

SENATE
STATE OF MINNESOTA
NINETIETH SESSION

S.F. No. 2413

(SENATE AUTHORS: HOUSLEY)

DATE
05/19/2017

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OFFICIAL STATUS
Introduction and first reading
Referred to Judiciary and Public Safety Finance and Policy

1.1 A bill for an act
 1.2 relating to family law; changing certain custody and parenting time provisions;
 1.3 amending Minnesota Statutes 2016, sections 257.541, subdivisions 2, 3; 518.003,
 1.4 subdivision 3; 518.091, by adding a subdivision; 518.131, subdivisions 1, 7;
 1.5 518.155; 518.156, subdivision 2; 518.167, subdivision 2; 518.17, subdivisions 1,
 1.6 3; 518.1705, subdivisions 3, 5, 9; 518.175, subdivision 1; 518.179, subdivision 1;
 1.7 518.18; proposing coding for new law in Minnesota Statutes, chapter 518.

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

1.9 Section 1. Minnesota Statutes 2016, section 257.541, subdivision 2, is amended to read:

1.10 Subd. 2. **Father's right to parenting time and custody.** (a) If paternity has been
 1.11 acknowledged under section 257.34 and paternity has been established under sections 257.51
 1.12 to 257.74, the father's rights of parenting time or custody are determined under sections
 1.13 ~~518.17 and 518.169~~ to 518.175.

1.14 (b) If paternity has not been acknowledged under section 257.34 and paternity has been
 1.15 established under sections 257.51 to 257.74, the biological father may petition for rights of
 1.16 parenting time or custody in the paternity proceeding or in a separate proceeding under
 1.17 section 518.156. The rights of parenting time or custody must be determined under sections
 1.18 518.169 to 518.175.

1.19 **EFFECTIVE DATE.** This section is effective for temporary orders and child custody
 1.20 determinations made on or after January 1, 2018.

1.21 Sec. 2. Minnesota Statutes 2016, section 257.541, subdivision 3, is amended to read:

1.22 Subd. 3. **Father's right to parenting time and custody; recognition of paternity.** If
 1.23 paternity has been recognized under section 257.75, the father may petition for rights of

2.1 parenting time or custody in an independent action under section 518.156. The proceeding
2.2 must be treated as an initial determination of custody ~~under section 518.17~~ and the provisions
2.3 ~~of chapter 518~~ provisions of sections 518.169 to 518.175 apply with respect to the granting
2.4 of custody and parenting time. An action to determine custody and parenting time may be
2.5 commenced pursuant to chapter 518 without an adjudication of parentage. These proceedings
2.6 may not be combined with any proceeding under chapter 518B.

2.7 **EFFECTIVE DATE.** This section is effective for temporary orders and child custody
2.8 determinations made on or after January 1, 2018.

2.9 Sec. 3. Minnesota Statutes 2016, section 518.003, subdivision 3, is amended to read:

2.10 Subd. 3. **Custody.** Unless otherwise agreed by the parties:

2.11 (a) "Legal custody" means the right to determine the child's upbringing, including
2.12 education, health care, and religious training.

2.13 (b) "Joint legal custody" means that both parents have equal rights and responsibilities,
2.14 including the right to participate in major decisions determining the child's upbringing,
2.15 including education, health care, and religious training.

2.16 (c) "Physical custody and residence" means the routine daily care and control and the
2.17 residence of the child.

2.18 (d) "Joint physical custody" means that the routine daily care and control and the residence
2.19 of the child is ~~structured~~ shared between the parties.

2.20 (e) Wherever used in this chapter, the term "custodial parent" or "custodian" means the
2.21 person who has the physical custody of the child at any particular time.

2.22 (f) "Custody determination" means a court decision and court orders and instructions
2.23 providing for the custody of a child, including parenting time, but does not include a decision
2.24 relating to child support or any other monetary obligation of any person.

2.25 (g) "Custody proceeding" includes proceedings in which a custody determination is one
2.26 of several issues, such as an action for dissolution, divorce, or separation, and includes
2.27 proceedings involving children who are in need of protection or services, domestic abuse,
2.28 and paternity.

