

PROPOSED AMENDMENTS TO

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.

1 3. "Equal parenting time" means each parent has the child in the parent's home for fifty
2 percent of the time or as close to fifty percent of the time as possible based on the
3 circumstances of the parents and child.

4 4. "Harm" means negative changes in a child's health which occur when an individual
5 responsible for the child's welfare:

6 a. Inflicts, or allows to be inflicted, upon the child, physical or mental injury, including
7 injuries sustained as a result of excessive corporal punishment; or

8 b. Commits, allows to be committed, or conspires to commit, against the child, a sex
9 offense as defined in chapter 12.1-20.

10 ~~3-5.~~ "Parental rights and responsibilities" means all rights and responsibilities a parent has
11 concerning the parent's child.

12 ~~4-6.~~ "Parenting plan" means a written plan describing each parent's rights and
13 responsibilities.

14 ~~5-7.~~ "Parenting schedule" means the schedule of when the child is in the care of each
15 parent.

16 ~~6-8.~~ "Parenting time" means the time when the child is to be in the care of a parent.

17 ~~7-9.~~ "Primary residential responsibility" means a parent with more than fifty percent of the
18 residential responsibility.

19 ~~8-10.~~ "Residential responsibility" means a parent's responsibility to provide a home for the
20 child.

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

23 **Legitimacy of children and parents.**

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

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

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

30 1. In any proceeding addressing parental rights and responsibilities, there is a
31 presumption that each parent is fit to care for a child and make decisions about the

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child's care, including making joint decisions with the other parent. The court may not apply the best interests and welfare of the child factors under section 14-09-06.2 unless a party establishes by clear and convincing evidence ~~the presumption is properly rebutted in accordance with subsection 2~~ that a parent is unfit to care for a child.

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

~~a. If a parent has voluntarily chosen to have minimal or no relationship with the child for a period of at least one year after the birth of the child.~~

~~b. If a parent or a parent's immediate family member has interfered with the other parent's ability to establish a relationship with the child, including by refusing to provide the other parent with opportunities to exercise care, residential responsibility, or control, even if a parenting time order has never been entered.~~

~~c. If there exists a history of persistent and unwarranted interference by a parent with the other parent's parenting time, or a history of alienating a child from the other parent, even if a parenting time order has never been entered.~~

~~d. If there exists one incident of domestic violence, as defined in section 14-07.1-01, which resulted in serious bodily injury or involved the use of a dangerous weapon, and the parent who committed the domestic violence was convicted of the crime due to the incident. A domestic violence protection order that has been issued by a court or magistrate may not be considered by the court as evidence of domestic violence.~~

~~e. If a parent has neglected or abused the child within a reasonable time proximate to the action. For purposes of this section, "neglected or abused" means a parent:~~

~~(1) Abandons, tortures, chronically abuses, or sexually abuses a child;~~

~~(2) Fails to make substantial, meaningful efforts to secure treatment for the parent's addiction, mental illness, behavior disorder, or any combination of these conditions for a period of at least one year after the parent has been diagnosed with the condition, and notified by a licensed practitioner the parent is in need of treatment to protect the child from being physically or emotionally harmed;~~

