

- i. Version Number: 5
- ii. Date of version: August 4, 2010 (incorporating feedback from workgroup meeting on June 22)
- iii. Current section number and short title: 25-403 best interests
- iv. Names of members: Bill Fabricius, Grace Hawkins
- v. Purpose:

In Version 5 the main suggestion is that perhaps C. 8. should not be part of 403 after all. It seems that the intent behind including it is to “scare” parents from making false allegations, but do we really want to punish the child when a parent does so by limiting the child’s parenting time with that parent? If false allegations indicate attempts to interfere with the child’s relationship and contact with the other parent, then it seems that is covered in C. 6. Perhaps the issue of false allegations should be dealt with in the new Sections 104 & 105.

We also wondered whether the second sentence of C 6. and C. 9. are now unnecessary in 403 given the new Sections 104 & 105, and whether C. 3, C. 4., and C. 5. have too much overlap.

We deleted the word “primary” from C. 7. to reflect the consensus that seemed to emerge from the May 27 meeting.

Finally, given that D. directs the court to be consistent with the child’s “physical safety and emotional well-being,” and that the court determines that by way of considering the factors in C., that we should label those factors as “relevant to the child’s physical safety and emotional well-being.”

Changes are tracked.

25-403. Parenting time and parental decision making; best interests of child

A. Absent evidence to the contrary, it is in a child’s best interests for both parents:

- 1. To have substantial, meaningful, and continuing parenting time with their child;
- 2. To share parental decision-making concerning their child.
- 3. To develop a mutually agreeable parenting time plan and a parental decision-making plan.

B. In the event the parents are unable to reach an agreement on a plan for either parenting time or parental decision-making, each parent shall submit to the court a proposed, detailed parenting time plan and proposal for parental decision-making as outlined in 25-403.02.

C. The court shall determine parenting time and parental decision-making, either originally or on petition for modification, in accordance with the best interests of the child. The court shall consider all factors relevant to the child’s physical safety and emotional well-being, including

- 1. The feasibility of each plan taking into account the distance between the parents’ homes, the parents’ and/or child’s work, school, daycare or other schedules, and the child’s age.
- 2. The child’s own viewpoint and wishes.
- 3. The interaction and interrelationship of the child with the child’s siblings and any other person who may significantly affect the child’s best interest.
- 4. The child’s adjustment to home, school and community.
- 5. The mental and physical health of all individuals involved.
- 6. Whether one parent is more likely to support and encourage the child’s relationship and contact with the other parent. This paragraph does not apply if the court determines that a parent is acting in good faith to protect the child from witnessing an act of domestic violence or being a victim of domestic violence or child abuse.
- 7. The historical nature of the relationship between the parent and the child including whether one parent performed a disproportionate amount of care, the current relationship between the parent and the child, and the potential future relationship of the parent and the child.
- 8. Whether either parent was convicted of an act of false reporting of child abuse or neglect under section 13-2907.02.

Deleted: relevant

Comment [BF1]: We wondered whether there might be too much overlap among these sections. The child’s relationship with “any other person,” the child’s “adjustment to home...” and the “health of all individuals” seem to overlap.

Comment [BF2]: Do we need this sentence any longer with the new Sections 104 and 105?

Deleted: primary

Comment [BF3]: Two questions about C. 8.:
 1. Doesn’t C. 6. cover this?
 2. Is it in the child’s best interest to be given less time with a parent who did this? Does this behavior by itself mean the child should have less time with that parent? Or that that parent should have less decision-making input?
 We question whether C. 8. should be removed from 403 and instead dealt with in the new sections 104 and 105? Shouldn’t those sections also deal with the issue of false allegations and their detection and “punishment” ?

9. Whether there has been domestic violence or child abuse as defined in section 25-403.03.
10. Whether a parent has complied with chapter 3, article 5, of this title.

D. Consistent with the child's physical safety and emotional well-being, the court shall adopt a plan that maximizes parenting time with both parents and provides for both parents to share parental decision-making concerning their child. In determining parenting time and/or parental decision-making responsibility, the court shall not prefer one parent over the other due to gender.

E. In a contested parenting time and parental decision-making case, the court shall make specific findings on the record about all relevant factors and the reasons for which the decision is in the best interests of the child.

Comment [BF4]: Isn't this now covered by Tom's group's new sections 104 and 105 specifying that the court first considers abuse / violence BEFORE considering best interests?