

2017 HOUSE JUDICIARY

HB 1392

2017 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

HB 1392
2/7/2017
28000

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to the parenting rights and responsibilities; to provide for retroactive application; and to declare an emergency.

Minutes:

1,2,3,4,5,6,7,8,9,10,11,12,13,

Chairman K. Koppelman: Opened the hearing on HB 1392.

Rep. Kading: Introduced the bill. (1:20-8:27) The bill presumed that shared parenting is appropriate most of the time. It is presumed to be true under the law. Different laws have different standards. This law is overturned by clear and convincing evidence. It is a standard that is less than 100% presumed true. Discussed the many things that the parent would be doing that would render the parent incapable of participating in the child care. Child support should have an effect on child support on 90-95% of the cases. This bill does not apply automatically. It only will change if the proper legal action is taken to implement that change. Children raised by single parent account for 63% of teen suicides, 71% of high school drop outs, 75% of children in chemical abuse centers, 85% of children exhibit behavior disorders and 90% of the homeless and runaway children. Have two clean up amendments to add to this bill (Passed out #1, #2, #3) We don't want to address domestic violence in this bill. This bill is designed to change the laws so that child custody laws are truly in the child's best interest.

Representative Klemin: How would this retroactive action on this bill going to work?

Rep. Kading: You would have to go back into court to get this. You can revisit cases.

Representative Hanson: Have any other states done this?

Rep. Kading: I did not look into what other states do.

Representative Nelson: Is arbitration and mediation generally done? Are these services generally available throughout the state?

Rep. Kading: Mediation and arbitration is common practice in a lot of different proceedings.

Chairman K. Koppelman: Mediation is used a lot more than it used to be in ND in family law cases.

Representative Klemin: You would not have any problem if we move that around in this bill? Some stuff in the definition really isn't definitions it is more subsequent than defining a term.

Rep. Kading: If the committee wants to change things to better implement the bill that would be appropriate.

Representative Hanson: Why enact an emergency clause if you are also making it retroactive?

Rep. Kading: It is a very emotional issue and the sooner people can do that with custody the sooner people would want that to happen.

Representative Hanson: If it is retroactive it would be available to people even without the emergency clause.

Rep. Kading: The emergency clause would bring this solution as a possibility by the end of July.

Representative Nelson: You gave a lot of statistics about single parents. Do you or someone else going represent information on how two single parents differ from one single parent?

Rep. Kading: No I don't know if there are some specific studies that are going to be brought in by testimony that is coming up.

Chairman K. Koppelman: Page 3, subsection 2 of the bill says in any proceeding which that presumption ie the shared parenting presumption is not rebutted, if requested by either parent, the court may not apply the best interest analysis mandated in Subsection 1. That is the current law. So this would preempt that? How do you see that working?

Rep. Kading: The intent is in the event shared parenting is not presumed or overturned then the best interest of the child would apply.

Chairman K. Koppelman: The bill has a lot of specific statements which you went into a little bit about exceptions or circumstances where the presumption could be rebutted; is it wise to make a definitive list. Should be add things that should be considered by a court if they came up?

Rep. Kading: I think the list is a good start. If you want to put something in like with the discretion of the court that would be ok.

Representative Paur: Page 2 exactly 50% of the time?

Representative Hanson: You said if it was retroactive do you know how many families that could affect?

Rep. Kading: No I do not know.

Chairman K. Koppelman: When we deal with retroactivity versus emergency clause action without an emergency clause it would take effect in the summer. Retroactivity would allow them to go back and try to deal with something that occurred in May, but they wouldn't apply any law we passed until it is effective.

Adam Gallant, Grand Forks: In the National Guard in Minnesota. My schedule is constantly changing. We have a month long training in Europe. Between these factors it made it impossible to get 50-50 custody. My ex-wife only works 10 hours a week so pushing for custody was not an option. I support this bill because I believe that 35% research. Right now I live 2 ½ miles away from my children and only see them 2 over nights every two weeks. I am an independent contractor so I could get more time with my children.

Charles Tuttle, Minot, ND: Handed out. (#4, #5, #6) (26:25-35:32) I put measure 6 on the ballot. I have heard so many stories about divorce. Went over the testimony. I have thousands of these. We are alienating our children. We need to see this through our children; not lawyers and divorce. Discussed various cases on divorce and their advantages and disadvantages.

Representative Nelson: In the bill there is a 50-mile presumption. Do you have an opinion on how much it too far?

Charles Tuttle: I drove 2 hours to pick my kids up and take them back. I did every other weekend. Kids need more time with both parents. It is a death to a child. They go through all those things like a death and they have to relive that every other weekend.

Representative Magrum: What do you know the parent investigators that are involved in these divorces? Is it a big problem or not?

Charles Tuttle: It was intended at first to be individuals; but it became lawyers that were handling them. ND has a lot of conflict and a mess. This will create less conflict. More parents would move closer to be with their child.

Representative Vetter: What about a scenario who takes care of the child and does most everything and doesn't seem to do much for the child. They would get 50-50?

Charles Tuttle: Instead of just asking for money from the dad; have them have the child move in and take responsibility for their child.

Shawn Kasson, Citizen: (#7, #8, #9, #10) Testimony plus handouts. (43:02-58:29)

Kent Osland, Citizen from Fargo, ND: (58:53) My divorce was strictly about money. I make too much money. I see my kids 5 hours a week every other weekend. Discussed how it did

not help to work so hard because everything goes to his child support so I barely make ends meet.

Brad Kasson, Citizen: We all appreciate and realize how fortunate my kids are that are here. A question was raised about the parental investigators. I told Shawn they were professionals and this would go well. They are looking out for every ones' best interest and the kids first. Was I ever mistaken. His attorney and the parental investigator who was also a family practice attorney also brought an op against Measure 6. Is there any ethical obligation for these people to tell you what their position is before they try either represent you as your attorney or be neutral parental investigator? He said there was no disclosure effort. The investigators report to the court failed to mention that the child care provider that they had prior to the divorce; had recommended Shawn be the primary custodial parent. That did not make the investigator's report to the court. This is a flawed system.

Representative Magrum: Do you believe these parent investigators are picking the winners and losers in these divorces?

Brad Kasson: Why wouldn't you have to say up front that I am not in favor of shared custody before you take on the role of being the parental investigator where shared custody is being looked at.

Arnold Fleck, Attorney in ND: (#11) (1:04:22-1:09:00) I am the principal drafter of this bill. Testimony handed out. Distance was an issue. It is best to have both parents involved. I proposed in the bill it be 50% unless there is reason there is reason to go to 35% because of work responsibilities. Wanted the children to attend the same school and other functions where they were. I understand this is a very emotional issue. Handed out Linda Nielson's information. (#12)

Representative Paur: On top of page 2 it says a child may not be placed in the care of one parent for less than 35% of the time. Are there not instances where that would not be advisable? Cases of abuse etc.

Arnold Fleck: Yes, there are exceptions and abuse is one of them. Measure 6 did not clearly define exceptions. The present laws defaults to one parent being awarded the primary responsibility of the child. It looks like abuse cases and the courts make for sure they get that decision right. If we are going to try to do the best for our children, we are going to side on sharing custody. This is a life and death issue. It addresses suicide. Children are more likely to commit suicide when they are raised by one primary parent.

Representative Paur: How do you define exactly 50% of the time. How do you define exactly?

Arnold Fleck: this legislation says that to deal with the child support issue. You heard briefly how the non-custodial parent Mr. Osland and Shawn Kasson said he had to work all the time and basically broke to meet all his child support obligations. Now if you get 49% of the time you are paying child support based on a monthly sum but you can also be ordered to pay additional for day care, health insurance and non-covered medical care costs. We need to change the child support guidelines. The court still has the discursion.

Representative Klemin: On this retroactive application can you walk us thru the procedure that we would follow if this became law?

Arnold Fleck: In Chapter 14-09-6.6 says if the last custody determination was made less than two years ago you have to prove some stringent things before you can change custody. This would give everyone a one-time chance to establish custody. After that two-year period then basically the standard is you have to convince the judge that something has changed in the custodial parents lives that makes it in the children's best interest to make the judge compelled to change custody. It gives everyone a onetime free chance without having to meet those standards; just go into the court under the existing law. No burdens on them that exist under the present law.

Representative Klemin: It seems like there was something about a child of a certain age has a right some input on who the custodial parent is?

Arnold Fleck: Yes one of them is the preference of the child when the child is of sufficient maturity to express a statement of preference that would be in their best interest. That was watered down in 2009 by the task force that studied the family laws in ND after the 2006 initiative that was put on the ballot.

Representative Klemin: That would not be considered if the presumption was rebutted?

Arnold Fleck: The presumption would control.

Representative Hanson: Page 4, line 7 & 8 relates to if a parent has neglected or abused a child. It uses the phrases for an extended period. Can you explain you thinking on that language?

Arnold Fleck: Then you should be concerned about the subjectivity behind the existing law because it is all over the place there as well. Those studies emphasize when you have dysfunctional couples; in not furthering the divide and emotional damage that is done in these contested proceedings.

Representative Roers Jones: Some of the things I am hearing is people think this is going to be about child support and it would have me owing my ex-husband all kinds of money. Is there any situation where you can see this would be used to make either someone who had primary custody in the past and if this was changed to a situation to a more even custody owe someone money from the past?

Arnold Fleck: There are probably going to be some extreme cases where it would cut the support in half. I will agree the issue of child support becomes the soul issue. In the last month I had two father's come in. They had actual physical custody of the child involved full time. The mother was awarded primary care giver in the original judgement. The mother will say I am fine with it as long as I still get my child support.

Representative Roers Jones: I heard there would be retroactive support?

Arnold Fleck: No that is not the intent.

Steve Wolt, Citizen: The children wanted to live with me and the parent at leikum decided. Investigators pick winners and losers. Discussed his situation with his children and that they wanted to live with their dad, but the custody investigator and guardian at leikum said it was in their opinion that they don't live with their dad. So they dreamt up something called parental allegation and I have been fighting that since When the mother fought to get my kids a month later she put them into foster care for a year. I have fought Burleigh County Social Service on and on. You can go to the supreme court and read that stuff. I am the poster child for how the system is broken.

Travis Todley and his son: I am a subject for this. I want 50% custody of my son but under court order I can only have half time. 14 days and five nights. Now I have to pay full child care, full medical and health on him, yet is only get him 14 days, but only 5 nights a month when I would love to have him more. I do not think there isn't a reason I shouldn't be allowed 50%. I believe co-parenting is the way it should be.

Opposition:

Jason McLean, Citizen: (#13) Went over testimony. (1:30:00-1:42:00)

Representative Hanson: Could you repeat the statistics of the divorce cases that involve children in ND? It is a falsely that we are not already doing joint custody.

Jason McLean: In 2016 there were 1112 total divorce cases. The total amount of cases that was awarded joint custody was 35% of those cases. Most of the courts look at the child and what is best for them. Those numbers are not new.

Chairman K. Koppelman: You are testifying are you here as a citizen? You said the court is the only one that can advocate for the child. Going through a divorce are parents

Jason McLean: Divorces are ugly. I do think at the end of the day they have a perspective; but the court does not.

Chairman K. Koppelman: If there was a provision in the bill that allowed the court some latitude in this case would that be more comfortable?

Jason McLean: There is no presumption on parenting now in ND. The mediation has worked wonders in the last seven years. Quality time if more important.

Representative Hanson: What about the abuse and negligent section. I am concerned about those subjective terms? How do you see that working?

Jason McLean: It is a problem. Often times abuse is systematic and over time. They stop the physical abuse, but not the emotional abuse.

Representative Roers Jones: The language in the bill says there should be a presumption for a floor of 35%? Do you feel if the father is awarded something less than 35% custody that you really have the same opportunity to have those quality time experiences?

Jason McLean: Time is what we make it. The problem with the 35% part of it; what we have looked at with the task force was to have a breakdown of three different zones of the parenting time. Equal meaning 50-50; Shared meaning 35%-; anything less than that is primary. These are all intertwined with child support and health insurance so the courts can see how those matters would be dealt with if a bill were to come into law like that.

Representative Roers Jones: What is the legislation you are putting on in 2019?

Jason McLean: I don't know. One of the subcommittees that the task force has and one of the tasks we were asked to review was the crime of fascia and whether they can be improved or changed. Right now for parenting time you can come in at any time if there are material change of circumstances. Courts are willing to allow changes that are best for the child.

Opposition: None

Neutral: None

Recessed.

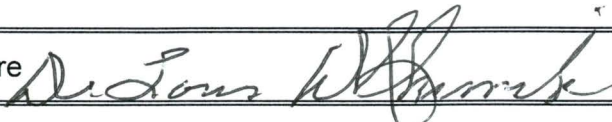
2017 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

HB 1392
2/7/2017 PM
28019

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to the parenting rights and responsibilities; to provide for retroactive application; and to declare an emergency.

Minutes:

1,2,3

Chairman K. Koppelman: Reopened the hearing on HB 1392.

Opposition:

Betsy Ellisberry, Resident of Bismarck and in family law: (#1) (1:12-10:36) Would like to go thru the bill. I do not know of any areas of law that require bonding arbitration unless two parties agree through a contract. I don't know of anyone in ND who does this. It would undo the protections once put in place by this legislation. I do know that everyone in this room that is subject to a ND parenting plan.

Chairman K. Koppelman: If the bill were to become law I assume most of the people who testified in favor of the bill did so because they are in this circumstance. Should there be some way who are currently in a child custody situation should it be subject so that the people that have that two or four-year-old have an opportunity to go back to court?

Betsy Ellisberry: I am concerned that the court door is revolving. There is a big difference between an original residential responsibility decision and an amendment or a modification to one. Our supreme court law has hit home; the importance of the stability and kids need that. The way it is drafted now there is no gate. That it would just be opened up to everyone.

Chairman K. Koppelman: Is there a way to allow that opportunity without blanket retroactivity?

Betsy Ellisberry: I don't know. If this goes into play and there is an emergency clause our already overworked court system is going to get flooded.

Chairman K. Koppelman: Mr. McClain testified that it was about parents, not about kids, but there has been a lot of testimony about the idea that both parents are good and important for the kids. How do we deal with the factors?

Betsy Ellisberry: I believe every child in the state deserves a best interest analysis.

Jackie Stevens, Attorney in Bismarck: (16:50-25:25) Discussed practicing law on divorces and child. Where are you in mediation. It is tough to have joint custody. We are not stacked against dads in this state. Definition of a single parent is one parent has passed away or true abandonment. There are three levels in parenting. You have rights in statute. Physically who has the children and then decision making. This bill tries to take pieces of this and try to fix it. You cannot do on size that fits all. Judges are never going to right every wrong. This bill attempts to treat everyone the same.

Chairman K. Koppelman: If the bill had court discretion if the bill had those kind of elements I don't think anyone would argue those things should be considered in a custody. Would that give you more comfort with some of these ideas that are being discussed?

Jackie Stevens: Yes. It is the best interest of the children that I am concerned about.

Janelle Moos, CAWS: (#2) (28:47) Testimony handed out.

Representative Hanson: There was an amendment proposed that affected the domestic violence aspect of this bill. Is that correct. What is your thought on this.

Janelle Moos: I have not seen that.

Neutral: None

Hearing closed.

Passed out #3 after the hearing.

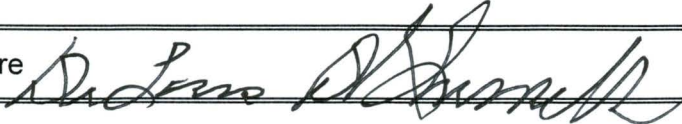
2017 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

HB 1392
2/14/2017
28319

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to the parenting rights and responsibilities; and to provide for the retroactive application; and to declare an emergency.

Minutes:

1,2,3,4

Chairman K. Koppelman: Reopened the meeting on HB 1392.

Representative Klemin: (#1 & #2) (3:15-6:51) Went over the information on #2 first. This amendment is a hog house amendment which is basically the new bill.

Rep. Karls: Do you think this study would include more legislatures than attorneys?

Representative Klemin: The family law taskforce has two legislatures on it now. I would anticipate the taskforce would have someone from the interim judiciary committee on, but mostly it would be made up of the family law taskforce appointed by the bar association.

Representative Paur: That taskforce has three separate parts, correct. Any legislation coming out of there shouldn't it be in three separate parts instead of being bundled all together and can we assure that?

Representative Klemin: We can encourage them to do it that way. By working through the interim judiciary committee we would also have the assistance of legislative counsel staff in doing the drafting.

Representative Roers Jones: (9:10-12:50) (#3) Went over proposed amendment.

Chairman K. Koppelman: Went over the hog house bill information.

Representative Roers Jones: If we go with this amendment this is the entire bill.

Representative Klemin: On page 2 under presumption; we have rebuttable and Should be put the word rebuttable presumption.

Representative Roers Jones: My intention was it would be rebuttable so we certainly could.

Representative Maragos: Did you talk to the primary bill sponsor. I did not reach out to the attorney who drafted the original bill.

Representative Roers Jones: I talked to the primary bill sponsor. I did not reach out to the attorney who drafted the original bill.

Representative Paur: I was wondering about the format?

Representative Roers Jones: It is a legislative counsel question.

Representative Jones: Questions on format?

Representative Roers Jones: The retroactivity is out on this variation?

Representative Jones: We have section 2; questions on formatting?

Representative Roers Jones: The retroactivity is out in this variation. I think that was one of the major concerns. It was the fear of the flood gates that it could open up and the costs involved.

Chairman K. Koppelman: If an individual would say my case was decided at the law at this time; the court can still reconsider their custody?

Representative Roers Jones: Generally if you have a change in circumstances; there are opportunities to request a review.

Representative Klemin: I have gotten a number of emails from proponents, but I have also gotten a number of emails from people who oppose changing the law to equal parenting time and reminding us the voters have voted twice on this subject and both times have decided against it. There hasn't been a lot of public support for this.

Representative Vetter: Representative Roers Jones this adds these two paragraphs and the equal parenting thing. Is that what they always do? Everything is done then through equal parenting?

Representative Roers Jones: It starts with a presumption, if one of the parents
Read this information: (#4) (20:22-23:20). So there are a number of different things they can weigh. If everything is balanced, then they should have equal parenting.

Representative Vetter: So this is how it does that with a hog house?

Representative Roers Jones: We have been using the best interest standards for years. It has worked.

Representative Magrum: Discussed makeup of the subcommittee? This best interest subcommittee is not a very gender equal committee?

Chairman K. Koppelman: We cannot dictate the makeup of the bar association. We can appoint the members of the interim committee that would do the study. We have four options here. Attach none of the amendments and deal with the bill. 2. Attach Rep. Roers Jones amendment; 3. Attach Rep. Klemin's amendment. 4. We can attach both amendments. Let's deal with the Roers Jones Amendment first.

Representative Klemin: Will change and put the word rebuttable inserted between the a and word presumption on second underscored line of page 2.

Made A Motion to move the amendment .02003 by Representative Roers Jones: Seconded by Representative Maragos:

Discussion: None

Voice vote carried.

Made A Motion to move that the study be tacked onto the Roers Jones amendment by Representative Klemin: Seconded by Representative Roers Jones:

Discussion: None

Voice Vote Carried.

Do Pass as Amended by Representative Maragos: Seconded by Representative Roers Jones:

Roll Call Vote: 15 Yes 0 No 0 Absent Carrier: Representative Roers Jones:

Closed.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1392

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to to amend and reenact section 14-09-00.1 and subsection 1 of section 14-09-29 of the North Dakota Century Code, relating to a presumption of equal parenting time and responsibility.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 14-09-00.1 of the North Dakota Century Code is amended and reenacted as follows:

14-09-00.1. Definitions.

As used in this chapter, unless the context otherwise requires:

1. "Decisionmaking responsibility" means the responsibility to make decisions concerning the child. The term may refer to decisions on all issues or on specified issues, but not child support issues.
2. "Equal parenting time and residential responsibility" means each parent has the child in that parent's care for a time that is equal to or as close to fifty percent of the time as can be arranged based on the circumstances but which is not less than thirty-five percent of the time.
3. "Parental rights and responsibilities" means all rights and responsibilities a parent has concerning the parent's child.
- ~~3.4.~~ "Parenting plan" means a written plan describing each parent's rights and responsibilities.
- ~~4.5.~~ "Parenting schedule" means the schedule of when the child is in the care of each parent.
- ~~5.6.~~ "Parenting time" means the time when the child is to be in the care of a parent.
- ~~6.7.~~ "Primary residential responsibility" means a parent with more than fifty percent of the residential responsibility.
- ~~7.8.~~ "Residential responsibility" means a parent's responsibility to provide a home for the child.

SECTION 2. AMENDMENT. Subsection 1 of section 14-09-29 of the North Dakota Century Code is amended and reenacted as follows:

1. a. A court issuing an order that deals with parenting rights and responsibilities of a child entered under this chapter shall award the parental rights and responsibilities concerning the child to a person,

agency, organization, or institution as will, in the opinion of the court, promote the best interests and welfare of the child.

- b. Between the mother and father, whether married or unmarried, there is no presumption as to whom will better promote the best interests and welfare of the child.
- c. In any proceeding dealing with parental rights and responsibilities, there is a presumption that equal parenting time and residential responsibility promotes the best interests and welfare of the child. If the court declines to enter an order awarding equal parenting time and residential responsibility, the court shall articulate in its decision the rationale for the denial of equal parenting time and residential responsibility."

Renumber accordingly

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1392

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for a legislative management study relating to parenting rights and responsibilities.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. PARENTING RIGHTS AND RESPONSIBILITIES - LEGISLATIVE MANAGEMENT STUDY. During the 2017-18 interim, the legislative management shall consider studying, in consultation with the family law task force of the family law section of the state bar association of North Dakota, parental rights and responsibility issues, including shared parenting, joint decisionmaking responsibility for the child, the best interest factors used by the court in making parental rights and responsibilities decisions, and the modification and enforcement of parental rights and responsibilities orders. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-sixth legislative assembly."

Renumber accordingly

February 14, 2017

2/14/17
DF
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PROPOSED AMENDMENTS TO HOUSE BILL NO. 1392

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to to amend and reenact section 14-09-00.1 and subsection 1 of section 14-09-29 of the North Dakota Century Code, relating to a presumption of equal parenting time and responsibility; and to provide for a legislative management study.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 14-09-00.1 of the North Dakota Century Code is amended and reenacted as follows:

14-09-00.1. Definitions.

As used in this chapter, unless the context otherwise requires:

1. "Decisionmaking responsibility" means the responsibility to make decisions concerning the child. The term may refer to decisions on all issues or on specified issues, but not child support issues.
2. "Equal parenting time and residential responsibility" means each parent has the child in that parent's care for a time that is equal to or as close to fifty percent of the time as can be arranged based on the circumstances but which is not less than thirty-five percent of the time.
3. "Parental rights and responsibilities" means all rights and responsibilities a parent has concerning the parent's child.
- ~~3.4.~~ "Parenting plan" means a written plan describing each parent's rights and responsibilities.
- ~~4.5.~~ "Parenting schedule" means the schedule of when the child is in the care of each parent.
- ~~5.6.~~ "Parenting time" means the time when the child is to be in the care of a parent.
- ~~6.7.~~ "Primary residential responsibility" means a parent with more than fifty percent of the residential responsibility.
- ~~7.8.~~ "Residential responsibility" means a parent's responsibility to provide a home for the child.

SECTION 2. AMENDMENT. Subsection 1 of section 14-09-29 of the North Dakota Century Code is amended and reenacted as follows:

1. a. A court issuing an order that deals with parenting rights and responsibilities of a child entered under this chapter shall award the parental rights and responsibilities concerning the child to a person,

agency, organization, or institution as will, in the opinion of the court, promote the best interests and welfare of the child.

- b. Between the mother and father, whether married or unmarried, there is no presumption as to whom will better promote the best interests and welfare of the child.
- c. In any proceeding dealing with parental rights and responsibilities, there is a rebuttable presumption that equal parenting time and residential responsibility promotes the best interests and welfare of the child. If the court declines to enter an order awarding equal parenting time and residential responsibility, the court shall articulate in its decision the rationale for the denial of equal parenting time and residential responsibility."

SECTION 3. PARENTING RIGHTS AND RESPONSIBILITIES - LEGISLATIVE MANAGEMENT STUDY. During the 2017-18 interim, the legislative management shall consider studying, in consultation with the family law task force of the family law section of the state bar association of North Dakota, parental rights and responsibility issues, including shared parenting, joint decisionmaking responsibility for the child, the best interest factors used by the court in making parental rights and responsibilities decisions, and the modification and enforcement of parental rights and responsibilities orders. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-sixth legislative assembly.

Renumber accordingly

2017 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO 1392

House Judiciary Committee

Subcommittee

Amendment LC# or Description: Roers Jones amend. 03003
word rebuttable in good testimony and word presumption

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar

Other Actions: Reconsider _____

Motion Made By Rep Roers Jones Seconded By Rep. Maragos

Representatives	Yes	No	Representatives	Yes	No
Chairman K. Koppelman			Rep. Hanson		
Vice Chairman Karls			Rep. Nelson		
Rep. Blum					
Rep. Johnston					
Rep. Jones					
Rep. Klemin					
Rep. Magrum					
Rep. Maragos					
Rep. Paur					
Rep. Roers-Jones					
Rep. Satrom					
Rep. Simons					
Rep. Vetter					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Vote carried

2017 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO 1392

House Judiciary Committee

Subcommittee

Amendment LC# or Description: Klemin Amend. 17.8150.02002

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar

Other Actions: Reconsider _____

Motion Made By Rep Klemin Seconded By Rep. Roers Jones

Representatives	Yes	No	Representatives	Yes	No
Chairman K. Koppelman			Rep. Hanson		
Vice Chairman Karls			Rep. Nelson		
Rep. Blum					
Rep. Johnston					
Rep. Jones					
Rep. Klemin					
Rep. Magrum					
Rep. Maragos					
Rep. Paur					
Rep. Roers-Jones					
Rep. Satrom					
Rep. Simons					
Rep. Vetter					

Total (Yes) _____ No _____

Absent _____

Floor Assignment : _____

If the vote is on an amendment, briefly indicate intent:

Vote carried

2017 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO 1392

House Judiciary Committee

Subcommittee

Amendment LC# or Description: 17-8150.02004

- Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Rep Maragos Seconded By Rep Roers Jones

Representatives	Yes	No	Representatives	Yes	No
Chairman K. Koppelman	✓		Rep. Hanson	✓	
Vice Chairman Karls	✓		Rep. Nelson	✓	
Rep. Blum	✓				
Rep. Johnston	✓				
Rep. Jones	✓				
Rep. Klemin	✓				
Rep. Magrum	✓				
Rep. Maragos	✓				
Rep. Paur	✓				
Rep. Roers-Jones	✓				
Rep. Satrom	✓				
Rep. Simons	✓				
Rep. Vetter	✓				

Total (Yes) 15 No 0

Absent 0

Floor Assignment Rep. Roers Jones

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1392: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (15 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1392 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to to amend and reenact section 14-09-00.1 and subsection 1 of section 14-09-29 of the North Dakota Century Code, relating to a presumption of equal parenting time and responsibility; and to provide for a legislative management study.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 14-09-00.1 of the North Dakota Century Code is amended and reenacted as follows:

14-09-00.1. Definitions.

As used in this chapter, unless the context otherwise requires:

1. "Decisionmaking responsibility" means the responsibility to make decisions concerning the child. The term may refer to decisions on all issues or on specified issues, but not child support issues.
2. "Equal parenting time and residential responsibility" means each parent has the child in that parent's care for a time that is equal to or as close to fifty percent of the time as can be arranged based on the circumstances but which is not less than thirty-five percent of the time.
3. "Parental rights and responsibilities" means all rights and responsibilities a parent has concerning the parent's child.
- ~~3-4.~~ "Parenting plan" means a written plan describing each parent's rights and responsibilities.
- ~~4-5.~~ "Parenting schedule" means the schedule of when the child is in the care of each parent.
- ~~5-6.~~ "Parenting time" means the time when the child is to be in the care of a parent.
- ~~6-7.~~ "Primary residential responsibility" means a parent with more than fifty percent of the residential responsibility.
- ~~7-8.~~ "Residential responsibility" means a parent's responsibility to provide a home for the child.

SECTION 2. AMENDMENT. Subsection 1 of section 14-09-29 of the North Dakota Century Code is amended and reenacted as follows:

1.
 - a. A court issuing an order that deals with parenting rights and responsibilities of a child entered under this chapter shall award the parental rights and responsibilities concerning the child to a person, agency, organization, or institution as will, in the opinion of the court, promote the best interests and welfare of the child.
 - b. Between the mother and father, whether married or unmarried, there is no presumption as to whom will better promote the best interests and welfare of the child.

- c. In any proceeding dealing with parental rights and responsibilities, there is a rebuttable presumption that equal parenting time and residential responsibility promotes the best interests and welfare of the child. If the court declines to enter an order awarding equal parenting time and residential responsibility, the court shall articulate in its decision the rationale for the denial of equal parenting time and residential responsibility."

SECTION 3. PARENTING RIGHTS AND RESPONSIBILITIES - LEGISLATIVE MANAGEMENT STUDY. During the 2017-18 interim, the legislative management shall consider studying, in consultation with the family law task force of the family law section of the state bar association of North Dakota, parental rights and responsibility issues, including shared parenting, joint decisionmaking responsibility for the child, the best interest factors used by the court in making parental rights and responsibilities decisions, and the modification and enforcement of parental rights and responsibilities orders. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty- sixth legislative assembly.

Renumber accordingly

2017 SENATE JUDICIARY

HB 1392

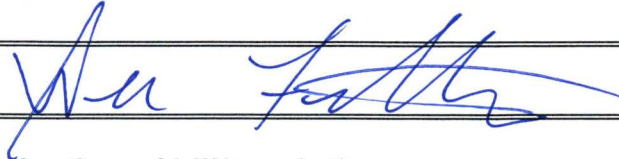
2017 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

HB 1392
3/8/2017
28928

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to a presumption of equal parenting time and responsibility; and to provide for a legislative management study.

Minutes:

Testimony attached #

1,2,3,4,5,6,7,8,9,10,11,12

Chairman Armstrong called the committee to order on HB 1392. All committee members were present.

Attachment 12 was handed out to committee but not orally testified.

Tom Kading, North Dakota State Representative District 45 (1:10 – 8:56), introduced and testified in support of the bill. (see attachment 1)

Sean Kasson, attorney and former prosecutor (9:14 – 15:17), testified in support of the bill. (see attachment 2,3,4,5,6)

Senator Luick: "I have constituents who want to mimic Minnesota law on child custody, is this like that? What's the difference?"

Sean Kasson: "There's 25 other states that are currently looking at this issue, trying to get some type of pro-child parent-custody legislation passed. Minnesota tried in the past to pass something more substantial, but it didn't happen. They do have a presumption in place but its only 25%, but research shows that the 35% threshold is where kids really start to benefit. There's different ways of creating the same results."

Andrew Doll (17:30 – 23:51), West Fargo resident, testified in support of the bill. No written testimony. He described how he is a father for two young girls, and how he feels this bill would be best for his children. He discussed a story how he got divorced and his attorney said that it would cost him 15k right up front. That money should go to his kids and not an institution. He was told that he should get prepared to spend half his income on divorce proceedings. He said it's not fair to his girls and he's upset that he doesn't get to see his children that much.

Tom Pischke, South Dakota State Representative (24:00 – 29:15), testified in support of the bill. No written testimony.

“I won’t get into too much specifics on statistics but I was a sponsor of pushing this type of legislation in South Dakota. If North Dakota gets this legislation passed I hope that South Dakota will follow suit. The word presumption is key in this legislation.”

Tom Pischke discussed a particular study which dealt with studying children in a shared-parenting environment. The study concluded that most of the children fared as well or better than other children who weren’t in shared-parenting but whose parents were still divorced., including better relationships with their fathers. Second, parents don’t have to be wealthy, affluent, or even get along to still see benefits in the child. It also concluded that our country, like most other industrialized countries is undergoing a shift in custody laws, public opinion, and parent decisions. He hopes that this research will help the committee institute a Do Pass recommendation.

“I’m also divorced and I only get to see my kids two nights a month.”

Charles Tuttle, North Dakota citizen (29:20 – 34:10), testified in support of the bill. No written testimony.

He said how he was the one responsible for getting Measure 6 on the ballot by getting 16,000 signatures by himself. He said how he believes this bill should be passed because the statistics show that this is best for the children. He empathized how some parents never get to see their children and perhaps those children are taken away from a parent just because they don’t like the other parent.

“People don’t realize the devastation this is causing our country and our children. Let’s look at this through the child’s eyes.”

