

## **EDUCATION FOR DIVORCING PARENTS, VISITATION, AND CUSTODY TASK FORCE**

### **Task Force Assignment**

The Education for Divorcing Parents, Visitation, and Custody Task Force was created from the passage of House Bill 1218 during the 2006 legislative session. The purpose of this Task Force was to study South Dakota's delivery of parent education for divorcing parents with minor children, visitation and custody issues, and to explore best practice models of evidence-based curriculums, court-required education, and visitation referees. The Task Force was directed to make recommendations to improve divorce outcomes for children and families in South Dakota. The Task Force was directed to make its recommendations to the Governor, Legislature, and Chief Justice of the Supreme Court.

### **Summary of Task Force Recommendations**

**The Task Force passed a motion to request the Unified Judicial System to have the standard child visitation guidelines changed by rule to become parenting guidelines rather than child visitation guidelines.**

In addition, the Task Force was informed by the Unified Judicial System that the UJS would immediately print pro se forms and compile packets that will be distributed to court houses and child support referees for the use by any person to seek enforcement of any valid visitation decree.

### **Summary of Legislation Recommended**

**An Act to revise certain provisions relating to the rights and duties of joint legal custodians.**

This legislation attempts to strengthen the joint legal custody statutes and clarifies the areas to which the courts have authority. It places in statute that both parents need to foster the other parent's relationship with the child.

**An Act to revise certain provisions relating to temporary custody prior to divorce or separate maintenance.**

This legislation increases from thirty days to twelve months the amount of time used in determining which parent has been the primary caregiver prior to the filing for divorce. The law provides that the minor child shall temporarily remain in the custody of the parent who was the primary caregiver for those twelve months, unless the parties agree otherwise.

**An Act to require that most records and applications regarding a child reference the names and addresses of both parents.**

This legislation would require that each parent make reasonable efforts to ensure that the name and address of the other parent is listed on certain records and information pertaining to a minor child.

**An Act to repeal certain provisions that have been superseded by other statutes concerning the rights of custodial parents.**

This legislation repeals §25-5-13 since that section has been superseded by §§25-4A-17, 25-4A-18, and 25-4A-19.

**An Act to provide that either parent is to reasonably inform the other parent about routine decisions concerning children when residing with the other.**

Current law provides that under joint legal custody that parent with whom the child is residing shall decide all routine matters concerning the child. This legislation would require that the other parent be reasonably informed about those routine decisions.

**An Act to revise certain provisions relating to the custody, service, and earnings of children.**

This legislation clarifies that the father and mother of any minor child born in wedlock are equally entitled to the child's custody, service, and earnings, subject to the court's right to award custody of the child to either parent after considering the best interests of the child as to the child's temporal, mental, and moral welfare.

**An Act to revise certain terminology in the statutes providing for standard child visitation guidelines.**

This legislation changes the terminology "child visitation" to "parenting time" in the law regarding child custody.

**An Act to provide for the imposition of certain sanctions against parties who willfully do not comply with custody or visitation decrees.**

This legislation provides a list of various sanctions that the court may impose on the parent after the violation of the custody or visitation agreement. The court may impose other reasonable sanctions based on the circumstances of a case, but this legislation will specify some possible options.

**An Act to adopt the South Dakota Family Law Arbitration Act and provide for its implementation and enforcement.**

This legislation would give an alternative to the court system to resolve certain family issues. No one is required to participate under this legislation. Some of the key factors of this legislation include: the person chosen to arbitrate does not have to be a judge or attorney, expediency, the process is private, parties can choose the format of the process, provides for impartiality, record required of any award, an easy process to modify the award, and the court has the right to modify the award if there are evident errors.

**An Act to provide for an order of joint physical care over certain children whose parents exercise joint legal custody under certain provisions.**

This legislation amends §25-5-7.1 to provide that if joint legal custody is awarded to both parents, the court may also award joint physical custody to the parties utilizing a court-ordered or court-approved shared parenting plan. The shared parenting plan would provide for the division of parental duties and responsibilities and the time spent with the children, on terms the court determines to be consistent with the best interest of the children. Such an arrangement could be ordered over the objections of one parent.

**An Act to create a rebuttable presumption against the award of custody to any person with proven history of domestic abuse.**

This legislation amends § 25-4-45.5 to provide that the court in awarding custody of a minor must consider a proven history of domestic abuse. The legislation further provides that a proven history of domestic abuse creates a rebuttable presumption that awarding custody of a minor to the abusive parent is not in the best interest of the minor. A history of domestic abuse may only be proven by the greater convincing force of the evidence.

**An Act to require custody or visitation dispute mediation under certain circumstances.**

This legislation amends §25-4-56 to provide for mediation in any custody or visitation dispute between parents upon the request of either parent unless one of the parents has been convicted of domestic abuse, has been convicted of assault under certain conditions, or has a proven history of domestic abuse. Under this legislation mediation would not take place if the court determines that mediation is not readily available or that mediation is not appropriate based on the facts and circumstances of the case.

**An Act to revise certain provisions relating to the rights of alleged contemnors in visitation and custody matters.**

This legislation allows for a custody hearing to proceed without a court-appointed attorney for an alleged contemnor if the alleged contemnor would not be

sentenced to jail. However, the alleged contemnor could still obtain an attorney at his or her expense.

**An Act to provide for a statewide visitation enforcement program and to provide for its funding.**

This legislation creates a statewide visitation enforcement program to assist parents in obtaining visitation rights or resolving visitation issues and disputes among parents and custodians of minor children. This legislation establishes visitation enforcement officers who would attempt to resolve visitation issues and disputes between parties without court litigation. The program would be administered and supervised by the Unified Judicial System. The legislation contains an appropriation of \$210,000 to the UJS to establish and fund the visitation enforcement program. This legislation would not become effective until July 1, 2009.

**An Act to authorize the court appointment of parenting coordinators in certain custody and visitation disputes.**

This legislation allows the court to appoint a parenting coordinator to assist the parents in resolving contested issues. If the appointment of a coordinator is made by agreement of both parents, the parenting coordinator's determinations are binding upon the parents until such time as the court may, upon motion of either parent, rule otherwise. If the appointment of a coordinator is made by the court over the objection of one or both parents, the parenting coordinator's determinations are recommendations to the court, to be adopted, modified, or rejected using the same process as child support referees' recommendations are reviewed. The court is given authority to promulgate rules to prescribe the authority, duties, appointment, and compensation of parenting coordinators.

**Summary of Meeting Dates and Listing of Task Force Members**

The task force met on August 29, 2006, December 13 and 14, 2006, March 29 and 30, 2007, April 24 and 25, 2007, and May 30 and 31, 2007 in Pierre. The task force conducted simultaneous public hearings in Sioux Falls, Aberdeen, and Rapid City on September 27, 2006.

Task force members included Representative Casey Murschel, Chair; Representative Tom Deadrick, Vice Chair; Senators Tom Hanson, Clarence Kooistra, William Napoli, and Dan Sutton; Representatives H. Paul Dennert, Burt Elliott, and Mike Vehle; Judge Rodney Steele, Dave Braun, Jeff Gillaspie, Tom Linngren, Thomas Otten, Dr. Thomas Stanage, Linda Lea Viken, and Debra Watson.

Staff members included Reuben Bezpaletz, Chief Analyst for Research and Legal Services; David L. Ortbahn, Principal Research Analyst; Kris Schneider, Senior Legislative Secretary; and Lisa Shafer, Legislative Secretary.