

SENATE
STATE OF MINNESOTA
NINETY-SECOND SESSION

S.F. No. 3504

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02/28/2022	5146	Introduction and first reading Referred to Civil Law and Data Practices Policy
03/10/2022	5289	Author added Bigham
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1.1

A bill for an act

1.2

relating to domestic relations; modifying parenting time provisions; amending

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Minnesota Statutes 2020, sections 257.025; 518.131, subdivisions 1, 11; 518.14;

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518.17, subdivisions 1, 3; 518.175, subdivisions 1, 6.

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

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Section 1. **PUBLIC POLICY STATEMENT.**

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The public policy of this state is to:

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(1) ensure that each child has frequent and substantial contact with the child's parents,

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as long as the child's parents have shown the ability to act in the best interests of the child;

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(2) ensure that parents and caregivers provide a safe and nurturing environment for each

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child; and

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(3) encourage parents to share the rights and duties of raising their child.

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Sec. 2. Minnesota Statutes 2020, section 257.025, is amended to read:

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257.025 CUSTODY AND PARENTING TIME DISPUTES.

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(a) In any custody or parenting time proceeding involving unmarried parents, the court

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shall consider section 518.175 and evaluate all relevant factors in section 518.17, subdivision

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1, to determine the best interests of the child.

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(b) The fact that the parents of the child are not or were never married to each other shall

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not be determinative of the custody and parenting time of the child.

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(c) A person may seek custody of a child by filing a petition or motion pursuant to section

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518.156.

2.1 (d) Section 518.619 applies to this section.

2.2 Sec. 3. Minnesota Statutes 2020, section 518.131, subdivision 1, is amended to read:

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

2.7 (a) Temporary custody and parenting time regarding the minor children of the parties.
2.8 Before commencing the action, the court must determine a temporary parenting time schedule
2.9 with each of the parents that considers the child's access to each parent as required under
2.10 section 518.17, subdivision 1. If the child's access to a parent was limited or restricted before
2.11 the action commenced, the court must determine the child's custody and parenting time in
2.12 a manner that supports the child's opportunity to develop a relationship with both parents
2.13 in accordance with sections 518.17 and 518.175;

2.14 (b) Temporary maintenance of either spouse;

2.15 (c) Temporary child support for the children of the parties;

2.16 (d) Temporary costs and reasonable attorney fees;

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

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

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

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

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

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

Sec. 4. Minnesota Statutes 2020, section 518.131, subdivision 11, is amended to read:

Subd. 11. ~~Temporary support and maintenance. Cases given priority for temporary relief. Temporary support and maintenance may be ordered during the time a parenting plan is being developed under section 518.1705.~~ (a) While the proceeding is pending, the court must give priority to scheduling and holding an expedited hearing for temporary relief where a party credibly alleges that:

(1) the party has been denied parenting time with a child for 14 consecutive days or more; or

(2) the party has been unreasonably denied access to necessary financial resources or support during a pending marital dissolution.

(b) A court must hold a priority hearing under this subdivision within 14 days of the party's request.

Sec. 5. Minnesota Statutes 2020, section 518.14, is amended to read:

518.14 COSTS AND DISBURSEMENTS; ATTORNEY FEES; COLLECTION COSTS.

Subdivision 1. **General.** Except as provided in section 518A.735, in a proceeding under this chapter or chapter 518A, the court shall award attorney fees, costs, and disbursements in an amount necessary to enable a party to carry on or contest the proceeding, provided it finds:

(1) that the fees are necessary for the good faith assertion of the party's rights in the proceeding and will not contribute unnecessarily to the length and expense of the proceeding;

(2) that the party from whom fees, costs, and disbursements are sought has the means to pay them; and

(3) that the party to whom fees, costs, and disbursements are awarded does not have the means to pay them.

