

First Regular Session
Seventieth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 15-0367.01 Brita Darling x2241

SENATE BILL 15-129

SENATE SPONSORSHIP

Lundberg,

HOUSE SPONSORSHIP

(None),

Senate Committees
Judiciary

House Committees

A BILL FOR AN ACT

101 CONCERNING PRESERVING THE PARENT-CHILD RELATIONSHIP IN
102 DOMESTIC RELATIONS ACTIONS.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

The bill amends provisions relating to best interests of a child in domestic relations actions and certain other actions in the juvenile code. With respect to such actions, the bill:

- ! Amends the legislative declaration to emphasize the fundamental liberty interest of both parents and children in maintaining the parent-child relationship;

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

- ! With respect to temporary orders hearings, if there has been a temporary or permanent protection order entered against one or both parties either prior to or in conjunction with the domestic relations action, requires the court to grant an expedited hearing at the request of either party for purposes of modifying provisions in the protection order relating to parenting time, communication, and access to a child. The court shall order substantially equal parenting time and access to the child unless it finds that such orders are clearly not in the child's best interest. The court shall also enter any orders necessary for the safety of the protected party relating to the restrained party's parenting time with the child.
- ! Changes the nature of an investigation by a court-appointed child and family investigator (CFI) from evaluation and recommendations to investigation and fact-finding. CFIs will conduct an objective investigation of issues as specifically directed by the court and will provide written factual findings to the court that are supported by credible evidence. A CFI's report will not make recommendations regarding the allocation of parental responsibilities but will provide the court with the factual findings the court deems necessary to make such determinations.
- ! Amends language in the legislative declaration regarding the allocation of parental rights and responsibilities relating to the best interests of the child. Also, the bill requires the court to allocate substantially equal parenting time unless the court finds that doing so would endanger a child's physical health or significantly impair the child's emotional development. In addition, the court shall award mutual decision-making responsibilities with respect to the child unless the court finds that such an order is clearly not in the child's best interest.
- ! For purposes of temporary orders in a domestic relations action, requires the court to award substantially equal parenting time to the parties unless the court finds that doing so would endanger a child's physical health or significantly impair the child's emotional development. In addition, the court shall order mutual decision-making responsibilities unless mutual decision-making is clearly not in the child's best interest.
- ! Changes the nature of an evaluation by a court-appointed parental responsibilities evaluator to an investigation by a mental health professional. The mental health investigation is limited to mental health diagnoses, assessments of

relevant addictions, or other mental health-related issues that are relevant to the court's allocation of parental responsibilities for the child. The investigator's report shall contain findings of fact but shall not contain conclusions or recommendations relating to the allocation of parental rights and responsibilities.

- ! Clarifies that the 2-year restriction on filing motions that request a substantial change in parenting time and that also change the party with whom the child resides the majority of the time do not apply to moderate changes to parenting time when the existing parenting time order awarded substantially equal parenting time to the parties; and
- ! Amends the provisions relating to modification of decision-making responsibility for a child from requiring the court to retain the prior decision-maker unless certain criteria are met to permitting the court to change the decision-maker after considering certain criteria, including whether an award of mutual decision-making responsibilities is now in the child's best interest.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, **amend** 14-10-102 (2)
3 as follows:

4 **14-10-102. Purposes - rules of construction.** (2) Its underlying
5 purposes are:

6 (a) To promote the amicable settlement of disputes that have
7 arisen between parties to a marriage;

8 (b) To mitigate the potential harm to the spouses and their
9 children caused by the process of legal dissolution of marriage; ~~and~~

10 (c) TO PROTECT THE FUNDAMENTAL LIBERTY INTEREST OF BOTH
11 PARENTS AND CHILD TO THE PARENT-CHILD RELATIONSHIP; AND

12 ~~(c)~~ (d) To make the law of legal dissolution of marriage more
13 effective for dealing with the realities of matrimonial experience by
14 making an irretrievable breakdown of the marriage relationship the sole

1 basis for its dissolution.

2 **SECTION 2.** In Colorado Revised Statutes, **amend** 14-10-104.5
3 as follows:

4 **14-10-104.5. Legislative declaration.** The general assembly
5 recognizes that it is ~~in the best interests of the parties to a marriage in~~
6 ~~which a dissolution has been granted and in which there are children of~~
7 ~~the marriage for the parties to be able to resolve disputes that arise~~
8 ~~subsequent to the dissolution in an amicable and fair manner. The general~~
9 ~~assembly further recognizes that, in most cases, it is in the best interests~~
10 ~~of the children of the marriage to have a relationship with both parents~~
11 ~~and that, in most cases, it is the parents' right to have a relationship with~~
12 ~~their children. The general assembly emphasizes that one of the~~
13 ~~underlying purposes of this article is to mitigate the potential harm to the~~
14 ~~spouses and their children and the relationships between the parents and~~
15 ~~their children caused by the process of legal dissolution of marriage. The~~
16 ~~general assembly recognizes that when a marriage in which children are~~
17 ~~involved is dissolved both parties either agree to or are subject to orders~~
18 ~~which contain certain obligations and commitments. The general~~
19 ~~assembly declares that the honoring and enforcing of those obligations~~
20 ~~and commitments made by both parties is necessary to maintaining a~~
21 ~~relationship that is in the best interest of the children of the marriage. In~~
22 ~~recognition thereof the general assembly hereby declares that both parties~~
23 ~~should honor and fulfill all of the obligations and commitments made~~
24 ~~between the parties and ordered by the court~~ PROTECTING AND
25 PROMOTING THE PARENT-CHILD RELATIONSHIP OF BOTH PARENTS AND
26 CHILD IS OF PARAMOUNT IMPORTANCE. OUTCOMES FOR CHILDREN ARE
27 INHERENTLY BETTER WHEN A CHILD HAS UNFETTERED RELATIONSHIPS

