

HOUSE COMMITTEE OF REFERENCE AMENDMENT

Committee on Judiciary.

HB26-1309 be amended as follows:

1 Amend printed bill, page 4, line 5, strike "pain." and substitute "pain;".

2 Page 4, after line 5 insert:

3 "(m) The National Council of Juvenile and Family Court Judges
4 has drafted a model code on domestic and family violence. That model
5 code provides courts with clear guidance and standards to address
6 domestic violence in determinations concerning the allocation of parental
7 responsibilities to ensure consistent application and protection of victims
8 and children.

9 Page 8, strike lines 19 and 20 and substitute:

10 "**SECTION 3.** In Colorado Revised Statutes, 14-10-124, **amend**
11 (1.5)(a) introductory portion, (1.5)(a)(III.5), and (1.5)(b) introductory
12 portion; **repeal** (1.3) and (4); and **add** (1.4), (1.5)(c), and (1.6) as
13 follows:".

14 Page 10, strike lines 22 through 27 and substitute:

15 "(1.4) (a) IF A PARTY CLAIMS, OR THE COURT HAS REASON TO
16 BELIEVE, THAT A PARTY HAS COMMITTED DOMESTIC VIOLENCE, CHILD
17 ABUSE OR NEGLECT, OR SEXUAL ASSAULT THAT RESULTED IN THE
18 CONCEPTION OF A CHILD, THE COURT SHALL DETERMINE, BY A
19 PREPONDERANCE OF THE EVIDENCE, WHETHER A PARTY HAS COMMITTED
20 DOMESTIC VIOLENCE, CHILD ABUSE OR NEGLECT, OR SEXUAL ASSAULT
21 THAT RESULTED IN THE CONCEPTION OF A CHILD, AND MAKE FINDINGS ON
22 THE RECORD CONCERNING ITS DETERMINATION, INCLUDING ANY EVIDENCE
23 RELIED UPON IN MAKING ITS DETERMINATION AND THE REASONS FOR ITS
24 DETERMINATION.

25 (b) WHEN DETERMINING WHETHER DOMESTIC VIOLENCE, CHILD
26 ABUSE OR NEGLECT, OR SEXUAL ASSAULT THAT RESULTED IN THE
27 CONCEPTION OF A CHILD HAS OCCURRED, THE COURT SHALL CONSIDER ANY
28 RELEVANT AND ADMISSIBLE EVIDENCE OF DOMESTIC VIOLENCE, CHILD
29 ABUSE OR NEGLECT, OR SEXUAL ASSAULT THAT RESULTED IN THE
30 CONCEPTION OF A CHILD.

31 (1.5) **Allocation of parental responsibilities.** The court shall
32 determine the allocation of parental responsibilities, including parenting
33 time and decision-making responsibilities, in accordance with the best
34 interests of the child, giving paramount consideration to the child's safety
35 and the physical, mental, and emotional conditions and needs of the child
36 as follows:

37 (a) **Determination of parenting time.** The court, upon the motion

1 of either party or upon its own motion, may make provisions for parenting
2 time that the court finds are in the best interests of the child, with the
3 child's safety always paramount, unless the court finds, after a hearing,
4 that parenting time by the party would endanger the child's physical health
5 or significantly impair the child's emotional development. In addition to
6 a finding that parenting time would endanger the child's physical health
7 or significantly impair the child's emotional development, in any order
8 imposing or continuing a parenting time restriction, the court shall
9 enumerate the specific factual findings supporting the restriction,
10 including findings related to domestic violence, child abuse OR NEGLECT,
11 SEXUAL ASSAULT THAT RESULTED IN THE CONCEPTION OF A CHILD, and OR
12 child sexual abuse, and may enumerate the conditions that the restricted
13 party could fulfill in order to seek modification in the parenting plan.
14 ~~When a claim of child abuse or neglect, domestic violence, or sexual~~
15 ~~assault where there is also a claim that the child was conceived as a result~~
16 ~~of the sexual assault has been made to the court, or the court has reason~~
17 ~~to believe that a party has committed child abuse or neglect, domestic~~
18 ~~violence, or sexual assault where there is also a claim that the child was~~
19 ~~conceived as a result of the sexual assault, prior to determining parenting~~
20 ~~time, the court shall follow the provisions of subsection (4) of this~~
21 ~~section.~~ In determining the best interests of the child for purposes of
22 parenting time, the court shall consider all relevant factors, including:

