

2025 SENATE JUDICIARY

SB 2383

2025 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Peace Garden Room, State Capitol

SB 2383
2/3/2025

Relating to parental rights and responsibilities, equal residential responsibility, and the presumption of fitness and relating to the definition of equal decision making responsibility and equal parenting time, the best interests of the child factors, and the residence of a child.

2:42 p.m. Chair Larson opened the hearing.

Members present:

Chair Larson, Vice Chairman Paulson, Senators: Castaneda, Cory, Luick, Myrdal, Braunberger.

Discussion Topics:

- Current Custody Laws
- Fundamental Parental Rights
- Equal parenting
- Protection against harm
- Current laws
- Domestic violence evidence
- Prioritizing children's interests
- Excessive litigation

2:43 p.m. Senator Cory introduced the bill.

2:45 p.m. Derrick R. Sherwood testified in favor and submitted testimony #33378.

2:53 p.m. Mark Ludwig testified in favor.

2:58 p.m. Phyllis L. Lewis testified in favor and submitted testimony #33376.

3:06 a.m. Seth O'Neil, Executive Director of the ND Domestic & Sexual Violence Coalition, testified in opposition and submitted testimony #33299.

3:16 p.m. Jaclyn Hall testified in opposition and submitted testimony #33899.

3:34 p.m. Jason W. McLean, Family Law Attorney, with Parvey, Larson and McLean PLLC, testified in opposition and submitted testimony #33464.

Additional written testimony:

Senate Judiciary Committee

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2/3/2025

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Cathy Brennan submitted testimony in favor #33369.

Craig Gaube submitted testimony in favor #33746.

3:56 p.m. Chair Larson adjourned.

Kendra McCann, Committee Clerk



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Senate Bill No. 2383
Senate Judiciary Committee
Testimony Presented Seth O'Neill, JD, MSW
Email: soneill@nddsvc.org
February 3, 2025

Chairwoman Larson and members of the Senate Judiciary Committee, my name is Seth O'Neill and I am representing the North Dakota Domestic & Sexual Violence Coalition in opposition to SB 2283.

This bill would make substantial changes to family law provisions of the North Dakota Century Code. Presently, when there is a custody action in court, the court must consider the best interests of the child when deciding parenting responsibility. This bill would change that by presuming that "equal decision-making responsibility" is in the best interests of the child. Although this presumption may be rebutted, some of the rebuttal provisions are cumbersome and inappropriate. In addition, the provision regarding domestic violence states that a court may not consider a domestic violence protection order as evidence that a party has committed domestic violence. Presently, under the best interest factors, a court may consider a finding of domestic violence in another action.

Also, if the court determines that equal residential responsibility would be detrimental to a child due to the parents living 50 miles apart, the parent who does not have primary residential responsibility must be awarded at least 100 days of parenting time. This provision is unworkable and does not allow a court to consider what is best for the child to craft an arrangement when determining parenting time.

This bill also would modify the best interest factors that would be used if the presumption is properly rebutted. The best interest factor regarding domestic violence would be severely weakened to only apply in cases of serious bodily injury. In addition, the individual who committed the violence must have been convicted of the crime. This provision also does not state what crime exactly they must have been convicted for. If



someone was convicted of trespassing related to an instance of domestic violence does not fit with this best interest factor?

Finally, this bill also would not allow a parent with equal residential responsibility to relocate to another state without the consent of the other parent. Presently, a court may allow a parent to relocate to another state without the permission of the other parent. Removing this provision would not prohibit the court from intervening in situations altogether. If a parent would like to move from Fargo to Moorhead and the other parent does not consent, they could be prohibited from making that move.

Due to these reasons, we strongly encourage the committee to give SB 2383 a “Do-Not-Pass” Recommendation. I appreciate your time and I am happy to answer any questions you may have. Thank You.



As a college instructor for over 20 years, I have seen MANY parental disputes and the impact they have on the lives of both parents and children. Expecting a parent to change their life through education, work advancement and more while at the same time fighting a battle for custody is insane. And yet, due to court and agency involvement, I saw this happening every day, often to multiple students each semester.

