

# State of South Dakota

EIGHTY-SIXTH SESSION  
LEGISLATIVE ASSEMBLY, 2011

628S0622

## HOUSE BILL NO. 1255

Introduced by: The Committee on Health and Human Services

1 FOR AN ACT ENTITLED, An Act to provide for the award of joint physical custody of  
2 children under certain circumstances.

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

4 Section 1. That chapter 25-5 be amended by adding thereto a NEW SECTION to read as  
5 follows:

6 If joint legal custody is awarded, pursuant to § 25-5-7.1, there is a rebuttable presumption  
7 that both parents have joint physical custody of their children. Joint physical custody of the  
8 children is defined as equal time-sharing. The burden of overcoming the presumption rests on  
9 the parent challenging the presumption. The presumption may be overcome by demonstrating  
10 that joint physical custody would not be in the best interests of the children or by one parent  
11 waiving the presumption. The clear and convincing evidentiary standard shall be used in  
12 determining if the presumption has been overcome. Upon request by either parent, the court  
13 shall hold a hearing at which the parties may introduce evidence. The court shall issue findings  
14 of fact and conclusions of law upon request by either parent. The court shall require the parents  
15 to prepare and submit a parenting plan to the court reflecting parental preferences and agreement



on the matters of substance concerning the child's education, upbringing, religious training, medical, and dental care. The parents shall share decision-making authority and responsibility as to the important decisions affecting the child's welfare and if parents are unable to agree, and they shall submit to, and abide by, the decision of a preselected mediator.

Section 2. That chapter 25-5 be amended by adding thereto a NEW SECTION to read as follows:

In awarding custody involving a child, the court shall consider:

- (1) A conviction of domestic abuse as defined in subdivision 25-10-1(1); or
- (2) A conviction of assault against a person as defined in subdivision 25-10-1(2), except against any person related by consanguinity, but not living in the same household; or
- (3) A proven history of domestic abuse.

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

Section 3. That § 25-4-45.5 be repealed.

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

- ~~(1) A conviction of domestic abuse as defined in subdivision 25-10-1(1); or~~
- ~~(2) A conviction of assault against a person as defined in subdivision 25-10-1(2), except against any person related by consanguinity, but not living in the same household; or~~
- ~~(3) A history of domestic abuse.~~

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