

# Section 14-10-124 - Best interests of the child, Colo. Rev. Stat. § 14-10-124 | Casetext Search + Citator

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## Section 14-10-124 - Best interests of the child

**(1)Legislative declaration.** While co-parenting is not appropriate in all circumstances following dissolution of marriage or legal separation, the general assembly finds and declares that, in most circumstances, it is in the best interest of all parties to encourage frequent and continuing contact between each parent and the minor children of the marriage after the parents have separated or dissolved their marriage. In order to effectuate this goal when appropriate, the general assembly urges parents to share the rights and responsibilities of child-rearing and to encourage the love, affection, and contact between the children and the parents.

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

**(a)** "Domestic violence" means an act of violence or a threatened act of violence upon a person with whom the actor is or has been involved in an intimate relationship, and may include any act or threatened act against a person or against property, including an animal, when used as a method of coercion, control, punishment, intimidation, or

revenge directed against a person with whom the actor is or has been involved in an intimate relationship.

**(b)** "Intimate relationship" means a relationship between spouses, former spouses, past or present unmarried couples, or persons who are both parents of the same child regardless of whether the persons have been married or have lived together at any time.

**(c)** "Sexual assault" has the same meaning as set forth in section 19-1-103.

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

**(a) Determination of parenting time.** The court, upon the motion of either party or upon its own motion, may make provisions for parenting time that the court finds are in the best interests of the child, with the child's safety always paramount, unless the court finds, after a hearing, that parenting time by the party would endanger the child's physical health or significantly impair the child's emotional development. In addition to a finding that parenting time would endanger the child's physical health or significantly impair the child's emotional development, in any order imposing or continuing a parenting time restriction, the court shall enumerate the specific factual findings supporting

the restriction, including findings related to domestic violence, child abuse, and child sexual abuse, and may enumerate the conditions that the restricted party could fulfill in order to seek modification in the parenting plan.

When a claim of child abuse or neglect, domestic violence, or sexual assault where there is also a claim that the child was conceived as a result of the sexual assault has been made to the court, or the court has reason to believe that a party has committed child abuse or neglect, domestic violence, or sexual assault where there is also a claim that the child was conceived as a result of the sexual assault, prior to determining parenting time, the court shall follow the provisions of subsection (4) of this section. In determining the best interests of the child for purposes of parenting time, the court shall consider all relevant factors, including:

- (I)** The wishes of the child's parents as to parenting time;
- (II)** The wishes of the child if he or she is sufficiently mature to express reasoned and independent preferences as to the parenting time schedule;
- (III)** The interaction and interrelationship of the child with his or her parents, his or her siblings, and any other person who may significantly affect the child's best interests;
- (III.5)** Any report related to domestic violence that is submitted to the court by a child and family investigator, if one is appointed pursuant to section 14-10-116.5; a professional parental responsibilities evaluator, if one is appointed pursuant to section 14-10-127; or a legal representative of the child, if one is appointed pursuant to

section 14-10-116. The court may consider other testimony regarding domestic violence from the parties, experts, therapists for any parent or child, the department of human services, parenting time supervisors, school personnel, or other lay witnesses.

**(IV)** The child's adjustment to his or her home, school, and community;

**(V)** The mental and physical health of all individuals involved, except that a disability alone shall not be a basis to deny or restrict parenting time;

**(VI)** The ability of the parties to encourage the sharing of love, affection, and contact between the child and the other party; except that, if the court determines that a party is acting to protect the child from witnessing domestic violence or from being a victim of child abuse or neglect or domestic violence, the party's protective actions shall not be considered with respect to this factor;

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

**(VIII)** The physical proximity of the parties to each other as this relates to the practical considerations of parenting time;

**(IX) and (X)** Repealed.

**(XI)** The ability of each party to place the needs of the child ahead of his or her own needs.

**(b)Allocation of decision-making responsibility.** The court, upon the motion of either party or its own motion, shall allocate the decision-making responsibilities between the

parties based upon the best interests of the child. In determining decision-making responsibility, the court may allocate the decision-making responsibility with respect to each issue affecting the child mutually between both parties or individually to one or the other party or any combination thereof. When a claim of child abuse or neglect or domestic violence has been made to the court, or the court has reason to believe that a party has committed child abuse or neglect, domestic violence, or sexual assault where there is also a claim that the child in question was conceived as a result of the sexual assault, prior to allocating decision-making responsibility, the court shall follow the provisions of subsection (4) of this section. In determining the best interests of the child for purposes of allocating decision-making responsibilities, the court shall consider, in addition to the factors set forth in paragraph (a) of this subsection (1.5), all relevant factors including:

- (I)** Credible evidence of the ability of the parties to cooperate and to make decisions jointly;
- (II)** Whether the past pattern of involvement of the parties with the child reflects a system of values, time commitment, and mutual support that would indicate an ability as mutual decision makers to provide a positive and nourishing relationship with the child;
- (III)** Whether an allocation of mutual decision-making responsibility on any one or a number of issues will promote more frequent or continuing contact between the child and each of the parties.

