

(SENATE AUTHORS: HOFFMAN, Wolf, Sparks, Hann and Daley)

DATE	D-PG	OFFICIAL STATUS
04/14/2011	1338	Introduction and first reading Referred to Judiciary and Public Safety
04/18/2011	1393	Author added Sparks
04/26/2011	1411	Author added Hann
01/26/2012	3651	Author added Daley

1.1

A bill for an act

1.2

relating to family law; changing certain custody and parenting time provisions;

1.3

amending Minnesota Statutes 2010, sections 257.541; 518.003, subdivision 3;

1.4

518.091; 518.131, subdivisions 1, 7; 518.155; 518.156; 518.167, subdivision 2;

1.5

518.17, subdivisions 1, 3; 518.1705, subdivisions 3, 5, 9; 518.175, subdivision

1.6

1; 518.179, subdivision 1; 518.18; proposing coding for new law in Minnesota

1.7

Statutes, chapter 518; repealing Minnesota Statutes 2010, section 518.17,

1.8

subdivision 2.

1.9

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

1.10

Section 1. Minnesota Statutes 2010, section 257.541, is amended to read:

1.11

257.541 CUSTODY AND PARENTING TIME WITH CHILDREN BORN

1.12

OUTSIDE OF MARRIAGE.

1.13

Subdivision 1. **Mother's right to custody.** The biological mother of a child born to

1.14

a mother who was not married to the child's father when the child was born and was not

1.15

married to the child's father when the child was conceived has sole custody of the child

1.16

until paternity has been established under sections 257.51 to 257.74, or until custody is

1.17

determined in a separate proceeding under section 518.156.

1.18

Subd. 2. **Father's right to parenting time and custody.** (a) If paternity has been

1.19

acknowledged under section 257.34 and paternity has been established under sections

1.20

257.51 to 257.74, the father's rights of parenting time or custody are determined under

1.21

sections ~~518.17 and~~ 518.169 to 518.175.

1.22

(b) If paternity has not been acknowledged under section 257.34 and paternity has

1.23

been established under sections 257.51 to 257.74, the biological father may petition for

1.24

rights of parenting time or custody in the paternity proceeding or in a separate proceeding

1.25

under section 518.156. The rights of parenting time or custody must be determined under

1.26

sections 518.169 to 518.175.

Subd. 3. **Father's right to parenting time and custody; recognition of paternity.**

If paternity has been recognized under section 257.75, the father may petition for rights of parenting time or custody in an independent action under section 518.156. The proceeding must be treated as an initial determination of custody ~~under section 518.17. The~~ and the provisions of ~~chapter 518~~ sections 518.169 to 518.175 apply with respect to the granting of custody and parenting time. An action to determine custody and parenting time may be commenced pursuant to chapter 518 without an adjudication of parentage. These proceedings may not be combined with any proceeding under chapter 518B.

EFFECTIVE DATE. This section is effective for temporary orders and child custody determinations made on or after January 1, 2012.

Sec. 2. 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~~ shared between the parties.

(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.

EFFECTIVE DATE. This section is effective for temporary orders and child custody determinations made on or after January 1, 2012.

Sec. 3. Minnesota Statutes 2010, section 518.091, is amended to read:

**518.091 SUMMONS; TEMPORARY RESTRAINING PROVISIONS;
NOTICE REGARDING PARENT EDUCATION PROGRAM REQUIREMENTS;
NOTICE REGARDING CUSTODY AND PARENTING TIME.**

Subdivision 1. **Temporary restraining orders.** (a) Every summons must include the notice in this subdivision.

**NOTICE OF TEMPORARY RESTRAINING AND ALTERNATIVE DISPUTE
RESOLUTION PROVISIONS**

UNDER MINNESOTA LAW, SERVICE OF THIS SUMMONS MAKES THE FOLLOWING REQUIREMENTS APPLY TO BOTH PARTIES TO THIS ACTION, UNLESS THEY ARE MODIFIED BY THE COURT OR THE PROCEEDING IS DISMISSED:

(1) NEITHER PARTY MAY DISPOSE OF ANY ASSETS EXCEPT (i) FOR THE NECESSITIES OF LIFE OR FOR THE NECESSARY GENERATION OF INCOME OR PRESERVATION OF ASSETS, (ii) BY AN AGREEMENT IN WRITING, OR (iii) FOR RETAINING COUNSEL TO CARRY ON OR TO CONTEST THIS PROCEEDING;

(2) NEITHER PARTY MAY HARASS THE OTHER PARTY; AND

(3) ALL CURRENTLY AVAILABLE INSURANCE COVERAGE MUST BE MAINTAINED AND CONTINUED WITHOUT CHANGE IN COVERAGE OR BENEFICIARY DESIGNATION.

