

Second Regular Session
Seventy-fifth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 26-0570.01 Jacob Baus x2173

SENATE BILL 26-027

SENATE SPONSORSHIP

Zamora Wilson,

HOUSE SPONSORSHIP

(None),

Senate Committees
State, Veterans, & Military Affairs

House Committees

A BILL FOR AN ACT

101 **CONCERNING THE CREATION OF A REBUTTABLE PRESUMPTION THAT**
102 **REQUIRES EQUAL PARENTING TIME.**

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://leg.colorado.gov>.)

Under current law, the court is required to determine the allocation of parental responsibilities, including parenting time and decision-making responsibilities, based on the best interests of the child.

The bill creates a rebuttable presumption that it is in the best interests of the child to allocate equal parenting time to both parents if both parents reside within 25 miles of a reasonable location determined

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing law.
Dashes through the words or numbers indicate deletions from existing law.

by the court, including the child's child care, preschool, school, the location where the child participates in their educational program, or another reasonable location. The presumption may be rebutted based on clear and convincing evidence that equal parenting time is not in the best interests of the child.

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

2 **SECTION 1. Short title.** The short title of this act is the "Parental
3 Equality and Child Empowerment Act" or "PEACE Act".

4 **SECTION 2. Legislative declaration.** (1) The general assembly
5 finds and declares that:

6 (a) The policy of the state promotes the best interests of the child
7 by encouraging frequent, meaningful, and continuing contact with both
8 parents following a separation or divorce;

9 (b) Children benefit emotionally, psychologically, and
10 academically and are empowered overall by shared parenting
11 arrangements;

12 (c) A rebuttable presumption of equal parenting time promotes
13 fairness, reduces litigation, and protects the constitutional rights of
14 parents and children; and

15 (d) Courts must retain discretion to protect children in exceptional
16 circumstances. However, that discretion must be exercised with written
17 findings to ensure transparency and consistency.

18 **SECTION 3.** In Colorado Revised Statutes, 14-10-124, **amend**
19 (1.5)(a) introductory portion; and **add** (1.3)(b.5) and (1.5)(a.3) as follows:

20 **14-10-124. Best interests of the child - definitions.**

21 (1.3) **Definitions.** For purposes of this section and section
22 14-10-129 (2)(c), unless the context otherwise requires:

23 (b.5) "EQUAL PARENTING TIME" MEANS A SUBSTANTIALLY EQUAL

1 ANNUAL ALLOCATION OF A CHILD'S OVERNIGHT VISITATIONS AT EACH
2 PARTY'S RESIDENCE, WITH AT LEAST FORTY-FIVE PERCENT OF THE
3 OVERNIGHT VISITATIONS AT EACH RESIDENCE, SUBJECT TO REASONABLE
4 ADJUSTMENTS FOR THE CHILD'S SCHOOL SCHEDULE, HOLIDAYS, OR OTHER
5 LOGISTICAL CONSIDERATIONS.

6 **(1.5) Allocation of parental responsibilities.** The court shall
7 determine the allocation of parental responsibilities, including parenting
8 time and decision-making responsibilities, in accordance with the best
9 interests of the child, giving paramount consideration to the child's safety
10 and the physical, mental, and emotional conditions and needs of the child
11 as follows:

12 **(a) Determination of parenting time.** The court, upon the motion
13 of either party or upon its own motion, may make provisions for parenting
14 time. THERE IS A REBUTTABLE PRESUMPTION DESCRIBED IN SUBSECTION
15 (1.5)(a.3) OF THIS SECTION THAT THE COURT ALLOCATE EQUAL PARENTING
16 TIME TO BOTH PARENTS. IF THE PRESUMPTION DESCRIBED IN SUBSECTION
17 (1.5)(a.3) OF THIS SECTION IS OVERCOME, THEN THE COURT MAY MAKE
18 PROVISIONS FOR PARENTING TIME that the court finds are in the best
19 interests of the child, with the child's safety always paramount, unless the
20 court finds, after a hearing, that parenting time by the party would
21 endanger the child's physical health or significantly impair the child's
22 emotional development. In addition to a finding that parenting time would
23 endanger the child's physical health or significantly impair the child's
24 emotional development, in any order imposing or continuing a parenting
25 time restriction, the court shall enumerate the specific factual findings
26 supporting the restriction, including findings related to domestic violence,
27 child abuse, and child sexual abuse, and may enumerate the conditions

1 that the restricted party could fulfill in order to seek modification in the
2 parenting plan. When a claim of child abuse or neglect, domestic
3 violence, or sexual assault where there is also a claim that the child was
4 conceived as a result of the sexual assault has been made to the court, or
5 the court has reason to believe that a party has committed child abuse or
6 neglect, domestic violence, or sexual assault where there is also a claim
7 that the child was conceived as a result of the sexual assault, prior to
8 determining parenting time, the court shall follow the provisions of
9 subsection (4) of this section. In determining the best interests of the child
10 for purposes of parenting time, the court shall consider all relevant
11 factors, including:

12 (a.3) (I) WHEN DETERMINING THE ALLOCATION OF PARENTING
13 TIME PURSUANT TO SUBSECTION (1.5)(a) OF THIS SECTION, THERE IS A
14 REBUTTABLE PRESUMPTION THAT THE BEST INTERESTS OF THE CHILD
15 INCLUDE ALLOCATING EQUAL PARENTING TIME TO BOTH PARENTS IF THE
16 COURT DETERMINES BY CLEAR AND CONVINCING EVIDENCE THAT BOTH
17 PARENTS RESIDE WITHIN TWENTY-FIVE MILES OF A GEOGRAPHIC LOCATION
18 THAT THE COURT DETERMINES IS REASONABLE, INCLUDING THE CHILD'S
19 CHILD CARE PROVIDER, PRESCHOOL, SCHOOL, THE LOCATION WHERE THE
20 CHILD PARTICIPATES IN THEIR EDUCATIONAL PROGRAM, OR ANOTHER
21 GEOGRAPHIC LOCATION THAT THE COURT DETERMINES IS REASONABLE.

22 (II) A PARTY MAY REBUT THE PRESUMPTION DESCRIBED IN
23 SUBSECTION (1.5)(a.3)(I) OF THIS SECTION BY CLEAR AND CONVINCING
24 EVIDENCE THAT IT IS NOT IN THE BEST INTERESTS OF THE CHILD TO
25 ALLOCATE EQUAL PARENTING TIME TO THE PARENTS. THE GROUNDS FOR
26 REBUTTING THE PRESUMPTION INCLUDE:

27 (A) A PARTY IS NOT WILLING, ABLE, OR FIT TO EXERCISE EQUAL

1 PARENTING TIME;

2 (B) A PARTY WAS FOUND GUILTY OF CHILD ABUSE OR A CRIME FOR
3 WHICH THE UNDERLYING FACTUAL BASIS HAS BEEN FOUND BY A COURT ON
4 THE RECORD TO INCLUDE AN ACT OF DOMESTIC VIOLENCE;

5 (C) A SUBSTANTIATED HISTORY OF PERSONAL SUBSTANCE MISUSE
6 OR ALCOHOL MISUSE THAT IMPAIRS A PARTY'S PARENTING FITNESS;

7 (D) A SUBSTANTIATED HISTORY OF A BEHAVIORAL OR MENTAL
8 HEALTH DISORDER THAT IMPAIRS A PARTY'S PARENTING FITNESS;

9 (E) A PARTY'S SUBSTANTIATED PATTERN OF BEHAVIOR THAT
10 DEMONSTRATES A FAILURE OR REFUSAL TO SHARE PARENTAL
11 RESPONSIBILITIES;

12 (F) A PARTY'S SUBSTANTIATED PATTERN OF BEHAVIOR THAT
13 DEMONSTRATES A FAILURE OR REFUSAL TO ENCOURAGE THE CHILD'S
14 RELATIONSHIP WITH THE OTHER PARTY; OR

15 (G) SIGNIFICANT GEOGRAPHIC OR LOGISTICAL BARRIERS THAT
16 INHIBIT EQUAL PARENTING TIME.

17 (III) WHEN THE COURT MAKES A DETERMINATION CONCERNING A
18 MOTION TO REBUT THE PRESUMPTION DESCRIBED IN THIS SUBSECTION
19 (1.5)(a.3), THE COURT SHALL MAKE SPECIFIC, WRITTEN FINDINGS OF FACT
20 ON THE RECORD CONCERNING ITS DETERMINATION, INCLUDING ANY CLEAR
21 AND CONVINCING EVIDENCE RELIED UPON IN MAKING THE
22 DETERMINATION.

23 (IV) NOTWITHSTANDING SUBSECTIONS (1.5)(a.3)(I) TO
24 (1.5)(a.3)(III) OF THIS SECTION, IF THE PARTIES AGREE TO PARENTING TIME
25 PROVISIONS THAT DO NOT CONSTITUTE EQUAL PARENTING TIME, THE
26 COURT SHALL ALLOCATE PARENTING TIME CONSISTENT WITH THE PARTIES'
27 AGREEMENT IF THE COURT DETERMINES THAT THE AGREEMENT IS IN THE

1 BEST INTERESTS OF THE CHILD.

2 **SECTION 4. Applicability.** This act applies to all proceedings
3 filed on or after the effective date of this act and to all pending
4 proceedings in which a final order has not been entered on or after the
5 effective date of this act.

6 **SECTION 5. Safety clause.** The general assembly finds,
7 determines, and declares that this act is necessary for the immediate
8 preservation of the public peace, health, or safety or for appropriations for
9 the support and maintenance of the departments of the state and state
10 institutions.