

SENATE
STATE OF MINNESOTA
NINETY-FIRST SESSION

S.F. No. 3688

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OFFICIAL STATUS
Introduction and first reading
Referred to Judiciary and Public Safety Finance and Policy

- 1.1 A bill for an act
- 1.2 relating to human services; children; modifying provisions for termination of
- 1.3 parental rights, custody, and parenting time; amending Minnesota Statutes 2018,
- 1.4 sections 257.025; 260C.301, subdivisions 1, 7; 518.17, subdivisions 1, 3; 518.1705,
- 1.5 subdivisions 3, 6; 518.175, subdivision 1, by adding a subdivision; 518.619,
- 1.6 subdivision 2.
- 1.7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:
- 1.8 Section 1. Minnesota Statutes 2018, section 257.025, is amended to read:
- 1.9 **257.025 CUSTODY DISPUTES.**
- 1.10 (a) In any custody or parenting time proceeding involving unmarried parents, the court
- 1.11 shall consider and evaluate all relevant factors in section 518.17, subdivision 1, to determine
- 1.12 the best interests of the child, except as provided in paragraph (b).
- 1.13 (b) Notwithstanding paragraph (a), where it has been shown by clear and convincing
- 1.14 evidence that a parent committed criminal sexual conduct as described in section 609.342
- 1.15 or 609.344 and the criminal sexual conduct resulted in the conception of the child, there is
- 1.16 a presumption that:
- 1.17 (1) it is in the best interest of the child to award sole legal and sole physical custody to
- 1.18 the parent who has been the victim of the criminal sexual conduct that resulted in the
- 1.19 conception of the child; and
- 1.20 (2) it is not in the best interest of the child to award any parenting time to the parent who
- 1.21 has been shown to have committed the act of criminal sexual conduct that resulted in the
- 1.22 conception of the child.

For the purposes of proving a parent has committed criminal sexual conduct as described in section 609.342 or 609.344, any of the following is conclusive evidence that the parent committed criminal sexual conduct against the other parent: (i) proof of a criminal conviction, as defined in section 609.02, subdivision 5; (ii) an Alford plea; (iii) a no contest; or (iv) any other judicial admission or finding of guilt, regardless of whether the adjudication was stayed or executed.

(c) The fact that the parents of the child are not or were never married to each other shall not be determinative of the custody of the child.

~~(e)~~ (d) A person may seek custody of a child by filing a petition or motion pursuant to section 518.156.

~~(d)~~ (e) Section 518.619 applies to this section, except where a showing under paragraph (b) has been made.

Sec. 2. Minnesota Statutes 2018, section 260C.301, subdivision 1, is amended to read:

Subdivision 1. **Voluntary and involuntary.** The juvenile court may upon petition, terminate all rights of a parent to a child:

(a) with the written consent of a parent who for good cause desires to terminate parental rights; or

(b) if it finds that one or more of the following conditions exist:

(1) that the parent has abandoned the child;

(2) that the parent has substantially, continuously, or repeatedly refused or neglected to comply with the duties imposed upon that parent by the parent and child relationship, including but not limited to providing the child with necessary food, clothing, shelter, education, and other care and control necessary for the child's physical, mental, or emotional health and development, if the parent is physically and financially able, and either reasonable efforts by the social services agency have failed to correct the conditions that formed the basis of the petition or reasonable efforts would be futile and therefore unreasonable;

(3) that a parent has been ordered to contribute to the support of the child or financially aid in the child's birth and has continuously failed to do so without good cause. This clause shall not be construed to state a grounds for termination of parental rights of a noncustodial parent if that parent has not been ordered to or cannot financially contribute to the support of the child or aid in the child's birth;

(4) that a parent is palpably unfit to be a party to the parent and child relationship because of a consistent pattern of specific conduct before the child or of specific conditions directly relating to the parent and child relationship either of which are determined by the court to be of a duration or nature that renders the parent unable, for the reasonably foreseeable future, to care appropriately for the ongoing physical, mental, or emotional needs of the child. It is presumed that a parent is palpably unfit to be a party to the parent and child relationship upon a showing that:

(i) the parent's parental rights to one or more other children were involuntarily terminated or that the parent's custodial rights to another child have been involuntarily transferred to a relative under Minnesota Statutes 2010, section 260C.201, subdivision 11, paragraph (e), clause (1), section 260C.515, subdivision 4, or a similar law of another jurisdiction; or

