

- i. Version Number: 7
- ii. Date of version: September 15, 2010 (incorporating feedback from workgroup meeting on August 27)
- iii. Current section number and short title: 25-403 best interests
- iv. Names of members: Bill Fabricius, Grace Hawkins
- v. Purpose:
 - (1) In Version 7, we added wording changes suggested by Workgroup members (these are tracked in the comments notes). We also re-ordered the parenting time factors as suggested by the Workgroup.

(2) We also added new language that we felt was needed in the following sections:

403.01.A.1. – we felt that parents should clearly identify which of the 3 types of parental decision-making they are proposing.

403.01.B -- These 2 sentences are in the current statute, in different wording, in sections 403.02.A.5. and 403.01.C. We felt this was the best place for these 2 sentences.

(3) We took out the following language that is in the current statute in 403.01 A. & B & C:

“A. In awarding child custody, the court may order sole custody or joint custody. This section does not create a presumption in favor of one custody arrangement over another

“B. The court may issue an order for joint custody over the objection of one of the parents if the court makes specific written findings of why the order is in the child's best interests ...

“C. The court may issue an order for joint custody of a child if both parents agree and submit a written parenting plan and the court finds such an order is in the best interests of the child.”

We felt that saying that the court can award sole or joint decision-making, and can order joint if one parent disagrees, is simply unnecessary now and maybe confusing given that parents are required to submit their plans and the court decides.

(4) The following language is in the current statute in 403.02.B. Should it also be somewhere in the new statute?

“B. If the parents are unable to agree on any element to be included in a parenting plan, the court shall determine that element. The court may determine other factors that are necessary to promote and protect the emotional and physical health of the child.”

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 plan as outlined in 25-403.01.

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C. Consistent with the child's physical 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.

D. 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.

25-403.01. Parenting plans

A. Parenting plans shall include, at least the following:

1. A designation of the parental decision-making plan as either shared, final or sole, as defined in 25-103.
2. Each parent's rights and responsibilities for making decisions concerning the child in areas such as education, health care, religious preference, extracurricular activities and personal care.
3. A plan for communication about the child, including methods and frequency.
2. A detailed schedule of parenting time for the child, including holidays and school vacations.
3. A plan for the exchanges of the child.
4. In shared parental decision-making plans, a procedure by which proposed changes, disputes and alleged breaches may be mediated or resolved, which may include the use of conciliation services or private mediation.
5. A procedure for periodic review of the plan's terms by the parents.
6. A statement that each party has read, understands and will abide by the notification requirements of section 25-403.05, subsection B.

B. Parenting plans may include shared parental decision-making without including substantially equal parenting time. Sole parental decision-making does not override the schedule of parenting time.

25-403.02 Parenting time

A. The court shall determine parenting time, 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 and emotional well-being, including

1. The historical nature of the relationship between the parent and the child, the current relationship between the parent and the child, and the potential future relationship between the parent and the child.
2. The mental and physical health of all individuals involved.
3. The child's adjustment to home, school and community.
4. The interaction and relationship between the child and the child's siblings and any other person who may significantly affect the child's best interest.
5. The child's own viewpoint and wishes, if of suitable age and maturity, along with the basis of those wishes.
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 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.
8. Whether a parent has complied with the educational program prescribed in chapter 3, article 5, of this title.

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Comment [KLR1]: Bruce Cohen's suggestion

Comment [KLR2]: Bruce suggests adding language about a method of communication between the parents.

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Comment [KLR3]: Sid's suggestion

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7. In sole parental decision making plans, a statement that the parties understand that sole parental decision making does not override the schedule of parenting time.¶

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Comment [KLR4]: Change sequencing of these factors: 7, 5, 4, 3, 2, 6, 1, 8

Comment [KLR5]: Consensus was that this language is beneficial. Brian Yee says the past-present-future language is an advantage, not a drawback. This is what an evaluator will look at because divorce will change the relationship. A homemaker may have to go into the workplace after divorce, so things will not be the same. Bruce noted that the language also works well for situations where a child and a parent have not established a relationship.

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Comment [KLR6]: Bruce also suggests: "along with factors that might influence those wishes" or "Basis for stated wishes." Tom suggests adding "if of suitable age and maturity."

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3. The interaction and relationship between the child and the child's siblings and any other person who may ... [1]

25-403.03. Parental decision-making, sole and joint

A. The court shall determine parental decision-making, either originally or on petition for modification, in accordance with the best interests of the child. The court shall consider the relevant findings made in accordance with section 25-403.02 and all of the following:

1. The agreement or lack of an agreement by the parents regarding the parental decision-making plan.
2. Whether a parent's lack of agreement is unreasonable or is influenced by an issue not related to the best interests of the child.
3. Whether an award of sole parental decision-making would be abused.
4. The past, present and future willingness and abilities of the parents to cooperate in decision-making about the child.
5. Whether the parental decision-making plan is logistically possible.
6. Whether a parent has complied with the educational program prescribed in chapter 3, article 5, of this title.

Comment [KLR7]: Bruce Cohen – alternative suggestion – “factors relevant for decision making” or “The court shall consider relevant findings made in accordance with ...”

Comment [KLR8]: Bruce uses another factor – false empowerment. “Whether an award of sole legal custody would be abused.”

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A. The court may issue an order for sole or joint parental decision making if both parents agree and the court finds such an order is in the best interests of the child. The court may order joint parental decision making without ordering a substantially equal parenting time plan. ¶

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B. The court may issue an order for joint parental decision making over the objection of one of the parents if the court makes specific written findings of why the order is in the child's best interests. In determining whether joint parental decision making is in the child's best interests, the court shall consider the relevant factors prescribed in

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2. The child's own viewpoint and wishes.
3. The interaction and relationship between the child and 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, the current relationship between the parent and the child, and the potential future relationship between the parent and the child.