

Minnesota: Children's Equal and Shared Parenting Act

Summary:

This bill creates a rebuttable presumption of equal custody following divorce. The bill establishes the clear and convincing evidence standard to be used in parental fitness determinations, and states that knowingly making a false allegation of spousal or child abuse is grounds to challenge the parental fitness of the accuser.

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Bill Number:

HF 322

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Media Coverage:

http://www.twincities.com/ci_17321043?IADID=Search-www.twincities.com-www.twincities.com&nclick_check=1

Text:

<https://www.revisor.mn.gov/bin/bldbill.php?bill=H0322.0.html&session=ls87>

Pertinent Provisions:

Sec. 7. CHILDREN'S EQUAL AND SHARED PARENTING ACT
Subdivision 1. Public policy.

(a) The legislature, recognizing the importance of protections afforded children by their ability to develop strong parental bonds, and recognizing the fundamental interest of liberty that parents enjoy respecting the care, custody, and companionship of their children, finds and declares the following with respect to the intent of Minnesota laws relating to families:...

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

Subd. 2. Joint custody.

(a) In cases of marital dissolution or unmarried parentage, when paternity has been established, both parents enjoy a rebuttable presumption of joint legal and joint physical custody of their children, and a rebuttable presumption the court will award a parenting minimum of 45.1 percent for each parent.

(b) The burden of overcoming the presumption rests on the parent challenging the presumption. The presumption may only be overcome by demonstrating an unfitness of the parent being challenged that would cause substantial harm to the children. The clear and convincing evidence standard must be used in making a fitness determination.

(c) Knowingly making false allegations of child or spousal abuse is sufficient grounds to challenge the parental fitness of the accuser. Allegations raised in the context of divorce or custody proceedings deserve heightened scrutiny as to their veracity.

(d) Allegations of substance abuse, mental illness, spousal or child abuse or neglect, and any subsequent issuance of protective orders are not sufficient to cause cessation or reduction in parent and child contact. When the fitness of a parent is challenged, the court must find by clear and convincing evidence that the parent's behaviors would qualify the parent's child to be found in need of protection or services under section 260C.007, subdivisions 13 and 15, or the parent is found to meet the criteria as a chemically dependent person under section 253B.02, subdivision 2. In no instance may the court limit parent and child contact absent compelling necessity to prevent substantial and imminent harm to the child.

(e) The court shall provide written findings of fact and conclusions of law when entering an order that does not maintain the presumption of joint legal and joint physical custody. The court must make written findings that enumerate which of the factors in this subdivision are applicable and by what evidence these factors were demonstrated

(f) If the court finds that a party has overcome the presumption in favor of joint physical custody, the court shall use the best interest standards in section 257.025 or 518.17, subdivision 1, as applicable, to make its determination for custodial arrangements.