The belief that one parent cares more, is more qualified, and has a more vested interest in the children involved is just plain WRONG. Each parent, unless it can be unquestionably proven beyond a shadow of a doubt, should have access to their child without needing to invest excessive legal funds, time and effort in reaching the location where the child is located, and should be involved in the decision-making process of raising that child. The fact a child doesn't live with a parent 24/7 doesn't make a parent's impact any less important or that parent any less deserving of being involved in that child's economic and physical/mental wellbeing.

Children are currently being used as pawns with judicial backing, and it needs to STOP. The pain of a parent becomes the pain of the child. SB 2383 assures the process of shared parenting is streamlined, less expensive, and will be beneficial to all.

SB 2383 will remove an added burden on the court system and allow more families to heal rather than keep the wounds of separation open and bleeding.

I urge you to pass SB 2383. Please help preserve the parent-child relationship and stop the ongoing legal chaos that ensures no one will survive without scars.

1. Madam Chair, Senators of the Committee, my name is Phyllis Lewis, and I'm here to support Senate Bill 2383.
2. This bill is for North Dakota. Bill 2383 allows children to experience the "orange effect." You ask yourselves "What is the orange effect?" Allow me to explain. The orange effect is a child or children that get to have both mom and dad in their lives as close to 50/50 as possible. If we continue the trend of having red houses, and yellow houses, children often do not get to blend themselves with both houses which would be your orange. Hence red and yellow make orange. While these colors are beautiful in their ways, when blended, they become something different, something brighter, and something that allows the children to thrive in each environment as if they were living in one home. They get to experience love, and traditions, and get to design memories that last a lifetime with both parents.
3. If you are concerned abusers or people who would place children in harm's way would be protected, they are not. I can assure you this bill will do the exact opposite. The provisions this bill has will activate Best Interest Factors if and only if there is unmistakable evidence resulting in convictions of domestic violence or other situations that would bring emotional and physical harm to the children. Let's remember just because mom and dad did not get along, it does not mean children have to suffer by not having one parent in their lives equally. The current law does not allow for as close to equal parenting time as possible, which creates government-sanctioned alienation.
4. There are clear differences between a child custody case where both parents have clean records and are considered "good parents" and cases where we need something activated because one parent has caused harm to the child. Listed in Section 3 Number 2 protects children from items such as Domestic Violence. Let me give you a real example. Before filing for my divorce in 2022 there was what I call a "Night of Terror" on August 23rd of that year. My then-husband held me and our two children against our will. I was beaten, choked, and struck with objects multiple times for roughly two hours. All was done within the presence of the children. He also threatened their lives many times that night. My now ex-husband was convicted of domestic violence not just against myself but the children. If this bill passes, situations like mine will trigger the provision in Section 3 Number 2(d) and Section 3 Number 2(e) therefore enforcing the Best Interest Factors to be decided. But note the word convicted. This means there was a fair review to which overwhelming evidence from myself and the children played in his conviction. This bill would protect children more than current laws do. This bill follows the guidelines within the Constitution of the United States of America.

5. Allow me to make a bold but true statement. I could, under the current best interest factors, have a child with anyone in this room and all I have to do is say I'm afraid of harm and it could be game over for your parenting time. This is in the Best Interest Factor where all I am required to do is show evidence. Evidence is not a legal standard and is extremely vague but just because I am fearful for an undefined thing does not mean you deserve to have your parenting rights revoked or limited parenting time. We are setting our children up for failure when there are limits on good parents. This bill is not just for the parents of North Dakota but more so for the children of North Dakota. They are what matter, they are our citizens, they are the future of this state, and we are responsible for protecting their rights too as they are not yet able to vote for these things. We need to preserve their right to life, liberty, and the pursuit of happiness, which are protected by SB 2383.
6. In conclusion, I am sure many of you have driven out of state and when you returned, I wonder if you've noticed what the sign says. It states, "Welcome to North Dakota Be Legendary." Let us be the state that sets the best standard for shared parenting.
7. I thank you all for listening to my testimony and request that you vote for a "do pass" on SB 2383

Phyllis L. Lewis
Phyllis L. Lewis

Resident, State Of North Dakota

February 1, 2025

MEMORANDUM FOR NORTH DAKOTA SENATE JUDICIARY COMMITTEE

FROM DERRICK R. SHERWOOD

Subject: Testimony in Support of Senate Bill 2383

1. Madam Chair and Senators of the Judiciary Committee, my name is Derrick Sherwood, and I submit this testimony of my own free will, that it was not influenced by any person and everything that I am stating is true based upon my personal knowledge and beliefs **IN SUPPORT OF SB2383**.

