

CHAPTER 87

CHILDREN AND DOMESTIC MATTERS

HOUSE BILL 10-1135

BY REPRESENTATIVE(S) Ryden, Benefield, Court, Gagliardi, Hulinghorst, Labuda, Looper, McCann, Middleton, Peniston, Primavera, Schafer S., Solano, Todd, Bradford, Frangas, Kerr A., King S., May, Merrifield, Nikkel, Pace, Priola, Scanlan, Stephens, Summers, Tyler, Vigil, Apuan, Gardner B., Kerr J., Miklosi;
also SENATOR(S) Hudak and Newell, Boyd, Spence, Williams, Carroll M., Heath, Morse, Schwartz, Shaffer B., Steadman, Tochtrop.

AN ACT**CONCERNING THE DEFINITION OF DOMESTIC VIOLENCE WHEN DETERMINING THE BEST INTERESTS OF A CHILD.**

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 14-10-124 (1.5) (a) (X), (1.5) (b) (V), and (4), Colorado Revised Statutes, are amended, and the said 14-10-124 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

14-10-124. Best interests of child. (1.3) Definitions. FOR PURPOSES OF THIS SECTION AND SECTION 14-10-129 (2) (c), UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "DOMESTIC VIOLENCE" MEANS AN ACT OF VIOLENCE OR A THREATENED ACT OF VIOLENCE UPON A PERSON WITH WHOM THE ACTOR IS OR HAS BEEN INVOLVED IN AN INTIMATE RELATIONSHIP, AND MAY INCLUDE ANY ACT OR THREATENED ACT AGAINST A PERSON OR AGAINST PROPERTY, INCLUDING AN ANIMAL, WHEN USED AS A METHOD OF COERCION, CONTROL, PUNISHMENT, INTIMIDATION, OR REVENGE DIRECTED AGAINST A PERSON WITH WHOM THE ACTOR IS OR HAS BEEN INVOLVED IN AN INTIMATE RELATIONSHIP.

(b) "INTIMATE RELATIONSHIP" MEANS A RELATIONSHIP BETWEEN SPOUSES, FORMER SPOUSES, PAST OR PRESENT UNMARRIED COUPLES, OR PERSONS WHO ARE BOTH PARENTS OF THE SAME CHILD REGARDLESS OF WHETHER THE PERSONS HAVE BEEN MARRIED OR HAVE LIVED TOGETHER AT ANY TIME.

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

(1.5) **Allocation of parental responsibilities.** The court shall determine the allocation of parental responsibilities, including parenting time and decision-making responsibilities, in accordance with the best interests of the child giving paramount consideration to the physical, mental, and emotional conditions and needs of the child as follows:

(a) **Determination of parenting time.** The court, upon the motion of either party or upon its own motion, may make provisions for parenting time that the court finds are in the child's best interests unless the court finds, after a hearing, that parenting time by the party would endanger the child's physical health or significantly impair the child's emotional development. In determining the best interests of the child for purposes of parenting time, the court shall consider all relevant factors, including:

~~(X) Whether one of the parties has been a perpetrator of spouse abuse as defined in subsection (4) of this section DOMESTIC VIOLENCE, which factor shall be supported by credible A PREPONDERANCE OF THE evidence;~~

(b) **Allocation of decision-making responsibility.** The court, upon the motion of either party or its own motion, shall allocate the decision-making responsibilities between the parties based upon the best interests of the child. In determining decision-making responsibility, the court may allocate the decision-making responsibility with respect to each issue affecting the child mutually between both parties or individually to one or the other party or any combination thereof. In determining the best interests of the child for purposes of allocating decision-making responsibilities, the court shall consider, in addition to the factors set forth in paragraph (a) of this subsection (1.5), all relevant factors including:

~~(V) Whether one of the parties has been a perpetrator of spouse abuse as defined in subsection (4) of this section DOMESTIC VIOLENCE, which factor shall be supported by credible A PREPONDERANCE OF THE evidence. If the court makes a finding of fact that one of the parties has been a perpetrator of spouse abuse DOMESTIC VIOLENCE, then it shall not be in the best interests of the child to allocate mutual decision-making responsibility over the objection of the other party or the legal representative of the child, unless the court finds that the parties are able to make shared decisions about their children without physical confrontation and in a place and manner that is not a danger to the abused party or the child.~~

~~(4) If a party is absent or leaves home because of spouse abuse AN ACT OR THREATENED ACT OF DOMESTIC VIOLENCE COMMITTED by the other party, such absence or leaving shall not be a factor in determining the best interests of the child. For the purpose of this subsection (4), "spouse abuse" means the proven threat of or infliction of physical pain or injury by a spouse or a party on the other party.~~

SECTION 2. The introductory portion to 14-10-129 (2) (c), Colorado Revised Statutes, is amended to read:

14-10-129. Modification of parenting time. (2) The court shall not modify a prior order concerning parenting time that substantially changes the parenting time as well as changes the party with whom the child resides a majority of the time unless it finds, upon the basis of facts that have arisen since the prior decree or that were unknown to the court at the time of the prior decree, that a change has

occurred in the circumstances of the child or the party with whom the child resides the majority of the time and that the modification is necessary to serve the best interests of the child. In applying these standards, the court shall retain the parenting time schedule established in the prior decree unless:

(c) The party with whom the child resides a majority of the time is intending to relocate with the child to a residence that substantially changes the geographical ties between the child and the other party. A court hearing on any modification of parenting time due to an intent to relocate shall be given a priority on the court's docket. In determining whether the modification of parenting time is in the best interests of the child, the court shall take into account all relevant factors, including whether a party has been a perpetrator of ~~spouse abuse~~ DOMESTIC VIOLENCE as that term is defined in section 14-10-124 (4) (1.3) which factor shall be supported by ~~credible~~ A PREPONDERANCE OF THE evidence, whether such ~~spouse abuse~~ DOMESTIC VIOLENCE occurred before or after the prior decree, and all other factors enumerated in section 14-10-124 (1.5) (a) and:

SECTION 3. Specified effective date - applicability. This act shall take effect July 1, 2010, and shall apply to a determination of the best interests of a child pursuant to section 14-10-124, Colorado Revised Statutes, occurring on or after said date.

SECTION 4. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: April 14, 2010