

**SENATE
STATE OF MINNESOTA
NINETY-THIRD SESSION**

S.F. No. 4559

(SENATE AUTHORS: LUCERO)

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Introduction and first reading
Referred to Judiciary and Public Safety

OFFICIAL STATUS

1.1 A bill for an act
1.2 relating to family law; requiring a court to consider allegations against a parent of
1.3 domestic abuse or child abuse in dissolution, child custody, and parenting time
1.4 proceedings; amending Minnesota Statutes 2022, sections 518.165, by adding a
1.5 subdivision; 518.17, subdivisions 1, 3, by adding subdivisions; 518.175,
1.6 subdivisions 1, 1a, 5.

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

1.8 Section 1. Minnesota Statutes 2022, section 518.165, is amended by adding a subdivision
1.9 to read:

1.10 Subd. 7. **Training.** A court appointing a guardian ad litem under subdivision 2 in a
1.11 proceeding for child custody, marriage dissolution, or legal separation where custody or
1.12 parenting time with a minor child is an issue shall make reasonable efforts to appoint a
1.13 guardian ad litem who received evidence-based education and training relating to domestic
1.14 abuse, child abuse, including child sexual abuse, and the effects of child abuse and domestic
1.15 abuse on children.

1.16 Sec. 2. Minnesota Statutes 2022, section 518.17, subdivision 1, is amended to read:

1.17 Subdivision 1. **Best interests of the child.** (a) In evaluating the best interests of the child
1.18 for purposes of determining issues of custody and parenting time, the court must consider
1.19 and evaluate all relevant factors, including:

1.20 (1) a child's physical, emotional, cultural, spiritual, and other needs, and the effect of
1.21 the proposed arrangements on the child's needs and development;

2.1 (2) any special medical, mental health, developmental disability, or educational needs
2.2 that the child may have that may require special parenting arrangements or access to
2.3 recommended services;

2.4 (3) the reasonable preference of the child based on the child's developmental stage,
2.5 maturity, and judgment, if the court deems the child to be of sufficient ability, age, and
2.6 maturity to express an independent, reliable preference. In assessing this factor, if the court
2.7 finds that the child's fear of a parent or party is based on the parent's or party's actual and
2.8 specific conduct that is contrary to the child's best interests, the court must weigh this factor
2.9 heavily in determining the custody of the child and parenting time with the child;

2.10 (4) whether domestic abuse, as defined in section 518B.01, or child abuse has occurred
2.11 in the parents' or either parent's household or relationship; the nature and context of the
2.12 domestic abuse or child abuse; and the implications of the domestic abuse or child abuse
2.13 for parenting and for the child's safety, well-being, and developmental needs;

2.14 (5) any physical, mental, or chemical health issue of a parent that affects the child's
2.15 safety or developmental needs;

2.16 (6) the history and nature of each parent's participation in providing care for the child;

2.17 (7) the willingness and ability of each parent to provide ongoing care for the child; to
2.18 meet the child's ongoing developmental, emotional, spiritual, and cultural needs; and to
2.19 maintain consistency and follow through with parenting time;

2.20 (8) the need for stability and continuity in the child's home, school, and community and
2.21 the effect on the child's well-being and development of changes to home, school, and
2.22 community, except if changes are necessary to protect the health or safety of the child or a
2.23 party;

2.24 (9) the effect of the proposed arrangements on the ongoing relationships between the
2.25 child and each parent, siblings, and other significant persons in the child's life;

2.26 (10) the benefit to the child in maximizing parenting time with both parents and the
2.27 detriment to the child in limiting parenting time with either parent;

2.28 (11) except in cases in which domestic abuse as described in clause (4) has occurred,
2.29 the disposition of each parent to support the child's relationship with the other parent and
2.30 to encourage and permit frequent and continuing contact between the child and the other
2.31 parent; ~~and~~

2.32 (12) the willingness and ability of parents to cooperate in the rearing of their child; to
2.33 maximize sharing information and minimize exposure of the child to parental conflict; and

3.1 to utilize methods for resolving disputes regarding any major decision concerning the life
3.2 of the child; and

3.3 (13) the attempts of a parent or party to turn the child against the other party or parent,
3.4 except in cases of domestic abuse where reasonable safety measures are necessary to protect
3.5 the health or safety of the child. A parent's or party's reasonable efforts to protect the child
3.6 shall not be considered to be attempts to turn the child against the other parent or party. A
3.7 child's deficient or negative relationship with a parent or party shall not be presumed to be
3.8 caused by the other party.