Richard McDonald, North Dakota citizen (34:25 – 36:00), testified in support of the bill. (see attachment 7)

Chairman Armstrong (36:10): “What I’m reading in subsection C on page 13-18 is that in any proceeding dealing with parental rights and responsibilities there is a rebuttable presumption. So my question on that is if there is a previous decision regardless of what that previous decision says, if we are going in to reopen a case, does that mean that that presumption is always rebutted, regardless of what happened in the past?”

Arnie Fleck, attorney, came up to answer the question for Chairman Armstrong: “It’s somewhat speculative for that to happen.”

Arnie Fleck discussed the difference between this bill and the last one.

Chairman Armstrong (37:55): “So let’s say it didn’t go to trial, when you go back into court, where does the presumption go? 50-50? 65-35?”

Arnie Fleck: “There’s an argument for that. The law exists in other parts in the Century Code and interpreted by the North Dakota Supreme Court says you have to get it changed in the custody if you make a motion within two years of the last decree then you got to show there is a dangerous involvement that children are living in a dangerous environment, or that you had the children for six consecutive months yourself, of there is significant interference with your parenting time. This bill was created to mimic what the studies suggested.”

Senator Myrdal (42:10): "You brought up science, and take emotions out of it. Isn't this scientific evidence already available to the judiciary system? I don't see anything in the bill itself that leads to me believe that those scientific studies are precluded from the judiciary system to use in cases as they stand."

Arnie Fleck: "Currently the law is look at these 13 factors and one factor can supersede the rest, particularly if it's domestic violence but it is up to the judge's discretion. Because of these studies judges have been finding ways to decide."

Brandi Zachariason, North Dakota citizen (45:30 – 49:20), testified in support of the bill. (see attachment 8)

Alex Anderson, North Dakota citizen (49:25 – 52:10), testified in support of the bill. No written testimony. He described a story where he was unable to see his child due to his ex-wife taking his daughter and leaving the state. Now he has trouble paying his ex-wife due to lack of funds.

Arnold V. Fleck, attorney and North Dakota citizen (52:15 – 1:00:00), testified in support of the bill. (see attachment 9)

Senator Nelson: "Have you seen an attitude change over your career regarding this issue?"

Arnie Fleck: "When I was younger I did more for my clients, and not so much about the kids, but after I experienced it I realized there is a problem and when children are involved it's just not a great situation."

Barb Winking, North Dakota citizen (1:00:20 – 1:07:00), testified in support of the bill. No written testimony. Barb discussed how she is a grandmother and how her son served in the Navy. Her son's wife was not happy being a military mom so they got a divorce. She said that the divorce proceedings went well and her son and his divorced wife shared the child on a 50-50 split, but once the divorce proceedings ended the wife got primary custody and now her son has every other weekend and one evening during the week to see his child, as well as 50-50 in the summer. Barb didn't understand why her son couldn't have 50-50 during the regular season because she isn't even in school yet. She continued to tell a story of how her son's ex-wife manipulated the system by claiming her husband was uncooperative with their child. She also switched day care and told the judge it was because the husband was being uncooperative. Barb said eventually her son acquiesced to his ex-wife's demands and now he barely gets to see his kid.

Jason McLean, Chair of the Family Law Section of the North Dakota Bar Association (1:07:40 – 1:32:00), testified in opposition of the bill. (see attachment 10)

Chairman Armstrong (1:19:40): "When we define equal parenting time in the bill as its currently written, typically equal parenting time is as close to 50-50 as possible. It seems in the bill as we received it, that has broadened to 35-65. So I do like a shared-parenting definition to be added. My question to you is when we have this definition of equal residential responsibility, I don't like saying equal time because you and I both know that people actually

keep tallies of this. So I'm wondering if we could use a definition that would allow a certain type of discretion for unseen consequences, primarily on that 50-50 split.?"

Jason McLean: "There's a question in there in somewhere. That definition was used in the proposed amendments because it comes from the child support guidelines. What the fix was in the administrator code was to put an 'or as the court determines' to help with that."

Tony Weiler, State Bar Association (1:32:15 – 1:38:05), testified in opposition of the bill. No written testimony. Tony Weiler said his organization does support the amendments that were brought forth in Jason McLean's testimony.

"The presumption will make it harder for those who can't afford to court, even harder. I think this works for some families, but it doesn't work for everyone."

Senator Luick: "The info you gathered in this task force, is that available to this committee?"

Tony Weiler: "Yes, we can get that for you."

Senator Luick: "Has there ever been an effort put forth to where you have stepped out of your box and said we are going to try something different here and address this county or this region or an area or a family, why aren't we trying something different here? If there is a problem like what we're hearing today, are you trying something different to help that?"

Tony Weiler: "In my career I don't know if there has ever been a pilot project for this."

Senator Luick: "Why not?"

Tony Weiler: "I don't have an answer to that. But the amendments in this bill is a good step in that direction."

Jim Fleming, State Child Support Director for Department of Human Services (1:42:15 – 1:50:05), testified in neutrality of the bill. (see attachment 11)

Senator Luick (1:46:11): "On the decisions of the percentages of income for child support. Who determines that? Your office or the judge?"

Jim Fleming: "My agency does that, every 4 years. It's based much like income taxes, based on a net monthly income."

Chairman Armstrong: "So there's no way to stipulate away your payment in a child divorce proceeding, right?"

Jim Fleming: "Correct."

Senator Luick: "So if we have an arrangement of 50-50 and there's a bad actor in the deal, that split becomes a 65-35 split now, is there any type of fine or penalty for this to not take place?"

Chairman Armstrong: "That's a civil case so you would have to initiate a contempt action. That's how it works. If you win in court they can hold civil contempt and order fines, fees, and/or change custody and visitation. I have a question though, when you log contempt proceedings are you logging contempt proceedings in failure to pay? There are a lot of contempt proceedings to be initiated in family law."

Jim Fleming: "It is failure to pay child support or failure to appear on a warrant."

Chairman Armstrong: "How are contempt orders for failure to pay initiated?"

Jim Fleming: "At request of child support or what we request, there can be many cases but we are generally the ones to ask for it."

Chairman Armstrong: "So you don't need to hire a lawyer?"

Jim Fleming: Correct.

Senator Osland: "Do all child support payments go through your office?"

Jim Fleming: "Yes, and about 80% of payments go through our office."

Chairman Armstrong closed the hearing on HB 1392.

No motions were made.

2017 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

HB 1392 Committee Work
3/27/2017
Job #: 29707

- Subcommittee
 Conference Committee

Committee Clerk Signature

Jana Bellamy for Sen. Fetter

Explanation or reason for introduction of bill/resolution:

Relating to a presumption of equal parenting time and responsibility; and to provide for a legislative management study.

Minutes:

Attachments

1, 2

All committee members were present. Committee worked on HB 1392.

(0:00:05-0:06:10) Chairman Armstrong handed out his proposed amendments (attachments #1, #2) and explained them to the committee.

(0:06:15) Senator Myrdal: What about an absent parent after 10 years wanting to start share parenting. How will this bill affect that?

Chairman Armstrong: It would be the same way the law is today. It doesn't change law. There's an initial custody determination at some point. If there is an initial proceeding dealing with custody and it's a 10-year old case. If you want to rebut a presumption, that would be the case to rebut the presumption in. My concern with rebuttal presumptions is, 200 miles apart, 100-mile distance, disadvantage. Those types of situations.

(0:07:29-0:09:55) Chairman Armstrong gave his thoughts on the bill.

Senator Myrdal: I like the changes, had concerns since day 1. The testimony with the percentage of suicides. Nobody on this committee argues that the best thing is to have mom and dad there. Main arguments of the proponents. All the studies that have nothing to do with custody cases.

(0:10:45-0:11:39) Chairman Armstrong: Correlation and causation are not the same thing. To insinuate every family law attorney and judge is corrupt bothers me. To insinuate that 86% of suicides are because of this are an overly simplistic view of this and borders on inappropriate.

Senator Myrdal: Some of the people have tried destroying my career in Fargo due to this.

Chairman Armstrong: I've also Represented people who got a bad deal in court. But the presumption doesn't solve that.

(0:13:10) Senator Myrdal: Give me the two scenarios if the bill passes or stays as it is.

(0:13:24-0:15:02) Chairman Armstrong explained the two scenarios.

Senator Osland: In your opinion, is this going to satisfy this issue?

Chairman Armstrong: No. This will not satisfy anyone; people will be upset. They will like the law better than it is today, but the proponents of the bill want the presumption.

(0:16:08-0:19:10) Chairman Armstrong gave a brief explanation of child custody cases in response to a question about the 35%.

Senator Luick: On page 2 subsection 8 of Christmas tree, those last few words of it just lay it out that you are saying that not less than 35% of the time is mandated

Chairman Armstrong: No, it's just defining what shared parenting is. If you don't have the definition in subsection one, then section 2 doesn't make sense.

(0:19:58-0:21:44) Senator Nelson: Gave antidotal information. Doesn't believe that number 2 isn't the best interest of the kid. It's the judge's decision period.

(0:21:44-0:22:54) Custodial distance was talked about.

(0:22:57) Senator Luick: Are judges required to go through training to determine their decisions, like on a continued timeframe? There are good judges and bad judges, just like in any other career. Are we looking at this empty eyed that once this gets into their hands it's going to be handled property and maybe it's not? Maybe there is some room for betterment on the judge's behalf on how they look at these cases.

Chairman Armstrong: They are required to do 40 hours of continuing education every three years.

(0:24:00-0:25:18) Senator Nelson: I'm looking at section 3. What good is the study going to do, are we going to do anything with it or sit on the shelf like the last one did?

Senator Myrdal moved to adopt the amendment.

Senator Larson seconded.

Roll Call Vote was taken: 6 ayes, 0 nays, 0 absent.

Senator Myrdal moved a do pass, as amended.

Senator Luick seconded.

Roll Call Vote was taken: 5 ayes, 1 nay, 0 absent.

Chairman Armstrong will carry the bill.

CA
3/27/17

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1392

Page 1, line 2, replace "a presumption of equal" with "shared"

Page 1, line 12, remove "Equal parenting time and residential responsibility" means each parent has the child

Page 1, remove lines 13 through 15

Page 1, line 16, remove "3."

Page 1, line 18, remove the overstrike over "3."

Page 1, line 18, remove "4."

Page 1, line 20, remove the overstrike over "4."

Page 1, line 20, remove "5."

Page 1, line 22, remove the overstrike over "5."

Page 1, line 22, remove "6."

Page 1, line 23, remove the overstrike over "6."

Page 1, line 23, remove "7."

Page 2, line 1, remove the overstrike over "7."

Page 2, line 1, remove "8."

Page 2, after line 2, insert:

"8. "Shared parenting time and residential responsibility" means each parent has the child in that parent's care for a time that is as close to fifty percent of the time as can be arranged based on the circumstances but which is not less than thirty-five percent of the time."

Page 2, line 13, remove "In any proceeding dealing with parental rights and responsibilities, there is a"

Page 2, replace lines 14 through 18 with "In any initial proceeding dealing with parental rights and responsibilities in which one party requests shared parenting time and residential responsibility, the court shall articulate in its decision the rationale for either awarding or denying the request for shared parenting time and residential responsibility."

Re-number accordingly

**2017 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. HB 1392**

Senate Judiciary Committee

Subcommittee

Amendment LC# or Description: 17.8150.03001

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Senator Myrdal Seconded By Senator Larson

Senators	Yes	No	Senators	Yes	No
Chairman Armstrong	X		Senator Nelson	X	
Vice-Chair Larson	X				
Senator Luick	X				
Senator Myrdal	X				
Senator Osland	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

**2017 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. HB 1392**

Senate Judiciary Committee

Subcommittee

Amendment LC# or Description: 17.8150.03001

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Senator Myrdal Seconded By Senator Luick

Senators	Yes	No	Senators	Yes	No
Chairman Armstrong	X		Senator Nelson		X
Vice-Chair Larson	X				
Senator Luick	X				
Senator Myrdal	X				
Senator Osland	X				

Total (Yes) 5 No 1

Absent 0

Floor Assignment Chairman Armstrong

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1392, as engrossed: Judiciary Committee (Sen. Armstrong, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1392 was placed on the Sixth order on the calendar.

Page 1, line 2, replace "a presumption of equal" with "shared"

Page 1, line 12, remove ""Equal parenting time and residential responsibility" means each parent has the child"

Page 1, remove lines 13 through 15

Page 1, line 16, remove "3."

Page 1, line 18, remove the overstrike over "~~3.~~"

Page 1, line 18, remove "4."

Page 1, line 20, remove the overstrike over "~~4.~~"

Page 1, line 20, remove "5."

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Page 1, line 22, remove "6."

Page 1, line 23, remove the overstrike over "~~6.~~"

Page 1, line 23, remove "7."

Page 2, line 1, remove the overstrike over "~~7.~~"

Page 2, line 1, remove "8."

Page 2, after line 2, insert:

"8. "Shared parenting time and residential responsibility" means each parent has the child in that parent's care for a time that is as close to fifty percent of the time as can be arranged based on the circumstances but which is not less than thirty-five percent of the time."

Page 2, line 13, remove "In any proceeding dealing with parental rights and responsibilities, there is a"

Page 2, replace lines 14 through 18 with "In any initial proceeding dealing with parental rights and responsibilities in which one party requests shared parenting time and residential responsibility, the court shall articulate in its decision the rationale for either awarding or denying the request for shared parenting time and residential responsibility."

Renumber accordingly

2017 CONFERENCE COMMITTEE

HB 1392

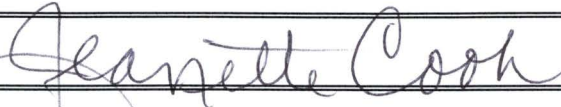
2017 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

HB 1392
4/12/2017
#30088

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to the parenting rights and responsibilities; and to provide for the retroactive application; and to declare an emergency.

Minutes:

Chairman Roers Jones: Opened the conference committee on HB 1392.

Attendance: Rep. Roers Jones, Rep. Jones, Rep. Vetter, Rep. Hanson; Senator Armstrong, Senator Myrdal; Senator C. Nelson

Chairman Roers Jones: Let's open the conversation. There are a lot of areas of disagreement, but this will be the initial step in facilitating the conversation.

Senator Armstrong: The first issue is shared parenting versus equal parenting time. There was a problem with the usage of equal and 35% and finding the definition. We took the presumption away of shared parenting and also any proceeding language, and said in an initial proceeding where one person asks for it. The court will delineate on the record why or why not it is granted. The Senate had a difficult time understanding the presumption and using the best interest standards to rebut it. Number 2, which is important as well, regardless of where this ends up, we feel strongly about the language that once you have an initial custody determination you shouldn't start ever two years over when you go to court. Inside of two years, it is very difficult to get back into court on a custody determination. To get into the courtroom after two years is not a very difficult burden. The way the bill was written as it came to us, it seems that once you get into the proceeding then you start over at zero again, not based on what the last determination is. That would be unique to custody and not how civil judgements are typically treated in any other area of the court system. We feel that prior court proceeding should play a role in future court proceeding. The big issue is the presumption. Maybe the "any proceeding language" is too.

Chairman Roers Jones: The House was trying to make sure it is available for people to use when they come before the court again. If the circumstances have changed, then it isn't just being applied proactively. We will need to find the best way to accomplish that. I can

understand the change in wording, from equal parenting time to shared parenting time, with the ability to flex between 50 and 30. That makes sense.

Representative Vetter: I feel like when you take out the two paragraphs the Senate took out; it doesn't do much anymore. The original bill has changed substantially. I realize the best child standard should be followed. If it doesn't work, then it is up to the judge to decide. The judge will decide what they deserve. They now have that option now; it doesn't force them to do the shared parenting. This law gives the judge the opportunity to bring this about.

Chairman Roers Jones: Based on the original bill; this is a significant change, and takes us to a much better place, the House version that we had. The amendments came from the testimony of a family lawyer who testified against the bill at the hearing. Her suggestion was that we go with the idea of shared parenting, but still apply the best interest of the child standards, if there is a deviation. Then we have the judge explaining on the record why the deviation is. We are kind of on the same page on that regard. Where are we starting out, if we don't call this a presumption? Is there a suggestion of what we do call this? There needs to be an understanding that this is still a starting point. I understand that the family law attorneys don't like the "presumption" language. Is there a place that we can make it clear that this is the starting point?

Senator Armstrong: Before we get into the presumption, my question would be, how are we going to deal with the other language? For me that is an **absolute** non-starter. The way this reads right now, every time you go back into court the previous determination doesn't matter, then you start over. Until we get anywhere close to getting that solved, the other part of the conversation doesn't occur. The other issue is you have to deal with is the significant change of circumstance statute. I really get concerned if there are unintended consequences of not allowing people into court as easily because of the determinations. Once they walk into court, under current law, you have to prove change of circumstances to get a change of custody agreement. This would be a significant shift to that. Regardless of how we deal with the first one, until we get to how we are going to deal with the second and subsequent court hearings with the same plaintiff and defendant, I don't know how we get anywhere on that until we deal with the second issue. We should talk about that before we schedule again.

Chairman Roers Jones: That is not the objective here to have these issues hashed and rehashed, and have the ability for the determinations to be reviewed every two years. I think you are right. We do need to look at this language. Maybe there is some way to word this so that people that have a determination buried, might have an opportunity to have that looked at. Not just as soon as the law is passed, but at their next custody evaluation. I don't know if there is a way to do that so there is one opportunity do this in the future.

Senator Myrdal: I agree with our chairman. We can't start fresh every two years. The concern here is for the children. What we are dealing with here is the most sacred institution we have on earth, marriage, and the most sacred gift, which are our children. It is an extremely sensitive thing. I agree that the first language has to be answered. If you reset every two years, I don't think that is in the best interest of the children.

Representative Vetter: The main concern that you have is the retroactivity? The way you look at this, every time you go to see the judge everything gets rehashed?

Senator Armstrong: That is not the main concern. We are not overly excited about the presumption either. This is essentially an end run around another piece of statute. Until we can rectify those two pieces, I don't think it does any good to have the next conversation.

Chairman Roers Jones: If we would work on some language where we tie this language to the initial proceeding or the significant change in circumstance proceeding, do you think that might be more satisfactory to the Senate Committee.

Senator Armstrong: For that section, yes. Until the law reads that prior proceedings control future proceedings, and you offset those versus the other one, we are wasting everyone's time to have a second conversation.

Chairman Roers Jones: Do we want to do research on the Section related to the significant change in circumstances? We can pull out that section for the committee. We could recraft that section, so we are tying any potential change in parenting time to either the initial proceeding or a proceeding that would be related to a significant change in the circumstances. Do we want to have any further conversation about the presumption language now, or wait until we have that language and move forward with the next step?

Senator Armstrong, would you find that section for me so we can work on this?

Adjourned.

2017 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

HB 1392
4/17/2017
30175

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to the parenting rights and responsibilities; and to provide for the retroactive application; and to declare an emergency.

Minutes:

1, 2

Chairman Roers Jones: Opened the conference committee on HB 1392.

Attendance: Rep. Roers Jones, Rep. Koppelman, Rep. Hanson; Senator Armstrong, Senator Myrdal; Senator C. Nelson

Chairman Roers Jones: (#1 & #2) Passed out the Christmas tree version and .03002 proposals. I will tell you what we have changed in the Christmas tree version. We are looking at probably accepting the Senate amendments; changing the equal parenting time definition on the first page to the share parenting definition; which is at the top of the second page. Going down to Section C we are looking at taking out the language related to the rebuttable presumption and changing it instead to starting in line 22 currently we have it written in any preceding to establish parental rights and responsibilities or to modify parental rights and responsibilities subject to section 14-09-06.6 if one party requests shared parenting time and residential responsibility, the court shall consider awarding shared parenting time and residential responsibility and shall articulate in its decision the rationale for either awarding or denying the request for shared parenting time and residential responsibility. We are looking at modifying that section slightly to match another section of code. The ideas are the same, but just a change in wording. The Section relating to 14-09-06.6 are the limitations that are currently being used for determining if and when a residential responsibility award can be modified; so it has that two-year window. This is addressing the concern on the Senates part that this isn't something that comes back over and over again where one party may be using this as a tool to hash out. I would like to have discussion on further concerns so we can iron them out now.

Senator Armstrong: It is 14-09-30 the language is in any preceding to establish or modify a judgement providing for parenting time. More so than any other area of code this has been appealed to the supreme court in ND in just about every area of this law. If you don't have

the exact consistent language; then you start dealing with where it is. I want to make sure we deal with that chapter honestly so I think this is a decent place to start. You either repeal a chapter and go to something else; or you recognize that it exists in your new law. This is a decent place to start and have something to get out here and deal with it.

Rep. K. Koppelman: I just want to compliment the committee. I am a place holder today and Representative Vetter will be back.

Representative Hanson: Do you have comments on how this suggested new language might reassure families who are worried about things coming back frequently to revisit. Have you analyzed how that might be effected or not effected?

Rep. Roers Jones: I think the issue we are trying to address is the ability for someone to just institute the law. That there might be a run on the courts. After two years there might be change in circumstances and that the modification is necessary to serve the best interest of the child. You would have to still show those to have custody determination revisited.

Senator Armstrong: That is the point. This language is in the code now to make it still applies in the same way, but you still have to have prior judgements matter.

Adjourned.

2017 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

HB 1392
4/18/2017
30189

Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to the parenting rights and responsibilities; and to provide for the retroactive application; and to declare an emergency.

Minutes:

1

Rep. Roers Jones: Opened the conference committee on HB 1392. Handed out #1 .03003.

Attendance: Rep. Roers Jones; Rep. Vetter; Rep. Hanson; Senator Armstrong; Senator Myrdal; Senator C. Nelson

Rep. Roers Jones: Yesterday we discussed what we considered for amendments. We have slightly changed language. (#1) New Christmas tree version.

Senator Armstrong: My only concern was how the wording was relating to citing back to 14-09-06.6. I did not think it read well. Line 23 and 24 lines I had a concern with. We need to address that statute or go into that statute and do some repeal or so I think now we are comfortable with this language. I put a period after request.

Rep. Roers Jones: Does anyone have any questions or comments on these amendments?

Motion Made that the Senate recede from Senate amendments and amend as follows with 17.8150.03004 by Senator Armstrong; Seconded by Senator Myrdal.

Rep. Roers Jones: Just to clarify if the Senate is receding is there anything that is not included in the new amendments?

Senator Armstrong: As long as accept the Christmas tree version as further amended.

Roll Call 6 Yes 0 No 0 Absent Carried

Adjourned.

4/18/17 D/R

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1392

That the Senate recede from its amendments as printed on pages 1225 and 1226 of the House Journal and page 967 of the Senate Journal and that Engrossed House Bill No. 1392 be amended as follows:

Page 1, line 2, replace "a presumption of equal" with "shared"

Page 1, line 12, remove ""Equal parenting time and residential responsibility" means each parent has the child"

Page 1, remove lines 13 through 15

Page 1, line 16, remove "3."

Page 1, line 18, remove the overstrike over "3."

Page 1, line 18, remove "4."

Page 1, line 20, remove the overstrike over "4."

Page 1, line 20, remove "5."

Page 1, line 22, remove the overstrike over "5."

Page 1, line 22, remove "6."

Page 1, line 23, remove the overstrike over "6."

Page 1, line 23, remove "7."

Page 2, line 1, remove the overstrike over "7."

Page 2, line 1, remove "8."

Page 2, after line 2, insert:

"8. "Shared parenting time and residential responsibility" means each parent has the child in that parent's care for a time that is as close to fifty percent of the time as can be arranged based on the circumstances but which is not less than thirty-five percent of the time."

Page 2, line 13, remove "In any proceeding dealing with parental rights and responsibilities, there is a"

Page 2, replace lines 14 through 18 with "In any proceeding to establish or modify a judgment for providing for parenting time and residential responsibility and subject to the requirements of section 14-09-06.6, if one party has requested shared parenting time and residential responsibility, the court shall consider awarding shared parenting time and residential responsibility and shall articulate in its decision its rationale for either awarding or denying the request for shared parenting time and responsibility."

Renumber accordingly

Date: 4/10/2017
 Roll Call Vote #: /

2017 HOUSE CONFERENCE COMMITTEE
 ROLL CALL VOTES

BILL HB1392 as (re) engrossed

House Judiciary Committee

- Action Taken HOUSE accede to Senate Amendments
 HOUSE accede to Senate Amendments and further amend
 SENATE recede from Senate amendments
 SENATE recede from Senate amendments and amend as follows
- Unable to agree, recommends that the committee be discharged and a new committee be appointed

Motion Made by: Armstrong Seconded by: Myrdal

Representatives	4/12	4/17	4/18	Yes	No	Senators	4/12	4/17	4/18	Yes	No
Chairman Roers Jones	✓	✓	✓	✓		Senator Armstrong	✓	✓	✓	✓	
Rep. Vetter	✓		✓	✓		Senator Myrdal	✓	✓	✓	✓	
Rep. Hanson	✓	✓	✓	✓		Senator C. Nelson	✓	✓	✓	✓	
<u>Rep Keppelman</u>		✓									
Total Rep. Vote						Total Senate Vote					

Vote Count Yes: 6 No: 0 Absent: 0

House Carrier Roers Jones Senate Carrier Armstrong

LC Number 17.8150 . 03004 of amendment

LC Number 05000 of engrossment

Emergency clause added or deleted

Statement of purpose of amendment: added 17.8156.03003, (#1) attachment.

Insert LC: 17.8150.03004
House Carrier: Roers Jones
Senate Carrier: Armstrong

REPORT OF CONFERENCE COMMITTEE

HB 1392, as engrossed: Your conference committee (Sens. Armstrong, Myrdal, Nelson and Reps. Roers Jones, Vetter, M. Nelson) recommends that the **SENATE RECEDE** from the Senate amendments as printed on HJ pages 1225-1226, adopt amendments as follows, and place HB 1392 on the Seventh order:

That the Senate recede from its amendments as printed on pages 1225 and 1226 of the House Journal and page 967 of the Senate Journal and that Engrossed House Bill No. 1392 be amended as follows:

Page 1, line 2, replace "a presumption of equal" with "shared"

Page 1, line 12, remove ""Equal parenting time and residential responsibility" means each parent has the child"

Page 1, remove lines 13 through 15

Page 1, line 16, remove "3."

Page 1, line 18, remove the overstrike over "~~3.~~"

Page 1, line 18, remove "4."

Page 1, line 20, remove the overstrike over "~~4.~~"

Page 1, line 20, remove "5."

Page 1, line 22, remove the overstrike over "~~5.~~"

Page 1, line 22, remove "6."

Page 1, line 23, remove the overstrike over "~~6.~~"

Page 1, line 23, remove "7."

Page 2, line 1, remove the overstrike over "~~7.~~"

Page 2, line 1, remove "8."

Page 2, after line 2, insert:

"8. "Shared parenting time and residential responsibility" means each parent has the child in that parent's care for a time that is as close to fifty percent of the time as can be arranged based on the circumstances but which is not less than thirty-five percent of the time."

Page 2, line 13, remove "In any proceeding dealing with parental rights and responsibilities, there is a"

Page 2, replace lines 14 through 18 with "In any proceeding to establish or modify a judgment for providing for parenting time and residential responsibility and subject to the requirements of section 14-09-06.6, if one party has requested shared parenting time and residential responsibility, the court shall consider awarding shared parenting time and residential responsibility and shall articulate in its decision its rationale for either awarding or denying the request for shared parenting time and responsibility."

Renumber accordingly

Engrossed HB 1392 was placed on the Seventh order of business on the calendar.

2017 TESTIMONY

HB 1392

Representative Tom Kading
District 45
2/7/17

#1
1392
2-7-17

House Standing Committee on Judiciary - Prairie Room

Chairman Koppelman and members of the committee. For the record I am Representative Tom Kading from district 45 in Fargo. I bring to you today house bill 1392 which is in regards to shared parenting rights in child custody decisions.

The bill was prepared with the intent of implementing, as the law in child custody disputes in North Dakota, the findings and recommendations made by internationally recognized child development experts after their review of social science studies from approximately the past 30 years. Those findings and recommendations are set forth in the following eleven published articles, copies of which articles I understand were emailed to you on Sunday, February 5, 2017, by Arnold Fleck, a Bismarck Attorney, who assisted me in the drafting of the bill:

1. Richard A. Warshak, *Social Science and Parenting Plans for Young Children: A Consensus Report*, 20 Psychol. Pub. Pol'y & L. 46 (2014);

2. Richard A. Warshak, *Parental Alienation: Overview, Management, Intervention, and Practice Tips*, 27 J. Am. Acad. Matrim. Law., in press (2015);

3. Fabricius, W. V., Sokol, K. R., Diaz, P., & Braver, S. L., *Father-child relationships: The missing link between parenting time and children's mental and physical health*. In Leslie Drozd, Michael Saini & Nancy Olesen (Eds.), *Parenting Plan Evaluations: Applied Research for the Family Court* (2nd ed.) (XXX -XXX). New York, NY: Oxford University Press (2016);

4. Fabricius, W.V., Sokol, K.R., Diaz, P., & Braver, S.L., *Parenting time, parent conflict, parent-child relationships, and children's physical health*. In K. Kuehnle & L. Drozd (Eds.) *Parenting Plan Evaluations: Applied Research for the Family Court* (pp. 188-213). Oxford University Press (2012);

5. Fabricius, W.V., & Luecken, L.J., *Postdivorce Living Arrangements, Parent Conflict, and Long-Term Physical Health Correlates for Children of Divorce*, 21 J. Fam. Psychol. 195 (2007);

6. Linda Nielsen, *Shared Physical Custody: Does It Benefit Most Children?* 28 J. Am. Acad. Matrim. Law. 79 (2015);

7. Linda Nielsen, *Shared Physical Custody: Summary of 40 Studies on Outcomes for Children*, Journal of Divorce & Remarriage, 55:8, 613-635 (2014);

8. Linda Nielsen, *Woozles: Their Role in Custody Law Reform, Parenting Plans and Family Court*, 20 Psychol. Pub. Pol'y & L. 164 (2014);

9. Linda Nielsen, *Parenting Plans for Infants, Toddlers, and Preschoolers: Research and Issues*, 55 J. Divorce & Remarriage 315 (2014);

10. Linda Nielsen, *Shared Residential Custody: Review of the Research (Part I of II)*, 27 Am. J. Fam. L. 61 (2013); and

11. Linda Nielsen, *Shared Residential Custody: Review of the Research (Part II of II)*, 27 Am. J. Fam. L. 123 (2013).

The bill presumes that shared parenting is the appropriate decision to make if both parents desire custody. If one of the parents do not request shared parenting then this bill has no effect on the situation.

First let's talk about what a presumption means.

- A fact assumed to be true under the **law**
- For example, a criminal defendant is presumed to be innocent until the prosecuting attorney proves beyond a reasonable doubt that she is guilty.
- Presumptions can be overturned
 - Different standards based on the law
 - In this bill, the standard is **Clear and Convincing** evidence.

So what is Clear and Convincing evidence?

- This standard is higher than “probably true” but less than 100% certainty.
- This is the same standard used in court if the State is going to terminate parental rights.

What exactly is presumed? At least 35% custody is appropriate

What factors are used to overturn a presumption:

- Parent chooses not to be involved
- Parental alienation (parent prevents other parent’s relationship with child)
- Domestic violence
- Child abuse/neglect
- Child is in danger
- Parent engages in sex offenses where child is victim or intended victim
- Parent committed a variety of crimes
- Parent is incarcerated
- Parent subjects child to prenatal exposure to substance abuse
- Parent subjects child to substance abuse
- Parent has placed child for care or adoption in violation of law
- Parent abandoned child
- Parent leaves child without proper care
- Parent refused to participate in treatment
- Parent allows a child to be a victim of human trafficking
- Parent has physical injury or medical or psychological condition that renders that parent incapable of properly caring for the child
- Residence of parents is greater than 50 miles apart
- Child is an infant at time of resolution of proceeding and schedule, health or other circumstances that does not allow such an arrangement.
- Child is special needs

I note that this bill will not have not have a significant impact on child support issues involved in child custody cases. It is expected the outcomes on child support issues involved in cases that would result in shared parenting arrangements will not be significantly affected in 90% to 95% of child custody cases as the result of enacting HB 1392. I have asked that Mr. Fleck address the

the child support issues more specifically in his testimony. However, I can assure you, there is no intent to have this bill result in one parent paying back to the other parent previous child support.

This bill does not automatically apply to situations. If one party wants to change custody as a result of this bill, such arrangement would have to be changed by taking the proper legal notice.

I am sure some of the following testimony will go into more depth as to the studies and the evidence that shows shared parenting is the right decision to make. I will cite a few, but leave much of it to the next speakers. Children raised by single parents account for:

- 63% of teen suicides,
- 71% of high school drop outs,
- 75% of children in chemical abuse centers,
- 85% of children who exhibit behavior disorders; and
- 90% of homeless and runaway children.

