

West's North Dakota Century Code Annotated
Title 14. Domestic Relations and Persons
Chapter 14-09. Parent and Child

NDCC, 14-09-06.2

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

Currentness

1. For the purpose of parental rights and responsibilities, the best interests and welfare of the child is determined by the court's consideration and evaluation of all factors affecting the best interests and welfare of the child. These factors include all of the following when applicable:

- a. The love, affection, and other emotional ties existing between the parents and child and the ability of each parent to provide the child with nurture, love, affection, and guidance.
- b. The ability of each parent to assure that the child receives adequate food, clothing, shelter, medical care, and a safe environment.
- c. The child's developmental needs and the ability of each parent to meet those needs, both in the present and in the future.
- d. The sufficiency and stability of each parent's home environment, the impact of extended family, the length of time the child has lived in each parent's home, and the desirability of maintaining continuity in the child's home and community.
- e. The willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the other parent and the child.
- f. The moral fitness of the parents, as that fitness impacts the child.
- g. The mental and physical health of the parents, as that health impacts the child.
- h. The home, school, and community records of the child and the potential effect of any change.
- i. If the court finds by clear and convincing evidence that a child is of sufficient maturity to make a sound judgment, the court may give substantial weight to the preference of the mature child. The court also shall give due consideration to other factors that may have affected the child's preference, including whether the child's preference was based on undesirable or improper influences.
- j. Evidence of domestic violence. In determining parental rights and responsibilities, the court shall consider evidence of domestic violence. If the court finds credible evidence that domestic violence has occurred, and there exists one incident

of domestic violence which resulted in serious bodily injury or involved the use of a dangerous weapon or there exists a pattern of domestic violence within a reasonable time proximate to the proceeding, this combination creates a rebuttable presumption that a parent who has perpetrated domestic violence may not be awarded residential responsibility for the child. This presumption may be overcome only by clear and convincing evidence that the best interests of the child require that parent have residential responsibility. The court shall cite specific findings of fact to show that the residential responsibility best protects the child and the parent or other family or household member who is the victim of domestic violence. If necessary to protect the welfare of the child, residential responsibility for a child may be awarded to a suitable third person, provided that the person would not allow access to a violent parent except as ordered by the court. If the court awards residential responsibility to a third person, the court shall give priority to the child's nearest suitable adult relative. The fact that the abused parent suffers from the effects of the abuse may not be grounds for denying that parent residential responsibility. As used in this subdivision, "domestic violence" means domestic violence as defined in [section 14-07.1-01](#). A court may consider, but is not bound by, a finding of domestic violence in another proceeding under chapter 14-07.1.

k. The interaction and interrelationship, or the potential for interaction and interrelationship, of the child with any person who resides in, is present, or frequents the household of a parent and who may significantly affect the child's best interests. The court shall consider that person's history of inflicting, or tendency to inflict, physical harm, bodily injury, assault, or the fear of physical harm, bodily injury, or assault, on other persons.

l. The making of false allegations not made in good faith, by one parent against the other, of harm to a child as defined in [section 50-25.1-02](#).

m. Any other factors considered by the court to be relevant to a particular parental rights and responsibilities dispute.

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

Credits

S.L. 1979, ch. 194, § 3; S.L. 1989, ch. 178, § 2; [S.L. 1991, ch. 148, § 2](#); [S.L. 1993, ch. 144, § 2](#); [S.L. 1993 ch. 151, § 1](#); [S.L. 1997, ch. 147, § 2](#); [S.L. 2009, ch. 149, § 5](#), eff. Aug. 1, 2009.

[Notes of Decisions \(701\)](#)

NDCC 14-09-06.2, ND ST 14-09-06.2

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NDCC, 14-09-06.3

§ 14-09-06.3. Custody investigations and reports--Costs

Currentness

1. In contested proceedings dealing with parental rights and responsibilities the court, upon the request of either party, or, upon its own motion, may order an investigation and report concerning parenting rights and responsibilities regarding the child. The court shall designate a person or agency responsible for making the investigation and report, which designees may include the county social service board, public health officer, school officials, and any other public agency or private practitioner it deems qualified to make the investigation.
2. The investigator may consult any person who may have information about the child and any potential arrangements for parenting rights and responsibilities, and upon order of the court may refer the child to any professional personnel for diagnosis.
3. The court shall mail the investigator's report to counsel and to any party not represented by counsel at least thirty days before the hearing. The investigator shall make available to any such counsel or party the complete file of data and reports underlying the investigator's report and the names and addresses of all persons whom the investigator has consulted. A party may call the investigator and any person whom the investigator has consulted for cross-examination at the hearing. A party may not waive the party's right of cross-examination before the hearing.
4. The court shall enter an order for the costs of any such investigation against either or both parties, except that if the parties are indigent the expenses must be borne by the county where the child resided at the time the action was commenced or if a modification of parental rights and responsibilities, at the time the motion to modify is served.

Credits

S.L. 1979, ch. 194, § 4; S.L. 1987, ch. 182, § 1; S.L. 2009, ch. 149, § 6, eff. Aug. 1, 2009.