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- 1 ~~(3) Engages in conduct prohibited under sections 12.1-20-01 through~~
2 ~~12.1-20-08 or chapter 12.1-27.2, in which the child at issue in the action is~~
3 ~~the victim;~~
- 4 ~~(4) Violates sections 12.1-16-01 through 12.1-16-03 or 14-09-22, in which the~~
5 ~~victim is another child of the parent;~~
- 6 ~~(5) Engages in aiding, abetting, attempting, conspiring, or soliciting in violation~~
7 ~~of section 12.1-16-01 through 12.1-16-03, in which the child at issue in the~~
8 ~~action is the victim;~~
- 9 ~~(6) Violates section 12.1-17-02, in which the child at issue in the action is the~~
10 ~~victim and has suffered serious bodily injury;~~
- 11 ~~(7) Commits an offense under the laws of another jurisdiction which require~~
12 ~~proof of substantially similar elements as the violations described in~~
13 ~~subparagraphs d through f; or~~
- 14 ~~(8) Allows the child to be the victim of human trafficking as defined in section~~
15 ~~12.1-41-01.~~
- 16 ~~f. If a parent engages or attempts to engage in conduct, prohibited under sections~~
17 ~~12.1-17-01 through 12.1-17-04, in which the child at issue in the action is the~~
18 ~~victim.~~
- 19 ~~g. If a parent, within a reasonable time proximate to the proceeding, exposes a child~~
20 ~~to chronic or severe alcohol use or use of any controlled substance as defined in~~
21 ~~section 19-03.1-01, in a manner not lawfully prescribed by a licensed practitioner.~~
- 22 ~~h. If a parent allows the child to be in an environment in which the child is exposed~~
23 ~~to a controlled substance or drug paraphernalia.~~
- 24 ~~i. If a parent allows a child to be without proper parental care or control,~~
25 ~~subsistence, education as required by law, or other care necessary for the child's~~
26 ~~physical, mental, or emotional health, and the deprivation is not due to the lack of~~
27 ~~financial means of the parent.~~
- 28 ~~j. If a parent places the child up for adoption in violation of the law.~~
- 29 ~~k. If a parent, within a reasonable time proximate to the proceeding, leaves the child~~
30 ~~without proper parental care or education as required by law, due to the physical,~~
31 ~~mental, emotional, or other illness or disability of the parent.~~

1 ~~l. If a parent, within a reasonable time proximate to the proceeding, refused to~~
2 ~~participate in treatment for a child in need of treatment, as ordered by a juvenile~~
3 ~~court.~~

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

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

9 **Priority of residential responsibility prohibited.**

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

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

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

- 18 1. Unless the ~~presumption of fitness is properly rebutted~~ court determines a parent is unfit
19 to care for a child in accordance with section 3 of this Act, or subsection 2, 4, 5 or 56 is
20 applicable, making an award of equal residential responsibility inappropriate, a court
21 must grant the parents equal residential responsibility of a child.
22 2. If the court determines the ~~parents reside more than fifty miles apart and parents'~~
23 residences are separated by a distance that would make an award of equal residential
24 responsibility ~~would be~~ detrimental to the physical or emotional health of a child, and
25 neither parent is willing to relocate to be closer to the other parent, the court must
26 grant the maximum amount of parenting time possible to the parent who is not
27 awarded primary residential responsibility of the child, ~~which must be at least one-~~
28 hundred days per year.
29 3. If a parent is on active military duty or is inherently unable to execute the full allotted
30 parenting time awarded, the court must order the missed parenting time be

- 1 compensated to the maximum extent possible, including on each extended school
2 break, if applicable.
- 3 4. If the child at issue in the action is an infant at the time of the proceeding and the
4 schedule, health, or other circumstances of a parent or the child does not allow for a
5 parenting schedule that provides for exchanges between the parents at least every
6 seven days, the court shall determine a parenting schedule that is in the best interests
7 of the child.
- 8 5. If a parent is unable to provide proper care for a child with a special need, as
9 documented by a child development expert, and an award of equal residential
10 responsibility would be detrimental to the physical or emotional health of the child, the
11 court shall determine a parenting schedule that is in the best interests of the child.
- 12 6. If the parties agree through mediation to deviate from equal residential responsibility,
13 the court must give consideration to the preference of the parties unless the
14 agreement is determined by the court to be detrimental to the emotional or physical
15 health of the child.

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

18 **14-09-06.2. Best interests and welfare of child - Court consideration - Factors.**

- 19 1. For the purpose of parental rights and responsibilities, the best interests and welfare of
20 the child is determined by the court's consideration and evaluation of all factors
21 affecting the best interests and welfare of the child. These factors may not be
22 considered unless the ~~presumption of fitness is properly rebutted~~ court determines a
23 parent is unfit to care for a child under section 3 of this Act or the court determines an
24 award of equal residential responsibility is inappropriate under section 5 of this Act.
25 These factors include all of the following when applicable:
- 26 a. The love, affection, and other emotional ties existing between the parents and
27 child and the ability of each parent to provide the child with nurture, love,
28 affection, and guidance.
- 29 b. The ability of each parent to assure that the child receives adequate food,
30 clothing, shelter, medical care, and a safe environment.

