

**First Regular Session
Seventieth General Assembly
STATE OF COLORADO**

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 15-0367.01 Brita Darling x2241

SENATE BILL 15-129

SENATE SPONSORSHIP

Lundberg,

HOUSE SPONSORSHIP

(None),

Senate Committees

Judiciary
Appropriations

House Committees

A BILL FOR AN ACT

101 **CONCERNING PRESERVING THE PARENT-CHILD RELATIONSHIP IN**
102 **DOMESTIC RELATIONS ACTIONS.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

The bill amends provisions relating to best interests of a child in domestic relations actions and certain other actions in the juvenile code. With respect to such actions, the bill:

- ! Amends the legislative declaration to emphasize the fundamental liberty interest of both parents and children in maintaining the parent-child relationship;

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
*Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

- ! With respect to temporary orders hearings, if there has been a temporary or permanent protection order entered against one or both parties either prior to or in conjunction with the domestic relations action, requires the court to grant an expedited hearing at the request of either party for purposes of modifying provisions in the protection order relating to parenting time, communication, and access to a child. The court shall order substantially equal parenting time and access to the child unless it finds that such orders are clearly not in the child's best interest. The court shall also enter any orders necessary for the safety of the protected party relating to the restrained party's parenting time with the child.
- ! Changes the nature of an investigation by a court-appointed child and family investigator (CFI) from evaluation and recommendations to investigation and fact-finding. CFIs will conduct an objective investigation of issues as specifically directed by the court and will provide written factual findings to the court that are supported by credible evidence. A CFI's report will not make recommendations regarding the allocation of parental responsibilities but will provide the court with the factual findings the court deems necessary to make such determinations.
- ! Amends language in the legislative declaration regarding the allocation of parental rights and responsibilities relating to the best interests of the child. Also, the bill requires the court to allocate substantially equal parenting time unless the court finds that doing so would endanger a child's physical health or significantly impair the child's emotional development. In addition, the court shall award mutual decision-making responsibilities with respect to the child unless the court finds that such an order is clearly not in the child's best interest.
- ! For purposes of temporary orders in a domestic relations action, requires the court to award substantially equal parenting time to the parties unless the court finds that doing so would endanger a child's physical health or significantly impair the child's emotional development. In addition, the court shall order mutual decision-making responsibilities unless mutual decision-making is clearly not in the child's best interest.
- ! Changes the nature of an evaluation by a court-appointed parental responsibilities evaluator to an investigation by a mental health professional. The mental health investigation is limited to mental health diagnoses, assessments of

relevant addictions, or other mental health-related issues that are relevant to the court's allocation of parental responsibilities for the child. The investigator's report shall contain findings of fact but shall not contain conclusions or recommendations relating to the allocation of parental rights and responsibilities.

- ! Clarifies that the 2-year restriction on filing motions that request a substantial change in parenting time and that also change the party with whom the child resides the majority of the time do not apply to moderate changes to parenting time when the existing parenting time order awarded substantially equal parenting time to the parties; and
- ! Amends the provisions relating to modification of decision-making responsibility for a child from requiring the court to retain the prior decision-maker unless certain criteria are met to permitting the court to change the decision-maker after considering certain criteria, including whether an award of mutual decision-making responsibilities is now in the child's best interest.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, **amend** 14-10-102 (2)
3 as follows:

4 **14-10-102. Purposes - rules of construction.** (2) Its underlying
5 purposes are:

6 (a) To promote the amicable settlement of disputes that have
7 arisen between parties to a marriage;

8 (b) To mitigate the potential harm to the spouses and their
9 children caused by the process of legal dissolution of marriage; ~~and~~

10 (c) TO PROTECT THE FUNDAMENTAL _____ INTEREST OF BOTH
11 PARENTS AND CHILD TO THE PARENT-CHILD RELATIONSHIP; AND

12 ~~(c)~~ (d) To make the law of legal dissolution of marriage more
13 effective for dealing with the realities of matrimonial experience by
14 making an irretrievable breakdown of the marriage relationship the sole

1 basis for its dissolution.

