

Sixty-fifth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1392

Introduced by

Representatives Kading, Kiefert, McWilliams, Pyle, Roers Jones, Vigesaa

1 A BILL ~~for an Act to amend and reenact sections 14-09-00.1 and 14-09-29 of the North Dakota~~
2 ~~Century Code, relating to the parenting rights and responsibilities; to provide for retroactive~~
3 ~~application; and to declare an emergency.~~ for an Act to to amend and reenact section
4 14-09-00.1 and subsection 1 of section 14-09-29 of the North Dakota Century Code, relating to
5 a presumption of equal parenting time and responsibility; and to provide for a legislative
6 management study.

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

8 ~~— **SECTION 1. AMENDMENT.** Section 14-09-00.1 of the North Dakota Century Code is~~
9 ~~amended and reenacted as follows:~~

10 ~~— **14-09-00.1. Definitions.**~~

11 ~~— As used in this chapter, unless the context otherwise requires:~~

12 ~~— 1. "Decisionmaking responsibility" means the responsibility to make decisions concerning~~
13 ~~the child. The term may refer to decisions on all issues or on specified issues, but not~~
14 ~~child support issues.~~

15 ~~— 2. "Equal decisionmaking responsibility" means each parent shall communicate with the~~
16 ~~other parent on all major decisions, which means any decision not involving routine~~
17 ~~and day-to-day matters, involving their child including the child's day care service~~
18 ~~provider, education, extracurricular activities, health care, and spiritual development,~~
19 ~~and, if the parents cannot reach a mutual decision on any major decision involving~~
20 ~~their child, the parents may resolve the decision through mediation, binding arbitration,~~
21 ~~a parenting coordinator, or a motion filed with the court having jurisdiction over the~~
22 ~~parents' child. Each parent has sole and final decisionmaking responsibility over their~~
23 ~~child on all routine and day-to-day matters that arise during the time the child is under~~
24 ~~the care of that parent.~~

~~3. "Equal parenting time and residential responsibility" means each parent has their child in his or her care for a significant amount of the time which is equal to or as close to fifty percent of the time for each child as can be arranged based on the circumstances of each child and the parents, but a child may not be placed in the care of one parent for less than thirty-five percent of the time. Upon an award of equal parenting time and residential responsibility, each parent has the responsibility to provide a home for their child exactly fifty percent of the time, and the monthly child support payment in the action is to be determined, using the child support guidelines developed by the department of human services, as if the child is in each parent's care exactly fifty percent of the time, subject to the court's ability to also order, in addition to mandating the monthly child support payment, if any, required by the guidelines, an apportionment between the parents of specific expenses related to the care and education of the child, such as the child's clothing costs; child's vehicle purchase, maintenance, and repair costs; child day care costs; child's school activity fees and extracurricular activity fees; child's health insurance costs; child's health care and other special need expenses not covered by insurance or other sources; and the travel expenses related to exchanging the actual physical care of a child between the parents.~~

~~4. "Infancy" means the time from the birth of a child to the day before the child attains three years of age.~~

~~5. "Parental rights and responsibilities" means all rights and responsibilities a parent has concerning the parent's child.~~

~~3.6. "Parenting plan" means a written plan describing each parent's parental rights and responsibilities.~~

~~4.7. "Parenting schedule" means the schedule of when the child is in the care of each parent.~~

~~5.8. "Parenting time" means the time when the child is to be in the care of a parent.~~

~~6.9. "Primary residential responsibility" means a parent with more than fifty percent of the residential responsibility.~~

~~7.10. "Residential responsibility" means a parent's responsibility to provide a home for the child.~~

1 ~~SECTION 2. AMENDMENT.~~ Section 14-09-29 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 ~~14-09-29. Parental rights and responsibilities -- Best interests and welfare of child.~~

4 ~~1. A court issuing an order that deals with parenting rights and responsibilities of a child~~
5 ~~entered under this chapter shall award the parental rights and responsibilities~~
6 ~~concerning the child to a person, agency, organization, or institution as will, in the~~
7 ~~opinion of the court, promote the best interests and welfare of the child. Between the~~
8 ~~mother and father, whether married or unmarried, there is no presumption as to whom~~
9 ~~will better promote the best interests and welfare of the child.~~