(Wilson, C. (1998). Economic Shifts That Will Impact Crime Control and Community Revitalization. What Can the Federal Government Do To Decrease Crime and Revitalize Communities? U.S. Department of Justice, National Institute of Justice, 11.) and
(U.S. Census Bureau, 2009-2011 American Community Surveys, 2012 Condition of Children in Orange County, America's Families and Living Arrangements: 2012 by Jonathan Vespa and Jamie M. Lewis)

Finally, I have a few amendments to propose. See attached Proposed Amendments to House Bill No. 1392. The first amendment is designed to cure an inadvertent error in the preparation of the bill. The second amendment, the elimination of subsection 4 of Section 14-09-29 on cost awards when a parent is found to have committed domestic violence, is designed to eliminate some of the incentive under the law to make false claims of domestic violence in child custody cases. And the third amendment is designed to overturn the holding in *Jarvis v. Jarvis*, 1998 ND 163, ¶ 36, 584 N.W.2d 84, that disagreements or the lack of cooperation between parents is grounds to not award a shared parenting arrangement in a child custody case, as that rationale has been proven by the social science studies to not be in the best interest of children.

In summary, this bill is designed to change our laws so that the decisions on child custody are truly in our children's best interest by making sure such decisions are firmly grounded in scientific research - not on the uninformed personal opinions of parents, seminar speakers, mental health practitioners or professionals working in family courts.

Thank you and I will try to answer any questions.

17.8150.02001
Title.

Prepared by the Legislative Council staff for
Representative Kading
January 27, 2017

#2
1392
2-7-17

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1392

Page 6, line 1, after the second underscored comma insert "was present in an environment
subjecting the child to"

Page 7, line 23, overstrike "In any proceeding dealing with parental rights and responsibilities in
which a parent is"

Page 7, overstrike lines 24 through 28

Page 7, line 29, overstrike "those costs would place an undue financial hardship on that parent"
and insert immediately thereafter "The court may not use disagreement or the lack of
cooperation between parents as a factor in denying equal parenting time and
residential responsibility"

Renumber accordingly

#3
1392
2-7-17

Frequently Asked Questions

1) In Summary, what does this bill accomplish?

If shared parenting is requested by either parent, the court will presume shared parenting is the best solution. The presumption that shared parenting is appropriate can be rebutted by clear and convincing evidence. If neither parent requests shared parenting, or the presumption of shared parenting has been rebutted, then the court will use thirteen Best Interest Factors to determine custody.

2) What does shared parenting mean?

The division of a child’s time between homes is no less than 35% (as distinguished from sole child custody).

3) Why is it so important to establish shared parenting for children?

Child custody disputes, based upon antiquated laws, are creating results which are harmful to our children. Social science clearly articulates 35% parenting time, at a minimum, is necessary for proper parent/child relationships where the parent is loving, able and fit. When a court does not order at least the minimal amount of parenting time, children are harmed. Children raised by single parents account for:

- * 63% of teen suicides,
- * 71% of high school drop outs,
- * 75% of children in chemical abuse centers,
- * 85% of children who exhibit behavior disorders; and
- * 90% of homeless and runaway children.

(Wilson, C. (1998). Economic Shifts That Will Impact Crime Control and Community Revitalization. *What Can the Federal Government Do To Decrease Crime and Revitalize Communities?* U.S. Department of Justice, National Institute of Justice, 11.) and (U.S. Census Bureau, 2009-2011 American Community Surveys, 2012 Condition of Children in Orange County, America’s Families and Living Arrangements: 2012 by Jonathan Vespa and Jamie M. Lewis)

4) What were the main objections to the shared parenting initiative of 2014 (Measure 6)?

<u>Objection</u>	<u>Solution placed in proposed bill</u>
Children are best served with one primary home.	Social science proves this false. Children are best served by having each loving, able and fit parent in their life at least 35% of the time. The parent/child relationship far outweighs the inconvenience of two homes.
Measure 6 is a cookie cutter approach which applied to all situations.	The bill has a presumption. It does not make shared parenting mandatory in every case.
Measure 6 would increase court costs.	This bill will save on court costs. The current system encourages conflict where parents fight to “win” custody. This bill, with the presumption in place, recognizes that shared parenting should be ordered in most cases. Therefore, instead of a parent preparing to fight for custody, the parent will need to show why their case is one

	of the minority cases in which fighting is even necessary.
Measure 6 doesn't consider parents that live far apart, i.e. Minot and Fargo.	This bill recognizes and addresses the distance concern by rebutting the presumption of shared parenting of parents living more than 50 miles apart.
Measure 6 is just a bunch of angry dads.	Social science provides empirical evidence that children need both parents in their lives. Shared parenting is a joint effort of men and women around the world.
Measure 6 places the interests of the parent before those of the child.	This bill has a presumption in place to reflect the consensus of 110 social scientists from around the world: in the vast majority of cases, shared parenting is best for the child. Reflecting social science into this bill does not place a parent's wants before a child's needs, but reaffirms what has been proven by empirical evidence and aims to correct court orders to the detriment of children.
Measure 6 would order 50/50 in every case.	Opponents of Measure 6 argued that every case would be treated the same, and in every case, the division of time between homes would be 50% with one parent and 50% with the other, regardless of circumstances. This bill does not mandate 50/50 in every case. This bill provides that there will be a presumption shared parenting be ordered, however, evidence can be received to rebut the presumption for those minority of situations in which shared parenting is not in the best interest of the child.
Measure 6 doesn't consider children of special needs.	This bill addresses children of special needs to ensure the child's interest remains paramount. The bill provides a rebuttable presumption where if a child is special needs and based upon written assessment made by a child development expert, one of the parents does not have the ability or time needed to avoid an award of shared parenting being detrimental to physical or emotional health of child.

How does this bill change the law?

Issues of Law	Existing	Proposed Changes
Is there currently a presumption as to who gets child custody?	No.	This bill provides a presumption. Including such language reflects the empirical evidence supported by 110 social scientists from around the world: in the vast majority of cases, shared parenting is best for the child.
How does a presumption work?	North Dakota Rules of Evidence already provides for presumptions. "In a civil case, unless a statute or these rules provide otherwise, if facts giving rise to a presumption are established by credible evidence, the presumption substitutes for evidence of the existence of the fact presumed." N.D.R.Ev. 301(a).	No Change
What is a rebuttable presumption?	North Dakota Rules of Evidence 301(b): "[i]f the trier of fact finds from credible evidence that the fact presumed does not exist, the presumption is rebutted and ceases to operate. A party against whom a presumption is directed has the burden of proving the nonexistence of the presumed fact is more probable than its existence." N.D.R.Ev. 301(b). In the instance of this bill, the presumption that shared parenting should be ordered can be rebutted by clear and convincing evidence.	No change
What facts can rebut the presumption in the proposed law?	Does not exist under current law.	Summary provided. For complete text, please see the bill at section 14-09-29(2)(a)-(d). <ul style="list-style-type: none"> • Parent chooses not to be involved • Parental alienation (parent prevents other parent's relationship with child) • Domestic violence • Child abuse/neglect • Child is in danger due to parent's chemical dependency/mental illness and parent fails to obtain treatment • Parent engages in sex offenses where child is victim or intended victim • Parent committed murder, manslaughter or negligent homicide, or child abuse in which victim is another child of the

		<p>parent; aiding, abetting, attempting, conspiring or soliciting a murder, manslaughter or negligent homicide in which victim is a child of the parent; or aggravated assault in which victim is a child of the parent and has suffered serious bodily injury</p> <ul style="list-style-type: none">• Parent engages or attempts any degree of assault, reckless endangerment or terrorizing in which a child is victim or intended victim;• Parent is incarcerated• Parent subjects child to prenatal exposure to chronic or severe use of alcohol or controlled substance (not prescribed)• Parent subjects child to controlled substance, chemical substance, or drug paraphernalia (endangerment of child)• Parent allows a child to be without proper parental care or control, subsistence, education (not due to financial hardship)• Parent has placed child for care or adoption in violation of law• Parent abandoned child• Parent leaves child without proper care because of physical, mental, emotional, or other illness or disability of parent• Parent refused to participate in treatment for a child who is in need of treatment, as ordered by juvenile court• Parent allows a child to be a victim of human trafficking• Parent has physical injury or medical or psychological condition that renders that
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		<p>parent incapable of properly caring for the child</p> <ul style="list-style-type: none"> • Residence of parents is greater than 50 miles apart • Child is an infant at time of resolution of proceeding and schedule, health or other circumstances of one of the parents does not allow for parenting schedule that allows for exchanges of the child between the parents at least every seven days or less, so that each parent may care for and interact with the child, including over nights with the child, on a frequent basis during the infancy of the child • Child is special needs
<p>How does this bill impact the Best Interest Factors?</p>	<p>No change to existing law.</p>	<p>The Best Interest Factors remain. If shared parenting is not requested by either party, the court will determine residential responsibility based upon the Best Interest Factors. The Best Interest Factors also apply if a party requests shared parenting, but the rebuttable presumption has been met; the court will default to the Best Interest Factors to determine residential responsibility.</p>
<p>What is clear and convincing evidence?</p>	<p>This standard is higher than “probably true” but less than 100% certainty. This is the same standard used in court if the State is going to terminate parental rights.</p>	<p>No change to existing law.</p>

#4
1392
2-7-17

Dear Mr. Charles Tuttle my name is Sam [REDACTED]. I saw you at Bison game day down town on Saturday (I was the kid with the funny hat). You where trying to get people to sigh your divorce petition that makes all parents that have a divorce to share the kids equally with a 50-50 split. IN my situation its suppose to be a 70-30 split and I can't change it neither can my dad because my mom won't let them have the 50-50 split. Now I know that this law won't help me in my situation but it can help kids in the future. My dad will send you an email tomarrow to give you a couple more places around town to petition I hope to get this law past it means a lot to me. Thanks for allowing me to send you this email I hope to stay in touch and thank you for doing this kind act of citizen ship.

From: Sam [REDACTED]

#5
1392
2-7-17

Everyone,

I'm thrilled to share the news, the State Bar Association of North Dakota (SBAND) is being sued for their anti Shared Parenting Ballot Measure 6 this past November.

The Goldwater Institute, led by famed attorney Clint Bolick, filed suit this morning, with more information available here: "Keeping Kids First" opposition group, and the previous reporting of their actions being available here:

<http://lw4sp.org/blog/2014/11/23/north-dakota-bar-association-sued>

and the press release is available here.

Last year, faced with a similar suit, the Nebraska State Bar Association was restructured by the Nebraska legislature effectively be a voluntary organization with the cut in dues requiring the elimination of staff, subleasing of and elimination of events.

Additional suits are being considered and any mandatory bar association that uses member dues to oppose consider itself at risk for a civil rights law suit.

--

Charles Tuttle
Common Sense North Dakota
For Common Sense North Dakota

1

776
1392
2-2-17**Anonymous**

I have decided to share my story, in hopes that maybe some mothers will read it and will change.

I have had sole custody of our son since he was 2. His father, Todd, saw our son every other weekend. Our son was 1 year old when we separated. At the time, he wasn't very interested in taking care of our son on his own. I fought for over a year to get sole custody with Todd having every other weekend.

Fast forward a few years and Todd was really starting to get his life together. He became a licensed welder, held a steady job and loved every second he had with our son. Unfortunately, I had developed a sense of entitlement and power. I wouldn't allow him to have one minute of extra time. When he called, I wouldn't answer. Our son would ask to see his dad more and I found myself saying no and feeling like I was doing something wrong. I had a sense of guilt. I knew that what I was doing was wrong, but I didn't want to share my son. He was mine!

Todd's weekend to have our son came almost 2 years ago to the date. I wouldn't allow him to take our son. I was angry with him over being late again with child support. I had planned on "holding my son hostage" until he caught up, but seeing my son so upset, I made arrangements for him to go with Todd on his next arranged weekend.

Todd never came.

He passed away in a car accident on his way to work. He was supposed to pick our son up after work and take him out bowling for his 6th birthday that was only 2 days after that fateful day.

I held so much guilt, remorse and sadness. How could I do this to my son? The one I love the most? I kept that little boy from one of the most important person in his life, for my own personal gratification.

So, I realize that we need change. The system needs changed!

I have been supporting father's rights for the past year. I have seen and felt first hand the agony that my precious son went through, because of me.

I really hope and pray that someone reads this and changes.

Truly changes.

I can't take anything back. I can't give my son his father. But I can tell you, you will regret being selfish.

Not a day goes by that I don't.

--

Charles Tuttle

Common Sense North Dakota

For Common Sense North Dakotans

701-630-9489

701-858-0800

A7
1392
2-7-17

In Support of HB 1392

Dear Committee Members:

Thank you for service and time. My name is Sean Kasson. I am a father of two beautiful daughters, Tessa (6) and Lyvia (4). I am an attorney and former prosecutor. It is with gratitude I appear before you today. As much as I wish our family did not have to go through the turmoil of divorce, I must be grateful to have been given the knowledge and inspiration to take action, working on such an important cause. Without having gone through the divorce, I never would have realized the importance of HB 1392. I hope I am able to give you some guidance, answer questions, and provide you the reason why passage of this bill is necessary.

Personal Experience

Three years ago, to the day, my life was forever changed. My wife left and days later, I was served with divorce papers. It was something that I never thought possible. High school sweethearts. I thought I was the man of her dreams and nothing would ever change that. But that did change. I recognize I was not a perfect husband. My ex and I both acknowledge our shortcomings. But even when we recognized our imperfect relationship, I remember us agreeing that at least we were great parents. In fact, I found out later she had been contemplating divorce for some time, even having a conversation with my dad about it, but acknowledging that I was a good father. I am happy to say that my ex and I co-parent wonderfully, and I respect her immensely for focusing on our children's welfare rather than any past bitterness. Our divorce, however, was the closest thing to hell on Earth.

When I was served with divorce papers, obviously I was saddened, but remained hopeful and optimistic. After all, we agreed on us being great parents, and ultimately, that is what matters. However, my first correspondence from her attorney made the false accusation that I was going to run away with the girls and therefore my ex needed to be with them the majority of the time during the interim of the divorce proceeding. I had no idea where this allegation was coming from: not only did I not make that statement, but it made no sense - where was I going to go? This letter was just the beginning. Throughout the interim of the divorce, times arose where I did not understand why there was disagreement, seeming as though she was intentionally trying get a rise out of me. Such actions have not presented since the divorce, but only when attorneys were involved. Regardless, for over one year, we had one week rotations, and it was working; one week with mom, one week with dad. But she refused to allow this arrangement to continue. We attempted mediation. I'm not sure I was there for more than 15 minutes - she wanted primary custody, and I wanted our girls to be in both of our lives equally. That was the end of mediation. We went to trial. Ultimately, the court ordered 50/50 in the summer, but reduced my girls being with me until every other Thursday to Monday morning. In waiving my appeal, I was able to gain an extra day.

Almost immediately, my youngest said to me on the phone that she was "sad at me." They weren't seeing me as often as they once were. They missed me. I miss them. I believe time is love. Kids don't know why they aren't seeing the other parent as much, but all they know is they're not there and there is a void. I love my kids incredibly, and they love me. I am a good father, and they deserve to have me be a substantial part of their life. Had a presumption been in place, I have little doubt we would have had our case resolved well short of trial, saving unnecessary expenses and strained familial relationships. Furthermore, the money that was blown away on court costs and attorney fees could have been set aside as I originally desired: for their college education. Now, there is no way for me to put aside money for their college. I can barely make ends meet.

Measure 6

During the interim of my divorce, Measure 6 was brought for a vote. I was in favor of shared parenting and supported Measure 6. My attorney, on the other hand, wrote one of the most aggressive and condescending op-eds in opposition, referring to supporters as nothing more than sore losers. An incredible statement in and of itself. But the op-ed went on, and the public was misled. He claimed Measure 6 would divide children's time in half between moms and dads, in every case. This is false. There was a presumption. Nothing in Measure 6 made shared parenting mandatory. He claimed that babies and toddlers need a primary parent and suffer if separated. This is false. He claims that the best way to predict how children in equal custody arrangements fare is whether their parents are civil and cooperative with each other. This is false. He claimed children fare better in one household out of routine and stability. This is false. The statistics show just how catastrophic this can be, placing children at greater risk in a number of issues. Mr. Gjesdahl's advice is the direct opposite of what is in the children's best interests – it is the surest path to increase a multitude of problems. His commentary has routinely been debunked. By his line of reasoning, it would be best just to eliminate the other parent from the child's life all together – for the sake of "routine and stability." And if you follow Mr. Gjesdahl's suggestions, I'll tell you what you get: I personally have talked to parents that have gone bankrupt, living out of a truck because all money has gone towards attorney fees, trying to get time with their kids; developed substance abuse problems; battle depression; spoken to parents that become suicidal because the pain is so great; and am aware of an individual that was successful in their suicide. Mr. Gjesdahl's commentary caused great harm to the public. The only person that was protected by his op-ed was himself, in preserving his business.

Nearly \$50,000 was expensed by the Family Law Section to defeat Measure 6. Had I not been going through the divorce and seeing the need for reform, I probably would have followed Mr. Gjesdahl's guidance. After all, he is a well established family law attorney, a very persuasive writer, and owns the largest family law practice in North Dakota. Luckily, I have the benefit of experience and personal knowledge to know just how mistaken he is. The public trusted opinions such as his. The public was misled. Measure 6 was defeated. Today we call this Fake News. As Justice Sandstrom said in his dissent of Stock v. Stock, 2016 ND 1, ¶ 42, "successful family law attorneys may be expected to oppose reform of the present expensive system."

Opponents will try to claim HB 1392 is just Measure 6 2.0. Wrong. There were some valid concerns raised through the Measure 6 debate, such as distance of parents, children of special needs and criteria which would specify when it is not in the child's best interest to have shared parenting. Those concerns have been addressed and incorporated into HB 1392.

Task Force

Through my continued work to raise awareness on the need for family law reform, I was recommended to be placed on the North Dakota Family Task Force. When I noticed the lack of Measure 6 supporters on the Task Force, I was told that's the reason I'm on the Task Force – a token. The Task Force is comprised of, for the most part, family law attorneys and includes vocal opponents of Measure 6. To even get the Task Force to discuss the idea of shared parenting was a task in itself. It was only after the Board of Governors directed them to include shared parenting in the discussion did such action take place.

After 18 months, the Task Force has done nothing to better the lives of our children. By their inaction, children continue to suffer. I refuse to stand by, knowing how desperately family law reform is needed, specifically child custody disputes. Our kids deserve a genuine approach to solving these problems.

I was able to connect with Dr. Linda Nielsen, one of the leading experts in child development in the country, if not the world. She has written many articles on the overwhelming empirical evidence which supports shared parenting. She agreed to appear telephonically for the Task Force. I could barely believe that not only did Dr. Nielsen return my email, agree to present, but the Task Force also agreed to hear her presentation. My optimism returned. However, upon review of the minutes at our next meeting, I noted inconsistencies, added commentary and emphasis to argue against shared parenting, and most notably, Dr. Nielsen's key point: shared parenting works in the vast majority of cases, and when it doesn't work, it's atypical. Noting the multiple flaws and errors in the minutes, I move to amend. When I don't receive a second, I ask why and am met with the response of "we don't have to give you a reason and we have more important things to take care of." Apparently having accurate minutes is not important, especially if they help deter supportive shared parenting evidence.

At another meeting, it was suggested that we eliminate the "morals" factor from the best interest factors. If we are serious about family law reform and bettering the lives of our children, I do not believe eliminating "morals" is the proper place to start.

Finally, it came time to draft some proposed legislation for you to consider this session. The legislation posed was disingenuous at best. The closest they got to bettering the lives of our kids was to include a definition of what "shared parenting" is. When the opportunity rose to vote on whether or not to send this legislation to you or wait and come back in

another two years, no way did I want this to be what you were presented with. Our kids deserve better.

States have tried to pass family law reform, specifically related to child custody. Last year, Florida passed SB 668, where language included "The court shall start with the premise that a minor child should spend approximately equal amounts of time with each parent." It passed the Senate 24-14. It passed the House 74-38. It had incredible support from the legislature, but the Family Law Section lobbied and convinced Governor Scott to veto. As they taught us in law school, just follow the money trail. We know if strong shared parenting legislation were to be put in effect, the business of family law would suffer, as conflict would diminish.

Missouri Senator Wayne Wallingford, speaking in support of Missouri's shared parenting bill, stated "most fatherlessness is not caused by abandonment; it's created by an outdated court system."

Action to Take

This bill must be passed. Family law reform is long overdue. Children continue to suffer. The public has been misled. The Task Force has done nothing to better the lives of our children in the past 18 months. This bill is based upon the findings and recommendations of world renowned social scientists, finding that shared parenting works in the vast majority of cases, and when it doesn't work, it's atypical. And here is how consultations will work if you pass this bill: a lawyer will have to explain to their client, "why is fighting over custody necessary in your case? We know social science proves it works in most cases, so why is yours in the minority?" The current conflict driven, winner take all system is failing our kids. Quit letting the children suffer through the passivity and inaction of the family law section. I think there is a fair amount of certainty that family law attorneys have a vested interest in the status quo continuing. This is why I'm before you - action is needed. And it can't be pushed back any longer. The longer we wait, the more kids suffer. Put an end to this. Support our kids. Support HB 1392.

Sean B. Kasson



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Severe Weather Announcements (3)

WDAY 6 News at 10

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Letter: Call it what it is: a sour grapes initiative

By Michael L. Gjesdahl from Fargo on Sep 27, 2014 at 11:34 p.m.

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Wise King Solomon would vote “no” on Measure 6 because it threatens to cut children in half. Remember? He made the same threat, and not because it was a good idea but because it was a bad one.

Dividing things in half may be a great idea when it comes to sharing candy or pie. But it's an awful idea when it comes to dividing time with children.

Yet that's what the sponsors of Measure 6 propose. They want courts to divide children's time half-and-half between moms and dads, in every case. They call their measure the “North Dakota Parental Rights Initiative.” A more accurate name is “The Sour Grapes Dad Initiative”; its sponsors are a group of noncustodial dads who feel victimized when courts give more consideration to their children's needs than their demands.

Child first

And that's the issue at the center of Measure 6. Should North Dakota distribute a child's time with separated parents based on the child's needs or the parents' selfish wants?

North Dakota law requires courts, in every case, to individually consider each child's “best interests,” then to fashion a custodial schedule to serve them.

To identify a child's best interests, the court must consider many facts, including: both parents' mental and physical health; their criminal backgrounds; their history with drugs and alcohol; their work hours; their ability to provide; which parent has been the child's primary caretaker; what kind of living environment each provides; what kind of people each parent spends time with; whether they are alienating; and more.

Measure 6 would replace this case by case, child by child, family by family evaluation with a one-size-fits-all approach. It would require judges to assume, rather than think, and to use the same time-share proportion for all children and all families, despite their differences. It would ping-pong children back and forth between parents, making them live half-time with each. Its “reasoning” has nothing to do with those children's interests, everything to do with aggrieved dads' self-focus.

Common sense

But both social sciences and common sense see things differently. In most instances, children are best-served with one primary home; with routine; with stability.

You be the judge. Here are a few common fact patterns judges regularly see. In each scenario, would you want to provide the child an individualized schedule ... or be stuck with Measure 6's cookie-cutter, halvesies, approach?

Babies and toddlers: Psychologists tell us that babies require a primary parental attachment, that it's harmful to separate them from their primary parent for more than a few hours at a time. Likewise, toddlers suffer if separated from their primary parent overnight. To Measure 6, though, what we know about children's developmental tolerances is irrelevant. It doesn't matter that harm is done to kids because, to its sponsors, this is about being "fair" to parents, not doing right by kids.

The paternity case: Census data tells us approximately half of all children are born out-of-wedlock, many times to men who have moved on by the time they're born. By the time a paternal relationship is legally established, the child has usually been living with Mom for more than a year, maybe two, often more. By then, the child doesn't know Dad from a stranger on the street. Measure 6 says, "so what?" Even an absent dad is "fit" and the child's best interests don't matter; even a previously uninvolved dad should have equal time with a child. Do you agree?

The bad divorce: Psychologists tell us that the single best predictor of how children in equal custody arrangements fare is whether their parents are civil and cooperative, or hostile and uncommunicative, with each other. Well, think about it. Which of these descriptions best match your understanding of most divorced couples? Are they divorced because of how well they worked together, or because they stopped working together? Measure 6 doesn't care. Under its terms, hostile and nonfunctioning couples will share equal time with their kids – even though we know it will likely harm the kids' well-being.

The primary caretaker: Most couples develop portfolios of responsibility. For many, when it comes to parenting, one party takes a strong lead, maybe even gives up the employed life to devote all energies to tending kids. Maybe the other parent is a workaholic, giving first priority to career. When those parents live a life based on one taking the primary parenting role, upon separation shouldn't the kids continue in that parent's primary care? Measure 6 says "no." It says, "let's think about parents first, kids last."

Solomonic choice?

But maybe you're less like a Measure 6 me-firster and more like King Solomon. When a child's fate was in his hands, he knew better than to actually cut it in half. When you step in the booth to vote on Measure 6, the fate of North Dakota's children will be in your hands. When that moment arrives, don't be suckered by the attractive phrase "equal parental rights." In this instance, "equal" means "half" and you should stand with wise old Solomon. Vote "no" on Measure 6.

Gjesdahl, Fargo, owns North Dakota's largest family law firm. It represents fathers and mothers in equal proportion.

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Decades of Research Supports Better Outcomes for Children with Joint Physical Custody and Equal Shared Parenting

Joint Physical Custody Puts the Best Interests of Children First and Means Better Outcomes for Children *(when, of course, appropriate exceptions are made for abuse, harm, neglect, abandonment, and endangerment, and appropriate protections are in place for victims of domestic violence)* There is an enormous amount of research that has been conducted for well over 3 decades which clearly continues to renew the findings that, without question, sole-custody to one parent at the expense and unwarranted removal of another fit parent, has created negative outcomes for children. While there are exceptions to everything, there is wide-spread agreement that family court is not working, and the statutory and government attempts to micro-manage these families and decide which fit parent is the “better” or “less than better” parent, is not working. This trend must be reversed. Why? Because children benefit from what each parent has to offer, and children benefit most from maximizing involvement with each fit parent.

It does no service to the children to continue the current policy to remove one fit parent in the current statutory scheme which supports an outcome of one “winner” and one “loser” as the model for family court custody determinations – especially when this is done EVEN when each parent is ready, willing, and able to take responsibility for their children. As far back as the early 1970’s (and before) when many of these custody laws were developed, our society looked very different than it does today. (In 1970 and before, few women worked outside the home and few fathers took substantial parenting roles). Decades of research show us now there is clearly no need to remove a fit parent, just because those parents are separated. We must no longer “divide the children” like a stick of furniture that can only reside in one place.

Chances are, it’s very difficult for every policy maker to become an expert on the research. There are people who have done this, but our legislative process does not provide a good forum for constituents, the citizens, to share all the research with all legislators.

The following is a **mere glimpse of the volumes of research available over 3 decades in support of a rebuttable presumption of joint physical custody and shared parenting, as close to equal as possible.**

Abundance of Research Speaks Consistently in Favor of Joint Physical Custody and Shared Parenting

This article serves to review the research from the past decade (2000 – 2010) and serves as a research guide to help policy makers “overcome their reservations about shared parenting ... **Considering the research, it’s hard to understand why more policy makers ... are not in favor of shared parenting.** Taking an optimistic stance, we can assume that too many people are simply unaware of what the research shows. Taking a more pessimistic stance, we might wonder if many people – especially influential people like judges and custody evaluators – are still guided by two disturbing myths: that men – married or divorced – are inferior to women as parents and that the most significant contribution fathers can make to their children is money – especially after a divorce. It’s been said that many of us would rather base our decisions on one good, soul satisfying emotion than on a hundred facts. Let’s hope this becomes less true as the research on shared parenting becomes more widely disseminated.”

Source: Nielsen, Linda Ed.D., M.S. “Shared residential custody: Review of the Research.” Journal of Divorce & Remarriage, (2011), 52:8, 586-609. Dr. Nielson is a professor of Adolescent and Educational Psychology in the Department of Education at Wake Forest University in Winston Salem, NC. She is known for her research on father-daughter relationships and shared parenting. This quote from 2010 version.

What Children Want

"Our participants, who have lived through their parents' divorces and have now entered young adulthood (and college) have given us their 'expert' advice. Seventy percent of them, men and women alike, believe that **living equal amounts of time with each parent is the best arrangement for children.**"

Source: Fabricius, W.V. and J. Hall, (2000) "Young Adults Perspective on Divorce", Family and Conciliation Courts Review, Vol. 38, 446-461.

What About Child Satisfaction

“Children have expressed higher levels of satisfaction with joint physical custody than with sole custody arrangements; citing the benefit of remaining close to both parents. Joint custody does not create confusion for the majority of youngsters about their living arrangements or about the finality of the divorce, nor does increase loyalty conflicts.”

Source: (Leupnitz, 1982; Shiller, 1986a, 1986b; Steinman, 1981).

The Current System Is Not Working – and it's been known for decades, yet nothing has been done

“It is ironic, and of some interest, that we have subjected joint custody to a level and intensity of scrutiny that was never directed toward the traditional post-divorce arrangement (sole legal and physical custody to the mother and two weekends each month of visiting to the father.) **Developmental and relationship theory should have alerted the mental health field to the potential immediate and long range consequences for the child of only seeing a parent four days each month. And yet until recently, there was no particular challenge to this traditional post-divorce parenting arrangement, despite growing evidence that such post-divorce relationships were not sufficiently nurturing or stabilizing for many children and parents.** There is some evidence that in our well-meaning efforts to save children in the immediate post-separation period from anxiety, confusion, and the normative divorce-engendered conflict, we have set the stage in the longer run for the more ominous symptoms of anger, depression, and a deep sense of loss by depriving the child of the opportunity to maintain a full relationship with each parent.”

Source: Kelly, J. 1991. Examining Resistance to Joint Custody. Joint Custody and Shared Parenting, second edition, Guilford Press.

On Outcomes for Children

“Children in joint physical or legal custody were better adjusted than children in sole-custody settings, but no different from those in intact families. More positive adjustment of joint-custody children held for separate comparisons of general adjustment, family relationships, self-esteem, emotional and behavioral adjustment, and divorce-specific adjustment. Joint-custody parents reported **less current and past conflict than did sole-custody parents**, but this did not explain the better adjustment of joint-custody children. The results are consistent with the hypothesis that joint custody can be advantageous for children in some cases, possibly by facilitating ongoing positive involvement with both parents.”

Source: Bauserman, R., (2002) “Child Adjustment in Joint-Custody Versus Sole-Custody Arrangements: A Meta-Analytic Review”, Journal of Family Psychology, Vol. 16, No. 1, (2002) 91-102.

“Joint custody led to **better child outcomes** overall.”

Source: Kelly, J. B. (2000). Children's adjustment in conflicted marriage and divorce: A decade review of research. Journal of the American Academy of Child and Adolescent Psychiatry, 39, 963-973.

Joint Custody for Parents in Conflict

“Joint custody is also the preferred option in high conflict situations because it helps reduce the conflict over time - and that is in the best interests of the children.” Bender reviews current and historical research on the ‘myths’ of joint custody, i.e. - that joint custody should not be awarded when the mother objects or in high conflict matters. The article describes the benefits of joint custody including that children adjust better post-divorce in joint custody as compared to sole custody awards, children’s attachment to both parents post-divorce is essential for healthy child development, joint custody leads to higher levels of financial compliance, **relitigation is lower as compared to sole custody, and joint custody leads to the best outcome for children** even in high conflict situations because it forces resolution and best leads to reduction of child stress in the long term.

Source: Bender, W.N. 1994. Joint custody: The option of choice. Journal of Divorce & Remarriage 21 (3/4): 115-131.

The Need for Improved Policy Called for LONG AGO – Change is Long-Overdue

This report “summarizes and evaluates the major research concerning joint custody and its impact on children’s welfare.” The report concludes that “The research reviewed supports the conclusion that **joint custody is associated with certain favorable outcomes** for children including **father involvement, best interest of the child for adjustment outcomes, child support, reduced relitigation costs**, and sometimes reduced parental conflict.” The APA also noted that “**The need for improved policy to reduce the present adversarial approach that has resulted in primarily sole maternal custody, limited father involvement and maladjustment of both children and parents is critical.** Increased mediation, joint custody, and parent education are supported for this policy.”

Source: Division 16, School Psychology, American Psychological Association, Report to the U.S. Commission on Child and Family Welfare, June 14, 1995.