[Notes of Decisions \(35\)](#)

NDCC 14-09-06.3, ND ST 14-09-06.3

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NDCC, 14-09-06.5

§ 14-09-06.5. Allegation of harm to child--Effect

Currentness

If the court finds that an allegation of harm to a child by one parent against the other is false and not made in good faith, the court shall order the parent making the false allegation to pay court costs and reasonable attorney's fees incurred by the other parent in responding to the allegation.

Credits

S.L. 1993, ch. 151, § 2.

Notes of Decisions (5)

NDCC 14-09-06.5, ND ST 14-09-06.5

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NDCC, 14-09-06.6

§ 14-09-06.6. Limitations on postjudgment modifications of primary residential responsibility

Currentness

1. Unless agreed to in writing by the parties, or if included in the parenting plan, no motion for an order to modify primary residential responsibility may be made earlier than two years after the date of entry of an order establishing primary residential responsibility, except in accordance with subsection 3.
2. Unless agreed to in writing by the parties, or if included in the parenting plan, if a motion for modification has been disposed of upon its merits, no subsequent motion may be filed within two years of disposition of the prior motion, except in accordance with subsection 5.
3. The time limitation in subsections 1 and 2 does not apply if the court finds:
 - a. The persistent and willful denial or interference with parenting time;
 - b. The child's present environment may endanger the child's physical or emotional health or impair the child's emotional development; or
 - c. The primary residential responsibility for the child has changed to the other parent for longer than six months.
4. A party seeking modification of an order concerning primary residential responsibility shall serve and file moving papers and supporting affidavits and shall give notice to the other party to the proceeding who may serve and file a response and opposing affidavits. The court shall consider the motion on briefs and without oral argument or evidentiary hearing and shall deny the motion unless the court finds the moving party has established a prima facie case justifying a modification. The court shall set a date for an evidentiary hearing only if a prima facie case is established.
5. The court may not modify the primary residential responsibility within the two-year period following the date of entry of an order establishing primary residential responsibility unless the court finds the modification is necessary to serve the best interest of the child and:
 - a. The persistent and willful denial or interference with parenting time;
 - b. The child's present environment may endanger the child's physical or emotional health or impair the child's emotional development; or

- c. The residential responsibility for the child has changed to the other parent for longer than six months.
6. The court may modify the primary residential responsibility after the two-year period following the date of entry of an order establishing primary residential responsibility if the court finds:
 - a. On the basis of facts that have arisen since the prior order or which were unknown to the court at the time of the prior order, a material change has occurred in the circumstances of the child or the parties; and
 - b. The modification is necessary to serve the best interest of the child.
 7. The court may modify a prior order concerning primary residential responsibility at any time if the court finds a stipulated agreement by the parties to modify the order is in the best interest of the child.
 8. Upon a motion to modify primary residential responsibility under this section, the burden of proof is on the moving party.
 9. If a motion for change of primary parental responsibility is filed during the time a parent is in active duty service, the court may not enter an order modifying or amending a previous judgment or order, or issue a new order, which changes the child's placement that existed on the date the parent was called to active duty service, except the court may enter a temporary order concerning residential responsibility which is in the best interest of the child. The temporary order must explicitly provide that residential responsibility must be restored to the service member upon the service member's release from active duty service, unless the court finds by clear and convincing evidence that restoration of residential responsibility would not be in the best interest of the child. If an original decision concerning primary residential responsibility is pending and the service member is alerted for active duty service, or is absent for active duty service, the court may not issue a permanent order until the return of the service member from active duty. The court may issue a temporary order concerning primary residential responsibility in the best interest of the child for the time period of the active duty service. This section does not prevent a service member from consenting to a modification that continues past discharge or release from active duty service or to agreeing to a permanent order before release from active duty service. For purposes of this section, "service member" means a member of the national guard or a reserve unit of the United States armed forces and "active duty service" means an order to active duty under United States Code title 10.

Credits

[S.L. 1997, ch. 149, § 1](#); [S.L. 2007, ch. 147, § 1](#), eff. Aug. 1, 2007; [S.L. 2009, ch. 149, § 8](#), eff. Aug. 1, 2009.

[Notes of Decisions \(530\)](#)

NDCC 14-09-06.6, ND ST 14-09-06.6

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NDCC, 14-09-07

§ 14-09-07. Residence of child

Currentness

1. A parent with primary residential responsibility for a child may not change the primary residence of the child to another state except upon order of the court or with the consent of the other parent, if the other parent has been given parenting time by the decree.

2. A parent with equal residential responsibility for a child may not change the residence of the child to another state except with consent of the other parent or order of the court allowing the move and awarding that parent primary residential responsibility.

3. A court order is not required if the other parent:
 - a. Has not exercised parenting time for a period of one year; or

 - b. Has moved to another state and is more than fifty miles [80.47 kilometers] from the residence of the parent with primary residential responsibility.

Credits

S.L. 1979, ch. 194, § 5; S.L. 1991, ch. 150, § 1; S.L. 2009, ch. 149, § 9, eff. Aug. 1, 2009.

Codifications: Civ. C. 1877, § 104; R.C. 1895, § 2794; R.C. 1899, § 2794; R.C. 1905, § 4106; C.L. 1913, § 4438; R.C. 1943, § 14-0907.

[Notes of Decisions \(222\)](#)

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