10 ~~2. In any proceeding dealing with a dispute between the parents of a child over the~~
11 ~~parental rights and responsibilities over a child, there is a presumption that each~~
12 ~~parent is fit to care for the child and to make with the other parent joint decisions for~~
13 ~~the child. In any proceeding in which that presumption is not rebutted, if requested by~~
14 ~~either parent, the court may not apply the best interest analysis mandated in~~
15 ~~subsection 1 of this section and shall award each parent equal decisionmaking~~
16 ~~responsibility and equal parenting time and residential responsibility. This presumption~~
17 ~~may be rebutted only upon a showing by clear and convincing evidence that any one~~
18 ~~of the following four conditions exist:~~

19 ~~a. Awarding one of the parents equal parenting time and residential responsibility~~
20 ~~would cause serious harm or detriment to the physical or emotional health of the~~
21 ~~child. A showing by clear and convincing evidence that one parent meets any one~~
22 ~~or more of the following conditions rebuts the presumption that parent is fit to~~
23 ~~care for the child:~~

24 ~~(1) If the parent has actual knowledge that he or she is the biological parent of~~
25 ~~the child for a period of at least one year after the birth of the child, the~~
26 ~~parent voluntarily has little or no relationship with the child before the~~
27 ~~commencement of the proceeding;~~

28 ~~(2) The parent, without just cause, interfered with the other parent's ability to~~
29 ~~establish a relationship with the child, including the parent refusing the other~~
30 ~~parent any reasonable opportunities to care for the child on his or her own~~
31 ~~after the birth of the child regardless of whether a court has issued a~~

parenting time order regarding the child, a history of persistent and
unwarranted interference with the other parent's parenting time, or a history
of alienating a child from the other parent;

(3) There exists one incident of domestic violence perpetrated by the parent
which resulted in serious bodily injury or involved the use of a dangerous
weapon or there exists a pattern of domestic violence within a reasonable
time proximate to the proceeding;

(4) The parent has neglected or abused the child for an extended period within
a reasonable time proximate to the proceeding. "Neglected or abused the
child" is defined in this subdivision to include any of the following acts:

(a) The parent abandons, tortures, chronically abuses, or sexually abuses
a child;

(b) The parent fails to make substantial, meaningful efforts to secure
treatment for the parent's addiction, mental illness, behavior disorder,
or any combination of those conditions for a period of at least one
year after the parent has been diagnosed with the addiction, mental
illness, behavior disorder, or any combination of those conditions, and
been notified by a licensed practitioner that parent is in need of such
treatment to protect his or her child from being seriously harmed
either physically or emotionally by the parent;

(c) The parent engages in conduct prohibited under sections 12.1-20-01
through 12.1-20-08 or chapter 12.1-27.2, in which a child is the victim
or intended victim;

(d) The parent engages in conduct that constitutes one of the following
crimes, or of an offense under the laws of another jurisdiction which
requires proof of substantially similar elements:

[1] A violation of section 12.1-16-01, 12.1-16-02, 12.1-16-03, or
14-09-22 in which the victim is another child of the parent;

[2] Aiding, abetting, attempting, conspiring, or soliciting a violation
of section 12.1-16-01, 12.1-16-02, or 12.1-16-03 in which the
victim is a child of the parent; or

~~[3] A violation of section 12.1-17-02 in which the victim is a child of the parent and has suffered serious bodily injury;~~

~~(e) The parent engages or attempts to engage in conduct, prohibited under sections 12.1-17-01 through 12.1-17-04, in which a child is the victim or intended victim;~~

~~(f) The parent has been incarcerated under a sentence for which the latest release date is after the date the court enters an order on the issue of residential responsibility in the proceedings;~~

~~(g) The parent, within a reasonable time proximate to the proceeding, subjects a child to prenatal exposure to chronic or severe use of alcohol or any controlled substance as defined in chapter 19-03.1 in a manner not lawfully prescribed by a licensed practitioner;~~

