

2020 South Dakota Legislature

House Bill 1133**AMENDMENT 1133E FOR THE INTRODUCED 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. Joint physical custody--Consideration upon petition--Rebuttable**
6 **presumption--Findings.**

7 ~~In any custody dispute between parents, upon application~~ Upon the petition of
8 ~~either parent, the court shall consider granting joint~~ for the initial determination regarding
9 physical custody of a minor child, there is a rebuttable presumption that equal or
10 approximately equal time spent between the child and each parent is in the best interest
11 of the minor child.

12 A presumption under this section may be rebutted by ~~clear and convincing~~
13 substantial, credible evidence, as referenced in § 19-19-301, and based on the factors set
14 forth in § 25-4A-24.

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

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

20 **25-4A-22. Domestic abuse--Assault--Rebuttable presumption against joint**
21 **physical custody.**

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

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

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

5 **25-4A-23. Home study or custody evaluation--Mediation.**

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

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

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

15 **25-4A-24. Joint physical custody--Presumption may be rebutted--**
16 **Presentation of evidence.**

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

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

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

- 1 extended families;
- 2 (21) The extent of the child's adjustment in ~~regards~~regard to home, school, and
- 3 community;
- 4 (22) Whether a break in attachment ~~with~~to the parent with whom the child has formed
- 5 a closer attachment would ~~cause detriment~~be detrimental due to the break in
- 6 continuity for the child; and
- 7 (23) Whether a parent is guilty of misconduct that may have a harmful effect on the
- 8 child.

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

10 **25-4A-25. Parental agreement for joint physical custody.**

11 **Section 6.** That § 25-4A-26 be REPEALED.

12 **25-4A-26. No presumption of joint physical custody.**