

State of South Dakota

SEVENTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2003

364I0179

SENATE JUDICIARY COMMITTEE ENGROSSED NO.

SB 60 - 02/03/2003

Introduced by: Senators Kooistra, Abdallah, Earley, Kloucek, Koetzle, Moore, and Olson
(Ed) and Representatives Christensen, Michels, and Nesselhuf

1 FOR AN ACT ENTITLED, An Act to revise certain provisions relating to child custody and to
2 provide for a shared parenting plan.

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

4 Section 1. That § 25-4A-10 be amended to read as follows:

5 25-4A-10. The South Dakota Supreme Court shall promulgate court rules establishing
6 standard guidelines to be used statewide for child visitation in divorce or separate maintenance
7 actions or any other custody action or proceeding. The standard guidelines shall reflect a
8 parenting schedule that allows the child to have regularly occurring, meaningful periods of
9 physical placement with each parent, taking into account geographic separation and
10 accommodations for different households. These guidelines shall provide a framework for child
11 visitation including frequency and time for child visitation; hours or days of visitation; definitions
12 for weekends, holidays, birthdays, and other special occasions; and time periods for summer
13 visitations. In establishing the standard guidelines, the court may consider varying ages and
14 circumstances of children and treat varying ages and circumstances differently.

15 Section 2. That § 25-4A-11 be amended to read as follows:



1 25-4A-11. Upon the filing of a summons and complaint for divorce or separate maintenance
2 or any other custody action or proceeding, the plaintiff shall also file and serve upon the
3 defendant a copy of the standard guidelines. The standard guidelines attached to the summons
4 shall become an order of the court upon fulfillment of the requirements of service. ~~Any minor~~
5 ~~child of the marriage shall remain in the custody of the parent who has been the primary~~
6 ~~caregiver for the minor child for the majority of time in the thirty days preceding the filing of the~~
7 ~~summons and complaint, unless the parties agree otherwise.~~ The standard guidelines shall apply
8 and continue in effect, unless the parties agree, or the court orders otherwise. Imposition of the
9 standard guidelines creates no presumption as to who shall be awarded custody at any hearing.

10 Section 3. That chapter 25-5 be amended by adding thereto a NEW SECTION to read as
11 follows:

12 If the court deviates from standard guidelines, the court shall make findings as to:

- 13 (1) The likelihood of serious physical or emotional harm to the child if placed in the
14 parent's custody;
- 15 (2) A history of abuse or neglect as defined in § 26-8A-2, domestic abuse as defined in
16 § 25-10-1, or any problem with alcohol or drug abuse;
- 17 (3) The lack of ability of either parent to provide for a child's physical, emotional, and
18 other needs over a significant period of time;
- 19 (4) The lack of a bonded relationship between the child and either parent, sufficient to
20 cause emotional harm to the child;
- 21 (5) Any situation that would cause significant instability and insecurity in the child's future
22 with either parent;
- 23 (6) The lack of cooperation and communication between the parties and whether either
24 party unreasonably refuses to cooperate or communicate with the other party;

- 1 (7) The pattern of involvement of the parties with the child that does not reflect a system
2 of values, time commitment, and mutual support;
- 3 (8) The lack of ability of either party to encourage the sharing of love, affection, and
4 contact between the child and the other party;
- 5 (9) An impairment to a child's right to an education while in the custody of either parent;
- 6 (10) That either parent has abandoned or persistently neglected the child;
- 7 (11) A demonstrated lack of either parent's commitment to raising the child;
- 8 (12) That either parent has forfeited or surrendered their parental rights over the child; or
- 9 (13) Any other circumstance that would substantially and adversely impact the welfare of
10 the child.

11 In all parenting arrangements, one parent's home shall be designated as the primary address
12 for the child.

13 Section 4. That chapter 25-5 be amended by adding thereto a NEW SECTION to read as
14 follows:

15 If an alternative parenting arrangement is ordered, the court shall state on the record why its
16 findings are in the best interest of the child.

17 Section 5. That § 25-5-13 be amended to read as follows:

18 ~~25-5-13. A parent entitled to the custody of a child has the right to change his residence,~~
19 ~~subject to the power of the circuit court to restrain a removal which would prejudice the rights~~
20 ~~or welfare of the child. Any person entitled to parenting time with a child shall give notice of any~~
21 proposed relocation of the residence of the child to another state or a distance greater than
22 seventy-five miles. The notice shall be in writing by certified mail, return receipt requested, to
23 any party that has parenting time rights. Absent exigent circumstances as determined by a court
24 with jurisdiction, written notice shall be provided at least thirty days before the proposed

1 relocation. The notice of the proposed relocation shall include the following information: the city
2 and state to which the relocation is proposed, the date of the intended move, the reasons for
3 moving, a proposed parenting plan, and the procedure to be followed if the parent objects to the
4 relocation.

5 The residence of the child may be relocated thirty days after providing notice, as required by
6 this section, unless a party entitled to parenting time with a child files a motion seeking an order
7 to prevent the relocation within fifteen days after receipt of such notice. An affidavit setting forth
8 the specific basis for prohibiting the relocation shall be attached to the motion. The person
9 seeking the relocation shall respond to the motion within ten days, unless the court extends the
10 response time for good cause, and provide a counter affidavit setting forth the facts in support
11 of the relocation and the proposed revised parenting plan for the child.

12 If relocation is permitted, the court shall order contact with the nonrelocating party including
13 parenting time and telephone access sufficient to assure that the child has frequent, continuing,
14 and meaningful contact with the nonrelocating party unless such contact is detrimental to the
15 child.