Policy Makers are Encouraged to Contact CPR Founder for More Research Available on This Same Subject



This educational brochure is provided as a public service by:
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CPR Project Mission: to remove the obstacles that prevent both parents from being fully and equally involved in the lives of their children.

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“Arguments for an Equal Parental Responsibility Presumption in Contested Child Custody”

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By: Edward Kruk

The American Journal of Family Therapy, 40:33-55
2012

16 Arguments In Support of Equal Parental Responsibility

1. Equal Parenting Preserves Children's Relationships With Both Parents

- “... children's highest level of emotional security is at 50% time levels with each of their parents Traditional visiting patterns and guidelines are, for the majority of children, outdated, unnecessarily rigid, and restrictive, and fail in both short and long term to address their best interests ... equal parenting arrangements are durable over the long-term and provide significantly more and better quality parental care time for children than sole custody arrangements.”

2. Equal Parenting Preserves Parents' Relationships With Their Children

- “An EPR presumption would go along way toward preventing parental disengagement from children's lives, in those situations in which parents want to maintain an active role as caregivers to their children ... maximizing parental well-being encourages and increases parental availability and responsiveness to children and this in turn maximizes children's well-being.”

3. Equal Parenting Decreases Parental Conflict and Prevents Family Violence

- “‘Winner-take-all’ adversarial processes and sole custody or primary residence orders are strongly associated with exacerbation or creation of parental conflict ... Given the high stakes involved; when primary parent-child relationships are threatened, the risk of violence rises dramatically ... Rather than accepting that high conflict is inevitable, the goals should be to reduce parental conflict after divorce ... current literature does not support a presumption that the amount of parenting time should be limited in cases of high conflict, and high conflict should not be used to justify restrictions on children's contact with either of their parents.”

4. Equal Parenting Respects Children's Preferences and Views About Their Needs and Best Interests

- “... children strongly favor equal parenting and consider shared parenting to be in their best interests. Seventy percent of children of divorce believe that equal amounts of time with each parent is the best living arrangement for children ...”

5. Equal Parenting Respects Parents' Preferences and Views About Their Children's Needs and Best Interests

- “Public opinion polls report that EPR is favored by about 80% of parents, with a slightly higher percentage of women favoring a legal presumption than men.”

6. Equal Parenting Reflects Child Caregiving Arrangements Before Divorce

- “... mothers and fathers working outside the home now spend about the same amount of time caring for their children ... a 51/49% split of child care tasks.”

7. Equal Parenting Enhances the Quality of Parent-Child Relationships

- “Quantity is necessary for quality, and there is a direct correlation between quantity of time and quality of parent-child relationships ...”

8. **Equal Parenting Decreases Parental Focus on “Mathematizing Time” and Reduces Litigation**
 - “... and EPR presumption reduces strategic bargaining, hostile negotiations and litigation, and remove child custody from the adversarial arena ...it also addresses the problem of ‘one-shoe-fits-all’ arrangements prevalent in sole custody ... An EPR approach guides parents toward the development of individualized parenting plans ... the EPR model we propose ... apportioning 50-50 time ... scheduled according to children’s ages and stages of development.”
9. **Equal Parenting Provides and Incentive for Inter-Parental Negotiation, Mediation, and the Development of Parenting Plans**
 - “Within a BIOC/sole custody system, however, there little incentive for parents who foresee winning sole custody.”
10. **Equal Parenting Provides a Clear and Consistent Guideline for Judicial Decision-Making**
 - “... the discretionary power of judges an area in which they are neither professionally trained, nor competent to assess third party evaluations or professional literature on the matter, is a receipt for disaster ... In the case of two fit and loving parents, the act of judges privileging one parents over the other ... lacks empirical foundation.”
11. **Equal Parenting Reduces the Risk of Incidence of Parental Alienation**
 - “Parental alienation flourishes in situation where one parent has exclusive care and control of children ...”
12. **Equal Parenting Enables Enforcement of Parenting Orders, as Parents are More Likely to Abide by an EPR Order**
 - “access denial is endemic in sole custody families ... rank-ordering of parents fuels discord ...”
13. **Equal Parenting Addresses Social Justice Imperatives Regarding Protection of Children’s Rights**
 - “... permitting remove of parental custody subsequent to divorce discriminates against children of divorce, permitting judges to remove custody from a parents on the basis of ... discretionary BIOC standard ... and EPR presumption applies the more stringent ‘child in need of protection’ standard to warrant parental removal ...”
14. **Equal Parenting Addresses Social Justice Imperatives Regarding Parental Authority, Autonomy, Equality, Rights and Responsibilities**
 - “... there is no basis in law or psychology for preferring one parent over the other, or for choosing between two ‘good enough’ parents contesting custody ...”
15. **The BIOC/Sole Custody Model is Not Empirically Supported**
 - “The evidence of the failure and harms of the sole custody model ... is abundant ... the pattern of primary residence to one parent with intermittent ‘visitation’ granted to the other continues, not subject to the degree of scrutiny and challenge it deserves.”
16. **A Rebuttable Legal Presumption of Equal Parenting Responsibility is Empirically Supported**
 - “The empirical evidence of the effectiveness of equal parenting as a viable alternative to a sole custody approach is mounting ... and EPR presumption is widely supported by both parents and professionals, and is beneficial and working well for children ...”

Full Source: (see title above for details to access full article)

Source: <http://www.psychologytoday.com/blog/co-parenting-after-divorce/201204/sixteen-arguments-in-support-co-parenting>



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CPR is an all volunteer grass roots organization mobilizing like-minded citizens exposing the problems in family court, educating people about the solution, and seeking family law reform, for the best interest of children.

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Project Mission: remove the obstacles that prevent both parents from being fully and equally involved in the lives of their children.

Date: Sun, 05 Feb 2017 09:18:57 PM CST

From: "Arnold Fleck" <arnfleck@usa.net>

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Subject: Vote "Do Pass" on HB 1392 on Shared Parenting

Dear Chairman Koppelman and other distinguished members of the House Judiciary Committee:

I write to encourage your support for HB 1392, which would, if enacted into law, create a presumption in favor of shared parenting in child custody disputes in the State of North Dakota. I worked with House Representative Tom Kading in drafting the bill. I greatly appreciate the foresight that Representative Kading has shown in the development of the bill and the willingness of the other so-sponsors of the bill, Representatives Dwight Kiefert, Aaron McWilliams, Brandy Pyle, Shannon Roers Jones, and Don Vigesaa, to join Representative Kading in supporting such an important bill for children of North Dakota in this legislative session. You now have the opportunity to improve the lives of many children in North Dakota, who find or will find themselves in the middle of the break up of their parents' relationship, and, in some instances, even save the lives of some of those children. The bill was prepared with the intent of implementing, as the law in child custody disputes in North Dakota, the findings and recommendations made by internationally recognized child development experts after their review of social science studies from approximately the past 30 years. Those findings and recommendations are set forth in the following published articles, copies of which first five articles are also attached to this email and copies of the remaining six articles will be attached to a subsequent email that I will be sending to you shortly after I send this email to you due to the attachment limits set by my email service provider, should you decide you want to read one or more of those articles:

1. Richard A. Warshak, Social Science and Parenting Plans for Young Children: A Consensus Report, 20 Psychol. Pub. Pol'y & L. 46 (2014) (discussing the consensus of 110 researchers and practitioners supporting shared parenting arrangements).
2. Richard A. Warshak, Parental Alienation: Overview, Management, Intervention, and Practice Tips, 27 J. Am. Acad. Matrim. Law., in press (2015) (discussing problems associated with parent removed from child's life).
3. Fabricius, W. V., Sokol, K. R., Diaz, P., & Braver, S. L. (2016). Father-child relationships: The missing link between parenting time and children's mental and physical health. In Leslie Drozd, Michael Saini & Nancy Olesen (Eds.), Parenting Plan Evaluations: Applied Research for the Family Court (2nd ed.) (XXX-XXX). New York, NY: Oxford University Press.
4. Fabricius, W.V., Sokol, K.R., Diaz, P., & Braver, S.L. (2012). Parenting time, parent conflict, parent-child relationships, and children's physical health. In K. Kuehnle & L. Drozd (Eds.) Parenting Plan Evaluations: Applied Research for the Family Court (pp. 188-213). Oxford University Press.
5. Fabricius, W.V., Luecken, L.J. Postdivorce Living Arrangements, Parent Conflict, and Long-Term Physical Health Correlates for Children of Divorce, 21 J. Fam. Psychol. 195 (2007) (finding more time children lived with fathers after divorce, the better their long-term relationships, even with high parent

conflict).

6. Linda Nielsen, Shared Physical Custody: Does It Benefit Most Children? 28 J. Am. Acad. Matrim. Law. 79 (2015) (discussing 40 studies where it is found that shared physical custody benefits most children).

7. Linda Nielsen, Shared Physical Custody: Summary of 40 Studies on Outcomes for Children, Journal of Divorce & Remarriage, 55:8, 613-635 (2014) (discussing 40 studies where it is found that shared physical custody benefits most children).

8. Linda Nielsen, Woozles: Their Role in Custody Law Reform, Parenting Plans and Family Court, 20 Psychol. Pub. Pol'y & L. 164 (2014) (discussing research being misrepresented and misused by groups for their own political purpose and such flawed representations being accepted).

9. Linda Nielsen, Parenting Plans for Infants, Toddlers, and Preschoolers: Research and Issues, 55 J. Divorce & Remarriage 315 (2014) (confirming there is no evidence to support postponing the introduction of regular and frequent involvement, including overnights, of both parents with their babies and toddlers, and this confirmation should be taken into account in reforming custody laws).

10. Linda Nielsen, Shared Residential Custody: Review of the Research (Part I of II), 27 Am. J. Fam. L. 61 (2013) (discussing shared residential custody, the children's perspective, parental conflict, and cooperation and income).

11. Linda Nielsen, Shared Residential Custody: Review of the Research (Part II of II), 27 Am. J. Fam. L. 123 (2013) (discussing characteristics of fathers, outcomes for children (e.g. academic and behavioral), and stability of shared parenting).

Professor Linda Nielson, the author of a majority of the above articles and one of the leading experts, if not the leading expert, on shared parenting in our country, has offered, if you are interested, "to have a one hour conference call with [your] committee [provided the members have read her] articles and want to ask [her] specific questions about the research." Though I requested Dr. Nielson's attendance at your hearing, she indicated she could not appear and testify in support of any bill because she believes any such appearance could jeopardize her qualifications "as an expert witness in custody hearings - and might raise concerns in the academic community that [she is] biased in [her] presentations of the research in CLE workshops and in [her] articles." I wanted her to be present at your hearing on HB 1392, but the most to which I could get her to commit was the one hour telephone conference described above. If one or more members of your committee wants to take Dr. Nielson up on her offer, let me know and I'll do whatever it takes to make it happen.

It has now been over ten years since shared parenting was first advocated for in the State of North Dakota, in the form of a 2006 Initiative Measure. It has, since then, been brought back into the spotlight here in North Dakota, pretty much every two to five years, while being a topic raised in other states more recently on an almost an annual basis. During the 2011 North Dakota Legislative Session, SB 2201 was rejected. In the 2013 North Dakota Legislative Session bills that would have just forced state's attorneys and law enforcement officials across the State to enforce existing child visitation/parenting time orders were rejected. And, most recently, in 2014 Initiative Measure #6 was rejected by the voters. On May 27, 2012, the Minnesota Governor vetoed a shared parenting bill that was passed by the Minnesota House and Senate. In 2012 the State of Arizona enacted a new custody law that encourages joint parenting, including requiring their courts to adopt a plan that "maximizes" both parents' time with the child and forbids the court from giving one parent preference based on the parent's or child's gender. In 2014, the State of South Dakota enacted a "Shared Parenting Law" that encourages shared parenting awards. In 2015 Minnesota

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changed its law to to recognize the benefits of maximizing the time children spend with both parents. On April 18, 2016, Florida Governor vetoed a shared parenting bill that had been passed by the Florida legislature. The last time I checked, Alaska and Oklahoma laws provided substantially equal access between minor children and both parents at the onset of the separation of the parents, and Texas and the District of Columbia laws provided a minimum of 40% access between children and their parents.

As revealed in the above articles, based on more than 40 studies, there is now a consensus among large groups of international experts that the vast majority of children benefit most from shared parenting after their parents separate. The 40 plus peer-reviewed studies compared children in shared parenting families where they continued to live with each parent at least 35% of the time to children who live primarily or exclusively with one parent while continuing to see their non-residential parent. The results are clear and unambiguous. The children in shared parenting families have better outcomes.

Unfortunately, too many mental health professionals and family court professionals make custody recommendations or decisions that are based on their personal beliefs, gut feelings or personal experiences with the most extreme custody cases - not on empirical data. Indeed, many of these professionals have never read the available research. Just as some poorly informed doctors offer outdated or harmful advice about medical treatments, there are professionals who offer advice to judges and mental health practitioners that is not research-based. More troubling still, many of these speakers and writers convincingly present their opinions as if they were actually reporting empirical data - a disguise that is not only disingenuous but potentially harmful to children whose lives are affected by judges' and mental health practitioners' decisions regarding custody issues. In short, too many well-intentioned judges and practitioners have been misled into accepting advice that is not based on empirical evidence.

Sharing the physical custody of the children on a more equal basis is not about parents' rights or about activist groups. It is about making the best choices for children - decisions that are firmly grounded in research - not on the personal opinions of parents, seminar speakers, mental health practitioners or professionals working in family courts.

Social science proves, when couples separate, shared parenting works in the clear majority of cases. Current North Dakota law requires, in essence, one parent be awarded sole custody unless the parents agree to shared parenting, and results in shared parenting awards being the exception, not the norm. Social science proves when a child does not spend at least 35% time with an able, willing and fit parent, that child is being deprived of his/her best outcome, academically, physically, mentally, socially, and economically. HB 1392 protects the parent-child relationship with each fit parent, and, if enacted, will actually promote children's best interests, by mandating shared parenting awards in cases where social science studies have show such awards are in the best interests of the children, while at the same time mandating sole custody awards in the cases where shared parenting has been proven not to be in the best interests of the children, such as in cases were it is clearly shown that one parent has abandoned, abused, or neglected the children or is not capable of properly caring for the needs of the children, or the distance that the parents live apart makes a shared parenting award not in the children's best interest.

It is well know that children do better when both parents remain involved in their lives. Shared parenting should be the norm, rather than the exception.

Please support HB 1392. Our children deserve your support of HB 1392.

Respectfully,

Arnold "Arnie" Fleck

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- [☐ Warshak, Social Science and Parenting Plans for Young Children - A Consensus Report 2014.pdf \(241K\)](#)
- [☐ Warshak, Parental Alienation - Overview, Management, Intervention, and Practice Tips 2015.pdf \(445K\)](#)
- [☐ Fabricius, Sokol, Diaz, & Braver, Father-child relationships - The missing link between parenting time and children's mental and physical health 2016.pdf \(2649K\)](#)
- [☐ Fabricius, Sokol, Diaz, & Braver, Parenting time, parent conflict, parent-child relationships, and children's physical health 2012.pdf \(12944K\)](#)
- [☐ Fabricius & Luecken, Postdivorce Living Arrangements, Parent Conflict, and Long-Term Physical Health Correlates for Children of Divorce 2007.pdf \(108K\)](#)



Resume – Dr. Linda Nielsen

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Education

1967-69 B.A. English (High school teaching certification) University of Tennessee, Knoxville
1970-72 M.A. Educational Psychology & Counseling U.T. Knoxville
1972-74 Ed.D. Educational Psychology & Counseling U.T. Knoxville
Area of concentration: Adolescent Psychology

Teaching Experience

1970-1973 High school English teacher, Knoxville, TN.
1973-1974 Instructor. University of Tennessee, Knoxville
1974-present Professor of Adolescent & Educational Psychology Wake Forest University

Areas of expertise: Shared parenting for children with separated parents
Father-daughter relationships
Adolescent psychology

Principle courses: Children of Divorce Child Custody: Research and Issues
Fathers & Daughters Adolescent Psychology

Books

Child custody & parenting plans: Research & Issues (under review)
Father-Daughter Relationships: Contemporary Research and Issues (2012) Routledge.
Between Fathers & Daughters: Enriching or Rebuilding Your Adult Relationship (2008) Turner Publishing
Embracing Your Father: Building the Relationship You Always Wanted with Your Dad (2004) McGraw Hill
Adolescence: A contemporary view (1987-1996, 3 editions) Harcourt Brace
How to motivate adolescents: A guide for parents, counselors and teachers (1983) Prentice Hall/

Distinctions and awards

1969 Phi Beta Kappa
1969 Outstanding graduate award. College of Education. University of Tennessee, Knoxville
1975 Fourteen grants. WFU Research & Publications Fund
1980 National award for outstanding article: Women's Scholars. U.S. Office of Education
1980 Post-doctoral Fellowship: American Association of University Women (9 awarded)
1983 Reynolds Leave to write book: How to Motivate Adolescents
1989 Reynolds Leave to write book: Adolescence: A contemporary View
1998 American Bar Association: Service Award for Domestic Violence Advocacy Program
1999 Archie Grant: Research on fathers and daughters
2000 CELI grant for technology training for course enhancement
2001 Reynolds Leave to finish book: Embracing Your Father
2001 Award for Fathers & Daughters syllabus: State University of New York, Buffalo
2002 Community Service Award: Today's Woman Health Center
2004 National Public Radio: one hour program on my Fathers & Daughters book
2005 PBS documentary featuring my work on Fathers & Daughters
2009 TLC grant, Wake Forest, Children of Divorce course development
2010 Reynolds leave to finish book: Fathers and Daughters
2012 WFU Humanities grant for new course development (Child Custody course)
2013-2016 WFU Community Engagement Grant for seminars to judges & lawyers

Professional memberships

Association of Family and Conciliation Courts
 American Council on Contemporary Families
 Association for the study of emerging adulthood
 National Council on Family Relations

Shared parenting (shared physical custody): Publications & Professional Activities

National service 2005-2015

Research & consultation provided for custody reform committees: Bermuda, Scotland, United Kingdom, Israel, Canada, Romania, Sicily, Australia, Arizona, Oregon, Wisconsin, Illinois, Minnesota, Nebraska, South Carolina, North Carolina, and West Virginia.

Expert witness testimony

Vetted as an expert on shared parenting research for child custody cases in Alabama, Georgia, Florida, Kentucky, and North Carolina.

Seminars on shared parenting research

Louisiana Bar Association: Family Law	November	2014	New Orleans
North Carolina Bar Association: Family Law Specialists Conference	July	2014	Raleigh, NC
South Carolina Bar Association: Family Lawyers' Conference	January	2014	Charleston, SC
North Carolina Bar Association: District Court Judges Conference	October	2013	Charlotte, NC
Midwestern Family Law Conference	October	2012	Omaha, Nebraska
Conference on Shared Custody Research	May	2011	Bermuda
Association of Family & Conciliatory Courts National Conferences			
Shared physical custody: Research and custody implications		2012,	Chicago
Divorced father-daughter relationships: Implications for custody		2009,	Denver

Academic journal articles (peer reviewed) Shared parenting & children of divorce

"The Conflict about conflict: Re-examining the research on parental conflict and child custody (2015, *presently under review*)

"Shared physical custody: Does it benefit most children?" (2015) *Journal of American Academy of Matrimonial Lawyers*, 28, 79-139.

"Pop goes the woozle: Being misled by the research on child custody and parenting plans." (2015) *Journal of Divorce & Remarriage*, 56, 595-633.

"Woozles: Their role in family court, custody law reform and parenting plans." (2014) *Psychology, Public Policy and Law (American Psychological Association)*, 20, 46-67.

"Parenting plans for infants, toddlers and preschoolers: Research and issues (2014) *Journal of Divorce & Remarriage*, 55, 315-334.

"Shared physical custody: Summary of 40 studies on outcomes for children" (2014) *Journal of Divorce & Remarriage*, 55, 613-635

"Shared parenting: Review of the Research" (2013) *American Journal of Family Law*, 27, 61-72 & 123-137.

"Divorced fathers and their daughters: A research review" (2011) *Journal of Divorce & Remarriage*, 52, 77-93.

"Shared residential custody: Research and issues" (2011) *Journal of Divorce & Remarriage*, 52, 586-609.

"Disenfranchising, demeaning & demoralizing divorced dads" (1999) *Journal of Divorce & Remarriage*, 31, 139-177.

"Stepmothers: Why so much stress?" (1999) *Journal of Divorce & Remarriage*, 30, 115-148.

"College students with divorced parents" (1999) *College Student Journal*, 30, 542-573.

"Adolescents from divorced and blended families" (1993) *Journal of Educational Psychology*, 42, 176-199.

State Bar & National Associations' Magazines

- "Ten damaging myths: Shared Custody and Fathering Time" (January, 2013) *Oregon Family Law Newsletter*.
 "Shared Residential Custody: Dogma vs. Data" (January, 2013) *Nebraska Lawyer Magazine*
 "Custody for young children: Myths and Misconceptions" (March, 2013) *Wisconsin Family Law Newsletter*
 "Shared Residential Custody: Research Family Lawyers (Feb, 2013) *Atlanta Bar Association Magazine*.
 "Shared residential custody: Fact and Fiction" (October, 2012) *North Carolina Family Bar Newsletter*

Father-Daughter Relationships: Publications & professional activities

National recognition for father-daughter research

Article by Pulitzer Prize winning journalist, Kathleen Parker about my course

PBS documentary about my Fathers and Daughters course 2005

National Public Radio show with Frank Stasio 2004

Radio, newspaper & magazine interviews including: Wall Street Journal, Chicago Tribune, Washington Post, Arizona Republic, Cosmopolitan, National PTA Magazine, Military Wives, Good Housekeeping, Seventeen, Woman's Day, Woman's Health, and Psychologies.

Publications: Books

Father-Daughter Relationships: Contemporary Research and Issues (Routledge, 2012)

Between Fathers & Daughters: Enriching or Rebuilding Your Adult Relationship (Turner Publishing, 2008)

Embracing Your Father: Building the Relationship You Always Wanted With Your Dad (McGraw Hill, 2004)

Chapters in books

"Father-daughter relationships" (2015, in press – 35 page chapter) in Mazza & Perry, eds. *Fatherhood in America: Social work perspectives in a changing society*. New York: Charles Thomas Publishers

"Fathers & daughters: A needed course in family studies" (2007) *The Craft of Teaching about Families* NY: Haworth Press.

Articles in peer reviewed academic journals

"Young adult daughters' relationships with their fathers: Review of recent research (2014) *Marriage and Family Review Journal*, 50, 1-13.

"College daughters' relationships with fathers: A 15 year study (2007) *College Student Journal*, 41, 112 -123.

"Father-daughter relationships: Review of Research" (2005) *Marriage & Family Review*, 38, 1-13.

"Fathers & Daughters: Why a course for college students?" (2001) *College Student Journal*, 35, 280-316

"Self-esteem & eating disorders in female undergraduates" (2000) *College Student Journal*, 34, 352-377.

Magazines

"Strengthening father-daughter relationships in military families" (2005) *Military Spouse Magazine*, 4, 22-28.

"How public schools can strengthen father-daughter relationships" (2009) *National PTA Magazine*

"Helping clients with father-daughter issues" (2005) *North Carolina Counselors Association Newsletter*.

Lectures and seminars on fathers & daughters

National Men's Studies Association National Conference 2008

Wake Forest University: Seminars for fathers 2008- 2010

North Carolina State Conference for School Counselors 2004

National Women's Studies Association Conference 2000

University of San Francisco, Quito, Ecuador 2000

Adolescent Psychology: Publications & professional activities

Books

Adolescence: A contemporary view (Harcourt Brace, 1987-1996, 3 editions) 700 page college textbook
How to motivate adolescents: A guide for parents, counselors and teachers (Prentice Hall, 1983)

Academic journal articles & book chapters

- "Adolescents' Locus of control and reading abilities" (1989) *Reading Improvement*, 46,15-27.
 "Teaching adolescents self-management" (1983) *Educational Clearinghouse*, 34, 22-31.
 "Decreasing adolescents' feelings of powerlessness" (1983) *American Secondary Education*, 36,33-41.
 "Contingency contracting with adolescents" (1980) *Programs for Special Children* J. Thomas (ed) Ornyx Press, Tucson, Arizona
 "Decreasing female students' math anxiety" (1979) *College Student Journal*, 13, 51-58.
 "Creative activities for teaching psychology" (1979) *New Directions in Teaching*, 6, 1-9.
 "Counseling suspended high school students" (1979) *American Personnel & Guidance Journal*, 18, 442-446.
 "Creating in-school suspension programs for adolescents" (1979) *School Counselor*, 42, 325-332.
 "Project Acumen: Helping learning disabled adolescents" (1979) *Learning Disabilities*, 45,70-75.
 "Contingency contracting with adolescents" (1978) *Secondary Education*, 18, 12-24.
 "Effects of criterion referenced grading" (1977) *Journal Educational Research*, 14, 71-81.
 "The effects of a college contingency system" (1976) *College Student Journal*, 8, 153-168.
 "Analysis of Keller's personalized instruction system" (1976) *Experimental Education*, 44, 49-53.
 "Increasing high school students' classroom participation" (1975) *Secondary Education*, 9, 23-29.

National Conferences

Professional development for feminist psychologists, National Association for Women in Psychology (1980)
 Decreasing female students' math anxiety. American Personnel & Guidance Association (1978)
 Creative strategies for teaching psychology. American Psychological Association (1976)

Federal Research Grants: Program designer, staff trainer & researcher

Project Acumen: Teaching learning disabled adolescents Guilford County Schools 1976-1977
 Creating in-school suspension programs Forsyth County School System 1977-1978

School Workshops: Motivating adolescents

Motivating female students Alliance of Math & Science for Girls Reidsville, NC 1985
 Motivating adolescents Guilford, Forsyth & Yadkin County Schools 1975-1985
 Establishing in-school suspension programs N.C. Center for Teachers 1979

Women and Gender Studies: Publications & professional activities

Publications

- "Alchemy in academe" (1982) *Handbook for Women Scholars* U.S. Office of Education
 "Sexism and self-healing in the university" (1979) *Harvard Educational Review*, 49, 467-478.
 "Profile of the ideal colleague" (1979) *Improving College & University Teaching*, 27, 163-168.
 "Counseling married career women" (1976) *National Association of Women Deans, Administrators & Counselors Journal*, 8, 12-22.

Professional activities

Director: WFU Association of Women Faculty 1983 - 1985
 Director: WFU Women's Studies Internships 1985 - 2005
 Women's Studies Steering Committee 1985- 2005

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Jason McLean HB 1392 Testimony: February 7, 2017

Good morning. My name is Jason McLean. I am the past chair of the Family Law Section of the North Dakota Bar Association. I am also the Co-Chair of the Family Law Task Force, which was formed in 2015 and continues its work today. I have been licensed to practice law in North Dakota since 2004 and in Minnesota since 2003. During this time, I have practiced exclusively in the area of family law. I appear here today not on behalf of SBAND, the Family Law Section, or the Task Force, but as a concerned citizen and someone who has worked in this area for over 10 years. It is that experience that tells me that HB 1392 is wrong for North Dakota families.

This Bill is a third attempt to institute something no other state and no shared parenting expert has advocated for: a presumption of equal time for parents. Supporters of this Bill would like us to believe this is different from the previous measures. They even provided you a list of "Frequently Asked Questions" to show how different the failed Measure 6 and HB 1392 are. Unfortunately, they are not that different at all:

- 1) Both Measure 6 and HB 1392 provide a presumption of 50-50 parenting time. While HB 1392 advocates claim that shared parenting (a 50-50 division) is not mandatory, the number of cases where that presumption will not apply are few and far between.
- 2) The four areas that the proposed law allows for the presumption to be rebutted are so narrowly tailored that most cases will not be eligible for anything less than 50-50 time, even when a child's best interests would not be met by such an arrangement.
- 3) This issue is especially true when the Bill's provision regarding distance is reviewed. Proponents argue that the distance problem in Measure 6 was solved by adding in a 50-mile radius requirement. If you are outside 50 miles, the presumption does not apply. However, please consider the following:
 - a) The distance from Fargo to Hillsboro: 38.62 miles
 - b) From Grand Forks to Grafton: 40.6 miles
 - c) From Valley City to Jamestown: 34.9 miles
 - d) From Lisbon to Forman: 24.6 miles

All of these examples involve cities with distinct school districts, activities, and social groups for children. They also involve different counties and different judicial districts in some cases. These children are forced into the equal presumption based upon simple geography.

As a comparison, a child whose parents live in Rugby and Devils Lake would not be treated the same. Why? Because Rugby and Devils Lake are 58.4 miles apart. One child gets to have his or her best interests considered, while another does not ... all because of 8.4 miles.

- 4) Proponents would also have this Committee believe that there is a consensus among Social Scientists that “shared parenting” is best for children. However, just as was done with Measure 6, important facts are left out:
 - a) Shared parenting is not equal parenting. Rather, it refers to any time parents have 35% of time or more with their children. Making time equal is irrelevant to shared parenting scholars.
 - b) The best interests of the child are central to shared parenting. HB 1392 removes those factors in the majority of cases.
 - c) Shared Parenting does not ignore what has occurred in the family dynamic to get to equal time. Instead, it is important to give a parent time to synchronize with a child. That could result in even less than 35% in some cases.
 - d) The studies cited by proponents do not involve cases with long distance or even differing school districts and/or schools. The reason is because shared parenting should not be an inconvenience to the child. HB 1392 would create such an inconvenience.

Committee Members, I can imagine you may wonder why it is I have this information and why it is different from what you have received. It is because I heard it directly from Dr. Linda Nielsen, the respected source on this topic. As part of my duties as Co-Chair of the Family Law Task Force, I was fortunate enough to hear Dr. Nielsen’s point of view and findings. She is very learned on this subject and the studies worldwide. And yet, at no point did she advocate for a presumption of this kind. At no point, did she tell us that the best interest factors should not apply. Quite frankly, what she described is what our state has been doing in practice for several years. However, that doesn’t mean there is not room for improvement.

Those improvements are the reason the Family Law Task Force was created in 2015. The Task Force is comprised of attorneys, legislators, and non-attorneys. The Task Force was broken down into subcommittees, one of which was tasked with reviewing our residential responsibility and parenting laws to determine what changes, if any, should be made. Mr. Sean Kasson was a member of this subcommittee. He even helped draft proposed legislation on this issue.

That Subcommittee spoke with Dr. Nielsen. It took Mr. Kasson's ideas and considered them. As Chair of the Family Law Section, I invited Dr. Edward Kruk, the President of the International Council on Shared Parenting, to present and participate at our annual meeting this past November. In short, the proponents of this legislation and presumption are being heard. However, it takes time to draft legislation that is focused on children, as opposed to parents.

That is what our Task Force is working toward: A comprehensive bill that establishes what shared time is, what it isn't, and how it works within our laws to ensure stability and continuity for families. In this process, we realized that we could not do North Dakota families justice if we provided a rushed bill. As a result, it is a goal of the Family Law Task Force to provide comprehensive, child-centric legislation to this body for the 2019 session.

HB 1392 will not help the process. Its retroactive application will cause an overcrowding in our already stressed Courts. After all, any case with minor children is subject to re-open and re-examination. All child support matters would need to be reset. All parenting plans redrawn. There were 8,531 domestic filings in 2016 alone. 31% were child support cases, and 29% divorce. Of the divorce cases, 1,112 involved children. It is not difficult to see the number of cases that would be re-opened, dating back to 1999-2000 in some cases. All those new cases, all those new clients, all those new billable hours. Someone in my position should be supporting this bill. After all, it will do wonders for my bottom line.

Yet, here I am, testifying against HB 1392. In the end, it's not because I don't like money, or because I hate dads, or even because I think the Task Force knows better. No, I testify because this bill is harmful to North Dakota and it is not wanted. If you don't believe me, please refer to 2014 district-by-district election results regarding Measure 6, a copy of which is provided.

Not one legislative district voted in favor of Measure 6. In fact, Measure 6 only garnered more than 45% of the vote in two districts. It was rejected loudly by your constituents. North Dakota has spoken twice on this issue, once in 2006 and again in 2014. The opposition to a presumption increased from 2006 to 2014. North Dakota has been clear: it does not want this "Parents First, Children Second" approach. I ask that you listen to that voice.

Thank you for your time. I would be happy to answer any questions.