2. I would like to discuss family law. I am here today in support of this bill as this is a much-needed change for the State of North Dakota. This bill is needed because our current laws force parents into a competition for custody of minor children by simply utilizing one word “best.” People may say that the courts of North Dakota cannot do this...but they can, and they do. For example, say we are here to determine who is the best senator and I am the only person who can decide who is best. Senator A may believe they are the best because they have vast experience in the legislature. Senator B may believe they are the best because they have new fresh ideas. Now prove to me who is the best. What happened here is we created an unnecessary competition. The fact is that while this hypothetical situation is not real, this is what happens in our family courts every day across the State of North Dakota. As Senators you all come into session on equal grounds simply by holding the title of Senator and being duly elected to your position, no voice is less powerful than the other and all votes are the same. In family court you are required to prove to a judge in a child custody case that you are better than the other parent. We need a standard in this state to place every individual, to include the children, on equal ground under the law. While the Constitution of the United States grants equal protection under the law, this standard is widely ignored in divorce cases simply because it is a civil not a criminal action. *Troxel v. Granville* 530 U.S. 57 (2000) and other United States Supreme Court decisions have made it clear that parenting is a fundamental right under the 14th Amendment—*i.e. to exercise care, custody and control* of their children (see also *Meyers v. Nebraska*, 262 U.S. 390 (1923)¹, *Stanley v. Illinois*, 405 U.S. 645 (1972)², *Washington v. Glucksburg* 521 U.S. 702 (1997)³, and *Santosky v.*

¹ *Meyer v. Nebraska*: The law was arbitrary and did not meet any state end.

² *Stanley v. Illinois*: fathers of children born out of wedlock had a fundamental right to their children

³ *Washington v. Glucksburg*: Established that the Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents to direct their children's education, care, and upbringing

*Kramer*⁴) and also the 1st Amendment “right to familiar association”—*i.e.* **private speech** (e.g. to do homework together, pray together and lead by an example on a regular basis). This also means that this right is further protected under Article I of the North Dakota Constitution. Now it begs the question: how is a parent able to be a parent when a court allows the children to move 1500 miles away from Parent A and only granting Parent A 15% of the year to have time with the children while Parent B being the custodial parent is granted 85% of the year and has the authority to determine when Parent A can exercise parenting time. With those numbers Parent A is nothing more than a visitor. This is exactly what happened in my divorce case, simply due to my job, that required me to move here, a District Judge determined there is no community support and therefore the children will be allowed to move to a place where they have never lived. SB 2383 corrects all these issues by establishing the rights of all parties involved (to include the children) and mandating that each parent is fit unless a parent has been deemed unfit (see *Troxel, id*). This determination of fitness and equal protection aligns North Dakota with current court guidance.

3. Additionally, this bill corrects vague language within the best interest factors. Specifically, this eliminates the “moral fitness clause,” commonly referred to as factor “f.” *State of North Dakota v. Holbach*, 2009 ND 37, ¶ 22-26, 763 N.W.2d 761 states, “*Vague laws may trap the innocent because they fail to provide adequate warning of what conduct is prohibited, and they may result in arbitrary and discriminatory application because a vague law delegates basic policy matters to those who apply the law allowing the law to be applied on an ad hoc and subjective basis*” (emphasis added). The vagueness of this factor is morality, what is defined as moral. As a Senator from this state said “it is not the job of the government to regulate morality” yet this regulation of morality is codified in our law. This codification allows a judge who may not agree with a person’s beliefs to be determined immoral and not be awarded custody of their children when that person’s morals and ethics have no effect on that parent’s ability to raise a child, simply because a judge has a different opinion.
4. Furthermore, this action reigns in the unchecked power of the courts that have been legislating from the bench. In 2021, the North Dakota Supreme Court explained the word “necessary” in *Slappy v. Slappy*, 2021 ND 186. **The court** (*emphasis added*) “expanded the requirement (for a modification of custody) to demonstrate the change in circumstances adversely affected the child’s best interest, that a change is required to include circumstances, where there has been a general decline in the condition of the child.” Therefore, **the court** (*emphasis added*) made it clear that simply improving your

⁴ *Santosky v. Kramer*- established that clear and convincing evidence is required to permanently terminate a parent's rights.

circumstances as a party is not sufficient to modify custody or parenting time. Neither will a general decline in the primary parent's circumstances. None of this is written into the law. By doing this the court has usurped the power of the legislative body. SB 2383 will ensure that the courts are bound to an equality standard not an equitable one. Equality and equitability are completely different things.