3.9 (b) If the court finds that a parent or party has limited parenting time with the other
3.10 parent under paragraph (a), clause (10); failed to support the child's relationship with the
3.11 other parent or party under paragraph (a), clause (11); or failed to cooperate with the other
3.12 parent or party in rearing their child under paragraph (a), clause (12), the court shall not
3.13 adversely weigh this factor against a parent or party if the circumstances were in response
3.14 to abuse or necessary to protect the child or an abused household member from harm.

3.15 ~~(b)~~ (c) Clauses (1) to (9) govern the application of the best interests of the child factors
3.16 by the court:

3.17 (1) The court must make detailed findings on each of the factors in paragraph (a) based
3.18 on the evidence presented and explain how each factor led to its conclusions and to the
3.19 determination of custody and parenting time. The court may not use one factor to the
3.20 exclusion of all others, and the court shall consider that the factors may be interrelated.

3.21 (2) The court shall consider that it is in the best interests of the child to promote the
3.22 child's healthy growth and development through safe, stable, nurturing relationships between
3.23 a child and both parents.

3.24 (3) The court shall consider both parents as having the capacity to develop and sustain
3.25 nurturing relationships with their children unless there are substantial reasons to believe
3.26 otherwise. In assessing whether parents are capable of sustaining nurturing relationships
3.27 with their children, the court shall recognize that there are many ways that parents can
3.28 respond to a child's needs with sensitivity and provide the child love and guidance, and
3.29 these may differ between parents and among cultures.

3.30 (4) The court shall not consider conduct of a party that does not affect the party's
3.31 relationship with the child, unless the party is alleged to have committed domestic abuse
3.32 against a household member or child abuse against any child. In cases where a parent is
3.33 alleged to have committed domestic abuse against a household member or child abuse
3.34 against a child, the court must make a finding by a preponderance of the evidence whether

4.1 or not the parent committed domestic abuse or child abuse. If the court finds that the parent
4.2 committed domestic abuse or child abuse, the court must first consider and weigh the
4.3 allegations of domestic abuse or child abuse before considering any other best interest
4.4 factors.

4.5 (5) Disability alone, as defined in section 363A.03, of a proposed custodian or the child
4.6 shall not be determinative of the custody of the child.

4.7 (6) The court shall consider evidence of a violation of section 609.507 in determining
4.8 the best interests of the child.

4.9 (7) There is no presumption for or against joint physical custody, except as provided in
4.10 clause (9).

4.11 (8) Joint physical custody does not require an absolutely equal division of time.

4.12 (9) The court shall use a rebuttable presumption that upon request of either or both
4.13 parties, joint legal custody is in the best interests of the child. However, the court shall use
4.14 a rebuttable presumption that joint legal custody or joint physical custody is not in the best
4.15 interests of the child if a parent is alleged to have committed domestic abuse, as defined in
4.16 section 518B.01, ~~has occurred between the parents~~ against a household member or child
4.17 abuse against any child and the court finds by a preponderance of the evidence that the
4.18 parent committed domestic abuse against the household member or child abuse against any
4.19 child. In determining whether the presumption is rebutted, the court shall consider the nature
4.20 and context of the domestic abuse or child abuse and the implications of the domestic abuse
4.21 or child abuse for parenting and for the child's safety, well-being, and developmental needs.
4.22 Disagreement alone over whether to grant sole or joint custody does not constitute an
4.23 inability of parents to cooperate in the rearing of their children as referenced in paragraph
4.24 (a), clause (12).

4.25 ~~(e)~~ (d) In a proceeding involving the custodial responsibility of a service member's child,
4.26 a court may not consider only a parent's past deployment or possible future deployment in
4.27 determining the best interests of the child. For purposes of this paragraph, "custodial
4.28 responsibility" has the meaning given in section 518E.102, paragraph (f).

4.29 Sec. 3. Minnesota Statutes 2022, section 518.17, subdivision 3, is amended to read:

4.30 Subd. 3. **Custody order.** (a) Upon adjudging the nullity of a marriage, or in a dissolution
4.31 or separation proceeding, or in a child custody proceeding, the court shall make such further
4.32 order as it deems just and proper concerning:

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

5.1 (2) their physical custody and residence; and

5.2 (3) their support. In determining custody, the court shall consider the best interests of
5.3 each child and shall not prefer one parent over the other solely on the basis of the sex of the
5.4 parent.

