforceable agreement, this article does not apply to alter or amend the terms of such order or agreement which addresses 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 article into an existing order determining the custody of or visitation with a child. Except as provided in subsection (c) of Section 30-3-165, this article 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)** Sections 30-3-169.1 to 30-3-169.7, 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.

## **§ 30-3-163. Principal residence; child.**

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Except as provided by Section 30-3-167, 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 30-3-165.

## **§ 30-3-164. Principal residence; custodian.**

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Except as provided by Section 30-3-167, 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 30-3-165.

## **§ 30-3-165. Notice requirement.**

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- (a)** When a notice is required by either Section 30-3-163 or Section 30-3-164, except as provided by Section 30-3-167, 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 article must be given by certified mail to the last known address of the person or persons entitled to notification under this article 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 30-3-167, 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) 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.

### **§ 30-3-166. Required notice provision.**

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After September 1, 2003, 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.

## **§ 30-3-167. Exceptions.**

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- (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 30-3-163 or Section 30-3-164 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 article 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). Issuance of a final order of protection under Sections 30-5-1 to 30-5-11, inclusive; a conviction for domestic violence pursuant to Sections 13A-6-130 to 13A-6-135, inclusive; or an award of custody of the child pursuant to Sections 30-3-131 to 30-3-135, inclusive, 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 article.

## **§ 30-3-168. Failure to provide notice.**

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- (a) Except as provided in Section 30-3-167, if a person required to give notice as required by Section 30-3-163 or Section 30-3-164 shall fail to provide the notice or the information required by subsection (b) of Section 30-3-165, 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 30-3-166 and may impose the sanctions authorized by law or rule of court for disobedience of a court order.

## **§ 30-3-169. Change of residence.**

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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.

### **§ 30-3-169.1. Objection proceeding.**

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- (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 30-3-165 is defective or insufficient upon which to base an action under this article.
- (d) Except as otherwise specifically provided in this article, the Alabama Rules of Civil Procedure shall apply to all proceedings under this article.

### **§ 30-3-169.2. Temporary restraining order.**

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- (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 article, and may consider, among other factors, any of the following:
  - (1) The notice required by this article was not provided in a timely manner.
  - (2) The notice required by this article 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.
- (b) 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 article 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.
- (c) 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.

### **§ 30-3-169.3. Custody considerations.**

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- (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.
  - (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 Section 30-3-167.

### **§ 30-3-169.4. Presumption.**

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In proceedings under this article 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.

### **§ 30-3-169.5. Security requirements.**

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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.

### **§ 30-3-169.6. Abuse of process.**

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- (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 30-3-167.
- (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.

### **§ 30-3-169.7. Collateral proceedings.**

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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 30-3-169.2 and 30-3-169.3 in making its initial determination.

### **§ 30-3-169.8. Fees and expenses.**

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

### **§ 30-3-169.9. Relocation out of state.**

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- (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, shall apply to actions commenced under this article.
- (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, 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, 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 article, 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 article 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 article. 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.

### **§ 30-3-169.10. Appeal procedure.**

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An appeal may be taken from a final order in a proceeding under this article in accordance with Alabama law. Unless the court enters a temporary order under Section 30-3-169.2, the court may not stay an order enjoining a change in principal residence of a child pending appeal.