1 WITH BOTH PARENTS. THE GENERAL ASSEMBLY AFFIRMS THAT PARENTS
2 HAVE A FUNDAMENTAL LIBERTY INTEREST IN THE CARE AND CONTROL OF
3 THEIR CHILDREN AS DEFINED IN THE UNITED STATES CONSTITUTION AND
4 REAFFIRMED BY THE UNITED STATES SUPREME COURT. THE GENERAL
5 ASSEMBLY RECOGNIZES THAT DISSOLUTION OF MARRIAGE CONFLICT AND
6 LITIGATION CAN BE MINIMIZED BY REQUIRING THE STATE TO
7 DEMONSTRATE A COMPELLING INTEREST AND ENDANGERMENT TO THE
8 CHILD BEFORE THE PARENT-CHILD RELATIONSHIP MAY BE INFRINGED UPON.
9 THE GENERAL ASSEMBLY FINDS THAT LITIGATION OF ISSUES RELATING TO
10 CHILDREN ARE PRIMARILY HARMFUL TO CHILDREN AND FAMILIES AND
11 SHOULD BE MINIMIZED. THE GENERAL ASSEMBLY FURTHER FINDS THAT
12 COURTS HEARING DOMESTIC RELATIONS MATTERS SHOULD ALIGN THEIR
13 PROCESSES, PROCEDURES, AND RULINGS TO BE CONSISTENT WITH THE
14 FUNDAMENTAL LIBERTY INTEREST OF THE PARENT-CHILD RELATIONSHIP.
15 THE GENERAL ASSEMBLY ENCOURAGES PARENTS TO RESOLVE
16 DISAGREEMENTS WITH THE BEST INTERESTS OF THEIR CHILDREN IN MIND
17 AND TO DO SO WITHOUT INVOLVING THE COURTS, IF POSSIBLE. THEREFORE,
18 THE GENERAL ASSEMBLY DECLARES THAT BY TREATING PARENTS
19 EQUALLY, REQUIRING EVIDENCE-BASED RULING AND ADHERENCE TO
20 STANDARDS OF DUE PROCESS, AND FOCUSING ON IMPROVING THE
21 OUTCOMES FOR CHILDREN, DISSOLUTION OF MARRIAGE LITIGATION WILL
22 DROP SIGNIFICANTLY.

23 **SECTION 3.** In Colorado Revised Statutes, 14-10-108, **add** (3.5)
24 as follows:

25 **14-10-108. Temporary orders in a dissolution case.** (3.5) IF A
26 TEMPORARY OR PERMANENT PROTECTION ORDER PURSUANT TO THE
27 PROVISIONS OF PART 1 OF ARTICLE 14 OF TITLE 13, C.R.S., HAS BEEN

1 ENTERED AGAINST ONE OR BOTH OF THE PARTIES TO THE ACTION FILED
2 PURSUANT TO THIS ARTICLE, EITHER PRIOR TO OR IN CONJUNCTION WITH
3 THE FILING OF THE ACTION UNDER THIS ARTICLE, EITHER PARTY MAY
4 REQUEST THAT THE COURT MODIFY THE PROVISIONS OF THE ORDER
5 CONSISTENT WITH THE PROVISIONS OF SECTION 14-10-124. UNLESS THE
6 COURT FINDS, AFTER A HEARING, THAT SUCH ORDERS WOULD ENDANGER
7 THE CHILD'S PHYSICAL HEALTH OR SIGNIFICANTLY IMPAIR THE CHILD'S
8 EMOTIONAL DEVELOPMENT, THE COURT SHALL ORDER SUBSTANTIALLY
9 EQUAL PARENTING TIME WITH ANY CHILD OVER WHOM THE COURT HAS
10 JURISDICTION AND ALLOW FOR NORMAL COMMUNICATIONS WITH THE
11 CHILD, ACCESS TO THE CHILD'S SCHOOL AND EXTRACURRICULAR
12 ACTIVITIES, AND ANY OTHER ORDERS RELATING TO THE RESTRAINED
13 PARTY'S RELATIONSHIP WITH THE CHILD. THE COURT SHALL MAKE ANY
14 ORDERS NECESSARY TO PRESERVE THE SAFETY OF THE PROTECTED PARTY
15 WHILE FACILITATING THE RESTRAINED PARTY'S PARENTING TIME AND
16 CONTACT WITH THE CHILD. IN ADDITION, IF THE SAFETY OF THE
17 PROTECTED PARTY WILL BE PRESERVED, THE COURT SHALL MODIFY A NO
18 CONTACT ORDER TO ALLOW EMAIL AND TEXT MESSAGING BETWEEN THE
19 PARTIES. UPON THE REQUEST OF EITHER PARTY, THE COURT SHALL ORDER
20 AN EXPEDITED HEARING CONCERNING MODIFICATION OF PROVISIONS OF A
21 TEMPORARY OR PERMANENT PROTECTION ORDER RELATING TO THE
22 ALLOCATION OF PARENTAL RIGHTS AND RESPONSIBILITIES AND
23 COMMUNICATION BETWEEN THE PARTIES.