2 **SECTION 2.** In Colorado Revised Statutes, **amend** 14-10-104.5
3 as follows:

4 **14-10-104.5. Legislative declaration.** The general assembly
5 recognizes that it is ~~in the best interests of the parties to a marriage in~~
6 ~~which a dissolution has been granted and in which there are children of~~
7 ~~the marriage for the parties to be able to resolve disputes that arise~~
8 ~~subsequent to the dissolution in an amicable and fair manner. The general~~
9 ~~assembly further recognizes that, in most cases, it is in the best interests~~
10 ~~of the children of the marriage to have a relationship with both parents~~
11 ~~and that, in most cases, it is the parents' right to have a relationship with~~
12 ~~their children. The general assembly emphasizes that one of the~~
13 ~~underlying purposes of this article is to mitigate the potential harm to the~~
14 ~~spouses and their children and the relationships between the parents and~~
15 ~~their children caused by the process of legal dissolution of marriage. The~~
16 ~~general assembly recognizes that when a marriage in which children are~~
17 ~~involved is dissolved both parties either agree to or are subject to orders~~
18 ~~which contain certain obligations and commitments. The general~~
19 ~~assembly declares that the honoring and enforcing of those obligations~~
20 ~~and commitments made by both parties is necessary to maintaining a~~
21 ~~relationship that is in the best interest of the children of the marriage. In~~
22 ~~recognition thereof the general assembly hereby declares that both parties~~
23 ~~should honor and fulfill all of the obligations and commitments made~~
24 ~~between the parties and ordered by the court~~ PROTECTING AND
25 PROMOTING THE PARENT-CHILD RELATIONSHIP OF BOTH PARENTS AND
26 CHILD IS OF PARAMOUNT IMPORTANCE. OUTCOMES FOR CHILDREN ARE
27 INHERENTLY BETTER WHEN A CHILD HAS UNFETTERED RELATIONSHIPS

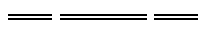
1 WITH BOTH PARENTS. THE GENERAL ASSEMBLY AFFIRMS THAT PARENTS
2 HAVE A FUNDAMENTAL INTEREST IN THE CARE AND CONTROL OF THEIR
3 CHILDREN AS DEFINED IN THE UNITED STATES CONSTITUTION AND
4 REAFFIRMED BY THE UNITED STATES SUPREME COURT. THE GENERAL
5 ASSEMBLY RECOGNIZES THAT DISSOLUTION OF MARRIAGE CONFLICT AND
6 LITIGATION CAN BE MINIMIZED BY REQUIRING THE STATE TO
7 DEMONSTRATE A COMPELLING INTEREST AND ENDANGERMENT TO THE
8 CHILD BEFORE THE PARENT-CHILD RELATIONSHIP MAY BE INFRINGED UPON.
9 THE GENERAL ASSEMBLY FINDS THAT LITIGATION OF ISSUES RELATING TO
10 CHILDREN ARE PRIMARILY HARMFUL TO CHILDREN AND FAMILIES AND
11 SHOULD BE MINIMIZED. THE GENERAL ASSEMBLY FURTHER FINDS THAT
12 COURTS HEARING DOMESTIC RELATIONS MATTERS SHOULD ALIGN THEIR
13 PROCESSES, PROCEDURES, AND RULINGS TO BE CONSISTENT WITH THE
14 FUNDAMENTAL LIBERTY INTEREST OF THE PARENT-CHILD RELATIONSHIP.
15 THE GENERAL ASSEMBLY ENCOURAGES PARENTS TO RESOLVE
16 DISAGREEMENTS WITH THE BEST INTERESTS OF THEIR CHILDREN IN MIND
17 AND TO DO SO WITHOUT INVOLVING THE COURTS, IF POSSIBLE. THEREFORE,
18 THE GENERAL ASSEMBLY DECLARES THAT BY TREATING PARENTS
19 EQUALLY, REQUIRING EVIDENCE-BASED RULING AND ADHERENCE TO
20 STANDARDS OF DUE PROCESS, AND FOCUSING ON IMPROVING THE
21 OUTCOMES FOR CHILDREN, DISSOLUTION OF MARRIAGE LITIGATION WILL
22 DROP SIGNIFICANTLY.