2.29 **EFFECTIVE DATE.** This section is effective for temporary orders and child custody
2.30 determinations made on or after January 1, 2018.

3.1 Sec. 4. Minnesota Statutes 2016, section 518.091, is amended by adding a subdivision to
3.2 read:

3.3 Subd. 3. Custody and parenting time requirements. Every summons must include
3.4 the notice in this subdivision.

3.5 PARENTS ARE ENTITLED TO A PRESUMPTION OF JOINT LEGAL CUSTODY
3.6 AND JOINT PHYSICAL CUSTODY WITH EQUAL SHARED PARENTING. THIS
3.7 MEANS EACH PARENT HAS AT LEAST 45.1 PERCENT PARENTING TIME, UNLESS
3.8 THE PARENTS AGREE OTHERWISE. CERTAIN EXCEPTIONS AND OTHER
3.9 PROVISIONS APPLY UNDER MINNESOTA STATUTES, SECTIONS 518.169 TO
3.10 518.175.

3.11 EFFECTIVE DATE. This section is effective for summons issued on or after January
3.12 1, 2018.

3.13 Sec. 5. Minnesota Statutes 2016, section 518.131, subdivision 1, is amended to read:

3.14 Subdivision 1. **Permissible orders.** In a proceeding brought for custody, dissolution,
3.15 or legal separation, or for disposition of property, maintenance, or child support following
3.16 the dissolution of a marriage, either party may, by motion, request from the court and the
3.17 court may grant a temporary order pending the final disposition of the proceeding to or for:

3.18 (a) Temporary custody and parenting time pursuant to sections 518.169 to 518.175
3.19 regarding the minor children of the parties;

3.20 (b) Temporary maintenance of either spouse;

3.21 (c) Temporary child support for the children of the parties;

3.22 (d) Temporary costs and reasonable attorney fees;

3.23 (e) Award the temporary use and possession, exclusive or otherwise, of the family home,
3.24 furniture, household goods, automobiles, and other property of the parties;

3.25 (f) Restrain one or both parties from transferring, encumbering, concealing, or disposing
3.26 of property except in the usual course of business or for the necessities of life, and to account
3.27 to the court for all such transfers, encumbrances, dispositions, and expenditures made after
3.28 the order is served or communicated to the party restrained in open court;

3.29 (g) Restrain one or both parties from harassing, vilifying, mistreating, molesting,
3.30 disturbing the peace, or restraining the liberty of the other party or the children of the parties;

4.1 (h) Restrain one or both parties from removing any minor child of the parties from the
4.2 jurisdiction of the court;

4.3 (i) Exclude a party from the family home of the parties or from the home of the other
4.4 party; and

4.5 (j) Require one or both of the parties to perform or to not perform such additional acts
4.6 as will facilitate the just and speedy disposition of the proceeding, or will protect the parties
4.7 or their children from physical or emotional harm.

4.8 **EFFECTIVE DATE.** This section is effective for temporary orders issued on or after
4.9 January 1, 2018.

4.10 Sec. 6. Minnesota Statutes 2016, section 518.131, subdivision 7, is amended to read:

4.11 Subd. 7. **Guiding factors.** The court shall be guided by the factors set forth in chapter
4.12 518A (concerning child support), and sections 518.552 (concerning maintenance), ~~518.17~~
4.13 518.169 to 518.175 (concerning custody and parenting time), and 518.14 (concerning costs
4.14 and attorney fees) in making temporary orders and restraining orders.

4.15 **EFFECTIVE DATE.** This section is effective January 1, 2018.

4.16 Sec. 7. Minnesota Statutes 2016, section 518.155, is amended to read:

4.17 **518.155 CUSTODY DETERMINATIONS.**

4.18 Notwithstanding any law to the contrary, a court in which a proceeding for dissolution,
4.19 legal separation, or child custody has been commenced shall not issue, revise, modify or
4.20 amend any order, pursuant to sections 518.131, 518.165, 518.168, 518.169, 518.17, 518.175
4.21 or 518.18, which affects the custody of a minor child or the parenting time of a parent unless
4.22 the court has jurisdiction over the matter pursuant to the provisions of chapter 518D.

