

**HOUSE BILL NO. 1242**

Introduced by

Representatives Frelich, Tveit, Klemin, Vetter, Rohr

Senators Mathern, Barta, Bekkedahl, Boehm, Powers, Paulson, Van Oosting

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 parental rights and responsibilities; and to provide for application.

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

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

6 **14-09-00.1. Definitions.**

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

- 8 1. "Decisionmaking responsibility" means the responsibility to make decisions concerning  
9 the child. The term may refer to decisions on all issues or on specified issues, but not  
10 child support issues.
- 11 2. "Harm" means negative changes in a child's health which occur when an individual  
12 responsible for the child's welfare:
  - 13 a. Inflicts, or allows to be inflicted, upon the child, physical or mental injury, including  
14 injuries sustained as a result of excessive corporal punishment; or
  - 15 b. Commits, allows to be committed, or conspires to commit, against the child, a sex  
16 offense as defined in chapter 12.1-20.
- 17 3. "Parental rights and responsibilities" means all rights and responsibilities a parent has  
18 concerning the parent's child.
- 19 4. "Parenting plan" means a written plan describing each parent's rights and  
20 responsibilities.
- 21 5. "Parenting schedule" means the schedule of when the child is in the care of each  
22 parent.
- 23 6. "Parenting time" means the time when the child is to be in the care of a parent.

- 1           7. "Primary residential responsibility" means a parent with more than fifty percent of the  
2           residential responsibility.
- 3           8. "Residential responsibility" means a parent's responsibility to provide a home for the  
4           child.
- 5           9. "Shared decisionmaking responsibility" means each parent has sole responsibility to  
6           make routine decisions about day-to-day matters during that parent's parenting time  
7           and all major decisions, including decisions about a day care provider, education,  
8           extracurricular activities, health care, and spiritual development, must be made jointly.
- 9           10. "Shared residential responsibility" means each parent has residential responsibility for  
10           the child for an equal or approximately equal amount of time, as determined by the  
11           court.

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

14           **14-09-29. Parental rights and responsibilities - Best interests and welfare of child -**  
15           **Rebuttable presumption.**

- 16           1. A court issuing an order that deals with parenting rights and responsibilities of a child  
17           entered under this chapter shall award the parental rights and responsibilities  
18           concerning the child to a person, ~~agency, organization, or institution~~ as that will, in the  
19           ~~opinion of the court,~~ promote the best interests and welfare of the child. Between the  
20           ~~mother and father~~ parents, whether married or unmarried, there is no presumption as  
21           to whom will better promote the best interests and welfare of the child.
- 22           2. a. Except as provided in subsection 3, or otherwise agreed to by the parties and  
23           approved by the court, in a proceeding under this chapter to determine residential  
24           responsibility, including an interim proceeding, there is a presumption that shared  
25           decisionmaking responsibility and shared residential responsibility is in the best  
26           interests of the child.
- 27           b. The presumption may be rebutted if a preponderance of the evidence in a  
28           contested matter establishes that shared decisionmaking responsibility or shared  
29           residential responsibility:
- 30           (1) May cause harm to the child;
- 31           (2) May endanger the child's physical or emotional health; or

- 1                   (3) Is not feasible because the circumstances of the parents do not allow for a  
2                   parenting schedule that provides for exchanges of the child between  
3                   parents at least every seven days.
- 4       3. The presumption that shared decisionmaking responsibility and shared residential  
5       responsibility is in the best interests of the child does not apply if:
- 6           a. A domestic violence protection order, disorderly conduct restraining order, or  
7           other order prohibiting contact has been entered against a parent which prohibits  
8           or places limitation on contact with the other parent or child at issue in the  
9           proceeding;
- 10          b. The court finds a parent has perpetrated domestic violence and there exists one  
11          incident of domestic violence which resulted in serious bodily injury or involved  
12          the use of a dangerous weapon or there exists a pattern of domestic violence  
13          within a reasonable time proximate to the proceeding; or
- 14          c. The court finds a parent has sexually abused a child, regardless of whether that  
15          child is at issue in the proceeding.
- 16       4. In a proceeding in which the presumption is applicable and not rebutted, the court  
17       shall award each parent shared decisionmaking responsibility and shared residential  
18       responsibility. Unless otherwise agreed to by the parties and approved by the court,  
19       the court shall construct a parenting time schedule which provides for each parent to  
20       have residential responsibility of the child for an equal or approximately equal amount  
21       of time, as determined by the court, and is consistent with ensuring the child's welfare.  
22       The court may consider the factors under section 14-09-06.2 when constructing the  
23       parenting time schedule.
- 24       5. In a proceeding in which the court determines the presumption is not applicable or is  
25       rebutted, the court shall make specific findings which provide a basis for that  
26       determination. The court shall consider and evaluate all factors affecting the best  
27       interests and welfare of the child as provided under section 14-09-06.2 and construct a  
28       parenting time schedule which is in the best interests of the child.
- 29       6. If the court finds that a parent has perpetrated domestic violence and that parent does  
30       not have residential responsibility, and there exists one incident of domestic violence  
31       which resulted in serious bodily injury or involved the use of a dangerous weapon or

1           there exists a pattern of domestic violence within a reasonable time proximate to the  
2           proceeding, the court shall allow only supervised parenting time with that parent  
3           unless there is a showing by clear and convincing evidence that unsupervised  
4           parenting time would not endanger the child's physical or emotional health.

5     ~~3.7.~~ If anya court finds ~~that~~ a parent has sexually abused the parent's child, the court shall  
6           prohibit contact between the abusive parent and the child until the court finds ~~that~~ the  
7           abusive parent has successfully completed a treatment program designed for such  
8           sexual abusers and ~~that~~ supervised parenting time is in the child's best interests.  
9           Contact between the abusive parent and the child may be allowed only in a  
10          therapeutic setting, facilitated by a therapist as part of a sexual abuse treatment  
11          program, and only when the therapist for the abusive parent and the therapist for the  
12          abused child agree that contact serves a therapeutic purpose and is in the best  
13          interests of the child.

14     ~~4.8.~~ In anya proceeding dealing with parental rights and responsibilities in which a parent is  
15          found to have perpetrated domestic violence, and there exists one incident of  
16          domestic violence which resulted in serious bodily injury or involved the use of a  
17          dangerous weapon or there exists a pattern of domestic violence within a reasonable  
18          time proximate to the proceeding, all court costs, attorney's fees, evaluation fees, and  
19          expert witness fees must be paid by the perpetrator of the domestic violence unless  
20          those costs would place an undue financial hardship on that parent.

21           **SECTION 3. APPLICATION.** The limitations under section 14-09-06.6 on postjudgment  
22          modifications of primary residential responsibility and under Rule 8.2 of the North Dakota Rules  
23          of Court on amending an interim order do not apply to the first motion filed in an action on or  
24          after the effective date of this Act by a moving party seeking a determination of parental rights  
25          and responsibilities under the presumption and evidentiary burden established by this Act.