IF YOU VIOLATE ANY OF THESE PROVISIONS, YOU WILL BE SUBJECT TO SANCTIONS BY THE COURT.

(4) PARTIES TO A MARRIAGE DISSOLUTION PROCEEDING ARE ENCOURAGED TO ATTEMPT ALTERNATIVE DISPUTE RESOLUTION PURSUANT TO MINNESOTA LAW. ALTERNATIVE DISPUTE RESOLUTION INCLUDES MEDIATION, ARBITRATION, AND OTHER PROCESSES AS SET FORTH IN THE DISTRICT COURT RULES. YOU MAY CONTACT THE COURT ADMINISTRATOR ABOUT RESOURCES IN YOUR AREA. IF YOU CANNOT PAY FOR MEDIATION OR ALTERNATIVE DISPUTE RESOLUTION, IN SOME COUNTIES, ASSISTANCE MAY BE AVAILABLE TO YOU THROUGH A NONPROFIT PROVIDER OR A COURT PROGRAM. IF YOU ARE A VICTIM OF DOMESTIC ABUSE OR THREATS OF ABUSE AS DEFINED IN MINNESOTA STATUTES, CHAPTER 518B, YOU ARE NOT REQUIRED TO TRY MEDIATION AND YOU WILL NOT BE PENALIZED BY THE COURT IN LATER PROCEEDINGS.

(b) Upon service of the summons, the restraining provisions contained in the notice apply by operation of law upon both parties until modified by further order of the court or

dismissal of the proceeding, unless more than one year has passed since the last document was filed with the court.

Subd. 2. **Parent education program requirements.** Every summons involving custody or parenting time of a minor child must include the notice in this subdivision.

NOTICE OF PARENT EDUCATION PROGRAM REQUIREMENTS

UNDER MINNESOTA STATUTES, SECTION 518.157, IN A CONTESTED PROCEEDING INVOLVING CUSTODY OR PARENTING TIME OF A MINOR CHILD, THE PARTIES MUST BEGIN PARTICIPATION IN A PARENT EDUCATION PROGRAM THAT MEETS MINIMUM STANDARDS PROMULGATED BY THE MINNESOTA SUPREME COURT WITHIN 30 DAYS AFTER THE FIRST FILING WITH THE COURT. IN SOME DISTRICTS, PARENTING EDUCATION MAY BE REQUIRED IN ALL CUSTODY OR PARENTING PROCEEDINGS. YOU MAY CONTACT THE DISTRICT COURT ADMINISTRATOR FOR ADDITIONAL INFORMATION REGARDING THIS REQUIREMENT AND THE AVAILABILITY OF PARENT EDUCATION PROGRAMS.

Subd. 3. **Custody and parenting time requirements.** Every summons must include the notice in this subdivision.

NOTICE OF CUSTODY AND PARENTING TIME

PARENTS ARE ENTITLED TO A PRESUMPTION OF JOINT LEGAL CUSTODY AND JOINT PHYSICAL CUSTODY WITH EQUAL SHARED PARENTING. THIS MEANS THAT EACH PARENT HAS AT LEAST 45.1 PERCENT PARENTING TIME, UNLESS THE PARENTS AGREE OTHERWISE. CERTAIN EXCEPTIONS AND OTHER PROVISIONS APPLY UNDER MINNESOTA STATUTES, SECTIONS 518.169 TO 518.175.

EFFECTIVE DATE. This section is effective for summons issued on or after January 1, 2012.