Subd. 1a. **Other award.** ~~Nothing in this section or section 518A.735 precludes~~ The court ~~from awarding~~ may award, in its discretion, additional fees, costs, and disbursements against a party who unreasonably contributes to the length or expense of the proceeding or whose unreasonable failure to comply with an order or decree causes the other party to seek enforcement or other relief, including the reimbursement of fees and costs incurred before filing a motion. Fees, costs, and disbursements provided for in this section and section 518A.735 may be awarded at any point in the proceeding, including a modification

proceeding under sections 518.18 and 518A.39. The court may adjudge costs and disbursements against either party. The court may authorize the collection of money awarded by execution, or out of property sequestered, or in any other manner within the power of the court. An award of attorney's fees made by the court during the pendency of the proceeding or in the final judgment survives the proceeding and if not paid by the party directed to pay the same may be enforced as above provided or by a separate civil action brought in the attorney's own name. If the proceeding is dismissed or abandoned prior to determination and award of attorney's fees, the court may nevertheless award attorney's fees upon the attorney's motion. The award shall also survive the proceeding and may be enforced in the same manner as last above provided.

Sec. 6. Minnesota Statutes 2020, section 518.17, subdivision 1, is amended to read:

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

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

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

(3) the reasonable preference of the child, if the court deems the child to be of sufficient ability, age, and maturity to express an independent, reliable preference;

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

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

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

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

(8) the effect on the child's well-being and development of changes to home, school, and community;

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

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

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

(12) the willingness and ability of parents to cooperate in the rearing of their child; to maximize sharing information and minimize exposure of the child to parental conflict; and to utilize methods for resolving disputes regarding any major decision concerning the life of the child.

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

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

(2) The court shall consider that it is in the best interests of the child to promote the child's healthy growth and development through safe, stable, nurturing relationships between a child and both parents. In determining custody, the court must consider the best interests of each child and must not prefer one parent over the other solely on the basis of the gender of the parent.

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

(4) The court shall not consider conduct of a party that does not affect the party's relationship with the child.

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

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

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

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

(9) The court shall use a rebuttable presumption that upon request of either or both parties, joint legal custody is in the best interests of the child. However, the court shall use a rebuttable presumption that joint legal custody or joint physical custody is not in the best interests of the child if domestic abuse, as defined in section 518B.01, has occurred between the parents. In determining whether the presumption is rebutted, the court shall consider the nature and context of the domestic abuse and the implications of the domestic abuse for parenting and for the child's safety, well-being, and developmental needs. Disagreement alone over whether to grant sole or joint custody does not constitute an inability of parents to cooperate in the rearing of their children as referenced in paragraph (a), clause (12).

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

Sec. 7. Minnesota Statutes 2020, section 518.17, subdivision 3, is amended to read:

Subd. 3. **Custody order.** (a) 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~~ that shall be sole or joint;

(2) their physical custody, parenting time, and residence; and

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

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

(c) The court may waive any of the rights under this section if it finds it is necessary to protect the welfare of a party or child.

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

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

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

Sec. 8. Minnesota Statutes 2020, section 518.175, subdivision 1, is amended to read:

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

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

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

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

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

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

(g) In the absence of other evidence, there is a rebuttable presumption that a ~~parent is entitled to~~ child must receive a minimum of at least 25 percent of the parenting time ~~for the child with each parent~~. For purposes of this paragraph, 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 court may consider the age of the child in determining whether a child is with a parent for a significant period of time.

Sec. 9. Minnesota Statutes 2020, section 518.175, subdivision 6, is amended to read:

Subd. 6. **Remedies.** (a) Each party must follow a court's order for custody and parenting time unless the parties have made another agreement in writing.

(b) For the purposes of this subdivision, "court-ordered parenting time" means:

(1) parenting time that a court has ordered, regardless of whether the order is temporary or permanent and whether the family court or juvenile court has issued the order;

(2) an order by a parenting time consultant, parenting coordinator, special master, or other court-appointed individual who is authorized to establish or modify parenting time;
or

(3) a binding agreement or decision under section 518.1751, subdivision 3.

~~(a)~~ (c) The court may must provide compensatory parenting time when a parent has intentionally made a substantial amount of court-ordered parenting time has been made unavailable to one the other parent unless providing the compensatory parenting time is not consistent with the child's best interests. The court must consider all relevant evidence to determine whether a parent has made a substantial amount of court-ordered parenting time unavailable to the other parent.

~~(b) The court shall provide for one of the remedies as provided under this subdivision for (1) a repeated and intentional denial of or interference with court-ordered parenting time, or (2) a repeated and intentional failure to comply with a binding agreement or decision under section 518.1751.~~

~~(e)~~ (d) If the court finds that a person has been deprived of court-ordered parenting time under paragraph (b), the court shall order the parent who has interfered to allow compensatory parenting time to the other parent. When compensatory parenting time is awarded, additional parenting time must be:

(1) at least of the same type and duration as the deprived parenting time and, at the discretion of the court, may be in excess of or of a different type than the deprived parenting time;

(2) taken within one year after the deprived parenting time; and

(3) at a time acceptable to the parent deprived of parenting time.

