

**2019 HOUSE JUDICIARY COMMITTEE**

**HB 1496**

# 2019 HOUSE STANDING COMMITTEE MINUTES

**Judiciary Committee**  
Prairie Room, State Capitol

HB 1496  
2/5/2019  
32229

- Subcommittee  
 Conference Committee

Committee Clerk: DeLores D. Shimek by Donna Whetham
---

## **Explanation or reason for introduction of bill/resolution:**

Relating to shared parenting time and responsibility

## **Minutes:**

1,2
-----

**Chairman Koppelman:** Opened the meeting on HB 1496.

**Rep. Kading:** Introduced the bill. (Attachment #1) Went over the testimony. Stopped 4:44

**Chairman K. Koppelman:** This is the bill that passed the house last session and defeated in the Senate or is this a different version?

**Rep. Kading:** This is the Senate version of the bill minus the study. They amended what the house sent them.

**Chairman K. Koppelman:** Further support or opposition to HB 1496? Seeing none. Any neutral testimony?

**Tony Weiler, Executive Director of the State Bar Association:** Has no position on this bill. Betsy Elsberry has emailed you and she asked that I introduce her email. She references It is an attempt to codify some terminology that would help make it consist ant thorough out the state and the courts and it would give an understandable terminology. (Attachment #2).

**Chairman K. Koppelman:** Is she for or against the bill or neutral as you are?

**Tony Weiler:** I think she is neutral. If we are going to pass this she would like to see those other definitions added. Then there would be support.

**Chairman K. Koppelman:** There has been real progress in shared parenting. I remember how contentious these bills have been in the past and if we are close to finding some resolution to it and if we are close to that that would be a good sign.

**Rep. Hanson:** It sounds like case law already requires judges to document their reasons for doing something one way or the other so this will would codify that?

**Tony Wieler:** The court has to make decisions on the best interest factors, there is a 20 point test, they have to outline their decision analyzing those factors. Often the courts are also analyzing whether shared parenting is in the best interest of the child. If I say I want 50-50 child custody the courts would have to analyze why not. That is why I think this is good.

**Rep. Hanson:** I understood that case law dictated that they had to do that and this would reinforce that. Child support would not be impacted by this? Is that right?

**Tony Weiler:** There are no issues with this bill or the language, the definitions that Miss Elsberry cites to are child support provisions, so they are consistent with child support.

**Chairman K. Koppelman:** We have a long history of dealing with family law and with custody.

**Rep. Jones:** The bill says shared residential responsibility at least 35% of the time but not an equal amount of time. What are they talking about there?

**Tony Wieler:** This was wording crafted last session to at least moved closer to a shared residential responsibility. It is not necessarily 50% each. You have to have equal residential responsibility to have an effect on your child support obligation.

**Rep. Magrum:** The initiated measure failed in 2014? What is going on with the law suit you mentioned?

**Tony Weiler:** The lawsuit caused us to modify some of our procedures and implement to make sure we are following the constitution. We do not take positions on anything controversial or political. Often that gets you beat up by everybody because some people want lawyer to weigh in.

**Rep. Magrum:** Who initiated the law suit?

**Tony Weiler:** It was started by one of our members.

**Chairman K. Koppelman:** You said it is pending before the United States Supreme court.

**Tony Weiler:** It went up to the Supreme Court and it was sent back to the 8<sup>th</sup> circuit to analyze the constitutionality of mandatory bar.

**Chairman K. Koppelman:** Any further discussion?

**Rep. Hanson:** I make a motion to amend the bill by the definitions off the Betsy Elsberry email. The four definitions listed there.

**Rep. Roers Jones:** Seconded.

**Rep. Vetter:** I would resist the first one that say but not equal amount of time. It is just a cause for them to fight.

**Chairman K. Koppelman:** the next definition is equal residential responsibility. We are dealing with different definitions for different things. If we pass this amendment then our intern can work with it. This bill does not create a presumption. The court must consider it. Read through the last section of the email definition. Any other questions? Seeing none.

**Voice vote taken:** Motion carried on adopting amendment to HB 1496.

**Rep. Jones:** Moved a Do Pass as amended on HB 1496.

**Rep. Satrom:** Seconded.

**Rep. Karls:** I have never supported shared parenting. I come from a very stable family background but I know 5 or 6 families who have gone through this. In every case there were 5 bad Dads and one bad Mom. Whoever did the heavy lifting gets the short end of the stick. I really struggle with this. I would love to see an example where they get along. I will resist this bill.

