

# State of South Dakota

NINETY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 2019

297B0430

## HOUSE BILL NO. 1104

Introduced by: Representatives Pischke, Beal, Brunner, Chase, Dennert, Finck, Frye-Mueller, Goodwin, Gosch, Greenfield (Lana), Hammock, Haugaard, Howard, Jensen (Kevin), Johnson (David), Koth, Latterell, Lesmeister, Livermont, Marty, Mulally, Perry, Post, Qualm, Rasmussen, Schoenfish, St John, Weis, Wiese, and Willadsen and Senators Russell, Blare, Greenfield (Brock), Heinert, Jensen (Phil), Maher, Monroe, Nelson, Steinhauer, and Youngberg

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding the consideration of  
2 joint physical custody of a minor.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That the code be amended by adding a NEW SECTION to read:

5 If joint legal custody is awarded, pursuant to § 25-5-7.1, there shall be a rebuttable  
6 presumption that both parents have joint physical custody of their children. Joint physical  
7 custody of the children is defined as equal time-sharing. The burden of overcoming the  
8 presumption rests on the parent challenging the presumption. The presumption may be  
9 overcome by demonstrating that joint physical custody would not be in the best interest of the  
10 children by weighing the factors set forth in §§ 25-4A-21 to 25-4A-27, inclusive, or by one  
11 parent waiving the presumption. The burden of proof necessary to overcome the presumption  
12 shall be by a preponderance of the evidence. If the court finds that a party has overcome the  
13 presumption in favor of joint physical custody, then the court shall use the best interests of the



1 child to make its determination for custodial arrangements.

2 Section 2. That the code be amended by adding a NEW SECTION to read:

3 The court shall require the parents to prepare and submit a parenting plan to the court  
4 reflecting parental preferences and agreement on the matters of substance concerning the child's  
5 education, upbringing, religious training, medical, and dental care. The parents shall share  
6 decision-making authority and responsibility as to the important decisions affecting the child's  
7 welfare and if parents are unable to agree, the court may order the parties to submit to a  
8 preselected mediator.

9 Section 3. That § 25-4A-26 be repealed.

10 ~~—25-4A-26. Nothing in §§ 25-4A-21 to 25-4A-27, inclusive, creates a presumption of joint~~  
11 ~~physical custody. The court shall determine the appropriate physical care, custody, and control~~  
12 ~~of a minor child based on a determination of the best interests of the child.~~