Measure 6 (North Dakota)
 Precincts Reporting: 427/427 - Total Ballots Cast: 255128
 2014 General Election - OFFICIAL RESULTS

District	Yes	No	TOTALS	Percent Opposed
District 01	1718	2196	3914	56.11
District 02	2242	3407	5649	60.31
District 03	1820	2617	4437	58.98
District 04	1905	2886	4791	60.24
District 05	1727	3024	4751	63.65
District 06	2213	3862	6075	63.57
District 07	2620	4143	6763	61.26
District 08	2841	4011	6852	58.54
District 09	1309	1564	2873	54.44
District 10	2188	3493	5681	61.49
District 11	1886	3148	5034	62.53
District 12	1495	3048	4543	67.09
District 13	2013	3444	5457	63.11
District 14	2082	4501	6583	68.37
District 15	1772	3304	5076	65.09
District 16	1726	2627	4353	60.35
District 17	2313	3705	6018	61.57
District 18	1737	1989	3726	53.38
District 19	1914	2817	4731	59.54
District 20	1758	3042	4800	63.38
District 21	1587	2209	3796	58.19
District 22	2014	3998	6012	66.5
District 23	1914	3169	5083	62.35
District 24	1673	3724	5397	69
District 25	1630	3350	4980	67.27
District 26	1865	3662	5527	66.26
District 27	2091	3226	5317	60.67
District 28	2307	4002	6309	63.43
District 29	1875	3852	5727	67.26
District 30	2206	3351	5557	60.3
District 31	2311	3171	5482	57.84
District 32	1997	3032	5029	60.29
District 33	2744	3443	6187	55.65
District 34	2341	3235	5576	58.02
District 35	2315	4047	6362	63.61
District 36	2322	3317	5639	58.82
District 37	2013	2872	4885	58.79
District 38	1815	2873	4688	61.28
District 39	2657	4180	6837	61.14
District 40	1137	1701	2838	59.94
District 41	1842	3684	5526	66.67
District 42	1197	1566	2763	56.68
District 43	1594	2350	3944	59.58
District 44	1806	3686	5492	67.12
District 45	1713	2988	4701	63.56
District 46	1936	3860	5796	66.6
District 47	2626	4628	7254	63.8
TOTAL	92807	152004	244811	62.09

Results provided by the Office of North Dakota Secretary of State

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Outline/Summary of Betsy Elsberry's February 7, 2017 testimony on HB 1392

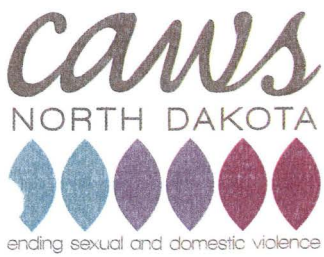
- Introduction
 - Mr. Chairman, members of the committee, my name is Betsy Elsberry. I am an attorney in private practice and I live here in Bismarck.
 - Today I am testifying on my own behalf.
 - My concern is what this bill would do to the kids of North Dakota.
- Mr. McLean/prior testimony
 - Mr. Jason McLean testified in opposition to this bill earlier, and I echo his concerns.
- A few of my specific concerns
 - Page 1 line 17: The bill references binding arbitration. The only place I know of where binding arbitration exists (in ND) is where two parties enter into a contract to submit any issues to binding arbitration. I do not know of any family law arbitrators in ND.
 - Page 1 line 24 through Page 2 line 3: “. . . fifty percent of the time for each child as can be arranged based on the circumstances of each child and the parents, but a child may not be placed in the care of one parent for less than thirty-five percent of the time.”
 - There is a big difference between 50% and 35% (when it comes to parenting time). Also, child support for 50% is calculated very differently than it is for anything less than 50% (offset vs. only taking obligor's income into consideration).
 - Sometimes 35% parenting time for one parent is simply not feasible due to one party's work schedule, or some other factor.
 - Page 4 lines 7 through 11:
 - Example: A North Dakota mother could go home today and physically torture, emotionally torture, or sexually abuse her five year old. This abuse lasted for 30-45 minutes. And say one year from now, that small child had the courage to tell his dad what happened. So dad immediately files for divorce and has his child see a therapist. Under this bill, mom would still be presumed to be fit to care for the child—and would be entitled to equal parenting time.
 - “Extended Period” The Courts will have to define what “extended period means.” Two hours? Three days? Multiple occasions?
 - “Within a Reasonable Time Proximate to the Proceeding.” The Courts will have to define this as well. Two months? Two years?
 - Page 5 lines 6 through 8:
 - Example: Mom goes to prison for 5 years. During this time, dad obtains a Court Order wherein he is granted primary. Mom gets out of prison—files a motion with the Court- and gets equal—even

though the young child is used to the routine and stability of living with dad.

- Page 6 line 14 and page 7 lines 3 and 4: “Written assessment made by a child development expert”
 - What is a child development expert? A child psychologist or psychiatrist?
 - How many are available in our state? What about rural areas?
 - If a case goes to trial, how can the Court rely on the written assessment without that expert testifying (hearsay rules)? This would put an incredible cost on the parent who wants that expert’s opinion to be taken into consideration by the Court.
- Retroactivity
 - One of my greatest concerns about the bill.
 - Page 8 lines 3 and 4:
 - N.D.C.C. § 14-09-06.6:
 - Requires a parent who wants to modify residential responsibility to wait 2 years, and prove there has been a material change in circumstances, and that the change would be in the best interests of the child (exceptions to the 2 year requirement).
 - This statute was created by the North Dakota Legislature to prevent the courtroom door from being constantly revolving, to provide stability.
 - The NDSC has noted the importance of gauging the backdrop of the stability of the child’s relationship with the custodial parent in modification cases, and that stability is the primary concern in a change of custody proceeding.
 - Frey v. Frey, 2014 ND 229, ¶ 7, 856 N.W.2d 781
 - Seibold v. Leverington, 2013 ND 173, ¶ 11, 837 N.W.2d 342
 - The retroactivity aspect of this bill would eliminate the stability consideration and would undue the protections put into place by the North Dakota Legislature.
 - Example 1: Both are good parents and love their child. Both parents live in Bismarck, mom works in Garrison at the hospital. Because of this, parties agreed dad would have primary 10 years ago when they divorced. Under this bill mom could go back and get equal, even though she would be working 12 hour shifts, 70 miles away during her parenting time.
 - Example 2: Mom and dad had a two year old and four year old when they divorced. They agreed mom would have primary. During the marriage, dad would from time to time (but no pattern—which is outlined in the bill) come home, get drunk, and push mom around.

Serious bodily injury never occurred (which is outlined in the bill). Right before mom filed for divorce, this happened, and the two small children witnessed the event. Under this bill, would it really be best for these kids for dad all of a sudden—many years later—to have equal?

- Closing
 - Mr. Chairman, members of the committee, I am here today because I am concerned about what this bill would do to the kids of North Dakota. They are our greatest asset, and they are our future.
 - I would be happy to answer any questions.



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Testimony on HB 1392
House Judiciary Committee
February 7, 2017

Chair Koppleman and Members of the Committee:

My name is Janelle Moos and I am the Executive Director of CAWS North Dakota. Our Coalition is a membership based organization that consists of 20 domestic violence and rape crisis centers that provide services to victims of domestic violence, sexual assault, and stalking in all 53 counties and the reservations in North Dakota. I'm speaking this morning on their behalf in opposition to HB 1392.

In an article published by the American Bar Association entitled "The Unintended Consequences of Using Rebuttable Presumptions to Determine Child Custody in Domestic Violence Cases" it's estimated that 25 to 50 percent of disputed custody cases involve domestic violence, and the adverse effects of maintaining regular contact with the abusive parent through custody and visitation are well documented. Nearly all states have enacted statutes codifying domestic violence as a factor in their "best interest" standard for child custody decisions. Some statutes encourage courts to consider the existence of domestic violence in the family and its impact on the child as a relevant factor, while others actually *require* the judicial officer to consider evidence of domestic violence and provide written justification for orders that place a child in the custody of the abusive parent. Many jurisdictions have enacted statutory rebuttable presumptions to shift the burden of proof and guide judicial discretion in child custody cases involving domestic violence based on the National Council of Juvenile and Family Court Judges best practice guide.

Our specific concern with HB 1392 is for domestic violence victims and their children. Equal or shared parenting may be a good option for divorcing parents in low conflict situations. However, by adopting equal parenting as the presumption, with or without a domestic violence exception, HB 1392 will have devastating consequences on domestic violence victims and their children. In contrast, current law allows for orders of joint or equal parenting in appropriate situations and provides appropriate safe guards for victims and their children. It's important that we continue to preserve the best interests of children in divorce and custody cases and therefore, I urge you to oppose HB 1392. Thank you.

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There has been much discussion regarding the North Dakota State Bar Association and Measure 6. The State Bar Association is not doing anything "illegal" by taking a position on Measure 6, or for putting resources toward defeating a measure that would create bad public policy and law. It seems the supporters of Measure 6 would like to change the focus from their poorly drafted measure and place it on emotional and meaningless attacks on lawyers and the Bar Association.

The U.S. Supreme Court has held that an integrated bar's use of compulsory fees to finance political and ideological activities violated the 1st Amendment rights of dissenting members when such expenditures are not "necessarily or reasonably incurred" for the purpose of regulating the legal profession or improving the quality of legal services. The Court specifically indicated that a guiding principle for determining allowable bar "expenditures relating to political or ideological activities is whether the challenged expenditures are necessarily or reasonably incurred for the purpose of regulating the legal profession or improving the quality of legal services." The Court also recognized that this may often be a fine line, and one that is not easily discernable. The extreme ends, the Court noted, are clear: no positions on "gun control" or "nuclear weapons freez[es]" but clearly yes on discipline or work on the profession's ethical codes.

For years, this decision of the U.S. Supreme Court has been tied to the union case of Abood v. Detroit Bd. of Ed., 431 U.S. 209 (1977), an agency shop decision indicating labor unions may in fact spend more on political activities (this area of law has clearly been modified by recent caselaw), but only from members who do not object to their money being spent in such a way.

Applying the Abood analysis to the California State Bar, the Court held that the California State Bar acts constitutionally in funding activities germane to the purpose for which the State Bar existed, but not activities of an ideological nature that fall outside of those areas. The Court recognized that it was not drawing bright lines:

The difficult question, of course, is to define the latter class of activities...Precisely where the line falls between those State Bar activities in which the officials and members of the Bar are acting essentially as professional advisers to those ultimately charged with regulation of the legal profession, on the one hand, and those activities having political or ideological coloration which are not reasonably related to the advancement of such goals, on the other, will not always be easy to discern.

499 U.S. 1, 14.

The Court suggested that the extreme ends of the spectrum are clear, so that compulsory fees may not be spent to endorse a gun control or a nuclear freeze initiative, but there is no basis to object to the use of fees for activities connected with lawyer discipline or the development of ethical codes for the profession.

Following union shop-agency cases such as Abood, the Court indicated a bar association could adopt procedures similar to those adopted by unions to deal with this issue, and possibly provide refunds to those who object. Thus, many unified bar associations describe what has become known as a "Keller Refund" for members who object to stances on issues taken by the association. North Dakota has followed suit.

The rule is quite simple: mandatory fees cannot be used for activities that are not "necessarily and reasonably related" to the purposes for which the bar exists, particularly where the activities involve issues of partisan politics or ideology. Keller identifies the purposes of the integrated bar as regulating the legal profession and improving the quality of legal services; other decisions describe the purposes of a mandatory bar as advancing the science of jurisprudence and improving the administration of justice. For bars like North Dakota, the bar's purpose also includes the regulation of the legal profession.

The challenge in applying Keller and its progeny to specific activities and issues is where things get complicated. A few things are clear, however:

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PROPOSED AMENDMENTS TO HOUSE BILL NO. 1392

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for a legislative management study relating to parenting rights and responsibilities.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. PARENTING RIGHTS AND RESPONSIBILITIES - LEGISLATIVE MANAGEMENT STUDY. During the 2017-18 interim, the legislative management shall consider studying, in consultation with the family law task force of the family law section of the state bar association of North Dakota, parental rights and responsibility issues, including shared parenting, joint decisionmaking responsibility for the child, the best interest factors used by the court in making parental rights and responsibilities decisions, and the modification and enforcement of parental rights and responsibilities orders. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-sixth legislative assembly."

Renumber accordingly

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The North Dakota Family Law Task Force

The North Dakota Family Law Task Force was created in 2015, at the request of the State Bar Association and Family Law Section, to address the changing world of family law and to address the concerns raised as part of the Measure 6 debate. The core Task Force membership is comprised of attorneys, —both family law and non-family law—non-attorneys, Judge Robin Schmidt, and legislators. Additionally, the Task Force was divided into several subcommittees to address specific topics in family law with the goal of recommending legislation, if necessary.

In its first meetings, held in in November and December 2015, the Task Force identified the topics that would be up for discussion and were of importance to the its mission. Of these topics, subcommittees were created for the following:

- 1) Best Interest of the Children/Parenting Time Subcommittee,
- 2) Prima Facie/Modification Subcommittee, and
- 3) Enforcement of Orders/Access to Relief Subcommittee

Other areas were explored as well, such as the updates to the Century Code to account for same sex marriage. However, the above three subcommittees were the primary focus of the Task Force in 2016. Of particular importance to the Legislature, as it relates to HB 1392, was the Best Interests of the Child Subcommittee.

Best Interests Subcommittee

The Best Interests of the Child Subcommittee consisted of Alisha Ankers (chair), DeAnn Pladson, Melinda Weerts, Sean Kasson, Carrie Francis, Erica Shively, Connie Cleveland, and Janelle Moos. The subcommittee held regular meetings throughout the 2016 calendar year on a weekly and bi-weekly basis. As part of these meetings, the Subcommittee reviewed laws from around the country. It spoke with various experts and advocates on both sides of the shared parenting issue. Included in the list of experts that were contacted were Dr. Linda Nielsen, Erin Pizzey, William Fabricius, and Sandford Braver. These ladies and gentlemen are often cited as the foremost social science authorities on shared parenting in divorce and residential responsibility matters. The subcommittee reached out to all sides of this area of law and social science for discussion.

When the Subcommittee was formed, it was with a goal of addressing the current best interest factors, found at N.D.C.C. § 14-09-06.2, and determining if other options exist to determine residential responsibility. The subcommittee also sought to review and address the claims made in 2014 during the Measure 6 campaign, that social science favored “shared parenting.”

After reviewing statutes from various states, input from social scientists, and articles on the topic, the Subcommittee set out to prepare legislation for the consideration of the Family Law Task for as a whole and the Family Law Section, with the goal of providing a bill for the 2017 session. However, as the process continued, it became apparent that in order to provide a bill that addressed all areas, the 2017 session was not feasible.

However, the Subcommittee did discuss changes to Chapter 14-09 of the Century Code to address the information it had received. The draft legislation is provided with this summary. This draft was not approved by the Family Law Section and was tabled at this time for the reason discussed herein. The larger changes and findings that were discussed by the Subcommittee were as follows:

- a. Throughout its investigation, the Subcommittee was informed that “shared parenting” refers to parenting time of no less than 35%. It also determined that shared parenting is not designed to provide for a presumed equal (50-50) division of time. Based upon this information, the Subcommittee discussed the addition of a “shared parenting” definition of at least 35% percent, but not equal time.
- b. The Subcommittee discussed and approved of the presumption for joint *decision making* responsibility for the child. The belief is that parents need to be involved and even those in high conflict situations can find a way to work together on major decisions.
- c. While there was a discussion about amending the best interest factors, the Subcommittee found that North Dakota “was ahead of the curve” with regard to its factors. Additionally, shared parenting experts, practitioners, and various states all continue to focus on the best interests of the child in making residential responsibility decisions, as opposed to implementing a presumption of equal time.

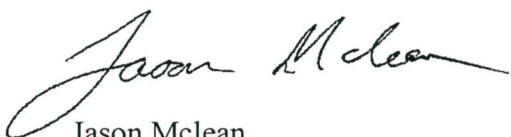
However, with these new definitions and proposed changes, concurrent issues with child support, the introduction of new labels that could be seen as superficial, and how to apply these changes presented new questions when presented to the Family Law Task Force as a whole. For example, the question was raised if a new area of residential responsibility—“Shared residential responsibility”—would have an impact on child support. The Task Force also voiced a concern if this designation was merely a label with no authority behind it. These questions created much discussion, but not a final resolution. That is because work remains to be done.

Future of the Family Law Task Force

The Best Interest Subcommittee and Modification Subcommittee both presented at the annual Family Law Seminar in November 2016. These committees received questions and feedback on the current state of the law, including what changes should be addressed moving forward. At its annual business meeting, the Family Law Section voted to allow the Task Force to continue with a goal of comprehensive legislation, that addresses the intertwined nature of family law, being provided to the 2019 Legislature.

Some members of the Task Force and Subcommittees have stepped away due to the time commitment it requires. However, there are others who have expressed interest in joining the core group or the various subcommittees. It is our goal to provide legislation that help the majority of the families in North Dakota, not just the few. We ask that we be allowed to continue this work and welcome any guidance or requests that the Legislature may offer.

Thank you for your consideration.



Jason Mclean

Co-Chair, Family Law Task Force



Leah duCharme

Co-Chair, Family Law Task Force

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PROPOSED AMENDMENTS TO HOUSE BILL NO. 1392

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to to amend and reenact section 14-09-00.1 and subsection 1 of section 14-09-29 of the North Dakota Century Code, relating to a presumption of equal parenting time and responsibility.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 14-09-00.1 of the North Dakota Century Code is amended and reenacted as follows:

14-09-00.1. Definitions.

As used in this chapter, unless the context otherwise requires:

1. "Decisionmaking responsibility" means the responsibility to make decisions concerning the child. The term may refer to decisions on all issues or on specified issues, but not child support issues.
2. "Equal parenting time and residential responsibility" means each parent has the child in that parent's care for a time that is equal to or as close to fifty percent of the time as can be arranged based on the circumstances but which is not less than thirty-five percent of the time.
3. "Parental rights and responsibilities" means all rights and responsibilities a parent has concerning the parent's child.
- ~~3.4.~~ "Parenting plan" means a written plan describing each parent's rights and responsibilities.
- ~~4.5.~~ "Parenting schedule" means the schedule of when the child is in the care of each parent.
- ~~5.6.~~ "Parenting time" means the time when the child is to be in the care of a parent.
- ~~6.7.~~ "Primary residential responsibility" means a parent with more than fifty percent of the residential responsibility.
- ~~7.8.~~ "Residential responsibility" means a parent's responsibility to provide a home for the child.

SECTION 2. AMENDMENT. Subsection 1 of section 14-09-29 of the North Dakota Century Code is amended and reenacted as follows:

1. a. A court issuing an order that deals with parenting rights and responsibilities of a child entered under this chapter shall award the parental rights and responsibilities concerning the child to a person,

agency, organization, or institution as will, in the opinion of the court, promote the best interests and welfare of the child.

- b. Between the mother and father, whether married or unmarried, there is no presumption as to whom will better promote the best interests and welfare of the child.
- c. In any proceeding dealing with parental rights and responsibilities, there is a presumption that equal parenting time and residential responsibility promotes the best interests and welfare of the child. If the court declines to enter an order awarding equal parenting time and residential responsibility, the court shall articulate in its decision the rationale for the denial of equal parenting time and residential responsibility."

Renumber accordingly

primary residential responsibility as a civil action and venued in the county of residence of the minor child.

5. The district court may require mediation of the matter under chapter 14-09.1. If mediation fails and if the mediator agrees, the court may order the dispute arbitrated by the person who attempted mediation. Joinder of grandparents or of great-grandparents awarded visitation rights under this section must occur in any proceeding to terminate parental rights.

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14-09-06. Priority of custody of father and mother.

Repealed by S.L. 2009, ch. 149, § 12.

14-09-06.1. Awarding custody - Best interests and welfare of child.

Repealed by S.L. 2009, ch. 149, § 12.

14-09-06.2. Best interests and welfare of child - Court consideration - Factors.

1. For the purpose of parental rights and responsibilities, the best interests and welfare of the child is determined by the court's consideration and evaluation of all factors affecting the best interests and welfare of the child. These factors include all of the following when applicable:
 - a. The love, affection, and other emotional ties existing between the parents and child and the ability of each parent to provide the child with nurture, love, affection, and guidance.
 - b. The ability of each parent to assure that the child receives adequate food, clothing, shelter, medical care, and a safe environment.
 - c. The child's developmental needs and the ability of each parent to meet those needs, both in the present and in the future.
 - d. The sufficiency and stability of each parent's home environment, the impact of extended family, the length of time the child has lived in each parent's home, and the desirability of maintaining continuity in the child's home and community.
 - e. The willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the other parent and the child.
 - f. The moral fitness of the parents, as that fitness impacts the child.
 - g. The mental and physical health of the parents, as that health impacts the child.
 - h. The home, school, and community records of the child and the potential effect of any change.
 - i. If the court finds by clear and convincing evidence that a child is of sufficient maturity to make a sound judgment, the court may give substantial weight to the preference of the mature child. The court also shall give due consideration to other factors that may have affected the child's preference, including whether the child's preference was based on undesirable or improper influences.
 - j. Evidence of domestic violence. In determining parental rights and responsibilities, the court shall consider evidence of domestic violence. If the court finds credible evidence that domestic violence has occurred, and there exists one incident of domestic violence which resulted in serious bodily injury or involved the use of a dangerous weapon or there exists a pattern of domestic violence within a reasonable time proximate to the proceeding, this combination creates a rebuttable presumption that a parent who has perpetrated domestic violence may not be awarded residential responsibility for the child. This presumption may be overcome only by clear and convincing evidence that the best interests of the child require that parent have residential responsibility. The court shall cite specific findings of fact to show that the residential responsibility best protects the child and the parent or other family or household member who is the victim of domestic violence. If necessary to protect the welfare of the child, residential responsibility for a child may be awarded to a suitable third person, provided that the person would not allow access to a violent parent except as ordered by the

court. If the court awards residential responsibility to a third person, the court shall give priority to the child's nearest suitable adult relative. The fact that the abused parent suffers from the effects of the abuse may not be grounds for denying that parent residential responsibility. As used in this subdivision, "domestic violence" means domestic violence as defined in section 14-07.1-01. A court may consider, but is not bound by, a finding of domestic violence in another proceeding under chapter 14-07.1.

- k. The interaction and inter-relationship, or the potential for interaction and inter-relationship, of the child with any person who resides in, is present, or frequents the household of a parent and who may significantly affect the child's best interests. The court shall consider that person's history of inflicting, or tendency to inflict, physical harm, bodily injury, assault, or the fear of physical harm, bodily injury, or assault, on other persons.
 - l. The making of false allegations not made in good faith, by one parent against the other, of harm to a child as defined in section 50-25.1-02.
 - m. Any other factors considered by the court to be relevant to a particular parental rights and responsibilities dispute.
2. In a proceeding for parental rights and responsibilities of a child of a servicemember, a court may not consider a parent's past deployment or possible future deployment in itself in determining the best interests of the child but may consider any significant impact on the best interests of the child of the parent's past or possible future deployment.
 3. In any proceeding under this chapter, the court, at any stage of the proceedings after final judgment, may make orders about what security is to be given for the care, custody, and support of the unmarried minor children of the marriage as from the circumstances of the parties and the nature of the case is equitable.

14-09-06.3. Custody investigations and reports - Costs.

1. In contested proceedings dealing with parental rights and responsibilities the court, upon the request of either party, or, upon its own motion, may order an investigation and report concerning parenting rights and responsibilities regarding the child. The court shall designate a person or agency responsible for making the investigation and report, which designees may include the county social service board, public health officer, school officials, and any other public agency or private practitioner it deems qualified to make the investigation.
2. The investigator may consult any person who may have information about the child and any potential arrangements for parenting rights and responsibilities, and upon order of the court may refer the child to any professional personnel for diagnosis.
3. The court shall mail the investigator's report to counsel and to any party not represented by counsel at least thirty days before the hearing. The investigator shall make available to any such counsel or party the complete file of data and reports underlying the investigator's report and the names and addresses of all persons whom the investigator has consulted. A party may call the investigator and any person whom the investigator has consulted for cross-examination at the hearing. A party may not waive the party's right of cross-examination before the hearing.
4. The court shall enter an order for the costs of any such investigation against either or both parties, except that if the parties are indigent the expenses must be borne by the county where the child resided at the time the action was commenced or if a modification of parental rights and responsibilities, at the time the motion to modify is served.

14-09-06.4. Appointment of guardian ad litem or investigator for child in proceedings involving parental rights and responsibilities - Immunity.

In any action for an annulment, divorce, legal separation, or other action affecting marriage, when either party has reason for special concern as to the future of the minor child, and in any action when the parenting rights and responsibilities concerning the child is contested, either

District 45

3/8/17

Senate Standing Committee on Judiciary - Fort Lincoln Room

Chairman Armstrong and members of the committee. For the record I am Representative Tom Kading from district 45 in Fargo. I bring to you today house bill 1392 which is in regards to the best interest of the child when it comes to child custody decisions.

The bill presumes that it is in the best interest of a child to have time with both parents if both parents desire custody in a dispute. Neither parent "wins" in a custody, so we must put the child first.

This Bill accomplishes some of the following:

- Allowing both parents to be involved in the child's life
- Keeps the best interest of the child as the most important factor in the decision
- Studies how courts make decisions when it comes to how children are handled. The family law task force of the family law section of the state bar association of North Dakota is specifically named to participate in this study.

Simply put, this bill:

- Presumes that it is in the best interest of the child to be in the custody of both parents at least 35% of the time.
- All the judge has to do to not follow the 35% standard is quote, "the court shall articulate in its decision the rationale..."
- By default I believe the legal standard which the court would follow would be preponderance of the evidence.

There are a variety of studies that clearly indicate that both parents should absolutely be involved in the life of the child.

110 is the number of world experts who've endorsed the importance of time with both parents in a dispute, a minimum of 35% which is exactly what HB1392 is, as best for children, families and society.

25 other states are considering similar concepts as this bill.

Fatherlessness is the top social problem in the US and is linked to every major social pathology in children.

I am sure some of the following testimony will go into more depth as to the studies and the evidence that shows shared responsibility is the right decision to make for the child. I will cite a few, but leave much of it to the next speakers. Children raised by single parents account for:

- 63% of teen suicides,
- 71% of high school drop outs,
- 75% of children in chemical abuse centers,
- 85% of children who exhibit behavior disorders; and
- 90% of homeless and runaway children.

(Wilson, C. (1998). Economic Shifts That Will Impact Crime Control and Community Revitalization. What Can the Federal Government Do To Decrease Crime and Revitalize Communities? U.S. Department of Justice, National Institute of Justice, 11.) and

(U.S. Census Bureau, 2009-2011 American Community Surveys, 2012 Condition of Children in Orange County, America's Families and Living Arrangements: 2012 by Jonathan Vespa and Jamie M. Lewis)

Objections:

1. This bill is the same as measure 6.
 - a. First lets look at measure 6:
 - i. Equal parenting of exactly 50/50 custody
 - ii. Rigid presumption that parents are fit
 - iii. If parents are fit then the 50/50 applies
 - iv. A standard of clear and convincing was required to overturn the presumption
 - v. No exceptions were made for items such as:
 1. Distance apart

2. Alienation
3. Infant
4. Disability
5. And so forth.

- b. If you put Measure 6 and 1392 side by side, they are clearly not the same bill
- c. 1392:
 - i. Presumes custody of at least 35% is in the best interest of the child
 - ii. The judge still has discretion to choose custody anywhere from 0% to 100% for any reason that is in the best interest of the child.
- d. Measure 6 was a parent's rights bill, 1392 is a children's rights bill.
 - i. When the people voted against measure 6, they voted against a problematic rigid bill that addressed parent's rights
 - ii. They didn't vote against ever considering changing the subject matter again and promoting the rights of children.

2. Abusive, negligent, and other bad parents will get more custody.

- a. Clearly, this is incorrect. If the judge uses the same best interest of the child standard today, the child will not end up with such a parent.
- b. Examples of reasons a judge could decide to deviate from the custody noted in this bill could include – though is not exclusive to:
 - i. Parent chooses not to be involved
 - ii. Parental alienation (parent prevents other parent's relationship with child)
 - iii. Domestic violence
 - iv. Child abuse/neglect
 - v. Child is in danger
 - vi. Parent engages in sex offenses where child is victim or intended victim
 - vii. Parent committed a variety of crimes
 - viii. Parent is incarcerated
 - ix. Parent subjects child to prenatal exposure to substance abuse
 - x. Parent subjects child to substance abuse
 - xi. Parent has placed child for care or adoption in violation of law
 - xii. Parent abandoned child

- xiii. Parent leaves child without proper care
- xiv. Parent refused to participate in treatment
- xv. Parent allows a child to be a victim of human trafficking
- xvi. Parent has physical injury or medical or psychological condition that renders that parent incapable of properly caring for the child
- xvii. Residence of parents is greater than 50 miles apart
- xviii. Child is an infant at time of resolution of proceeding and schedule, health or other circumstances that does not allow such an arrangement.
- xix. Child is special needs
- xx. An so on

3. Child support is going to be significantly changed.

- a. Child support is not addressed at all in this bill
- b. Following me another attorney who is a child support expert will get up and he can explain the technical details of child support if you would like.
- c. Very broadly,
 - i. In North Dakota the parent who receives more custody receives child support from the other parent. So if a parent receives 60% custody, the other parent would have to pay the same child support as if the parent had received 100%.
 - ii. There are some adjustments when the non-custodial parent has the child for more than a certain number of days in a year
 - iii. Or if one parent makes more than the other.
 - iv. Like I said, the technicalities can be described in depth by the follow child support expert.
 - v. If two parents get exactly 50/50 custody then child support could be affected. We could make all kinds of speculation if this could occur, but my understanding is 50/50 custody is not occurring in the majority of disputes.
- d. So in regards to child support, it is very unlikely that it will be affected to any significant degree

On the house side, the bill was modified to find a compromise between the wishes the trial attorneys and the interest of the child. In this form, I believe this bill

does a lot of good things and is makes progress when it comes to handling custody disputes.

As I noted, this is a child's rights bill, not a parent's rights bill. Putting the child first is the best thing to do.

This bill is an attempt to find a solution to help ensure the best interest of the child is protected and that both parents are adequately protected in a custody dispute. Thank you and I will try to answer any questions.

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In Support of HB 1392
Senate Judiciary Committee
3/8/2017

Dear Committee Members:

Thank you for your service and time. My name is Sean Kasson. I am a father of two beautiful daughters, Tessa (6) and Lyvia (4). I am an attorney and former prosecutor. It is with gratitude I appear before you today. As much as I wish our family did not have to go through the turmoil of divorce, I must be grateful to have been given the knowledge and inspiration to take action, working on such an important cause. Without having gone through the divorce, I never would have realized the importance of HB 1392. I hope I am able to give you some guidance, answer questions, and provide you the reason why passage of this bill is necessary.

Personal Experience

Three years ago, my life was forever changed. My wife left and days later, I was served with divorce papers. It was something that I never thought possible. High school sweethearts. I thought I was the man of her dreams and nothing would ever change that. But that did change. I recognize I was not a perfect husband. My ex and I both acknowledge our shortcomings. But even when we recognized our imperfect relationship, I remember us agreeing that at least we were great parents. In fact, I found out later she had been contemplating divorce for some time, even having a conversation with my dad about it, but acknowledging that I was a good father. I am happy to say that my ex and I co-parent wonderfully, and I respect her immensely for focusing on our children's welfare rather than any past bitterness. Our divorce, however, was the closest thing to hell on Earth.

When I was served with divorce papers, obviously I was saddened, but remained hopeful and optimistic. After all, we agreed on us being great parents, and ultimately, that is what matters. However, my first correspondence from her attorney made the false accusation that I was going to run away with the girls and therefore my ex needed to be with them the majority of the time during the interim of the divorce proceeding. I had no idea where this allegation was coming from: not only did I not make that statement, but it made no sense – where was I going to go? This letter was just the beginning. Throughout the interim of the divorce, times arose where I did not understand why there was disagreement, seeming as though she was intentionally trying get a rise out of me. Such actions have not presented since the divorce, but only when attorneys were involved. Regardless, for over one year, we had one week rotations, and it was working; one week with mom, one week with dad. But she refused to allow this arrangement to continue. We attempted mediation. I'm not sure I was there for more than 15 minutes – she wanted primary custody, and I wanted our girls to be in both of our lives equally. That was the end of mediation. We went to trial. Ultimately, the court ordered 50/50 in the summer, but reduced my girls being with me until every other Thursday to Monday morning. In waiving my appeal, I was able to gain an extra day.

Almost immediately, my youngest said to me on the phone that she was "sad at me." They weren't seeing me as often as they once were. They missed me. I miss them. I believe time is love. Kids don't know why they aren't seeing the other parent as much, but all they know is they're not there and there is a void. I love my kids incredibly, and they love me. I am a good father, and they deserve to have me be a substantial part of their life. Had a presumption been in place, I have little doubt we would have had our case resolved well short of trial, saving unnecessary expenses and strained familial relationships. Furthermore, the money that was blown away on court costs and attorney fees could have been set aside as I originally desired: for their college education. Now, there is no way for me to put aside money for their college. I can barely make ends meet.

