

Introduced by

Senators Cory, Luick, Paulson

Representative Vetter

1 A BILL for an Act to create and enact four new sections to chapter 14-09 of the North Dakota
2 Century Code, relating to parental rights and responsibilities, equal residential responsibility,
3 and the presumption of fitness; to amend and reenact sections 14-09-00.1, 14-09-06.2, and
4 14-09-07 of the North Dakota Century Code, relating to the definition of equal decisionmaking
5 responsibility and equal parenting time, the best interests of the child factors, and the residence
6 of a child; and to provide for application.

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 is responsible for
16 communicating with the other parent and agreeing on all major decisions that do not
17 involve routine or day-to-day matters, including choosing a day care service provider,
18 education, extracurricular activities, health care, and spiritual development.
- 19 3. "Equal parenting time" means each parent has the child in the parent's home for fifty
20 percent of the time or as close to fifty percent of the time as possible based on the
21 circumstances of the parents and child.
- 22 4. "Harm" means negative changes in a child's health which occur when an individual
23 responsible for the child's welfare:

- 1 a. Inflicts, or allows to be inflicted, upon the child, physical or mental injury, including
2 injuries sustained as a result of excessive corporal punishment; or
3 b. Commits, allows to be committed, or conspires to commit, against the child, a sex
4 offense as defined in chapter 12.1-20.

5 ~~3-5.~~ "Parental rights and responsibilities" means all rights and responsibilities a parent has
6 concerning the parent's child.

7 ~~4-6.~~ "Parenting plan" means a written plan describing each parent's rights and
8 responsibilities.

9 ~~5-7.~~ "Parenting schedule" means the schedule of when the child is in the care of each
10 parent.

11 ~~6-8.~~ "Parenting time" means the time when the child is to be in the care of a parent.

12 ~~7-9.~~ "Primary residential responsibility" means a parent with more than fifty percent of the
13 residential responsibility.

14 ~~8-10.~~ "Residential responsibility" means a parent's responsibility to provide a home for the
15 child.

16 **SECTION 2.** A new section to chapter 14-09 of the North Dakota Century Code is created
17 and enacted as follows:

18 **Legitimacy of children and parents.**

19 A child or parent involved in an action brought under this chapter may not be denied the
20 privileges or immunities of citizens of the United States and this state without due process of
21 law, and may not be denied equal protection of the law.

22 **SECTION 3.** A new section to chapter 14-09 of the North Dakota Century Code is created
23 and enacted as follows:

24 **Residential responsibility of a child - Presumption of fitness.**

25 1. In any proceeding addressing parental rights and responsibilities, there is a
26 presumption that each parent is fit to care for a child and make decisions about the
27 child's care, including making joint decisions with the other parent. The court may not
28 apply the best interests and welfare of the child factors under section 14-09-06.2
29 unless a party establishes by clear and convincing evidence the presumption is
30 properly rebutted in accordance with subsection 2.

31 2. As determined by the court, the presumption of fitness may be rebutted:

- 1 a. If a parent has voluntarily chosen to have minimal or no relationship with the child
2 for a period of at least one year after the birth of the child.
- 3 b. If a parent or a parent's immediate family member has interfered with the other
4 parent's ability to establish a relationship with the child, including by refusing to
5 provide the other parent with opportunities to exercise care, residential
6 responsibility, or control, even if a parenting time order has never been entered.
- 7 c. If there exists a history of persistent and unwarranted interference by a parent
8 with the other parent's parenting time, or a history of alienating a child from the
9 other parent, even if a parenting time order has never been entered.
- 10 d. If there exists one incident of domestic violence, as defined in section 14-07.1-01,
11 which resulted in serious bodily injury or involved the use of a dangerous
12 weapon, and the parent who committed the domestic violence was convicted of
13 the crime due to the incident. A domestic violence protection order that has been
14 issued by a court or magistrate may not be considered by the court as evidence
15 of domestic violence.
- 16 e. If a parent has neglected or abused the child within a reasonable time proximate
17 to the action. For purposes of this section, "neglected or abused" means a
18 parent:
- 19 (1) Abandons, tortures, chronically abuses, or sexually abuses a child;
20 (2) Fails to make substantial, meaningful efforts to secure treatment for the
21 parent's addiction, mental illness, behavior disorder, or any combination of
22 those conditions for a period of at least one year after the parent has been
23 diagnosed with the condition, and notified by a licensed practitioner the
24 parent is in need of treatment to protect the child from being physically or
25 emotionally harmed;
- 26 (3) Engages in conduct prohibited under sections 12.1-20-01 through
27 12.1-20-08 or chapter 12.1-27.2, in which the child at issue in the action is
28 the victim;
- 29 (4) Violates sections 12.1-16-01 through 12.1-16-03 or 14-09-22, in which the
30 victim is another child of the parent;