4.23 **EFFECTIVE DATE.** This section is effective January 1, 2018.

4.24 Sec. 8. Minnesota Statutes 2016, section 518.156, subdivision 2, is amended to read:

4.25 Subd. 2. **Required notice.** (a) Written notice of a child custody or parenting time or
4.26 visitation proceeding shall be given to the child's parent, guardian, and custodian, who may
4.27 appear and be heard and may file a responsive pleading. The court may, upon a showing of
4.28 good cause, permit the intervention of other interested parties.

4.29 (b) Every summons must include the notice in this subdivision.

5.1 NOTICE OF CUSTODY AND PARENTING TIME

5.2 PARENTS ARE ENTITLED TO A PRESUMPTION OF JOINT LEGAL CUSTODY
 5.3 AND JOINT PHYSICAL CUSTODY WITH EQUAL SHARED PARENTING. THIS
 5.4 MEANS EACH PARENT HAS AT LEAST 45.1 PERCENT PARENTING TIME, UNLESS
 5.5 THE PARENTS AGREE OTHERWISE. CERTAIN EXCEPTIONS AND OTHER
 5.6 PROVISIONS APPLY UNDER MINNESOTA STATUTES, SECTIONS 518.169 TO
 5.7 518.175.

5.8 **EFFECTIVE DATE.** This section is effective for summons issued on or after January
 5.9 1, 2018.

5.10 Sec. 9. Minnesota Statutes 2016, section 518.167, subdivision 2, is amended to read:

5.11 Subd. 2. **Preparation.** (a) In preparing a report concerning a child, the investigator may
 5.12 consult any person who may have information about the child and the potential custodial
 5.13 arrangements except for persons involved in mediation efforts between the parties. Mediation
 5.14 personnel may disclose to investigators and evaluators information collected during mediation
 5.15 only if agreed to in writing by all parties. Upon order of the court, the investigator may refer
 5.16 the child to professional personnel for diagnosis. The investigator may consult with and
 5.17 obtain information from medical, psychiatric, school personnel, or other expert persons who
 5.18 have served the child in the past after obtaining the consent of the parents or the child's
 5.19 custodian or guardian.

5.20 (b) The report submitted by the investigator must:

5.21 (1) state the position of each party;

5.22 (2) consider and evaluate the factors in section ~~518.17, subdivision 1~~ 518.169, subdivision
 5.23 3;

5.24 (3) include a detailed analysis of all information considered for each factor;

5.25 (4) state the investigator's recommendation and the reason for the recommendation; and

5.26 (5) reference established means for dispute resolution between the parties.

5.27 **EFFECTIVE DATE.** This section is effective for all investigations ordered on or after
 5.28 January 1, 2018.

5.29 Sec. 10. **[518.169] JOINT CUSTODY AND EQUAL SHARED PARENTING.**

5.30 Subdivision 1. **Public policy.** (a) Recognizing the importance of protections afforded
 5.31 children by their ability to develop strong parental bonds, and recognizing the fundamental

6.1 right and liberty interest that parents enjoy regarding the care, custody, and companionship
6.2 of their children, the legislature finds and declares the following with respect to the intent
6.3 of Minnesota laws relating to families:

6.4 (1) an intact, involved, two-parent home provides the optimal environment through
6.5 which children grow into productive and responsible adult citizens;

6.6 (2) parents play the primary role in the nurturing and development of their children. Our
6.7 society, state, and statutes are secondary structures designed to support, not supplant, both
6.8 parents in their role as the primary shapers of their children;

6.9 (3) mothers and fathers provide unique and invaluable contributions toward the
6.10 development of their children. Each parent's contributions to the upbringing of their children
6.11 are indistinguishable and equally necessary to assure children the best opportunity to develop
6.12 into healthy citizens;

6.13 (4) children should be separated from their parents only under the most compelling and
6.14 unusual circumstances in order to protect a child from endangerment;