5.5 (b) In cases where a parent is alleged to have committed an act of domestic abuse against
5.6 a household member or child abuse against any child, the court must make a finding by a
5.7 preponderance of the evidence whether or not the parent committed domestic abuse or child
5.8 abuse. If the court finds that the parent committed domestic abuse against a household
5.9 member or child abuse against any child, the court must consider whether there is an ongoing
5.10 risk of abuse to the subject child. There is a rebuttable presumption that the court shall
5.11 suspend a party's parenting time or shall only allow supervised parenting time for a party
5.12 who poses a risk of abuse to the child. A court must find that a maltreatment finding under
5.13 chapter 260E is sufficient evidence for a finding of child abuse under this paragraph.

5.14 ~~(b)~~ (c) The court shall grant the rights listed in subdivision 3a to each of the parties,
5.15 regardless of custodial designation, unless specific findings are made under section 518.68,
5.16 subdivision 1. The court shall include in the custody order the notice under subdivision 3a.

5.17 ~~(c)~~ (d) The court may waive any of the rights under this section if it finds it is necessary
5.18 to protect the welfare of a party or child. If the court finds that a party or parent has a history
5.19 of committing child abuse of a child or domestic abuse of a household member, or if the
5.20 court finds that a party or parent poses a present risk of harm to the child or a household
5.21 member and awards any form of custody or visitation to the party or parent who committed
5.22 the abuse, the court must order safety conditions, such as supervised parenting time, to
5.23 protect the child or household member.

5.24 (e) If a court orders supervised parenting time or other safety conditions for a party or
5.25 parent's visits with the child, the custody order must include:

5.26 (1) the court's reason for ordering supervised parenting time with the child or imposing
5.27 safety conditions; and

5.28 (2) the court's explanation of why supervised parenting time with the party or parent are
5.29 in the best interests of the child.

5.30 (f) If the court orders a parent or party to only have supervised parenting time with the
5.31 child, the court must continue to review the risk of harm to the child and need for supervised
5.32 parenting time on an annual basis.

6.1 ~~(d)~~ (g) If a court order or law prohibits contact by a party, the notifications and
 6.2 information required to be sent under subdivision 3a, clauses (1), (2), (3), (5), and (6), shall
 6.3 not be made by direct communication of the parties. Third-party communication shall be
 6.4 limited to the specific purposes delineated in this subdivision or subdivision 3a. Nothing in
 6.5 this subdivision or subdivision 3a shall modify, suspend, revoke, or terminate a court order
 6.6 or law that prohibits contact by a party.

6.7 ~~(e)~~ (h) If one of the parties is a program participant under chapter 5B, the other party
 6.8 shall send all information and notifications required under subdivision 3a, clauses (1), (2),
 6.9 (3), (5), and (6), to the participant's designated address. The program participant is exempted
 6.10 from the requirements of subdivision 3a.

6.11 ~~(f)~~ (i) Failure to notify or inform a party of rights under subdivision 3a does not form a
 6.12 basis for modification under section 518.18, paragraph (d), clause (iv), unless other grounds
 6.13 are alleged which would support a modification.

6.14 Sec. 4. Minnesota Statutes 2022, section 518.17, is amended by adding a subdivision to
 6.15 read:

6.16 **Subd. 7. Custody and parenting time; health and safety of the child. (a)**
 6.17 Notwithstanding any other provision of law to the contrary, a court making a determination
 6.18 based on the best interests of a child pursuant to this chapter shall prioritize and promote
 6.19 the child's health and safety when making this determination. A court must promote the
 6.20 safety of a child, including preventing direct physical or emotional harm to the child.

6.21 (b) Prior to issuing any custody or parenting time order, the court must determine the
 6.22 child's safety by considering all relevant factors and by giving weighted consideration to
 6.23 all factors that affect the health and safety of the child, including but not limited to:

6.24 (1) whether either parent or party is more likely to ensure the protection of the child's
 6.25 health and safety. There is a rebuttable presumption that the court must not award the child's
 6.26 custody or unsupervised parenting time to a parent or party who jeopardizes the health or
 6.27 safety of the child;

6.28 (2) the child's need for stability and continuity in the child's education, family life, and
 6.29 community life, except if changes are necessary to protect the health or safety of the child
 6.30 or a parent or party;

6.31 (3) whether either parent or party jeopardizes the health or safety of the child by placing
 6.32 the child at substantial risk of abuse;

7.1 (4) whether a parent or a party has committed domestic abuse against a household
7.2 member, including past or current orders for protection where there was a finding of abuse;

7.3 (5) whether either parent or party has committed an act of child abuse against any child;

7.4 (6) whether either parent or party is better able or more likely to meet the child's daily
7.5 physical, emotional, developmental, educational, and special needs; and

7.6 (7) the existence of an order for protection with no finding of domestic abuse or child
7.7 abuse if, upon reviewing the facts presented at the custody hearing, the court finds that
7.8 domestic abuse or child abuse occurred.

