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State of Minnesota
HOUSE OF REPRESENTATIVES
NINETIETH SESSION

H. F. No. 2805

02/09/2018 Authored by Franson and Poston
The bill was referred to the Committee on Civil Law and Data Practices Policy

1.1 A bill for an act
1.2 relating to family law; allowing a child over the age of 11 to indicate a preference
1.3 in custody and parenting time matters; amending Minnesota Statutes 2016, section
1.4 518.17, subdivision 1, by adding a subdivision.

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

1.6 Section 1. Minnesota Statutes 2016, section 518.17, subdivision 1, is amended to read:

1.7 Subdivision 1. **Best interests of the child.** (a) In evaluating the best interests of the child
1.8 for purposes of determining issues of custody and parenting time, the court must consider
1.9 and evaluate all relevant factors, including:

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

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

1.14 (3) the reasonable preference of the child consistent with subdivision 7, or the reasonable
1.15 preference of a child under the age of 11, if the court deems the child to be of sufficient
1.16 ability, age, and maturity to express an independent, reliable preference;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3.7 (7) There is no presumption for or against joint physical custody, except as provided in
3.8 clause (9).

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

3.10 (9) The court shall use a rebuttable presumption that upon request of either or both
3.11 parties, joint legal custody is in the best interests of the child. However, the court shall use
3.12 a rebuttable presumption that joint legal custody or joint physical custody is not in the best
3.13 interests of the child if domestic abuse, as defined in section 518B.01, has occurred between
3.14 the parents. In determining whether the presumption is rebutted, the court shall consider
3.15 the nature and context of the domestic abuse and the implications of the domestic abuse for
3.16 parenting and for the child's safety, well-being, and developmental needs. Disagreement
3.17 alone over whether to grant sole or joint custody does not constitute an inability of parents
3.18 to cooperate in the rearing of their children as referenced in paragraph (a), clause (12).

3.19 (c) In a proceeding involving the custodial responsibility of a service member's child, a
3.20 court may not consider only a parent's past deployment or possible future deployment in
3.21 determining the best interests of the child. For purposes of this paragraph, "custodial
3.22 responsibility" has the meaning given in section 518E.102, paragraph (f).

3.23 Sec. 2. Minnesota Statutes 2016, section 518.17, is amended by adding a subdivision to
3.24 read:

3.25 Subd. 7. **Preference of the child.** (a) In all custody cases determined using the best
3.26 interest factors in this section, when a child is 14 years of age or older, the child shall have
3.27 the ability to inform the court in camera about the child's preference for custody and parenting
3.28 time. The child's preference for custody and parenting time shall be presumptive unless the
3.29 court believes the child's preferences are not in the child's best interest. If the child is
3.30 requesting a modification in custody or parenting time, there shall be a presumption that
3.31 the child's emotional development is endangered for the purposes of section 518.18,
3.32 paragraph (c), except that a motion for modification may not be brought for a modification

4.1 of custody and parenting time until two years after a motion for modification has been heard
4.2 or a final decree has been issued.

4.3 (b) In all custody cases determined using the best interest factors in this section, where
4.4 a child is at least 11 years of age but not yet 14 years of age, the child shall have the ability
4.5 to inform the court in camera about the child's preference for custody and parenting time.
4.6 The court shall consider the preferences of the child but the preferences of the child shall
4.7 not be controlling.

4.8 **EFFECTIVE DATE.** This section is effective August 1, 2018, and applies to cases
4.9 filed before, on, or after that date.