

HOUSE BILL No. 2356

By Committee on Judiciary

2-8

1 AN ACT concerning family law; relating to legal custody, residency and
2 parenting time; requiring the court to adopt a parenting plan that
3 maximizes each party's parenting time; adding misleading the court as a
4 factor to consider when the court considers legal custody, residency and
5 parenting time; creating a presumption that joint legal custody in a
6 temporary parenting plan is in the best interests of a child and defining
7 related terms under the Kansas family law code; adding failure to
8 exercise parenting time as an action that may be considered a material
9 change of circumstances; amending K.S.A. 2022 Supp. 23-3202, 23-
10 3203, 23-3211, 23-3212, 23-3213 and 23-3221 and repealing the
11 existing sections.
12

13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. K.S.A. 2022 Supp. 23-3202 is hereby amended to read as
15 follows: 23-3202. (a) If the parties have entered into a parenting plan, it
16 shall be presumed that the agreement is in the best interests of the child.
17 This presumption may be overcome and the court may make a different
18 order if the court makes specific findings of fact stating why the agreed
19 parenting plan is not in the best interests of the child.

20 (b) (1) *If the parties are not in agreement on a permanent parenting*
21 *plan, each party shall submit a proposed parenting plan to the court for*
22 *consideration at such time before the final hearing as may be directed by*
23 *the court. The court shall adopt a permanent parenting plan that*
24 *maximizes each party's parenting time and is consistent with the best*
25 *interests of the child.*

26 (2) *The court shall make specific findings of fact stating the relevant*
27 *factors and reasons why the permanent parenting plan ordered by the*
28 *court is in the best interests of the child.*

29 (c) *A court shall not adopt a local rule, form or practice that requires*
30 *a standardized or default parenting plan for any orders.*

31 Sec. 2. K.S.A. 2022 Supp. 23-3203 is hereby amended to read as
32 follows: 23-3203. (a) In determining the issue of legal custody, residency
33 and parenting time of a child, the court shall consider all relevant factors,
34 including, but not limited to:

35 (1) Each parent's role and involvement with the minor child before
36 and after separation;

- 1 (2) the desires of the child's parents as to *legal* custody or residency;
- 2 (3) the desires of a child of sufficient age and maturity as to the
- 3 child's *legal* custody or residency;
- 4 (4) the age of the child;
- 5 (5) the emotional and physical needs of the child;
- 6 (6) the interaction and interrelationship of the child with parents,
- 7 siblings and any other person who may significantly affect the child's best
- 8 interests;
- 9 (7) the child's adjustment to the child's home, school and community;
- 10 (8) the willingness and ability of each parent to respect and appreciate
- 11 the bond between the child and the other parent and to allow for a
- 12 continuing relationship between the child and the other parent;
- 13 (9) evidence of domestic abuse, including, but not limited to:
- 14 (A) A pattern or history of physically or emotionally abusive
- 15 behavior or threat thereof used by one person to gain or maintain
- 16 domination and control over an intimate partner or household member; or
- 17 (B) an act of domestic violence, stalking or sexual assault;
- 18 (10) the ability of the parties to communicate, cooperate and manage
- 19 parental duties;
- 20 (11) the school activity schedule of the child;
- 21 (12) the work schedule of the parties;
- 22 (13) the location of the parties' residences and places of employment;
- 23 (14) the location of the child's school;
- 24 (15) whether a parent is subject to the registration requirements of the
- 25 Kansas offender registration act, K.S.A. 22-4901 et seq., and amendments
- 26 thereto, or any similar act in any other state, or under military or federal
- 27 law;
- 28 (16) whether a parent has been convicted of abuse of a child, K.S.A.
- 29 21-3609, prior to its repeal, or K.S.A. 2022 Supp. 21-5602, and
- 30 amendments thereto;
- 31 (17) whether a parent is residing with an individual who is subject to
- 32 registration requirements of the Kansas offender registration act, K.S.A.
- 33 22-4901 et seq., and amendments thereto, or any similar act in any other
- 34 state, or under military or federal law; ~~and~~
- 35 (18) whether a parent is residing with an individual who has been
- 36 convicted of abuse of a child, K.S.A. 21-3609, prior to its repeal, or K.S.A.
- 37 2022 Supp. 21-5602, and amendments thereto; *and*
- 38 (19) *whether a parent has intentionally misled the court in order to*
- 39 *cause unnecessary delay, increase litigation costs and expenses or*
- 40 *improperly influence the court to determine the issue of legal custody,*
- 41 *residency and parenting time in a manner favorable to such parent.*
- 42 (b) To aid in determining the issue of legal custody, residency and
- 43 parenting time of a child, the court may order a parent to undergo a

1 domestic violence offender assessment conducted by a certified batterer
2 intervention program and may order such parent to follow all
3 recommendations made by such program.

