

SENATE
STATE OF MINNESOTA
EIGHTY-NINTH SESSION

S.F. No. 1191

(SENATE AUTHORS: NEWMAN)

DATE	D-PG	OFFICIAL STATUS
02/26/2015	445	Introduction and first reading Referred to Judiciary
03/11/2015		Comm report: To pass as amended Second reading

1.1 A bill for an act
 1.2 relating to family law; custody and parenting time; modifying best interests
 1.3 standards; making technical changes; amending Minnesota Statutes 2014,
 1.4 sections 257.025; 518.167, subdivision 2; 518.17, subdivision 1; repealing
 1.5 Minnesota Statutes 2014, section 518.17, subdivisions 1a, 2.

1.6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.7 Section 1. Minnesota Statutes 2014, section 257.025, is amended to read:

1.8 **257.025 CUSTODY DISPUTES.**

1.9 (a) In any custody or parenting time proceeding ~~where two or more parties seek~~
 1.10 ~~custody of a child involving unmarried parents,~~ the court shall consider and evaluate all
 1.11 relevant factors ~~in determining in section 518.17, subdivision 1, to determine~~ the best
 1.12 interests of the child, ~~including the following factors:~~

1.13 ~~(1) the wishes of the party or parties as to custody;~~

1.14 ~~(2) the reasonable preference of the child, if the court deems the child to be of~~
 1.15 ~~sufficient age to express preference;~~

1.16 ~~(3) the child's primary caretaker;~~

1.17 ~~(4) the intimacy of the relationship between each party and the child;~~

1.18 ~~(5) the interaction and interrelationship of the child with a party or parties, siblings,~~
 1.19 ~~and any other person who may significantly affect the child's best interests;~~

1.20 ~~(6) the child's adjustment to home, school, and community;~~

1.21 ~~(7) the length of time the child has lived in a stable, satisfactory environment and~~
 1.22 ~~the desirability of maintaining continuity;~~

1.23 ~~(8) the permanency, as a family unit, of the existing or proposed custodial home;~~

2.1 ~~(9) the mental and physical health of all individuals involved; except that a~~
2.2 ~~disability, as defined in section 363A.03, of a proposed custodian or the child shall not be~~
2.3 ~~determinative of the custody of the child, unless the proposed custodial arrangement is not~~
2.4 ~~in the best interest of the child;~~

2.5 ~~(10) the capacity and disposition of the parties to give the child love, affection, and~~
2.6 ~~guidance, and to continue educating and raising the child in the child's culture, religion, or~~
2.7 ~~creed, if any;~~

2.8 ~~(11) the child's cultural background; and~~

2.9 ~~(12) the effect on the child of the actions of an abuser, if related to domestic abuse as~~
2.10 ~~defined in section 518B.01, that has occurred between the parents or the parties.~~

2.11 ~~The court may not use one factor to the exclusion of all others. The court must make~~
2.12 ~~detailed findings on each of the factors and explain how the factors led to its conclusions~~
2.13 ~~and to the determination of the best interests of the child.~~

2.14 ~~(b) The fact that the parents of the child are not or were never married to each other~~
2.15 ~~shall not be determinative of the custody of the child.~~

2.16 ~~(e) The court shall not consider conduct of a proposed custodian that does not affect~~
2.17 ~~the custodian's relationship to the child.~~

2.18 ~~(d) The court shall consider evidence of a violation of section 609.507 in determining~~
2.19 ~~the best interests of the child.~~

2.20 ~~(e) (c) A person may seek custody of a child by filing a petition or motion pursuant~~
2.21 ~~to section 518.156.~~

2.22 ~~(f) (d) Section 518.619 applies to this section.~~

2.23 Sec. 2. Minnesota Statutes 2014, section 518.167, subdivision 2, is amended to read:

2.24 Subd. 2. **Preparation.** (a) In preparing a report concerning a child, the investigator
2.25 may consult any person who may have information about the child and the potential
2.26 custodial arrangements except for persons involved in mediation efforts between the
2.27 parties. Mediation personnel may disclose to investigators and evaluators information
2.28 collected during mediation only if agreed to in writing by all parties. Upon order of the
2.29 court, the investigator may refer the child to professional personnel for diagnosis. The
2.30 investigator may consult with and obtain information from medical, psychiatric, school
2.31 personnel, or other expert persons who have served the child in the past after obtaining the
2.32 consent of the parents or the child's custodian or guardian.