**(IV) and (V) Repealed.**

**(1.7)** Pursuant to section 14-10-123.4, children have the right to have the determination of matters relating to parental responsibilities based upon the best interests of the child. In contested hearings on final orders regarding the allocation of parental responsibilities, the court shall make findings on the record concerning the factors the court considered and the reasons why the allocation of parental responsibilities is in the best interests of the child.

**(2)** The court shall not consider conduct of a party that does not affect that party's relationship to the child.

**(3)** In determining parenting time or decision-making responsibilities, the court shall not presume that any person is better able to serve the best interests of the child because of that person's sex.

**(3.5)** A request by either party for genetic testing shall not prejudice the requesting party in the allocation of parental responsibilities pursuant to subsection (1.5) of this section.

**(4)**

**(a)** When a claim of child abuse or neglect, domestic violence, or sexual assault where there is also a claim that the child was conceived as a result of the sexual assault has been made to the court, or the court has reason to believe that a party has committed child abuse or neglect, domestic violence, or sexual assault that resulted in the conception of the child, prior to allocating parental responsibilities, including parenting time and decision-making responsibility, and prior to considering the factors set forth in paragraphs

(a) and (b) of subsection (1.5) of this section, the court shall consider the following factors:

**(I)** Whether one of the parties has committed an act of child abuse or neglect as defined in section 18-6-401, C.R.S., or as defined under the law of any state, which factor must be supported by a preponderance of the evidence. If the court finds that one of the parties has committed child abuse or neglect, then it shall not be in the best interests of the child to allocate mutual decision-making with respect to any issue over the objection of the other party or the legal representative of the child.

**(II)** Whether one of the parties has committed an act of domestic violence, has engaged in a pattern of domestic violence, or has a history of domestic violence, which factor must be supported by a preponderance of the evidence. If the court finds by a preponderance of the evidence that one of the parties has committed domestic violence:

**(A)** It shall not be in the best interests of the child to allocate mutual decision-making responsibility over the objection of the other party or the legal representative of the child, unless the court finds that there is credible evidence of the ability of the parties to make decisions cooperatively in the best interest of the child in a manner that is safe for the abused party and the child; and

**(B)** The court shall not appoint a parenting coordinator solely to ensure that mutual decision-making can be accomplished.

**(III)** Whether one of the parties has committed an act of sexual assault resulting in the conception of the child, which

factor must be supported by a preponderance of the evidence. If the court finds by a preponderance of the evidence that one of the parties has committed sexual assault and the child was conceived as a result of the sexual assault, there is a rebuttable presumption that it is not in the best interests of the child to allocate sole or split decision-making authority to the party found to have committed sexual assault or to allocate mutual decision-making between a party found to have committed sexual assault and the party who was sexually assaulted with respect to any issue.

**(IV)** If one of the parties is found by a preponderance of the evidence to have committed sexual assault resulting in the conception of the child, whether it is in the best interests of the child to prohibit or limit the parenting time of that party with the child.

**(b)** The court shall consider the additional factors set forth in paragraphs (a) and (b) of subsection (1.5) of this section in light of any finding of child abuse or neglect, domestic violence, or sexual assault resulting in the conception of a child pursuant to this subsection (4).

**(c)** If a party is absent or leaves home because of an act or threatened act of domestic violence committed by the other party, such absence or leaving shall not be a factor in determining the best interests of the child.

**(d)** When the court finds by a preponderance of the evidence that one of the parties has committed child abuse or neglect, domestic violence, or sexual assault resulting in the conception of the child, the court shall consider, as the



primary concern, the safety and well-being of the child and the abused party.

**(e)** When the court finds by a preponderance of the evidence that one of the parties has committed child abuse or neglect, domestic violence, or sexual assault resulting in the conception of the child, in formulating or approving a parenting plan, the court shall consider conditions on parenting time that ensure the safety of the child and of the abused party. In addition to any provisions set forth in subsection (7) of this section that are appropriate, the parenting plan in these cases may include, but is not limited to, the following provisions:

**(I)** An order limiting contact between the parties to contact that the court deems is safe and that minimizes unnecessary communication between the parties;

**(II)** An order that requires the exchange of the child for parenting time to occur in a protected setting determined by the court;

**(III)** An order for supervised parenting time;

**(IV)** An order restricting overnight parenting time;

**(V)** An order that restricts the party who has committed domestic violence, sexual assault resulting in the conception of the child, or child abuse or neglect from possessing or consuming alcohol or controlled substances during parenting time or for twenty-four hours prior to the commencement of parenting time;

**(VI)** An order directing that the address of the child or of any party remain confidential;

**(VII)** An order that imposes any other condition on one or more parties that the court determines is necessary to protect the child, another party, or any other family or household member of a party; and

**(VIII)** An order that requires child support payments to be made through the child support registry to avoid the need for any related contact between the parties and an order that the payments be treated as a nondisclosure of information case.

