

HOUSE BILL NO. 1392

Introduced by

Representatives Kading, Kiefert, McWilliams, Pyle, Roers Jones, Vigesaa

1 A BILL for an Act to amend and reenact sections 14-09-00.1 and 14-09-29 of the North Dakota
2 Century Code, relating to the parenting rights and responsibilities; to provide for retroactive
3 application; and to declare an emergency.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1. AMENDMENT.** Section 14-09-00.1 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **14-09-00.1. Definitions.**

8 As used in this chapter, unless the context otherwise requires:

- 9 1. "Decisionmaking responsibility" means the responsibility to make decisions concerning
10 the child. The term may refer to decisions on all issues or on specified issues, but not
11 child support issues.
- 12 2. "Equal decisionmaking responsibility" means each parent shall communicate with the
13 other parent on all major decisions, which means any decision not involving routine
14 and day-to-day matters, involving their child including the child's day care service
15 provider, education, extracurricular activities, health care, and spiritual development,
16 and, if the parents cannot reach a mutual decision on any major decision involving
17 their child, the parents may resolve the decision through mediation, binding arbitration,
18 a parenting coordinator, or a motion filed with the court having jurisdiction over the
19 parents' child. Each parent has sole and final decisionmaking responsibility over their
20 child on all routine and day-to-day matters that arise during the time the child is under
21 the care of that parent.
- 22 3. "Equal parenting time and residential responsibility" means each parent has their child
23 in his or her care for a significant amount of the time which is equal to or as close to
24 fifty percent of the time for each child as can be arranged based on the circumstances

1 of each child and the parents, but a child may not be placed in the care of one parent
2 for less than thirty-five percent of the time. Upon an award of equal parenting time and
3 residential responsibility, each parent has the responsibility to provide a home for their
4 child exactly fifty percent of the time, and the monthly child support payment in the
5 action is to be determined, using the child support guidelines developed by the
6 department of human services, as if the child is in each parent's care exactly fifty
7 percent of the time, subject to the court's ability to also order, in addition to mandating
8 the monthly child support payment, if any, required by the guidelines, an
9 apportionment between the parents of specific expenses related to the care and
10 education of the child, such as the child's clothing costs; child's vehicle purchase,
11 maintenance, and repair costs; child day care costs; child's school activity fees and
12 extracurricular activity fees; child's health insurance costs; child's health care and
13 other special need expenses not covered by insurance or other sources; and the travel
14 expenses related to exchanging the actual physical care of a child between the
15 parents.

16 4. "Infancy" means the time from the birth of a child to the day before the child attains
17 three years of age.

18 5. "Parental rights and responsibilities" means all rights and responsibilities a parent has
19 concerning the parent's child.

20 3-6. "Parenting plan" means a written plan describing each parent's parental rights and
21 responsibilities.

22 4-7. "Parenting schedule" means the schedule of when the child is in the care of each
23 parent.

24 5-8. "Parenting time" means the time when the child is to be in the care of a parent.

25 6-9. "Primary residential responsibility" means a parent with more than fifty percent of the
26 residential responsibility.

27 7-10. "Residential responsibility" means a parent's responsibility to provide a home for the
28 child.

29 **SECTION 2. AMENDMENT.** Section 14-09-29 of the North Dakota Century Code is
30 amended and reenacted as follows:

1 **14-09-29. Parental rights and responsibilities - Best interests and welfare of child.**

2 1. A court issuing an order that deals with parenting rights and responsibilities of a child
3 entered under this chapter shall award the parental rights and responsibilities
4 concerning the child to a person, agency, organization, or institution as will, in the
5 opinion of the court, promote the best interests and welfare of the child. Between the
6 mother and father, whether married or unmarried, there is no presumption as to whom
7 will better promote the best interests and welfare of the child.