6.15 (5) it is in the best interests of children to have frequent and continuing physical contact
6.16 with both parents under joint legal and joint physical custody when the parents live separately,
6.17 including after parental separation or dissolution of marriage. The proper role of the state
6.18 is to interfere to the least degree in familial relationships with the specific purpose of
6.19 preserving maximum time allocations with each parent and their children;

6.20 (6) parents may, and should be encouraged to, reach any agreement mutually acceptable
6.21 to them regarding their parenting time allocations that reflects the individual circumstances
6.22 of the parents and children. In the event parents cannot reach agreement on a parenting
6.23 arrangement, it is the specific intent of Minnesota law that parents have a right to a rebuttable
6.24 presumption of equal time with their children; and

6.25 (7) the judiciary in contested custody proceedings should demonstrate consistent
6.26 application of the rebuttable presumption in favor of joint legal and joint physical custody
6.27 in order to minimize the adversarial nature of custody proceedings.

6.28 (b) The purpose of this section is to prevent children from being alienated or
6.29 disenfranchised from their parents' lives through the unwarranted interference of either
6.30 parent.

6.31 (c) This section establishes clear legislative policy regarding the relationship of children
6.32 with each parent when the parents live separately.

7.1 (d) In accordance with the findings in paragraph (a), the legislature declares that public
7.2 policy is advanced and the best interests of children are promoted through equal and shared
7.3 parenting and the recognition of both parents' fundamental freedoms to actively participate
7.4 in the care, custody, and companionship of their children.

7.5 Subd. 2. **Presumption of joint legal and physical custody and shared parenting.** This
7.6 subdivision applies to temporary and final orders in marriage dissolution, custody
7.7 determinations, and parenting plans ordered by the court. Upon request of either or both
7.8 parties, the court shall use a rebuttable presumption that joint legal custody and joint physical
7.9 custody, with equal shared parenting, is in the best interests of the child. For purposes of
7.10 this subdivision, "equal" means a minimum parenting time for each parent of 45.1 percent.
7.11 The percentage of parenting time may be determined by calculating the number of overnights
7.12 that a child spends with a parent or by using a method other than overnights if the parent
7.13 has significant time periods on separate days when the child is in the parent's physical
7.14 custody but does not stay overnight. The parenting time must be spread throughout one
7.15 calendar year in a way that best meets variable circumstances for the parties, unless both
7.16 parents agree to a different division of time or schedule.

7.17 Subd. 3. **Overcoming presumption.** If the parents are unable to reach an agreement on
7.18 joint legal custody and joint physical custody and equal shared parenting, the burden of
7.19 overcoming the presumption of joint legal custody, joint physical custody, and equal shared
7.20 parenting rests on the parent challenging the presumption. To overcome the presumption,
7.21 the court must find that the parent challenging the presumption has established by clear and
7.22 convincing evidence that:

7.23 (1) the other parent's actions rise to the level of endangering the child due to any of the
7.24 following:

7.25 (i) abandonment under section 260C.007, subdivision 6, clause (1); 260C.301, subdivision
7.26 2; or 518.1705, subdivision 6, paragraph (b), clause (3);

7.27 (ii) physical or sexual abuse under section 260C.007, subdivision 6, clause (2);

7.28 (iii) neglect under section 260C.007, subdivision 6, clause (3) or (8);

7.29 (iv) allowing the child to live in injurious or dangerous conditions under section
7.30 260C.007, subdivision 6, clause (9);

7.31 (v) egregious harm under section 260C.007, subdivision 14;

7.32 (vi) emotional maltreatment under section 260C.007, subdivision 15;

7.33 (vii) great bodily harm under section 609.02, subdivision 8;

8.1 (viii) conviction of child abuse as defined in section 609.185, paragraph (d);

8.2 (ix) child maltreatment under section 626.556; or

8.3 (x) domestic abuse as defined in section 518B.01, except when:

8.4 (A) a parent has petitioned for an order for protection and the petition has been dismissed
8.5 or denied by a court, or an order for protection was filed by agreement of the parties without
8.6 a finding of domestic abuse and the agreement and order incorporating the agreement did
8.7 not provide otherwise, in which case the court must find that no domestic abuse has occurred
8.8 with respect to matters that were alleged or could have been alleged; or

