

State of Minnesota

HOUSE OF REPRESENTATIVES

EIGHTY-EIGHTH SESSION

H. F. No. **2722**

- 03/06/2014 Authored by Mahoney, Laine, Scott and Norton
The bill was read for the first time and referred to the Committee on Civil Law
- 03/19/2014 Adoption of Report: Re-referred to the Committee on Judiciary Finance and Policy
- 03/21/2014 Adoption of Report: Placed on the General Register
Read Second Time
- 04/28/2014 Calendar for the Day
Read Third Time
Passed by the House and transmitted to the Senate

1.1 A bill for an act
 1.2 relating to family law; making changes to custody and parenting time provisions;
 1.3 amending Minnesota Statutes 2012, sections 518.17, subdivision 2; 518.175,
 1.4 subdivisions 1, 5.

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

1.6 Section 1. Minnesota Statutes 2012, section 518.17, subdivision 2, is amended to read:

1.7 Subd. 2. **Factors when joint custody is sought.** (a) There is no presumption for or
 1.8 against joint physical custody, except when domestic abuse, as defined in section 518B.01,
 1.9 has occurred between the parents.

1.10 (b) In addition to the factors listed in subdivision 1, where either joint legal or
 1.11 joint physical custody is contemplated or sought, the court shall consider the following
 1.12 relevant factors:

1.13 ~~(a)~~ (1) the ability of parents to cooperate in the rearing of their children;

1.14 ~~(b)~~ (2) methods for resolving disputes regarding any major decision concerning the
1.15 life of the child, and the parents' willingness to use those methods;

1.16 ~~(c)~~ (3) whether it would be detrimental to the child if one parent were to have sole
1.17 authority over the child's upbringing; and

1.18 ~~(d)~~ (4) whether domestic abuse, as defined in section 518B.01, has occurred between
1.19 the parents.

1.20 The court shall not use one of the factors to be considered to the exclusion of all of the
 1.21 other factors. The court shall use a rebuttable presumption that upon request of either or
 1.22 both parties, joint legal custody is in the best interests of the child. However, the court
 1.23 shall use a rebuttable presumption that joint legal or physical custody is not in the best
 1.24 interests of the child if domestic abuse, as defined in section 518B.01, has occurred

2.1 between the parents. Disagreement alone over whether to grant sole or joint custody
 2.2 does not constitute an inability of parents to cooperate in the rearing of their children
 2.3 as referenced in paragraph (b), clause (1).

2.4 ~~If the court awards~~ (c) If the parties disagree as to whether the court should award
 2.5 joint or sole legal or physical custody over the objection of a party, the court shall make
 2.6 detailed factual findings on each of the factors in this subdivision and explain how its
 2.7 findings on the factors led to its determination ~~that~~ as to whether joint custody or sole
 2.8 custody would be in the best interests of the child.

2.9 Sec. 2. Minnesota Statutes 2012, section 518.175, subdivision 1, is amended to read:

2.10 Subdivision 1. **General.** (a) In all proceedings for dissolution or legal separation,
 2.11 subsequent to the commencement of the proceeding and continuing thereafter during
 2.12 the minority of the child, the court shall, upon the request of either parent, grant such
 2.13 parenting time on behalf of the child and a parent as will enable the child and the parent to
 2.14 maintain a child to parent relationship that will be in the best interests of the child. The
 2.15 court, when issuing a parenting time order, may reserve a determination as to the future
 2.16 establishment or expansion of a parent's parenting time. In that event, the best interest
 2.17 standard set forth in subdivision 5, paragraph (a), shall be applied to a subsequent motion
 2.18 to establish or expand parenting time.

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

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

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

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

2.33 ~~(d) (f)~~ (f) The court administrator shall provide a form for a pro se motion regarding
 2.34 parenting time disputes, which includes provisions for indicating the relief requested, an
 2.35 affidavit in which the party may state the facts of the dispute, and a brief description of

3.1 the parenting time expeditor process under section 518.1751. The form may not include
 3.2 a request for a change of custody. The court shall provide instructions on serving and
 3.3 filing the motion.

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

3.11 Sec. 3. Minnesota Statutes 2012, section 518.175, subdivision 5, is amended to read:

3.12 Subd. 5. **Modification of parenting plan or order for parenting time.** (a) If
 3.13 modification would serve the best interests of the child, the court shall modify the
 3.14 decision-making provisions of a parenting plan or an order granting or denying parenting
 3.15 time, if the modification would not change the child's primary residence. Consideration of
 3.16 a child's best interest includes a child's changing developmental needs.

3.17 (b) Except as provided in section 631.52, the court may not restrict parenting time
 3.18 unless it finds that:

3.19 (1) parenting time is likely to endanger the child's physical or emotional health or
 3.20 impair the child's emotional development; or

3.21 (2) the parent has chronically and unreasonably failed to comply with court-ordered
 3.22 parenting time.

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

3.26 (c) If a parent makes specific allegations that parenting time by the other parent
 3.27 places the parent or child in danger of harm, the court shall hold a hearing at the
 3.28 earliest possible time to determine the need to modify the order granting parenting time.
 3.29 Consistent with subdivision 1a, the court may require a third party, including the local
 3.30 social services agency, to supervise the parenting time or may restrict a parent's parenting
 3.31 time if necessary to protect the other parent or child from harm. If there is an existing order
 3.32 for protection governing the parties, the court shall consider the use of an independent,
 3.33 neutral exchange location for parenting time.