2.33 (b) The report submitted by the investigator must:

2.34 (1) state the position of each party;

2.35 (2) consider and evaluate the factors in section 518.17, subdivision 1, and;

- 3.1 ~~(3) include a detailed analysis of all information considered for each factor. If joint~~
3.2 ~~custody is contemplated or sought, the report must consider and evaluate the factors in~~
3.3 ~~section 518.17, subdivision 2, state the position of each party and;~~
3.4 ~~(4) state the investigator's recommendation and the reason for the recommendation;~~
3.5 ~~and~~
3.6 ~~(5) reference established means for dispute resolution between the parties.~~

3.7 Sec. 3. Minnesota Statutes 2014, section 518.17, subdivision 1, is amended to read:

3.8 Subdivision 1. **The best interests of the child.** ~~(a) "The best interests of the child"~~
3.9 ~~means all relevant factors to be considered and evaluated by the court including:~~

3.10 ~~(1) the wishes of the child's parent or parents as to custody;~~

3.11 ~~(2) the reasonable preference of the child, if the court deems the child to be of~~
3.12 ~~sufficient age to express preference;~~

3.13 ~~(3) the child's primary caretaker;~~

3.14 ~~(4) the intimacy of the relationship between each parent and the child;~~

3.15 ~~(5) the interaction and interrelationship of the child with a parent or parents, siblings,~~
3.16 ~~and any other person who may significantly affect the child's best interests;~~

3.17 ~~(6) the child's adjustment to home, school, and community;~~

3.18 ~~(7) the length of time the child has lived in a stable, satisfactory environment and~~
3.19 ~~the desirability of maintaining continuity;~~

3.20 ~~(8) the permanence, as a family unit, of the existing or proposed custodial home;~~

3.21 ~~(9) the mental and physical health of all individuals involved; except that a~~
3.22 ~~disability, as defined in section 363A.03, of a proposed custodian or the child shall not be~~
3.23 ~~determinative of the custody of the child, unless the proposed custodial arrangement is not~~
3.24 ~~in the best interest of the child;~~

3.25 ~~(10) the capacity and disposition of the parties to give the child love, affection,~~
3.26 ~~and guidance, and to continue educating and raising the child in the child's culture and~~
3.27 ~~religion or creed, if any;~~

3.28 ~~(11) the child's cultural background;~~

3.29 ~~(12) the effect on the child of the actions of an abuser, if related to domestic abuse,~~
3.30 ~~as defined in section 518B.01, that has occurred between the parents or between a parent~~
3.31 ~~and another individual, whether or not the individual alleged to have committed domestic~~
3.32 ~~abuse is or ever was a family or household member of the parent; and~~

3.33 ~~(13) except in cases in which a finding of domestic abuse as defined in section~~
3.34 ~~518B.01 has been made, the disposition of each parent to encourage and permit frequent~~
3.35 ~~and continuing contact by the other parent with the child.~~

4.1 ~~The court may not use one factor to the exclusion of all others. The primary~~
4.2 ~~caretaker factor may not be used as a presumption in determining the best interests of the~~
4.3 ~~child. The court must make detailed findings on each of the factors and explain how the~~
4.4 ~~factors led to its conclusions and to the determination of the best interests of the child.~~

4.5 ~~(b) The court shall not consider conduct of a proposed custodian that does not affect~~
4.6 ~~the custodian's relationship to the child.~~

4.7 (a) In evaluating the best interests of the child for purposes of determining issues
4.8 of custody and parenting time, the court must consider and evaluate all relevant factors,
4.9 including:

4.10 (1) a child's physical, emotional, cultural, spiritual, and other needs, and the effect of
4.11 the proposed arrangements on the child's needs and development;

4.12 (2) any special medical, mental health, or educational needs that the child may have
4.13 that may require special parenting arrangements or access to recommended services;

4.14 (3) the reasonable preference of the child, if the court deems the child to be of
4.15 sufficient ability, age, and maturity to express an independent, reliable preference;

4.16 (4) whether domestic abuse, as defined in section 518B.01, has occurred in the
4.17 parents' or either parent's household or relationship; the nature and context of the domestic
4.18 abuse; and the implications of the domestic abuse for parenting and for the child's safety,
4.19 well-being, and developmental needs;

4.20 (5) any physical, mental, or chemical health issue of a parent that affects the child's
4.21 safety or developmental needs;

4.22 (6) the history and nature of each parent's participation in providing care for the child;

4.23 (7) the willingness and ability of each parent to provide ongoing care for the child;
4.24 to meet the child's ongoing developmental, emotional, spiritual, and cultural needs; and to
4.25 maintain consistency and follow through with parenting time;

4.26 (8) the effect on the child's well-being and development of changes to home, school,
4.27 and community;