**Chairman K. Koppelman:** I have struggled with this issue to. What makes this a bit surprising is that what we are seeing today is this might be a good move forward.

**Rep. Jones:** Things must be straightening out because we aren't seeing so many turning out for this.

**Rep. Roers Jones:** I wanted to note that the court still has to use the 20 standards that are in the best interest of the child when determining which parent get more custody. They still have to use those 20 standards.

**Rep. McWilliams:** When we just did that amendment I don't understand what we amended there. The bill sponsor does not want the bill amended. I recognize we already moved the amendment. I think it weakens the bill.

**Chairman K. Koppelman:** We will pause to look over the amendments. The first definition in the amendment is what was discussed last time. The second 2 are from the administrative code and they are the definitions that are used by child support.

**Rep. McWilliams:** I think by moving to that other definition it weakens the entire bill. Because in the original definition it explains it which is not less than 35% of the time and there is no definition of that time in there. It is my opinion it ends up weakening the entire bill.

**Rep. Roers Jones:** What we are doing with this amendment is not weakening the definition but rather clarifying shared parenting. It says in the original it says as close to 50% but not less than 35% and what we are saying here is equal parenting time is 50% and shared parenting is something more than 35% but not equal parenting time. You are just using two definitions to get to the same thing.

**Chairman K. Koppelman:** In many cases there is sole custody. Shared parenting is the concept. Any further discussion on the Do pass as amended? Seeing none.

House Judiciary Committee  
HB 1496  
February 5, 2019  
Page 4

**Roll Call vote taken:** Yes 11 No 3 Absent 0. Motion carries.

**Rep. Roers Jones:** Will carry the bill.

**Hearing closed.**

DA 2/3/19

February 5, 2019

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1496

Page 1, after line 11, insert:

- "2. "Equal residential responsibility" means each parent has residential responsibility for the child for an equal amount of time as determined by the court.
3. "Extended parenting time" means parenting time between a child and a parent scheduled by court order to exceed an annual total of 100 overnights."

Page 1, line 12, overstrike "2." and insert immediately thereafter "4."

Page 1, line 14, overstrike "3." and insert immediately thereafter "5."

Page 1, line 16, overstrike "4." and insert immediately thereafter "6."

Page 1, line 18, overstrike "5." and insert immediately thereafter "7."

Page 1, line 19, overstrike "6." and insert immediately thereafter "8."

Page 1, line 21, overstrike "7." and insert immediately thereafter "9."

Page 1, line 23, replace "8." with "10."

Page 1, line 23, remove "parenting time and"

Page 1, line 23, after "has" insert "residential responsibility for"

Page 1, remove line 24

Page 2, line 1, replace "arranged based on the circumstances but which is not less than" with "at least"

Page 2, line 2, after "time" insert ", but not an equal amount of time"

Page 2, line 15, replace "parenting time and" with "or equal"

Page 2, line 16, replace "parenting time and" with "or equal"

Page 2, line 18, replace "parenting time and" with "or equal residential"

ReNUMBER accordingly

**2019 HOUSE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. HB 1496**

House Judiciary Committee

Subcommittee

Amendment LC# or Description: 4 definitions-"shared residential responsibility, equal residential responsibility, extended parenting time", and "if one party has requested shared or equal residential responsibility." From Betsy Elsberry email. 19.0952.0200

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. Hanson Seconded By Rep. Roers Jones

Representatives	Yes	No	Representatives	Yes	No
Chairman Koppelman			Rep. Buffalo		
Vice Chairman Karls			Rep. Karla Rose Hanson		
Rep. Becker					
Rep. Terry Jones					
Rep. Magrum					
Rep. McWilliams					
Rep. B. Paulson					
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:

**Voice Vote: Motion carried.**

**2019 HOUSE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. HB 1496**

House Judiciary Committee

Subcommittee

Amendment LC# or Description: \_\_\_\_\_

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. Jones Seconded By Rep. Satrom

Representatives	Yes	No	Representatives	Yes	No
Chairman Koppelman	X		Rep. Buffalo	X	
Vice Chairman Karls		X	Rep. Karla Rose Hanson	X	
Rep. Becker	X				
Rep. Terry Jones	X				
Rep. Magrum	X				
Rep. McWilliams	X				
Rep. B. Paulson	X				
Rep. Paur		X			
Rep. Roers Jones	X				
Rep. Satrom	X				
Rep. Simons	X				
Rep. Vetter		X			

Total (Yes) 11 No 3

Absent 0

Floor Assignment Rep. Roers Jones

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

REPORT OF STANDING COMMITTEE

HB 1496: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (11 YEAS, 3 NAYS, 0 ABSENT AND NOT VOTING). HB 1496 was placed on the Sixth order on the calendar.

