

# State of South Dakota

NINETY-SECOND SESSION  
LEGISLATIVE ASSEMBLY, 2017

486Y0098

## SENATE BILL NO. 72

Introduced by: Senators Jensen (Phil), Greenfield (Brock), Heinert, Nelson, Netherton, and Russell and Representatives Pischke, Clark, Dennert, Frye-Mueller, Gosch, Greenfield (Lana), Haugaard, Howard, Kaiser, Latterell, Marty, May, Rasmussen, Smith, and Zikmund

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 That § 25-4A-26 be repealed.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. Joint physical  
11 custody of the children is defined as equal time-sharing. The burden of overcoming the  
12 presumption rests on the parent challenging the presumption. The presumption may be  
13 overcome by demonstrating that joint physical custody would not be in the best interest of the  
14 children by weighing the factors set forth in §§ 25-4A-21 to 25-4A-27, inclusive, or by one



1 parent waiving the presumption. The burden of proof necessary to overcome the presumption  
2 shall be by a preponderance of the evidence. If the court finds that a party has overcome the  
3 presumption in favor of joint physical custody, then the court shall use the best interests of the  
4 child to make its determination for custodial arrangements.

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

6 The court shall require the parents to prepare and submit a parenting plan to the court  
7 reflecting parental preferences and agreement on the matters of substance concerning the child's  
8 education, upbringing, religious training, medical, and dental care. The parents shall share  
9 decision-making authority and responsibility as to the important decisions affecting the child's  
10 welfare and if parents are unable to agree, the court may order the parties to submit to a  
11 preselected mediator.

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

13 A finding by the court that a parent has a history of drug or alcohol abuse or a conviction  
14 related to possession or distribution of a controlled substance or marijuana, as defined in chapter  
15 22-42; drug paraphernalia, as defined in § 22-42A-3 or 22-42A-4; driving while under the  
16 influence, as defined in chapter 32-23; or a substantially similar federal offense creates a  
17 rebuttable presumption that joint physical custody is not in the best interests of the child.