

State of South Dakota

NINETY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 2017

666Y0623

HOUSE JUDICIARY ENGROSSED NO. **HB 1203** 2/22/2017

Introduced by: Representative Pischke and Senator Jensen (Phil)

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding the consideration of
2 joint physical custody of a minor.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 25-4A-26 be repealed.

5 ~~—25-4A-26. Nothing in §§ 25-4A-21 to 25-4A-27, inclusive, creates a presumption of joint~~
6 ~~physical custody. The court shall determine the appropriate physical care, custody, and control~~
7 ~~of a minor child based on a determination of the best interests of the child.~~

8 Section 2. That the code be amended by adding a NEW SECTION to read:

9 If joint legal custody is awarded, pursuant to § 25-5-7.1, there shall be a rebuttable
10 presumption that both parents have joint physical custody of their children, provided that neither
11 parent has abandoned the children nor been physically absent for the past ninety days. Joint
12 physical custody of the children is defined as equal parenting time with the children spending
13 no less than one hundred seventy days and nights in each parent's home. The burden of
14 overcoming the presumption rests on the parent challenging the presumption. The presumption
15 may be overcome by demonstrating that joint physical custody would not be in the best interest



1 of the children by weighing the factors set forth in §§ 25-4A-21 to 25-4A-5, inclusive, or by one
2 parent waiving the presumption. The burden of proof necessary to overcome the presumption
3 shall be by a preponderance of the evidence. If the court finds that a party has overcome the
4 presumption in favor of joint physical custody, then the court shall determine the appropriate
5 physical care, custody, and control of a minor child based on a determination of the best
6 interests of the child.

7 Section 3. That the code be amended by adding a NEW SECTION to read:

8 The court shall require the parents to prepare and submit a parenting plan to the court
9 reflecting parental preferences and agreement on the matters of substance concerning the child's
10 education, upbringing, religious training, medical, and dental care. The parents shall share
11 decision-making authority and responsibility as to the important decisions affecting the child's
12 welfare and if parents are unable to agree, the court may order the parties to submit to a
13 preselected mediator. The court may modify the parenting plan based upon the best interest of
14 the child, including the days and nights the child will spend in each parent's home. However,
15 the modification should adhere as closely to one hundred seventy days and nights spent in each
16 parent's home as possible.

17 Section 4. That chapter 25-4A be amended by adding a NEW SECTION to read:

18 A finding by the court that, within the last two years, a parent has abused drugs or alcohol
19 or has a conviction related to possession or distribution of a controlled substance or marijuana,
20 as defined in chapter 22-42; drug paraphernalia, as defined in § 22-42A-3 or 22-42A-4; driving
21 while under the influence, as defined in chapter 32-23; or a substantially similar federal offense
22 creates a rebuttable presumption that joint physical custody is not in the best interests of the
23 child.

24 Section 5. That the code be amended by adding a NEW SECTION to read:

1 The court may order a psychological evaluation of either parent, and the results of the
2 evaluation may be taken into account for the determination of physical custody pursuant to
3 section 2 of this Act.

4 Section 6. That the code be amended by adding a NEW SECTION to read:

5 This Act does not constitute a substantial change in circumstances justifying the
6 modification of existing custody orders, but the provisions shall apply to modification
7 proceedings which are otherwise properly before the court.