Measure 6

During the interim of my divorce, Measure 6 was brought for a vote. I was in favor of shared parenting and supported Measure 6. My attorney, on the other hand, wrote one of the most aggressive and condescending op-eds in opposition, referring to supporters as nothing more than sore losers. An incredible statement in and of itself. But the op-ed went on, and the public was misled. He claimed Measure 6 would divide children's time in half between moms and dads, in every case. This is false. There was a presumption. Nothing in Measure 6 made shared parenting mandatory. He claimed that babies and toddlers need a primary parent and suffer if separated. This is false. He claims that the best way to predict how children in equal custody arrangements fare is whether their parents are civil and cooperative with each other. This is false. He claimed children fare better in one household out of routine and stability. This is false. The statistics show just how catastrophic this can be, placing children at greater risk in a number of issues. Mr. Gjesdahl's advice is the direct opposite of what is in the children's best interests – it is the surest path to increase a multitude of problems. His commentary has routinely been debunked. By his line of reasoning, it would be best just to eliminate the other parent from the child's life all together – for the sake of "routine and stability." And if you follow Mr. Gjesdahl's suggestions, I'll tell you what you get: I personally have talked to parents that have gone bankrupt, living out of a truck because all money has gone towards attorney fees, trying to get time with their kids; developed substance abuse problems; battle depression; unable to walk by the toy aisle at WalMart because it hurts so much to think about not seeing your kids; spoken to parents that become suicidal because the pain is so great; and am aware of an individual that was success in their suicide. Mr. Gjesdahl's commentary caused great harm to the public. The only person that was protected by his op-ed was himself, in preserving his business.

Nearly \$50,000 was expensed by the Family Law Section to defeat Measure 6. Had I not been going through the divorce and seeing the need for reform, I probably would have followed Mr. Gjesdahl's guidance. After all, he is a well established family law attorney, a very persuasive writer, and owns the largest family law practice in North Dakota. Luckily, I have the benefit of experience and personal knowledge to know just how mistaken he is. The public trusted opinions such as his. Mr. Gjesdahl is entitled to his own opinion, but presented his opinion as objective fact. The public was misled. Measure 6 was defeated.

Today we call this Fake News. As Justice Sandstrom said in his dissent of Stock v. Stock, 2016 ND 1, ¶ 42, a case that dealt with spousal support, “successful family law attorneys may be expected to oppose reform of the present expensive system.” Although this is not spousal support, we are all well aware of just how expensive (or lucrative) child custody battles can be.

Opponents will try to claim HB 1392 is just Measure 6 2.0. Wrong. There were some valid concerns raised through the Measure 6 debate, such as distance of parents, children of special needs and criteria which would specify when it is not in the child’s best interest to have shared parenting. The House Judiciary Committee heard the opponents’ concerns and provided a revised version of the bill. In fact, Jim Fleming, Director of Child Support, provided in an email, “as an observer to the hearings, it looks like the amendments are responsive to many of things raised in the opposition testimony to the original bill from the private bar.”

Measure 6 provided: 1) presumption of 50/50 parenting time 2) unless parent was found unfit 3) by clear and convincing evidence. HB 1392 provides: 1) presumption of no less than 35% parenting time 2) unless rebutted by best interest factors 3) by preponderance of the evidence. Please remember, just because people did not approve Measure 6 does not mean they are against shared parenting – they had issue with the original language, which has been changed significantly.

Task Force

Through my continued work to raise awareness on the need for family law reform, I was recommended to be placed on the North Dakota Family Task Force. When I noticed the lack of Measure 6 supporters on the Task Force, I was told that’s the reason I’m on the Task Force – a token. The Task Force is comprised of, for the most part, family law attorneys and includes vocal opponents of Measure 6. To even get the Task Force to discuss the idea of shared parenting was a task in itself. It was only after the Board of Governors directed them to include shared parenting in the discussion did such action take place.

After nearly 18 months, the Task Force has done nothing to better the lives of our children. By their inaction, children continue to suffer. I refuse to stand by, knowing how desperately family law reform is needed, specifically child custody disputes. Our kids deserve a genuine approach to solving these problems.

I was able to connect with Dr. Linda Nielsen, one of the leading experts in child development in the country, if not the world. She has written many articles on the overwhelming empirical evidence which supports shared parenting. She agreed to appear telephonically for the Task Force. I could barely believe that not only did Dr. Nielsen return my email, agree to present, but the Task Force also agreed to hear her presentation. My optimism returned. However, upon review of the minutes at our next meeting, I noted inconsistencies, added commentary and emphasis to argue against shared parenting, and most notably, Dr. Nielsen’s key point: shared parenting works in the vast majority of cases, and when it doesn’t work, it’s atypical. Noting the multiple flaws and errors in the minutes,

I move to amend. When I don't receive a second, I ask why and am met with the response of "we don't have to give you a reason and we have more important things to take care of." Apparently having accurate minutes is not important, especially if they help deter supportive shared parenting evidence.

At another meeting, it was suggested that we eliminate the "morals" factor from the best interest factors. If we are serious about family law reform and bettering the lives of our children, I do not believe eliminating "morals" is the proper place to start.

Finally, it came time to draft some proposed legislation for you to consider this session. The legislation posed was disingenuous at best. The closest they got to bettering the lives of our kids was to include a definition of what "shared parenting" is. When the opportunity rose to vote on whether or not to send this legislation to you or wait and come back in another two years, no way did I want this to be what you were presented with. Our kids deserve better.

States have tried to pass family law reform, specifically related to child custody. Last year, Florida passed SB 668, where language included "The court shall start with the premise that a minor child should spend approximately equal amounts of time with each parent." It passed the Senate 24-14. It passed the House 74-38. It had incredible support from the legislature, but the Family Law Section lobbied and convinced Governor Scott to veto. As they taught us in law school, just follow the money trail. We know if strong shared parenting legislation were to be put in effect, the business of family law would suffer, as conflict would diminish.

Missouri Senator Wayne Wallingford, speaking in support of Missouri's shared parenting bill, stated "most fatherlessness is not caused by abandonment; it's created by an outdated court system."

Action to Take

This bill must be passed. Family law reform is long overdue. Children continue to suffer. The public has been misled. The Task Force has done nothing to better the lives of our children. This bill is based upon the findings and recommendations of world renowned social scientists, finding that shared parenting works in the vast majority of cases, and when it doesn't work, it's atypical. And here is how consultations will work if you pass this bill: a lawyer will have to explain to their client, "why is fighting over custody necessary in your case? We know social science proves it works in most cases, so why is yours in the minority?" The current conflict driven, winner take all system is failing our kids. Quit letting the children suffer through the passivity and inaction of the family law section. I think there is a fair amount of certainty that family law attorneys have a vested interest in the status quo continuing. This is why I'm before you - action is needed. And it can't be pushed back any longer. The longer we wait, the more kids suffer. Put an end to this. Support our kids. Support HB 1392.

Sean B. Kasson

3/8/17

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HB 1392



: Shared Parenting Bill

Fleming, James C. <jfleming@nd.gov>

Tue, Feb 21, 2017 at 10:20 AM

To: "mjohnson@valleybusllc.com" <mjohnson@valleybusllc.com>, Tony Weiler <tony@sband.org>, Alisha Ankers <ankerslaw@hotmail.com>, Betsy Elsberry <betsy@nodaklaw.com>, Cathy Ferderer <CFerderer@ndcourts.gov>, "Cleveland, Constance L." <clevelandc@casscountynd.gov>, Janelle Moos <jmoos@cawsnorthdakota.org>, Jason McLean <Jason@gjesdahllaw.com>, Kara Brinster <kbrinster@dakotalaw.net>, Leah duCharme <leah@gjesdahllaw.com>, "Oban, Erin" <eoban@nd.gov>, "Schmidt, Robin" <rschmidt@ndcourts.gov>, Sean Kasson <sean.b.kasson@gmail.com>

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Representative, without convening a quick meeting of the task force, that's probably not a question that can be answered. At one of the original meetings, Tony advised about the open meetings implications of group e-mail.

As an observer to the hearings, it looks like the amendments are responsive to many of things raised in the opposition testimony to the original bill from the private bar.

Jim

From: mjohnson@valleybusllc.com [mailto:mjohnson@valleybusllc.com]

Sent: Tuesday, February 21, 2017 10:06 AM

To: Tony Weiler; Alisha Ankers; Betsy Elsberry; Cathy Ferderer; Cleveland, Constance L.; Janelle Moos; Jason McLean; Fleming, James C.; Kara Brinster; Leah duCharme; Oban, Erin; Schmidt, Robin; Sean Kasson

Cc: Charles G. DeMakis; Carrie Francis; Darcie Einarson; Kim Radermacher

Subject: RE: Shared Parenting Bill

CAUTION: This email originated from an outside source. Do not click links or open attachments unless you know they are safe.

Will be hearing 1392 on the floor today. I see that it has been substantially changed. Is the FLTF ok with it now?

Please advise.

mj

3/8/17

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HB 1392

“Arguments for an Equal Parental Responsibility Presumption in Contested Child Custody”

By: Edward Kruk

The American Journal of Family Therapy, 40:33-55
2012

16 Arguments In Support of Equal Parental Responsibility

1. Equal Parenting Preserves Children’s Relationships With Both Parents

- “... children’s highest level of emotional security is at 50% time levels with each of their parents Traditional visiting patterns and guidelines are, for the majority of children, outdated, unnecessarily rigid, and restrictive, and fail in both short and long term to address their best interests ... equal parenting arrangements are durable over the long-term and provide significantly more and better quality parental care time for children than sole custody arrangements.”

2. Equal Parenting Preserves Parents’ Relationships With Their Children

- “An EPR presumption would go along way toward preventing parental disengagement from children’s lives, in those situations in which parents want to maintain an active role as caregivers to their children ... maximizing parental well-being encourages and increases parental availability and responsiveness to children and this in turn maximizes children’s well-being.”

3. Equal Parenting Decreases Parental Conflict and Prevents Family Violence

- “‘Winner-take-all’ adversarial processes and sole custody or primary residence orders are strongly associated with exacerbation or creation of parental conflict ... Given the high stakes involved; when primary parent-child relationships are threatened, the risk of violence rises dramatically ... Rather than accepting that high conflict is inevitable, the goals should be to reduce parental conflict after divorce ... current literature does not support a presumption that the amount of parenting time should be limited in cases of high conflict, and high conflict should not be used to justify restrictions on children’s contact with either of their parents.”

4. Equal Parenting Respects Children’s Preferences and Views About Their Needs and Best Interests

- “... children strongly favor equal parenting and consider shared parenting to be in their best interests. Seventy percent of children of divorce believe that equal amounts of time with each parent is the best living arrangement for children ...”

5. Equal Parenting Respects Parents’ Preferences and Views About Their Children’s Needs and Best Interests

- “Public opinion polls report that EPR is favored by about 80% of parents, with a slightly higher percentage of women favoring a legal presumption than men.”

6. Equal Parenting Reflects Child Caregiving Arrangements Before Divorce

- “... mothers and fathers working outside the home now spend about the same amount of time caring for their children ... a 51/49% split of child care tasks.”

7. Equal Parenting Enhances the Quality of Parent-Child Relationships

- “Quantity is necessary for quality, and there is a direct correlation between quantity of time and quality of parent-child relationships ...”

8. **Equal Parenting Decreases Parental Focus on “Mathematizing Time” and Reduces Litigation**
 - “... and EPR presumption reduces strategic bargaining, hostile negotiations and litigation, and remove child custody from the adversarial arena ...it also addresses the problem of ‘one-shoe-fits-all’ arrangements prevalent in sole custody ... An EPR approach guides parents toward the development of individualized parenting plans ... the EPR model we propose ... apportioning 50-50 time ... scheduled according to children’s ages and stages of development.”
9. **Equal Parenting Provides an Incentive for Inter-Parental Negotiation, Mediation, and the Development of Parenting Plans**
 - “Within a BIOC/sole custody system, however, there is little incentive for parents who foresee winning sole custody.”
10. **Equal Parenting Provides a Clear and Consistent Guideline for Judicial Decision-Making**
 - “... the discretionary power of judges in an area in which they are neither professionally trained, nor competent to assess third party evaluations or professional literature on the matter, is a receipt for disaster ... In the case of two fit and loving parents, the act of judges privileging one parent over the other ... lacks empirical foundation.”
11. **Equal Parenting Reduces the Risk of Incidence of Parental Alienation**
 - “Parental alienation flourishes in situations where one parent has exclusive care and control of children ...”
12. **Equal Parenting Enables Enforcement of Parenting Orders, as Parents are More Likely to Abide by an EPR Order**
 - “access denial is endemic in sole custody families ... rank-ordering of parents fuels discord ...”
13. **Equal Parenting Addresses Social Justice Imperatives Regarding Protection of Children’s Rights**
 - “... permitting removal of parental custody subsequent to divorce discriminates against children of divorce, permitting judges to remove custody from a parent on the basis of ... discretionary BIOC standard ... and EPR presumption applies the more stringent ‘child in need of protection’ standard to warrant parental removal ...”
14. **Equal Parenting Addresses Social Justice Imperatives Regarding Parental Authority, Autonomy, Equality, Rights and Responsibilities**
 - “... there is no basis in law or psychology for preferring one parent over the other, or for choosing between two ‘good enough’ parents contesting custody ...”
15. **The BIOC/Sole Custody Model is Not Empirically Supported**
 - “The evidence of the failure and harms of the sole custody model ... is abundant ... the pattern of primary residence to one parent with intermittent ‘visitation’ granted to the other continues, not subject to the degree of scrutiny and challenge it deserves.”
16. **A Rebuttable Legal Presumption of Equal Parenting Responsibility is Empirically Supported**
 - “The empirical evidence of the effectiveness of equal parenting as a viable alternative to a sole custody approach is mounting ... and EPR presumption is widely supported by both parents and professionals, and is beneficial and working well for children ...”

Full Source: (see title above for details to access full article)

Source: <http://www.psychologytoday.com/blog/co-parenting-after-divorce/201204/sixteen-arguments-in-support-co-parenting>



For questions contact document author:

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CPR is an all volunteer grass roots organization mobilizing like-minded citizens exposing the problems in family court, educating people about the solution, and seeking family law reform, for the best interest of children.

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Project Mission: remove the obstacles that prevent both parents from being fully and equally involved in the lives of their children.



Decades of Research Supports Better Outcomes for Children with Joint Physical Custody and Equal Shared Parenting

Joint Physical Custody Puts the Best Interests of Children First and Means Better Outcomes for Children (*when, of course, appropriate exceptions are made for abuse, harm, neglect, abandonment, and endangerment, and appropriate protections are in place for victims of domestic violence*) There is an enormous amount of research that has been conducted for well over 3 decades which clearly continues to renew the findings that, without question, sole-custody to one parent at the expense and unwarranted removal of another fit parent, has created negative outcomes for children. While there are exceptions to everything, there is wide-spread agreement that family court is not working, and the statutory and government attempts to micro-manage these families and decide which fit parent is the “better” or “less than better” parent, is not working. This trend must be reversed. Why? Because children benefit from what each parent has to offer, and children benefit most from maximizing involvement with each fit parent.

It does no service to the children to continue the current policy to remove one fit parent in the current statutory scheme which supports an outcome of one “winner” and one “loser” as the model for family court custody determinations – especially when this is done EVEN when each parent is ready, willing, and able to take responsibility for their children. As far back as the early 1970’s (and before) when many of these custody laws were developed, our society looked very different than it does today. (In 1970 and before, few women worked outside the home and few fathers took substantial parenting roles). Decades of research show us now there is clearly no need to remove a fit parent, just because those parents are separated. We must no longer “divide the children” like a stick of furniture that can only reside in one place.

Chances are, it’s very difficult for every policy maker to become an expert on the research. There are people who have done this, but our legislative process does not provide a good forum for constituents, the citizens, to share all the research with all legislators.

The following is a **mere glimpse of the volumes of research available over 3 decades in support of a rebuttable presumption of joint physical custody and shared parenting, as close to equal as possible.**

Abundance of Research Speaks Consistently in Favor of Joint Physical Custody and Shared Parenting

This article serves to review the research from the past decade (2000 – 2010) and serves as a research guide to help policy makers “overcome their reservations about shared parenting ... **Considering the research, it’s hard to understand why more policy makers ... are not in favor of shared parenting.** Taking an optimistic stance, we can assume that too many people are simply unaware of what the research shows. Taking a more pessimistic stance, we might wonder if many people – especially influential people like judges and custody evaluators – are still guided by two disturbing myths: that men – married or divorced – are inferior to women as parents and that the most significant contribution fathers can make to their children is money – especially after a divorce. It’s been said that many of us would rather base our decisions on one good, soul satisfying emotion than on a hundred facts. Let’s hope this becomes less true as the research on shared parenting becomes more widely disseminated.”

Source: Nielsen, Linda Ed.D., M.S. “Shared residential custody: Review of the Research.” Journal of Divorce & Remarriage, (2011), 52:8, 586-609. Dr. Nielsen is a professor of Adolescent and Educational Psychology in the Department of Education at Wake Forest University in Winston Salem, NC. She is known for her research on father-daughter relationships and shared parenting. This quote from 2010 version.

What Children Want

“Our participants, who have lived through their parents’ divorces and have now entered young adulthood (and college) have given us their ‘expert’ advice. Seventy percent of them, men and women alike, believe that **living equal amounts of time with each parent is the best arrangement for children.**”

Source: Fabricius, W.V. and J. Hall, (2000) “Young Adults Perspective on Divorce”, Family and Conciliation Courts Review, Vol. 38, 446-461.

What About Child Satisfaction

“**Children have expressed higher levels of satisfaction with joint physical custody** than with sole custody arrangements; citing the benefit of remaining close to both parents. Joint custody does not create confusion for the majority of youngsters about their living arrangements or about the finality of the divorce, nor does increase loyalty conflicts.”

Source: (Leupnitz, 1982; Shiller, 1986a, 1986b; Steinman, 1981).

The Current System Is Not Working – and it's been known for decades, yet nothing has been done

“It is ironic, and of some interest, that we have subjected joint custody to a level and intensity of scrutiny that was never directed toward the traditional post-divorce arrangement (sole legal and physical custody to the mother and two weekends each month of visiting to the father.) **Developmental and relationship theory should have alerted the mental health field to the potential immediate and long range consequences for the child of only seeing a parent four days each month. And yet until recently, there was no particular challenge to this traditional post-divorce parenting arrangement, despite growing evidence that such post-divorce relationships were not sufficiently nurturing or stabilizing for many children and parents.** There is some evidence that in our well-meaning efforts to save children in the immediate post-separation period from anxiety, confusion, and the normative divorce-engendered conflict, we have set the stage in the longer run for the more ominous symptoms of anger, depression, and a deep sense of loss by depriving the child of the opportunity to maintain a full relationship with each parent.”

Source: Kelly, J. 1991. Examining Resistance to Joint Custody. Joint Custody and Shared Parenting, second edition, Guilford Press.

On Outcomes for Children

“Children in joint physical or legal custody were better adjusted than children in sole-custody settings, but no different from those in intact families. More positive adjustment of joint-custody children held for separate comparisons of general adjustment, family relationships, self-esteem, emotional and behavioral adjustment, and divorce-specific adjustment. Joint-custody parents reported **less current and past conflict than did sole-custody parents**, but this did not explain the better adjustment of joint-custody children. The results are consistent with the hypothesis that joint custody can be advantageous for children in some cases, possibly by facilitating ongoing positive involvement with both parents.”

Source: Bauserman, R., (2002) “Child Adjustment in Joint-Custody Versus Sole-Custody Arrangements: A Meta-Analytic Review”, Journal of Family Psychology, Vol. 16, No. 1, (2002) 91-102.

“Joint custody led to **better child outcomes** overall.”

Source: Kelly, J. B. (2000). Children's adjustment in conflicted marriage and divorce: A decade review of research. Journal of the American Academy of Child and Adolescent Psychiatry, 39, 963-973.

Joint Custody for Parents in Conflict

“Joint custody is also the preferred option in high conflict situations because it helps reduce the conflict over time - and that is in the best interests of the children.” Bender reviews current and historical research on the ‘myths’ of joint custody, i.e. - that joint custody should not be awarded when the mother objects or in high conflict matters. The article describes the benefits of joint custody including that children adjust better post-divorce in joint custody as compared to sole custody awards, children’s attachment to both parents post-divorce is essential for healthy child development, joint custody leads to higher levels of financial compliance, **relitigation is lower as compared to sole custody, and joint custody leads to the best outcome for children** even in high conflict situations because it forces resolution and best leads to reduction of child stress in the long term.

Source: Bender, W.N. 1994. Joint custody: The option of choice. Journal of Divorce & Remarriage 21 (3/4): 115-131.

The Need for Improved Policy Called for LONG AGO – Change is Long-Overdue

This report “summarizes and evaluates the major research concerning joint custody and its impact on children’s welfare.” The report concludes that “The research reviewed supports the conclusion that **joint custody is associated with certain favorable outcomes** for children including **father involvement, best interest of the child for adjustment outcomes, child support, reduced relitigation costs**, and sometimes reduced parental conflict.” The APA also noted that “**The need for improved policy to reduce the present adversarial approach that has resulted in primarily sole maternal custody, limited father involvement and maladjustment of both children and parents is critical.** Increased mediation, joint custody, and parent education are supported for this policy.”

Source: Division 16, School Psychology, American Psychological Association, Report to the U.S. Commission on Child and Family Welfare, June 14, 1995.

Policy Makers are Encouraged to Contact CPR Founder for More Research Available on This Same Subject



This educational brochure is provided as a public service by:
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CPR Project Mission: to remove the obstacles that prevent both parents from being fully and equally involved in the lives of their children.

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Letter: Call it what it is: a sour grapes initiative

By Michael L. Gjesdahl from Fargo on Sep 27, 2014 at 11:34 p.m.

891

Wise King Solomon would vote “no” on Measure 6 because it threatens to cut children in half. Remember? He made the same threat, and not because it was a good idea but because it was a bad one.

Dividing things in half may be a great idea when it comes to sharing candy or pie. But it's an awful idea when it comes to dividing time with children.

Yet that's what the sponsors of Measure 6 propose. They want courts to divide children's time half-and-half between moms and dads, in every case. They call their measure the “North Dakota Parental Rights Initiative.” A more accurate name is “The Sour Grapes Dad Initiative”; its sponsors are a group of noncustodial dads who feel victimized when courts give more consideration to their children's needs than their demands.

Child first

And that's the issue at the center of Measure 6. Should North Dakota distribute a child's time with separated parents based on the child's needs or the parents' selfish wants?

North Dakota law requires courts, in every case, to individually consider each child's “best interests,” then to fashion a custodial schedule to serve them.

To identify a child's best interests, the court must consider many facts, including: both parents' mental and physical health; their criminal backgrounds; their history with drugs and alcohol; their work hours; their ability to provide; which parent has been the child's primary caretaker; what kind of living environment each provides; what kind of people each parent spends time with; whether they are alienating; and more.

Measure 6 would replace this case by case, child by child, family by family evaluation with a one-size-fits-all approach. It would require judges to assume, rather than think, and to use the same time-share proportion for all children and all families, despite their differences. It would ping-pong children back and forth between parents, making them live half-time with each. Its “reasoning” has nothing to do with those children's interests, everything to do with aggrieved dads' self-focus.

Common sense

But both social sciences and common sense see things differently. In most instances, children are best-served with one primary home; with routine; with stability.

You be the judge. Here are a few common fact patterns judges regularly see. In each scenario, would you want to provide the child an individualized schedule ... or be stuck with Measure 6's cookie-cutter, halvesies, approach?

Babies and toddlers: Psychologists tell us that babies require a primary parental attachment, that it's harmful to separate them from their primary parent for more than a few hours at a time. Likewise, toddlers suffer if separated from their primary parent overnight. To Measure 6, though, what we know about children's developmental tolerances is irrelevant. It doesn't matter that harm is done to kids because, to its sponsors, this is about being "fair" to parents, not doing right by kids.

The paternity case: Census data tells us approximately half of all children are born out-of-wedlock, many times to men who have moved on by the time they're born. By the time a paternal relationship is legally established, the child has usually been living with Mom for more than a year, maybe two, often more. By then, the child doesn't know Dad from a stranger on the street. Measure 6 says, "so what?" Even an absent dad is "fit" and the child's best interests don't matter; even a previously uninvolved dad should have equal time with a child. Do you agree?

The bad divorce: Psychologists tell us that the single best predictor of how children in equal custody arrangements fare is whether their parents are civil and cooperative, or hostile and uncommunicative, with each other. Well, think about it. Which of these descriptions best match your understanding of most divorced couples? Are they divorced because of how well they worked together, or because they stopped working together? Measure 6 doesn't care. Under its terms, hostile and nonfunctioning couples will share equal time with their kids – even though we know it will likely harm the kids' well-being.

The primary caretaker: Most couples develop portfolios of responsibility. For many, when it comes to parenting, one party takes a strong lead, maybe even gives up the employed life to devote all energies to tending kids. Maybe the other parent is a workaholic, giving first priority to career. When those parents live a life based on one taking the primary parenting role, upon separation shouldn't the kids continue in that parent's primary care? Measure 6 says "no." It says, "let's think about parents first, kids last."

Solomonic choice?

But maybe you're less like a Measure 6 me-firster and more like King Solomon. When a child's fate was in his hands, he knew better than to actually cut it in half. When you step in the booth to vote on Measure 6, the fate of North Dakota's children will be in your hands. When that moment arrives, don't be suckered by the attractive phrase "equal parental rights." In this instance, "equal" means "half" and you should stand with wise old Solomon. Vote "no" on Measure 6.

Gjesdahl, Fargo, owns North Dakota's largest family law firm. It represents fathers and mothers in equal proportion.

7 3/8/17
TESTIMONY HOUSE BILL NUMBER 1392

First off I would like to thank Rep. Tom Kading for sponsoring this well thought out and just legislation. I would also like to thank all of you for your time and the opportunity to testify on this bill that I believe in so deeply.

Divorce is an ugly process, one that I wouldn't wish upon anyone, and can be made even uglier the way our current, quite frankly archaic laws are set up regarding child custody and parenting time. I think that everyone here can agree that having both parents productively involved in a child's life is a good thing and this bill 12921 guarantees this, except in cases where a parent is proven unfit, and a fit parent should never be denied time with his or her children.

Parental alienation, it exists and is far more prevalent in this state than most realize and it happens far more often than judges and divorce attorneys would ever admit. I have experienced it personally and cannot think of a more painful or emotionally excruciating experience. Custodial parents on a regular basis use their children as pawns, this is unmoral and unfair, but this bill signed into law will insure to a great deal this unjust behavior this will cease to exist.

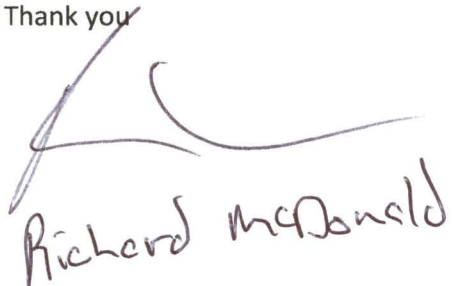
Too many parents having residential responsibility see this as their meal ticket, how ridiculous is that, both parents should equally support their child emotionally, physically, and financially. In my case for example I have 2 children, I am a self-employed farmer, I also have a few rental properties, and used to run trucks in the oil field, after 2012 my best year ever my child support was assessed at \$2500 a month, a very high amount, but at the time I thought it was doable. I should add that we have joint custody and decision making, but my child's mother has residential responsibility. I have the children every other weekend, alternating holidays, one day during the week, and in the summer every weekday including overnights, this works out to be almost exactly 40% of the time. I bring this up because we all know what happened to the oil and ag economies in our state, so I petitioned the court seeking a reduction, my ex with her attorney, and the state child support enforcement fought it, the state actually had a formula and their position was that I was underemployed and used input formulas on what a property manager, an owner of a transport company, and a farmer should make combined and used this for their recommendation, apparently farming 3000 acres is not work enough? Ultimately I lost, not only did I lose but the judge bought their arguments and raised my support by more than \$300 a month even though the previous couple years tax returns showed six figure losses, and the losses were reflected in the respective balance sheets, 2 weeks later I received a letter from the bank and the farm service agency saying they would not be funding my operation. So now I have most of my crop in the ground, no financing, but required to pay \$2832 a month in child support, if I fall behind I lose my driver's license and could face jail time. Luckily through credit from multiple suppliers, and bringing a partner on board I was able to continue farming and keep my child support current at least to this point, but this grossly high number is unaffordable and other debts are being neglected and going to collection, this is not fair to my creditors nor myself. I bring this up because if I'm current on child

support co-parenting is easy, but if theres a glitch and there have been a few, all hell breaks loose and the children become pawns. Bill 1392 would go a long way towards solving this, residential responsibility would be equal which would lead to child support only in cases of income disparity which would have both parents contributing essentially equally and parenting time could never be used as a pawn.

In my case my children have wanted to live with me since the time of the divorce, my attorney advised me because of the age of my children and my workload that it would not be a winning fight. Since then my kids have gotten older they are now 11 and 9, their home life with their mother has gotten to be more tumultuous with allegations of abuse and cruelty, but my attorney still believes it to be an uphill battle. Numerous times throughout the years their mother has tried using social services as a means to affect my relationship with my children, not once have I been close to being reprimanded, however their mother has been reprimanded, and yet I'm still told custody would be an uphill battle, how can this be? Bill 1392 would solve this.

Finally this bill has been the focal point of most of my discussions as of late, with the overwhelming number of people being in favor of it, the only individuals that I have found opposed have been custodial parents, who quite frankly don't want to give up their pawn. They give various reasons such as the court should do whats best for the child, these individuals believing that to be themselves without usually giving any credible reason as to why. But what is truly best for a child is both parents equally involved and Bill 1392 sets this standard and the great state of North Dakota should make it law and any citizen including past cases that could benefit from this legislation should have that opportunity.

Thank you

A handwritten signature in dark ink, appearing to read "Richard McDonald". The signature is written in a cursive, somewhat stylized font. The first name "Richard" is written in a larger, more prominent script, while "McDonald" is written in a smaller, more compact script. The signature is positioned below the "Thank you" text and above the page number.



Testimony in Support of House Bill 1392

Wednesday, March 8, 2017

Good afternoon. My name is Brandi Zachariason. I am here today in support of House Bill 1392.

My husband and I live in Fargo. We have been married for 20 years, and are raising 3 teenager daughters. Our girls are here with me today. My brother is Sean Kasson. Although I am here to support my brother, I am also here to support my nieces: 6 year old Tessa and 4 year old Lyvia—because this bill is about children; and I believe shared parenting is best for children.

Three years ago, my brother and his wife were living in Minot raising a 1 and 3 year old, when they separated. His wife moved back to Fargo and my brother continued to work in Minot. They agreed to alternate full weeks with the girls.

Eventually, my brother was able to find a job in Fargo. He rented a room from a friend and took a substantial pay cut; but it allowed him and family members to spend more time with his daughters.

Tessa and Lyvia knew this routine for over a year. On the weeks that they were with Sean, the rest of our family enjoyed time with them as well—celebrating birthdays, playing at the park, swimming at the lake, or just snuggling on the couch while watching Frozen. The girls settled into this routine; and it was working.

Then, the divorce was finalized. The judge awarded his ex-wife primary custody; and Sean got a little more than every other weekend with his daughters during the school year and alternating full weeks in the summer. The little girls' routine for the past year was disrupted. They didn't do anything wrong, but now they had less time with Dad; less time with Grandma and Grandpa; and less time with aunts, uncles and cousins. I believe that a law, such as this, where children are allowed at least 35% time with their non-custodial parent, would have helped reinforce and promote the routine that Tessa and Lyvia had come to know.

It would be easy to be upset with the result. Why was the routine (that Tessa and Lyvia had known for the past year) disrupted? They were only 1 and 3 when their parents separated. A year in the life of a toddler, is a long time. Why does it appear that Sean is fit enough to spend full weeks with his daughters in the summer, but only fit enough to spend a little more than every other weekend with them in the school year. How does that offer stability to the girls

and look out for their best interests? How do you explain to little girls why they do not get to see their Dad, grandparents, aunts, uncles and cousins as often anymore? We all love Tessa and Lyvia; and they love us.

When 4 year old Lyvia had a school project, she was asked, "What is your favorite place to visit?" Although she had been to Storybook Land and Mexico, Lyvia's response was "visiting Lauren, Kate and Julia" –her cousins...my teenage daughters. When my oldest daughter was looking at colleges, she said that staying near Tessa and Lyvia was important to her; and she chose NDSU.