4 Sec. 3. K.S.A. 2022 Supp. 23-3211 is hereby amended to read as
5 follows: 23-3211. *As used in article 32 of chapter 23 of the Kansas*
6 *Statutes Annotated, and amendments thereto:*

7 (a) *"Joint legal custody" means that both parents retain the decision-*
8 *making authority for the most important issues affecting a child's life,*
9 *including health, education and welfare, and neither parent has the right*
10 *to decide such matters without receiving input from or consulting with the*
11 *other parent.*

12 (b) *"Legal custody" means the allocation of parenting responsibilities*
13 *between parents, or any person acting as a parent, including decision-*
14 *making rights and responsibilities pertaining to matters of child health,*
15 *education and welfare.*

16 (c) *"Parenting time" means the schedule of time when each parent*
17 *has actual physical access to a child, during which the scheduled parent is*
18 *responsible for the physical care and supervision of the child.*

19 (d) *"Permanent parenting plan" means an agreement between*
20 *parents that is incorporated into an order at a final hearing or an order or*
21 *decree issued at a final hearing without agreement that establishes legal*
22 *custody, residency, parenting time and other matters regarding a child*
23 *custody arrangement in a matter in which a parenting plan may be*
24 *entered.*

25 (e) *"Temporary parenting plan" means an agreement or order issued*
26 *defining the legal custody, residency and parenting time to be exercised by*
27 *parents with regard to a child between the time of filing of a matter in*
28 *which a parenting plan may be entered, and any other provisions regarding*
29 *the child's care which may be in the best interest of the child, until a final*
30 *order is issued.*

31 ~~(b) "Permanent parenting plan" means an agreement between parents~~
32 ~~which is incorporated into an order at a final hearing or an order or decree~~
33 ~~issued at a final hearing without agreement that establishes legal custody,~~
34 ~~residency, parenting time and other matters regarding a child custody~~
35 ~~arrangement in a matter in which a parenting plan may be entered.~~

36 ~~(e) "Legal custody" means the allocation of parenting responsibilities~~
37 ~~between parents, or any person acting as a parent, including decision-~~
38 ~~making rights and responsibilities pertaining to matters of child health,~~
39 ~~education and welfare.~~

40 Sec. 4. K.S.A. 2022 Supp. 23-3212 is hereby amended to read as
41 follows: 23-3212. (a) The court may ~~enter~~ *issue an agreement or order for*
42 *a temporary parenting plan in any case a matter* in which temporary orders
43 relating to child custody ~~is~~ *are* authorized.

1 (b) If the court deems it appropriate, a temporary parenting plan
 2 approved by the court may include one or more of the following
 3 provisions regarding children involved in the matter before the court:

- 4 (1) Designation of the temporary legal custody of the child;
- 5 (2) designation of a temporary residence for the child;
- 6 (3) allocation of parental rights and responsibilities regarding matters
 7 pertaining to the child's health, education and welfare; *and*
- 8 (4) a schedule for the child's time with each parent, when appropriate.

9 (c) *In making an order for a temporary parenting plan, there shall be*
 10 *a presumption that it is in the best interests of the child for parents to have*
 11 *temporary joint legal custody and maximized parenting time with each*
 12 *parent.*

13 (d) A parent seeking a temporary order in which matters of ~~child~~
 14 *legal custody, residency, or parenting time are included shall file a*
 15 *proposed temporary parenting plan contemporaneous with any request for*
 16 *issuance of such temporary orders, which and such plan shall be served*
 17 *with any such temporary orders.*

18 ~~(d)~~(e) If the parent who has not filed a proposed temporary parenting
 19 plan disputes the allocation of parenting responsibilities, residency,
 20 parenting time or other matters included in the proposed temporary
 21 parenting plan, ~~that~~ *such* parent shall file and serve a responsive proposed
 22 temporary parenting plan.

23 ~~(e)~~(f) Either parent may move to have a proposed temporary
 24 parenting plan entered as part of a temporary order. The parents may enter
 25 an agreed temporary parenting plan at any time as part of a temporary
 26 order.

27 ~~(f)~~(g) A parent may move for amendment ~~of~~ *to* a temporary parenting
 28 plan, and the court may order amendment to the temporary parenting plan,
 29 if the amendment is in the best ~~interest~~ *interests* of the child.