(ii) by clear and convincing evidence, both that the parent committed criminal sexual conduct as described in section 609.342 or 609.344 and the criminal sexual conduct resulted in the conception of the child. For the purposes of proving a parent has committed criminal sexual conduct as described in section 609.342 or 609.344, any of the following is conclusive evidence that the parent committed criminal sexual conduct against the other parent: (A) proof of a criminal conviction, as defined in section 609.02, subdivision 5; (B) an Alford plea; (C) a no contest; or (D) any other judicial admission or finding of guilt, regardless of whether the adjudication was stayed or executed;

(5) that following the child's placement out of the home, reasonable efforts, under the direction of the court, have failed to correct the conditions leading to the child's placement. It is presumed that reasonable efforts under this clause have failed upon a showing that:

(i) a child has resided out of the parental home under court order for a cumulative period of 12 months within the preceding 22 months. In the case of a child under age eight at the time the petition was filed alleging the child to be in need of protection or services, the presumption arises when the child has resided out of the parental home under court order for six months unless the parent has maintained regular contact with the child and the parent is complying with the out-of-home placement plan;

(ii) the court has approved the out-of-home placement plan required under section 260C.212 and filed with the court under section 260C.178;

(iii) conditions leading to the out-of-home placement have not been corrected. It is presumed that conditions leading to a child's out-of-home placement have not been corrected upon a showing that the parent or parents have not substantially complied with the court's orders and a reasonable case plan; and

(iv) reasonable efforts have been made by the social services agency to rehabilitate the parent and reunite the family.

This clause does not prohibit the termination of parental rights prior to one year, or in the case of a child under age eight, prior to six months after a child has been placed out of the home.

It is also presumed that reasonable efforts have failed under this clause upon a showing that:

(A) the parent has been diagnosed as chemically dependent by a professional certified to make the diagnosis;

(B) the parent has been required by a case plan to participate in a chemical dependency treatment program;

(C) the treatment programs offered to the parent were culturally, linguistically, and clinically appropriate;

(D) the parent has either failed two or more times to successfully complete a treatment program or has refused at two or more separate meetings with a caseworker to participate in a treatment program; and

(E) the parent continues to abuse chemicals.

(6) that a child has experienced egregious harm in the parent's care which is of a nature, duration, or chronicity that indicates a lack of regard for the child's well-being, such that a reasonable person would believe it contrary to the best interest of the child or of any child to be in the parent's care;

(7) that in the case of a child born to a mother who was not married to the child's father when the child was conceived nor when the child was born the person is not entitled to notice of an adoption hearing under section 259.49 and the person has not registered with the fathers' adoption registry under section 259.52;

(8) that the child is neglected and in foster care; ~~or~~

(9) that the parent has been convicted of a crime listed in section 260.012, paragraph (g), clauses (1) to (5); or

(10) the parent has been shown to be palpably unfit as having committed criminal sexual conduct as described under section 609.342 or 609.344 that resulted in the conception of the child.

In an action involving an American Indian child, sections 260.751 to 260.835 and the Indian Child Welfare Act, United States Code, title 25, sections 1901 to 1923, control to the extent that the provisions of this section are inconsistent with those laws.

Sec. 3. Minnesota Statutes 2018, section 260C.301, subdivision 7, is amended to read:

Subd. 7. **Best interests of child paramount.** (a) In any proceeding under this section, the best interests of the child must be the paramount consideration, provided that the conditions in subdivision 1, clause (a), or at least one condition in subdivision 1, clause (b), are found by the court. In proceedings involving an American Indian child, as defined in section 260.755, subdivision 8, the best interests of the child must be determined consistent with the Indian Child Welfare Act of 1978, United States Code, title 25, section 1901, et seq. Where the interests of parent and child conflict, the interests of the child are paramount.

(b) Notwithstanding paragraph (a), there is a presumption that termination of parental rights is in the best interests of the child where there is a showing by clear and convincing evidence that:

(1) the parent committed criminal sexual conduct as described in section 609.342 or 609.344; and

(2) the criminal sexual conduct resulted in the conception of the child.

For the purposes of proving a parent has committed criminal sexual conduct as described in section 609.342 or 609.344, any of the following is conclusive evidence that the parent committed criminal sexual conduct against the other parent: (i) proof of a criminal conviction, as defined in section 609.02, subdivision 5; (ii) an Alford plea; (iii) a no contest; or (iv) any other judicial admission or finding of guilt, regardless of whether the adjudication was stayed or executed.

Sec. 4. Minnesota Statutes 2018, 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)~~ (11) 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.

(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)~~ clauses (10) and (11).

(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,~~

(10) 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).