Page 1, after line 11, insert:

- "2. "Equal residential responsibility" means each parent has residential responsibility for the child for an equal amount of time as determined by the court.
3. "Extended parenting time" means parenting time between a child and a parent scheduled by court order to exceed an annual total of 100 overnights."

Page 1, line 12, overstrike "2." and insert immediately thereafter "4."

Page 1, line 14, overstrike "3." and insert immediately thereafter "5."

Page 1, line 16, overstrike "4." and insert immediately thereafter "6."

Page 1, line 18, overstrike "5." and insert immediately thereafter "7."

Page 1, line 19, overstrike "6." and insert immediately thereafter "8."

Page 1, line 21, overstrike "7." and insert immediately thereafter "9."

Page 1, line 23, replace "8." with "10."

Page 1, line 23, remove "parenting time and"

Page 1, line 23, after "has" insert "residential responsibility for"

Page 1, remove line 24

Page 2, line 1, replace "arranged based on the circumstances but which is not less than" with "at least"

Page 2, line 2, after "time" insert ", but not an equal amount of time"

Page 2, line 15, replace "parenting time and" with "or equal"

Page 2, line 16, replace "parenting time and" with "or equal"

Page 2, line 18, replace "parenting time and" with "or equal residential"

Renumber accordingly

**2019 SENATE JUDICIARY**

**HB 1496**

# 2019 SENATE STANDING COMMITTEE MINUTES

**Judiciary Committee**  
Fort Lincoln Room, State Capitol

HB 1496  
2/27/2019  
#32941 (57:40)

- Subcommittee  
 Conference Committee

Committee Clerk: Meghan Pegel

## Explanation or reason for introduction of bill/resolution:

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 shared parenting time and responsibility.

## Minutes:

1 Attachment

**Chair Larson** begins discussion on HB 1496. Senator Osland was absent, and Senator Bakke was temporarily absent for a separate hearing.

## **Tom Kading, District 45 Representative, testifies in favor**

**Representative Kading:** This bill provides a basic definition for shared parenting and provides guidelines for a judge to use should such standards apply. If you remember last time, this bill was killed after conference committee; however, both sides seem to think some additional progress is needed on this issue. I believe it is important to protect the rights of both the parents and the child. Good parents should have the right to see their child, but more importantly, a child should have the right to see both of their good parents. I say "good" because this bill should not apply in situations where there are unfit parents. Neither party, child or parent, wins in a custody battle, so we must put the child first. It's not good for society to alienate or make it difficult for one parent to be more involved.

Shared parenting time and equal residential responsibility are defined in the bill. "Equal residential responsibility" is defined as equal time whereas "shared parenting" is defined as more than 35% custody but not exactly equal. On page 2 the bill says shared parenting or equal residential responsibility, if requested, should be considered by the court. In the event the court decides not to award that, they must articulate that decision. It is my understanding that most judges in ND are beginning to adopt standards similar to this- I don't have supporting data, but that is what I am told. I don't anticipate this bill having much effect on child support. I think both sides of this issue acknowledge that there is a problem that should be addressed. Ultimately we must do right by the child and protect their rights. This bill doesn't create a drastic change; rather it encourages courts to establish both parents are important to that child. I believe children should have fair access to both parents, and this bill helps achieve that.

**Chair Larson:** I didn't intentionally plan this, but it's a bit ironic you were here this morning saying we shouldn't be telling the courts what to do but instead let the courts decide. And now it's the opposite.

**Representative Kading:** Those are two separate pieces in law and two separate concepts. When it comes to taking care of prisoners, the state has a role to do that. When parties come before a court and ask a court to make decisions, I think we have a different and distinct role in providing the courts guidelines for making those decisions.