8.9 (B) a parent knowingly makes false allegations of domestic abuse as defined in section
8.10 518B.01, subdivision 2. Making a false allegation of abuse is sufficient grounds to challenge
8.11 the custody and parenting time of the accuser. Allegations raised in the context of custody
8.12 proceedings that do not display evidence of a previous pattern of abuse deserve heightened
8.13 scrutiny as to their veracity; or

8.14 (2) the other parent is incapable of self-management or management of personal affairs
8.15 and would jeopardize the safety of the children due to current habitual and excessive use
8.16 of alcohol, drugs, or other mind-altering substances and the related actions due to the
8.17 substance abuse demonstrate endangerment to the well-being of the child.

8.18 Subd. 4. **Consideration of geographic limitations.** This subdivision applies when the
8.19 presumption has not been overcome, but due to the parents' different geographic locations,
8.20 a 45.1 percent minimum parenting time for each parent would prevent the parents from
8.21 keeping the child in one school during a school year. During the pendency of the custody
8.22 proceeding, the child shall remain in the same school district which the child currently
8.23 attends or most recently attended, unless the parents agree otherwise, or except in cases
8.24 under section 518B.01 where the parent or child involved in the proceeding is endangered.
8.25 If the parents do not agree otherwise, the court shall determine which parent has the majority
8.26 of parenting time using the best interests of the child factors under section 518.17, subdivision
8.27 1, provided that a minimum of 25 percent parenting time must be granted to the other parent,
8.28 making every attempt to exceed this amount and maximize the parental involvement of
8.29 each parent.

8.30 Subd. 5. **Findings and order.** (a) If the court finds the presumption has been overcome,
8.31 the court shall make detailed written findings that enumerate and explain which of the factors
8.32 in this section are applicable and what evidence supported these factors. The court shall
8.33 restrict physical custody and parenting time with the other parent as to time, place, duration,
8.34 or supervision and may deny parenting time entirely, as the circumstances warrant.

9.1 (b) If the court finds the presumption was not overcome, the court shall issue a custody
9.2 order or parenting plan with a minimum 45.1 percent parenting time for each parent, or a
9.3 different division of time agreed to by the parents, or as provided under subdivision 4, if
9.4 applicable.

9.5 **EFFECTIVE DATE.** This section is effective for temporary orders and child custody
9.6 determinations made on or after January 1, 2018.

9.7 Sec. 11. Minnesota Statutes 2016, section 518.17, subdivision 1, is amended to read:

9.8 Subdivision 1. **Best interests of the child.** (a) In evaluating the best interests of the child
9.9 for purposes of determining issues of custody and parenting time, the court must consider
9.10 and evaluate all relevant factors, subject to section 518.169, and including:

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

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

9.15 (3) the reasonable preference of the child, if the court deems the child to be of sufficient
9.16 ability, age, and maturity to express an independent, reliable preference;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11.15 Sec. 12. Minnesota Statutes 2016, section 518.17, subdivision 3, is amended to read:

11.16 Subd. 3. **Custody order.** (a) Subject to section 518.169, upon adjudging the nullity of
11.17 a marriage, or in a dissolution or separation proceeding, or in a child custody proceeding,
11.18 the court shall make such further order as it deems just and proper concerning:

11.19 (1) the legal custody of the minor children of the parties which shall be sole or joint;

11.20 (2) their physical custody and residence; and

11.21 (3) their support. In determining custody, the court shall use section 518.169, or if section
11.22 518.169 is not applicable then consider the best interests of each child and shall not prefer
11.23 one parent over the other solely on the basis of the sex of the parent.

11.24 (b) The court shall grant the rights listed in subdivision 3a to each of the parties, regardless
11.25 of custodial designation, unless specific findings are made under section 518.68, subdivision
11.26 1. The court shall include in the custody order the notice under subdivision 3a.

11.27 (c) The court may waive any of the rights under this section if it finds it is necessary to
11.28 protect the welfare of a party or child.

