

A bill for an act

relating to children; establishing a presumption of joint physical custody; creating the Children's Equal and Shared Parenting Act; requiring certain parenting plans; amending Minnesota Statutes 2010, sections 257.541; 518.003, subdivision 3; 518.091; 518.131, subdivision 1; 518.156; 518.167, subdivision 2; 518.175, subdivision 1; 518.18; 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 257.541, is amended to read:

257.541 CUSTODY AND PARENTING TIME WITH CHILDREN BORN OUTSIDE OF MARRIAGE.

Subdivision 1. **Mother's right to custody.** The biological mother of a child born to a mother who was not married to the child's father when the child was born and was not married to the child's father when the child was conceived has sole custody of the child until paternity has been established under sections 257.51 to 257.74, or until custody is determined in a separate proceeding under section 518.156.

Subd. 2. **Father's right to parenting time and custody.** (a) If paternity has been acknowledged under section 257.34 and paternity has been established under sections 257.51 to 257.74, the father's rights of parenting time or custody are determined under sections 518.169, 518.17₂ and 518.175.

(b) If paternity has not been acknowledged under section 257.34 and paternity has been established under sections 257.51 to 257.74, the biological father may petition for rights of parenting time or custody in the paternity proceeding or in a separate proceeding under section 518.156. The rights of parenting time or custody must be determined under section 518.169.

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 provisions of ~~chapter 518~~ section 518.169 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~~ Primary residential parent" means the parent with 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- and that the parents share time with the child equally. For purposes of this definition, "equally" means at least 45.1 percent parenting time for each parent.

(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 PARENTING PLANS.**

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. **Parenting plan requirements.** Every summons must include the notice in this subdivision.

NOTICE OF PARENTING PLAN REQUIREMENTS

A PARENTING PLAN MUST BE CREATED. FOR JOINT PHYSICAL CUSTODY THE PLAN MUST INCLUDE A SCHEDULE OF TIME EACH PARENT SPENDS WITH THE CHILD WITH A MINIMUM OF 45.1 PERCENT TIME FOR EACH PARENT. IF BOTH PARENTS DO NOT AGREE TO A PARENTING PLAN, THE COURT SHALL CREATE ONE ON ITS OWN MOTION, EXCEPT THAT THE COURT MUST NOT DO SO IF IT FINDS THAT A PARENT HAS BEEN CONVICTED OF DOMESTIC ABUSE AGAINST A PARENT OR CHILD WHO IS A PARTY TO, OR SUBJECT OF, THE MATTER BEFORE THE COURT. PARENTING PLANS MUST BE BASED ON MINNESOTA STATUTES, SECTION 518.169.

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 section 518.169, subdivision 2, 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 518.156, is amended to read:

518.156 COMMENCEMENT OF CUSTODY PROCEEDING.

Subdivision 1. **Procedure.** In a court of this state which has 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 found 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 parenting plan requirements.

NOTICE OF PARENTING PLAN REQUIREMENTS

A PARENTING PLAN MUST BE CREATED. FOR JOINT PHYSICAL CUSTODY THE PLAN MUST INCLUDE A SCHEDULE OF TIME EACH PARENT SPENDS WITH THE CHILD WITH A MINIMUM OF 45.1 PERCENT TIME FOR EACH PARENT. IF BOTH PARENTS DO NOT AGREE TO A PARENTING PLAN, THE COURT SHALL CREATE ONE ON ITS OWN MOTION, EXCEPT THAT THE COURT MUST NOT DO SO IF IT FINDS THAT A PARENT HAS BEEN CONVICTED OF DOMESTIC ABUSE AGAINST A PARENT OR CHILD WHO IS A PARTY TO, OR SUBJECT OF, THE MATTER BEFORE THE COURT. PARENTING PLANS MUST BE BASED ON MINNESOTA STATUTES, SECTION 518.169.

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

Sec. 6. 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, and include a detailed analysis of all information considered for each factor. ~~If joint custody is contemplated or sought,~~ The report must consider and evaluate the factors in section ~~518.17, subdivision 2~~ 518.169, subdivision 2, 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, 2011.

Sec. 7. **[518.169] CHILDREN'S EQUAL AND SHARED PARENTING 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 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 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 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. 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 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 interference of either parent.

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

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

8.7 Subd. 2. **Joint custody.** (a) In cases of marital dissolution or unmarried parentage,
8.8 when paternity has been established, both parents enjoy a rebuttable presumption of joint
8.9 legal and joint physical custody of their children, and a rebuttable presumption the court
8.10 will award a parenting minimum of 45.1 percent for each parent.

