

# HOUSE RESEARCH

## Bill Summary

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### Overview

This bill creates the Children's Equal and Shared Parenting Act and establishes a rebuttable presumption of joint legal and joint physical child custody.

**1 Custody and parenting time with children born outside of marriage.** Amends § 257.541.

**Subd. 1. Mother's right to custody.** Makes no changes to this subdivision.

**Subd. 2. Father's right to parenting time and custody.** Provides that when paternity has been acknowledged and paternity established under the Parentage Act, a father's rights to custody and parenting time are to be determined under the provisions of the Children's Equal and Shared Parenting Act.

**Subd. 3. Father's right to parenting time and custody; recognition of paternity.** Provides that when a father and a mother sign a recognition of parentage form, the father's rights to parenting time and custody are to be determined under the provisions of the Children's Equal and Shared Parenting Act.

Provides that this section is effective for temporary orders and child custody determinations made on or after January 1, 2012.

**2 Custody.** Amends § 518.003, subdivision 3. Modifies the definition of "joint physical custody" by striking the word "structured" and substituting "shared."

Provides that this section is effective for temporary orders and child custody determinations made on or after January 1, 2012.

**3 Summons; temporary restraining provisions; notice regarding parent education program requirements; notice regarding parent plans.** Amends § 518.091, by adding subdivision 3. Adds that in the summons sent to parents in marital dissolution and legal separation cases there must be a notice of custody and parenting time. Recites the language that must appear in the summons, including the presumption of 45.1 percent parenting time unless the parents agree otherwise.

Provides that this section is effective for summons issued on or after January 1, 2012.

- 4 Permissible orders.** Amends § 518.131, subdivision 1. Adds that temporary custody and parenting time orders shall comply with the requirements in the Children's Equal and Shared Parenting Act.

Provides that this section is effective for temporary orders issued on or after January 1, 2012.

- 5 Guiding factors.** Amends § 518.131, subdivision 7. Adds a cross-reference to section 518.169.

- 6 Custody determinations.** Amends § 518.155. Adds a cross-reference to section 518.169.

- 7 Commencement of custody proceeding.** Amends § 518.156, subdivision 2. Requires notice of custody and parenting time to be included in the written notice for a custody, parenting time, or visitation proceeding. Recites the language that must appear in the notice.

Provides that this section is effective for all notices issued on or after January 1, 2012.

- 8 Preparation.** Amends § 518.167, subdivision 2. Provides that if an investigation and report regarding child custody is ordered by the court, the investigator's report must consider and evaluate the factors listed in subdivision 2 of the Children's Equal and Shared Parenting Act instead of the best interests factors in section 518.17, subdivision 2.

Provides that this section is effective for all investigations ordered on or after January 1, 2012.

- 9 Children's Equal and Shared Parenting Act.** Creates § 518.169.

**Subd. 1. Public policy.** Paragraph (a) provides legislative findings.

Paragraph (b) states the purpose of this act is to prevent children from being alienated from their parents' lives through the interference of either parent.

Paragraph (c) establishes legislative policy regarding the relationship of children with their parents when the parents live separately.

Paragraph (d) provides a public policy declaration.

**Subd. 2. Presumption of joint legal and physical custody and shared parenting.** Provides that upon request of one or both parties, the court shall use a rebuttable presumption of joint legal and joint physical custody and a rebuttable presumption the court will award a minimum of 45.1 percent parenting time for each parent.

**Subd. 3. Overcoming presumption.** Places the burden of overcoming the presumption on the challenging parent. Provides the presumption can only be overcome by proving with clear and convincing evidence that the other parent's actions endanger the child due to any of the listed actions. Actions include abandonment, physical or sexual abuse, neglect, egregious harm, and domestic violence, among other things. Definitions are provided for each of the listed actions.

Provides an exception for false allegations of domestic violence, or orders for protection that have been dismissed or denied, or orders for protection that have been filed by mutual agreement with no findings of domestic abuse.

**Subd. 4. Consideration of geographic limitations.** Allows an exception to the presumption of 45.1 percent parenting time when geographic locations of the parents would prevent the parents from keeping the child in one school during a school year.

**Subd. 5. Findings and order.** Paragraph (a) requires the court to issue written findings of fact and conclusions of law when deviating from the presumption in favor of joint legal and joint physical custody. Requires the court to identify the factors and evidence supporting the

deviation. Allows the court to restrict physical custody and parenting time, as warranted.

Paragraph (b) states that if the presumption has not been overcome, then the court shall issue a custody order with a minimum of 45.1 percent parenting time.

Provides that this section is effective for temporary orders and child custody determinations made on or after January 1, 2011.

- 10**     **The best interests of the child.** Amends § 518.17, subdivision 1. Adds a cross-reference to section 518.169.
- 11**     **Custody order.** Amends § 518.17, subdivision 3. Adds that custody determinations are subject to the provisions of section 518.169, but if that section is not applicable, then the best interests factors are to be used. Adds that if neither parent requests joint legal and joint physical custody, but either or both parents request joint legal custody, then the court shall use a rebuttable presumption that joint legal custody is in the best interests of the child.
- 12**     **Creating parenting plan; restrictions on creation; alternative.** Amends § 518.1705, subdivision 3. Adds a cross-reference to section 518.169.
- 13**     **Role of the court.** Amends § 518.1705, subdivision 5. Adds the provisions section 518.169 as one of the statutes to be considered in developing a parenting plan.
- 14**     **Modification of parenting plans.** Amends § 518.1705, subdivision 9. Allows parents to apply a standard other than the best interests factors in making a physical custody arrangement for a child.
- 15**     **General.** Amends § 518.175, subdivision 1. Strikes the rebuttable presumption that a parent is entitled to receive at least 25 percent parenting time. Adds clarifying language.
- Provides that this section is effective for child custody determination made on or after January 1, 2012.
- 16**     **Seeking custody or parenting time.** Amends § 518.179, subdivision 1. Adds a cross-reference to section 518.169.
- 17**     **Modification of order.** Amends § 518.18 by adding paragraph (g). Provides that an existing custody order cannot be modified based on the provisions of section 518.169 until July 1, 2013, unless the child's environment endangers the child.
- Provides that this section is effective January 1, 2012.
- 18**     **Revisor's instruction.** Instructs the revisor to change a headnote.
- 19**     **Repealer.** Repeals § 518.17, subdivision 2 (Factors when joint custody is sought).
- Provides that this section is effective January 1, 2012.