- 1 (5) Engages in aiding, abetting, attempting, conspiring, or soliciting in violation
2 of section 12.1-16-01 through 12.1-16-03, in which the child at issue in the
3 action is the victim;
- 4 (6) Violates section 12.1-17-02, in which the child at issue in the action is the
5 victim and has suffered serious bodily injury;
- 6 (7) Commits an offense under the laws of another jurisdiction which require
7 proof of substantially similar elements as the violations described in
8 subparagraphs d through f; or
- 9 (8) Allows the child to be the victim of human trafficking as defined in section
10 12.1-41-01.
- 11 f. If a parent engages or attempts to engage in conduct, prohibited under sections
12 12.1-17-01 through 12.1-17-04, in which the child at issue in the action is the
13 victim.
- 14 g. If a parent, within a reasonable time proximate to the proceeding, exposes a child
15 to chronic or severe alcohol use or use of any controlled substance as defined in
16 section 19-03.1-01, in a manner not lawfully prescribed by a licensed practitioner.
- 17 h. If a parent allows the child to be in an environment in which the child is exposed
18 to a controlled substance or drug paraphernalia.
- 19 i. If a parent allows a child to be without proper parental care or control,
20 subsistence, education as required by law, or other care necessary for the child's
21 physical, mental, or emotional health, and the deprivation is not due to the lack of
22 financial means of the parent.
- 23 j. If a parent places the child up for adoption in violation of the law.
- 24 k. If a parent, within a reasonable time proximate to the proceeding, leaves the child
25 without proper parental care or education as required by law, due to the physical,
26 mental, emotional, or other illness or disability of the parent.
- 27 l. If a parent, within a reasonable time proximate to the proceeding, refused to
28 participate in treatment for a child in need of treatment, as ordered by a juvenile
29 court.

- 1 m. If a parent has been diagnosed with having a physical injury or psychological
2 condition, as certified by a licensed practitioner, which renders the parent unfit to
3 provide proper care, custody, or control over the child.

4 **SECTION 4.** A new section to chapter 14-09 of the North Dakota Century Code is created
5 and enacted as follows:

6 **Priority of residential responsibility prohibited.**

- 7 1. The court may not give priority to a parent, regardless of gender, race, creed, or
8 religion when determining the residential responsibility of a child.
9 2. Notwithstanding any other law, if a court gives priority to a parent in violation of this
10 section, the court's action is deemed to be a violation of a parent's equal protection
11 rights under the law.

