

HOUSE BILL NO. 1062

Introduced by

Representative Wald

1 A BILL for an Act to amend and reenact sections 14-05-22 and 14-09-06.2 of the North Dakota
2 Century Code, relating to supervised child visitation in cases of physical or sexual abuse of the
3 child.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1. AMENDMENT.** Section 14-05-22 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **14-05-22. Custody of children - Visitation rights - Costs.**

- 8 1. In an action for divorce, the court, before or after judgment, may give such direction
9 for the custody, care, and education of the children of the marriage as may seem
10 necessary or proper, and may vacate or modify the same at any time. Any award
11 or change of custody must be made in accordance with the provisions of chapter
12 14-09.
- 13 2. After making an award of custody, the court shall, upon request of the noncustodial
14 parent, grant such rights of visitation as will enable the child and the noncustodial
15 parent to maintain a parent-child relationship that will be beneficial to the child,
16 unless the court finds, after a hearing, that visitation is likely to endanger the child's
17 physical or emotional health.
- 18 3. If the court finds that a parent has perpetrated domestic violence and that parent
19 does not have custody, and there exists one incident of domestic violence which
20 resulted in serious bodily injury or involved the use of a dangerous weapon or there
21 exists a pattern of domestic violence within a reasonable time proximate to the
22 proceeding, the court shall allow only supervised child visitation with that parent
23 unless there is a showing by clear and convincing evidence that unsupervised
24 visitation would not endanger the child's physical or emotional health.

- 1 4. If any court finds that a parent has sexually abused the parent's child, the court
2 shall prohibit all visitation and contact between the abusive parent and the child
3 until the court finds that the abusive party has successfully completed a treatment
4 program designed for such sexual abusers, and that supervised visitation is in the
5 child's best interest. Contact between the abusive parent and the child may be
6 allowed only in a therapeutic setting, facilitated by a therapist as part of a sexual
7 abuse treatment program, and only when the therapist for the abusive parent and
8 the therapist for the abused child agree that it serves a therapeutic purpose and is
9 in the best interests of the child.
- 10 5. If the court finds credible evidence that a parent seeking visitation physically
11 abused the child in question, a disputable presumption is created that any visitation
12 granted to the abusing parent must be supervised. If the court finds credible
13 evidence of a pattern of physical abuse of the child by the parent seeking visitation
14 which resulted in serious bodily injury to the child or involved the use of a
15 dangerous weapon, a conclusive presumption is created that any visitation granted
16 to the abusing parent must be supervised.
- 17 6. In any custody or visitation proceeding in which a parent is found to have
18 perpetrated domestic violence, and there exists one incident of domestic violence
19 which resulted in serious bodily injury or involved the use of a dangerous weapon
20 or there exists a pattern of domestic violence within a reasonable time proximate to
21 the proceeding, all court costs, attorneys' fees, evaluation fees, and expert witness
22 fees must be paid by the perpetrator of the domestic violence unless those costs
23 would place an undue financial hardship on that parent.

24 **SECTION 2. AMENDMENT.** Section 14-09-06.2 of the North Dakota Century Code is
25 amended and reenacted as follows:

26 **14-09-06.2. Best interests and welfare of child - Court consideration - Factors.**

- 27 1. For the purpose of custody, the best interests and welfare of the child is
28 determined by the court's consideration and evaluation of all factors affecting the
29 best interests and welfare of the child. These factors include all of the following
30 when applicable:

- 1 a. The love, affection, and other emotional ties existing between the parents and
- 2 child.
- 3 b. The capacity and disposition of the parents to give the child love, affection,
- 4 and guidance and to continue the education of the child.
- 5 c. The disposition of the parents to provide the child with food, clothing, medical
- 6 care, or other remedial care recognized and permitted under the laws of this
- 7 state in lieu of medical care, and other material needs.
- 8 d. The length of time the child has lived in a stable satisfactory environment and
- 9 the desirability of maintaining continuity.
- 10 e. The permanence, as a family unit, of the existing or proposed custodial home.
- 11 f. The moral fitness of the parents.
- 12 g. The mental and physical health of the parents.
- 13 h. The home, school, and community record of the child.
- 14 i. The reasonable preference of the child, if the court deems the child to be of
- 15 sufficient intelligence, understanding, and experience to express a preference.
- 16 j. Evidence of domestic violence. In awarding custody or granting rights of
- 17 visitation, the court shall consider evidence of domestic violence. If the court
- 18 finds credible evidence that domestic violence has occurred, and there exists
- 19 one incident of domestic violence which resulted in serious bodily injury or
- 20 involved the use of a dangerous weapon or there exists a pattern of domestic
- 21 violence within a reasonable time proximate to the proceeding, this
- 22 combination creates a rebuttable presumption that a parent who has
- 23 perpetrated domestic violence may not be awarded sole or joint custody of a
- 24 child. This presumption may be overcome only by clear and convincing
- 25 evidence that the best interests of the child require that parent's participation
- 26 as a custodial parent. The court shall cite specific findings of fact to show that
- 27 the custody or visitation arrangement best protects the child and the parent or
- 28 other family or household member who is the victim of domestic violence. If
- 29 necessary to protect the welfare of the child, custody may be awarded to a
- 30 suitable third person, provided that the person would not allow access to a
- 31 violent parent except as ordered by the court. If the court awards custody to a

1 third person, the court shall give priority to the child's nearest suitable adult
2 relative. The fact that the abused parent suffers from the effects of the abuse
3 may not be grounds for denying that parent custody. As used in this
4 subdivision, "domestic violence" means domestic violence as defined in
5 section 14-07.1-01. A court may consider, but is not bound by, a finding of
6 domestic violence in another proceeding under chapter 14-07.1.

7 k. Evidence of sexual abuse. In awarding custody or granting rights of visitation,
8 the court shall consider evidence of sexual abuse. If the court finds credible
9 evidence that the party seeking custody or visitation sexually abused the child
10 in question, the court shall prohibit all visitation and contact between the
11 abusive party and the child until the court finds that the abusive party has
12 successfully completed a treatment program designed for sexual abusers and
13 that supervised visitation is in the child's best interest. Contact between the
14 abusive party and the child may be allowed only in a therapeutic setting,
15 facilitated by a therapist as part of a sexual abuse treatment program, and
16 only when the therapist for the abusive party and the therapist for the abused
17 child agree that contact serves a therapeutic purpose and is in the best
18 interests of the child.

19 l. Evidence of physical abuse. In granting rights of visitation, the court shall
20 consider evidence of physical abuse of the child. If the court finds credible
21 evidence that the party seeking visitation physically abused the child in
22 question, a disputable presumption is created that any visitation granted to the
23 abusing party must be supervised. If the court finds credible evidence of a
24 pattern of physical abuse of the child by the party seeking visitation which
25 resulted in serious bodily injury to the child or involved the use of a dangerous
26 weapon, a conclusive presumption is created that any visitation granted to the
27 abusing party must be supervised.

28 m. The interaction and interrelationship, or the potential for interaction and
29 interrelationship, of the child with any person who resides in, is present, or
30 frequents the household of a parent and who may significantly affect the
31 child's best interests. The court shall consider that person's history of

1 inflicting, or tendency to inflict, physical harm, bodily injury, assault, or the fear
2 of physical harm, bodily injury, or assault, on other persons.

3 **f. n.** The making of false allegations not made in good faith, by one parent against
4 the other, of harm to a child as defined in section 50-25.1-02.

5 ~~m. o.~~ Any other factors considered by the court to be relevant to a particular child
6 custody dispute.

7 2. In any proceeding under this chapter, the court, at any stage of the proceedings
8 after final judgment, may make orders about what security is to be given for the
9 care, custody, and support of the unmarried minor children of the marriage as from
10 the circumstances of the parties and the nature of the case is equitable.