



2023 South Dakota Legislature

Senate Bill 136

Introduced by: **Senator Pischke**

1 **An Act to provide a rebuttable presumption in favor of joint physical custody of a**
 2 **minor child.**

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

4 **Section 1. That § 25-4A-21 be AMENDED:**

5 **25-4A-21.** ~~In any custody dispute between parents, upon application~~Upon the
 6 petition of either parent, ~~the court shall consider granting joint for the initial determination~~
 7 regarding physical custody of a minor child, ~~there is a rebuttable presumption that equal~~
 8 or approximately equal time spent between the child and each parent is in the best interest
 9 of the minor child. This presumption may be rebutted by a preponderance of evidence
 10 showing that joint physical custody is not in the best interest of the child based on the
 11 factors set forth in § 25-4A-24.

12 ~~The court shall consider the factors set forth in § 25-4A-24, and shall make written~~
 13 ~~findings of fact and conclusions of law regarding the best interests of the minor child,~~
 14 ~~unless waived by both parties in accordance with § 25-4A-24, unless the parents have~~
 15 ~~stipulated to the terms of an agreement resolving the petition.~~

16 **Section 2. That § 25-4A-22 be AMENDED:**

17 **25-4A-22.** The court shall determine the appropriate physical care, custody, and
 18 control of a minor child, in accordance with § 25-4A-21, following the consideration of
 19 factors set forth in § 25-4-45.5. A finding by the court that a parent has a conviction or a
 20 history of committing domestic abuse or has an assault conviction as defined in § 25-4-
 21 45.5, creates a rebuttable presumption that joint physical custody is not in the best
 22 interests-interest of the child.

23 **Section 3. That § 25-4A-23 be AMENDED:**

1 **25-4A-23.** Prior to ruling on a petition for joint physical custody ~~petition under~~
 2 § 25-4A-21, the court may require that the parties to parents participate in a home study
 3 or a custody evaluation. ~~Prior to the court ruling on a joint physical custody petition,~~
 4 ~~either parent may request mediation pursuant to § 25-4-56.~~

5 ~~In any case where the court orders the parties to participate in a home study,~~
 6 ~~custody evaluation, or custody mediation, the, or mediation in accordance with § 25-4-~~
 7 56. The court shall allocate the costs of the same any home study, custody evaluation, or
 8 mediation required under this section between the parties parents.

9 **Section 4. That § 25-4A-24 be AMENDED:**

10 **25-4A-24.** ~~In considering a contested request for~~ The presumption in favor of joint
 11 physical custody, ~~in addition to the traditional factors for determining the best interests of~~
 12 ~~a child, the court shall consider the following factors~~ under § 25-4A-21 may be rebutted
 13 upon a presentation of evidence pertaining to:

- 14 (1) Whether each parent is a suitable physical custodian for the child;
- 15 (2) Whether each parent has an appropriate dwelling to support physical custody of
 16 the child;
- 17 (3) Whether the psychological and emotional needs and the development of the child
 18 will suffer due to lack of active contact with, and attention from, both parents if
 19 joint physical custody is not granted;
- 20 (4) Whether one parent has denied the child, without just cause, ~~the child~~ the
 21 opportunity for continuing contact with the other parent. Facts supporting an
 22 application of the presumption in § 25-4-45.5 constitute just cause;
- 23 (5) Whether the parents can show mutual respect for and effectively communicate
 24 with each other regarding the child's needs. When considering this factor, the court
 25 shall include a determination of the degree to which the parents are in general
 26 agreement about their approach to daily child rearing matters;
- 27 (6) The extent to which both parents actively care for the child;
- 28 (7) Whether each parent can support the other parent's relationship with the child.
 29 When considering this factor, the court shall include a determination of conflict
 30 between the parents, as joint physical custody requires substantial and regular
 31 interaction between the parents on a myriad of issues;
- 32 (8) Whether the joint physical custody arrangement is in accord with the child's wishes
 33 or whether the child has strong opposition to joint physical custody, taking into
 34 consideration the child's age, maturity, and reason for the objection;

- 1 (9) Whether a parent has intentionally alienated or interfered with the other parent's
2 relationship with the child;
- 3 (10) Whether one or both parents are opposed to joint physical custody. A parent's
4 opposition to joint physical custody is not determinative in itself, but only one factor
5 for the court to consider;
- 6 (11) The geographic proximity of the parents;
- 7 (12) Whether the safety of the child, other children, or the other parent will be
8 jeopardized by an award of joint physical custody;
- 9 (13) Whether a parent allows another person custody or control of, or unsupervised
10 access to, a child after knowing the person is required to register or is on the sex
11 offender registry as a sex offender under chapter 22-24B;
- 12 (14) Whether a parent has attempted to influence a custody determination by alleging,
13 falsely or without good cause, that the child or the sibling of the child has been
14 subjected to physical or sexual abuse or abuse and neglect, as set forth in § 25-4-
15 45.8;
- 16 (15) Whether a parent is physically and mentally capable of providing temporal, mental,
17 and moral wellness for the child;
- 18 (16) Whether a parent has the capacity and disposition to provide the child with
19 protection, food, clothing, medical care, and other basic needs;
- 20 (17) Whether a parent is willing and ~~capable~~able to provide the child love, affection,
21 guidance, and education in order to impart the family's religion or creed;
- 22 (18) Whether a parent is committed to prepare the child for responsible adulthood, as
23 well as to ensure that the child experiences a fulfilling childhood;
- 24 (19) Whether a parent provides exemplary modeling so that the child witnesses
25 firsthand what it means to be a good parent, a loving spouse, and a responsible
26 citizen;
- 27 (20) Whether a parent provides a stable and consistent home environment including
28 the relationship and interaction of the child with the parents, stepparents, siblings,
29 and extended families;
- 30 (21) The extent of the child's adjustment in ~~regards~~regard to home, school, and
31 community;
- 32 (22) Whether a break in attachment ~~with~~to the parent with whom the child has formed
33 a closer attachment would ~~cause detriment~~be detrimental due to the break in
34 continuity for the child; and

1 (23) Whether a parent is guilty of misconduct that may have a harmful effect on the
2 child.

3 **Section 5. That § 25-4A-25 be REPEALED:**

4 ~~If both parents agree to joint physical custody of a child, the court is not required~~
5 ~~to consider the factors set forth in § 25-4A-24.~~

6 **Section 6. That § 25-4A-26 be REPEALED:**

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