11.29 (d) If a court order or law prohibits contact by a party, the notifications and information
11.30 required to be sent under subdivision 3a, clauses (1), (2), (3), (5), and (6), shall not be made
11.31 by direct communication of the parties. Third-party communication shall be limited to the
11.32 specific purposes delineated in this subdivision or subdivision 3a. Nothing in this subdivision

12.1 or subdivision 3a shall modify, suspend, revoke, or terminate a court order or law that
12.2 prohibits contact by a party.

12.3 (e) If one of the parties is a program participant under chapter 5B, the other party shall
12.4 send all information and notifications required under subdivision 3a, clauses (1), (2), (3),
12.5 (5), and (6), to the participant's designated address. The program participant is exempted
12.6 from the requirements of subdivision 3a.

12.7 (f) Failure to notify or inform a party of rights under subdivision 3a does not form a
12.8 basis for modification under section 518.18, paragraph (d), clause (iv), unless other grounds
12.9 are alleged which would support a modification.

12.10 Sec. 13. Minnesota Statutes 2016, section 518.1705, subdivision 3, is amended to read:

12.11 Subd. 3. **Creating parenting plan; restrictions on creation; alternative.** (a) Upon the
12.12 request of both parents, a parenting plan must be created in lieu of an order for child custody
12.13 and parenting time unless the court makes detailed findings that the proposed plan is not in
12.14 the best interests of the child.

12.15 (b) If both parents do not agree to a parenting plan, the court may create one on its own
12.16 motion, except that the court must not do so if it finds that a parent has committed domestic
12.17 abuse against a parent or child who is a party to, or subject of, the matter before the court.
12.18 If the court creates a parenting plan on its own motion, it must not use alternative terminology
12.19 unless the terminology is agreed to by the parties.

12.20 (c) If an existing order does not contain a parenting plan, the parents must not be required
12.21 to create a parenting plan as part of a modification order under section 518A.39.

12.22 (d) A parenting plan must not be required during an action under section 256.87.

12.23 (e) If the parents do not agree to a parenting plan and the court does not create one on
12.24 its own motion, orders for custody and parenting time must be entered under sections ~~518.17~~
12.25 ~~and 518.169~~ to 518.175 or section 257.541, as applicable.

12.26 Sec. 14. Minnesota Statutes 2016, section 518.1705, subdivision 5, is amended to read:

12.27 Subd. 5. **Role of court.** If both parents agree to the use of a parenting plan but are unable
12.28 to agree on all terms, the court may create a parenting plan under this section. If the court
12.29 is considering a parenting plan, it may require each parent to submit a proposed parenting
12.30 plan at any time before entry of the final judgment and decree. If parents seek the court's
12.31 assistance in deciding the schedule for each parent's time with the child or designation of
12.32 decision-making responsibilities regarding the child, the court may order an evaluation and

13.1 should consider the appointment of a guardian ad litem. Parenting plans, whether entered
13.2 on the court's own motion, following a contested hearing, or reviewed by the court pursuant
13.3 to a stipulation, must be based on ~~the best interests factors in~~ section 518.169, 518.17, or
13.4 257.025, as applicable.

13.5 Sec. 15. Minnesota Statutes 2016, section 518.1705, subdivision 9, is amended to read:

13.6 Subd. 9. **Modification of parenting plans.** (a) Parents may modify the schedule of the
13.7 time each parent spends with the child or the decision-making provisions of a parenting
13.8 plan by agreement. To be enforceable, modifications must be confirmed by court order. A
13.9 motion to modify decision-making provisions or the time each parent spends with the child
13.10 may be made only within the time limits provided by section 518.18.

13.11 (b) The parties may agree, but the court must not require them, to apply the best interests
13.12 standard in section 257.025 or 518.17, as applicable, for deciding a motion for modification
13.13 that would change the child's primary residence or the physical custody arrangement for
13.14 the child, provided that:

13.15 (1) both parties were represented by counsel when the parenting plan was approved; or

13.16 (2) the court found the parties were fully informed, the agreement was voluntary, and
13.17 the parties were aware of its implications.

13.18 (c) If the parties do not agree to apply the best interests standard, section 518.18,
13.19 paragraph (d), applies.