Although I feel Tessa and Lyvia are exceptional little girls, I do not believe their story is uncommon. Like many other children, they did not ask for their parents to get divorced, yet they are affected by its aftermath. Time and money spent on attorneys, parental investigators, and court fees takes away from the resources needed to raise those children.

Sure there's social science to support shared parenting—but it's also common sense. Children need time with both parents to form meaningful relationships. I was lucky enough to be raised by a stay at home mom and a dad who was home by 5:00 every night. When I reflect on my childhood, I do not think, "I wish I had spent less time with my parents."

Children win when they are allowed to spend as much time as possible with each willing, fit and able parent. I ask that you please support Shared Parenting and House Bill 1392.

Thank you.

Brandi Zachariason

⑧ 9

Testimony of Arnold V. Fleck

HB 1392 - March 8, 2017, Hearing

Senate Judiciary Committee – Fort Lincoln Room

Dear Chairman Armstrong and other distinguished members of the Senate Judiciary Committee:

I write to encourage your support for HB 1392, which would, if enacted into law, create a presumption in favor of shared parenting in child custody disputes in the State of North Dakota. I worked with House Representative Tom Kading in drafting the original bill. I greatly appreciate the foresight that Representative Kading has shown in the development of the bill and the willingness of the other co-sponsors of the bill, Representatives Dwight Kiefert, Aaron McWilliams, Brandy Pyle, Shannon Roers Jones, and Don Vigesaain, to join Representative Kading in supporting such an important bill for children of North Dakota in this legislative session. I also appreciate the work of the House Judiciary Committee on the bill and their unanimous support for the bill as amended by their committee. Though the bill as reported out of committee did not include all of the provisions that had been originally proposed in HB 1392, the members of committee did agree with the most important part of HB 1392 as it was originally proposed, a presumption in favor of shared parenting awards, and has also decided that all sides on this important issue be provided with the opportunity to continue to educate each other in an effort to resolve all the other issues that exist among the interested parties through an interim study. I applaud their insight and willingness to allow this matter to be further studied to aid in the development of North Dakota laws on child custody. I whole heartily supported HB 1392 as reported out of the House Judiciary Committee. And, it was inspiring to see the House of Representatives respect the work of the committee and pass the bill with a clear majority vote of 71-21.

You now have the opportunity to improve the lives of many children in North Dakota, who find or will find themselves in the middle of the breakup of their parents' relationship, and, in some instances, even save the lives of some of those children. The bill was prepared with the intent of implementing, as the law in child custody disputes in North Dakota, the findings and recommendations made by internationally recognized child development experts after their review of social science studies from approximately the past 30 years. Those findings and recommendations are set forth in the following published articles:

1. Richard A. Warshak, Social Science and Parenting Plans for Young Children: A Consensus Report, 20 Psychol. Pub. Pol'y & L. 46 (2014) (discussing the consensus of 110 researchers and practitioners supporting shared parenting arrangements).
2. Richard A. Warshak, Parental Alienation: Overview, Management, Intervention, and Practice Tips, 27 J. Am. Acad. Matrim. Law., in press (2015) (discussing problems associated with parent removed from child's life).
3. Fabricius, W. V., Sokol, K. R., Diaz, P., & Braver, S. L. (2016). Father-child relationships: The missing link between parenting time and children's mental and physical health. In Leslie Drozd, Michael Saini & Nancy Olesen (Eds.), Parenting Plan Evaluations: Applied Research for the Family Court (2nd ed.) (XXX -XXX). New York, NY: Oxford University Press.
4. Fabricius, W.V., Sokol, K.R., Diaz, P., & Braver, S.L. (2012). Parenting time, parent conflict, parent-child relationships, and children's physical health. In K. Kuehnle & L. Drozd (Eds.) Parenting Plan Evaluations: Applied Research for the Family Court (pp. 188-213). Oxford University Press.
5. Fabricius, W.V., Luecken, L.J. Postdivorce Living Arrangements, Parent Conflict, and Long-Term Physical Health Correlates for Children of Divorce, 21 J. Fam. Psychol. 195 (2007) (finding more time children lived with fathers after divorce, the better their long-term relationships, even with high parent conflict).
6. Linda Nielsen, Shared Physical Custody: Does It Benefit Most Children? 28 J. Am. Acad. Matrim. Law. 79 (2015) (discussing 40 studies where it is found that shared physical custody benefits most children).
7. Linda Nielsen, Shared Physical Custody: Summary of 40 Studies on Outcomes for Children, Journal of Divorce & Remarriage, 55:8, 613-635 (2014) (discussing 40 studies where it is found that shared physical custody benefits most children).
8. Linda Nielsen, Wozzles: Their Role in Custody Law Reform, Parenting Plans and Family Court, 20 Psychol. Pub. Pol'y & L. 164 (2014) (discussing research being misrepresented and misused by groups for their own political purpose and such flawed representations being accepted).
9. Linda Nielsen, Parenting Plans for Infants, Toddlers, and Preschoolers: Research and Issues, 55 J. Divorce & Remarriage 315 (2014) (confirming there is no evidence to support postponing the introduction of regular and frequent involvement, including overnights, of both parents with their babies and toddlers, and this confirmation should be taken into account in reforming custody laws).

10. Linda Nielsen, Shared Residential Custody: Review of the Research (Part I of II), 27 Am. J. Fam. L. 61 (2013) (discussing shared residential custody, the children's perspective, parental conflict, and cooperation and income).

11. Linda Nielsen, Shared Residential Custody: Review of the Research (Part II of II), 27 Am. J. Fam. L. 123 (2013) (discussing characteristics of fathers, outcomes for children (e.g. academic and behavioral), and stability of shared parenting).

I have not attached any of these articles, as they are quite voluminous. However, if you are interested in reading any one or more of these articles, let me know and I will email you copies of the articles you request. Most of these articles, if not all, along with other articles and reports on this subject matter, are also available at <http://lw4sp.org/research/>.

Professor Linda Nielson, the author of a majority of the above articles and one of the leading experts, if not the leading expert, on shared parenting in our country, has offered, if you are interested, "to have a one hour conference call with [your] committee [provided the members have read her] articles and want to ask [her] specific questions about the research." Though I requested Dr. Nielson's attendance at your hearing, she indicated she could not appear and testify in support of any bill because she believes any such appearance could jeopardize her qualifications "as an expert witness in custody hearings - and might raise concerns in the academic community that [she is] biased in [her] presentations of the research in CLE workshops and in [her] articles." I wanted her to be present at your hearing on HB 1392, but the most to which I could get her to commit was the one hour telephone conference described above. If one or more members of your committee want to take Dr. Nielson up on her offer, let me know and I'll do whatever it takes to make it happen.

It has now been over ten years since shared parenting was first advocated for in the State of North Dakota, in the form of a 2006 Initiative Measure. It has, since then, been brought back into the spotlight here in North Dakota, pretty much every two to five years, while being a topic raised in other states more recently on an almost an annual basis. During the 2011 North Dakota Legislative Session, SB 2201 was rejected. In the 2013 North Dakota Legislative Session bills that would have just forced state's attorneys and law enforcement officials across the State to enforce existing child visitation/parenting time orders were rejected. And, most recently, in 2014 Initiative Measure #6 was rejected by the voters. On May 27, 2012, the Minnesota Governor vetoed a shared parenting bill that was passed by the Minnesota House and Senate. In 2012 the State of Arizona enacted a new custody law that encourages joint parenting, including requiring their courts to adopt a plan that "maximizes" both parents' time with the child and forbids

the court from giving one parent preference based on the parent's or child's gender. In 2014, the State of South Dakota enacted a "Shared Parenting Law" that encourages shared parenting awards. In 2015 Minnesota changed its law to recognize the benefits of maximizing the time children spend with both parents. On April 18, 2016, Florida Governor vetoed a shared parenting bill that had been passed by the Florida legislature. The last time I checked, Alaska and Oklahoma laws provided substantially equal access between minor children and both parents at the onset of the separation of the parents, and Texas and the District of Columbia laws provided a minimum of 40% access between children and their parents.

Half the state legislatures across the United States are currently considering a move to shared parenting or an enhancement of their existing shared parenting laws, as Lawmakers have filed bills in twenty-five states. Support for a rebuttable presumption of shared parenting has been growing in recent years. After Arizona's successful move to Shared Parenting in 2012, attorneys from Arizona now tell fathers they have a 90% chance their children will be awarded equal time with both parents, and Judges feel the new statute is working well. Additional states have followed suit. The language varies between bills, with some calling for 50/50 equal parenting and HB 1392 calling for a minimum of 35% of the child's time to be awarded to both parents with the remainder to be crafted according to family circumstances.

Bills have been filed in Alabama, Arizona, Connecticut, Indiana, Iowa, Kentucky, Maine, Maryland, Massachusetts, Michigan, Mississippi, Missouri, Montana, New Hampshire, New York, North Dakota, Oregon, South Carolina, South Dakota, Texas, Vermont, Washington, West Virginia, Wisconsin, and Wyoming. A page, containing links to the language in all the bills, as they were introduced, their sponsors, and their sponsors contact information is available at:

https://static1.squarespace.com/static/5154a075e4b08f050dc20996/t/58af7c489de4bbf849974810/1487895625336/Shared+Parenting+Bills_For+LW4SP+Site_2017Final.pdf

While bills have not yet been filed in Massachusetts, Michigan or Wisconsin, the legislative calendar in these states is unusual and it is very likely that bills are forthcoming.

As revealed in the above cited articles, based on more than 40 studies, there is now a consensus among large groups of international experts that the vast majority of children benefit most from shared parenting after their parents separate. The 40 plus peer-reviewed studies compared children in shared parenting families where they continued to live with each parent at least 35% of the time to children who live primarily or exclusively with one parent while continuing to see their non-residential parent. The results are clear and unambiguous. The children in shared parenting families have better outcomes.

Unfortunately, too many mental health professionals and family court professionals make custody recommendations or decisions that are based on their personal beliefs, gut feelings or personal experiences with the most extreme custody cases - not on empirical data. Indeed, many of these professionals have never read the available research. Just as some poorly informed doctors offer outdated or harmful advice about medical treatments, there are professionals who offer advice to judges and mental health practitioners that is not research-based. More troubling still, many of these speakers and writers convincingly present their opinions as if they were actually reporting empirical data - a disguise that is not only disingenuous but potentially harmful to children whose lives are affected by judges' and mental health practitioners' decisions regarding custody issues. In short, too many well-intentioned judges and practitioners have been misled into accepting advice that is not based on empirical evidence.

Sharing the physical custody of the children on a more equal basis is not about parents' rights or about activist groups. It is about making the best choices for children - decisions that are firmly grounded in research - not on the personal opinions of parents, seminar speakers, mental health practitioners or professionals working in family courts.

Social science proves, when couples separate, shared parenting works in the clear majority of cases. Current North Dakota law requires one parent be awarded sole custody unless the parents agree to shared parenting, and results in shared parenting awards being the exception, not the norm. Though shared parenting arrangements are awarded by judges in our state under our current law, it is very rare that such awards are made when the issue is decided by the judge, unless your case is tried in Minot. For some reason, the judges from Minot are more inclined, than in other areas of the State, to award shared parenting. My best guess as to why that is, is that those judges have learned about the significant benefits that shared parenting arrangements offer, and have on their own decided to let it affect their decisions despite the existing law.

The benefits from shared parenting awards are significant. The statistics indicate children raised by single parents account for 63% of teen suicides, 71% of high school drop outs, 75% of children in chemical abuse centers, 85% of children who exhibit behavior disorders; and 90% of homeless and runaway children. In other words, this is literally a life and death issue for some and a life changing issue for many others.

Social science proves when a child does not spend at least 35% time with an able, willing and fit parent, that child is being deprived of his/her best outcome, academically, physically, mentally, socially, and economically. HB 1392 protects the parent-child relationship with each fit parent, and, if

enacted, will actually promote children's best interests, by mandating shared parenting awards in cases where social science studies have shown such awards are in the best interests of the children, while at the same time allowing sole/primary custody awards in the cases where shared parenting has been proven not to be in the best interests of the children.

It is well known that children do better when both parents remain involved in their lives. Shared parenting should be the norm in situation where you have two fit parents, rather than the exception.

I am a lawyer who has practiced family law in North Dakota for more than 30 years now and whose children, in my opinion, were victimized by the family law system in North Dakota though the divorce action their mother commenced against me. I am different from most, if not all who will testify before you on HB 1392, in that I no longer have a dog in this fight, as all my children are now adults and I am not paid for my advocacy in support of shared parenting. I am only involved in this endeavor because I know, in my brain and heart, shared parenting laws are truly in the best interests of all our children and that enactment of HB 1392 would result in North Dakota having the best law in our great nation on child custody disputes. As I have indicated HB 1392 is firmly grounded in scientific research that is backed by internationally known scholars on the issue of child custody. I plead with you, for the sake of our children, to not give into the woozlers who oppose HB 1392 based on their speculative personal beliefs that are not supported by science. Our children's lives literally are at stake here!

Respectfully,

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Jason McLean HB 1392 Testimony: March 8, 2017

Good morning. My name is Jason McLean. I am the past Chair of the Family Law Section of the North Dakota Bar Association. I am also the Co-Chair of the Family Law Task Force, which was formed in 2015 and continues its work today. I have been licensed to practice law in North Dakota since 2004 and in Minnesota since 2003. During this time, I have practiced exclusively in the area of family law. I appear here today not on behalf of SBAND, the Family Law Section, or the Task Force, but as a concerned citizen and someone who has worked in this area for over 10 years. It is that experience that tells me that HB 1392 is wrong for North Dakota families.

The current version passed by your colleagues in the house is not the version I testified against in February. Rather, this version is the result of a hodgepodge amendment that removed much of the language that opponents found objectionable. However, it did not remove perhaps the most important and potentially harmful part of the Bill: the presumption of an equal parenting time award.

HB 1392 v. Measure 6

During floor debate on this Bill, I was surprised to learn that Representatives viewed this as different from the defeated Measure 6 in 2014. I was further surprised to hear the comments from the Bill's original sponsor, Representative Tom Kading, that this Bill differs from Measure 6 because of the 35% "floor." Make no mistake Senators, the purpose of this Bill, and its end result, is no different than Measure 6: a presumption of an equal award of residential responsibility. If anything, the changes to HB 1392 made what was a bad bill, worse.

Perhaps it is best to start with what HB 1392 actually does based upon its plain language. It creates a presumption that all parents are to receive equal parenting time and residential responsibility unless a court explains why a parent does not receive equal time. Proponents of this bill will say that what I am saying isn't accurate and that it only mandates 35%. Here's the problem though, that's not what this bill says:

"Equal parenting time and residential responsibility" means each parent has the child in that parent's care for a time that is *equal to or as close to fifty percent of the time as can be arranged* based on the circumstances but which is not less than 35% percent of the time.

The plain language, which is what courts are required to follow, states that the starting point for a court must be as close to 50% as can be arranged. When coupled with the definition located in Section 2 (c) of HB 1392, a hard presumption of 50-50 time for children unless courts decide otherwise is the result.

If our goal as a State is to keep families out of the courthouse, HB 1392 does the opposite. The court is the only place a parent can go to overcome a presumption. Not only that, the burden of proof is no longer equal between the parents. Instead, the parent opposing the presumption bears that burden. Imagine an abused parent having to relive that abuse to overcome an equal presumption and being told it is not enough.

HB 1392 is Retroactive in Application

This presumption also creates a de facto retroactive application of the law. Yes, on its face the retroactive and emergency clauses have been removed. However, consider a parent with a parenting plan in place for 4-5 years. Under the current law, to change residential responsibility, the nonprimary parent would need to show that there has been a change in circumstances, that the change is in the children's best interests, and it's necessary to change residential responsibility. That *prima facie* bar is very low, so low in fact that the majority of cases outside of two years clear it with ease. That is fine under the current law because the moving nonprimary parent is then required to prove his or her case to the court to justify a change.

Under HB 1392, that same parent, using the same facts and passing the same hurdle, now gets a de facto change in residential responsibility to "equal" without actually having to prove anything. At the *prima facie* stage, his or her allegations are taken as truthful. The courts are only allowed to entertain competing evidence that directly contradicts the movant's claims. There are no new allegations at that stage. Under HB 1392, the parent with primary residential responsibility must defend why things should say the same. This change is contrary to basically every aspect of how we proceed in family law courts and courts in general. If you want to make a change, the burden falls on the moving party. Not so with HB 1392. As a result, de facto retroactivity occurs.

Zero Social Scientists Advocate for a Presumption

Proponents have said today, and for years, that 110 social scientists found that shared parenting is what is best for children. I am not going to refute that. However, that is only a small portion of the story. First, "shared parenting" is **not** equal parenting. Rather, it refers to any time parents have 35% of time or more with their children. Making time equal is irrelevant to shared parenting scholars.

Second, shared parenting does not ignore what has occurred in the family dynamic to get to equal time. Instead, it is important to give a parent time to synchronize with a child. That could result in even less than 35% of parenting time in some cases.

Third, the studies cited by proponents do not involve cases with long distance or even differing school districts and/or schools. The reason is because shared parenting should not be an inconvenience to the child. HB 1392 would create such an inconvenience. There is nothing in our best interest factors to provide the courts guidance if 5 miles, 25 miles, or 75 miles between families is enough to overcome a presumption.

Lastly, scholars do not favor what proponents are doing here. They do not favor across the board presumptions or "one-size fits all" mandates when it comes to shared parenting. They don't favor these sorts of ideas because they are contrary to idea that ever family is different. Social scientists are not advocating for what the proponents of HB 1392 are asking. No state has issued such a presumption either. Not a one.

A Better Alternative

What social scientists are trying to do is looking for ways to discuss and educate about shared parenting, not force feed it to families. In that vein, and with hopes of providing a more reasonable and child friendly alternative to the hard presumption of HB 1392, the Family Law Section of the State Bar Association, after discussion on the matter, drafted a proposed amendment to HB 1392. This amendment provides for the following:

1. Three clear definitions for primary residential responsibility, shared residential responsibility, and equal residential responsibility. Shared residential responsibility is defined as 35% of the time, but less than equal residential responsibility. Equal residential is defined in the same manner as it is defined in our child support guidelines.
2. That when establishing or modifying the parental and decision making rights to a child, the court, after considering the best interest factors, may award any of the three options and must clearly state its reasoning for that award.

What this proposed amended version does not do is change child support or its definitions. Instead of defining equal as 35% or more, this proposed amendment tracks with the guidelines. Any deductions for extended parenting time would be available to a qualifying parent. Rather than creating differing definitions of equal for the courts to sort out, this amendment presents a cleaner option...an option that does not run afoul of our guidelines.

That does not mean that the proposed amendments are a magic bullet. The need for a legislative study to work with the ongoing Family Task Force remains and is welcomed. However, if the purpose of this legislation is to introduce the legislature to shared parenting and what it actually means in the social scientific world, the amended version offered by the Family Law Sections does so. However, if the purpose of HB 1392 and its supporters is to implement a presumption, the same presumption rejected 62% to 38% in 2014, that is not what shared parenting is or what it is about.

Why I am Here

I am sure many of you are thinking that this debate seems familiar and that you want to do something so it does not come up every two to four years. Believe me, I sympathize with you. In just the past few months, I have received emails and messages from the supporters of HB 1392 calling me a liar, telling me I will burn in hell, blaming me for a suicide because an adult from a divorced family killed himself, and—my personal favorite—challenging me to a debate “mano y mano.” My firm has been the subject of false reviews and other bullying tactics. I am not alone in dealing with this behavior. Yet, here I am, standing by my statements and my beliefs.

The reason why I do it is clear to me. I don't do it because I hate fathers (I don't) or because I hate money (HB 1392 will increase my bottom line). I do it because for every piece of vile hate mail or other statement I receive, I get 5 or 10 more supporting what I have said and asking me to fight this fight for the families out there. I get emails and messages asking me to tell the legislature about their case. Ones where a parent did not come around for the first three years of their son's life and now expects half the time. Or the parent that left an abusive relationship but would not be able to overcome a presumption against 50-50 time now because too much time has passed. Then there is the parent who was belittled day-in and day-out about their parenting, looks, or decisions by a parent that chose to drink or use illegal substances instead of being a parent. Those parents are the real majority out there Senators, not the few proponents that are here and only give you one-half of a story.

Conclusion

As I did when I testified before the House Judiciary Committee, I am providing you with information concerning the 2014 election, including a district-by-district breakdown of the peoples' rejection of a presumption. I am providing you with a copy of the 2016 divorce statistics from Cathy Ferderer with the Family Law Mediation Project to show the number of cases that settle under our current laws. I have also included a copy of proposed amendments to HB 1392 that the Family Law Section provided for comment and approved.

Thank you for your time. I would be happy to answer any questions.

2014 Measure 6 Election Results: District Totals

Measure 6 (North Dakota)

Precincts Reporting: 427/427 - Total Ballots Cast: 255128

2014 General Election - OFFICIAL RESULTS

District	Yes	No	TOTALS	Percent Opposed
District 01	1718	2196	3914	56.11
District 02	2242	3407	5649	60.31
District 03	1820	2617	4437	58.98
District 04	1905	2886	4791	60.24
District 05	1727	3024	4751	63.65
District 06	2213	3862	6075	63.57
District 07	2620	4143	6763	61.26
District 08	2841	4011	6852	58.54
District 09	1309	1564	2873	54.44
District 10	2188	3493	5681	61.49
District 11	1886	3148	5034	62.53
District 12	1495	3048	4543	67.09
District 13	2013	3444	5457	63.11
District 14	2082	4501	6583	68.37
District 15	1772	3304	5076	65.09
District 16	1726	2627	4353	60.35
District 17	2313	3705	6018	61.57
District 18	1737	1989	3726	53.38
District 19	1914	2817	4731	59.54
District 20	1758	3042	4800	63.38
District 21	1587	2209	3796	58.19
District 22	2014	3998	6012	66.5
District 23	1914	3169	5083	62.35
District 24	1673	3724	5397	69
District 25	1630	3350	4980	67.27
District 26	1865	3662	5527	66.26
District 27	2091	3226	5317	60.67
District 28	2307	4002	6309	63.43
District 29	1875	3852	5727	67.26
District 30	2206	3351	5557	60.3
District 31	2311	3171	5482	57.84
District 32	1997	3032	5029	60.29
District 33	2744	3443	6187	55.65
District 34	2341	3235	5576	58.02
District 35	2315	4047	6362	63.61
District 36	2322	3317	5639	58.82
District 37	2013	2872	4885	58.79
District 38	1815	2873	4688	61.28
District 39	2657	4180	6837	61.14
District 40	1137	1701	2838	59.94
District 41	1842	3684	5526	66.67
District 42	1197	1566	2763	56.68
District 43	1594	2350	3944	59.58
District 44	1806	3686	5492	67.12
District 45	1713	2988	4701	63.56
District 46	1936	3860	5796	66.6
District 47	2626	4628	7254	63.8
TOTAL	92807	152004	244811	62.09

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Initiated Statutory Measure No. 6 Relating to Parental Rights and Responsibilities - Vote For 1

		Votes	Percent
Rejected	No	152,004	62.09%
	Yes	92,807	37.91%
	Total Votes	244,811	

Legislative District Results

District 01			
		Votes	Percent
	No	2,196	56.11%
	Yes	1,718	43.89%
	Total Votes	3,914	

District 02			
-------------	--	--	--

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	▲	Votes ▼	Percent		
	No	3,407	60.31%		
	Yes	2,242	39.69%		
	Total Votes	5,649			

ⓘ

District 03

	▲	Votes ▼	Percent		
	No	2,617	58.98%		
	Yes	1,820	41.02%		
	Total Votes	4,437			

ⓘ

District 04

	▲	Votes ▼	Percent		
	No	2,886	60.24%		
	Yes	1,905	39.76%		
	Total Votes	4,791			

ⓘ

District 05

	▲	Votes ▼	Percent		
	No	3,024	63.65%		
	Yes	1,727	36.35%		
	Total Votes	4,751			

ⓘ

District 06

	▲	Votes ▼	Percent		
	No	3,862	63.57%		
	Yes	2,213	36.43%		
	Total Votes	6,075			

ⓘ

District 07

	▲	Votes ▼	Percent		
	No	4,143	61.26%		
	Yes	2,620	38.74%		
	Total Votes	6,763			

ⓘ

District 08

	▲	Votes ▼	Percent		
	No	4,011	58.54%		
	Yes	2,841	41.46%		
	Total Votes	6,852			

□ District 09

	▲	Votes ▼	Percent		
	No	1,564	54.44%		
	Yes	1,309	45.56%		
	Total Votes	2,873			

□ District 10

	▲	Votes ▼	Percent		
	No	3,493	61.49%		
	Yes	2,188	38.51%		
	Total Votes	5,681			

□ District 11

	▲	Votes ▼	Percent		
	No	3,148	62.53%		
	Yes	1,886	37.47%		
	Total Votes	5,034			

□ District 12

	▲	Votes ▼	Percent		
	No	3,048	67.09%		
	Yes	1,495	32.91%		
	Total Votes	4,543			

□ District 13

	▲	Votes ▼	Percent		
	No	3,444	63.11%		
	Yes	2,013	36.89%		
	Total Votes	5,457			

□ District 14

	▲	Votes ▼	Percent
	No	4,501	68.37%
	Yes	2,082	31.63%
	Total Votes	6,583	

District 15

	▲	Votes ▼	Percent
	No	3,304	65.09%
	Yes	1,772	34.91%
	Total Votes	5,076	

District 16

	▲	Votes ▼	Percent
	No	2,627	60.35%
	Yes	1,726	39.65%
	Total Votes	4,353	

District 17

	▲	Votes ▼	Percent
	No	3,705	61.57%
	Yes	2,313	38.43%
	Total Votes	6,018	

District 18

	▲	Votes ▼	Percent
	No	1,989	53.38%
	Yes	1,737	46.62%
	Total Votes	3,726	

District 19

	▲	Votes ▼	Percent
	No	2,817	59.54%
	Yes	1,914	40.46%
	Total Votes	4,731	

District 20

10

	▲	Votes ▼	Percent
	No	3,042	63.38%
	Yes	1,758	36.63%
	Total Votes	4,800	

District 21

	▲	Votes ▼	Percent
	No	2,209	58.19%
	Yes	1,587	41.81%
	Total Votes	3,796	

District 22

	▲	Votes ▼	Percent
	No	3,998	66.50%
	Yes	2,014	33.50%
	Total Votes	6,012	

District 23

	▲	Votes ▼	Percent
	No	3,169	62.35%
	Yes	1,914	37.65%
	Total Votes	5,083	

District 24

	▲	Votes ▼	Percent
	No	3,724	69.00%
	Yes	1,673	31.00%
	Total Votes	5,397	

District 25

	▲	Votes ▼	Percent
	No	3,350	67.27%
	Yes	1,630	32.73%
	Total Votes	4,980	

District 26

	▲	Votes ▼	Percent
	No	3,662	66.26%
	Yes	1,865	33.74%
	Total Votes	5,527	

□ District 27

	▲	Votes ▼	Percent
	No	3,226	60.67%
	Yes	2,091	39.33%
	Total Votes	5,317	

□ District 28

	▲	Votes ▼	Percent
	No	4,002	63.43%
	Yes	2,307	36.57%
	Total Votes	6,309	

□ District 29

	▲	Votes ▼	Percent
	No	3,852	67.26%
	Yes	1,875	32.74%
	Total Votes	5,727	

□ District 30

	▲	Votes ▼	Percent
	No	3,351	60.30%
	Yes	2,206	39.70%
	Total Votes	5,557	

□ District 31

	▲	Votes ▼	Percent
	No	3,171	57.84%
	Yes	2,311	42.16%
	Total Votes	5,482	

□ District 32

12

	▲	Votes ▼	Percent
	No	3,032	60.29%
	Yes	1,997	39.71%
	Total Votes	5,029	

District 33

	▲	Votes ▼	Percent
	No	3,443	55.65%
	Yes	2,744	44.35%
	Total Votes	6,187	

District 34

	▲	Votes ▼	Percent
	No	3,235	58.02%
	Yes	2,341	41.98%
	Total Votes	5,576	

District 35

	▲	Votes ▼	Percent
	No	4,047	63.61%
	Yes	2,315	36.39%
	Total Votes	6,362	

District 36

	▲	Votes ▼	Percent
	No	3,317	58.82%
	Yes	2,322	41.18%
	Total Votes	5,639	

District 37

	▲	Votes ▼	Percent
	No	2,872	58.79%
	Yes	2,013	41.21%
	Total Votes	4,885	

District 38

13

	▲	Votes ▼	Percent
	No	2,873	61.28%
	Yes	1,815	38.72%
	Total Votes	4,688	

LI District 39

	▲	Votes ▼	Percent
	No	4,180	61.14%
	Yes	2,657	38.86%
	Total Votes	6,837	

LI District 40

	▲	Votes ▼	Percent
	No	1,701	59.94%
	Yes	1,137	40.06%
	Total Votes	2,838	

LI District 41

	▲	Votes ▼	Percent
	No	3,684	66.67%
	Yes	1,842	33.33%
	Total Votes	5,526	

LI District 42

	▲	Votes ▼	Percent
	No	1,566	56.68%
	Yes	1,197	43.32%
	Total Votes	2,763	

LI District 43

	▲	Votes ▼	Percent
	No	2,350	59.58%
	Yes	1,594	40.42%
	Total Votes	3,944	

LI District 44

41

	▲	Votes ▼	Percent
	No	3,686	67.12%
	Yes	1,806	32.88%
	Total Votes	5,492	

⌵ District 45

	▲	Votes ▼	Percent
	No	2,988	63.56%
	Yes	1,713	36.44%
	Total Votes	4,701	

⌵ District 46

	▲	Votes ▼	Percent
	No	3,860	66.60%
	Yes	1,936	33.40%
	Total Votes	5,796	

⌵ District 47

	▲	Votes ▼	Percent
	No	4,628	63.80%
	Yes	2,626	36.20%
	Total Votes	7,254	

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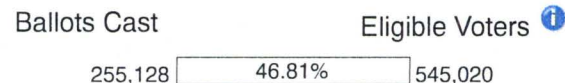
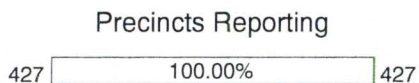
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North Dakota Election Officials, County Auditors and Secretary of State

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Initiated Statutory Measure No. 6 Relating to Parental Rights and Responsibilities - Vote For 1

		Votes ▼	Percent
Rejected	No	152,004	62.09%
	Yes	92,807	37.91%
	Total Votes	244,811	

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County Results

Adams County Precincts Reporting: 1/1 (Election Day Reporting Complete)

[Precinct Results](#)

		Votes ▼	Percent
	No	639	63.52%
	Yes	367	36.48%
	Total Votes	1,006	

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Barnes County [Precinct Results](#)
 Precincts Reporting: 15/15 (Election Day Reporting Complete)

	▲	Votes ▼	Percent		
	No	3,011	70.58%		
	Yes	1,255	29.42%		
	Total Votes	4,266			

Benson County [Precinct Results](#)
 Precincts Reporting: 8/8 (Election Day Reporting Complete)

	▲	Votes ▼	Percent		
	No	902	64.06%		
	Yes	506	35.94%		
	Total Votes	1,408			

Billings County [Precinct Results](#)
 Precincts Reporting: 3/3 (Election Day Reporting Complete)

	▲	Votes ▼	Percent		
	No	303	58.95%		
	Yes	211	41.05%		
	Total Votes	514			

Bottineau County [Precinct Results](#)
 Precincts Reporting: 5/5 (Election Day Reporting Complete)

	▲	Votes ▼	Percent		
	No	1,877	68.16%		
	Yes	877	31.84%		
	Total Votes	2,754			

Bowman County [Precinct Results](#)
 Precincts Reporting: 4/4 (Election Day Reporting Complete)

	▲	Votes ▼	Percent		
	No	996	69.99%		
	Yes	427	30.01%		
	Total Votes	1,423			

Burke County

Precincts Reporting: 6/6 (Election Day Reporting Complete)

[Precinct Results](#)

	▲	Votes ▼	Percent
	No	536	61.33%
	Yes	338	38.67%
	Total Votes	874	

Burleigh County
Precincts Reporting: 36/36 (Election Day Reporting Complete)

[Precinct Results](#)

	▲	Votes ▼	Percent
	No	21,842	61.94%
	Yes	13,419	38.06%
	Total Votes	35,261	

Cass County
Precincts Reporting: 37/37 (Election Day Reporting Complete)

[Precinct Results](#)