24 **SECTION 4.** In Colorado Revised Statutes, 14-10-116.5, **amend**
25 (2) as follows:

26 **14-10-116.5. Appointment in domestic relations cases - child**
27 **and family investigator - disclosure - background check.** (2) A child

1 and family investigator appointed by the court may be an attorney, a
2 mental health professional, or any other individual with appropriate
3 training, qualifications, and an independent perspective acceptable to the
4 court. The child and family investigator for the court shall ~~investigate~~
5 ~~report, and make recommendations~~ CONDUCT AN OBJECTIVE
6 INVESTIGATION OF SPECIFIC MATTERS OR ISSUES OF MERIT as ~~specifically~~
7 directed by the court in the appointment order ~~taking into consideration~~
8 ~~the relevant factors for determining the best interests of the child as~~
9 ~~specified in section 14-10-124. The child and family investigator shall~~
10 ~~make independent and informed recommendations to the court, in the~~
11 ~~form of a written report filed with the court, unless otherwise ordered by~~
12 ~~the court. While the child and family investigator shall consider the~~
13 ~~wishes of the child, the child and family investigator need not adopt such~~
14 ~~wishes in making his or her recommendations to the court unless they~~
15 ~~serve the child's interests as described in section 14-10-124. The child's~~
16 ~~best wishes, if expressed, shall be disclosed in the child and family~~
17 ~~investigator's written report~~ AND SHALL PROVIDE WRITTEN FACTUAL
18 FINDINGS TO THE COURT THAT ARE SUPPORTED BY CREDIBLE EVIDENCE
19 CONCERNING THE MATTERS OR ISSUES INVESTIGATED. DUE TO THE
20 INVESTIGATIVE NATURE OF THE APPOINTMENT, THE CHILD AND FAMILY
21 INVESTIGATOR'S REPORT SHALL NOT INCLUDE CONCLUSIONS OR
22 RECOMMENDATIONS TO THE COURT CONCERNING THE ALLOCATION OF
23 PARENTAL RESPONSIBILITIES. The child and family investigator SHALL
24 KEEP DIGITAL RECORDINGS OF ALL CONVERSATIONS AND INTERVIEWS
25 RELEVANT TO THE INVESTIGATION, AND may be called to testify as a
26 witness regarding his or her ~~recommendations~~ FACTUAL FINDINGS. The
27 child and family investigator shall comply with applicable provisions set

1 forth in chief justice directives, and any other practice or ethical standards
2 established by rule, statute, or licensing board that regulates the child and
3 family investigator.

4 **SECTION 5.** In Colorado Revised Statutes, **amend** 14-10-123.4
5 (1) (a) as follows:

6 **14-10-123.4. Rights of children in matters relating to parental**
7 **responsibilities.** (1) The general assembly hereby declares that children
8 have certain rights in the determination of matters relating to parental
9 responsibilities, including:

10 (a) The right to have such determinations based upon the best
11 interests of the child IN A MANNER THAT PROTECTS THE FUNDAMENTAL
12 LIBERTY INTERESTS OF BOTH PARENTS AND CHILD TO THE PARENT-CHILD
13 RELATIONSHIP;

14 **SECTION 6.** In Colorado Revised Statutes, **amend** 14-10-124
15 (1), (1.5) (a) introductory portion, (1.5) (b) introductory portion, and
16 (1.7); and **repeal** (1.5) (a) (VII) as follows:

17 **14-10-124. Best interests of child. (1) Legislative declaration.**
18 ~~While co-parenting is not appropriate in all circumstances following~~
19 ~~dissolution of marriage or legal separation, the general assembly finds and~~
20 ~~declares that, in most circumstances, it is in the best interest of all parties~~
21 ~~to encourage frequent and continuing contact between each parent and the~~
22 ~~minor children of the marriage after the parents have separated or~~
23 ~~dissolved their marriage. In order to effectuate this goal when~~
24 ~~appropriate, the general assembly urges parents to share the rights and~~
25 ~~responsibilities of child-rearing and to encourage the love, affection, and~~
26 ~~contact between the children and the parents~~ THE GENERAL ASSEMBLY
27 FINDS AND DECLARES THAT OUTCOMES FOR CHILDREN FOLLOWING