Sec. 4. Minnesota Statutes 2010, section 518.131, subdivision 1, is amended to read:

Subdivision 1. **Permissible orders.** In a proceeding brought for custody, dissolution, or legal separation, or for disposition of property, maintenance, or child support following the dissolution of a marriage, either party may, by motion, request from the court and the court may grant a temporary order pending the final disposition of the proceeding to or for:

- (a) Temporary custody and parenting time pursuant to sections 518.169 to 518.175, regarding the minor children of the parties;
- (b) Temporary maintenance of either spouse;
- (c) Temporary child support for the children of the parties;

(d) Temporary costs and reasonable attorney fees;

(e) Award the temporary use and possession, exclusive or otherwise, of the family home, furniture, household goods, automobiles, and other property of the parties;

(f) Restrain one or both parties from transferring, encumbering, concealing, or disposing of property except in the usual course of business or for the necessities of life, and to account to the court for all such transfers, encumbrances, dispositions, and expenditures made after the order is served or communicated to the party restrained in open court;

(g) Restrain one or both parties from harassing, vilifying, mistreating, molesting, disturbing the peace, or restraining the liberty of the other party or the children of the parties;

(h) Restrain one or both parties from removing any minor child of the parties from the jurisdiction of the court;

(i) Exclude a party from the family home of the parties or from the home of the other party; and

(j) Require one or both of the parties to perform or to not perform such additional acts as will facilitate the just and speedy disposition of the proceeding, or will protect the parties or their children from physical or emotional harm.

EFFECTIVE DATE. This section is effective for temporary orders issued on or after January 1, 2012.

Sec. 5. Minnesota Statutes 2010, section 518.131, subdivision 7, is amended to read:

Subd. 7. **Guiding factors.** The court shall be guided by the factors set forth in chapter 518A (concerning child support), and sections 518.552 (concerning maintenance), ~~518.17~~ 518.169 to 518.175 (concerning custody and parenting time), and 518.14 (concerning costs and attorney fees) in making temporary orders and restraining orders.

EFFECTIVE DATE. This section is effective January 1, 2012.

Sec. 6. Minnesota Statutes 2010, section 518.155, is amended to read:

518.155 CUSTODY DETERMINATIONS.

Notwithstanding any law to the contrary, a court in which a proceeding for dissolution, legal separation, or child custody has been commenced shall not issue, revise, modify or amend any order, pursuant to sections 518.131, 518.165, 518.168, 518.169, 518.17, 518.175 or 518.18, which affects the custody of a minor child or the parenting

time of a parent unless the court has jurisdiction over the matter pursuant to the provisions of chapter 518D.

EFFECTIVE DATE. This section is effective January 1, 2012.

Sec. 7. Minnesota Statutes 2010, section 518.156, is amended to read:

518.156 COMMENCEMENT OF CUSTODY PROCEEDING.

Subdivision 1. **Procedure.** In a court of this state ~~which has~~ with jurisdiction to decide child custody matters, a child custody proceeding is commenced by a parent:

(1) by filing a petition for dissolution or legal separation; or

(2) where a decree of dissolution or legal separation has been entered or where none is sought, or when paternity has been recognized under section 257.75, by filing a petition or motion seeking custody or parenting time with the child in the county where the child is permanently resident ~~or~~ where the child is found₂ or where an earlier order for custody of the child has been entered.

Subd. 2. **Required notice.** (a) Written notice of a child custody or parenting time or visitation proceeding shall be given to the child's parent, guardian, and custodian, who may appear and be heard and may file a responsive pleading. The court may, upon a showing of good cause, permit the intervention of other interested parties.

(b) Every notice must include the following notice of custody and parenting time requirements.

NOTICE OF CUSTODY AND PARENTING TIME

PARENTS ARE ENTITLED TO A PRESUMPTION OF JOINT LEGAL CUSTODY AND JOINT PHYSICAL CUSTODY WITH EQUAL SHARED PARENTING. THIS MEANS THAT EACH PARENT HAS AT LEAST 45.1 PERCENT PARENTING TIME, UNLESS THE PARENTS AGREE OTHERWISE. CERTAIN EXCEPTIONS AND OTHER PROVISIONS APPLY UNDER MINNESOTA STATUTES, SECTIONS 518.169 TO 518.175.

EFFECTIVE DATE. This section is effective for all notices issued on or after January 1, 2012.