**Senator Myrdal:** On the first page it talks about equal residential responsibility, but then it talks about 35% and then 100 days. Is this contradictory language?

**Representative Kading:** I was also confused at first with this language. That's language that was actually amended in the House. My understanding is that if you can request either equal responsibility or shared parenting. That's based on child support guidelines.

**Senator Myrdal:** On the last paragraph on page 2, does this still leave the sole discretion to the judge? I don't see it here, but I believe there's 20 points that they have to go through to consider the welfare of the child. Does that still override this?

**Representative Kading:** Absolutely. This bill does not change a lot when it comes to that. The judge would have the discretion to award whatever they feel is correct. They could even award 0% under this bill.

**Chair Larson:** What is different from that now then?

**Representative Kading:** This begins to put it into statute and provides the right for an individual to formally request it to the court per their right.

**Vice Chairman Dwyer:** There are three different terms: equal residential responsibility, extended parenting time and shared residential responsibility.

**Representative Kading:** The extended parenting time was also amended in the house. I don't know if there was an intention to tie it to anything, but I believe it can be removed without affecting anything. It is a term that is in child support guidelines but isn't used in that section.

**Vice Chairman Dwyer:** Then it's not referred to anywhere else.

**Representative Kading:** Exactly.

**(9) Tony Weiler, Executive Director of the ND State Bar Association, testifies in favor Weiler:** We support this legislation. As many of you know who have been here over multiple sessions, there have been bills in the shared parenting realm. As Representative Kading stated, this, in essence, is the bill that came out of conference committee last session and then was defeated. I think it's a step in the right direction and a step towards helping to codify some of the terms that are already used but don't show up in the code. It also makes sure that if you request it from a judge, the judge has to acknowledge and give you a reason why they didn't award you with either equal residential responsibility or shared residential

responsibility. I agree with Representative Kading that the extended parenting time, while it is tied to child support and the administrative code, probably doesn't necessarily belong in the bill. Courts in ND still have the discretion and will still apply the 20 factor best interest of the child test. If a court determines that it's not in the best interest to award either equal residential or shared residential, they're under no compulsion to do that. In the last several years, we're seeing more and more that parents are getting equal residential responsibility; Mr. Fleming told me it's maybe 1 out of 4 cases. If the parents can work it out and agree to it, then the court will generally agree and affirm those wishes unless they see something that would cause them not to do so.

**Senator Myrdal:** Is this retroactive in any way?

**Weiler:** No.

**Senator Myrdal:** I like the last section in which the courts have to explain their reasoning, but what does the new language do?

**Weiler:** Yes, the last section on page 2 would require a court to give a reason why they didn't award equal or shared responsibility. From what my family law lawyers tell me, that is already in case law, but this would codify it. That's a positive step. Then we added these other terms. There is some confusion often with clients where there's maybe not an understanding of the terminology, and this might help. For the longest time it was "custody" and "visitation", but we've moved away from that.

**(14:30) Jim Fleming, Director of State Child Support, neutral party**

**Fleming:** Every 4 years, we review the parent guidelines. Part of that review is to undertake a statistical analysis concerning court orders, and that's where we learned that for every new order that has been issued in the last 30 months or so, 1 out of 4 is an equal parenting order. It's something that is becoming much more common. However, you do not see that when mom and dad choose to live apart. If parents are determined to live and work in separate communities with separate school districts, it's difficult for equal parenting time to work in that arrangement. For us the bill will confirm what good judging ought to be, which is that if a party makes an argument in favor of something they're asking for, even if the judge doesn't grant it, they ought to explain why. That's to make sure that there is an explanation. A cynic would say that this is happening anyway, so the bill is not needed. The advocate would say the definitions will help clarity and understanding. With regard to the definition of "extended parenting time", that came from a private attorney in the House side. I think it was under a misunderstanding that it would be helpful to put in code. The child support guidelines have about 15 terms or phrases defined, and extended parenting time is one of them. You could take that definition out because it's not used in the Century Code. If you want to keep it in, it's not doing any harm either; it's superfluous words. Again the Department doesn't have a position on it. Child support will continue the way it is; it's not impacted negatively or positively by the bill. Whatever history there is about gender roles and custody, it is definitely going away.