30 ~~(g)~~(h) If a proceeding for divorce, separate maintenance, annulment
 31 or determination of parentage is dismissed, any temporary parenting plan
 32 is vacated.

33 Sec. 5. K.S.A. 2022 Supp. 23-3213 is hereby amended to read as
 34 follows: 23-3213. (a) The objectives of the permanent parenting plan are
 35 to:

- 36 (1) Establish a proper allocation of parental rights and
 37 responsibilities;
- 38 (2) establish an appropriate working relationship between the parents
 39 such that matters regarding the health, education and welfare of their child
 40 is best determined;
- 41 (3) provide for the child's physical care;
- 42 (4) set forth an appropriate schedule of parenting time *that maximizes*
 43 *parenting time with each parent;*

- 1 (5) maintain the child's emotional stability;
- 2 (6) provide for the child's changing needs as the child grows and
- 3 matures in a way that minimizes the need for future modifications to the
- 4 permanent parenting plan;
- 5 (7) minimize the child's exposure to harmful parental conflict;
- 6 (8) encourage the parents, where appropriate, to meet their
- 7 responsibilities to their minor children through agreements in the
- 8 permanent parenting plan, rather than by relying on judicial intervention;
- 9 and
- 10 (9) otherwise protect the best interests of the child.
- 11 (b) A permanent parenting plan may consist of a general outline of
- 12 how parental responsibilities and parenting time will be shared and may
- 13 allow the parents to develop a more detailed agreement on an informal
- 14 basis; however, a permanent parenting plan ~~must~~ shall set forth the
- 15 following minimum provisions:
- 16 (1) Designation of the legal custodial relationship of the child;
- 17 (2) a schedule for the child's time with each parent, when appropriate;
- 18 (3) a provision for a procedure by which disputes between the parents
- 19 may be resolved without need for court intervention; and
- 20 (4) if either parent is a service member, as defined in K.S.A. 2022
- 21 Supp. 23-3217, and amendments thereto, provisions for *legal* custody,
- 22 *residency* and parenting time upon military deployment, mobilization,
- 23 temporary duty or unaccompanied tour of such service member.
- 24 (c) A detailed permanent parenting plan shall include those provisions
- 25 required by subsection (b), and may include, but need not be limited to,
- 26 provisions relating to:
- 27 (1) Residential schedule;
- 28 (2) holiday, birthday and vacation planning;
- 29 (3) weekends, including holidays and school inservice days preceding
- 30 or following weekends;
- 31 (4) allocation of parental rights and responsibilities regarding matters
- 32 pertaining to the child's health, education and welfare;
- 33 (5) sharing of and access to information regarding the child;
- 34 (6) relocation of parents;
- 35 (7) telephone access;
- 36 (8) transportation; and
- 37 (9) methods for resolving disputes.
- 38 (d) The court shall develop a permanent parenting plan, ~~which that~~
- 39 may include such detailed provisions as the court deems appropriate,
- 40 when:
- 41 (1) ~~So~~ Requested by either parent; or
- 42 (2) ~~the parent or parents are unable to develop~~ parties are not in
- 43 agreement on a parenting plan.

1 Sec. 6. K.S.A. 2022 Supp. 23-3221 is hereby amended to read as
2 follows: 23-3221. (a) The court may modify an order granting or denying
3 parenting time whenever modification would serve the best interests of the
4 child.

5 (b) *The following actions by a party may be considered a material*
6 *change of circumstances that justify modification of a prior order of legal*
7 *custody, residency or parenting time:*

8 (1) Repeated unreasonable denial of or interference with parenting
9 time granted under this article ~~may be considered a material change of~~
10 ~~circumstances which justifies modification of a prior order of legal~~
11 ~~custody, residency or parenting time; or~~

12 (2) *failure to exercise more than 1/2 of such party's parenting time*
13 *during the immediately preceding six months, except as provided in K.S.A.*
14 *23-3217(b), and amendments thereto, or when such failure is caused by a*
15 *medical condition.*

16 (c) ~~Any~~A party may petition the court to modify an order granting
17 parenting time to require that the exchange or transfer of children for
18 parenting time take place at a child exchange and visitation center, as
19 established in K.S.A. 75-720, and amendments thereto.

20 Sec. 7. K.S.A. 2022 Supp. 23-3202, 23-3203, 23-3211, 23-3212, 23-
21 3213 and 23-3221 are hereby repealed.

22 Sec. 8. This act shall take effect and be in force from and after its
23 publication in the statute book.