- 1 c. The child's developmental needs and the ability of each parent to meet those
2 needs, both in the present and in the future.
- 3 d. The sufficiency and stability of each parent's home environment, the impact of
4 extended family, the length of time the child has lived in each parent's home, and
5 the desirability of maintaining continuity in the child's home and community.
- 6 e. The willingness and ability of each parent to facilitate and encourage a close and
7 continuing relationship between the other parent and the child.
- 8 f. ~~The moral fitness of the parents, as that fitness impacts the child.~~
- 9 g. The mental and physical health of the parents, as that health impacts the child.
- 10 ~~h-g.~~ The home, school, and community records of the child and the potential effect of
11 any change.
- 12 i-h. If the court finds by clear and convincing evidence that a child is of sufficient
13 maturity to make a sound judgment, the court may give substantial weight to the
14 preference of the mature child. The court also shall give due consideration to
15 other factors that may have affected the child's preference, including whether the
16 child's preference was based on undesirable or improper influences.
- 17 j-i. Evidence of domestic violence. In determining parental rights and responsibilities,
18 the court shall consider evidence of domestic violence. *If the court finds credible*
19 *evidence that domestic violence has occurred, and there exists one incident of*
20 *domestic violence which resulted in serious bodily injury or involved the use of a*
21 *dangerous weapon or there exists a pattern of domestic violence within a*
22 *reasonable time proximate to the proceeding, this combination creates a*
23 *rebuttable presumption that a parent who has perpetrated domestic violence may*
24 *not be awarded residential responsibility for the child. This presumption may be*
25 *overcome only by clear and convincing evidence that the best interests of the*
26 *child require that parent have residential responsibility. The court shall cite*
27 *specific findings of fact to show that the residential responsibility best protects the*
28 *child and the parent or other family or household member who is the victim of*
29 *domestic violence. If necessary to protect the welfare of the child, residential*
30 *responsibility for a child may be awarded to a suitable third person, provided that*
31 *the person would not allow access to a violent parent except as ordered by the*

1 court. If the court awards residential responsibility to a third person, the court
2 shall give priority to the child's nearest suitable adult relative. The fact that the
3 abused parent suffers from the effects of the abuse may not be grounds for
4 denying that parent residential responsibility. As used in this subdivision,
5 "domestic violence" means domestic violence as defined in section 14-07.1-01. A
6 court may consider, but is not bound by, a finding of domestic violence in another
7 proceeding under chapter 14-07.1. ~~if there exists one incident of domestic~~
8 ~~violence, as defined in section 14-07.1-01, which resulted in serious bodily injury~~
9 ~~or involved the use of a dangerous weapon, and the parent who committed the~~
10 ~~domestic violence was convicted of the crime due to the incident.~~

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

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

21 ~~m.l.~~ Any other factors considered by the court to be relevant to a particular parental
22 rights and responsibilities dispute.

23 2. In a proceeding for parental rights and responsibilities of a child of a service member,
24 a court may not consider a parent's past deployment or possible future deployment in
25 itself in determining the best interests of the child but may consider any significant
26 impact on the best interests of the child of the parent's past or possible future
27 deployment.

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

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

3 **14-09-07. Residence of child.**

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

7 2. A parent with primary residential responsibility for a child may not change the primary
8 residence of the child to another state except upon order of the court or with the
9 written consent of the other parent, if the other parent has been given parenting time
10 by the decree.

11 ~~2-3.~~ A parent with equal residential responsibility for a child may not change the residence
12 of the child ~~to another state~~ outside of a fifty mile radius except with the written consent
13 of the other parent or order of the court allowing the move and awarding that parent
14 primary residential responsibility.

15 ~~3-4.~~ A court order is not required if the other parent:

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

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

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