1 DISSOLUTION OF MARRIAGE OR LEGAL SEPARATION ARE SIGNIFICANTLY
2 BETTER WHEN A CHILD'S RELATIONSHIP WITH BOTH PARENTS CAN DEVELOP
3 AND GROW UNHINDERED. RESEARCH DEMONSTRATING THAT CHILDREN
4 NEED, WANT, AND LOVE BOTH PARENTS OVERWHELMINGLY SUPPORTS THE
5 CONCLUSION THAT THE INTERESTS OF CHILDREN ARE BEST SERVED BY
6 SPENDING SUBSTANTIALLY EQUAL TIME WITH EACH PARENT. TREATING
7 PARENTS EQUALLY IN THE ALLOCATION OF PARENTAL RIGHTS AND
8 RESPONSIBILITIES IS OF PARAMOUNT IMPORTANCE TO REDUCING
9 DISSOLUTION OF MARRIAGE CONFLICT AND AVOIDING HARMFUL
10 LITIGATION. PARENTS HAVE A FUNDAMENTAL LIBERTY INTEREST IN
11 MAINTAINING THE PARENT-CHILD RELATIONSHIP, AND COURTS SHOULD
12 REQUIRE COMPELLING EVIDENCE BEFORE DIVERGING FROM A
13 SUBSTANTIALLY EQUAL ALLOCATION OF PARENTAL RIGHTS AND
14 RESPONSIBILITIES.

15 (1.5) **Allocation of parental responsibilities.** The court shall
16 determine the allocation of parental responsibilities, including parenting
17 time and decision-making responsibilities, in accordance with the best
18 interests of the child giving paramount consideration to the child's safety
19 and the physical, mental, and emotional conditions and needs of the child
20 as follows:

21 (a) **Determination of parenting time.** The court, upon the motion
22 of either party or upon its own motion, may make provisions for parenting
23 time that the court finds are in the child's best interests. THE COURT SHALL
24 ENTER AN ORDER FOR PARENTING TIME THAT AWARDS SUBSTANTIALLY
25 EQUAL PARENTING TIME TO EACH PARTY unless the court finds, after a
26 hearing, that SUBSTANTIALLY EQUAL parenting time by WITH ONE OF the
27 party PARTIES would endanger the child's physical health or significantly

1 impair the child's emotional development. ~~In addition to a finding~~ IF THE
2 COURT FINDS, AFTER A HEARING, that parenting time would endanger the
3 child's physical health or significantly impair the child's emotional
4 development, in any order imposing or continuing a parenting time
5 restriction, the court shall enumerate the specific factual findings
6 supporting the restriction and may enumerate the conditions that the
7 restricted party could fulfill in order to seek modification in the parenting
8 plan. When a claim of child abuse or neglect, domestic violence, or
9 sexual assault where there is also a claim that the child was conceived as
10 a result of the sexual assault has been made to the court, or the court has
11 reason to believe that a party has committed child abuse or neglect,
12 domestic violence, or sexual assault where there is also a claim that the
13 child was conceived as a result of the sexual assault, prior to determining
14 parenting time, the court shall follow the provisions of subsection (4) of
15 this section. In determining the best interests of the child for purposes of
16 parenting time, the court shall consider ~~all relevant factors, including~~
17 THAT PROTECTING AND FOSTERING THE PARENT-CHILD RELATIONSHIP IS OF
18 PARAMOUNT IMPORTANCE TO ACHIEVING THE BEST OUTCOMES FOR THE
19 CHILD, AND THE IMPORTANCE OF THE PARENT-CHILD RELATIONSHIP
20 OUTWEIGHS MOST OTHER CONSIDERATIONS, INCLUDING THE SUBJECTIVE
21 VIEW OF A PARENT. IN CIRCUMSTANCES WHERE SUBSTANTIALLY EQUAL
22 PARENTING TIME IS NOT IN THE CHILD'S BEST INTERESTS, THE COURT SHALL
23 CONSIDER ALL RELEVANT FACTORS, INCLUDING:

24 (VII) ~~Whether the past pattern of involvement of the parties with~~
25 ~~the child reflects a system of values, time commitment, and mutual~~
26 ~~support;~~

27 (b) **Allocation of decision-making responsibility.** The court,

1 upon the motion of either party or its own motion, shall allocate the
2 decision-making responsibilities between the parties based upon the best
3 interests of the child, RECOGNIZING THAT, IN MOST CASES, MUTUAL
4 DECISION-MAKING RESPONSIBILITY RESULTS IN THE BEST OUTCOMES FOR
5 THE CHILD, AND SHALL ORDER MUTUAL DECISION-MAKING RESPONSIBILITY
6 UNLESS CREDIBLE EVIDENCE SUPPORTS THE COURT'S FINDING THAT
7 MUTUAL DECISION-MAKING RESPONSIBILITY WITH RESPECT TO ONE OR
8 MORE ISSUES IS CLEARLY NOT IN THE CHILD'S BEST INTEREST. In
9 determining decision-making responsibility, the court may allocate the
10 decision-making responsibility with respect to each issue affecting the
11 child mutually between both parties or individually to one or the other
12 party or any combination thereof. When a claim of child abuse or neglect
13 or domestic violence has been made to the court, or the court has reason
14 to believe that a party has committed child abuse or neglect, domestic
15 violence, or sexual assault where there is also a claim that the child in
16 question was conceived as a result of the sexual assault, prior to
17 allocating decision-making responsibility, the court shall follow the
18 provisions of subsection (4) of this section. In determining the best
19 interests of the child for purposes of allocating decision-making
20 responsibilities, the court shall consider, in addition to the factors set forth
21 in paragraph (a) of this subsection (1.5), all relevant factors including:

22 (1.7) Pursuant to section 14-10-123.4, children have the right to
23 have the determination of matters relating to parental responsibilities
24 based upon the best interests of the child. In contested hearings on final
25 orders regarding the allocation of parental responsibilities, the court shall
26 make findings on the record concerning the factors the court considered
27 AND THE SPECIFIC EVIDENCE SUPPORTING THOSE FACTORS and the reasons

1 why the allocation of parental responsibilities is in the best interests of the
2 child.

3 **SECTION 7.** In Colorado Revised Statutes, **amend** 14-10-125 (1)
4 as follows:

5 **14-10-125. Temporary orders.** (1) A party to a proceeding
6 concerning the allocation of parental responsibilities may move for a
7 temporary order. The court may allocate temporary parental
8 responsibilities, including temporary parenting time and temporary
9 decision-making responsibility, after a hearing. THE COURT SHALL ENTER
10 AN ORDER FOR SUBSTANTIALLY EQUAL PARENTING TIME UNLESS THE
11 COURT MAKES FINDINGS, SUPPORTED BY CREDIBLE EVIDENCE, THAT SUCH
12 ORDER WOULD ENDANGER THE CHILD'S PHYSICAL HEALTH OR
13 SIGNIFICANTLY IMPAIR THE CHILD'S EMOTIONAL DEVELOPMENT. THE
14 COURT SHALL ALSO ORDER MUTUAL DECISION-MAKING RESPONSIBILITIES
15 FOR THE CHILD UNLESS CREDIBLE EVIDENCE SUPPORTS THE COURT'S
16 FINDING THAT MUTUAL DECISION-MAKING RESPONSIBILITY WITH RESPECT
17 TO ONE OR MORE ISSUES IS CLEARLY NOT IN THE CHILD'S BEST INTEREST.

18 **SECTION 8.** In Colorado Revised Statutes, 14-10-126, **amend**
19 (1) as follows:

20 **14-10-126. Interviews.** (1) The court may interview the child in
21 chambers to ascertain the child's wishes as to the allocation of parental
22 responsibilities. The court may permit counsel to be present at the
23 interview. The court shall cause ~~a record~~ AN AUDIO RECORDING of the
24 interview to be made, and it shall be made part of the record in the case.

25 **SECTION 9.** In Colorado Revised Statutes, **amend** 14-10-127 as
26 follows:

27 **14-10-127. Investigation by mental health professional -**

1 **findings - disclosure.** (1) (a) (I) In all proceedings concerning the
2 allocation of parental responsibilities with respect to a child, the court
3 may, upon motion of either party or upon its own motion, order any
4 county or district social services department or a licensed mental health
5 professional qualified pursuant to subsection (4) of this section to perform
6 an ~~evaluation~~ INVESTIGATION and file a written ~~report~~ FINDINGS OF FACT
7 concerning ~~the disputed~~ MENTAL HEALTH DIAGNOSES, ASSESSMENTS OF
8 RELEVANT ADDICTIONS, OR OTHER MENTAL HEALTH-RELATED issues
9 ~~relating~~ THAT ARE RELEVANT to the allocation of parental responsibilities
10 for the child, unless such motion by either party is made for the purpose
11 of delaying the proceedings. THE INVESTIGATOR'S WRITTEN FINDINGS OF
12 FACT MUST NOT CONTAIN CONCLUSIONS OR RECOMMENDATIONS THAT ARE
13 PROPERLY MADE BY THE COURT, INCLUDING CONCLUSIONS OR
14 RECOMMENDATIONS RELATING TO THE ALLOCATION OF PARENTAL RIGHTS
15 AND RESPONSIBILITIES BETWEEN THE PARTIES. Any court or social
16 services department personnel appointed by the court to do such
17 evaluation shall be qualified pursuant to subsection (4) of this section.
18 ~~When a mental health professional performs the evaluation,~~ The court
19 shall appoint or approve the selection of the mental health professional.
20 Within seven days after the appointment, the ~~evaluator~~ INVESTIGATOR
21 shall comply with the disclosure provisions of subsection (1.2) of this
22 section. The court shall, at the time of the appointment of the ~~evaluator~~
23 INVESTIGATOR, order one or more of the parties to deposit a reasonable
24 sum with the court to pay the cost of the ~~evaluation~~ INVESTIGATION. The
25 court may order the reasonable charge for such ~~evaluation~~ INVESTIGATION
26 and report to be assessed as costs between the parties at the time the
27 ~~evaluation~~ INVESTIGATION is completed.