5. Also, if passed this bill will update our standards in North Dakota to a modern-day standard that takes into consideration the elevated divorce and children born out of wedlock statistics. While it is understood and agreed that the family unit is the cornerstone of our great country and state, we must face a fact that 50% of all marriages will end in divorce⁵ and most divorces occur within the first five (5) years and the fifteenth (15th) to twentieth (20th) years of marriage. According to these statistics sixty-five (65) percent of children are born within the first five (5) years of marriage. These statistics do not include forty (40) percent of children who are born out of wedlock and half of these occur within cohabitating.⁶ These dynamics show that most children are more than likely to be involved with a divorce type custody arrangement at some point in their life. By ensuring that parents are presumed fit unless deemed unfit we can place the children in a more dynamic home life situation where they can be raised by both parents equally under the law.
6. Lastly, this bill protects our military members across the state. The provisions listed in Section 5 number 3 allow a military member who is deployed to make up lost time especially if they are inherently unable to execute parenting time due to military service. We must consider that eighty (80) percent of all military marriages end in divorce with only .04% of the military members retaining primary custody.⁷ By guaranteeing equal division of the time or at minimum one hundred (100) days a year or approximately 30%, it will ensure proper parenting time is guaranteed for our service members unless they are deemed unfit.
7. In conclusion, for the above-listed reasons, now is the time to pass this bill. This will only make the State of North Dakota better by aligning us with current guidance, update us to modern day standards, and protect our military members. Not only will it make it better for parents but the future of the State of North Dakota which is the children.

⁵ Source: Center For Disease Control (CDC)/National Center for Health Statistics (NCHS) National Vital System

⁶ Source: www.childtrends.org- Among women, roughly 40% of first births occurred before marriage and one-half of all premarital first births occurred within cohabiting.

⁷ Source: University of Maryland School of Law: Approximately 142,000 of active duty, national guard, and reserve members have primary custody out of a total of approximately a total of 2.86 million members who currently serve.

8. I thank you all for reading this testimony and respectfully request that you vote a **DO PASS** recommendation for this bill.

Derrick R. Sherwood

DERRICK R. SHERWOOD

Citizen, State of North Dakota, United States



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February 2, 2025

The Honorable Diane Larson
State Capital Building
600 E. Boulevard Ave.
Bismarck, ND 58505

RE: Senate Bill 2383

Dear Senator Larson:

My name is Jason McLean. I am a family law attorney with Parvey, Larson, and McLean, PLLC, in West Fargo, North Dakota. I have practiced exclusively in the area of family law since becoming licensed in 2004. Prior to that time, I clerked for a family law attorney in Grand Forks. I have also practiced family law in Minnesota since 2003. I am a mediator in what I consider one of the most successful family law programs created, not only in our state, but perhaps in the whole of America: the Family Law Mediation Program. I chaired the Family Law Section of SBAND, co-chaired the SBAND Family Law Task Force, both of which explored these very issues. It is with this background that I appear today and provide my testimony, as a private citizen, in unequivocal opposition to Senate Bill 2383.

As I read through this Bill, I am drawn to the fact that its focus is on the parents and not the children that it claims to protect. Beginning with the "Presumption of Fitness Language" found at Section 3, this Bill takes what is in the children's best interests and sidelines it for a legal presumption. Senators, a presumption creates one thing and one thing only: litigation. That is because the nature of a legal presumption requires a court, a judge who knows these parties for a short period and sees them at the worst, to make a decision as to whether or not the needs and best interests of the children will even be considered by the court. That fact alone, that we make the needs of an innocent child subservient to a parent's wishes and desires, should be disqualifying. However, there are several more reasons to reject this bill.

