

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

391H0028

SENATE JUDICIARY COMMITTEE ENGROSSED NO.

HB 1220 - 02/11/2002

This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.

Introduced by: Representatives Murschel, Bartling, Brown (Jarvis), Davis, Derby, Hennies (Thomas), Jensen, Juhnke, Kooistra, Madsen, and Slaughter and Senators Everist and Daugaard

1 FOR AN ACT ENTITLED, An Act to revise certain provisions with regard to child custody and
2 to declare an emergency.

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 Upon motion or by petition, a court may allow a person other than a parent to intervene in
7 an action under this chapter involving child custody. In any matter under this chapter involving
8 child custody, the court may, in its discretion, appoint a guardian ad litem or legal counsel to
9 represent the child. The court may award full or partial custody, care, education, and visitation
10 rights of the child to a person other than a parent.

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

13 In determining any issue regarding custody of a child, the court shall be guided by the best



1 interests of the child. The court may consider any preference expressed by the child if the court
2 finds the child is of sufficient age and intelligence to express a knowing and voluntary preference.
3 In any dispute involving child custody, a presumption favoring a parent may be rebutted by
4 showing serious detriment to the child as evidenced by one or more of the following
5 extraordinary circumstances:

- 6 (1) The abandonment or persistent neglect of the child by the parent;
- 7 (2) The likelihood of serious physical or emotional harm to the child if placed in the
8 parent's custody;
- 9 (3) The extended, unjustifiable absence of parental custody;
- 10 (4) The abdication of parental responsibilities;
- 11 (5) The provision of the child's physical, emotional, and other needs by persons other than
12 the parent over a significant period of time;
- 13 (6) The existence of a bonded relationship between the child and a person other than the
14 parent sufficient to cause significant emotional harm to the child in the event of a
15 change in custody;
- 16 (7) The substantial enhancement of the child's well-being while under the care of a person
17 other than the parent;
- 18 (8) The extent of the parent's delay in seeking to reacquire custody of the child;
- 19 (9) The demonstrated quality of the parent's commitment to raising the child;
- 20 (10) The likely degree of stability and security in the child's future with the parent;
- 21 (11) The extent to which the child's right to an education would be impaired while in the
22 custody of the parent; or
- 23 (12) Any other circumstances that would substantially and adversely impact the welfare of
24 the child.

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

3 A judgment under section 1 of this Act awarding any person other than a biological parent
4 custodial rights may award the biological parent with visitation rights with the child.

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

7 If a court awards a third party custodial rights to a child, the court may set child support in
8 whatever amount it deems appropriate, and notwithstanding the provisions of any other statute
9 to the contrary, may waive the biological parent's duty to provide monetary or other support for
10 their child.

11 Section 5. The term, parent, as used in this Act, means any biological or adoptive parent. The
12 term, biological parent, as used in this Act, means any biological or adoptive parent.

13 Section 6. Whereas, this Act is necessary for the immediate preservation of the public peace,
14 health, or safety, an emergency is hereby declared to exist, and this Act shall be in full force and
15 effect from and after its passage and approval.