



2023 South Dakota Legislature

Senate Bill 137

Introduced by: **Senator Pischke**

1 **An Act to provide for the consideration of a child's wishes in awarding custody.**

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

3 **Section 1. That § 25-4-45 be AMENDED:**

4 **25-4-45.** In an action for divorce, the court may, before or after judgment, give
5 such direction for the custody, care, and education of the children of the marriage as may
6 seem necessary or proper, and may at any time vacate or modify the same.

7 In awarding the custody of a child, the court ~~shall~~must be guided by consideration
8 of what appears to be for the best interests of the child, in respect to the child's
9 temporal~~and~~mental, and moral welfare.

10 ~~If the child is of a sufficient age to form an intelligent preference, the~~The court
11 ~~may~~shall consider that ~~preference~~the desires and wishes of the child in determining the
12 question, ~~if the child is of an age of comprehension, regardless of chronological age, and~~
13 ~~if the child's desires and wishes are based on sound reasoning.~~

14 As between parents adversely claiming the custody, neither parent may be given
15 preference over the other in determining custody.

16 **Section 2. That § 25-4A-24 be AMENDED:**

17 **25-4A-24.** In considering a contested request for joint physical custody, in
18 addition to the traditional factors for determining the best interests of a child, the court
19 shall consider ~~the following factors:~~

- 20 (1) Whether each parent is a suitable physical custodian for the child;
- 21 (2) Whether each parent has an appropriate dwelling to support physical custody of
22 the child;
- 23 (3) Whether the psychological and emotional needs and the development of the child
24 will suffer due to lack of active contact with, and attention from, both parents if
25 joint physical custody is not granted;

- 1 (4) Whether one parent has denied, without just cause, the child the opportunity for
2 continuing contact with the other parent. Facts supporting an application of the
3 presumption in § 25-4-45.5 constitute just cause;
- 4 (5) Whether the parents can show mutual respect for and effectively communicate
5 with each other regarding the child's needs. When considering this factor, the court
6 shall include a determination of the degree to which the parents are in general
7 agreement about their approach to daily child rearing matters;
- 8 (6) The extent to which both parents actively care for the child;
- 9 (7) Whether each parent can support the other parent's relationship with the child.
10 When considering this factor, the court shall include a determination of conflict
11 between the parents, as joint physical custody requires substantial and regular
12 interaction between the parents on a myriad of issues;
- 13 (8) Whether the joint physical custody arrangement is in accord with the child's desires
14 and wishes ~~or whether, if the child has strong opposition to joint physical custody,~~
15 ~~taking into consideration the child's age, maturity, and reason for the objection~~ is
16 of an age of comprehension, regardless of the child's chronological age, and if the
17 child's desires and wishes are based on sound reasoning;
- 18 (9) Whether a parent has intentionally alienated or interfered with the other parent's
19 relationship with the child;
- 20 (10) Whether one or both parents are opposed to joint physical custody. A parent's
21 opposition to joint physical custody is not determinative in itself, but only one factor
22 for the court to consider;
- 23 (11) The geographic proximity of the parents;
- 24 (12) Whether the safety of the child, other children, or the other parent will be
25 jeopardized by an award of joint physical custody;
- 26 (13) Whether a parent allows another person custody or control of, or unsupervised
27 access to, a child after knowing the person is required to register or is on the sex
28 offender registry as a sex offender under chapter 22-24B;
- 29 (14) Whether a parent has attempted to influence a custody determination by alleging,
30 falsely or without good cause, that the child or the sibling of the child has been
31 subjected to physical or sexual abuse or abuse and neglect, as set forth in § 25-4-
32 45.8;
- 33 (15) Whether a parent is physically and mentally capable of providing temporal, mental,
34 and moral wellness for the child;

- 1 (16) Whether a parent has the capacity and disposition to provide the child with
2 protection, food, clothing, medical care, and other basic needs;
- 3 (17) Whether a parent is willing and capable to provide the child love, affection,
4 guidance, and education in order to impart the family's religion or creed;
- 5 (18) Whether a parent is committed to prepare the child for responsible adulthood, as
6 well as to ensure that the child experiences a fulfilling childhood;
- 7 (19) Whether a parent provides exemplary modeling so that the child witnesses
8 firsthand what it means to be a good parent, a loving spouse, and a responsible
9 citizen;
- 10 (20) Whether a parent provides a stable and consistent home environment including
11 the relationship and interaction of the child with the parents, stepparents, siblings,
12 and extended families;
- 13 (21) The extent of the child's adjustment in ~~regards~~ regard to home, school, and
14 community;
- 15 (22) Whether a break in attachment with the parent whom the child has formed a closer
16 attachment would cause detriment due to the break in continuity for the child; and
- 17 (23) Whether a parent is guilty of misconduct that may have a harmful effect on the
18 child.