1 (I.3) In determining whether to order an ~~evaluation~~
2 INVESTIGATION pursuant to this section, in addition to any other
3 considerations the court deems relevant, the court shall consider:

4 (A) Whether an investigation by a child and family investigator
5 pursuant to section 14-10-116.5 would be sufficient or appropriate given
6 the scope or nature of the disputed issues; ~~relating to the allocation of~~
7 ~~parental responsibilities for the child;~~

8 (B) Whether an ~~evaluation~~ INVESTIGATION pursuant to this section
9 is necessary to assist the court in determining RELEVANT MENTAL HEALTH
10 ISSUES RELATING TO the best interests of the child; and

11 (C) Whether involving the child in an ~~evaluation~~ INVESTIGATION
12 pursuant to this section is in the best interests of the child.

13 (I.5) A party may request a supplemental ~~evaluation~~
14 INVESTIGATION to the ~~evaluation~~ INVESTIGATION ordered pursuant to
15 subparagraph (I) of this paragraph (a). The court shall appoint another
16 mental health professional to perform the supplemental ~~evaluation~~
17 INVESTIGATION at the initial expense of the moving party. The person
18 appointed to perform the supplemental ~~evaluation~~ INVESTIGATION shall
19 comply with the disclosure provisions of subsection (1.2) of this section.
20 The court shall not order a supplemental ~~evaluation~~ INVESTIGATION if it
21 determines that any of the following applies, based on motion and
22 supporting affidavits:

23 (A) Such motion is interposed for purposes of delay;

24 (B) A party objects, and the party who objects or the child has a
25 physical or mental condition that would make it harmful for such party or
26 the child to participate in ~~the~~ A supplemental ~~evaluation~~ MENTAL HEALTH
27 INVESTIGATION;

1 (C) The purpose of such motion is to harass or oppress the other
2 party;

3 (D) The moving party has failed or refused to cooperate with the
4 first ~~evaluation~~ INVESTIGATION;

5 (E) The weight of the evidence other than the ~~evaluation~~
6 ~~concerning the allocation of parental responsibilities or parenting time~~
7 INVESTIGATION by the mental health professional demonstrates that a
8 second ~~evaluation~~ INVESTIGATION would not be of benefit to the court; ~~in~~
9 ~~determining the allocation of parental responsibilities and parenting time;~~
10 or

11 (F) In addition to the ~~evaluation~~ INVESTIGATION ordered pursuant
12 to subparagraph (I) of this paragraph (a), there has been an investigation
13 and report prepared by a child and family investigator pursuant to section
14 14-10-116.5, and the court finds that a supplemental ~~evaluation~~
15 ~~concerning parental responsibilities~~ MENTAL HEALTH EVALUATION will
16 not serve the best interests of the child.

17 (II) Each party and the child shall cooperate in the supplemental
18 ~~evaluation~~ INVESTIGATION. If the court finds that the supplemental
19 ~~evaluation~~ INVESTIGATION was necessary and materially assisted the
20 court, the court may order the costs of such supplemental ~~evaluation~~
21 INVESTIGATION to be assessed as costs between the parties. Except as
22 otherwise provided in this section, ~~such report shall be considered~~ THE
23 INVESTIGATOR'S WRITTEN FINDINGS OF FACT ARE confidential and shall
24 not be available for public inspection unless by order of court. The cost
25 of each probation department or department of human services ~~evaluation~~
26 INVESTIGATION shall be based on an ability to pay and shall be assessed
27 as part of the costs of the action or proceeding, and, upon receipt of such

1 sum by the clerk of court, it shall be transmitted to the department or
2 agency performing the ~~evaluation~~ INVESTIGATION.

3 (b) The person ~~signing a report or evaluation~~ SUBMITTING THE
4 WRITTEN FINDINGS OF FACT and supervising its preparation shall be a
5 licensed mental health professional. The mental health professional may
6 have associates or persons working under him or her who are unlicensed.

7 (1.2) (a) Within seven days after his or her appointment, the
8 ~~evaluator~~ INVESTIGATOR shall disclose to each party, attorneys of record,
9 and the court any familial, financial, or social relationship that the
10 ~~evaluator~~ INVESTIGATOR has or has had with the child, either party, the
11 attorneys of record, or the judicial officer and, if a relationship exists, the
12 nature of the relationship.

13 (b) Based on the disclosure required pursuant to paragraph (a) of
14 this subsection (1.2), the court may, in its discretion, terminate the
15 appointment and appoint a different ~~evaluator~~ INVESTIGATOR in the
16 proceedings. A party has seven days from the date of the disclosure to
17 object to the appointment based upon information contained in the
18 disclosure. If a party objects to the appointment, the court shall appoint
19 a different person or confirm the appointment within seven days after the
20 date of the party's objection. If no party timely objects to the appointment,
21 then the appointment is deemed confirmed.