8 2. In any proceeding dealing with a dispute between the parents of a child over the
9 parental rights and responsibilities over a child, there is a presumption that each
10 parent is fit to care for the child and to make with the other parent joint decisions for
11 the child. In any proceeding in which that presumption is not rebutted, if requested by
12 either parent, the court may not apply the best interest analysis mandated in
13 subsection 1 of this section and shall award each parent equal decisionmaking
14 responsibility and equal parenting time and residential responsibility. This presumption
15 may be rebutted only upon a showing by clear and convincing evidence that any one
16 of the following four conditions exist:

17 a. Awarding one of the parents equal parenting time and residential responsibility
18 would cause serious harm or detriment to the physical or emotional health of the
19 child. A showing by clear and convincing evidence that one parent meets any one
20 or more of the following conditions rebuts the presumption that parent is fit to
21 care for the child:

22 (1) If the parent has actual knowledge that he or she is the biological parent of
23 the child for a period of at least one year after the birth of the child, the
24 parent voluntarily has little or no relationship with the child before the
25 commencement of the proceeding;

26 (2) The parent, without just cause, interfered with the other parent's ability to
27 establish a relationship with the child, including the parent refusing the other
28 parent any reasonable opportunities to care for the child on his or her own
29 after the birth of the child regardless of whether a court has issued a
30 parenting time order regarding the child, a history of persistent and

- 1 unwarranted interference with the other parent's parenting time, or a history
2 of alienating a child from the other parent;
- 3 (3) There exists one incident of domestic violence perpetrated by the parent
4 which resulted in serious bodily injury or involved the use of a dangerous
5 weapon or there exists a pattern of domestic violence within a reasonable
6 time proximate to the proceeding;
- 7 (4) The parent has neglected or abused the child for an extended period within
8 a reasonable time proximate to the proceeding. "Neglected or abused the
9 child" is defined in this subdivision to include any of the following acts:
- 10 (a) The parent abandons, tortures, chronically abuses, or sexually abuses
11 a child;
- 12 (b) The parent fails to make substantial, meaningful efforts to secure
13 treatment for the parent's addiction, mental illness, behavior disorder,
14 or any combination of those conditions for a period of at least one
15 year after the parent has been diagnosed with the addiction, mental
16 illness, behavior disorder, or any combination of those conditions, and
17 been notified by a licensed practitioner that parent is in need of such
18 treatment to protect his or her child from being seriously harmed
19 either physically or emotionally by the parent;
- 20 (c) The parent engages in conduct prohibited under sections 12.1-20-01
21 through 12.1-20-08 or chapter 12.1-27.2, in which a child is the victim
22 or intended victim;
- 23 (d) The parent engages in conduct that constitutes one of the following
24 crimes, or of an offense under the laws of another jurisdiction which
25 requires proof of substantially similar elements:
- 26 [1] A violation of section 12.1-16-01, 12.1-16-02, 12.1-16-03, or
27 14-09-22 in which the victim is another child of the parent;
- 28 [2] Aiding, abetting, attempting, conspiring, or soliciting a violation
29 of section 12.1-16-01, 12.1-16-02, or 12.1-16-03 in which the
30 victim is a child of the parent; or

- 1 [3] A violation of section 12.1-17-02 in which the victim is a child of
2 the parent and has suffered serious bodily injury;
- 3 (e) The parent engages or attempts to engage in conduct, prohibited
4 under sections 12.1-17-01 through 12.1-17-04, in which a child is the
5 victim or intended victim;
- 6 (f) The parent has been incarcerated under a sentence for which the
7 latest release date is after the date the court enters an order on the
8 issue of residential responsibility in the proceedings;
- 9 (g) The parent, within a reasonable time proximate to the proceeding,
10 subjects a child to prenatal exposure to chronic or severe use of
11 alcohol or any controlled substance as defined in chapter 19-03.1 in a
12 manner not lawfully prescribed by a licensed practitioner;
- 13 (h) The parent allows the child to be present in an environment subjecting
14 the child to a controlled substance, chemical substance, or drug
15 paraphernalia as prohibited by section 19-03.1-22.2;
- 16 (i) The parent allows a child to be without proper parental care or control,
17 subsistence, education as required by law, or other care or control
18 necessary for the child's physical, mental, or emotional health, or
19 morals, and the deprivation is not due primarily to the lack of financial
20 means of the parent;
- 21 (j) The parent has placed the child for care or adoption in violation of law;
- 22 (k) The parent abandoned his or her child within a reasonable time
23 proximate to the proceeding;
- 24 (l) The parent, within a reasonable time proximate to the proceeding,
25 leaves his or her child without proper parental care, control, or
26 education as required by law, or other care and control necessary for
27 the child's well-being because of the physical, mental, emotional, or
28 other illness or disability of the parent;
- 29 (m) The parent, within a reasonable time proximate to the proceeding,
30 refused to participate in treatment for a child who is in need of
31 treatment, as ordered by the juvenile court;