~~(h) The parent allows the child to be present in an environment subjecting the child to a controlled substance, chemical substance, or drug paraphernalia as prohibited by section 19-03.1-22.2;~~

~~(i) The parent allows a child to be without proper parental care or control, subsistence, education as required by law, or other care or control necessary for the child's physical, mental, or emotional health, or morals, and the deprivation is not due primarily to the lack of financial means of the parent;~~

~~(j) The parent has placed the child for care or adoption in violation of law;~~

~~(k) The parent abandoned his or her child within a reasonable time proximate to the proceeding;~~

~~(l) The parent, within a reasonable time proximate to the proceeding, leaves his or her child without proper parental care, control, or education as required by law, or other care and control necessary for the child's well-being because of the physical, mental, emotional, or other illness or disability of the parent;~~

~~(m) The parent, within a reasonable time proximate to the proceeding, refused to participate in treatment for a child who is in need of treatment, as ordered by the juvenile court;~~

- 1 ~~_____ (n) The parent, within a reasonable time proximate to the proceeding,~~
2 ~~exposure to a controlled substance, chemical substance, or drug~~
3 ~~paraphernalia as prohibited by section 19-03.1-22.2; or~~
- 4 ~~_____ (o) The parent, within a reasonable time proximate to the proceeding,~~
5 ~~allows a child to be a victim of human trafficking as defined in~~
6 ~~title 12.1; or~~
- 7 ~~_____ (5) The parent is diagnosed as having a physical injury or medical or~~
8 ~~psychological condition that renders that parent incapable of properly caring~~
9 ~~for the child at the time the court is called upon to decide the parental rights~~
10 ~~and responsibilities over the child.~~
- 11 ~~_____ b. The residences in which the child will live with each parent are located a sufficient~~
12 ~~distance away from the other, which renders an award of equal parenting time~~
13 ~~and residential responsibility detrimental to the physical or emotional health of the~~
14 ~~child, based on a written assessment made by a child development expert, and~~
15 ~~neither parent is willing to relocate their respective residence to be closer to the~~
16 ~~other to make an award of equal parenting time and residential responsibility~~
17 ~~work in the best interests of the child. This subdivision does not apply if the~~
18 ~~parties' respective residences are located fifty miles [80.47 kilometers] or less~~
19 ~~away from the other. However, if a parent relocates to a residence more than fifty~~
20 ~~miles [80.47 kilometers] from the other parent's residence at any time after the~~
21 ~~conception of a child for whom an award of primary residential responsibility is~~
22 ~~being sought by the parent in the action and then attempts to apply this~~
23 ~~subdivision in an attempt to avoid an award of equal parenting time and~~
24 ~~residential responsibility that relocation may be grounds, based on the discretion~~
25 ~~of the court, to award primary residential responsibility over the child to the other~~
26 ~~parent;~~
- 27 ~~_____ c. The child who is the subject of the action is an infant at the time of the resolution~~
28 ~~of the proceeding and the schedule, health or other circumstances of one of the~~
29 ~~parents does not allow for a parenting schedule that allows for exchanges of the~~
30 ~~child between the parents at least every seven days or less, so that each parent~~

1 ~~may care for and interact with the child, including over nights with the child, on a~~
2 ~~frequent basis during the infancy of the child; and~~

3 ~~d. The child has a special need that, based on a written assessment made by a~~
4 ~~child development expert, one of the parents does not have the ability or time~~
5 ~~needed to avoid an award of equal parenting time and residential responsibility~~
6 ~~being detrimental to the physical or emotional health of the child.~~

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

14 ~~3.4. If any court finds by clear and convincing evidence that a parent has sexually abused~~
15 ~~the parent's child, the court shall prohibit contact between the abusive parent and the~~
16 ~~child until the court finds that the abusive parent has successfully completed a~~
17 ~~treatment program designed for such sexual abusers and that supervised parenting~~
18 ~~time is in the child's best interests. Contact between the abusive parent and the child~~
19 ~~may be allowed only in a therapeutic setting, facilitated by a therapist as part of a~~
20 ~~sexual abuse treatment program, and only when the therapist for the abusive parent~~
21 ~~and the therapist for the abused child agree that contact serves a therapeutic purpose~~
22 ~~and is in the best interests of the child.~~