Sec. 8. Minnesota Statutes 2010, section 518.167, subdivision 2, is amended to read:

Subd. 2. **Preparation.** (a) In preparing a report concerning a child, the investigator may consult any person who may have information about the child and the potential custodial arrangements except for persons involved in mediation efforts between the parties. Mediation personnel may disclose to investigators and evaluators information

collected during mediation only if agreed to in writing by all parties. Upon order of the court, the investigator may refer the child to professional personnel for diagnosis. The investigator may consult with and obtain information from medical, psychiatric, school personnel, or other expert persons who have served the child in the past after obtaining the consent of the parents or the child's custodian or guardian.

(b) The report submitted by the investigator must consider and evaluate the factors in section ~~518.17, subdivision 1~~ 518.169, subdivision 3, and include a detailed analysis of all information considered for each factor; provided that if joint physical custody is contemplated or sought not requested by either party, the report must consider and evaluate the factors in section ~~518.17, subdivision 2~~ 518.17, subdivision 1. The report must state the position of each party and the investigator's recommendation and the reason for the recommendation, and reference established means for dispute resolution between the parties.

EFFECTIVE DATE. This section is effective for all investigations ordered on or after January 1, 2012.

Sec. 9. [518.169] JOINT CUSTODY AND EQUAL SHARED PARENTING.

Subdivision 1. Public policy. (a) Recognizing the importance of protections afforded children by their ability to develop strong parental bonds, and recognizing the fundamental right and liberty interest that parents enjoy regarding the care, custody, and companionship of their children, the legislature finds and declares the following with respect to the intent of Minnesota laws relating 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 play the primary role 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 endangerment;

(5) it is in the best interests of children to have frequent and continuing physical contact with both parents under joint legal and joint 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 each parent 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 and children. 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 rebuttable presumption in favor of joint legal and joint physical 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 unwarranted interference of either parent.

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

(d) In accordance with the findings in paragraph (a), the legislature declares that public policy is advanced and the best interests of children are promoted through equal and shared parenting and the recognition of both parents' fundamental freedoms to actively participate in the care, custody, and companionship of their children.

Subd. 2. Presumption of joint legal and physical custody and shared parenting.
This subdivision applies to temporary and final orders in marriage dissolution or parentage cases. Upon request of either or both parties, the court shall use a rebuttable presumption that joint legal custody and joint physical custody, with equal shared parenting, is in the best interests of the child. For purposes of this subdivision, "equal" means a minimum parenting time for each parent of 45.1 percent. The percentage of parenting time may be determined by calculating the number of overnights that a child spends with a parent or by using a method other than overnights if the parent has significant time periods on separate days when the child is in the parent's physical custody but does not stay overnight. The parenting time must be spread throughout one calendar year in a way that best meets variable circumstances for the parties, unless both parents agree to a different division of time or schedule.

Subd. 3. Overcoming presumption. If the parents are unable to reach an agreement on joint legal and joint physical custody and equal shared parenting, the burden of overcoming the presumption of joint legal custody, joint physical custody, and equal shared parenting rests on the parent challenging the presumption. To overcome

the presumption, the court must find that the parent challenging the presumption has established by clear and convincing evidence that:

(1) the other parent's actions rise to the level of endangering the child due to any of the following:

(i) abandonment under section 260C.007, subdivision 6, clause (1), 260C.301, subdivision 2, or 518.1705, subdivision 6, paragraph (b), clause (3);

(ii) physical or sexual abuse under section 260C.007, subdivision 6, clause (2);

(iii) neglect under section 260C.007, subdivision 6, clause (3) or (8);

(iv) allowing the child to live in injurious or dangerous conditions under section 260C.007, subdivision 6, clause (9);

(v) egregious harm under section 260C.007, subdivision 14;

(vi) emotional maltreatment under section 260C.007, subdivision 15;

(vii) great bodily harm under section 609.02, subdivision 7;

(viii) conviction of child abuse as defined in section 609.185, clause (b);

(ix) child maltreatment under section 626.556, subdivision 2, clauses (c) to (g); or

(x) domestic abuse as defined in section 518B.01, except when:

(A) a parent has petitioned for an order for protection and the petition has been dismissed or denied by a court, or an order for protection was filed by agreement of the parties without a finding of domestic abuse and the agreement and order incorporating the agreement did not provide otherwise, in which case the court must find that no domestic abuse has occurred with respect to matters that were alleged or could have been alleged; or