22 (2) In preparing ~~the report~~ WRITTEN FINDINGS OF FACT concerning
23 a child, the ~~evaluator~~ INVESTIGATOR may consult any person who may
24 have RELEVANT information about the child. ~~and the child's potential~~
25 ~~parenting arrangements.~~ Upon order of the court, the ~~evaluator~~
26 INVESTIGATOR may refer the child to other professional personnel for
27 diagnosis. The ~~evaluator~~ INVESTIGATOR may consult with and obtain

1 information from medical, mental health, educational, or other expert
2 persons who have served the child in the past without obtaining the
3 consent of the parent or the person allocated parental responsibilities for
4 the child; but the child's consent must be obtained if the child has reached
5 the age of fifteen years unless the court finds that the child lacks mental
6 capacity to consent. If the requirements of subsections (3) to (7) of this
7 section are fulfilled, the ~~evaluator's~~ INVESTIGATOR'S report may be
8 received in evidence at the hearing.

9 (3) The ~~evaluator~~ INVESTIGATOR shall mail the ~~report~~ WRITTEN
10 FINDINGS OF FACT to the court and to counsel and to any party not
11 represented by counsel at least twenty-one days prior to the hearing. The
12 ~~evaluator~~ INVESTIGATOR shall make available to counsel and to any party
13 not represented by counsel his or her file of underlying data and reports,
14 complete texts of diagnostic reports made to the ~~evaluator~~ INVESTIGATOR
15 pursuant to the provisions of subsections (2), (5), and (6) of this section,
16 and the names and addresses of all persons whom the ~~evaluator~~
17 INVESTIGATOR has consulted. Any party to the proceeding may call the
18 ~~evaluator~~ INVESTIGATOR and any person with whom the ~~evaluator~~
19 INVESTIGATOR has consulted for cross-examination. No party may waive
20 his or her right of cross-examination prior to the hearing.

21 (4) A person shall not be allowed to testify regarding a ~~parental~~
22 ~~responsibilities or parenting time evaluation~~ MENTAL HEALTH
23 INVESTIGATION that the person has performed pursuant to this section
24 unless the court finds that the person is qualified as competent, by
25 training and experience, in the areas of:

26 (a) The effects of divorce and remarriage on children, adults, and
27 families;

- 1 (b) ~~Appropriate parenting techniques;~~
- 2 (c) Child development, including cognitive, personality,
- 3 emotional, and psychological development;
- 4 (d) Child and adult psychopathology;
- 5 (e) Applicable clinical assessment techniques; and
- 6 (f) Applicable legal and ethical requirements of ~~parental~~
- 7 ~~responsibilities evaluation~~ A MENTAL HEALTH INVESTIGATION.

8 (5) If ~~evaluation~~ INVESTIGATION is indicated in an area which is
9 beyond the training or experience of the ~~evaluator~~ INVESTIGATOR, the
10 ~~evaluator~~ INVESTIGATOR shall consult with a mental health professional
11 qualified by training or experience in that area. Such areas may include,
12 but are not limited to, domestic violence, child abuse, alcohol or
13 substance abuse, or psychological testing.

14 (6) (a) ~~A mental health professional may make specific~~
15 ~~recommendations when the mental health professional has interviewed~~
16 ~~and assessed all parties to the dispute, assessed the quality of the~~
17 ~~relationship, or the potential for establishing a quality relationship,~~
18 ~~between the child and each of the parties, and had access to pertinent~~
19 ~~information from outside sources.~~

20 (b) ~~A mental health professional may make recommendations~~
21 ~~even though all parties and the child have not been evaluated by the same~~
22 ~~mental health professional in the following circumstances if the mental~~
23 ~~health professional states with particularity in his or her opinion the~~
24 ~~limitations of his or her findings and recommendations:~~

25 (I) ~~Any of the parties reside outside Colorado and it would not be~~
26 ~~feasible for all parties and the child to be evaluated by the same mental~~
27 ~~health professional; or~~

1 ~~(H) One party refuses or is unable to cooperate with the~~
2 ~~court-ordered evaluation; or~~

3 ~~(HH) The mental health professional is a member of a team of~~
4 ~~professionals that performed the evaluation and is presenting~~
5 ~~recommendations of the team that has interviewed and assessed all parties~~
6 ~~to the dispute.~~

7 (7) (a) ~~A Written report of the evaluation shall~~ FINDINGS OF FACT
8 MUST be provided to the court and to the parties pursuant to subsection
9 (3) of this section.

10 (b) ~~The report of the evaluation shall~~ WRITTEN FINDINGS OF FACT
11 MUST include, but need not be limited to, the following ADDITIONAL
12 information:

13 (I) A description of the procedures employed during the
14 ~~evaluation~~ INVESTIGATION;

15 (II) A report of the data collected; AND

16 ~~(HH) A conclusion that explains how the resulting~~
17 ~~recommendations were reached from the data collected, with specific~~
18 ~~reference to criteria listed in section 14-10-124 (1.5), and, if applicable,~~
19 ~~to the criteria listed in section 14-10-131, and their relationship to the~~
20 ~~results of the evaluation;~~

21 ~~(IV) Recommendations concerning the allocation of parental~~
22 ~~responsibilities for the child, including decision-making responsibility,~~
23 ~~parenting time, and other considerations; and~~

24 ~~(V) (III) An explanation of any limitations in the evaluations or~~
25 ~~any reservations regarding the resulting recommendations~~
26 INVESTIGATION.