23 (III.5) ANY EVIDENCE OF DOMESTIC VIOLENCE, CHILD ABUSE OR
24 NEGLECT, OR SEXUAL ASSAULT THAT RESULTED IN THE CONCEPTION OF A
25 CHILD, OR any report related to domestic violence, CHILD ABUSE OR
26 NEGLECT, OR SEXUAL ASSAULT THAT RESULTED IN THE CONCEPTION OF A
27 CHILD, that is submitted to the court by a child and family investigator, if
28 one is appointed pursuant to section 14-10-116.5; a professional parental
29 responsibilities evaluator, if one is appointed pursuant to section
30 14-10-127; or a legal representative of the child, if one is appointed
31 pursuant to section 14-10-116. The court may consider other testimony
32 regarding domestic violence, CHILD ABUSE OR NEGLECT, OR SEXUAL
33 ASSAULT THAT RESULTED IN THE CONCEPTION OF A CHILD from the parties,
34 experts, therapists for any parent or child, the department of human
35 services, parenting time supervisors, school personnel, or other lay
36 witnesses.

37 (b) **Allocation of decision-making responsibility.** The court,
38 upon the motion of either party or its own motion, shall allocate the
39 decision-making responsibilities between the parties based upon the best
40 interests of the child. In determining decision-making responsibility, the
41 court may allocate the decision-making responsibility with respect to each
42 issue affecting the child mutually between both parties or individually to
43 one or the other party or any combination thereof. ~~When a claim of child~~

1 ~~abuse or neglect or domestic violence has been made to the court, or the~~
2 ~~court has reason to believe that a party has committed child abuse or~~
3 ~~neglect, domestic violence, or sexual assault where there is also a claim~~
4 ~~that the child in question was conceived as a result of the sexual assault,~~
5 ~~prior to allocating decision-making responsibility, the court shall follow~~
6 ~~the provisions of subsection (4) of this section.~~ In determining the best
7 interests of the child for purposes of allocating decision-making
8 responsibilities, the court shall consider, in addition to the factors set forth
9 in ~~paragraph (a) of this subsection (1.5)~~ SUBSECTION (1.5) OF THIS
10 SECTION, all relevant factors, including:

11 (c) (I) If A COURT DETERMINES BY A PREPONDERANCE OF THE
12 EVIDENCE THAT A PARTY HAS COMMITTED DOMESTIC VIOLENCE, CHILD
13 ABUSE OR NEGLECT, OR SEXUAL ASSAULT THAT RESULTED IN THE
14 CONCEPTION OF A CHILD, IT IS NOT IN THE BEST INTERESTS OF THE CHILD
15 TO ALLOCATE MUTUAL DECISION-MAKING RESPONSIBILITY OVER THE
16 OBJECTION OF THE OTHER PARTY OR THE LEGAL REPRESENTATIVE OF THE
17 CHILD UNLESS THE COURT FINDS THAT THERE IS CREDIBLE EVIDENCE OF
18 THE ABILITY OF THE PARTIES TO MAKE DECISIONS COOPERATIVELY IN THE
19 BEST INTERESTS OF THE CHILD IN A MANNER THAT IS SAFE FOR THE ABUSED
20 PARTY AND THE CHILD; AND

21 (II) THE COURT SHALL NOT APPOINT A PARENTING COORDINATOR
22 SOLELY TO ENSURE THAT MUTUAL DECISION-MAKING CAN BE
23 ACCOMPLISHED.

24 (1.6) (a) If A COURT DETERMINES BY A PREPONDERANCE OF THE
25 EVIDENCE THAT A PARTY HAS COMMITTED DOMESTIC VIOLENCE, CHILD
26 ABUSE OR NEGLECT, OR SEXUAL ASSAULT THAT RESULTED IN THE
27 CONCEPTION OF A CHILD, THE COURT SHALL CONSIDER AS THE PRIMARY
28 CONCERN THE SAFETY AND WELL-BEING OF THE CHILD AND THE ABUSED
29 PARTY AND CONDITIONS ON PARENTING TIME THAT ENSURE THE SAFETY
30 OF THE CHILD AND ABUSED PARTY, GIVING PARAMOUNT CONSIDERATION
31 TO THE SAFETY AND THE PHYSICAL, MENTAL, AND EMOTIONAL CONDITIONS
32 AND NEEDS OF THE CHILD AND ABUSED PARTY. THE PARENTING PLAN FOR
33 A CASE DESCRIBED IN THIS SUBSECTION (1.6) MAY INCLUDE, BUT IS NOT
34 LIMITED TO, THE FOLLOWING:

35 (I) AN ORDER LIMITING CONTACT BETWEEN THE PARTIES TO
36 CONTACT THAT THE COURT DEEMS IS SAFE AND THAT MINIMIZES
37 UNNECESSARY COMMUNICATION BETWEEN THE PARTIES;

38 (II) AN ORDER THAT REQUIRES THE EXCHANGE OF THE CHILD FOR
39 PARENTING TIME TO OCCUR IN A PROTECTED SETTING DETERMINED BY THE
40 COURT;

41 (III) AN ORDER FOR SUPERVISED PARENTING TIME;

42 (IV) AN ORDER RESTRICTING OVERNIGHT PARENTING TIME;

43 (V) AN ORDER THAT RESTRICTS THE PARTY WHO HAS COMMITTED

1 DOMESTIC VIOLENCE, CHILD ABUSE OR NEGLECT, OR SEXUAL ASSAULT
2 THAT RESULTED IN THE CONCEPTION OF A CHILD FROM POSSESSING OR
3 CONSUMING ALCOHOL OR CONTROLLED SUBSTANCES DURING PARENTING
4 TIME OR FOR TWENTY-FOUR HOURS PRIOR TO THE COMMENCEMENT OF
5 PARENTING TIME;
6 (VI) AN ORDER DIRECTING THAT THE ADDRESS OF THE CHILD OR
7 OF ANY PARTY REMAIN CONFIDENTIAL;
8 (VII) AN ORDER THAT IMPOSES ANY OTHER CONDITION ON ONE OR
9 MORE PARTIES THAT THE COURT DETERMINES IS NECESSARY TO PROTECT
10 THE CHILD, ANOTHER PARTY, OR ANY OTHER FAMILY OR HOUSEHOLD
11 MEMBER OF A PARTY; AND
12 (VIII) AN ORDER THAT REQUIRES CHILD SUPPORT PAYMENTS TO BE
13 MADE THROUGH THE CHILD SUPPORT REGISTRY TO AVOID THE NEED FOR
14 ANY RELATED CONTACT BETWEEN THE PARTIES AND AN ORDER THAT THE
15 PAYMENTS BE TREATED AS A NONDISCLOSURE OF INFORMATION CASE.
16 (b) WHEN THE COURT FINDS BY A PREPONDERANCE OF THE
17 EVIDENCE THAT ONE OF THE PARTIES HAS COMMITTED DOMESTIC
18 VIOLENCE, CHILD ABUSE OR NEGLECT, OR SEXUAL ASSAULT THAT
19 RESULTED IN THE CONCEPTION OF A CHILD, THE COURT MAY ORDER THE
20 PARTY TO SUBMIT TO A DOMESTIC VIOLENCE EVALUATION. IF THE COURT
21 DETERMINES, BASED UPON THE RESULTS OF THE EVALUATION, THAT
22 TREATMENT IS APPROPRIATE, THE COURT MAY ORDER THE PARTY TO
23 PARTICIPATE IN DOMESTIC VIOLENCE TREATMENT. AT ANY TIME, THE
24 COURT MAY REQUIRE A SUBSEQUENT EVALUATION TO DETERMINE
25 WHETHER ADDITIONAL TREATMENT IS NECESSARY. IF THE COURT AWARDS
26 PARENTING TIME TO A PARTY WHO HAS BEEN ORDERED TO PARTICIPATE IN
27 DOMESTIC VIOLENCE TREATMENT, THE COURT MAY ORDER THE PARTY TO
28 OBTAIN A REPORT FROM THE TREATMENT PROVIDER CONCERNING THE
29 PARTY'S PROGRESS IN TREATMENT AND ADDRESSING ANY ONGOING
30 SAFETY CONCERNS REGARDING THE PARTY'S PARENTING TIME. THE COURT
31 MAY ORDER THE PARTY WHO HAS COMMITTED DOMESTIC VIOLENCE, CHILD
32 ABUSE OR NEGLECT, OR SEXUAL ASSAULT THAT RESULTED IN THE
33 CONCEPTION OF A CHILD TO PAY THE COSTS OF THE DOMESTIC VIOLENCE
34 EVALUATIONS AND TREATMENT.
35 (c) IF THE COURT FINDS BY A PREPONDERANCE OF THE EVIDENCE
36 THAT A PARTY HAS COMMITTED DOMESTIC VIOLENCE, CHILD ABUSE OR
37 NEGLECT, OR SEXUAL ASSAULT THAT RESULTED IN THE CONCEPTION OF A
38 CHILD, THE COURT SHALL CONSIDER WHETHER IT IS IN THE BEST INTERESTS
39 OF THE CHILD TO PROHIBIT OR LIMIT THE PARENTING TIME OF THAT PARTY
40 WITH THE CHILD.
41 (d) IF A PARTY IS ABSENT OR LEAVES HOME BECAUSE OF DOMESTIC
42 VIOLENCE, CHILD ABUSE OR NEGLECT, OR SEXUAL ASSAULT THAT
43 RESULTED IN THE CONCEPTION OF A CHILD COMMITTED BY THE OTHER