7.9 (c) A court must not presume that a child's deficient or negative relationship with a
7.10 parent was caused by the other parent. A court must not separate a child from a parent or
7.11 party who is the child's primary attachment figure for the purpose of improving a deficient
7.12 relationship with another parent or party.

7.13 (d) In cases in which the court has found that a household member is the victim of
7.14 domestic abuse or in which child abuse has occurred or is occurring:

7.15 (1) the court shall not base decisions on a legal presumption of shared parenting; and

7.16 (2) all costs, including attorney and expert fees, incurred by the nonoffending parent
7.17 and the child shall be paid by the parent whom the court has found to have committed child
7.18 abuse or domestic abuse, unless the offending parent has insufficient means to pay the costs.

7.19 Sec. 5. Minnesota Statutes 2022, section 518.17, is amended by adding a subdivision to
7.20 read:

7.21 Subd. 8. **Training required.** (a) Before a judge or magistrate handles child custody or
7.22 parenting time proceedings in which a party or parent is alleged to have committed domestic
7.23 abuse against a household member or child abuse against a child, the judge or magistrate
7.24 must complete at least 20 hours of training on handling domestic abuse and child abuse
7.25 cases. The training must include but is not limited to:

7.26 (1) training about the maltreatment of children under chapter 260E;

7.27 (2) training about sexual abuse of children under chapter 260E;

7.28 (3) training about physical abuse of children under chapter 260E;

7.29 (4) training about implicit and explicit bias;

7.30 (5) training about trauma and child neglect; and

7.31 (6) training about the impact of child abuse and domestic violence on children.

8.1 (b) The training under paragraph (a) shall include the latest best practices from
8.2 evidence-based, peer-reviewed research by recognized experts in the types of child abuse
8.3 specified under paragraph (a).

8.4 (c) District courts shall offer training under this paragraph to court personnel, including
8.5 guardian ad litem, on the impact of child abuse, domestic abuse, and trauma on a child
8.6 victim and situations in which a party attempts to turn a child against another party.

8.7 Sec. 6. Minnesota Statutes 2022, section 518.175, subdivision 1, is amended to read:

8.8 Subdivision 1. **General.** (a) In all proceedings for dissolution or legal separation,
8.9 subsequent to the commencement of the proceeding and continuing thereafter during the
8.10 minority of the child, the court shall, upon the request of either parent, grant such parenting
8.11 time on behalf of the child and a parent as will enable the child and the parent to maintain
8.12 a child to parent relationship that will be in the best interests of the child except when a
8.13 parent is alleged to have committed domestic abuse against a household member or child
8.14 abuse against any child. If a parent is alleged to have committed domestic abuse against a
8.15 household member or child abuse against any child, the court must make a finding by a
8.16 preponderance of the evidence whether or not the parent committed an act of domestic abuse
8.17 or child abuse. If the court finds that the parent committed an act of domestic abuse or child
8.18 abuse, the court must first weigh and consider the allegations of domestic abuse or child
8.19 abuse before considering any other best interest factors. The court, when issuing a parenting
8.20 time order, may reserve a determination as to the future establishment or expansion of a
8.21 parent's parenting time. In that event, the best interest standard set forth in subdivision 5,
8.22 paragraph (a), shall be applied to a subsequent motion to establish or expand parenting time.

8.23 (b) If the court finds, after a hearing, that parenting time with a parent is likely to endanger
8.24 the child's physical or emotional health or impair the child's emotional development, the
8.25 court shall restrict parenting time with that parent as to time, place, duration, or supervision
8.26 and may deny parenting time entirely, as the circumstances warrant. If the court awards
8.27 custody or grants parenting time to a party after finding that: (1) the party has a history of
8.28 domestic abuse of a household member or child abuse of any child; or (2) the party poses
8.29 a present risk of harm to a child or household member, the court must order safety conditions,
8.30 such as supervised parenting time and limitations on the time of day or maximum number
8.31 of hours that parenting time takes place. The court shall consider the age of the child and
8.32 the child's relationship with the parent prior to the commencement of the proceeding.