12 **SECTION 5.** A new section to chapter 14-09 of the North Dakota Century Code is created
13 and enacted as follows:

14 **Equal residential responsibility - When awarded.**

- 15 1. Unless the presumption of fitness is properly rebutted in accordance with section 3 of
16 this Act, or subsection 2, 4, or 5 is applicable making an award of equal residential
17 responsibility inappropriate, a court must grant the parents equal residential
18 responsibility of a child.
19 2. If the court determines the parents reside more than fifty miles apart and an award of
20 equal residential responsibility would be detrimental to the physical or emotional health
21 of a child, and neither parent is willing to relocate to be closer to the other parent, the
22 court must grant the maximum amount of parenting time possible to the parent who is
23 not awarded primary residential responsibility of the child, which must be at least one
24 hundred days per year.
25 3. If a parent is on active military duty or is inherently unable to execute the full allotted
26 parenting time awarded, the court must order the missed parenting time be
27 compensated to the maximum extent possible, including on each extended school
28 break, if applicable.
29 4. If the child at issue in the action is an infant at the time of the proceeding and the
30 schedule, health, or other circumstances of a parent or the child does not allow for a
31 parenting schedule that provides for exchanges between the parents at least every

1 seven days, the court shall determine a parenting schedule that is in the best interests
2 of the child.

3 5. If a parent is unable to provide proper care for a child with a special need, as
4 documented by a child development expert, and an award of equal residential
5 responsibility would be detrimental to the physical or emotional health of the child, the
6 court shall determine a parenting schedule that is in the best interests of the child.

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

9 **14-09-06.2. Best interests and welfare of child - Court consideration - Factors.**

- 10 1. For the purpose of parental rights and responsibilities, the best interests and welfare of
11 the child is determined by the court's consideration and evaluation of all factors
12 affecting the best interests and welfare of the child. These factors may not be
13 considered unless the presumption of fitness is properly rebutted under section 3 of
14 this Act or the court determines an award of equal residential responsibility is
15 inappropriate under section 5 of this Act. These factors include all of the following
16 when applicable:
- 17 a. The love, affection, and other emotional ties existing between the parents and
18 child and the ability of each parent to provide the child with nurture, love,
19 affection, and guidance.
 - 20 b. The ability of each parent to assure that the child receives adequate food,
21 clothing, shelter, medical care, and a safe environment.
 - 22 c. The child's developmental needs and the ability of each parent to meet those
23 needs, both in the present and in the future.
 - 24 d. The sufficiency and stability of each parent's home environment, the impact of
25 extended family, the length of time the child has lived in each parent's home, and
26 the desirability of maintaining continuity in the child's home and community.
 - 27 e. The willingness and ability of each parent to facilitate and encourage a close and
28 continuing relationship between the other parent and the child.
 - 29 f. ~~The moral fitness of the parents, as that fitness impacts the child.~~
 - 30 g. The mental and physical health of the parents, as that health impacts the child.

1 h.g. The home, school, and community records of the child and the potential effect of
2 any change.

3 i.h. If the court finds by clear and convincing evidence that a child is of sufficient
4 maturity to make a sound judgment, the court may give substantial weight to the
5 preference of the mature child. The court also shall give due consideration to
6 other factors that may have affected the child's preference, including whether the
7 child's preference was based on undesirable or improper influences.

8 j.i. Evidence of domestic violence. In determining parental rights and responsibilities,
9 the court shall consider evidence of domestic violence. ~~If the court finds credible~~
10 ~~evidence that domestic violence has occurred, and there exists one incident of~~
11 ~~domestic violence which resulted in serious bodily injury or involved the use of a~~
12 ~~dangerous weapon or there exists a pattern of domestic violence within a~~
13 ~~reasonable time proximate to the proceeding, this combination creates a~~
14 ~~rebuttable presumption that a parent who has perpetrated domestic violence may~~
15 ~~not be awarded residential responsibility for the child. This presumption may be~~
16 ~~overcome only by clear and convincing evidence that the best interests of the~~
17 ~~child require that parent have residential responsibility. The court shall cite~~
18 ~~specific findings of fact to show that the residential responsibility best protects the~~
19 ~~child and the parent or other family or household member who is the victim of~~
20 ~~domestic violence. If necessary to protect the welfare of the child, residential~~
21 ~~responsibility for a child may be awarded to a suitable third person, provided that~~
22 ~~the person would not allow access to a violent parent except as ordered by the~~
23 ~~court. If the court awards residential responsibility to a third person, the court~~
24 ~~shall give priority to the child's nearest suitable adult relative. The fact that the~~
25 ~~abused parent suffers from the effects of the abuse may not be grounds for~~
26 ~~denying that parent residential responsibility. As used in this subdivision,~~
27 ~~"domestic violence" means domestic violence as defined in section 14-07.1-01. A~~
28 ~~court may consider, but is not bound by, a finding of domestic violence in another~~
29 ~~proceeding under chapter 14-07.1. if there exists one incident of domestic~~
30 ~~violence, as defined in section 14-07.1-01, which resulted in serious bodily injury~~

