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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-FIFTH
SESSION

HOUSE FILE No. **1262**

February 22, 2007

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The bill was read for the first time and referred to the Committee on Public Safety and Civil Justice

1.1 A bill for an act
1.2 relating to family law; creating a presumption of joint physical custody; requiring
1.3 the use of parenting plans in certain cases; modifying custody designations for
1.4 parenting plans that use alternative terminology; amending Minnesota Statutes
1.5 2006, sections 518.003, subdivision 3; 518.17, subdivisions 1, 2; 518.1705,
1.6 subdivisions 3, 4.

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

1.8 Section 1. Minnesota Statutes 2006, section 518.003, subdivision 3, is amended to read:

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

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

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

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

1.17 (d) "Joint physical custody" means that the routine daily care and control and the
1.18 residence of the child is structured between the parties. Joint physical custody does not
1.19 require an equal or nearly equal division of time between the parties.

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

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

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

2.5 Sec. 2. Minnesota Statutes 2006, section 518.17, subdivision 1, is amended to read:

2.6 Subdivision 1. **The best interests of the child.** (a) "The best interests of the child"
2.7 means all relevant factors to be considered and evaluated by the court including:

2.8 (1) the wishes of the child's parent or parents as to custody;

2.9 (2) the reasonable preference of the child, if the court deems the child to be of
2.10 sufficient age to express preference;

2.11 (3) the child's primary caretaker;

2.12 (4) the intimacy of the relationship between each parent and the child;

2.13 (5) the interaction and interrelationship of the child with a parent or parents, siblings,
2.14 and any other person who may significantly affect the child's best interests;

2.15 (6) the child's adjustment to home, school, and community;

2.16 (7) the length of time the child has lived in a stable, satisfactory environment and
2.17 the desirability of maintaining continuity;

2.18 (8) the permanence, as a family unit, of the existing or proposed custodial home;

2.19 (9) the mental and physical health of all individuals involved; except that a
2.20 disability, as defined in section 363A.03, of a proposed custodian or the child shall not be
2.21 determinative of the custody of the child, unless the proposed custodial arrangement is not
2.22 in the best interest of the child;

2.23 (10) the capacity and disposition of the parties to give the child love, affection,
2.24 and guidance, and to continue educating and raising the child in the child's culture and
2.25 religion or creed, if any;

2.26 (11) the child's cultural background;

2.27 (12) the effect on the child of the actions of an abuser, if related to domestic abuse,
2.28 as defined in section 518B.01, that has occurred between the parents or between a parent
2.29 and another individual, whether or not the individual alleged to have committed domestic
2.30 abuse is or ever was a family or household member of the parent; and

2.31 (13) except in cases in which a finding of domestic abuse as defined in section
2.32 518B.01 has been made, the disposition of each parent to encourage and permit frequent
2.33 and continuing contact by the other parent with the child.

2.34 The court may not use one factor to the exclusion of all others. The primary
2.35 caretaker factor may not be used as a presumption in determining the best interests of the

3.1 child. The court must make detailed findings on each of the factors and explain how the
 3.2 factors led to its conclusions and to the determination of the best interests of the child.
 3.3 The court must make detailed findings regarding the rationale for a deviation from the
 3.4 rebuttable presumptions in subdivision 2.

3.5 (b) The court shall not consider conduct of a proposed custodian that does not affect
 3.6 the custodian's relationship to the child.

3.7 Sec. 3. Minnesota Statutes 2006, section 518.17, subdivision 2, is amended to read:

3.8 Subd. 2. ~~Factors when joint custody is sought~~ **Rebuttable presumptions in**
 3.9 **child custody disputes.** ~~In addition to the factors listed in subdivision 1, where either~~
 3.10 ~~joint legal or joint physical custody is contemplated or sought, the court shall consider the~~
 3.11 ~~following relevant factors:~~

3.12 (a) ~~the ability of parents to cooperate in the rearing of their children;~~

3.13 (b) ~~methods for resolving disputes regarding any major decision concerning the life~~
 3.14 ~~of the child, and the parents' willingness to use those methods;~~

3.15 (c) ~~whether it would be detrimental to the child if one parent were to have sole~~
 3.16 ~~authority over the child's upbringing; and~~

3.17 (d) ~~whether domestic abuse, as defined in section 518B.01, has occurred between~~
 3.18 ~~the parents.~~

3.19 (a) The court shall use a rebuttable presumption that upon request of either or both
 3.20 parties, joint legal and physical custody is in the best interests of the child. However,

3.21 (b) Notwithstanding paragraph (a), the court shall use a rebuttable presumption that
 3.22 joint legal or physical custody is not in the best interests of the child if domestic abuse,
 3.23 as defined in section 518B.01, has occurred between the parents or by a parent against
 3.24 the child who is the subject of the matter before the court.

3.25 ~~If the court awards joint legal or physical custody over the objection of a party, the~~
 3.26 ~~court shall make detailed findings on each of the factors in this subdivision and explain~~
 3.27 ~~how the factors led to its determination that joint custody would be in the best interests of~~
 3.28 ~~the child.~~

3.29 Sec. 4. Minnesota Statutes 2006, section 518.1705, subdivision 3, is amended to read:

3.30 Subd. 3. **Creating parenting plan; restrictions on creation; alternative.** (a)
 3.31 ~~Upon the request of both parents, a parenting plan must be created in lieu of an order for~~
 3.32 ~~child custody and parenting time~~ The court shall adopt a parenting plan proposed by
 3.33 both parents unless the court makes detailed findings that the proposed plan is not in the
 3.34 best interests of the child.

4.1 (b) If both parents do not agree to a parenting plan, the court ~~may~~ shall create ~~one~~ a
4.2 parenting order on its own motion, ~~except that the court must not do so if it~~ unless the court:

4.3 (1) makes detailed findings that use of a parenting order is not feasible; or

4.4 (2) finds that a parent has committed domestic abuse against a parent or child who is
4.5 a party to, or subject of, the matter before the court. ~~If the court creates a parenting plan~~
4.6 ~~on its own motion, it must not use alternative terminology unless the terminology is~~
4.7 ~~agreed to by the parties.~~

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

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

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

4.14 Sec. 5. Minnesota Statutes 2006, section 518.1705, subdivision 4, is amended to read:

4.15 Subd. 4. **Custody designation.** ~~A final judgment and decree that includes a~~
4.16 ~~parenting plan using alternate terms to designate decision-making responsibilities or~~
4.17 ~~allocation of residential time between the parents must designate whether the parents have~~
4.18 ~~joint legal custody or joint physical custody or which parent has sole legal custody or sole~~
4.19 ~~physical custody, or both. This designation is solely for enforcement of the final judgment~~
4.20 ~~and decree where this designation is required for that enforcement and has no effect~~
4.21 ~~under the laws of this state, any other state, or another country that do not require this~~
4.22 ~~designation. If the parenting plan or order substitutes other terms for legal and physical~~
4.23 custody and if a designation of legal and physical custody is necessary for enforcement
4.24 of the judgment and decree in another jurisdiction, it must be considered solely for that
4.25 purpose that the parents have joint legal and joint physical custody.