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

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

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

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

9.12 (g) In the absence of other evidence, there is a rebuttable presumption that a parent is
9.13 entitled to receive a minimum of 25 percent of the parenting time for the child. For purposes
9.14 of this paragraph, the percentage of parenting time may be determined by calculating the
9.15 number of overnights that a child spends with a parent or by using a method other than
9.16 overnights if the parent has significant time periods on separate days when the child is in
9.17 the parent's physical custody but does not stay overnight. The court may consider the age
9.18 of the child in determining whether a child is with a parent for a significant period of time.

9.19 Sec. 7. Minnesota Statutes 2022, section 518.175, subdivision 1a, is amended to read:

9.20 Subd. 1a. **Domestic abuse; child abuse; supervised parenting time.** (a) If a parent
9.21 requests supervised parenting time under subdivision 1 or 5 and an order for protection
9.22 under chapter 518B or a similar law of another state is in effect against the other parent to
9.23 protect the parent with whom the child resides or the child, the judge or judicial officer must
9.24 consider the order for protection in making a decision regarding parenting time.

9.25 (b) If a parent is alleged to have committed domestic abuse against a household member
9.26 or child abuse against any child, the court must make a finding by a preponderance of the
9.27 evidence whether or not the parent committed domestic abuse or child abuse. If the court
9.28 finds that the parent committed domestic abuse or child abuse, the court must first weigh
9.29 and consider the allegations of domestic abuse or child abuse before considering any other
9.30 best interest factors when making a decision regarding parenting time.

9.31 ~~(b)~~ (c) The state court administrator, in consultation with representatives of parents and
9.32 other interested persons, shall develop standards to be met by persons who are responsible

10.1 for supervising parenting time. Either parent may challenge the appropriateness of an
10.2 individual chosen by the court to supervise parenting time.

10.3 Sec. 8. Minnesota Statutes 2022, section 518.175, subdivision 5, is amended to read:

10.4 Subd. 5. **Modification of parenting plan or order for parenting time.** (a) If a parenting
10.5 plan or an order granting parenting time cannot be used to determine the number of overnights
10.6 or overnight equivalents the child has with each parent, the court shall modify the parenting
10.7 plan or order granting parenting time so that the number of overnights or overnight
10.8 equivalents the child has with each parent can be determined. For purposes of this section,
10.9 "overnight equivalents" has the meaning given in section 518A.36, subdivision 1.

10.10 (b) If modification would serve the best interests of the child, the court shall modify the
10.11 decision-making provisions of a parenting plan or an order granting or denying parenting
10.12 time, if the modification would not change the child's primary residence. Consideration of
10.13 a child's best interest includes a child's changing developmental needs.

10.14 (c) Except as provided in section 631.52, the court may not restrict a parent's parenting
10.15 time unless ~~it finds that~~:

10.16 (1) a parent is alleged to have committed domestic abuse against a household member
10.17 or child abuse against any child and the court has found by a preponderance of the evidence
10.18 that the parent committed domestic abuse or child abuse;

10.19 ~~(1)~~ (2) the court finds that parenting time is likely to endanger the child's physical or
10.20 emotional health or impair the child's emotional development; or

10.21 ~~(2)~~ (3) the court finds that the parent has chronically and unreasonably failed to comply
10.22 with court-ordered parenting time.

10.23 A modification of parenting time which increases a parent's percentage of parenting time
10.24 to an amount that is between 45.1 to 54.9 percent parenting time is not a restriction of the
10.25 other parent's parenting time.

10.26 (d) If a parent makes specific allegations that parenting time by the other parent places
10.27 the parent or child in danger of harm, such as when the other parent is alleged to have
10.28 committed domestic abuse against a household member or child abuse against any child,
10.29 the court shall hold a hearing at the earliest possible time to determine the need to modify
10.30 the order granting parenting time. If a parent is alleged to have committed domestic abuse
10.31 against a household member or child abuse against any child, the court must make a finding
10.32 by a preponderance of the evidence whether or not the parent committed domestic abuse
10.33 or child abuse. If the court finds that the parent committed domestic abuse or child abuse,

- 11.1 the court must first weigh and consider allegations of domestic abuse or child abuse before
11.2 considering any other best interest factors when making a decision regarding parenting time.
11.3 Consistent with subdivision 1a, the court may require a third party, including the local social
11.4 services agency, to supervise the parenting time or may restrict a parent's parenting time if
11.5 necessary to protect the other parent or child from harm. If there is an existing order for
11.6 protection governing the parties, the court shall consider the use of an independent, neutral
11.7 exchange location for parenting time.