

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

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BILL DRAFT 2017-MM-152 [v.4]

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
07/27/2018 09:50:46 AM

Short Title: Child Custody/Ct. Ordered MH Assessment.

(Public)

Sponsors:

Referred to:

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A COURT MAY ORDER AN EVALUATION BY A MENTAL
HEALTH PROFESSIONAL OF THE PARTIES TO A CHILD CUSTODY PROCEEDING.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 50-13.2 reads as rewritten:

**"§ 50-13.2. Who entitled to custody; terms of custody; visitation rights of grandparents;
taking child out of State; consideration of parent's military service.**

(a) An order for custody of a minor child entered pursuant to this section shall award the custody of such child to such person, agency, organization or institution as will best promote the interest and welfare of the child. In making the determination, the court shall consider all relevant factors including acts of domestic violence between the parties, the safety of the child, and the safety of either party from domestic violence by the other party. An order for custody must include written findings of fact that reflect the consideration of each of these factors and that support the determination of what is in the best interest of the child. Between the parents, whether natural or adoptive, no presumption shall apply as to who will better promote the interest and welfare of the child. Joint custody to the parents shall be considered upon the request of either parent.

(b) ~~An~~ Subject to subsection (b3), an order for custody of a minor child may grant joint custody to the parents, exclusive custody to one person, agency, organization, or institution, or grant custody to two or more persons, agencies, organizations, or institutions. Any order for custody shall include such terms, including visitation, as will best promote the interest and welfare of the child. If the court finds that domestic violence has occurred, the court shall enter such orders that best protect the children and party who were the victims of domestic violence, in accordance with the provisions of G.S. 50B-3(a1)(1), (2), and (3). If a party is absent or relocates with or without the children because of an act of domestic violence, the absence or relocation shall not be a factor that weighs against the party in determining custody or visitation. Absent an order of the court to the contrary, each parent shall have equal access to the records of the minor child involving the health, education, and welfare of the child.

(b1) An order for custody of a minor child may provide visitation rights for any grandparent of the child as the court, in its discretion, deems appropriate. As used in this subsection, "grandparent" includes a biological grandparent of a child adopted by a stepparent or a relative of the child where a substantial relationship exists between the grandparent and the child. Under no circumstances shall a biological grandparent of a child adopted by adoptive



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1 parents, neither of whom is related to the child and where parental rights of both biological
2 parents have been terminated, be entitled to visitation rights.

3 (b2) Any order for custody, including visitation, may, as a condition of such custody or
4 visitation, require either or both parents, or any other person seeking custody or visitation, to
5 abstain from consuming alcohol and may require submission to a continuous alcohol monitoring
6 system, of a type approved by the Division of Adult Correction and Juvenile Justice of the
7 Department of Public Safety, to verify compliance with this condition of custody or visitation.
8 Any order pursuant to this subsection shall include an order to the monitoring provider to report
9 any violation of the order to the court and each party to the action. Failure to comply with this
10 condition shall be grounds for civil or criminal contempt.

11 (b3) In a proceeding establishing or modifying an order for custody, where one parent who
12 is physically available in this State to remain actively involved a minor child's life proposes joint
13 custody and the other parent objects to joint custody or seeks exclusive custody, the court may
14 order an evaluation and recommendation as prescribed in subsection (h) of this section. The
15 court may take into consideration any such recommendation in establishing or modifying an
16 order for custody. [There may be a rebuttable presumption that joint custody is in the best interest
17 of the child.]

18 (c) An order for custody of a minor child may provide for such child to be taken outside
19 of the State, but if the order contemplates the return of the child to this State, the judge may
20 require the person, agency, organization or institution having custody out of this State to give
21 bond or other security conditioned upon the return of the child to this State in accordance with
22 the order of the court.

23 (d) If, within a reasonable time, one parent fails to consent to adoption pursuant to
24 Chapter 48 of the General Statutes or parental rights have not been terminated, the consent of the
25 other consenting parent shall not be effective in an action for custody of the child.

26 (e) An order for custody of a minor child may provide for visitation rights by electronic
27 communication. In granting visitation by electronic communication, the court shall consider the
28 following:

- 29 (1) Whether electronic communication is in the best interest of the minor child.
- 30 (2) Whether equipment to communicate by electronic means is available,
31 accessible, and affordable to the parents of the minor child.
- 32 (3) Any other factor the court deems appropriate in determining whether to grant
33 visitation by electronic communication.

34 The court may set guidelines for electronic communication, including the hours in which the
35 communication may be made, the allocation of costs between the parents in implementing
36 electronic communication with the child, and the furnishing of access information between
37 parents necessary to facilitate electronic communication. Electronic communication with a minor
38 child may be used to supplement visitation with the child. Electronic communication may not be
39 used as a replacement or substitution for custody or visitation. The amount of time electronic
40 communication is used shall not be a factor in calculating child support or be used to justify or
41 support relocation by the custodial parent out of the immediate area or the State. Electronic
42 communication between the minor child and the parent may be subject to supervision as ordered
43 by the court. As used in this subsection, "electronic communication" means contact, other than
44 face-to-face contact, facilitated by electronic means, such as by telephone, electronic mail, instant
45 messaging, video conferencing, wired or wireless technologies by Internet, or other medium
46 of communication.

47 (f) In a proceeding for custody of a minor child of a service member, a court may not
48 consider a parent's past deployment or possible future deployment as the only basis in
49 determining the best interest of the child. The court may consider any significant impact on the
50 best interest of the child regarding the parent's past or possible future deployment.

1 (g) In a proceeding to enforce an order of custody or visitation, where the court finds both
2 of the following:

3 (1) One parent has consistently complied with the material terms and conditions
4 of any such order; and

5 (2) The other parent demonstrates either (i) a pattern and practice of willful
6 noncompliance or (ii) has three material violations without reasonable excuse,
7 the court may order an evaluation and recommendation as prescribed in
8 subsection (h) of this section.

9 (h) In appropriate matters, including those matters identified in subsections (b3) and (g),
10 the court may order the parties to submit to an evaluation conducted by a licensed mental health
11 professional or to such other professional who can assist the court, taking into account the
12 resources of the parties and the availability of such professionals in the locale. The court may
13 order such professional to conduct the evaluation and make a written report in a reasonable period
14 of time not to exceed [three] months from the date of such order. In establishing, modifying or
15 enforcing an order for custody, the court may take into consideration each party's good faith or
16 lack of good faith in participating in such evaluation, including whether or not the party with
17 custody of the child made the child available to the professional. In appointing a professional,
18 the court may, to the extent possible, select a mental health provider with experience in family
19 systems [and the attachment system]. The report may be admissible as evidence without regard
20 to any rule against hearsay."

21 **SECTION 2.** This act becomes effective October 1, 2018, and applies to all pending
22 and future proceedings related to the custody of a minor child.