

SENATE BILL NO. 2064

Introduced by

Judiciary Committee

(At the request of the Adjutant General)

1 A BILL for an Act to amend and reenact sections 14-09-06.2 and 14-09-06.6 of the North
2 Dakota Century Code, relating to awarding of custody and modification of custody of a child
3 with a service member parent.

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

5 **SECTION 1. AMENDMENT.** Section 14-09-06.2 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **14-09-06.2. Best interests and welfare of child - Court consideration - Factors.**

- 8 1. For the purpose of custody, the best interests and welfare of the child is
9 determined by the court's consideration and evaluation of all factors affecting the
10 best interests and welfare of the child. These factors include all of the following
11 when applicable:
- 12 a. The love, affection, and other emotional ties existing between the parents and
13 child.
 - 14 b. The capacity and disposition of the parents to give the child love, affection,
15 and guidance and to continue the education of the child.
 - 16 c. The disposition of the parents to provide the child with food, clothing, medical
17 care, or other remedial care recognized and permitted under the laws of this
18 state in lieu of medical care, and other material needs.
 - 19 d. The length of time the child has lived in a stable satisfactory environment and
20 the desirability of maintaining continuity.
 - 21 e. The permanence, as a family unit, of the existing or proposed custodial home.
 - 22 f. The moral fitness of the parents.
 - 23 g. The mental and physical health of the parents.
 - 24 h. The home, school, and community record of the child.

- 1 i. The reasonable preference of the child, if the court deems the child to be of
2 sufficient intelligence, understanding, and experience to express a preference.
- 3 j. Evidence of domestic violence. In awarding custody or granting rights of
4 visitation, the court shall consider evidence of domestic violence. If the court
5 finds credible evidence that domestic violence has occurred, and there exists
6 one incident of domestic violence which resulted in serious bodily injury or
7 involved the use of a dangerous weapon or there exists a pattern of domestic
8 violence within a reasonable time proximate to the proceeding, this
9 combination creates a rebuttable presumption that a parent who has
10 perpetrated domestic violence may not be awarded sole or joint custody of a
11 child. This presumption may be overcome only by clear and convincing
12 evidence that the best interests of the child require that parent's participation
13 as a custodial parent. The court shall cite specific findings of fact to show that
14 the custody or visitation arrangement best protects the child and the parent or
15 other family or household member who is the victim of domestic violence. If
16 necessary to protect the welfare of the child, custody may be awarded to a
17 suitable third person, provided that the person would not allow access to a
18 violent parent except as ordered by the court. If the court awards custody to a
19 third person, the court shall give priority to the child's nearest suitable adult
20 relative. The fact that the abused parent suffers from the effects of the abuse
21 may not be grounds for denying that parent custody. As used in this
22 subdivision, "domestic violence" means domestic violence as defined in
23 section 14-07.1-01. A court may consider, but is not bound by, a finding of
24 domestic violence in another proceeding under chapter 14-07.1.
- 25 k. The interaction and interrelationship, or the potential for interaction and
26 interrelationship, of the child with any person who resides in, is present, or
27 frequents the household of a parent and who may significantly affect the
28 child's best interests. The court shall consider that person's history of
29 inflicting, or tendency to inflict, physical harm, bodily injury, assault, or the fear
30 of physical harm, bodily injury, or assault, on other persons.

- 1 l. The making of false allegations not made in good faith, by one parent against
2 the other, of harm to a child as defined in section 50-25.1-02.
- 3 m. Any other factors considered by the court to be relevant to a particular child
4 custody dispute.
- 5 2. In any proceeding under this chapter, the court, at any stage of the proceedings
6 after final judgment, may make orders about what security is to be given for the
7 care, custody, and support of the unmarried minor children of the marriage as from
8 the circumstances of the parties and the nature of the case is equitable.
- 9 3. In determining custody, if a parent is a service member, the court may not consider
10 the service member's absence or potential absence from the home for active duty
11 service in the United States armed forces as a factor affecting the best interests of
12 the child. The court may not interpret any other factor identified in subsection 1 to
13 contravene the intention of this subsection. For purposes of this subsection,
14 "service member" means a member of the national guard or a reserve unit of the
15 United States armed forces.

16 **SECTION 2. AMENDMENT.** Section 14-09-06.6 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **14-09-06.6. Limitations on postjudgment custody modifications.**

- 19 1. Unless agreed to in writing by the parties, no motion to modify a custody order may
20 be made earlier than two years after the date of entry of an order establishing
21 custody, except in accordance with subsection 3.
- 22 2. Unless agreed to in writing by the parties, if a motion for modification has been
23 disposed of upon its merits, no subsequent motion may be filed within two years of
24 disposition of the prior motion, except in accordance with subsection 3.
- 25 3. The time limitation in subsections 1 and 2 does not apply if the court finds:
- 26 a. The persistent and willful denial or interference with visitation;
- 27 b. The child's present environment may endanger the child's physical or
28 emotional health or impair the child's emotional development; or
- 29 c. The primary physical care of the child has changed to the other parent for
30 longer than six months.

- 1 4. A party seeking modification of a custody order shall serve and file moving papers
2 and supporting affidavits and shall give notice to the other party to the proceeding
3 who may serve and file a response and opposing affidavits. The court shall
4 consider the motion on briefs and without oral argument or evidentiary hearing and
5 shall deny the motion unless the court finds the moving party has established a
6 prima facie case justifying a modification. If a prima facie case is established, the
7 court shall set a date for an evidentiary hearing.
- 8 5. The court may not modify a prior custody order within the two-year period following
9 the date of entry of an order establishing custody unless the court finds the
10 modification is necessary to serve the best interest of the child and:
11 a. The persistent and willful denial or interference with visitation;
12 b. The child's present environment may endanger the child's physical or
13 emotional health or impair the child's emotional development; or
14 c. The primary physical care of the child has changed to the other parent for
15 longer than six months.
- 16 6. The court may modify a prior custody order after the two-year period following the
17 date of entry of an order establishing custody if the court finds:
18 a. On the basis of facts that have arisen since the prior order or which were
19 unknown to the court at the time of the prior order, a material change has
20 occurred in the circumstances of the child or the parties; and
21 b. The modification is necessary to serve the best interest of the child.
- 22 7. The court may modify a prior custody order at any time if the court finds a
23 stipulated agreement by the parties to modify the custody is in the best interest of
24 the child.
- 25 8. If a service member enters a stipulated agreement to modify custody based in part
26 upon a service member's active duty service or if primary physical care of a child
27 has changed as a result of active duty service, the court shall require reinstatement
28 of physical custody to the service member immediately upon the service member's
29 discharge or release from active duty service. Nothing in this section prevents a
30 service member from consenting to modification of custody that continues past
31 discharge or release from active duty service. For purposes of this subsection,

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- 1 "active duty service" means an order to active duty under section 12301(a),
2 12301(g), 12302, 12304, or 12306 of title 10 of the United States Code.
3 9. Upon a motion to modify custody under this section, the burden of proof is on the
4 moving party.