	▲	Votes ▼	Percent
	No	33,837	63.97%
	Yes	19,059	36.03%
	Total Votes	52,896	

Cavalier County
Precincts Reporting: 1/1 (Election Day Reporting Complete)

[Precinct Results](#)

	▲	Votes ▼	Percent
	No	1,163	66.72%
	Yes	580	33.28%
	Total Votes	1,743	

Dickey County
Precincts Reporting: 3/3 (Election Day Reporting Complete)

[Precinct Results](#)

	▲	Votes ▼	Percent
	No	1,385	68.87%
	Yes	626	31.13%
	Total Votes	2,011	

Divide County
Precincts Reporting: 4/4 (Election Day Reporting Complete)

[Precinct Results](#)

19

	▲	Votes ▼	Percent		
	No	680	68.27%		
	Yes	316	31.73%		
	Total Votes	996			

▢ **Dunn County**
Precincts Reporting: 12/12 (Election Day Reporting Complete)

[Precinct Results](#)

	▲	Votes ▼	Percent		
	No	972	59.52%		
	Yes	661	40.48%		
	Total Votes	1,633			

▢ **Eddy County**
Precincts Reporting: 4/4 (Election Day Reporting Complete)

[Precinct Results](#)

	▲	Votes ▼	Percent		
	No	769	73.59%		
	Yes	276	26.41%		
	Total Votes	1,045			

▢ **Emmons County**
Precincts Reporting: 5/5 (Election Day Reporting Complete)

[Precinct Results](#)

	▲	Votes ▼	Percent		
	No	907	57.12%		
	Yes	681	42.88%		
	Total Votes	1,588			

▢ **Foster County**
Precincts Reporting: 6/6 (Election Day Reporting Complete)

[Precinct Results](#)

	▲	Votes ▼	Percent		
	No	1,066	67.55%		
	Yes	512	32.45%		
	Total Votes	1,578			

▢ **Golden Valley County**
Precincts Reporting: 1/1 (Election Day Reporting Complete)

[Precinct Results](#)

	▲	Votes ▼	Percent		
	Total Votes	729			

	▲	Votes ▼	Percent		
	No	444	60.91%		
	Yes	285	39.09%		
	Total Votes	729			

Grand Forks County [Precinct Results](#)
 Precincts Reporting: 27/27 (Election Day Reporting Complete)

	▲	Votes ▼	Percent		
	No	11,817	58.86%		
	Yes	8,258	41.14%		
	Total Votes	20,075			

Grant County [Precinct Results](#)
 Precincts Reporting: 4/4 (Election Day Reporting Complete)

	▲	Votes ▼	Percent		
	No	679	57.54%		
	Yes	501	42.46%		
	Total Votes	1,180			

Griggs County [Precinct Results](#)
 Precincts Reporting: 5/5 (Election Day Reporting Complete)

	▲	Votes ▼	Percent		
	No	741	61.75%		
	Yes	459	38.25%		
	Total Votes	1,200			

Hettinger County [Precinct Results](#)
 Precincts Reporting: 4/4 (Election Day Reporting Complete)

	▲	Votes ▼	Percent		
	No	698	60.49%		
	Yes	456	39.51%		
	Total Votes	1,154			

Kidder County [Precinct Results](#)
 Precincts Reporting: 6/6 (Election Day Reporting Complete)

	▲	Votes ▼	Percent		
	Total Votes	1,124			

	▲	Votes ▼	Percent
	No	727	64.68%
	Yes	397	35.32%
	Total Votes	1,124	

LaMoure County [Precinct Results](#)
 Precincts Reporting: 4/4 (Election Day Reporting Complete)

	▲	Votes ▼	Percent
	No	1,259	67.80%
	Yes	598	32.20%
	Total Votes	1,857	

Logan County [Precinct Results](#)
 Precincts Reporting: 5/5 (Election Day Reporting Complete)

	▲	Votes ▼	Percent
	No	624	66.60%
	Yes	313	33.40%
	Total Votes	937	

McHenry County [Precinct Results](#)
 Precincts Reporting: 8/8 (Election Day Reporting Complete)

	▲	Votes ▼	Percent
	No	1,345	58.94%
	Yes	937	41.06%
	Total Votes	2,282	

McIntosh County [Precinct Results](#)
 Precincts Reporting: 6/6 (Election Day Reporting Complete)

	▲	Votes ▼	Percent
	No	903	67.09%
	Yes	443	32.91%
	Total Votes	1,346	

McKenzie County [Precinct Results](#)
 Precincts Reporting: 11/11 (Election Day Reporting Complete)

	▲	Votes ▼	Percent
	Total Votes	2,477	

82

	▲	Votes ▼	Percent		
	No	1,287	51.96%		
	Yes	1,190	48.04%		
	Total Votes	2,477			

McLean County
Precincts Reporting: 3/3 (Election Day Reporting Complete)

[Precinct Results](#)

	▲	Votes ▼	Percent		
	No	2,385	55.75%		
	Yes	1,893	44.25%		
	Total Votes	4,278			

Mercer County
Precincts Reporting: 14/14 (Election Day Reporting Complete)

[Precinct Results](#)

	▲	Votes ▼	Percent		
	No	1,891	51.96%		
	Yes	1,748	48.04%		
	Total Votes	3,639			

Morton County
Precincts Reporting: 18/18 (Election Day Reporting Complete)

[Precinct Results](#)

	▲	Votes ▼	Percent		
	No	6,508	59.20%		
	Yes	4,486	40.80%		
	Total Votes	10,994			

Mountrail County
Precincts Reporting: 9/9 (Election Day Reporting Complete)

[Precinct Results](#)

	▲	Votes ▼	Percent		
	No	1,445	61.33%		
	Yes	911	38.67%		
	Total Votes	2,356			

Nelson County
Precincts Reporting: 1/1 (Election Day Reporting Complete)

[Precinct Results](#)

	▲	Votes ▼	Percent		
	Total Votes	1,404			

23

	▲	Votes ▼	Percent		
	No	812	57.83%		
	Yes	592	42.17%		
	Total Votes	1,404			

Oliver County [Precinct Results](#)
 Precincts Reporting: 7/7 (Election Day Reporting Complete)

	▲	Votes ▼	Percent		
	No	504	59.93%		
	Yes	337	40.07%		
	Total Votes	841			

Pembina County [Precinct Results](#)
 Precincts Reporting: 6/6 (Election Day Reporting Complete)

	▲	Votes ▼	Percent		
	No	1,573	59.67%		
	Yes	1,063	40.33%		
	Total Votes	2,636			

Pierce County [Precinct Results](#)
 Precincts Reporting: 8/8 (Election Day Reporting Complete)

	▲	Votes ▼	Percent		
	No	1,344	72.14%		
	Yes	519	27.86%		
	Total Votes	1,863			

Ramsey County [Precinct Results](#)
 Precincts Reporting: 4/4 (Election Day Reporting Complete)

	▲	Votes ▼	Percent		
	No	2,631	64.52%		
	Yes	1,447	35.48%		
	Total Votes	4,078			

Ransom County [Precinct Results](#)
 Precincts Reporting: 4/4 (Election Day Reporting Complete)

	▲	Votes ▼	Percent		
	Total Votes	1,894			

hC

	▲	Votes ▼	Percent
	No	1,206	63.67%
	Yes	688	36.33%
	Total Votes	1,894	

Renville County [Precinct Results](#)
 Precincts Reporting: 5/5 (Election Day Reporting Complete)

	▲	Votes ▼	Percent
	No	640	61.60%
	Yes	399	38.40%
	Total Votes	1,039	

Richland County [Precinct Results](#)
 Precincts Reporting: 15/15 (Election Day Reporting Complete)

	▲	Votes ▼	Percent
	No	3,933	67.87%
	Yes	1,862	32.13%
	Total Votes	5,795	

Rolette County [Precinct Results](#)
 Precincts Reporting: 5/5 (Election Day Reporting Complete)

	▲	Votes ▼	Percent
	No	1,564	54.44%
	Yes	1,309	45.56%
	Total Votes	2,873	

Sargent County [Precinct Results](#)
 Precincts Reporting: 5/5 (Election Day Reporting Complete)

	▲	Votes ▼	Percent
	No	967	59.65%
	Yes	654	40.35%
	Total Votes	1,621	

Sheridan County [Precinct Results](#)
 Precincts Reporting: 1/1 (Election Day Reporting Complete)

	▲	Votes ▼	Percent
	Total Votes	687	

50

	▲	Votes ▼	Percent
	No	449	65.36%
	Yes	238	34.64%
	Total Votes	687	

Sioux County [Precinct Results](#)
 Precincts Reporting: 6/6 (Election Day Reporting Complete)

	▲	Votes ▼	Percent
	Yes	318	50.24%
	No	315	49.76%
	Total Votes	633	

Slope County [Precinct Results](#)
 Precincts Reporting: 3/3 (Election Day Reporting Complete)

	▲	Votes ▼	Percent
	No	249	68.60%
	Yes	114	31.40%
	Total Votes	363	

Stark County [Precinct Results](#)
 Precincts Reporting: 8/8 (Election Day Reporting Complete)

	▲	Votes ▼	Percent
	No	5,162	58.43%
	Yes	3,673	41.57%
	Total Votes	8,835	

Steele County [Precinct Results](#)
 Precincts Reporting: 5/5 (Election Day Reporting Complete)

	▲	Votes ▼	Percent
	No	523	59.64%
	Yes	354	40.36%
	Total Votes	877	

Stutsman County [Precinct Results](#)
 Precincts Reporting: 12/12 (Election Day Reporting Complete)

	▲	Votes ▼	Percent
	Total Votes	7,435	

90

	▲	Votes ▼	Percent	
	No	4,993	67.16%	
	Yes	2,442	32.84%	
	Total Votes	7,435		

Towner County [Precinct Results](#)
 Precincts Reporting: 3/3 (Election Day Reporting Complete)

	▲	Votes ▼	Percent	
	No	673	67.43%	
	Yes	325	32.57%	
	Total Votes	998		

Traill County [Precinct Results](#)
 Precincts Reporting: 12/12 (Election Day Reporting Complete)

	▲	Votes ▼	Percent	
	No	1,938	64.86%	
	Yes	1,050	35.14%	
	Total Votes	2,988		

Walsh County [Precinct Results](#)
 Precincts Reporting: 2/2 (Election Day Reporting Complete)

	▲	Votes ▼	Percent	
	No	2,258	57.69%	
	Yes	1,656	42.31%	
	Total Votes	3,914		

Ward County [Precinct Results](#)
 Precincts Reporting: 19/19 (Election Day Reporting Complete)

	▲	Votes ▼	Percent	
	No	11,451	61.61%	
	Yes	7,136	38.39%	
	Total Votes	18,587		

Wells County [Precinct Results](#)
 Precincts Reporting: 6/6 (Election Day Reporting Complete)

	▲	Votes ▼	Percent	
	Total Votes	2,058		

27

	▲	Votes ▼	Percent		
	No	1,403	68.17%		
	Yes	655	31.83%		
	Total Votes	2,058			

Williams County [Precinct Results](#)
 Precincts Reporting: 15/15 (Election Day Reporting Complete)

	▲	Votes ▼	Percent		
	No	3,778	55.82%		
	Yes	2,990	44.18%		
	Total Votes	6,768			

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28

2016 North Dakota Divorce Statistics

2016

Total # of Divorce Cases	2374	100%
Total # with Children	1112	47%
Total Wife Custody	527	47%
Total Husband Custody	90	8%
Total Joint Custody	385	35%
No Custody captured	95	9%
Other Custody	15	1%
Total	1112	100%
Decided by Court	141	13%
Decided by Stipulation	856	77%
Information not entered	115	10%
Total	1112	100%
Decided by Court	141	
For the wife	97	69%
For the husband	16	11%
Joint	23	16%
Other	1	1%
Information not entered	4	3%
	123	100%
Decided by Stipulation	856	
For the wife	408	48%
For the husband	70	8%
Joint	335	39%
Other	8	1%
Information not entered	35	4%
	838	100%
Information not entered	115	
For the wife	24	21%
For the husband	4	3%
Joint	25	22%

Other
Blank

5	4%
57	50%
115	100%

Proposed Amendments to HB 1392

A BILL for an Act to amend and reenact section 14-09-00.1 and subsection 1 of section 14-09-29 of the North Dakota Century Code, relating to a parenting time and responsibility; and to provide for a legislative management study.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 14-09-00.1 of the North Dakota Century Code is amended and reenacted as follows:

14-09-00.1. Definitions.

As used in this chapter, unless the context otherwise requires:

1. "Decisionmaking responsibility" means the responsibility to make decisions concerning the child. The term may refer to decisions on all issues or on specified issues, but not child support issues.

2. "Parental rights and responsibilities" means all rights and responsibilities a parent has concerning the parent's child.

3. "Primary residential responsibility" means a parent with more than fifty percent of the residential responsibility.

4. "Shared residential responsibility" means each parent has residential responsibility for the child at least 35% of the time, but in an amount less than "equal residential responsibility", as defined herein.

5. "Equal residential responsibility" means each parent has residential responsibility for the child or children for an equal amount of time as determined by the court.

6. "Residential responsibility" means a parent's responsibility to provide a home for the child.

3 7. "Parenting plan" means a written plan describing each parent's rights and responsibilities.

4 8. "Parenting schedule" means the schedule of when the child is in the care of each parent.

5 9. "Parenting time" means the time when the child is to be in the care of a parent.

SECTION 2. AMENDMENT. Subsection 1 of section 14-09-29 of the North Dakota Century Code is amended and reenacted as follows:

1.
 - a. A court issuing an order that deals with parenting rights and responsibilities of a child entered under this chapter shall award the parental rights and responsibilities concerning the child to a person, agency, organization, or institution as will, in the opinion of the court, promote the best interests and welfare of the child.
 - b. Between the mother and father, whether married or unmarried, there is no presumption as to whom will better promote the best interests and welfare of the child.

- c. In proceedings to establish or modify parental and decision-making rights to a child, a court, after considering N.D.C.C. § 14-09-06.2, may award primary, shared, or equal residential responsibility. A Court must make findings as to the children's best interests and articulate the reasons for its award.

SECTION 3. PARENTING RIGHTS AND RESPONSIBILITIES – LEGISLATIVE MANAGEMENT STUDY.

During the 2017-18 interim, the legislative management shall consider studying, in consultation with the family law task force of the family law section of the state bar association of North Dakota, parental rights and responsibility issues, including shared parenting, joint decisionmaking responsibility for the child, the best interest factors used by the court in making parental rights and responsibilities decisions, and the modification and enforcement of parental rights and responsibilities orders. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-sixth legislative assembly.

10 11

Testimony
Engrossed House Bill 1392 – Department Of Human Services
Senate Judiciary Committee
Senator Kelly Armstrong, Chairman
March 8, 2017

Chairman Armstrong, members of the Senate Judiciary Committee, I am Jim Fleming, Director of the Child Support Division of the Department of Human Services (Child Support). I am here in a neutral capacity to provide some information to the committee on Engrossed House Bill 1392 and to recommend an amendment.

As of January 1, 2017, there were roughly 26,000 cases in North Dakota with an accruing monthly child support obligation, with 1,658 of those cases having residential responsibility being shared equally between the parents. Although this represents only 6.3% of the total, there were only 400 such cases in 2011, and the total number of cases includes parenting time orders entered by the court over the last 18 years. It is clearly a growing trend under current law for parents to obtain equal parenting time.

There are many myths about the child support program. The reality is that our program has no preference for cases with equal parenting time as compared to cases where one parent has primary residential responsibility, as long as the parties or their attorneys follow the child support guidelines correctly.

Under federal law, the North Dakota child support guidelines must be applied in all cases where the parents are no longer living together. In general, when one parent has primary residential responsibility, the guidelines are used to establish an obligation for the other parent (known

in our program as the absent parent or obligor, since the parent is not present in the child's household on a daily basis). Similar to income taxes, the absent parent's obligation is based on the parent's income or earning ability. Although frequently misunderstood by our customers, the fact that the guidelines only take into account the income of the absent parent does not mean that the parent with primary residential responsibility lacks a child support obligation. Rather, the obligation of the absent parent is best described as a contribution toward support of the child, with the remaining costs of the child being the responsibility of the parent with primary residential responsibility. The average child support obligation in North Dakota per child is less than \$365 per month. In our experience, the parent with primary residential responsibility usually bears more of the actual cost of supporting a child, particularly when both parents have low incomes.

If the court order gives an absent parent sufficient parenting time with the child to reduce the expense of supporting the child to the parent with primary residential responsibility, then the absent parent's child support obligation is reduced through an extended parenting time adjustment. The criteria for this adjustment were expressed by the Legislature several sessions ago, in recognition of the fact that some costs of raising the child (such as the difference between a one-bedroom and two-bedroom dwelling or child care) are constant.

The method I just described for cases where one parent has primary residential responsibility and a child support obligation is calculated for the other parent does not work for cases where the parents have equal parenting time. In those cases, the income of each parent is considered and a separate obligation for each parent is established. For simplicity

and practicality, the obligations are offset with each other for payment purposes. A payment credit for the lesser amount is entered on the payment ledger for each parent, and the parent with the greater obligation owes the net difference between the two obligations.

This information is provided to illustrate a potential source of confusion arising out of Engrossed House Bill 1392 between the use of equal parenting time in the bill and the meaning of equal parenting time in the child support guidelines. Since Engrossed House Bill 1392 envisions cases where one parent's time with the child could be as low as 35%, we suggest the phrase "shared parenting time" would be more accurate than "equal."

Mr. Chairman and members of the committee, this concludes my testimony regarding Engrossed House Bill 1392, and I would be glad to answer any questions the committee may have.

PROPOSED AMENDMENT TO ENGROSSED HOUSE Bill NO. 1392

Page 1, line 2, replace "equal" with "shared"

Page 1, line 12, remove "Equal parenting time and residential responsibility" means each parent has the child"

Page 1, remove line 13 through line 15

Page 1, line 16, remove "3."

Page 1, line 18, remove the overstrike over "~~3.~~" and remove "4."

Page 1, line 20, remove the overstrike over "~~4.~~" and remove "5."

Page 1, line 22, remove the overstrike over "~~5.~~" and remove "6."

Page 1, line 23, remove the overstrike over "~~6.~~" and remove "7."

Page 2, line 1, remove the overstrike over "~~7.~~" and remove "8."

Page 2, after line 2, insert:

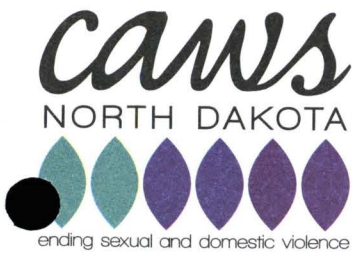
8. "Shared parenting time and residential responsibility" means each parent has the child in that parent's care for a time that is as close to fifty percent of the time as can be arranged based on the circumstances but which is not less than thirty-five percent of the time.

Page 2, line 14, replace "equal" with "shared"

Page 2, line 16, replace "equal" with "shared"

Page 2, line 17, replace "equal" with "shared"

Renumber accordingly



Handwritten notes: 3/8/17, HB 1392, and circled numbers 12 and 12.

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Testimony on HB 1392
Senate Judiciary Committee
March 8, 2017

Chair Armstrong and Members of the Committee:

My name is Janelle Moos and I am the Executive Director of CAWS North Dakota. Our Coalition is a membership based organization that consists of 20 domestic violence and rape crisis centers that provide services to victims of domestic violence, sexual assault, and stalking in all 53 counties and the reservations in North Dakota. I'm speaking this morning on their behalf in opposition to HB 1392.

In an article published by the American Bar Association entitled "The Unintended Consequences of Using Rebuttable Presumptions to Determine Child Custody in Domestic Violence Cases" it's estimated that 25 to 50 percent of disputed custody cases involve domestic violence, and the adverse effects of maintaining regular contact with the abusive parent through custody and visitation are well documented. Nearly all states have enacted statutes codifying domestic violence as a factor in their "best interest" standard for child custody decisions. Some statutes encourage courts to consider the existence of domestic violence in the family and its impact on the child as a relevant factor, while others actually require the judicial officer to consider evidence of domestic violence and provide written justification for orders that place a child in the custody of the abusive parent. Many jurisdictions have enacted statutory rebuttable presumptions to shift the burden of proof and guide judicial discretion in child custody cases involving domestic violence based on the National Council of Juvenile and Family Court Judges best practice guide.

Our specific concern with HB 1392 is for domestic violence victims and their children. Equal or shared parenting may be a good option for divorcing parents in low conflict situations. However, by adopting equal parenting as the presumption, with or without a domestic violence exception, HB 1392 will have devastating consequences on domestic violence victims and their children. In contrast, current law allows for orders of joint or equal parenting in appropriate situations and provides appropriate safe guards for victims and their children. It's important that we continue to preserve the best interests of children in divorce and custody cases and therefore, I urge you to oppose HB 1392. Thank you.

3/27/17

①

HB 1392

17.8150.03001

FIRST ENGROSSMENT

Sixty-fifth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1392

Introduced by

Representatives Kading, Kiefert, McWilliams, Pyle, Roers Jones, Vigesaa

1 A BILL for an Act to to amend and reenact section 14-09-00.1 and subsection 1 of section
2 14-09-29 of the North Dakota Century Code, relating to ~~a presumption of equal~~ shared
3 parenting time and responsibility; and to provide for a legislative management study.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1. AMENDMENT.** Section 14-09-00.1 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **14-09-00.1. Definitions.**

8 As used in this chapter, unless the context otherwise requires:

9 1. "Decisionmaking responsibility" means the responsibility to make decisions concerning
10 the child. The term may refer to decisions on all issues or on specified issues, but not
11 child support issues.

12 2. ~~"Equal parenting time and residential responsibility" means each parent has the child~~
13 ~~in that parent's care for a time that is equal to or as close to fifty percent of the time as~~
14 ~~can be arranged based on the circumstances but which is not less than thirty five~~
15 ~~percent of the time.~~

16 3. "Parental rights and responsibilities" means all rights and responsibilities a parent has
17 concerning the parent's child.

18 ~~3.4.~~ "Parenting plan" means a written plan describing each parent's rights and
19 responsibilities.

20 ~~4.5.~~ "Parenting schedule" means the schedule of when the child is in the care of each
21 parent.

22 ~~5.6.~~ "Parenting time" means the time when the child is to be in the care of a parent.

23 ~~6.7.~~ "Primary residential responsibility" means a parent with more than fifty percent of the
24 residential responsibility.

1 ~~7.8.~~ "Residential responsibility" means a parent's responsibility to provide a home for the
2 child.

3 8. "Shared parenting time and residential responsibility" means each parent has the child
4 in that parent's care for a time that is as close to fifty percent of the time as can be
5 arranged based on the circumstances but which is not less than thirty-five percent of
6 the time.

7 **SECTION 2. AMENDMENT.** Subsection 1 of section 14-09-29 of the North Dakota Century
8 Code is amended and reenacted as follows:

9 1. a. A court issuing an order that deals with parenting rights and responsibilities of a
10 child entered under this chapter shall award the parental rights and
11 responsibilities concerning the child to a person, agency, organization, or
12 institution as will, in the opinion of the court, promote the best interests and
13 welfare of the child.

14 b. Between the mother and father, whether married or unmarried, there is no
15 presumption as to whom will better promote the best interests and welfare of the
16 child.

17 c. ~~In any proceeding dealing with parental rights and responsibilities, there is a~~
18 ~~rebuttable presumption that equal parenting time and residential responsibility~~
19 ~~promotes the best interests and welfare of the child. If the court declines to enter~~
20 ~~an order awarding equal parenting time and residential responsibility, the court~~
21 ~~shall articulate in its decision the rationale for the denial of equal parenting time~~
22 ~~and residential responsibility.~~In any initial proceeding dealing with parental rights
23 and responsibilities in which one party requests shared parenting time and
24 residential responsibility, the court shall articulate in its decision the rationale for
25 either awarding or denying the request for shared parenting time and residential
26 responsibility.

27 **SECTION 3. PARENTING RIGHTS AND RESPONSIBILITIES - LEGISLATIVE**

28 **MANAGEMENT STUDY.** During the 2017-18 interim, the legislative management shall consider
29 studying, in consultation with the family law task force of the family law section of the state bar
30 association of North Dakota, parental rights and responsibility issues, including shared
31 parenting, joint decisionmaking responsibility for the child, the best interest factors used by the

Sixty-fifth
Legislative Assembly

- 1 court in making parental rights and responsibilities decisions, and the modification and
- 2 enforcement of parental rights and responsibilities orders. The legislative management shall
- 3 report its findings and recommendations, together with any legislation required to implement the
- 4 recommendations, to the sixty-sixth legislative assembly.

17.8150.03001
Title.

Prepared by the Legislative Council staff for
Senator Armstrong
March 24, 2017

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1392

Page 1, line 2, replace "a presumption of equal" with "shared "

Page 1, line 12, remove "Equal parenting time and residential responsibility" means each parent has the child

Page 1, remove lines 13 through 15

Page 1, line 18, remove the overstrike over "3"

Page 1, line 18, remove "4."

Page 1, line 20, remove the overstrike over "4."

Page 1, line 20, remove "5."

Page 1, line 22, remove the overstrike over "5."

Page 1, line 22, remove "6."

Page 1, line 23, remove the overstrike over "6."

Page 1, line 23, remove "7."

Page 2, line 1, remove the overstrike over "7."

Page 2, line 1, remove "8."

Page 2, after line 2, insert:

"8. "Shared parenting time and residential responsibility" means each parent has the child in that parent's care for a time that is as close to fifty percent of the time as can be arranged based on the circumstances but which is not less than thirty-five percent of the time."

Page 2, line 13, remove "In any proceeding dealing with parental rights and responsibilities, there is a"

Page 2, replace lines 14 through 18 with "In any initial proceeding dealing with parental rights and responsibilities in which one party requests shared parenting time and residential responsibility, the court shall articulate in its decision the rationale for either awarding or denying the request for shared parenting time and residential responsibility."

Renumber accordingly

#1
1392
4-17-17

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1392

That the Senate recede from its amendments as printed on pages 1225-1226 of the House Journal and page 967 of the Senate Journal and that Engrossed House Bill No. 1392 be amended as follows:

Page 1, line 2, replace "a presumption of equal" with "shared"

Page 1, line 12, remove "Equal parenting time and residential responsibility" means each parent has the child"

Page 1, remove lines 13 through 15

Page 1, line 16, remove "3."

Page 1, line 18, remove the overstrike over "3."

Page 1, line 18, remove "4."

Page 1, line 20, remove the overstrike over "4."

Page 1, line 20, remove "5."

Page 1, line 22, remove the overstrike over "5."

Page 1, line 22, remove "6."

Page 1, line 23, remove the overstrike over "6."

Page 1, line 23, remove "7."

Page 2, line 1, remove the overstrike over "7."

Page 2, line 1, remove "8."

Page 2, after line 2, insert:

"8. "Shared parenting time and residential responsibility" means each parent has the child in that parent's care for a time that is as close to fifty percent of the time as can be arranged based on the circumstances but which is not less than thirty-five percent of the time."

Page 2, line 13, remove "In any proceeding dealing with parental rights and responsibilities, there is a"

Page 2, replace lines 14 through 18 with "In any proceeding to establish parental rights and responsibilities, or to modify parental rights and responsibilities subject to section 14-09-06.6, if one party requests shared parenting time and residential responsibility, the court shall consider awarding shared parenting time and residential responsibility and shall articulate in its decision the rationale for either awarding or denying the request for shared parenting time and residential responsibility."

Renumber accordingly

#2
1392
4-17-17

Sixty-fifth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1392

Introduced by

Representatives Kading, Kiefert, McWilliams, Pyle, Roers Jones, Vigesaa

1 A BILL for an Act to to amend and reenact section 14-09-00.1 and subsection 1 of section
2 14-09-29 of the North Dakota Century Code, relating to ~~a presumption of equal~~shared parenting
3 time and responsibility; and to provide for a legislative management study.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1. AMENDMENT.** Section 14-09-00.1 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **14-09-00.1. Definitions.**

8 As used in this chapter, unless the context otherwise requires:

9 1. "Decisionmaking responsibility" means the responsibility to make decisions concerning
10 the child. The term may refer to decisions on all issues or on specified issues, but not
11 child support issues.

12 2. ~~"Equal parenting time and residential responsibility" means each parent has the child~~
13 ~~in that parent's care for a time that is equal to or as close to fifty percent of the time as~~
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15 ~~percent of the time.~~

16 ~~3.~~ "Parental rights and responsibilities" means all rights and responsibilities a parent has
17 concerning the parent's child.

18 ~~3.4.~~ "Parenting plan" means a written plan describing each parent's rights and
19 responsibilities.

20 ~~4.5.~~ "Parenting schedule" means the schedule of when the child is in the care of each
21 parent.

22 ~~5.6.~~ "Parenting time" means the time when the child is to be in the care of a parent.

23 ~~6.7.~~ "Primary residential responsibility" means a parent with more than fifty percent of the
24 residential responsibility.

1 ~~7.8.~~ "Residential responsibility" means a parent's responsibility to provide a home for the
2 child.

3 8. "Shared parenting time and residential responsibility" means each parent has the child
4 in that parent's care for a time that is as close to fifty percent of the time as can be
5 arranged based on the circumstances but which is not less than thirty-five percent of
6 the time.

7 **SECTION 2. AMENDMENT.** Subsection 1 of section 14-09-29 of the North Dakota Century
8 Code is amended and reenacted as follows:

9 1. a. A court issuing an order that deals with parenting rights and responsibilities of a
10 child entered under this chapter shall award the parental rights and
11 responsibilities concerning the child to a person, agency, organization, or
12 institution as will, in the opinion of the court, promote the best interests and
13 welfare of the child.

14 b. Between the mother and father, whether married or unmarried, there is no
15 presumption as to whom will better promote the best interests and welfare of the
16 child.

17 c. ~~In any proceeding dealing with parental rights and responsibilities, there is a~~
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20 ~~an order awarding equal parenting time and residential responsibility, the court~~
21 ~~shall articulate in its decision the rationale for the denial of equal parenting time~~
22 ~~and residential responsibility.~~In any proceeding to establish parental rights and
23 responsibilities, or to modify parental rights and responsibilities subject to section
24 14-09-06.6, if one party requests shared parenting time and residential
25 responsibility, the court shall consider awarding shared parenting time and
26 residential responsibility and shall articulate in its decision the rationale for either
27 awarding or denying the request for shared parenting time and residential
28 responsibility.

29 **SECTION 3. LEGISLATIVE MANAGEMENT STUDY - PARENTING RIGHTS AND**
30 **RESPONSIBILITIES.** During the 2017-18 interim, the legislative management shall consider
31 studying, in consultation with the family law task force of the family law section of the state bar

Sixty-fifth
Legislative Assembly

1 association of North Dakota, parental rights and responsibility issues, including shared
2 parenting, joint decisionmaking responsibility for the child, the best interest factors used by the
3 court in making parental rights and responsibilities decisions, and the modification and
4 enforcement of parental rights and responsibilities orders. The legislative management shall
5 report its findings and recommendations, together with any legislation required to implement the
6 recommendations, to the sixty-sixth legislative assembly.

#1
1392
4-18-17

Sixty-fifth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1392

Introduced by

Representatives Kading, Kiefert, McWilliams, Pyle, Roers Jones, Vigesaa

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10 the child. The term may refer to decisions on all issues or on specified issues, but not
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13 welfare of the child.

14 b. Between the mother and father, whether married or unmarried, there is no
15 presumption as to whom will better promote the best interests and welfare of the
16 child.

17 c. ~~In any proceeding dealing with parental rights and responsibilities, there is a~~
18 ~~rebuttable presumption that equal parenting time and residential responsibility~~
19 ~~promotes the best interests and welfare of the child. If the court declines to enter~~
20 ~~an order awarding equal parenting time and residential responsibility, the court~~
21 ~~shall articulate in its decision the rationale for the denial of equal parenting time~~
22 ~~and residential responsibility.~~ In any proceeding to establish or modify a judgment
23 for providing for parenting time and residential responsibility and subject to the
24 requirements of 14-09-06.6, if one party has requested shared parenting time
25 and residential responsibility, the court shall consider awarding shared parenting
26 time and residential responsibility and shall articulate in its decision its rationale
27 for either awarding or denying the request for shared parenting time and
28 responsibility

29 **SECTION 3. LEGISLATIVE MANAGEMENT STUDY - PARENTING RIGHTS AND**
30 **RESPONSIBILITIES.** During the 2017-18 interim, the legislative management shall consider
31 studying, in consultation with the family law task force of the family law section of the state bar

Sixty-fifth
Legislative Assembly

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3 court in making parental rights and responsibilities decisions, and the modification and
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