AN ACT

ENTITLED, An Act to provide for the consideration of joint physical custody of a minor.

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

Section 1. In any custody dispute between parents, upon application of either parent, the court shall consider granting joint physical custody of a minor child.

The court shall consider the factors set forth in section 4 of this Act, and shall make written findings of fact and conclusions of law regarding the best interests of the minor child, unless waived by both parties.

Section 2. A finding by the court that a parent has a history of committing domestic abuse or has an assault conviction as defined in § 25-4-45.5, creates a rebuttable presumption that joint physical custody is not in the best interests of the child.

Section 3. Prior to ruling on a joint physical custody petition the court may require the parties to participate in a home study or a custody evaluation. Prior to the court ruling on a joint physical custody petition, either parent may request mediation pursuant to § 25-4-56.

In any case where the court orders the parties to participate in a home study, custody evaluation, or custody mediation, the court shall allocate the costs of the same between the parties.

Section 4. In considering a contested request for joint physical custody, in addition to the traditional factors for determining the best interests of a child, the court shall consider the following factors:

(1) Whether each parent is a suitable physical custodian for the child;

(2) Whether each parent has an appropriate dwelling to support physical custody of the child;

(3) Whether the psychological and emotional needs and the development of the child will suffer due to lack of active contact with, and attention from, both parents if joint physical custody is not granted;

(4) Whether one parent has denied, without just cause, the child the opportunity for continuing contact with the other parent. Facts supporting an application of the presumption in § 25-4-45.5 constitute just cause;

(5) Whether the parents can show mutual respect for and effectively communicate with each other regarding the child's needs. When considering this factor, the court shall include a determination of the degree to which the parents are in general agreement about their approach to daily child rearing matters;

(6) The extent to which both parents actively care for the child;

(7) Whether each parent can support the other parent's relationship with the child. When considering this factor, the court shall include a determination of conflict between the parents, as joint physical custody requires substantial and regular interaction between the parents on a myriad of issues;

(8) Whether the joint physical custody arrangement is in accord with the child's wishes or whether the child has strong opposition to joint physical custody, taking into consideration the child's age, maturity, and reason for the objection;

(9) Whether a parent has intentionally alienated or interfered with the other parent's relationship with the child;

(10) Whether one or both parents are opposed to joint physical custody. A parent's opposition to joint physical custody is not determinative in itself, but only one factor for the court to consider;

(11) The geographic proximity of the parents;

(12) Whether the safety of the child, other children, or the other parent will be jeopardized by an award of joint physical custody;

(13) Whether a parent allows another person custody or control of, or unsupervised access to,

a child after knowing the person is required to register or is on the sex offender registry as a sex offender under chapter 22-24B;

(14) Whether a parent has attempted to influence a custody determination by alleging, falsely or without good cause, that the child or the sibling of the child has been subjected to physical or sexual abuse or abuse and neglect, as set forth in § 25-4-45.8.

Section 5. If both parents agree to joint physical custody of a child, the court is not required to consider the factors set forth in section 4 of this Act.

Section 6. Nothing in this Act creates a presumption of joint physical custody. The court shall determine the appropriate physical care, custody, and control of a minor child based on a determination of the best interests of the child.

Section 7. The enactment of this Act does not constitute a substantial change in circumstances justifying the modification of existing custody orders, but the provisions of this Act shall apply to modification proceedings which are otherwise properly before the court.

An Act to provide for the consideration of joint physical custody of a minor.

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I certify that the attached Act originated in the

SENATE as Bill No. 74

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Secretary of the Senate

_____
President of the Senate

Attest:

_____
Secretary of the Senate

_____
Speaker of the House

Attest:

_____
Chief Clerk

Senate Bill No. _74_
File No. ____
Chapter No. _____

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Received at this Executive Office this _____ day of _____ ,

20____ at _____ M.

By _____
for the Governor

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The attached Act is hereby approved this _____ day of _____ , A.D., 20___

_____
Governor

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STATE OF SOUTH DAKOTA,
ss.
Office of the Secretary of State

Filed _____ , 20___
at _____ o'clock __ M.

_____
Secretary of State

By _____
Asst. Secretary of State