

**FIRST ENGROSSMENT**

**ENGROSSED SENATE BILL NO. 2383**

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.

- 1       4. "Harm" means negative changes in a child's health which occur when an individual  
2       responsible for the child's welfare:
- 3       a. Inflicts, or allows to be inflicted, upon the child, physical or mental injury, including  
4       injuries sustained as a result of excessive corporal punishment; or
- 5       b. Commits, allows to be committed, or conspires to commit, against the child, a sex  
6       offense as defined in chapter 12.1-20.
- 7       ~~3-5.~~ "Parental rights and responsibilities" means all rights and responsibilities a parent has  
8       concerning the parent's child.
- 9       4.6. "Parenting plan" means a written plan describing each parent's rights and  
10      responsibilities.
- 11      ~~5-7.~~ "Parenting schedule" means the schedule of when the child is in the care of each  
12      parent.
- 13      ~~6-8.~~ "Parenting time" means the time when the child is to be in the care of a parent.
- 14      ~~7-9.~~ "Primary residential responsibility" means a parent with more than fifty percent of the  
15      residential responsibility.
- 16      ~~8-10.~~ "Residential responsibility" means a parent's responsibility to provide a home for the  
17      child.

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

20       **Legitimacy of children and parents.**

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

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

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

- 27       1. In any proceeding addressing parental rights and responsibilities, there is a  
28      presumption that each parent is fit to care for a child and make decisions about the  
29      child's care, including making joint decisions with the other parent. The court may not  
30      apply the best interests and welfare of the child factors under section 14-09-06.2

1           unless a party establishes by clear and convincing evidence that a parent is unfit to  
2           care for a child.

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

5           **Priority of residential responsibility prohibited.**

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

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

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

- 14           1. Unless the court determines a parent is unfit to care for a child in accordance with  
15           section 3 of this Act, or subsection 2, 4, 5, or 6 is applicable, making an award of equal  
16           residential responsibility inappropriate, a court must grant the parents equal residential  
17           responsibility of a child.  
18           2. If the court determines the parents' residences are separated by a distance that would  
19           make an award of equal residential responsibility detrimental to the physical or  
20           emotional health of a child, and neither parent is willing to relocate to be closer to the  
21           other parent, the court must grant the maximum amount of parenting time possible to  
22           the parent who is not awarded primary residential responsibility of the child.  
23           3. If a parent is on active military duty or is inherently unable to execute the full allotted  
24           parenting time awarded, the court must order the missed parenting time be  
25           compensated to the maximum extent possible, including on each extended school  
26           break, if applicable.  
27           4. If the child at issue in the action is an infant at the time of the proceeding and the  
28           schedule, health, or other circumstances of a parent or the child does not allow for a  
29           parenting schedule that provides for exchanges between the parents at least every  
30           seven days, the court shall determine a parenting schedule that is in the best interests  
31           of the child.

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

5        6. If the parties agree through mediation to deviate from equal residential responsibility,  
6        the court must give consideration to the preference of the parties unless the  
7        agreement is determined by the court to be detrimental to the emotional or physical  
8        health of the child.

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

11       **14-09-06.2. Best interests and welfare of child - Court consideration - Factors.**

12       1. For the purpose of parental rights and responsibilities, the best interests and welfare of  
13       the child is determined by the court's consideration and evaluation of all factors  
14       affecting the best interests and welfare of the child. These factors may not be  
15       considered unless the court determines a parent is unfit to care for a child under  
16       section 3 of this Act or the court determines an award of equal residential responsibility  
17       is inappropriate under section 5 of this Act. These factors include all of the following  
18       when applicable:

- 19       a. The love, affection, and other emotional ties existing between the parents and  
20       child and the ability of each parent to provide the child with nurture, love,  
21       affection, and guidance.
- 22       b. The ability of each parent to assure that the child receives adequate food,  
23       clothing, shelter, medical care, and a safe environment.
- 24       c. The child's developmental needs and the ability of each parent to meet those  
25       needs, both in the present and in the future.
- 26       d. The sufficiency and stability of each parent's home environment, the impact of  
27       extended family, the length of time the child has lived in each parent's home, and  
28       the desirability of maintaining continuity in the child's home and community.
- 29       e. The willingness and ability of each parent to facilitate and encourage a close and  
30       continuing relationship between the other parent and the child.
- 31       f. ~~The moral fitness of the parents, as that fitness impacts the child.~~