(11) Where it has been shown by clear and convincing evidence both that a parent committed criminal sexual conduct as described in section 609.342 or 609.344 and the criminal sexual conduct resulted in the conception of the child, there is a presumption that:

(i) it is in the best interest of the child to award sole legal and sole physical custody to the parent who has been the victim of the criminal sexual conduct that resulted in the conception of the child; and

(ii) it is not in the best interest of the child to award any parenting time to the parent who has been shown to have committed the act of criminal sexual conduct that resulted in the conception of the child.

For the purposes of proving a parent has committed criminal sexual conduct as described in section 609.342 or 609.344, any of the following is conclusive evidence that the parent committed criminal sexual conduct against the other parent: (A) proof of a criminal conviction, as defined in section 609.02, subdivision 5; (B) an Alford plea; (C) a no contest; or (D) any other judicial admission or finding of guilt, regardless of whether the adjudication was stayed or executed.

(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. 5. Minnesota Statutes 2018, 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 shall be sole or joint;

(2) their physical custody 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, except in cases where a parent has been denied custody based on the factor described in subdivision 1, paragraph (b), clause (11).

(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. 6. Minnesota Statutes 2018, section 518.1705, subdivision 3, is amended to read:

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

(b) If both parents do not agree to a parenting plan, the court may create one on its own motion, except that the court must not do so if it finds that:

(1) a parent has committed domestic abuse against a parent or child who is a party to, or subject of, the matter before the court; or

(2) a parent has been shown by clear and convincing evidence to have committed criminal sexual conduct as described in section 609.342 or 609.344 and the criminal sexual conduct resulted in the conception of the child. If the court creates a parenting plan on its own motion, it must not use alternative terminology unless the terminology is agreed to by the parties.

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

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

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

Sec. 7. Minnesota Statutes 2018, section 518.1705, subdivision 6, is amended to read:

Subd. 6. Restrictions on preparation of parenting plan. (a) Dispute resolution processes other than the judicial process may not be required in the preparation of a parenting plan if a parent is alleged to have committed domestic abuse toward a parent or child who is a party to, or subject of, the matter before the court. In these cases, the court shall consider the appointment of a guardian ad litem and a parenting plan evaluator.

(b) The court may not require a parenting plan that provides for joint legal custody or use of dispute resolution processes, other than the judicial process, if the court finds that section 518.179 applies or the court finds that either parent has engaged in the following toward a parent or child who is a party to, or subject of, the matter before the court:

(1) acts of domestic abuse, including physical harm, bodily injury, and infliction of fear of physical harm, assault, terroristic threats, or criminal sexual conduct;

(2) physical, sexual, or a pattern of emotional abuse of a child; ~~or~~

(3) willful abandonment that continues for an extended period of time or substantial refusal to perform parenting functions; or

(4) criminal sexual conduct as described in section 609.342 or 609.344 and the criminal sexual conduct resulted in the conception of the child, under subdivision 3.

Sec. 8. Minnesota Statutes 2018, 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 or emotional health 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 parenting time, including the frequency and duration of visitation and visitation during holidays and vacations, 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) Except as provided in subdivisions 1a and 1b, in the absence of other evidence, there is a rebuttable presumption that a parent is entitled to receive a minimum of 25 percent of the parenting time for the child. 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 2018, section 518.175, is amended by adding a subdivision to read:

Subd. 1b. **When parenting time may not be granted.** There is a presumption that no parenting time shall be awarded to a parent where it has been shown by clear and convincing evidence that:

(1) the parent committed criminal sexual conduct as described in section 609.342 or 609.344; and

(2) the criminal sexual conduct resulted in the conception of the child.

For the purposes of proving a parent has committed criminal sexual conduct as described in section 609.342 or 609.344, any of the following is conclusive evidence that the parent committed criminal sexual conduct against the other parent: (i) proof of a criminal conviction, as defined in section 609.02, subdivision 5; (ii) an Alford plea; (iii) a no contest; or (iv) any

12.1 other judicial admission or finding of guilt, regardless of whether the adjudication was
12.2 stayed or executed.

12.3 Sec. 10. Minnesota Statutes 2018, section 518.619, subdivision 2, is amended to read:

12.4 Subd. 2. **Exception.** If the court determines that there is probable cause that one of the
12.5 parties, or a child of a party, has been physically or sexually abused by the other party or
12.6 that one of the parties committed criminal sexual conduct as described in section 609.342
12.7 or 609.344 and the criminal sexual conduct resulted in the conception of the child, the court
12.8 shall not require or refer the parties to mediation or any other process that requires parties
12.9 to meet and confer without counsel, if any, present.