- 1 (n) The parent, within a reasonable time proximate to the proceeding,
2 exposure to a controlled substance, chemical substance, or drug
3 paraphernalia as prohibited by section 19-03.1-22.2; or
4 (o) The parent, within a reasonable time proximate to the proceeding,
5 allows a child to be a victim of human trafficking as defined in
6 title 12.1; or
7 (5) The parent is diagnosed as having a physical injury or medical or
8 psychological condition that renders that parent incapable of properly caring
9 for the child at the time the court is called upon to decide the parental rights
10 and responsibilities over the child.
11 b. The residences in which the child will live with each parent are located a sufficient
12 distance away from the other, which renders an award of equal parenting time
13 and residential responsibility detrimental to the physical or emotional health of the
14 child, based on a written assessment made by a child development expert, and
15 neither parent is willing to relocate their respective residence to be closer to the
16 other to make an award of equal parenting time and residential responsibility
17 work in the best interests of the child. This subdivision does not apply if the
18 parties' respective residences are located fifty miles [80.47 kilometers] or less
19 away from the other. However, if a parent relocates to a residence more than fifty
20 miles [80.47 kilometers] from the other parent's residence at any time after the
21 conception of a child for whom an award of primary residential responsibility is
22 being sought by the parent in the action and then attempts to apply this
23 subdivision in an attempt to avoid an award of equal parenting time and
24 residential responsibility that relocation may be grounds, based on the discretion
25 of the court, to award primary residential responsibility over the child to the other
26 parent;
27 c. The child who is the subject of the action is an infant at the time of the resolution
28 of the proceeding and the schedule, health or other circumstances of one of the
29 parents does not allow for a parenting schedule that allows for exchanges of the
30 child between the parents at least every seven days or less, so that each parent

1 may care for and interact with the child, including over nights with the child, on a
2 frequent basis during the infancy of the child; and

3 d. The child has a special need that, based on a written assessment made by a
4 child development expert, one of the parents does not have the ability or time
5 needed to avoid an award of equal parenting time and residential responsibility
6 being detrimental to the physical or emotional health of the child.

7 3. If the court finds that a parent has perpetrated domestic violence and that parent does
8 not have residential responsibility, and there exists one incident of domestic violence
9 which resulted in serious bodily injury or involved the use of a dangerous weapon or
10 there exists a pattern of domestic violence within a reasonable time proximate to the
11 proceeding, the court shall allow only supervised parenting time with that parent
12 unless there is a showing by clear and convincing evidence that unsupervised
13 parenting time would not endanger the child's physical or emotional health.

14 ~~3.4.~~ If any court finds by clear and convincing evidence that a parent has sexually abused
15 the parent's child, the court shall prohibit contact between the abusive parent and the
16 child until the court finds that the abusive parent has successfully completed a
17 treatment program designed for such sexual abusers and that supervised parenting
18 time is in the child's best interests. Contact between the abusive parent and the child
19 may be allowed only in a therapeutic setting, facilitated by a therapist as part of a
20 sexual abuse treatment program, and only when the therapist for the abusive parent
21 and the therapist for the abused child agree that contact serves a therapeutic purpose
22 and is in the best interests of the child.

23 4.5. In any proceeding dealing with parental rights and responsibilities in which a parent is
24 found to have perpetrated domestic violence, and there exists one incident of
25 domestic violence which resulted in serious bodily injury or involved the use of a
26 dangerous weapon or there exists a pattern of domestic violence within a reasonable
27 time proximate to the proceeding, all court costs, attorney's fees, evaluation fees, and
28 expert witness fees must be paid by the perpetrator of the domestic violence unless
29 those costs would place an undue financial hardship on that parent.

30 **SECTION 3. RETROACTIVE APPLICATION OF ACT.** This Act applies retroactively to each
31 pending and past civil action that involves or involved a determination of the parental rights and

1 responsibilities in which one or more of the children are younger than eighteen years of age as
2 of the effective date of this Act and over which determination the state of North Dakota has
3 jurisdiction as of the effective date of this Act. The limitations under section 14-09-06.6 on
4 postjudgment modifications of primary residential responsibility and under Rule 8.2 of the North
5 Dakota Rules of Court on amending an interim order do not apply to the first motion filed in an
6 action on or after the effective date of this Act wherein the moving party seeks a redetermination
7 of the parental rights and responsibilities under the presumption and evidentiary burden
8 established by the enactment of this Act.

9 **SECTION 4. EMERGENCY.** This Act is declared to be an emergency measure.