

Introduced by

1 A BILL for an Act to amend and reenact section 14-09-06.2 of the North Dakota Century Code,  
2 relating to joint custody of a child.

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

4 **SECTION 1. AMENDMENT.** Section 14-09-06.2 is amended:

5 **14-09-06.2. Best interests and welfare of child - Court consideration - Factors.**

- 6 1. For the purpose of custody, the best interests and welfare of the child is  
7 determined by the court's consideration and evaluation of all factors affecting the  
8 best interests and welfare of the child. These factors include all of the following  
9 when applicable:
- 10 a. The love, affection, and other emotional ties existing between the parents and  
11 child.
  - 12 b. The capacity and disposition of the parents to give the child love, affection,  
13 and guidance and to continue the education of the child.
  - 14 c. The disposition of the parents to provide the child with food, clothing, medical  
15 care, or other remedial care recognized and permitted under the laws of this  
16 state in lieu of medical care, and other material needs.
  - 17 d. The length of time the child has lived in a stable satisfactory environment and  
18 the desirability of maintaining continuity.
  - 19 e. The permanence, as a family unit, of the existing or proposed custodial home.
  - 20 f. The moral fitness of the parents.
  - 21 g. The mental and physical health of the parents.
  - 22 h. The home, school, and community record of the child.
  - 23 i. The reasonable preference of the child, if the court deems the child to be of  
24 sufficient intelligence, understanding, and experience to express a preference.

- 1           j.   Evidence of domestic violence. In awarding custody or granting rights of  
2           visitation, the court shall consider evidence of domestic violence. If the court  
3           finds credible evidence that domestic violence has occurred, and there exists  
4           one incident of domestic violence which resulted in serious bodily injury or  
5           involved the use of a dangerous weapon or there exists a pattern of domestic  
6           violence within a reasonable time proximate to the proceeding, this  
7           combination creates a rebuttable presumption that a parent who has  
8           perpetrated domestic violence may not be awarded sole or joint custody of a  
9           child. This presumption may be overcome only by clear and convincing  
10          evidence that the best interests of the child require that parent's participation  
11          as a custodial parent. The court shall cite specific findings of fact to show that  
12          the custody or visitation arrangement best protects the child and the parent or  
13          other family or household member who is the victim of domestic violence. If  
14          necessary to protect the welfare of the child, custody may be awarded to a  
15          suitable third person, provided that the person would not allow access to a  
16          violent parent except as ordered by the court. If the court awards custody to a  
17          third person, the court shall give priority to the child's nearest suitable adult  
18          relative. The fact that the abused parent suffers from the effects of the abuse  
19          may not be grounds for denying that parent custody. As used in this  
20          subdivision, "domestic violence" means domestic violence as defined in  
21          section 14-07.1-01. A court may consider, but is not bound by, a finding of  
22          domestic violence in another proceeding under chapter 14-07.1.
- 23          k.   The interaction and interrelationship, or the potential for interaction and  
24          interrelationship, of the child with any person who resides in, is present, or  
25          frequents the household of a parent and who may significantly affect the  
26          child's best interests. The court shall consider that person's history of  
27          inflicting, or tendency to inflict, physical harm, bodily injury, assault, or the fear  
28          of physical harm, bodily injury, or assault, on other persons.
- 29          l.   The making of false allegations not made in good faith, by one parent against  
30          the other, of harm to a child as defined in section 50-25.1-02.

- 1                   m. Any other factors considered by the court to be relevant to a particular child  
2                   custody dispute.
- 3           2. Unless there is evidence of domestic violence, as provided in subdivision j of  
4           subsection 1, upon the request of either or both parties for joint custody of a child,  
5           the court shall use a rebuttable presumption that joint custody is in the best  
6           interests of the child.
- 7           3. In any proceeding under this chapter, the court, at any stage of the proceedings  
8           after final judgment, may make orders about what security is to be given for the  
9           care, custody, and support of the unmarried minor children of the marriage as from  
10          the circumstances of the parties and the nature of the case is equitable.