27 (8) All ~~evaluations~~ INVESTIGATIONS and reports, including but not

1 limited to supplemental ~~evaluations~~ INVESTIGATIONS and related medical
2 and mental health information, that are submitted to the court pursuant to
3 this section ~~shall be deemed~~ ARE confidential without the necessity of
4 filing a motion to seal or otherwise limit access to the court file under the
5 Colorado rules of civil procedure. An ~~evaluation~~ INVESTIGATION or report
6 that is ~~deemed~~ confidential under this subsection (8) shall not be made
7 available for public inspection without an order of the court authorizing
8 public inspection.

9 **SECTION 10.** In Colorado Revised Statutes, **amend** 14-10-129
10 (1.5); and **add** (2) (b.5) as follows:

11 **14-10-129. Modification of parenting time.** (1.5) If a motion for
12 a substantial modification of parenting time which also changes the party
13 with whom the child resides a majority of the time has been filed, whether
14 or not it has been granted, no subsequent motion may be filed within two
15 years after disposition of the prior motion unless the court decides, on the
16 basis of affidavits, that the child's present environment may endanger the
17 child's physical health or significantly impair the child's emotional
18 development or that the party with whom the child resides a majority of
19 the time is intending to relocate with the child to a residence that
20 substantially changes the geographical ties between the child and the
21 other party. THE RESTRICTION ON MODIFICATION OF PARENTING TIME
22 WITHIN TWO YEARS AFTER DISPOSITION OF A PRIOR MOTION DOES NOT
23 APPLY TO MODERATE MODIFICATIONS TO A PARENTING PLAN THAT
24 CHANGES THE PARTY WITH WHOM THE CHILD RESIDES A MAJORITY OF THE
25 TIME WHERE THE EXISTING PARENTING PLAN AWARDED THE PARTIES
26 SUBSTANTIALLY EQUAL PARENTING TIME.

27 (2) The court shall not modify a prior order concerning parenting

1 time that substantially changes the parenting time as well as changes the
2 party with whom the child resides a majority of the time unless it finds,
3 upon the basis of facts that have arisen since the prior decree or that were
4 unknown to the court at the time of the prior decree, that a change has
5 occurred in the circumstances of the child or the party with whom the
6 child resides the majority of the time and that the modification is
7 necessary to serve the best interests of the child. In applying these
8 standards, the court shall retain the parenting time schedule established
9 in the prior decree unless:

10 (b.5) THE EXISTING PARENTING PLAN AWARDED THE PARTIES
11 SUBSTANTIALLY EQUAL PARENTING TIME AND THE CHANGE IN PARENTING
12 TIME REQUESTED IS NOT SUBSTANTIAL; OR

13 **SECTION 11.** In Colorado Revised Statutes, 14-10-131, **amend**
14 (2) as follows:

15 **14-10-131. Modification of custody or decision-making**
16 **responsibility.** (2) The court shall not modify a custody decree or a
17 decree allocating decision-making responsibility unless it finds, upon the
18 basis of facts that have arisen since the prior decree or that were unknown
19 to the court at the time of the prior decree, that a change has occurred in
20 the circumstances of the child, ANY PARTY, or the child's custodian or
21 party to whom decision-making responsibility was allocated and that the
22 modification ~~is necessary to~~ WOULD serve the best interests of the child.
23 In applying these standards, the court shall ~~retain the allocation of~~
24 ~~decision-making responsibility established by the prior decree unless~~
25 CONSIDER:

- 26 (a) WHETHER the parties agree to the modification;
27 (b) WHETHER the child has been integrated into the family of the

1 petitioner with the consent of the other party and such situation warrants
2 a modification of the allocation of decision-making responsibilities;

3 (b.5) WHETHER there has been a modification in the parenting
4 time order pursuant to section 14-10-129, that warrants a modification of
5 the allocation of decision-making responsibilities;

6 (b.7) WHETHER a party has consistently consented to the other
7 party making individual decisions for the child which decisions the party
8 was to make individually or the parties were to make mutually; ~~or~~

9 (b.9) WHETHER FOSTERING THE PARENT-CHILD RELATIONSHIP
10 THROUGH AN AWARD OF MUTUAL DECISION-MAKING RESPONSIBILITY WITH
11 RESPECT TO ONE OR MORE ISSUES IS NOW IN THE CHILD'S BEST INTEREST;
12 OR

13 (c) WHETHER the retention of the allocation of decision-making
14 responsibility would endanger the child's physical health or significantly
15 impairs the child's emotional development and the harm likely to be
16 caused by a change of environment is outweighed by the advantage of a
17 change to the child.

18 **SECTION 12. Act subject to petition - effective date.** This act
19 takes effect September 1, 2015; except that, if a referendum petition is
20 filed pursuant to section 1 (3) of article V of the state constitution against
21 this act or an item, section, or part of this act within the ninety-day period
22 after final adjournment of the general assembly, then the act, item,
23 section, or part will not take effect unless approved by the people at the
24 general election to be held in November 2016 and, in such case, will take
25 effect on the date of the official declaration of the vote thereon by the
26 governor.