Continuing in Section 3, the list of areas a court may look at to determine "fitness" will require evidentiary hearings, with clear and convincing evidence standards, to rebut these factors. For example, what is a "history of alienation" and how can there be such a thing when there is no order for a court to enforce (Section 3 (2)(c))? What constitutes an



“immediate family member interfering in a relationship” (Section 3 (2(b)))? If a grandparent wishes to see their grandchild overnight and the other parent feels slighted, will that be considered interference? The only way to answer these questions will be to ask an already overworked and overcrowded judiciary to do so.

As Chief Justice Jensen noted in his 2025 State of the Judiciary Message, our district courts handle approximately 160,000 new filings and 20,000 reopened cases each year—180,000 cases. While not all of the civil docket involves domestic law cases, close to majority of the civil filings in the past have been family law related. The continuing nature of child-related issues in family law also causes most of the reopened cases to fall within this area as well. Currently, our system is struggling to handle the volume of cases. For example, one of my clients was required to wait for nearly four months for an interim motion hearing in Stutsman County. Our Rules require a hearing to be held in 30 days, but there was no room on the docket. Now imagine that every single contested residential responsibility case needs to be heard by a judge to answer the questions I posed a few moments ago. The backlog for families—for children—in our state would be disastrous. That backlog means a need for more judges, more clerks, more staff, more everything just to handle the increases in our family law courts that would not exist otherwise.

Moreover, this Bill would essentially neuter one our State’s greatest success stories: the Family Law Mediation Program. I would encourage each of you to contact Cathy Ferderer’s office and look at the statistics of cases that avoid court because of this Program. I would also encourage you find someone in your district that has been through that Program before you consider this Bill. I would hazard a guess that you will find that the people that use that program, that approach it with an open mind, would not need this Bill, nor do the families in our State.

However, if there is a presumption of equal time until a court says otherwise, the Program loses its ability to help families. As a mediator, I cannot force anyone to make an agreement they do not want to make and I cannot advise them of a position to take. The end result is less attempts at compromise and more litigation for all of the families involved. That should not be our goal. Our goal in family law should be the opposite.

Which brings me to something else that should be clear in this Bill and should honestly raise some questions for you. I have just told you that this Bill will increase litigation and create the need for evidentiary hearings in nearly every case that comes along. That raises the logical question: why would a family law attorney oppose something that will make him more money? Senators, I’m not going to sit here and try to tell you that money isn’t important, it is; but it is also not the driving factor for most of us in this profession. If we wanted to make money there are far less stressful areas of law to pursue. That said, if you want to increase my billable hours, this Bill is the perfect vehicle for you to do so. Yet here I am telling you **not** to do so. No amount of money is worth the amount of harm this Bill will cause to families in our State.



Lastly, and perhaps most importantly, if you take nothing else away from my testimony as to why this Bill should receive a “Do Not Pass” recommendation, I want to draw your attention to the language related to domestic violence. Domestic violence is a significant problem throughout our state and our country. The majority of violent crimes, including homicides, can be traced to domestic violence. However, this bill, at Sections 3 (2) (d) and in the rewording of the current domestic violence best interest factor, seeks to limit what a court may consider when determining if a parent is “fit.” It seeks to make it harder for abuse victims to be heard and for courts to protect children in those circumstances. This Bill does not even allow a court to consider a validly entered protection order for domestic violence as evidence of that violence. These clauses make no sense and are designed to protect the abuser, not the child.

Senators, I could spend hours dissecting and parsing each and every problem with this Bill, as I have not even discussed the myriads of problems in the “abuse and neglect” section of Section 3 or the fact that this premise has been roundly rejected by the voters and this body for over 15 years. I understand we have limited time and I cannot do that with you today. I would invite you to reach out to me, and to other people who practice in this area of law, to those that serve as mediators in the Program, and to families where one parent has been the repeated victim of domestic violence. I would encourage you to listen to those perspectives, and not just to parents who think they have been wronged by the other parent or the system. Our system in North Dakota is not perfect, but it works more often than it fails. This bill is a looking for a “problem” to solve that simply does not exist in our State.

That said, if you are looking for a problem to address, perhaps the place to start addressing the number of family law cases that are left to languish because we do not have a dedicated family law court system in our State. North Dakota families, all of them, would be better served if the energies that came with this bill—and HB 1242—were channeled at the addressing problem of access, backlogs, and a need for family court system, not a presumption that does not treat families as the unique entities they are. That will be the way to help families. This Bill does not help families.

