

A bill for an act
relating to joint physical custody; establishing a rebuttable presumption;
amending Minnesota Statutes 2010, section 518.003, subdivision 3; proposing
coding for new law in Minnesota Statutes, chapter 518; repealing Minnesota
Statutes 2010, section 518.17, subdivision 2.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 2010, section 518.003, subdivision 3, is amended to read:

Subd. 3. **Custody.** Unless otherwise agreed by the parties:

(a) "Legal custody" means the right to determine the child's upbringing, including
education, health care, and religious training.

(b) "Joint legal custody" means that both parents have equal rights and
responsibilities, including the right to participate in major decisions determining the
child's upbringing, including education, health care, and religious training.

(c) "Physical custody and residence" means the routine daily care and control and
the residence of the child.

(d) "Joint physical custody" means that the routine daily care and control and the
residence of the child is structured between the parties. It means the parents shall share
time with the child as equally as possible.

(e) Wherever used in this chapter, the term "custodial parent" or "custodian" means
the person who has the physical custody of the child at any particular time.

(f) "Custody determination" means a court decision and court orders and instructions
providing for the custody of a child, including parenting time, but does not include a
decision relating to child support or any other monetary obligation of any person.

(g) "Custody proceeding" includes proceedings in which a custody determination is
one of several issues, such as an action for dissolution, divorce, or separation, and includes

proceedings involving children who are in need of protection or services, domestic abuse, and paternity.

Sec. 2. [518.169] CHILDREN'S EQUAL PARENTING ACCESS ACT.

Subdivision 1. Public policy. (a) The legislature, recognizing the importance of protections afforded children by their ability to develop strong parental bonds, and recognizing the fundamental interest of liberty that parents enjoy respecting the care, custody, and companionship of their children, finds and declares the following with respect to the intent of Minnesota statutes related to families:

(1) an intact, involved two-parent home provides the optimal environment through which children grow into productive and responsible adult citizens;

(2) parents are primary in the nurturing and development of their children. Our society, state, and statutes are secondary structures designed to support, not supplant, both parents in their role as the primary shapers of their children;

(3) mothers and fathers provide unique and invaluable contributions toward the development of their children. Each parent's contributions to the upbringing of their children are indistinguishable and equally necessary to assure children the best opportunity to develop into healthy citizens;

(4) children should be separated from their parents only under the most compelling and unusual circumstances in order to protect a child from substantial and imminent harm;

(5) children should have frequent and continuing physical contact with both parents under joint legal and physical custody when the parents live separately, including after parental separation or dissolution of marriage. The proper role of the state is to interfere to the least degree in familial relationships with the specific purpose of preserving maximum time allocations with parents and their children;

(6) parents may, and should be encouraged to, reach any agreement mutually acceptable to them regarding their parenting time allocations that reflects the individual circumstances of the parents. In the event parents cannot reach agreement on a parenting arrangement, it is the specific intent of Minnesota law that parents have a right to a rebuttable presumption of equal time with their children; and

(7) the judiciary in contested custody proceedings should demonstrate consistent application of the presumption in favor of joint custody in order to minimize the adversarial nature of custody proceedings.

(b) The purpose of this section is to prevent children from being alienated or disenfranchised from their parents' lives through the interference of either parent.

3.1 (c) This section establishes clear legislative policy regarding the relationship of
3.2 children with their parents when parents live separately.

3.3 (d) In accordance with the findings in paragraph (a), the legislature declares that
3.4 public policy is advanced and the well-being of Minnesota's children is promoted through
3.5 the recognition of both parents' fundamental freedoms to actively participate in the care,
3.6 custody, and companionship of their children.

3.7 Subd. 2. **Joint custody.** (a) In cases of marital dissolution or unmarried parentage,
3.8 when paternity has been established, both parents enjoy a rebuttable presumption of joint
3.9 legal and physical custody of their children.

3.10 (b) The burden of overcoming the presumption rests on the parent challenging the
3.11 presumption. The presumption may only be overcome by demonstrating an unfitness of
3.12 the parent being challenged that would cause substantial harm to the children. The clear
3.13 and convincing evidence standard must be used in making a fitness determination.

3.14 (c) Allegations of substance abuse, mental illness, spousal or child abuse or neglect,
3.15 and any subsequent issuance of protective orders are not sufficient to cause cessation or
3.16 reduction in parent and child contact. Only written findings of substantiated abuse are
3.17 sufficient to allow the court to deviate from the joint physical custody arrangement and
3.18 award physical custody to one parent. In no instance may the court limit parent and child
3.19 contact absent compelling necessity to prevent substantial and imminent harm to the child.

3.20 (d) Knowingly making false allegations of child or spousal abuse is sufficient
3.21 grounds to challenge the parental fitness of the accuser. Allegations raised in the context
3.22 of divorce or custody proceedings deserve heightened scrutiny as to their veracity.

3.23 (e) When the fitness of a parent is challenged, the court must find by clear and
3.24 convincing evidence that the parent's past behaviors would qualify the parent's child to be
3.25 found a child in need of protection or services under section 260C.007, subdivision 6.

3.26 (f) The court shall provide written findings of fact and conclusions of law when
3.27 entering an order that does not maintain the presumption of joint legal and physical
3.28 custody. The court must make written findings that enumerate which of the factors in this
3.29 subdivision are applicable and by what evidence these factors were demonstrated.

3.30 (g) If the court finds that a party has overcome the presumption in favor of joint
3.31 custody, the court shall use the best interest standards in section 518.17, subdivision 1, to
3.32 makes its determination for custodial arrangements.

3.33 **Sec. 3. REPEALER.**

3.34 Minnesota Statutes 2010, section 518.17, subdivision 2, is repealed.

518.17 CUSTODY AND SUPPORT OF CHILDREN ON JUDGMENT.

Subd. 2. **Factors when joint custody is sought.** In addition to the factors listed in subdivision 1, where either joint legal or joint physical custody is contemplated or sought, the court shall consider the following relevant factors:

- (a) the ability of parents to cooperate in the rearing of their children;
- (b) methods for resolving disputes regarding any major decision concerning the life of the child, and the parents' willingness to use those methods;
- (c) whether it would be detrimental to the child if one parent were to have sole authority over the child's upbringing; and
- (d) whether domestic abuse, as defined in section 518B.01, has occurred between the parents.

The court shall use a rebuttable presumption that upon request of either or both parties, joint legal custody is in the best interests of the child. However, the court shall use a rebuttable presumption that joint legal or physical custody is not in the best interests of the child if domestic abuse, as defined in section 518B.01, has occurred between the parents.

If the court awards joint legal or physical custody over the objection of a party, the court shall make detailed findings on each of the factors in this subdivision and explain how the factors led to its determination that joint custody would be in the best interests of the child.