

HOUSE BILL 216

55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021

INTRODUCED BY

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AN ACT

RELATING TO DOMESTIC AFFAIRS; PROVIDING SANCTIONS FOR WILLFULLY AND UNJUSTIFIABLY INTERFERING WITH VISITATION OR TIMESHARING; REQUIRING TRAINING FOR INDIVIDUALS WHO ISSUE TIMESHARING RECOMMENDATIONS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 40-4-9.1 NMSA 1978 (being Laws 1986, Chapter 41, Section 1, as amended) is amended to read:

"40-4-9.1. JOINT CUSTODY--STANDARDS FOR DETERMINATION-- PARENTING PLAN.--

A. There shall be a presumption that joint custody is in the best interests of a child in an initial custody determination. An award of joint custody does not imply an equal division of financial responsibility for the child. Joint custody shall not be awarded as a substitute for an

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1 existing custody arrangement unless there has been a
2 substantial and material change in circumstances since the
3 entry of the prior custody order or decree, which change
4 affects the welfare of the child such that joint custody is
5 presently in the best interests of the child. With respect to
6 any proceeding in which it is proposed that joint custody be
7 terminated, the court shall not terminate joint custody unless
8 there has been a substantial and material change in
9 circumstances affecting the welfare of the child, since entry
10 of the joint custody order, such that joint custody is no
11 longer in the best interests of the child.

12 B. In determining whether a joint custody order is
13 in the best interests of the child, in addition to the factors
14 provided in Section 40-4-9 NMSA 1978, the court shall consider
15 the following factors:

16 (1) whether the child has established a close
17 relationship with each parent;

18 (2) whether each parent is capable of
19 providing adequate care for the child throughout each period of
20 responsibility, including arranging for the child's care by
21 others as needed;

22 (3) whether each parent is willing to accept
23 all responsibilities of parenting, including a willingness to
24 accept care of the child at specified times and to relinquish
25 care to the other parent at specified times;

1 (4) whether the child can best maintain and
2 strengthen a relationship with both parents through
3 predictable, frequent contact and whether the child's
4 development will profit from such involvement and influence
5 from both parents;

6 (5) whether each parent is able to allow the
7 other to provide care without intrusion, that is, to respect
8 the other's parental rights and responsibilities and right to
9 privacy;

10 (6) the suitability of a parenting plan for
11 the implementation of joint custody, preferably, although not
12 necessarily, one arrived at through parental agreement;

13 (7) geographic distance between the parents'
14 residences;

15 (8) willingness or ability of the parents to
16 communicate, cooperate or agree on issues regarding the child's
17 needs; and

18 (9) whether a judicial adjudication has been
19 made in a prior or the present proceeding that either parent or
20 other person seeking custody has engaged in one or more acts of
21 domestic abuse against the child, a parent of the child or
22 other household member. If a determination is made that
23 domestic abuse has occurred, the court shall set forth findings
24 that the custody or visitation ordered by the court adequately
25 protects the child, the abused parent or other household

1 member.

2 C. In any proceeding in which the custody of a
3 child is at issue, the court shall not prefer one parent as a
4 custodian solely because of gender.

5 D. In any case in which the parents agree to a form
6 of custody, the court should award custody consistent with the
7 agreement unless the court determines that such agreement is
8 not in the best interests of the child.

9 E. In making an order of joint custody, the court
10 may specify the circumstances, if any, under which the consent
11 of both legal custodians is required to be obtained in order to
12 exercise legal control of the child and the consequences of the
13 failure to obtain mutual consent.

14 F. When joint custody is awarded, the court shall
15 approve a parenting plan for the implementation of the
16 prospective custody arrangement prior to the award of joint
17 custody. The parenting plan shall include a division of a
18 child's time and care into periods of responsibility for each
19 parent. It may also include:

20 (1) statements regarding the child's religion,
21 education, child care, recreational activities and medical and
22 dental care;

23 (2) designation of specific decision-making
24 responsibilities;

25 (3) methods of communicating information about

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1 the child, transporting the child, exchanging care for the
2 child and maintaining telephone and mail contact between parent
3 and child;

4 (4) procedures for future [~~decision-making~~]
5 decision making, including procedures for dispute resolution;
6 and

7 (5) other statements regarding the welfare of
8 the child or designed to clarify and facilitate parenting under
9 joint custody arrangements.

10 In a case where joint custody is not agreed to or
11 necessary aspects of the parenting plan are contested, the
12 parties shall each submit parenting plans. The court may
13 accept the plan proposed by either party or it may combine or
14 revise these plans as it deems necessary in the child's best
15 interests. The time of filing of parenting plans shall be set
16 by local rule. A plan adopted by the court shall be entered as
17 an order of the court.

18 G. Where custody is contested, the court shall
19 refer that issue to mediation if feasible. The court may also
20 use auxiliary services such as professional evaluation by
21 application of Rule 706 of the New Mexico Rules of Evidence or
22 Rule 53 of the Rules of Civil Procedure for the District
23 Courts.

24 H. Notwithstanding any other provisions of law,
25 access to records and information pertaining to a minor child,

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1 including medical, dental and school records, shall not be
2 denied to a parent because that parent is not the child's
3 physical custodial parent or because that parent is not a joint
4 custodial parent.

5 I. Whenever a request for joint custody is granted
6 or denied, the court shall state in its decision its basis for
7 granting or denying the request for joint custody. A statement
8 that joint custody is or is not in the best interests of the
9 child is not sufficient to meet the requirements of this
10 subsection.