23 ~~4.5. In any proceeding dealing with parental rights and responsibilities in which a parent is~~
24 ~~found to have perpetrated domestic violence, and there exists one incident of~~
25 ~~domestic violence which resulted in serious bodily injury or involved the use of a~~
26 ~~dangerous weapon or there exists a pattern of domestic violence within a reasonable~~
27 ~~time proximate to the proceeding, all court costs, attorney's fees, evaluation fees, and~~
28 ~~expert witness fees must be paid by the perpetrator of the domestic violence unless~~
29 ~~those costs would place an undue financial hardship on that parent.~~

30 ~~**SECTION 3. RETROACTIVE APPLICATION OF ACT.** This Act applies retroactively to each~~
31 ~~pending and past civil action that involves or involved a determination of the parental rights and~~

responsibilities in which one or more of the children are younger than eighteen years of age as of the effective date of this Act and over which determination the state of North Dakota has jurisdiction as of the effective date of this Act. The limitations under section 14-09-06.6 on postjudgment modifications of primary residential responsibility and under Rule 8.2 of the North Dakota Rules of Court on amending an interim order do not apply to the first motion filed in an action on or after the effective date of this Act wherein the moving party seeks a redetermination of the parental rights and responsibilities under the presumption and evidentiary burden established by the enactment of this Act.

~~SECTION 4. EMERGENCY.~~ This Act is declared to be an emergency measure.

SECTION 1. AMENDMENT. Section 14-09-00.1 of the North Dakota Century Code is amended and reenacted as follows:

14-09-00.1. Definitions.

As used in this chapter, unless the context otherwise requires:

1. "Decisionmaking responsibility" means the responsibility to make decisions concerning the child. The term may refer to decisions on all issues or on specified issues, but not child support issues.
2. "Equal parenting time and residential responsibility" means each parent has the child in that parent's care for a time that is equal to or as close to fifty percent of the time as can be arranged based on the circumstances but which is not less than thirty-five percent of the time.
3. "Parental rights and responsibilities" means all rights and responsibilities a parent has concerning the parent's child.
- ~~3.4.~~ "Parenting plan" means a written plan describing each parent's rights and responsibilities.
- ~~4.5.~~ "Parenting schedule" means the schedule of when the child is in the care of each parent.
- ~~5.6.~~ "Parenting time" means the time when the child is to be in the care of a parent.
- ~~6.7.~~ "Primary residential responsibility" means a parent with more than fifty percent of the residential responsibility.
- ~~7.8.~~ "Residential responsibility" means a parent's responsibility to provide a home for the child.

SECTION 2. AMENDMENT. Subsection 1 of section 14-09-29 of the North Dakota Century Code is amended and reenacted as follows:

1. a. A court issuing an order that deals with parenting rights and responsibilities of a child entered under this chapter shall award the parental rights and responsibilities concerning the child to a person, agency, organization, or institution as will, in the opinion of the court, promote the best interests and welfare of the child.

b. Between the mother and father, whether married or unmarried, there is no presumption as to whom will better promote the best interests and welfare of the child.

c. In any proceeding dealing with parental rights and responsibilities, there is a rebuttable presumption that equal parenting time and residential responsibility promotes the best interests and welfare of the child. If the court declines to enter an order awarding equal parenting time and residential responsibility, the court shall articulate in its decision the rationale for the denial of equal parenting time and residential responsibility.

SECTION 3. PARENTING RIGHTS AND RESPONSIBILITIES - LEGISLATIVE

MANAGEMENT STUDY. During the 2017-18 interim, the legislative management shall consider studying, in consultation with the family law task force of the family law section of the state bar association of North Dakota, parental rights and responsibility issues, including shared parenting, joint decisionmaking responsibility for the child, the best interest factors used by the court in making parental rights and responsibilities decisions, and the modification and enforcement of parental rights and responsibilities orders. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-sixth legislative assembly.