**(f)** When the court finds by a preponderance of the evidence that one of the parties has committed domestic violence, the court may order the party to submit to a domestic violence evaluation. If the court determines, based upon the results of the evaluation, that treatment is appropriate, the court may order the party to participate in domestic violence treatment. At any time, the court may require a subsequent evaluation to determine whether additional treatment is necessary. If the court awards parenting time to a party who has been ordered to participate in domestic violence treatment, the court may order the party to obtain a report from the treatment provider concerning the party's progress in treatment and addressing any ongoing safety concerns regarding the party's parenting time. The court may order the party who has committed domestic violence to pay the costs of the domestic violence evaluations and treatment.

**(5)** Repealed.

**(6)** In the event of a medical emergency, either party shall be allowed to obtain necessary medical treatment for the minor child or children without being in violation of the order

allocating decision-making responsibility or in contempt of court.

**(7)** In order to implement an order allocating parental responsibilities, both parties may submit a parenting plan or plans for the court's approval that shall address both parenting time and the allocation of decision-making responsibilities. If no parenting plan is submitted or if the court does not approve a submitted parenting plan, the court, on its own motion, shall formulate a parenting plan that shall address parenting time and the allocation of decision-making responsibilities. When issues relating to parenting time are contested, and in other cases where appropriate, the parenting plan must be as specific as possible to clearly address the needs of the family as well as the current and future needs of the aging child. In general, the parenting plan may include, but is not limited to, the following provisions:

- (a)** A designation of the type of decision-making awarded;
- (b)** A practical schedule of parenting time for the child, including holidays and school vacations;
- (c)** A procedure for the exchanges of the child for parenting time, including the location of the exchanges and the party or parties responsible for the child's transportation;
- (d)** A procedure for communicating with each other about the child, including methods for communicating and frequency of communication;
- (e)** A procedure for communication between a parent and the child outside of that parent's parenting time, including

methods for communicating and frequency of communication; and

**(f)** Any other orders in the best interests of the child.

**(8)** The court may order mediation, pursuant to section 13-22-311, C.R.S., to assist the parties in formulating or modifying a parenting plan or in implementing a parenting plan specified in subsection (7) of this section and may allocate the cost of said mediation between the parties.

C.R.S. § 14-10-124

Amended by 2021 Ch. 136, §19, eff. 10/1/2021.

Amended by 2021 Ch. 292, §5, eff. 6/22/2021.

Amended by 2014 Ch. 167, §7, eff. 7/1/2014.

Amended by 2013 Ch. 124, §1, eff. 8/7/2013.

Amended by 2013 Ch. 218, §2, eff. 7/1/2013.

L. 71: R&RE, p. 529, § 1. C.R.S. 1963: § 46-1-24. L. 79: (3) added, p. 645, § 1, effective March 2. L. 81: (4) added, p. 904, § 1, effective May 22. L. 83: (1) R&RE and (1.5) and (5) added, p. 647, §§ 3, 4, effective June 10. L. 87: (1.5)(g) to (1.5)(m) added and (5) repealed, pp. 574, 576, §§ 3, 6, effective July 1; (1.5)(m) repealed, p. 1578, § 22, effective July 1. L. 98: Entire section amended, p. 1380, § 10, effective February 1, 1999. L. 2005: (1.5)(b)(IV) and (1.5)(b)(V) amended, p. 961, § 6, effective July 1; (3.5) added, p. 377, § 2, effective January 1, 2006. L. 2010: (1.3) added and (1.5)(a)(X), (1.5)(b)(V), and (4) amended, (HB 10-1135), ch. 290, p. 290, §1, effective July 1.

(1) Amendments to the introductory portion to subsection (1.5)(a) by House Bill 13-1259 and House Bill 13-1243 were harmonized.

(2) Subsections (4)(a)(I) and (4)(a)(II) are similar to former § 14-10-124 (1.5)(b)(IV) and (1.5)(b)(V) as they existed prior to August 7, 2013.

(1) For the "Uniform Child-custody Jurisdiction and Enforcement Act", see article 13 of this title 14. (2) For the legislative declarations contained in the 2005 act amending subsections (1.5)(b)(IV) and (1.5)(b)(V), see sections 1 and 3 of chapter 244, Session Laws of Colorado 2005. For the legislative declaration in HB 21-1228, see section 1 of chapter 292, Session Laws of Colorado 2021.

- [Section 14-10-123.8 - Access to records](#)
- [Section 14-10-124.3 - \[Repealed\]](#)