13.20 Sec. 16. Minnesota Statutes 2016, section 518.175, subdivision 1, is amended to read:

13.21 Subdivision 1. **General.** (a) ~~In all proceedings for dissolution or legal separation,~~ Subject
13.22 to section 518.169, subsequent to the commencement of ~~the~~ a custody proceeding and
13.23 continuing thereafter during the minority of the child, the court shall, upon the request of
13.24 either parent, grant such parenting time on behalf of the child and a parent who does not
13.25 have temporary or permanent sole or joint physical custody of the child as will enable the
13.26 child and the parent to maintain a child to parent relationship that will be in the best interests
13.27 of the child. The court, when issuing a parenting time order, may reserve a determination
13.28 as to the future establishment or expansion of a parent's parenting time. In that event, the
13.29 best interest standard set forth in subdivision 5, paragraph (a), shall be applied to a subsequent
13.30 motion to establish or expand parenting time.

13.31 (b) If the court finds, after a hearing, that parenting time with a parent is likely to endanger
13.32 the child's physical or emotional health or impair the child's emotional development, the

14.1 court shall restrict parenting time with that parent as to time, place, duration, or supervision
 14.2 and may deny parenting time entirely, as the circumstances warrant. The court shall consider
 14.3 the age of the child and the child's relationship with the parent prior to the commencement
 14.4 of the proceeding.

14.5 (c) A parent's failure to pay support because of the parent's inability to do so shall not
 14.6 be sufficient cause for denial of parenting time.

14.7 (d) The court may provide that a law enforcement officer or other appropriate person
 14.8 will accompany a party seeking to enforce or comply with parenting time.

14.9 (e) Upon request of either party, to the extent practicable an order for parenting time
 14.10 must include a specific schedule for parenting time, including the frequency and duration
 14.11 of visitation and visitation during holidays and vacations, unless parenting time is restricted,
 14.12 denied, or reserved.

14.13 (f) The court administrator shall provide a form for a pro se motion regarding parenting
 14.14 time disputes, which includes provisions for indicating the relief requested, an affidavit in
 14.15 which the party may state the facts of the dispute, and a brief description of the parenting
 14.16 time expeditor process under section 518.1751. The form may not include a request for a
 14.17 change of custody. The court shall provide instructions on serving and filing the motion.

14.18 ~~(g) In the absence of other evidence, there is a rebuttable presumption that a parent is~~
 14.19 ~~entitled to receive a minimum of 25 percent of the parenting time for the child. For purposes~~
 14.20 ~~of this paragraph, the percentage of parenting time may be determined by calculating the~~
 14.21 ~~number of overnights that a child spends with a parent or by using a method other than~~
 14.22 ~~overnights if the parent has significant time periods on separate days when the child is in~~
 14.23 ~~the parent's physical custody but does not stay overnight. The court may consider the age~~
 14.24 ~~of the child in determining whether a child is with a parent for a significant period of time.~~

14.25 **EFFECTIVE DATE.** This section is effective for child custody determinations made
 14.26 on or after January 1, 2018.

14.27 Sec. 17. Minnesota Statutes 2016, section 518.179, subdivision 1, is amended to read:

14.28 Subdivision 1. **Seeking custody or parenting time.** Notwithstanding any contrary
 14.29 provision in section 518.169, 518.17₂, or 518.175, if a person seeking child custody or
 14.30 parenting time has been convicted of a crime described in subdivision 2, the person seeking
 14.31 custody or parenting time has the burden to prove that custody or parenting time by that
 14.32 person is in the best interests of the child if:

14.33 (1) the conviction occurred within the preceding five years;

15.1 (2) the person is currently incarcerated, on probation, or under supervised release for
15.2 the offense; or

15.3 (3) the victim of the crime was a family or household member as defined in section
15.4 518B.01, subdivision 2.

15.5 If this section applies, the court may not grant custody or parenting time to the person
15.6 unless it finds that the custody or parenting time is in the best interests of the child. If the
15.7 victim of the crime was a family or household member, the standard of proof is clear and
15.8 convincing evidence. A guardian ad litem must be appointed in any case where this section
15.9 applies.

