

## MORE CHANGES IN FAMILY LAW ON THE HORIZON?

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Effective January 1, 2007, the new child support guidelines went into effect. The guidelines were significantly modified to take into account, among other things, the amount of parenting time awarded to each parent. In a story reported on [Minnesota Public Radio](#), the state's child custody law is now also up for review. At issue is whether or not the courts should automatically presume that children should split their time living with each of their divorced parents. Presently, Minnesota law already presumes that both parents should share legal custody of the children, which is different from physical custody. Legal custody involves the right to make important decisions for the children, such as those relating to medical, education and religion. Physical custody determines with whom the children shall live.

In Minnesota, the existing law in establishing physical custody is premised upon a finding as to the best interests of the child. In determining the children's best interests, the court is to consider and evaluate 13 factors which are explicitly set forth in the statute. One of the factors to be considered, but which cannot be used as a presumption in determining custody, is which parent acted as the children's primary custodial parent during the marriage. This required the court to essentially start with a clean slate in deciding whether the children should live solely with their mother, father, or split the time that they spend with each parent. It has been argued, however, that the existing custody laws provide for a bias toward awarding sole physical custody to the mother.

Under the legislative proposal, however, the courts would be required to presume that the children's best interests will be served by awarding the parents joint physical custody. This presumption can be rebutted where there exist a compelling reason for not awarding joint physical custody, such as in the case of child abuse. It is important to note, however, that joint physical custody may not necessarily mean the children would split their time 50/50 with each of their parents. By requiring the courts to *presume* joint physical custody is in the best interests of the children, the playing field would arguably be leveled between the parents. It is hoped that this presumption will eliminate any stereotype that mothers are superior caregivers to the children and will allow both parents to be jointly responsible for, and have the ability to, raise the children.

One of the concerns raised by enacting such a presumption is whether or not placing the children in a joint physical custodial arrangement will be detrimental in those cases where the parents are contentious and are unable to cooperate in raising the children. Such a shared custodial arrangement in those situations could have the effect of placing the children in the middle of a hostile and unhealthy living environment.

A state court official was to report a study group's findings to the legislature on whether or not such a presumption should be implemented in Minnesota by no later than January 15, 2009. Depending upon the recommendations of the state court official, it is possible that Minnesota's custody laws may be modified in the relatively near future.

Currently, only one other state, Idaho, has enacted this presumption, while others have considered it.

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