(B) a parent knowingly makes false allegations of domestic abuse as defined in section 518B.01, subdivision 2. Making a false allegation of abuse is sufficient grounds to challenge the custody and parenting time of the accuser. Allegations raised in the context of custody proceedings that do not display evidence of a previous pattern of abuse deserve heightened scrutiny as to their veracity; or

(2) the other parent is incapable of self-management or management of personal affairs and would jeopardize the safety of the children due to current habitual and excessive use of alcohol, drugs, or other mind-altering substances and the related actions due to the substance abuse demonstrate endangerment to the well-being of the child.

Subd. 4. Consideration of geographic limitations. This subdivision applies when the presumption has not been overcome, but due to the parents' different geographic locations, a 45.1 percent minimum parenting time for each parent would prevent the parents from keeping the child in one school during a school year. During the pendency of the custody proceeding, the child shall remain in the same school district which the child currently attends or most recently attended, unless the parents agree otherwise, or except

in cases under section 518B.01 where the parent or child involved in the proceeding is endangered. If the parents do not agree otherwise, the court shall determine which parent has the majority of parenting time using the best interests of the child factors under section 518.17, subdivision 1, provided that a minimum of 25 percent parenting time must be granted to the other parent, making every attempt to exceed this amount and maximize the parental involvement of each parent.

Subd. 5. **Findings and order.** (a) If the court finds the presumption has been overcome, the court shall make detailed written findings that enumerate and explain which of the factors in this subdivision are applicable and what evidence supported these factors. The court shall restrict physical custody and parenting time with the other parent as to time, place, duration, or supervision and may deny parenting time entirely, as the circumstances warrant.

(b) If the court finds the presumption was not overcome, the court shall issue a custody order or parenting plan with a minimum 45.1 percent parenting time for each parent, or a different division of time agreed to by the parents, or as provided under subdivision 4, if applicable.

EFFECTIVE DATE. This section is effective for temporary orders and child custody determinations made on or after January 1, 2012.

Sec. 10. Minnesota Statutes 2010, section 518.17, subdivision 1, is amended to read:

Subdivision 1. **The best interests of the child.** (a) Subject to section 518.169, "the best interests of the child" means all relevant factors to be considered and evaluated by the court including:

- (1) the wishes of the child's parent or parents as to custody;
- (2) the reasonable preference of the child, if the court deems the child to be of sufficient age to express preference;
- (3) the child's primary caretaker;
- (4) the intimacy of the relationship between each parent and the child;
- (5) the interaction and interrelationship of the child with a parent or parents, siblings, and any other person who may significantly affect the child's best interests;
- (6) the child's adjustment to home, school, and community;
- (7) the length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity;
- (8) the permanence, as a family unit, of the existing or proposed custodial home;
- (9) the mental and physical health of all individuals involved; except that a disability, as defined in section 363A.03, of a proposed custodian or the child shall not be

determinative of the custody of the child, unless the proposed custodial arrangement is not in the best interest of the child;

(10) the capacity and disposition of the parties to give the child love, affection, and guidance, and to continue educating and raising the child in the child's culture and religion or creed, if any;

(11) the child's cultural background;

(12) the effect on the child of the actions of an abuser, if related to domestic abuse, as defined in section 518B.01, that has occurred between the parents or between a parent and another individual, whether or not the individual alleged to have committed domestic abuse is or ever was a family or household member of the parent; and

(13) except in cases in which a finding of domestic abuse as defined in section 518B.01 has been made, the disposition of each parent to encourage and permit frequent and continuing contact by the other parent with the child.

The court may not use one factor to the exclusion of all others. The primary caretaker factor may not be used as a presumption in determining the best interests of the child. The court must make detailed findings on each of the factors and explain how the factors led to its conclusions and to the determination of the best interests of the child.

(b) The court shall not consider conduct of a proposed custodian that does not affect the custodian's relationship to the child.

