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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-FIRST SESSION

H. F. No. 46

01/14/2019 Authored by Hertaus, Franson, Elkins, Jurgens, Munson and others
The bill was read for the first time and referred to the Judiciary Finance and Civil Law Division

1.1 A bill for an act
1.2 relating to family law; modifying custody and parenting time presumptions;
1.3 amending Minnesota Statutes 2018, sections 518.17, subdivision 1; 518.175,
1.4 subdivision 1.

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

1.6 Section 1. Minnesota Statutes 2018, section 518.17, subdivision 1, is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3.24 Sec. 2. Minnesota Statutes 2018, section 518.175, subdivision 1, is amended to read:

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

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

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

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

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

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

4.20 (g) In the absence of other evidence, there is a rebuttable presumption that a parent is
4.21 entitled to receive a minimum of ~~25~~ 50 percent of the parenting time for the child. For
4.22 purposes of this paragraph, the percentage of parenting time may be determined by calculating
4.23 the number of overnights that a child spends with a parent or by using a method other than
4.24 overnights if the parent has significant time periods on separate days when the child is in
4.25 the parent's physical custody but does not stay overnight. The court may consider the age
4.26 of the child in determining whether a child is with a parent for a significant period of time.