

SENATE BILL NO. 2235

Introduced by

Senators W. Stenehjem, Traynor, Watne

Representatives Kretschmar, Murphy, Stenehjem

1 A BILL for an Act to amend and reenact subsections 3 and 5 of section 14-05-22 and
2 subdivision j of subsection 1 of section 14-09-06.2 of the North Dakota Century Code, relating
3 to the effect of domestic violence on visitation rights and child custody proceedings.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1. AMENDMENT.** Subsections 3 and 5 of section 14-05-22 of the 1995
6 Supplement to the North Dakota Century Code are amended and reenacted as follows:

7 3. If the court finds that a parent has perpetrated domestic violence and that parent
8 does not have custody, and there exists one incident of domestic violence which
9 resulted in serious bodily injury or involved the use of a dangerous weapon or there
10 exists a pattern of domestic violence within a reasonable time proximate to the
11 proceeding, the court shall allow only supervised child visitation with that parent
12 unless there is a showing by clear and convincing evidence that unsupervised
13 visitation would not endanger the child's physical or emotional health.

14 5. In any custody or visitation proceeding in which a parent is found to have
15 perpetrated domestic violence, and there exists one incident of domestic violence
16 which resulted in serious bodily injury or involved the use of a dangerous weapon
17 or there exists a pattern of domestic violence within a reasonable time proximate to
18 the proceeding, all court costs, attorneys' fees, evaluation fees, and expert witness
19 fees must be paid by the perpetrator of the domestic violence unless those costs
20 would place an undue financial hardship on that parent.

21 **SECTION 2. AMENDMENT.** Subdivision j of subsection 1 of section 14-09-06.2 of the
22 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23 j. Evidence of domestic violence. In awarding custody or granting rights of
24 visitation, the court shall consider evidence of domestic violence. If the court

1 finds credible evidence that domestic violence has occurred, and there exists
2 one incident of domestic violence which resulted in serious bodily injury or
3 involved the use of a dangerous weapon or there exists a pattern of domestic
4 violence within a reasonable time proximate to the proceeding, this evidence
5 combination creates a rebuttable presumption that a parent who has
6 perpetrated domestic violence may not be awarded sole or joint custody of a
7 child. This presumption may be overcome only by clear and convincing
8 evidence that the best interests of the child require that parent's participation
9 as a custodial parent. The court shall cite specific findings of fact to show that
10 the custody or visitation arrangement best protects the child and the parent or
11 other family or household member who is the victim of domestic violence. If
12 necessary to protect the welfare of the child, custody may be awarded to a
13 suitable third person, provided that the person would not allow access to a
14 violent parent except as ordered by the court. If the court awards custody to a
15 third person, the court shall give priority to the child's nearest suitable adult
16 relative. The fact that the abused parent suffers from the effects of the abuse
17 may not be grounds for denying that parent custody. As used in this
18 subdivision, "domestic violence" means domestic violence as defined in
19 section 14-07.1-01. A court may consider, but is not bound by, a finding of
20 domestic violence in another proceeding under chapter 14-07.1.