~~(d)~~ (e) If the court finds that a party has repeatedly and intentionally denied or interfered with court-ordered parenting time ~~or failed to comply with a binding agreement or decision under section 518.1751~~, the court ~~may~~ shall, in addition to awarding compensatory parenting time ~~under paragraph (e):~~ require the party to reimburse the other party for costs incurred as a result of the party's denial of or interference with court-ordered parenting time and award reasonable attorney fees to the other party. The court may:

(1) impose a civil penalty sanction of up to \$500 on \$1,000 against the party who denied or interfered with parenting time that is payable to the other party;

(2) modify legal and physical custody of the child by awarding custody of the child to the party whose parenting time was denied or interfered with; or

~~(2) require the party to post a bond with the court for a specified period of time to secure the party's compliance;~~

~~(3) award reasonable attorney's fees and costs;~~

~~(4) require the party who violated the parenting time order or binding agreement or decision of the parenting time expeditor to reimburse the other party for costs incurred as a result of the violation of the order or agreement or decision; or~~

~~(5)~~ (3) award any other remedy that the court finds to be in the best interests of the children involved.

~~A civil penalty imposed under this paragraph must be deposited in the county general fund and must be used to fund the costs of a parenting time expeditor program in a county with this program. In other counties, the civil penalty must be deposited in the state general fund.~~

~~(e)~~ (f) The court shall provide one or more of the remedies available in paragraph (d), clauses (1) ~~to (5)~~ and (2), if ~~one of the following occurs:~~

~~(1)~~ the court finds that a party has repeatedly and intentionally denied or interfered with court-ordered parenting time after a previous finding that the party repeatedly and intentionally denied or interfered with court-ordered parenting time; ~~or,~~

~~(2)~~ the court finds that a party has failed to comply with a binding agreement or decision under section 518.1751 after a previous finding that the party failed to comply with a binding agreement or decision under section 518.1751.

~~(f)~~ (g) If the court makes written findings that any denial of or interference with court-ordered parenting time ~~or the failure to comply with a binding agreement or decision under section 518.1751~~ was necessary to protect a child's physical or emotional health, the court is not required to comply with paragraphs (b) to (e).

~~(g)~~ (h) If the court finds that a party has been denied parenting time and has incurred expenses in connection with the denied parenting time, the court may require the party who denied parenting time to post a bond in favor of the other party in the amount of prepaid expenses associated with upcoming planned parenting time.

~~(h)~~ (i) Proof of an unwarranted denial of or interference with duly established parenting time may constitute contempt of court and may be sufficient cause for reversal of custody.

~~(i)~~ (j) All parenting time orders must include notice of the provisions of this subdivision.

(k) The required notice under paragraph (i) must be substantially as follows:

"NOTICE REGARDING COMPLIANCE WITH PARENTING TIME ORDER:

The parties are expected to fully comply with the court's order unless the parties mutually agree otherwise. Pursuant to Minnesota Statutes, section 518.175, subdivision 6, and Minnesota Statutes, section 518.131, subdivision 11, the parties are hereby notified that:

(1) The court shall award compensatory parenting time to a parent who has been prevented from exercising parenting time;

(2) Deprivation of parental rights is a FELONY crime pursuant to Minnesota Statutes, section 609.375.

11.1 (3) If the court finds that one parent has repeatedly and intentionally denied or interfered
11.2 with another parent's parenting time, then the court shall award attorney fees to the parent
11.3 who has been denied parenting time and require the parent who has been denying or
11.4 interfering with parenting time to pay the other parent for costs incurred as a result of
11.5 enforcing the decision.

11.6 (4) If the court finds that one parent has repeatedly and intentionally denied or interfered
11.7 with parenting time, then the court may also:

11.8 (i) transfer custody of the child to the other parent;

11.9 (ii) impose a sanction of up to \$1,000 on the parent who repeatedly and intentionally
11.10 denied or interfered with parenting time; and

11.11 (iii) award other relief as determined to be in the best interests of the children involved."