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

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

8.18 (d) Allegations of substance abuse, mental illness, spousal or child abuse or neglect,
8.19 and any subsequent issuance of protective orders are not sufficient to cause cessation or
8.20 reduction in parent and child contact. When the fitness of a parent is challenged, the court
8.21 must find by clear and convincing evidence that the parent's behaviors would qualify
8.22 the parent's child to be found in need of protection or services under section 260C.007,
8.23 subdivisions 13 and 15, or the parent is found to meet the criteria as a chemically
8.24 dependent person under section 253B.02, subdivision 2. In no instance may the court limit
8.25 parent and child contact absent compelling necessity to prevent substantial and imminent
8.26 harm to the child.

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

8.31 (f) If the court finds that a party has overcome the presumption in favor of joint
8.32 physical custody, the court shall use the best interest standards in section 257.025 or
8.33 518.17, subdivision 1, as applicable, to make its determination for custodial arrangements.

8.34 **EFFECTIVE DATE.** This section is effective for temporary orders and child
8.35 custody determinations made on or after January 1, 2011.

9.1 Sec. 8. Minnesota Statutes 2010, section 518.175, subdivision 1, is amended to read:

9.2 Subdivision 1. **General.** (a) In all proceedings for dissolution or legal separation,
9.3 subsequent to the commencement of the proceeding and continuing thereafter during
9.4 the minority of the child, the court shall, upon the request of either parent, grant such
9.5 parenting time on behalf of the child and a parent as will enable the child and the parent to
9.6 maintain a child to parent relationship that will be in the best interests of the child.

9.7 If the court finds, after a hearing, that parenting time with a parent is likely
9.8 to endanger the child's physical or emotional health or impair the child's emotional
9.9 development, the court shall restrict parenting time with that parent as to time, place,
9.10 duration, or supervision and may deny parenting time entirely, as the circumstances
9.11 warrant. The court shall consider the age of the child and the child's relationship with the
9.12 parent prior to the commencement of the proceeding.

9.13 A parent's failure to pay support because of the parent's inability to do so shall not be
9.14 sufficient cause for denial of parenting time.

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

9.17 (c) Upon request of either party, to the extent practicable an order for parenting
9.18 time must include a specific schedule for parenting time, including the frequency and
9.19 duration of visitation and visitation during holidays and vacations, unless parenting time
9.20 is restricted, denied, or reserved.

9.21 (d) The court administrator shall provide a form for a pro se motion regarding
9.22 parenting time disputes, which includes provisions for indicating the relief requested, an
9.23 affidavit in which the party may state the facts of the dispute, and a brief description of
9.24 the parenting time expeditor process under section 518.1751. The form may not include
9.25 a request for a change of custody. The court shall provide instructions on serving and
9.26 filing the motion.

9.27 (e) In the absence of other evidence, there is a rebuttable presumption that a
9.28 parent is entitled to receive at least ~~25~~ 45.1 percent of the parenting time for the child.
9.29 For purposes of this paragraph, the percentage of parenting time may be determined
9.30 by calculating the number of overnights that a child spends with a parent or by using a
9.31 method other than overnights if the parent has significant time periods on separate days
9.32 when the child is in the parent's physical custody but does not stay overnight. If the court
9.33 finds that a party has overcome the presumption in favor of joint physical custody, the
9.34 court may consider the age of the child in determining whether a child is with a parent
9.35 for a significant period of time.

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

10.3 Sec. 9. Minnesota Statutes 2010, section 518.18, is amended to read:

10.4 **518.18 MODIFICATION OF ORDER.**

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

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

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

10.17 (d) If the court has jurisdiction to determine child custody matters, the court shall
10.18 not modify a prior custody order or a parenting plan provision which specifies the child's
10.19 primary residence unless it finds, upon the basis of facts, including unwarranted denial of,
10.20 or interference with, a duly established parenting time schedule, that have arisen since the
10.21 prior order or that were unknown to the court at the time of the prior order, that a change
10.22 has occurred in the circumstances of the child or the parties and that the modification is
10.23 necessary to serve the best interests of the child. In applying these standards the court
10.24 shall retain the custody arrangement or the parenting plan provision specifying the child's
10.25 primary residence that was established by the prior order unless:

10.26 (i) the court finds that a change in the custody arrangement or primary residence is in
10.27 the best interests of the child and the parties previously agreed, in a writing approved by a
10.28 court, to apply the best interests standard in section 518.17 or 257.025, as applicable; and,
10.29 with respect to agreements approved by a court on or after April 28, 2000, both parties
10.30 were represented by counsel when the agreement was approved or the court found the
10.31 parties were fully informed, the agreement was voluntary, and the parties were aware
10.32 of its implications;

10.33 (ii) both parties agree to the modification;

10.34 (iii) the child has been integrated into the family of the petitioner with the consent
10.35 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 parent 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) Except as expressly provided, an enactment, amendment, or repeal of law does not constitute grounds for a modification of a child custody order.

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

Sec. 10. **REPEALER.**

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

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