11 J. An award of joint custody means that:

12 (1) each parent shall have significant, well-
13 defined periods of responsibility for the child;

14 (2) each parent shall have, and be allowed and
15 expected to carry out, responsibility for the child's
16 financial, physical, emotional and developmental needs during
17 that parent's periods of responsibility;

18 (3) the parents shall consult with each other
19 on major decisions involving the child before implementing
20 those decisions; that is, neither parent shall make a decision
21 or take an action ~~[which]~~ that results in a major change in a
22 child's life until the matter has been discussed with the other
23 parent and the parents agree. If the parents, after
24 discussion, cannot agree and if one parent wishes to effect a
25 major change while the other does not wish the major change to

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1 occur, then no change shall occur until the issue has been
2 resolved as provided in this subsection;

3 (4) the following guidelines apply to major
4 changes in a child's life:

5 (a) if either parent plans to change
6 ~~[his]~~ the parent's home city or state of residence, ~~[he]~~ that
7 parent shall provide to the other parent thirty days' notice in
8 writing stating the date and destination of move;

9 (b) the religious denomination and
10 religious activities, or lack thereof, ~~[which]~~ that were being
11 practiced during the marriage should not be changed unless the
12 parties agree or it has been otherwise resolved as provided in
13 this subsection;

14 (c) both parents shall have access to
15 school records, teachers and activities. The type of
16 education, public or private, ~~[which]~~ that was in place during
17 the marriage should continue, whenever possible, and school
18 districts should not be changed unless the parties agree or it
19 has been otherwise resolved as provided in this subsection;

20 (d) both parents shall have access to
21 medical and dental treatment providers and records. Each
22 parent has authority to make emergency medical decisions.
23 Neither parent may contract for major elective medical or
24 dental treatment unless both parents agree or it has been
25 otherwise resolved as provided in this subsection; and

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1 (e) both parents may attend the child's
2 public activities and both parents should know the necessary
3 schedules. Whatever recreational activities the child
4 participated in during the marriage should continue with the
5 child's agreement, regardless of which of the parents has
6 physical custody. Also, neither parent may enroll the child in
7 a new recreational activity unless the parties agree or it has
8 been otherwise resolved as provided in this subsection; and

9 (5) decisions regarding major changes in a
10 child's life may be decided by:

11 (a) agreement between the joint
12 custodial parents;

13 (b) requiring that the parents seek
14 family counseling, conciliation or mediation service to assist
15 in resolving their differences;

16 (c) agreement by the parents to submit
17 the dispute to binding arbitration;

18 (d) allocating ultimate responsibility
19 for a particular major decision area to one legal custodian;

20 (e) terminating joint custody and
21 awarding sole custody to one person;

22 (f) reference to a master pursuant to
23 Rule 53 of the Rules of Civil Procedure for the District
24 Courts; or

25 (g) the district court.

1 K. When ~~[any]~~ a person other than a natural or
2 adoptive parent seeks custody of a child, no such person shall
3 be awarded custody absent a showing of unfitness of the natural
4 or adoptive parent.

5 L. If the court determines by clear and convincing
6 evidence that a party has willfully and unjustifiably
7 interfered with the other parent's visitation or timesharing,
8 the court shall impose sanctions.

9 M. Beginning January 1, 2022, any person appointed
10 by the court to issue timesharing recommendations shall attend
11 at least two hours of training per year on each of the
12 following:

13 (1) peer-reviewed empirically based studies on
14 the longitudinal effect of timesharing arrangements on
15 children; and

16 (2) child interview techniques.

17 ~~[E.]~~ N. As used in this section:

18 (1) "child" means a person under the age of
19 eighteen;

20 (2) "custody" means the authority and
21 responsibility to make major decisions in a child's best
22 interests in the areas of residence, medical and dental
23 treatment, education or child care, religion and recreation;

24 (3) "domestic abuse" means any incident by a
25 household member against another household member resulting in:

- 1 (a) physical harm;
2 (b) severe emotional distress;
3 (c) a threat causing imminent fear of
4 physical harm by any household member;
5 (d) criminal trespass;
6 (e) criminal damage to property;
7 (f) stalking or aggravated stalking, as
8 provided in Sections 30-3A-3 and 30-3A-3.1 NMSA 1978; or
9 (g) harassment, as provided in Section
10 30-3A-2 NMSA 1978;

11 (4) "joint custody" means an order of the
12 court awarding custody of a child to two parents. Joint
13 custody does not imply an equal division of the child's time
14 between the parents or an equal division of financial
15 responsibility for the child;

16 (5) "parent" means a natural parent, adoptive
17 parent or person who is acting as a parent who has or shares
18 legal custody of a child or who claims a right to have or share
19 legal custody;

20 (6) "parenting plan" means a document
21 submitted for approval of the court setting forth the
22 responsibilities of each parent individually and the parents
23 jointly in a joint custody arrangement;

24 (7) "period of responsibility" means a
25 specified period of time during which a parent is responsible

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1 for providing for a child's physical, developmental and
2 emotional needs, including the ~~[decision-making]~~ decision
3 making required in daily living. Specified periods of
4 responsibility shall not be changed in an instance or more
5 permanently except by the methods of ~~[decision-making]~~ decision
6 making described under Subsection ~~[E]~~ J of this section;

7 (8) "sole custody" means an order of the court
8 awarding custody of a child to one parent; and

9 (9) "visitation" means a period of time
10 available to a noncustodial parent, under a sole custody
11 arrangement, during which a child resides with or is under the
12 care and control of the noncustodial parent."