Sec. 11. Minnesota Statutes 2010, section 518.17, subdivision 3, is amended to read:

Subd. 3. **Custody order.** (a) Subject to section 518.169, upon adjudging the nullity of a marriage, or in a dissolution or separation proceeding, or in a child custody proceeding, the court shall make such further order as it deems just and proper concerning:

(1) the legal custody of the minor children of the parties which shall be sole or joint;

(2) their physical custody and residence; and

(3) their support. In determining custody, the court shall ~~consider~~ use section 518.169 or, if section 518.169 is not applicable, use the best interests of each the child factors under subdivision 1 and shall not prefer one parent over the other solely on the basis of the sex of the parent. If neither party requests joint legal and joint physical custody under section 518.169 but either or both parties request joint legal custody, the court shall use a rebuttable presumption that joint legal custody is in the best interests of the child.

(b) The court shall grant the following rights to each of the parties, unless specific findings are made under section 518.68, subdivision 1. Each party has the right of access to, and to receive copies of, school, medical, dental, religious training, and other important records and information about the minor children. Each party has the right of access to

12.1 information regarding health or dental insurance available to the minor children. Each
12.2 party shall keep the other party informed as to the name and address of the school of
12.3 attendance of the minor children. Each party has the right to be informed by school
12.4 officials about the children's welfare, educational progress and status, and to attend school
12.5 and parent-teacher conferences. The school is not required to hold a separate conference
12.6 for each party. In case of an accident or serious illness of a minor child, each party shall
12.7 notify the other party of the accident or illness, and the name of the health care provider
12.8 and the place of treatment. Each party has the right to reasonable access and telephone
12.9 contact with the minor children. The court may waive any of the rights under this section
12.10 if it finds it is necessary to protect the welfare of a party or child.

12.11 Sec. 12. Minnesota Statutes 2010, section 518.1705, subdivision 3, is amended to read:

12.12 Subd. 3. **Creating parenting plan; restrictions on creation; alternative.** (a) Upon
12.13 the request of both parents, a parenting plan must be created in lieu of an order for child
12.14 custody and parenting time unless the court makes detailed findings that the proposed
12.15 plan is not in the best interests of the child.

12.16 (b) If both parents do not agree to a parenting plan, the court may create one on its
12.17 own motion, except that the court must not do so if it finds that a parent has committed
12.18 domestic abuse against a parent or child who is a party to, or subject of, the matter
12.19 before the court. If the court creates a parenting plan on its own motion, it must not use
12.20 alternative terminology unless the terminology is agreed to by the parties.

12.21 (c) If an existing order does not contain a parenting plan, the parents must not be
12.22 required to create a parenting plan as part of a modification order under section 518A.39.

12.23 (d) A parenting plan must not be required during an action under section 256.87.

12.24 (e) If the parents do not agree to a parenting plan and the court does not create one
12.25 on its own motion, orders for custody and parenting time must be entered under sections
12.26 ~~518.17 and 518.169~~ to 518.175 or section 257.541, as applicable.

12.27 Sec. 13. Minnesota Statutes 2010, section 518.1705, subdivision 5, is amended to read:

12.28 Subd. 5. **Role of court.** If both parents agree to the use of a parenting plan but are
12.29 unable to agree on all terms, the court may create a parenting plan under this section. If
12.30 the court is considering a parenting plan, it may require each parent to submit a proposed
12.31 parenting plan at any time before entry of the final judgment and decree. If parents seek
12.32 the court's assistance in deciding the schedule for each parent's time with the child or
12.33 designation of decision-making responsibilities regarding the child, the court may order an
12.34 evaluation and should consider the appointment of a guardian ad litem. Parenting plans,

13.1 whether entered on the court's own motion, following a contested hearing, or reviewed by
13.2 the court pursuant to a stipulation, must be based on ~~the best interests factors in~~ section
13.3 518.169, 518.17₂, or 257.025, as applicable.

13.4 Sec. 14. Minnesota Statutes 2010, section 518.1705, subdivision 9, is amended to read:

13.5 Subd. 9. **Modification of parenting plans.** (a) Parents may modify the schedule
13.6 of the time each parent spends with the child or the decision-making provisions of a
13.7 parenting plan by agreement. To be enforceable, modifications must be confirmed by court
13.8 order. A motion to modify decision-making provisions or the time each parent spends
13.9 with the child may be made only within the time limits provided by section 518.18.

