

State of South Dakota

EIGHTY-THIRD SESSION
LEGISLATIVE ASSEMBLY, 2008

268P0292

SENATE JUDICIARY ENGROSSED NO. **HB 1100** - 2/20/2008

Introduced by: Representatives Vehle, Deadrick, Dennert, and Elliott and Senator Hansen (Tom) at the request of the Interim Committee on Education for Divorcing Parents, Visitation, and Custody Task Force

1 FOR AN ACT ENTITLED, An Act to create a rebuttable presumption against the award of
2 custody to any person with a proven history of domestic abuse.

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

4 Section 1. That § 25-4-45.5 be amended to read as follows:

5 25-4-45.5. In awarding custody involving a minor, the court shall consider ~~a~~:

6 (1) A conviction of domestic abuse as defined in subdivision 25-10-1(1); or ~~a~~

7 (2) A conviction of assault against a person as defined in subdivision 25-10-1(2), except
8 against any person related by consanguinity, but not living in the same household; ~~or~~

9 (3) A history of domestic abuse.

10 The conviction or history of domestic abuse creates a rebuttable presumption that awarding
11 custody to the abusive parent is not in the best ~~interests~~ interest of the minor. A history of
12 domestic abuse may only be proven by greater convincing force of the evidence.

13 Section 2. That chapter 25-4 be amended by adding thereto a NEW SECTION to read as
14 follows:



1 For purposes of this chapter, in determining whether a history of domestic abuse exists, the
2 court's consideration may include the issuance of a protection order against a parent or the arrest
3 of a parent following response of law enforcement to a report of alleged physical harm or bodily
4 injury to a family or household member.