23 **SECTION 3.** In Colorado Revised Statutes, 14-10-108, **add** (3.5)
24 as follows:

25 **14-10-108. Temporary orders in a dissolution case.** (3.5) IF A
26 TEMPORARY OR PERMANENT PROTECTION ORDER PURSUANT TO THE
27 PROVISIONS OF PART 1 OF ARTICLE 14 OF TITLE 13, C.R.S., HAS BEEN

1 ENTERED AGAINST ONE OR BOTH OF THE PARTIES TO THE ACTION FILED
2 PURSUANT TO THIS ARTICLE, EITHER PRIOR TO OR IN CONJUNCTION WITH
3 THE FILING OF THE ACTION UNDER THIS ARTICLE, EITHER PARTY MAY
4 REQUEST THAT THE COURT MODIFY THE PROVISIONS OF THE ORDER
5 CONSISTENT WITH THE PROVISIONS OF SECTION 14-10-124. UNLESS THE
6 COURT FINDS, AFTER A HEARING, THAT SUCH ORDERS WOULD ENDANGER
7 THE CHILD'S PHYSICAL HEALTH OR SIGNIFICANTLY IMPAIR THE CHILD'S
8 EMOTIONAL DEVELOPMENT AND IF THE COURT DETERMINES THAT SHARED
9 PARENTING IS APPROPRIATE, THE COURT SHALL ORDER SUBSTANTIALLY
10 EQUAL PARENTING TIME WITH ANY CHILD OVER WHOM THE COURT HAS
11 JURISDICTION AND ALLOW FOR NORMAL COMMUNICATIONS WITH THE
12 CHILD, ACCESS TO THE CHILD'S SCHOOL AND EXTRACURRICULAR
13 ACTIVITIES, AND ANY OTHER ORDERS RELATING TO THE RESTRAINED
14 PARTY'S RELATIONSHIP WITH THE CHILD. THE COURT SHALL MAKE ANY
15 ORDERS NECESSARY TO PRESERVE THE SAFETY OF THE PROTECTED PARTY
16 WHILE FACILITATING THE RESTRAINED PARTY'S PARENTING TIME AND
17 CONTACT WITH THE CHILD. IN ADDITION, IF THE SAFETY OF THE
18 PROTECTED PARTY WILL BE PRESERVED, THE COURT SHALL MODIFY A NO
19 CONTACT ORDER TO ALLOW EMAIL AND TEXT MESSAGING BETWEEN THE
20 PARTIES. UPON THE REQUEST OF EITHER PARTY, THE COURT SHALL ORDER
21 AN EXPEDITED HEARING CONCERNING MODIFICATION OF PROVISIONS OF A
22 TEMPORARY OR PERMANENT PROTECTION ORDER RELATING TO THE
23 ALLOCATION OF PARENTAL RIGHTS AND RESPONSIBILITIES AND
24 COMMUNICATION BETWEEN THE PARTIES.

25



26 **SECTION 4.** In Colorado Revised Statutes, **amend** 14-10-124
27 (1), (1.5) (a) introductory portion, (1.5) (b) introductory portion, and

1 (1.7); and **repeal** (1.5) (a) (VII) as follows:

2 **14-10-124. Best interests of child. (1) Legislative declaration.**

3 ~~While co-parenting is not appropriate in all circumstances following~~
4 ~~dissolution of marriage or legal separation, the general assembly finds and~~
5 ~~declares that, in most circumstances, it is in the best interest of all parties~~
6 ~~to encourage frequent and continuing contact between each parent and the~~
7 ~~minor children of the marriage after the parents have separated or~~
8 ~~dissolved their marriage. In order to effectuate this goal when~~
9 ~~appropriate, the general assembly urges parents to share the rights and~~
10 ~~responsibilities of child-rearing and to encourage the love, affection, and~~
11 ~~contact between the children and the parents~~ THE GENERAL ASSEMBLY
12 FINDS AND DECLARES THAT OUTCOMES FOR CHILDREN FOLLOWING
13 DISSOLUTION OF MARRIAGE OR LEGAL SEPARATION ARE SIGNIFICANTLY
14 BETTER WHEN A CHILD'S RELATIONSHIP WITH BOTH PARENTS CAN DEVELOP
15 AND GROW UNHINDERED. RESEARCH DEMONSTRATING THAT CHILDREN
16 NEED, WANT, AND LOVE BOTH PARENTS OVERWHELMINGLY SUPPORTS THE
17 CONCLUSION THAT THE INTERESTS OF CHILDREN ARE BEST SERVED BY
18 SPENDING SUBSTANTIALLY EQUAL TIME WITH EACH PARENT. TREATING
19 PARENTS EQUALLY IN THE ALLOCATION OF PARENTAL RIGHTS AND
20 RESPONSIBILITIES IS OF PARAMOUNT IMPORTANCE TO REDUCING
21 DISSOLUTION OF MARRIAGE CONFLICT AND AVOIDING HARMFUL
22 LITIGATION. PARENTS HAVE A FUNDAMENTAL _____ INTEREST IN
23 MAINTAINING THE PARENT-CHILD RELATIONSHIP, AND COURTS SHOULD
24 REQUIRE COMPELLING EVIDENCE BEFORE DIVERGING FROM A
25 SUBSTANTIALLY EQUAL ALLOCATION OF PARENTAL RIGHTS AND
26 RESPONSIBILITIES.

27 (1.5) **Allocation of parental responsibilities.** The court shall

1 determine the allocation of parental responsibilities, including parenting
2 time and decision-making responsibilities, in accordance with the best
3 interests of the child giving paramount consideration to the child's safety
4 and the physical, mental, and emotional conditions and needs of the child
5 as follows:

6 (a) **Determination of parenting time.** The court, upon the motion
7 of either party or upon its own motion, may make provisions for parenting
8 time that the court finds are in the child's best interests. IF THE COURT
9 FINDS THAT SHARED PARENTING IS APPROPRIATE, THE COURT SHALL ENTER
10 AN ORDER FOR PARENTING TIME THAT AWARDS SUBSTANTIALLY EQUAL
11 PARENTING TIME TO EACH PARTY unless the court finds, after a hearing,
12 that SUBSTANTIALLY EQUAL parenting time ~~by~~ WITH ONE OF the party
13 PARTIES would endanger the child's physical health or significantly impair
14 the child's emotional development. ~~In addition to a finding~~ IF THE COURT
15 FINDS, AFTER A HEARING, that parenting time would endanger the child's
16 physical health or significantly impair the child's emotional development,
17 in any order imposing or continuing a parenting time restriction, the court
18 shall enumerate the specific factual findings supporting the restriction and
19 may enumerate the conditions that the restricted party could fulfill in
20 order to seek modification in the parenting plan. When a claim of child
21 abuse or neglect, domestic violence, or sexual assault where there is also
22 a claim that the child was conceived as a result of the sexual assault has
23 been made to the court, or the court has reason to believe that a party has
24 committed child abuse or neglect, domestic violence, or sexual assault
25 where there is also a claim that the child was conceived as a result of the
26 sexual assault, prior to determining parenting time, the court shall follow
27 the provisions of subsection (4) of this section. In determining the best

1 interests of the child for purposes of parenting time, the court shall
2 consider ~~all relevant factors, including~~ THAT PROTECTING AND FOSTERING
3 THE PARENT-CHILD RELATIONSHIP IS OF PARAMOUNT IMPORTANCE TO
4 ACHIEVING THE BEST OUTCOMES FOR THE CHILD, AND THE IMPORTANCE OF
5 THE PARENT-CHILD RELATIONSHIP OUTWEIGHS MOST OTHER
6 CONSIDERATIONS, INCLUDING THE SUBJECTIVE VIEW OF A PARENT. IN
7 CIRCUMSTANCES WHERE SUBSTANTIALLY EQUAL PARENTING TIME IS NOT
8 IN THE CHILD'S BEST INTERESTS, THE COURT SHALL CONSIDER ALL
9 RELEVANT FACTORS, INCLUDING:

10 (VII) ~~Whether the past pattern of involvement of the parties with~~
11 ~~the child reflects a system of values, time commitment, and mutual~~
12 ~~support;~~

13 (b) **Allocation of decision-making responsibility.** The court,
14 upon the motion of either party or its own motion, shall allocate the
15 decision-making responsibilities between the parties based upon the best
16 interests of the child, RECOGNIZING THAT, IN MOST CASES, MUTUAL
17 DECISION-MAKING RESPONSIBILITY RESULTS IN THE BEST OUTCOMES FOR
18 THE CHILD, AND SHALL ORDER MUTUAL DECISION-MAKING RESPONSIBILITY
19 UNLESS CREDIBLE EVIDENCE SUPPORTS THE COURT'S FINDING THAT
20 MUTUAL DECISION-MAKING RESPONSIBILITY WITH RESPECT TO ONE OR
21 MORE ISSUES IS CLEARLY NOT IN THE CHILD'S BEST INTEREST. In
22 determining decision-making responsibility, the court may allocate the
23 decision-making responsibility with respect to each issue affecting the
24 child mutually between both parties or individually to one or the other
25 party or any combination thereof. When a claim of child abuse or neglect
26 or domestic violence has been made to the court, or the court has reason
27 to believe that a party has committed child abuse or neglect, domestic

1 violence, or sexual assault where there is also a claim that the child in
2 question was conceived as a result of the sexual assault, prior to
3 allocating decision-making responsibility, the court shall follow the
4 provisions of subsection (4) of this section. In determining the best
5 interests of the child for purposes of allocating decision-making
6 responsibilities, the court shall consider, in addition to the factors set forth
7 in paragraph (a) of this subsection (1.5), all relevant factors including:

8 (1.7) Pursuant to section 14-10-123.4, children have the right to
9 have the determination of matters relating to parental responsibilities
10 based upon the best interests of the child. In contested hearings on final
11 orders regarding the allocation of parental responsibilities, the court shall
12 make findings on the record concerning the factors the court considered
13 AND THE SPECIFIC EVIDENCE SUPPORTING THOSE FACTORS and the reasons
14 why the allocation of parental responsibilities is in the best interests of the
15 child.

16 **SECTION 5.** In Colorado Revised Statutes, **amend** 14-10-125 (1)
17 as follows:

18 **14-10-125. Temporary orders.** (1) A party to a proceeding
19 concerning the allocation of parental responsibilities may move for a
20 temporary order. The court may allocate temporary parental
21 responsibilities, including temporary parenting time and temporary
22 decision-making responsibility, after a hearing. IF THE COURT FINDS THAT
23 SHARED PARENTING IS APPROPRIATE, THE COURT SHALL ENTER AN ORDER
24 FOR SUBSTANTIALLY EQUAL PARENTING TIME UNLESS THE COURT MAKES
25 FINDINGS, SUPPORTED BY CREDIBLE EVIDENCE, THAT SUCH ORDER WOULD
26 ENDANGER THE CHILD'S PHYSICAL HEALTH OR SIGNIFICANTLY IMPAIR THE
27 CHILD'S EMOTIONAL DEVELOPMENT. THE COURT SHALL ALSO ORDER

1 MUTUAL DECISION-MAKING RESPONSIBILITIES FOR THE CHILD UNLESS
2 CREDIBLE EVIDENCE SUPPORTS THE COURT'S FINDING THAT MUTUAL
3 DECISION-MAKING RESPONSIBILITY WITH RESPECT TO ONE OR MORE ISSUES
4 IS CLEARLY NOT IN THE CHILD'S BEST INTEREST.

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6 **SECTION 6. Act subject to petition - effective date.** This act
7 takes effect September 1, 2015; except that, if a referendum petition is
8 filed pursuant to section 1 (3) of article V of the state constitution against
9 this act or an item, section, or part of this act within the ninety-day period
10 after final adjournment of the general assembly, then the act, item,
11 section, or part will not take effect unless approved by the people at the
12 general election to be held in November 2016 and, in such case, will take
13 effect on the date of the official declaration of the vote thereon by the
14 governor.