1 PARTY, THE ABSENCE OR LEAVING IS NOT A FACTOR IN DETERMINING THE
2 BEST INTERESTS OF THE CHILD.

3 ~~(4) (a) When a claim of child abuse or neglect, domestic violence,~~
4 ~~or sexual assault where there is also a claim that the child was conceived~~
5 ~~as a result of the sexual assault has been made to the court, or the court~~
6 ~~has reason to believe that a party has committed child abuse or neglect,~~
7 ~~domestic violence, or sexual assault that resulted in the conception of the~~
8 ~~child, prior to allocating parental responsibilities, including parenting~~
9 ~~time and decision-making responsibility, and prior to considering the~~
10 ~~factors set forth in paragraphs (a) and (b) of subsection (1.5) of this~~
11 ~~section, the court shall consider the following factors:~~

12 ~~(I) Whether one of the parties has committed an act of child abuse~~
13 ~~or neglect as defined in section 18-6-401, C.R.S., or as defined under the~~
14 ~~law of any state, which factor must be supported by a preponderance of~~
15 ~~the evidence. If the court finds that one of the parties has committed child~~
16 ~~abuse or neglect, then it shall not be in the best interests of the child to~~
17 ~~allocate mutual decision-making with respect to any issue over the~~
18 ~~objection of the other party or the legal representative of the child:~~

19 ~~(H) Whether one of the parties has committed an act of domestic~~
20 ~~violence, has engaged in a pattern of domestic violence, or has a history~~
21 ~~of domestic violence, which factor must be supported by a preponderance~~
22 ~~of the evidence. If the court finds by a preponderance of the evidence that~~
23 ~~one of the parties has committed domestic violence:~~

24 ~~(A) It shall not be in the best interests of the child to allocate~~
25 ~~mutual decision-making responsibility over the objection of the other~~
26 ~~party or the legal representative of the child, unless the court finds that~~
27 ~~there is credible evidence of the ability of the parties to make decisions~~
28 ~~cooperatively in the best interest of the child in a manner that is safe for~~
29 ~~the abused party and the child; and~~

30 ~~(B) The court shall not appoint a parenting coordinator solely to~~
31 ~~ensure that mutual decision-making can be accomplished.~~

32 ~~(HH) Whether one of the parties has committed an act of sexual~~
33 ~~assault resulting in the conception of the child, which factor must be~~
34 ~~supported by a preponderance of the evidence. If the court finds by a~~
35 ~~preponderance of the evidence that one of the parties has committed~~
36 ~~sexual assault and the child was conceived as a result of the sexual~~
37 ~~assault, there is a rebuttable presumption that it is not in the best interests~~
38 ~~of the child to allocate sole or split decision-making authority to the party~~
39 ~~found to have committed sexual assault or to allocate mutual~~
40 ~~decision-making between a party found to have committed sexual assault~~
41 ~~and the party who was sexually assaulted with respect to any issue.~~

42 ~~(IV) If one of the parties is found by a preponderance of the~~
43 ~~evidence to have committed sexual assault resulting in the conception of~~

1 the child, whether it is in the best interests of the child to prohibit or limit
2 the parenting time of that party with the child.

