

- i. Version Number: 9 FINAL VERSION
- ii. Date of version: February 7, 2011
- iii. Current section number and short title: 25-403 best interests
- iv. Names of members: Bill Fabricius, Grace Hawkins
- v. Purpose:

No substantive changes since Version 7.

We struck the words "sole and joint" from the title "25-403.03. Parental decision-making" because there are three parental decision-making alternatives: sole, joint, and split.

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.

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.
- 8. 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. **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**

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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25-403.03. Parental decision-making

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.