1 or involved the use of a dangerous weapon, and the parent who committed the
2 domestic violence was convicted of the crime due to the incident.

3 k-j. The interaction and inter-relationship, or the potential for interaction and inter-
4 relationship, of the child with any ~~person~~individual who resides in, is present, or
5 frequents the household of a parent and who may significantly affect the child's
6 best interests. The court shall consider that ~~person's~~individual's history of self-
7 harm and inflicting, or tendency to inflict, physical harm, bodily injury, assault, or
8 the fear of physical harm, bodily injury, or assault, on other ~~persons~~individuals.

9 l-k. The making of false allegations not made in good faith, by one parent against the
10 other, of harm to a child. If the court finds false allegations not made in good faith
11 of harm to a child were made by one parent against the other, the court shall
12 consider whether the parent's actions are punishable under chapter 27-10.

13 m-l. Any other factors considered by the court to be relevant to a particular parental
14 rights and responsibilities dispute.

15 2. In a proceeding for parental rights and responsibilities of a child of a service member,
16 a court may not consider a parent's past deployment or possible future deployment in
17 itself in determining the best interests of the child but may consider any significant
18 impact on the best interests of the child of the parent's past or possible future
19 deployment.

20 3. In any proceeding under this chapter, the court, at any stage of the proceedings after
21 final judgment, may make orders about what security is to be given for the care,
22 custody, and support of the unmarried minor children of the marriage as from the
23 circumstances of the parties and the nature of the case is equitable.

24 **SECTION 7. AMENDMENT.** Section 14-09-07 of the North Dakota Century Code is
25 amended and reenacted as follows:

26 **14-09-07. Residence of child.**

27 1. The primary residence of a child or the relocation of a child to another state may not
28 be determined until the final judgment in an action. An interim order is not a final
29 judgment.

30 2. A parent with primary residential responsibility for a child may not change the primary
31 residence of the child to another state except upon order of the court or with the

1 ~~written~~ consent of the other parent, ~~if the other parent has been given parenting time~~
2 ~~by the decree.~~

3 ~~2.3.~~ A parent with equal residential responsibility for a child may not change the residence
4 of the child to another state except with the written consent of the other parent ~~or order~~
5 ~~of the court allowing the move and awarding that parent primary residential~~
6 ~~responsibility.~~

7 ~~3.4.~~ A court order is not required if the other parent:

8 a. Has not, as established by clear and convincing evidence, exercised parenting
9 time for a period of one year; or

10 b. Has moved to another state and is more than fifty miles [80.47 kilometers] from
11 the residence of the parent with primary residential responsibility. If the other
12 parent is an active member of the armed forces, this subdivision does not apply.

13 **SECTION 8. APPLICATION.** This Act applies to each action involving a determination of
14 parental rights and responsibilities in which a child at issue in the action is under the age of
15 eighteen. The limitations under section 14-09-06.6 on postjudgment modifications of primary
16 residential responsibility, including the requirement that the moving party establish a prima facie
17 case, or material change in circumstance, justifying a modification, and under rule 8.2 of the
18 North Dakota Rules of Court on amending an interim order, do not apply to the first motion filed
19 in an action on or after the effective date of this Act by a moving party seeking a determination
20 of parental rights and responsibilities under the presumption and evidentiary burden established
21 by this Act.