

SENATE

STATE OF MINNESOTA

NINETY-SECOND SESSION

S.F. No. 1313

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DATE	D-PG	OFFICIAL STATUS
02/22/2021	490	Introduction and first reading Referred to Civil Law and Data Practices Policy

1.1

A bill for an act

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relating to family law; modifying parenting time provisions; amending Minnesota

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Statutes 2020, section 518.175, subdivision 1.

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

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

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Subdivision 1. **General.** (a) In all proceedings for dissolution or legal separation,

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subsequent to the commencement of the proceeding and continuing thereafter during the

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minority of the child, the court shall, upon the request of either parent, grant such parenting

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time on behalf of the child and a parent as will enable the child and the parent to maintain

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a child to parent relationship that will be in the best interests of the child. The court shall

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use a rebuttable presumption that it is in the best interests of the child to protect each

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individual parent-child relationship by maximizing the child's time with each parent. The

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court, when issuing a parenting time order, may reserve a determination as to the future

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establishment or expansion of a parent's parenting time. In that event, the best interest

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standard set forth in subdivision 5, paragraph (a), shall be applied to a subsequent motion

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to establish or expand parenting time.

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(b) If the court finds, after a hearing, that parenting time with a parent is likely to endanger

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the child's physical, mental, or emotional health or safety or impair the child's emotional

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development, the court shall restrict parenting time with that parent as to time, place, duration,

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or supervision and may deny parenting time entirely, as the circumstances warrant. The

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court shall consider the age of the child and the child's relationship with the parent prior to

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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,~~ Unless otherwise agreed, there is a rebuttable presumption that ~~a the court shall award each parent is entitled to receive a minimum of 25~~ 50 percent of the parenting time for the child. If it is not practicable to award 50 percent of the parenting time to each parent, the court shall maximize parenting time for each parent as close as possible to the 50 percent presumption. 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.~~

(h) In a parenting time order, the court must include findings regarding:

(1) the ability of each parent to comply with the awarded parenting time schedule; and

(2) if a court deviates from the parenting time presumption under paragraph (g) and the parties have not otherwise made a parenting time agreement, the court shall make written findings of fact supported by clear and convincing evidence that the deviation results from one or more of the following circumstances:

(i) a parent has a mental illness that was diagnosed by a licensed physician or by a licensed psychologist, and the mental illness endangers the safety of the child based on the opinion of the licensed physician or the licensed psychologist treating the parent;

(ii) a parent refuses or fails to complete a chemical dependency evaluation or assessment ordered by a court, or a parent refuses or fails to complete chemical dependency recommendations as ordered by a licensed physician or by a licensed drug or alcohol counselor;

(iii) a parent is unable to care for the child 50 percent of the time because of the parent's inability to modify the parent's schedule to accommodate having a child 50 percent of the time. An inability to modify a parent's schedule includes but is not limited to work, school, child care, or medical appointment scheduling conflicts that prevent a parent from maintaining parenting time with a child to accommodate the presumption under this section. A parent's provision of safe alternative care for the child when the parent is not available during the parent's scheduled parenting time is not an inability of a parent to participate in a parenting time schedule under this paragraph;

(iv) a parent's repeated willful failure to comply with parenting time awarded pursuant to a temporary order;

(v) the distance required to travel between each parent's residence is so great that it makes the parenting time presumption impractical to meet;

(vi) the child has a diagnosed medical or educational special need that cannot be accommodated by the parenting time presumption; or

(vii) a child protection finding that the child is currently not safe in a parent's care.

(i) In assessing whether to deviate from the parenting time presumption in paragraph (g), the court shall consider that a reduction in a parent's parenting time may impair the parent's ability to parent the child, which may have a negative impact on the child.

(j) If a child does not have a relationship with a parent due to the parent's absence for one year or more with minimal or no contact with the child, or if the child is one year old or younger, the court may order a gradual increase in parenting time. If the court orders a gradual increase in parenting time, the gradual increase shall only be in effect for a period of one year or less, at which time the order shall provide for a parenting time schedule based on the parenting time presumption in paragraph (g).

(k) The court shall not limit parenting time for a parent based solely on the age of the child. If the child is five years old or younger at the time that the parenting time schedule is established and the order does not provide for equal parenting time, the order must include a provision for a possible future modification of the parenting time order.

4.1 (l) The court shall not consider the gender of a parent or a parent's marital or relationship
4.2 status when making parenting time determinations under this section.

4.3 (m) An award of parenting time of up to 53 percent for one parent and not below 47
4.4 percent for the other parent or a finding that domestic abuse has occurred, as defined in
4.5 section 518B.01, subdivision 2, or a qualified domestic violence-related offense, as defined
4.6 in section 609.02, subdivision 16, between the parents or between a parent and the child
4.7 does not constitute a deviation from the parenting time presumption in paragraph (g).

4.8 (n) When awarding parenting time, the court shall evaluate whether:

4.9 (1) one parent has engaged in unwarranted interference between the child and the other
4.10 parent;

4.11 (2) one parent has made false allegations of domestic abuse; and

4.12 (3) one parent has chronically denied or minimized parenting time of the other parent
4.13 in order to gain advantage in custody matters.