- 1           g. The mental and physical health of the parents, as that health impacts the child.
- 2           h.g. The home, school, and community records of the child and the potential effect of  
3           any change.
- 4           i.h. If the court finds by clear and convincing evidence that a child is of sufficient  
5           maturity to make a sound judgment, the court may give substantial weight to the  
6           preference of the mature child. The court also shall give due consideration to  
7           other factors that may have affected the child's preference, including whether the  
8           child's preference was based on undesirable or improper influences.
- 9           j.i. Evidence of domestic violence. In determining parental rights and responsibilities,  
10          the court shall consider evidence of domestic violence. If the court finds credible  
11          evidence that domestic violence has occurred, and there exists one incident of  
12          domestic violence which resulted in serious bodily injury or involved the use of a  
13          dangerous weapon or there exists a pattern of domestic violence within a  
14          reasonable time proximate to the proceeding, this combination creates a  
15          rebuttable presumption that a parent who has perpetrated domestic violence may  
16          not be awarded residential responsibility for the child. This presumption may be  
17          overcome only by clear and convincing evidence that the best interests of the  
18          child require that parent have residential responsibility. The court shall cite  
19          specific findings of fact to show that the residential responsibility best protects the  
20          child and the parent or other family or household member who is the victim of  
21          domestic violence. If necessary to protect the welfare of the child, residential  
22          responsibility for a child may be awarded to a suitable third person, provided that  
23          the person would not allow access to a violent parent except as ordered by the  
24          court. If the court awards residential responsibility to a third person, the court  
25          shall give priority to the child's nearest suitable adult relative. The fact that the  
26          abused parent suffers from the effects of the abuse may not be grounds for  
27          denying that parent residential responsibility. As used in this subdivision,  
28          "domestic violence" means domestic violence as defined in section 14-07.1-01. A  
29          court may consider, but is not bound by, a finding of domestic violence in another  
30          proceeding under chapter 14-07.1.

- 1           k.j. The interaction and inter-relationship, or the potential for interaction and inter-  
2           relationship, of the child with any ~~person~~individual who resides in, is present, or  
3           frequents the household of a parent and who may significantly affect the child's  
4           best interests. The court shall consider that ~~person's~~individual's history of self-  
5           harm and inflicting, or tendency to inflict, physical harm, bodily injury, assault, or  
6           the fear of physical harm, bodily injury, or assault, on other ~~persons~~individuals.
- 7           h.k. The making of false allegations not made in good faith, by one parent against the  
8           other, of harm to a child.
- 9           m.l. Any other factors considered by the court to be relevant to a particular parental  
10          rights and responsibilities dispute.
- 11          2. In a proceeding for parental rights and responsibilities of a child of a service member,  
12          a court may not consider a parent's past deployment or possible future deployment in  
13          itself in determining the best interests of the child but may consider any significant  
14          impact on the best interests of the child of the parent's past or possible future  
15          deployment.
- 16          3. In any proceeding under this chapter, the court, at any stage of the proceedings after  
17          final judgment, may make orders about what security is to be given for the care,  
18          custody, and support of the unmarried minor children of the marriage as from the  
19          circumstances of the parties and the nature of the case is equitable.

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

22          **14-09-07. Residence of child.**

- 23          1. The primary residence of a child or the relocation of a child to another state may not  
24          be determined until the final judgment in an action. An interim order is not a final  
25          judgment.
- 26          2. A parent with primary residential responsibility for a child may not change the primary  
27          residence of the child to another state except upon order of the court or with the  
28          written consent of the other parent, if the other parent has been given parenting time  
29          by the decree.
- 30          ~~2-3.~~ A parent with equal residential responsibility for a child may not change the residence  
31          of the child ~~to another state~~ outside of a fifty mile radius except with the written consent

1 of the other parent or order of the court allowing the move and awarding that parent  
2 primary residential responsibility.

3 ~~3.4.~~ A court order is not required if the other parent:

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

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

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