For these reasons, and the many more I do not have time to state here today, I respectfully submit that this Committee should vote Do Not Pass on SB 2383. I thank the Committee for its time and consideration and am happy to answer any questions you may have.

Sincerely,

Jason W. McLean

Dear Members of the Legislature,

My name is Craig Gaube, and I am the proud father of three wonderful children. I strongly support HB 1242 – Rebuttable Shared Parenting because children deserve meaningful relationships with both parents after divorce or separation.

During my custody case, my two mature children submitted affidavits expressing their desire for equal time with both parents. Their voices were ignored. The judge refused to speak with them or consider their wishes. My ex-wife and I were both fit, capable parents, yet the court granted her primary custody based on outdated and biased assumptions about parental roles. Because I was the financial provider rather than the one packing school lunches, I was deemed less essential—despite my deep involvement in my children's lives.

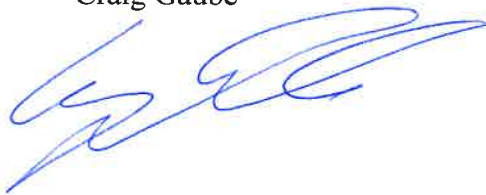
North Dakota's custody determination process is flawed. The 14 best-interest factors, meant to protect children, are often weaponized in court. In my case, my ex-wife made false allegations to gain an advantage. Despite two independent chemical dependency evaluations confirming I had no issue with alcohol, the court continued to treat me as a risk. The only professional who met with both parents and our children—a parenting investigator—testified that equal parenting was in their best interest. Yet, the judge dismissed this expert opinion, prioritized unsupported claims, and awarded primary custody to their mother.

The consequences have been devastating. My children have suffered unnecessary loss, and the signs of parental alienation are undeniable. The system is failing them.

HB 1242 ensures that equal parenting is the starting point—unless actual evidence proves otherwise—so no child needlessly loses a parent. This bill is not about parents; it is about protecting children from the harm caused by an outdated, adversarial system.

I urge you to support HB 1242 and put children first.

Best regards,
Craig Gaube



Madam Chair Larson and members of the Senate Judiciary Committee, my name is Jaci Hall and I live in Mandan ND. I am here as an individual and not as a lobbyist.

I am here to ask you not to pass SB2383.

In 2013, my ex-husband and I divorced. Our children were 2, 4 and 6 at the time. My ex-husband did not have a permanent place to live or, to be honest, the knowledge to care for them 50-50 at the time of our divorce.

Our decree stated that he had six months to find a place to live and be able to furnish his home to care for three young children before our parenting would change.

SB2383 would presume he is fit to care for our young children and allow him to receive 50/50 parenting right away. He was not ready.

Our marriage started out happily, but then we grew distant. With that came arguments and disagreements in front of our children, or at least with them knowing we were not getting along. There were never any domestic violence charges, but after our divorce, my father came and patched up a few walls and doors from my ex-husband's fists.

After our divorce was final, I was told by my daycare providers that they knew something was going on because my son had started to get aggressive with the other children – as a result to the unhappiness at home.

SB2383 takes the child's best interest out of the equation and puts the parent's request front and center. This is wrong. The child's best interest always must come first.

It also requires proof of abuse or other issues to remove the predetermined parenting time. This may cause more police activity – either accurate or false – to happen. Again, this is an issue.

Our decree also placed responsibilities on me for education, health and other matters. This was to ensure the children would live in the same home and the same school as they had prior to our divorce. I will tell you, my ex-husband and I do not agree on all major decisions – he lives in a different town. If my ex-husband wanted my child to stay in band and they did not, would he win?

If my daughter chooses to not play basketball, do our wishes supersede? If my ex-husband believes our son needs braces and I do not, does he get braces when he is with my ex-husband and then we take them off when he is with me? We are taking the decision away from the child.

Every divorce is different, every marriage is different. SB2383 says you need to prove with clear and convincing evidence that one parent is unfit. The process of divorce has also changed. Parenting and family counseling and free mediation are offered. This legislation will increase the cost of divorces because all these situations need to be either spelled out in the decree or worked out.

Let's keep the best interest of the child at the forefront of a divorce. It is not their fault their parents decided it was best for them, and you don't want to create animosity between one parent and the other. This puts the children in a situation they do not deserve to be in.

Please do not pass SB2383.