13.10 (b) The parties may agree, but the court must not require them, to apply the best
13.11 interests standard in section 518.17 or 257.025, as applicable, or another standard, for
13.12 deciding a motion for modification that would change the child's primary residence or the
13.13 physical custodial arrangement for the child, provided that:

13.14 (1) both parties were represented by counsel when the parenting plan was approved;
13.15 or

13.16 (2) the court found the parties were fully informed, the agreement was voluntary,
13.17 and the parties were aware of its implications.

13.18 (c) If the parties do not agree to apply the best interests standard or another standard,
13.19 section 518.18, paragraph (d), applies.

13.20 Sec. 15. Minnesota Statutes 2010, section 518.175, subdivision 1, is amended to read:

13.21 Subdivision 1. **General.** (a) ~~In all proceedings for dissolution or legal separation,~~
13.22 Subject to section 518.169, subsequent to the commencement of ~~the~~ a custody proceeding
13.23 and continuing thereafter during the minority of the child, the court shall, upon the request
13.24 of either parent, grant such parenting time on behalf of the child and a parent who does not
13.25 have temporary or permanent sole or joint physical custody of the child as will enable
13.26 the child and the parent to maintain a child to parent relationship that will be in the best
13.27 interests of the child.

13.28 (b) If the court finds, after a hearing, that parenting time with a parent is likely
13.29 to endanger the child's physical or emotional health or impair the child's emotional
13.30 development, the court shall restrict parenting time with that parent as to time, place,
13.31 duration, or supervision and may deny parenting time entirely, as the circumstances
13.32 warrant. The court shall consider the age of the child and the child's relationship with the
13.33 parent prior to the commencement of the proceeding.

14.1 (c) A parent's failure to pay support because of the parent's inability to do so shall
14.2 not be sufficient cause for denial of parenting time.

14.3 ~~(b)~~ (d) The court may provide that a law enforcement officer or other appropriate
14.4 person will accompany a party seeking to enforce or comply with parenting time.

14.5 ~~(e)~~ (e) Upon request of either party, to the extent practicable an order for parenting
14.6 time must include a specific schedule for parenting time, including the frequency and
14.7 duration of visitation and visitation during holidays and vacations, unless parenting time
14.8 is restricted, denied, or reserved.

14.9 ~~(d)~~ (f) The court administrator shall provide a form for a pro se motion regarding
14.10 parenting time disputes, which includes provisions for indicating the relief requested, an
14.11 affidavit in which the party may state the facts of the dispute, and a brief description of
14.12 the parenting time expeditor process under section 518.1751. The form may not include
14.13 a request for a change of custody. The court shall provide instructions on serving and
14.14 filing the motion.

14.15 ~~(e) In the absence of other evidence, there is a rebuttable presumption that a parent is~~
14.16 ~~entitled to receive at least 25 percent of the parenting time for the child. For purposes of~~
14.17 ~~this paragraph, the percentage of parenting time may be determined by calculating the~~
14.18 ~~number of overnights that a child spends with a parent or by using a method other than~~
14.19 ~~overnights if the parent has significant time periods on separate days when the child is in~~
14.20 ~~the parent's physical custody but does not stay overnight. The court may consider the age~~
14.21 ~~of the child in determining whether a child is with a parent for a significant period of time.~~

14.22 **EFFECTIVE DATE.** This section is effective for child custody determinations
14.23 made on or after January 1, 2012.

14.24 Sec. 16. Minnesota Statutes 2010, section 518.179, subdivision 1, is amended to read:

14.25 Subdivision 1. **Seeking custody or parenting time.** Notwithstanding any contrary
14.26 provision in section 518.169, 518.17₂, or 518.175, if a person seeking child custody
14.27 or parenting time has been convicted of a crime described in subdivision 2, the person
14.28 seeking custody or parenting time has the burden to prove that custody or parenting time
14.29 by that person is in the best interests of the child if:

14.30 (1) the conviction occurred within the preceding five years;

14.31 (2) the person is currently incarcerated, on probation, or under supervised release
14.32 for the offense; or

14.33 (3) the victim of the crime was a family or household member as defined in section
14.34 518B.01, subdivision 2.

15.1 If this section applies, the court may not grant custody or parenting time to the
15.2 person unless it finds that the custody or parenting time is in the best interests of the
15.3 child. If the victim of the crime was a family or household member, the standard of
15.4 proof is clear and convincing evidence. A guardian ad litem must be appointed in any
15.5 case where this section applies.

