

# HOUSE RESEARCH

## Bill Summary

**FILE NUMBER:** H.F. 465  
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**Subject:** Child custody determinations; best interest factors

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### Overview

This bill re-writes the best interest factors in section 518.17 that the court uses to determine custody and parenting time for married and unmarried parents. The previous thirteen factors and additional considerations by the court are removed and new language is inserted in section 518.17, subdivision 1, that incorporates many of the considerations currently in law and provides additional or alternative language related to many of the current factors under the law.

#### Section

- 1**      **Custody disputes.** Clarifies that in custody and parenting time disputes between unmarried parents the court should use the best interest factors in section 518.17, which are the same best interest factors used to determine custody and parenting time between parents who were married when the child was born.
- 2**      **Preparation.** Requires an individual preparing a custody evaluation to include in the report to the court the stated preferences of the parties as to the custody and parenting time arrangement and removes a requirement for the report to contain considerations for factors on joint legal custody, a section of the law which is repealed in this bill. (See section 4)
- 3**      **The best interest of the child.** Removes the existing language that provides the thirteen best interest factors currently considered by the court to determine custody and parenting time decisions between parents, including additional directions to the court not to weigh one factor over another.

## **Section**

This section provides twelve factors for the court to consider in determining custody between parents and then provides directions on how the court should consider those factors and presumptions that should be made in making those decisions.

### **TWELVE BEST INTEREST FACTORS**

The bill provides the following twelve factors as the basis for determining custody and parenting time:

1. A child's physical, emotional, cultural, spiritual, and other needs and the affect of the proposed custody and parenting time arrangement on the child's needs and development
2. Any special needs the child has that require special parenting time arrangements or access to services
3. Preference of the child, if the child is of a sufficient age and maturity to express an independent, reliable preference
4. Whether domestic abuse has occurred as defined in section 518B.01, either between the parents or in the parents households or relationships and the implications to the child's safety and well-being
5. The physical, mental, or chemical health issues of a parent that affects the child's safety or developmental needs
6. The history and nature of each parent's participation in providing care for the child
7. The willingness and ability of each parent to provide ongoing care of the child, including meeting developmental, emotional, spiritual, and cultural needs and to be consistent in their parenting time
8. The effect of a change to the child's home, school, and community
9. The effect of the proposed arrangement on the child's ongoing relationships between the child and the parents, siblings, and significant persons in the child's life
10. The benefit to the child in maximizing the parenting time with each parent and the detriment of limiting parenting time with either parent
11. The ability of the parents to support a continuing relationship with the other parent, except in cases where domestic abuse has occurred
12. The willingness and ability of the parents to cooperate in rearing their child and to keep their children out of parental conflict and utilize methods to resolve disputes regarding raising the child

### **APPLICATION AND PRESUMPTIONS**

The bill provides the following principals to be considered in the application of the best interest **factors**.

1. Provides language similar to what is currently in law in section 518.17 that says the court cannot use one factor to the exclusion of others, that the court shall consider the

## Section

factors to be interrelated, and that the court shall provide a detailed finding on each factor based on the evidence presented to determine custody and parenting time.

2. Provides that the best interest of the child is to promote the child's healthy growth and development through safe, stable, nurturing relationships between a child and both parents.
3. Requires the court to start with the presumption that the parents are capable of having a nurturing relationship with their children unless there is a reason to believe otherwise, and to consider cultural differences in how parents interact with their children.
4. Prevents the court from considering conduct of a parent that does not affect the party's relationship with the child similar to what is currently in section 518.17.
5. Prevents a disability that is covered by the Minnesota Human Rights Act, which include physical, sensory, and mental impairments, from being determinative of the child's custody.
6. Requires the court to consider evidence of a false report of child abuse in determining the best interest of the child, which is currently in law in section 518.17, subdivision 1a, which is now in subdivision 1 and subdivision 1a is repealed in this bill.
7. Provides that there is no presumption for or against joint physical custody except where domestic abuse has occurred, similar to what is currently in section 518.17.
8. Provides that physical custody does not require an absolute division of time.
9. Provides that joint legal custody can be considered a rebuttable presumption when one or both parties requests it, except where domestic abuse has occurred and that disagreement over custody is not a basis to determine the parties cannot cooperate under the best interest factors. This provisions is similar to what is currently in 518.17.

- 4**      **Repealer.** Repeals subdivision 1a, requiring the court to consider a false allegation of child abuse, as the language has now been placed in subdivision 1. (See section 3) This section also repeals section 518.17, subdivision 2, which provided factors that the court must consider when joint physical or legal custody is sought. The majority of the considerations in this subdivision are incorporated into section 3 of the bill— the best interest factors and the application of the best interest factors.