Jaclyn Hall

3812 Lakewood Dr

Mandan, ND 58554

2025 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee

Peace Garden Room, State Capitol

SB 2383
2/17/2025
10:19 AM

Relating to parental rights and responsibilities, equal residential responsibility, and the presumption of fitness AND relating to the definition of equal decision making responsibility and equal parenting time, the best interests of the child factors, and the residence of a child.

10:19 a.m. Chair Larson opened the hearing.

Members present:

Chair Larson, Vice Chairman Paulson, Senators: Castaneda, Cory, Luick, Myrdal, Braunberger.

Discussion Topics:

- Banking industry input

10:20 a.m. Committee discussion on upcoming schedule.

10:23 a.m. Chair Larson decided to wait before hearing Senator Cory's proposed amendments for Senate Bill 2383.

10:23 a.m. Senate Bill 2364 waiting on amendment from the banking industry.

10:23 a.m. Senator Paulson planned to speak with bill sponsor for Senate Bill 2321 to make adjustments.

10:25 a.m. Chair Larson closed the hearing.

Kendra McCann, Committee Clerk

2025 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee Peace Garden Room, State Capitol

SB 2383
2/17/2025

Relating to parental rights and responsibilities, equal residential responsibility, and the presumption of fitness AND relating to the definition of equal decision making responsibility and equal parenting time, the best interests of the child factors, and the residence of a child.

11:40 a.m. Chair Larson opened the hearing.

Members present:

Chair Larson, Vice Chairman Paulson, Senators: Castaneda, Cory, Luick, Myrdal, Braunberger.

Discussion Topics:

- Presumption of innocence
- Parental fitness determination
- Stakeholder collaboration

11:40 a.m. Senator Cory introduced the amendment and submitted testimony #37894.

11:49 a.m. Senator Cory moved amendment LC# 25.0774.02001.

11:49 a.m. Senator Luick seconded.

11:53 a.m. Voice Vote - Motion Passed.

11:53 a.m. Senator Luick moved a Do Pass as amended.

11:53 a.m. Senator Cory seconded the motion.

Senators	Vote
Senator Diane Larson	Y
Senator Bob Paulson	Y
Senator Ryan Braunberger	N
Senator Jose L. Castaneda	Y
Senator Claire Cory	Y
Senator Larry Luick	Y
Senator Janne Myrdal	N

Motion Passed 5-2-0.

11:53 a.m. Senator Cory will carry the bill.

Senate Judiciary Committee

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11:54 a.m. Chair Larson closed the hearing.

Kendra McCann, Committee Clerk

Sixty-ninth
Legislative Assembly
of North Dakota

PROPOSED AMENDMENTS TO

MB
2/17/25
1 of 9

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

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 those 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;~~

- 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
20 is 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 l.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.

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

14-09-07. Residence of child.

1. The primary residence of a child or the relocation of a child to another state may not be determined until the final judgment in an action. An interim order is not a final judgment.
2. A parent with primary residential responsibility for a child may not change the primary residence of the child to another state except upon order of the court or with the written consent of the other parent, if the other parent has been given parenting time by the decree.
- 2.3. A parent with equal residential responsibility for a child may not change the residence of the child ~~to another state~~ outside of a fifty mile radius except with the written consent of the other parent or order of the court allowing the move and awarding that parent primary residential responsibility.
- 3.4. A court order is not required if the other parent:
 - a. Has not, as established by clear and convincing evidence, exercised parenting time for a period of one year; or
 - b. Has moved to another state and is more than fifty miles [80.47 kilometers] from the residence of the parent with primary residential responsibility. If the other parent is an active member of the armed forces, this subdivision does not apply.

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

**REPORT OF STANDING COMMITTEE
SB 2383**

Judiciary Committee (Sen. Larson, Chairman) recommends **AMENDMENTS** ([25.0774.02001](#)) and when so amended, recommends **DO PASS** (5 YEAS, 2 NAYS, 0 ABSENT OR EXCUSED AND NOT VOTING). SB 2383 was placed on the Sixth order on the calendar. This bill does not affect workforce development.

25.0774.02001
Title.

Prepared by the Legislative Council
staff for Senator Cory
February 12, 2025

Sixty-ninth
Legislative Assembly
of North Dakota

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

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

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

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

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

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

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

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

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

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

- 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.i. 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 l.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.