4.28 (9) the effect of the proposed arrangements on the ongoing relationships between the
4.29 child and each parent, siblings, and other significant persons in the child's life;

4.30 (10) the benefit to the child in maximizing parenting time with both parents and the
4.31 detriment to the child in limiting parenting time with either parent;

4.32 (11) except in cases in which domestic abuse as described in clause (4) has occurred,
4.33 the disposition of each parent to support the child's relationship with the other parent
4.34 and to encourage and permit frequent and continuing contact between the child and the
4.35 other parent; and

5.1 (12) the willingness and ability of parents to cooperate in the rearing of their child;
5.2 to maximize sharing information and minimize exposure of the child to parental conflict;
5.3 and to utilize methods for resolving disputes regarding any major decision concerning
5.4 the life of the child.

5.5 (b) Clauses (1) to (9) govern the application of the best interests of the child factors
5.6 by the court:

5.7 (1) The court must make detailed findings on each of the factors in paragraph (a)
5.8 based on the evidence presented and explain how each factor led to its conclusions and to
5.9 the determination of custody and parenting time. The court may not use one factor to the
5.10 exclusion of all others, and the court shall consider that the factors may be interrelated.

5.11 (2) The court shall consider that it is in the best interests of the child to promote the
5.12 child's healthy growth and development through safe, stable, nurturing relationships
5.13 between a child and both parents.

5.14 (3) The court shall consider both parents as having the capacity to develop and
5.15 sustain nurturing relationships with their children unless there are substantial reasons
5.16 to believe otherwise. In assessing whether parents are capable of sustaining nurturing
5.17 relationships with their children, the court shall recognize that there are many ways that
5.18 parents can respond to a child's needs with sensitivity and provide the child love and
5.19 guidance, and these may differ between parents and among cultures.

5.20 (4) The court shall not consider conduct of a party that does not affect the party's
5.21 relationship with the child.

5.22 (5) Disability alone, as defined in section 363A.03, of a proposed custodian or the
5.23 child shall not be determinative of the custody of the child.

5.24 (6) The court shall consider evidence of a violation of section 609.507 in determining
5.25 the best interests of the child.

5.26 (7) There is no presumption for or against joint physical custody, except when
5.27 domestic abuse, as defined in section 518B.01, has occurred between the parents.

5.28 (8) Joint physical custody does not require an absolutely equal division of time.

5.29 (9) The court shall use a rebuttable presumption that upon request of either or both
5.30 parties, joint legal custody is in the best interests of the child. However, the court shall use
5.31 a rebuttable presumption that joint legal custody or joint physical custody is not in the
5.32 best interests of the child if domestic abuse, as defined in section 518B.01, has occurred
5.33 between the parents. Disagreement alone over whether to grant sole or joint custody
5.34 does not constitute an inability of parents to cooperate in the rearing of their children as
5.35 referenced in paragraph (a), clause (12).

6.1 Sec. 4. **REPEALER.**

6.2 Minnesota Statutes 2014, section 518.17, subdivisions 1a and 2, are repealed.

518.17 CUSTODY AND SUPPORT OF CHILDREN ON JUDGMENT.

Subd. 1a. **Evidence of false allegations of child abuse.** The court shall consider evidence of a violation of section 609.507 in determining the best interests of the child.

Subd. 2. **Factors when joint custody is sought.** (a) There is no presumption for or against joint physical custody, except when domestic abuse, as defined in section 518B.01, has occurred between the parents.

(b) In addition to the factors listed in subdivision 1, where either joint legal or joint physical custody is contemplated or sought, the court shall consider the following relevant factors:

(1) the ability of parents to cooperate in the rearing of their children;

(2) methods for resolving disputes regarding any major decision concerning the life of the child, and the parents' willingness to use those methods;

(3) whether it would be detrimental to the child if one parent were to have sole authority over the child's upbringing; and

(4) whether domestic abuse, as defined in section 518B.01, has occurred between the parents.

The court shall not use one of the factors to be considered to the exclusion of all of the other factors. The court shall use a rebuttable presumption that upon request of either or both parties, joint legal custody is in the best interests of the child. However, the court shall use a rebuttable presumption that joint legal or physical custody is not in the best interests of the child if domestic abuse, as defined in section 518B.01, has occurred between the parents. Disagreement alone over whether to grant sole or joint custody does not constitute an inability of parents to cooperate in the rearing of their children as referenced in paragraph (b), clause (1).

(c) If the parties disagree as to whether the court should award joint or sole legal or physical custody, the court shall make detailed factual findings on each of the factors in this subdivision and explain how its findings on the factors led to its determination as to whether joint custody or sole custody would be in the best interests of the child.