3 ~~(b) The court shall consider the additional factors set forth in~~
4 ~~paragraphs (a) and (b) of subsection (1.5) of this section in light of any~~
5 ~~finding of child abuse or neglect, domestic violence, or sexual assault~~
6 ~~resulting in the conception of a child pursuant to this subsection (4).~~

7 ~~(c) If a party is absent or leaves home because of an act or~~
8 ~~threatened act of domestic violence committed by the other party, such~~
9 ~~absence or leaving shall not be a factor in determining the best interests~~
10 ~~of the child.~~

11 ~~(d) When the court finds by a preponderance of the evidence that~~
12 ~~one of the parties has committed child abuse or neglect, domestic~~
13 ~~violence, or sexual assault resulting in the conception of the child, the~~
14 ~~court shall consider, as the primary concern, the safety and well-being of~~
15 ~~the child and the abused party.~~

16 ~~(e) When the court finds by a preponderance of the evidence that~~
17 ~~one of the parties has committed child abuse or neglect, domestic~~
18 ~~violence, or sexual assault resulting in the conception of the child, in~~
19 ~~formulating or approving a parenting plan, the court shall consider~~
20 ~~conditions on parenting time that ensure the safety of the child and abused~~
21 ~~party, giving paramount consideration to the safety and the physical,~~
22 ~~mental, and emotional conditions and needs of the child and abused party.~~
23 ~~In addition to any provisions set forth in subsection (7) of this section that~~
24 ~~are appropriate, the parenting plan in these cases may include, but is not~~
25 ~~limited to, the following provisions:~~

26 ~~(I) An order limiting contact between the parties to contact that~~
27 ~~the court deems is safe and that minimizes unnecessary communication~~
28 ~~between the parties;~~

29 ~~(II) An order that requires the exchange of the child for parenting~~
30 ~~time to occur in a protected setting determined by the court;~~

31 ~~(III) An order for supervised parenting time;~~

32 ~~(IV) An order restricting overnight parenting time;~~

33 ~~(V) An order that restricts the party who has committed domestic~~
34 ~~violence, sexual assault resulting in the conception of the child, or child~~
35 ~~abuse or neglect from possessing or consuming alcohol or controlled~~
36 ~~substances during parenting time or for twenty-four hours prior to the~~
37 ~~commencement of parenting time;~~

38 ~~(VI) An order directing that the address of the child or of any~~
39 ~~party remain confidential;~~

40 ~~(VII) An order that imposes any other condition on one or more~~
41 ~~parties that the court determines is necessary to protect the child, another~~
42 ~~party, or any other family or household member of a party; and~~

43 ~~(VIII) An order that requires child support payments to be made~~

1 through the child support registry to avoid the need for any related contact
2 between the parties and an order that the payments be treated as a
3 nondisclosure of information case.

4 (f) When the court finds by a preponderance of the evidence that
5 one of the parties has committed domestic violence, the court may order
6 the party to submit to a domestic violence evaluation. If the court
7 determines, based upon the results of the evaluation, that treatment is
8 appropriate, the court may order the party to participate in domestic
9 violence treatment. At any time, the court may require a subsequent
10 evaluation to determine whether additional treatment is necessary. If the
11 court awards parenting time to a party who has been ordered to participate
12 in domestic violence treatment, the court may order the party to obtain a
13 report from the treatment provider concerning the party's progress in
14 treatment and addressing any ongoing safety concerns regarding the
15 party's parenting time. The court may order the party who has committed
16 domestic violence to pay the costs of the domestic violence evaluations
17 and treatment."

18 Strike pages 11 and 12.

19 Page 13, strike lines 1 through 21.

20 Page 15, strike line 18 and substitute:

21 "(2) introductory portion, (2)(c) introductory portion, and (2.5)(a)
22 introductory portion as follows:"

23 Page 16, after line 16 insert:

24 "(2.5) (a) When the court restricts a party's parenting time
25 pursuant to section 19-5-105.5, C.R.S., or section 19-5-105.7, C.R.S., or
26 ~~section 14-10-124 (4)(a)(IV)~~ OR SECTION 14-10-124 (1.6), the court may
27 make or modify an order granting or denying parenting time rights
28 whenever such order or modification would serve the best interests of the
29 child. Within thirty-five days after the filing of a verified motion by the
30 restricted party seeking a modification of parenting time, the court shall
31 determine from the verified motion, and response to the motion, if any,
32 whether there has been a substantial and continuing change of
33 circumstances such that the current parenting time orders are no longer
34 in the child's best interests, including consideration of whether the
35 restricted parent has satisfactorily complied with any conditions set forth
36 by the court when the court imposed the restrictions on parenting time,
37 and either:"

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