15.10 Sec. 18. Minnesota Statutes 2016, section 518.18, is amended to read:

15.11 **518.18 MODIFICATION OF ORDER.**

15.12 (a) Unless agreed to in writing by the parties, no motion to modify a custody order or
15.13 parenting plan may be made earlier than one year after the date of the entry of a decree of
15.14 dissolution or legal separation containing a provision dealing with custody, except in
15.15 accordance with paragraph (c).

15.16 (b) If a motion for modification has been heard, whether or not it was granted, unless
15.17 agreed to in writing by the parties no subsequent motion may be filed within two years after
15.18 disposition of the prior motion on its merits, except in accordance with paragraph (c).

15.19 (c) The time limitations prescribed in paragraphs (a) and (b) shall not prohibit a motion
15.20 to modify a custody order or parenting plan if the court finds that there is persistent and
15.21 willful denial or interference with parenting time, or has reason to believe that the child's
15.22 present environment may endanger the child's physical or emotional health or impair the
15.23 child's emotional development.

15.24 (d) If the court has jurisdiction to determine child custody matters, the court shall not
15.25 modify a prior custody order or a parenting plan provision which specifies the child's primary
15.26 residence or the physical custody arrangement for the child unless it finds, upon the basis
15.27 of facts, including unwarranted denial of, or interference with, a duly established parenting
15.28 time schedule, that have arisen since the prior order or that were unknown to the court at
15.29 the time of the prior order, that a change has occurred in the circumstances of the child or
15.30 the parties and that the modification is necessary to serve the best interests of the child,
15.31 consistent with sections 518.169 to 518.175. In applying these standards the court shall
15.32 retain the custody arrangement or the parenting plan provision specifying the child's primary

16.1 residence or the physical custody arrangement for the child that was established by the prior
16.2 order unless:

16.3 (i) the court finds that a change in the custody arrangement or primary residence is ~~in~~
16.4 ~~the best interests of the child and~~ consistent with a standard to which the parties previously
16.5 agreed, in a writing approved by a court, ~~to apply the best interests standard in section~~
16.6 ~~518.17 or 257.025, as applicable;~~ and, with respect to agreements approved by a court on
16.7 or after April 28, 2000, both parties were represented by counsel when the agreement was
16.8 approved or the court found the parties were fully informed, the agreement was voluntary,
16.9 and the parties were aware of its implications;

16.10 (ii) both parties agree to the modification;

16.11 (iii) the child has been integrated into the family of the petitioner with the consent of
16.12 the other party;

16.13 (iv) the child's present environment endangers the child's physical or emotional health
16.14 or impairs the child's emotional development and the harm likely to be caused by a change
16.15 of environment is outweighed by the advantage of a change to the child; or

16.16 (v) the court has denied a request of ~~the primary custodial~~ a parent with sole or joint
16.17 physical custody to move the residence of the child to another state, and the primary custodial
16.18 parent has relocated to another state despite the court's order.

16.19 In addition, a court may modify a custody order or parenting plan under section 631.52.

16.20 (e) In deciding whether to modify a prior joint custody order, the court shall apply the
16.21 standards set forth in paragraph (d) unless: (1) the parties agree in writing to the application
16.22 of a different standard, or (2) the party seeking the modification is asking the court for
16.23 permission to move the residence of the child to another state.

16.24 (f) If a parent has been granted sole physical custody of a minor and the child
16.25 subsequently lives with the other parent, and temporary sole physical custody has been
16.26 approved by the court or by a court-appointed referee, the court may suspend the obligor's
16.27 child support obligation pending the final custody determination. The court's order denying
16.28 the suspension of child support must include a written explanation of the reasons why
16.29 continuation of the child support obligation would be in the best interests of the child.

16.30 (g) There must be no modification of an existing custody order based on the joint physical
16.31 custody provisions of section 518.169 until July 1, 2019, unless the child's environment
16.32 presently endangers the child's physical or emotional health or impairs the child's emotional
16.33 development.

17.1 **EFFECTIVE DATE.** This section is effective January 1, 2018.