15.6 Sec. 17. Minnesota Statutes 2010, section 518.18, is amended to read:

15.7 **518.18 MODIFICATION OF ORDER.**

15.8 (a) Unless agreed to in writing by the parties, no motion to modify a custody order
15.9 or parenting plan may be made earlier than one year after the date of the entry of a decree
15.10 of dissolution or legal separation containing a provision dealing with custody, except in
15.11 accordance with paragraph (c).

15.12 (b) If a motion for modification has been heard, whether or not it was granted, unless
15.13 agreed to in writing by the parties no subsequent motion may be filed within two years
15.14 after disposition of the prior motion on its merits, except in accordance with paragraph (c).

15.15 (c) The time limitations prescribed in paragraphs (a) and (b) shall not prohibit a
15.16 motion to modify a custody order or parenting plan if the court finds that there is persistent
15.17 and willful denial or interference with parenting time, or has reason to believe that the
15.18 child's present environment may endanger the child's physical or emotional health or
15.19 impair the child's emotional development.

15.20 (d) If the court has jurisdiction to determine child custody matters, the court shall
15.21 not modify a prior custody order or a parenting plan provision which specifies the child's
15.22 primary residence or the physical custodial arrangement for the child unless it finds, upon
15.23 the basis of facts, including unwarranted denial of, or interference with, a duly established
15.24 parenting time schedule, that have arisen since the prior order or that were unknown to
15.25 the court at the time of the prior order, that a change has occurred in the circumstances of
15.26 the child or the parties and that the modification is necessary to serve the best interests
15.27 of the child, consistent with sections 518.169 to 518.175. In applying these standards,
15.28 the court shall retain the custody arrangement or the parenting plan provision specifying
15.29 the child's primary residence or the physical custodial arrangement for the child that
15.30 was established by the prior order unless:

15.31 (i) the court finds that a change in the custody arrangement or primary residence is ~~in~~
15.32 ~~the best interests of the child and the parties~~ consistent with a standard previously agreed
15.33 to by the parties, in a writing approved by a court, ~~to apply the best interests standard in~~
15.34 ~~section 518.17 or 257.025, as applicable~~; and, with respect to agreements approved by
15.35 a court on or after April 28, 2000, both parties were represented by counsel when the

agreement was approved or the court found the parties were fully informed, the agreement was voluntary, and the parties were aware of its implications;

(ii) both parties agree to the modification;

(iii) the child has been integrated into the family of the petitioner with the consent of the other party;

(iv) the child's present environment endangers the child's physical or emotional health or impairs the child's emotional development and the harm likely to be caused by a change of environment is outweighed by the advantage of a change to the child; or

(v) the court has denied a request of ~~the primary custodial~~ a parent with sole or joint physical custody of the child to move the residence of the child to another state, and the ~~primary custodial~~ parent has relocated to another state despite the court's order.

In addition, a court may modify a custody order or parenting plan under section 631.52.

(e) In deciding whether to modify a prior joint custody order, the court shall apply the standards set forth in paragraph (d) unless: (1) the parties agree in writing to the application of a different standard, or (2) the party seeking the modification is asking the court for permission to move the residence of the child to another state.

(f) If a parent has been granted sole physical custody of a minor and the child subsequently lives with the other parent, and temporary sole physical custody has been approved by the court or by a court-appointed referee, the court may suspend the obligor's child support obligation pending the final custody determination. The court's order denying the suspension of child support must include a written explanation of the reasons why continuation of the child support obligation would be in the best interests of the child.

(g) There must be no modification of an existing custody order based on the joint physical custody provisions of section 518.169 until July 1, 2013, unless the child's environment presently endangers the child's physical or emotional health or impairs the child's emotional development.

EFFECTIVE DATE. This section is effective January 1, 2012.

Sec. 18. REVISOR'S INSTRUCTION.

The revisor of statutes shall change the headnote for Minnesota Statutes, section 518.175, to read "OTHER PARENTING TIME PROVISIONS."

Sec. 19. REPEALER.

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

17.1 **EFFECTIVE DATE.** This section is effective January 1, 2012.