

AN ACT

ENTITLED, An Act to revise certain provisions regarding the consideration of joint physical custody of a minor.

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

Section 1. That § 25-4A-24 be amended to read:

25-4A-24. In considering a contested request for joint physical custody, in addition to the traditional factors for determining the best interests of a child, the court shall consider the following factors:

- (1) Whether each parent is a suitable physical custodian for the child;
- (2) Whether each parent has an appropriate dwelling to support physical custody of the child;
- (3) Whether the psychological and emotional needs and the development of the child will suffer due to lack of active contact with, and attention from, both parents if joint physical custody is not granted;
- (4) Whether one parent has denied, without just cause, the child the opportunity for continuing contact with the other parent. Facts supporting an application of the presumption in § 25-4-45.5 constitute just cause;
- (5) Whether the parents can show mutual respect for and effectively communicate with each other regarding the child's needs. When considering this factor, the court shall include a determination of the degree to which the parents are in general agreement about their approach to daily child rearing matters;
- (6) The extent to which both parents actively care for the child;
- (7) Whether each parent can support the other parent's relationship with the child. When considering this factor, the court shall include a determination of conflict between the parents, as joint physical custody requires substantial and regular interaction between the

parents on a myriad of issues;

- (8) Whether the joint physical custody arrangement is in accord with the child's wishes or whether the child has strong opposition to joint physical custody, taking into consideration the child's age, maturity, and reason for the objection;
- (9) Whether a parent has intentionally alienated or interfered with the other parent's relationship with the child;
- (10) Whether one or both parents are opposed to joint physical custody. A parent's opposition to joint physical custody is not determinative in itself, but only one factor for the court to consider;
- (11) The geographic proximity of the parents;
- (12) Whether the safety of the child, other children, or the other parent will be jeopardized by an award of joint physical custody;
- (13) Whether a parent allows another person custody or control of, or unsupervised access to, a child after knowing the person is required to register or is on the sex offender registry as a sex offender under chapter 22-24B;
- (14) Whether a parent has attempted to influence a custody determination by alleging, falsely or without good cause, that the child or the sibling of the child has been subjected to physical or sexual abuse or abuse and neglect, as set forth in § 25-4-45.8;
- (15) Whether a parent is physically and mentally capable of providing temporal, mental, and moral wellness for the child;
- (16) Whether a parent has the capacity and disposition to provide the child with protection, food, clothing, medical care, and other basic needs;
- (17) Whether a parent is willing and capable to provide the child love, affection, guidance, and education in order to impart the family's religion or creed;

- (18) Whether a parent is committed to prepare the child for responsible adulthood, as well as to ensure that the child experiences a fulfilling childhood;
- (19) Whether a parent provides exemplary modeling so that the child witnesses firsthand what it means to be a good parent, a loving spouse, and a responsible citizen;
- (20) Whether a parent provides a stable and consistent home environment including the relationship and interaction of the child with the parents, stepparents, siblings, and extended families;
- (21) The extent of the child's adjustment in regards to home, school, and community;
- (22) Whether a break in attachment with the parent whom the child has formed a closer attachment would cause detriment due to the break in continuity for the child; and
- (23) Whether a parent is guilty of misconduct that may have a harmful effect on the child.

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I certify that the attached Act
originated in the
SENATE as Bill No. 167

Secretary of the Senate

President of the Senate

Attest:

Secretary of the Senate

Speaker of the House

Attest:

Chief Clerk

Senate Bill No. 167
File No. _____
Chapter No. _____

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Received at this Executive Office
this ____ day of _____ ,
20__ at _____ M.

By _____
for the Governor

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The attached Act is hereby
approved this _____ day of
_____, A.D., 20__

Governor

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STATE OF SOUTH DAKOTA,
ss.
Office of the Secretary of State

Filed _____, 20__
at _____ o'clock __ M.

Secretary of State

By _____
Asst. Secretary of State