

2024 South Dakota Legislature

Senate Bill 214**AMENDMENT 214C
FOR THE SENATE JUDICIARY ENGROSSED BILL**

1 **An Act to provide a rebuttable presumption in favor of joint physical custody of a**
2 **minor child.**

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

4 **Section 1. That § 25-4A-21 be AMENDED:**

5 **25-4A-21.** ~~In any custody dispute between parents, upon application~~Upon the
6 petition of either parent, ~~the court shall consider granting joint~~ for the initial determination
7 regarding physical custody of a minor child, there is a rebuttable presumption that equal
8 or approximately equal time spent between the child and each parent is in the best interest
9 of the minor child. This presumption may be rebutted by ~~a preponderance of~~ evidence
10 showing that joint physical custody is not in the best interest of the child based on the
11 factors set forth in § 25-4A-24.

12 ~~The court shall consider the factors set forth in § 25-4A-24, and shall make written~~
13 ~~findings of fact and conclusions of law regarding the best interests~~ interest of the minor
14 ~~child, unless waived by both parties~~ in accordance with § 25-4A-24, unless the parents
15 have stipulated to the terms of an agreement resolving the petition.

16 The presumption set forth in this section is not applicable if a presumption that
17 joint physical custody is not in the best interest of the child has been created in accordance
18 with § 25-4A-22.

19
20 **Section 2. That ~~§ 25-4A-22~~ be AMENDED:**

21 ~~**25-4A-22.** The court shall determine the appropriate physical care, custody, and control of~~
22 ~~a minor child, in accordance with § 25-4A-21, following the consideration of factors set forth~~
23 ~~in § 25-4-45.5. A finding by the court that a parent has a conviction or a history of committing~~

1 ~~domestic abuse or has an assault conviction as defined in § 25-4-45.5, creates a rebuttable~~
 2 ~~presumption that joint physical custody is not in the best interests interest of the child.~~

3

4 **Section 3. That § 25-4A-23 be AMENDED:**

5 ~~**25-4A-23.** Prior to ruling on a petition for joint physical custody petition under § 25-4A-21,~~
 6 ~~the court may require that the parties to parents participate in a home study or a custody~~
 7 ~~evaluation. Prior to the court ruling on a joint physical custody petition, either parent may~~
 8 ~~request mediation pursuant to § 25-4-56.~~

9 ~~In any case where the court orders the parties to participate in a home study, custody~~
 10 ~~evaluation, or custody mediation, the, or mediation in accordance with § 25-4-56. The court~~
 11 ~~shall allocate the costs of the same any home study, custody evaluation, or mediation required~~
 12 ~~under this section between the parties parents.~~

13 **Section 4. That § 25-4A-24 be AMENDED:**

14 ~~**25-4A-24.** In considering a contested request for The presumption in favor of joint physical~~
 15 ~~custody, in addition to the traditional factors for determining the best interests of a child, the~~
 16 ~~court shall consider the following factors under § 25-4A-21 may be rebutted upon a~~
 17 ~~presentation of evidence pertaining to:~~

- 18 ~~(1) Whether each parent is a suitable physical custodian for the child;~~
 19 ~~(2) Whether each parent has an appropriate dwelling to support physical custody of~~
 20 ~~the child;~~
 21 ~~(3) Whether the psychological and emotional needs and the development of the child~~
 22 ~~will suffer due to lack of active contact with, and attention from, both parents if~~
 23 ~~joint physical custody is not granted;~~
 24 ~~(4) Whether one parent has denied the child, without just cause, the child the~~
 25 ~~opportunity for continuing contact with the other parent. Facts supporting an~~
 26 ~~application of the presumption in § 25-4-45.5 constitute just cause;~~
 27 ~~(5) Whether the parents can show mutual respect for and effectively communicate~~
 28 ~~with each other regarding the child's needs. When considering this factor, the court~~
 29 ~~shall include a determination of the degree to which the parents are in general~~
 30 ~~agreement about their approach to daily child rearing matters;~~
 31 ~~(6) The extent to which both parents actively care for the child;~~

- 1 ~~(7) Whether each parent can support the other parent's relationship with the child.~~
2 ~~When considering this factor, the court shall include a determination of conflict~~
3 ~~between the parents, as joint physical custody requires substantial and regular~~
4 ~~interaction between the parents on a myriad of issues;~~
- 5 ~~(8) Whether the joint physical custody arrangement is in accord with the child's wishes~~
6 ~~or whether the child has strong opposition to joint physical custody, taking into~~
7 ~~consideration the child's age, maturity, and reason for the objection;~~
- 8 ~~(9) Whether a parent has intentionally alienated or interfered with the other parent's~~
9 ~~relationship with the child;~~
- 10 ~~(10) Whether one or both parents are opposed to joint physical custody. A parent's~~
11 ~~opposition to joint physical custody is not determinative in itself, but only one factor~~
12 ~~for the court to consider;~~
- 13 ~~(11) The geographic proximity of the parents;~~
- 14 ~~(12) Whether the safety of the child, other children, or the other parent will be~~
15 ~~jeopardized by an award of joint physical custody;~~
- 16 ~~(13) Whether a parent allows another person custody or control of, or unsupervised~~
17 ~~access to, a child after knowing the person is required to register or is on the sex~~
18 ~~offender registry as a sex offender under chapter 22-24B;~~
- 19 ~~(14) Whether a parent has attempted to influence a custody determination by alleging,~~
20 ~~falsely or without good cause, that the child or the sibling of the child has been~~
21 ~~subjected to physical or sexual abuse or abuse and neglect, as set forth in § 25-4-~~
22 ~~45.8;~~
- 23 ~~(15) Whether a parent is physically and mentally capable of providing temporal, mental,~~
24 ~~and moral wellness for the child;~~
- 25 ~~(16) Whether a parent has the capacity and disposition to provide the child with~~
26 ~~protection, food, clothing, medical care, and other basic needs;~~
- 27 ~~(17) Whether a parent is willing and capable able to provide the child love, affection,~~
28 ~~guidance, and education in order to impart the family's religion or creed;~~
- 29 ~~(18) Whether a parent is committed to prepare the child for responsible adulthood, as~~
30 ~~well as to ensure that the child experiences a fulfilling childhood;~~
- 31 ~~(19) Whether a parent provides exemplary modeling so that the child witnesses~~
32 ~~firsthand what it means to be a good parent, a loving spouse, and a responsible~~
33 ~~citizen;~~

1 ~~(20) Whether a parent provides a stable and consistent home environment including~~
2 ~~the relationship and interaction of the child with the parents, stepparents, siblings,~~
3 ~~and extended families;~~

4 ~~(21) The extent of the child's adjustment in regards regard to home, school, and~~
5 ~~community;~~

6 ~~(22) Whether a break in attachment with to the parent with whom the child has formed~~
7 ~~a closer attachment would cause detriment be detrimental due to the break in~~
8 ~~continuity for the child; and~~

9 ~~(23) Whether a parent is guilty of misconduct that may have a harmful effect on the~~
10 ~~child.~~

11

12 **~~Section 5. That § 25-4A-25 be REPEALED.~~**

13 ~~If both parents agree to joint physical custody of a child, the court is not required to~~
14 ~~consider the factors set forth in § 25-4A-24.~~

15 **Section 2. That § 25-4A-26 be REPEALED.**

16 ~~Nothing in §§ 25-4A-21 to 25-4A-27, inclusive, creates a presumption of joint~~
17 ~~physical custody. The court shall determine the appropriate physical care, custody, and~~
18 ~~control of a minor child based on a determination of the best interests of the child.~~