**Senator Myrdal:** Over the weekend just from my district alone, I received 60 emails and stories that said do not pass this bill. Why do you think that is?

**Fleming:** My guess is that someone got a word out suggesting that the bill does something that it doesn't actually do. Child support does not decide custody. This issue in the past has gone much further than the fairness of an explanation and attempted to exert a presumption which would override the judge. You have cases where the judge is looking at two parents where maybe one has a meth or marijuana problem. The judge may not want to call out the parent in front of their kids on public record. They may simply say "upon a preponderance of evidence and looking at these factors, I feel like this is the best parent to have". If you have a presumption, then the judge is now compelled to come forward with all of the bad stuff and good stuff. It can become really painful, and it is a public record. My guess is the word got out erroneously that this bill would establish a presumption of shared or equal parenting which would take out of the hands of the judge unless the judge really wanted to bad-mouth one of the parents, probably not a productive thing when you're looking at kids and parents wanting to get along. That would be my guess, but this bill doesn't do that. This bill simply says if you ask for it and don't get it, you have the courtesy of an explanation, and that seems fair.

**Chair Larson:** I'm curious about the list of 20 items that they look at. I didn't realize there was a checklist.

**Fleming:** 20 items is my rough estimate. Perhaps your clerk can find it in chapter 14-09. They're the best interest factors. When I read those decisions, quite often the judge lists each factor and separately analyzes them yes or no. In terms of a parent getting a fair explanation, I think in most cases, that's happening anyway. It's difficult when you have two perfectly good parents but one lives in Fargo and one lives in Bismarck; it's not like the child can alternate school districts by week. You can't have any extracurricular activity, and you'd have different friend sets. We'd love for them to live right next to each other, but it's not the reality. Sometimes it's a hard spot for judges because they have to decide where the child spends the predominant amount of their time so they can go to school.

**The intern provides "Best Interests and Welfare of child court consideration factors" from chapter 14-09. (see attachment #1)**

**Vice Chairman Dwyer:** You said 1 out of 4 is equal. What are the other 3?

**Fleming:** The other 3 out of 4 would be ones where the predominant amount of time is with one parent. They are considered to be the obligee or the custodial parent and provide their share of the child's expenses by in-kind. They would go to the grocery store, pay rent, etc. The other parent has less than half of the time. They are the obligor and have their income applied to the child support guidelines to figure out what they should pay every month. It's income-based based on USDA data. The definition in the bill for extended parenting time reflects a recent decision of the child support guidelines committee to lighten up on how readily discounted child support will be if the child spends extended time with the other parent. It used to be 160 nights, and now it's 100. The point is that we want to foster the noncustodial parent relationship, and it's a discount for the time they spend with their child. We think that's productive in the guidelines because roughly 35% of the cost of raising a child is food. That cost goes away for every day that the child is not living with the custodial parent. If you have 10 days a month where the child is being fed by the noncustodial parent, that noncustodial parent can then get the discount for reflecting the fact that the food is being paid

in-kind by them. Even though we have an obligor model that only looks at the one parent, the guidelines are pretty adept at recognizing the savings of having that extended parenting time. We deliberately lightened up on that standard because we do recognize that time with both parents is a really good deal. Therefore, the other 3 is when someone is the obligor, but it can really vary how much they owe based on their income and how much of a parenting time deduction they get. We also factor into the calculation if the noncustodial parent has two families; it will be a little discounted for each one to reflect the fact that they have two families instead of one.

**Senator Luick:** How often is the formula recalculated?

**Fleming:** The guidelines review the table of contributions every 4 years. If you imagine, the left side of the spreadsheet is net monthly income in \$100 increments. Then the tables moving to the right are 1 child, 2 child, 3 child and 4 child. Those amounts are reviewed every 4 years. Every 18 months we will review the parent's income to see what line of that chart they should be on. We revisit the chart every 4 years and revisit where they ought to be in that chart upon request every 18 months. The feds set a parameter to say you have to do it every 3 years. This last year we changed it to 18 months because if you have a significant job change up or down, 3 years is a long time to wait before you get a change. We hope that will allow for better support for kids if the income has gone up. It will also help the obligor if the income has gone down. Our current support collection rate is now well above 75%, which I think reflects the fact that we do a lot to try to keep obligations payable one way or the other. There's 250 million unpaid child supports, so anything you want to throw at us to help with the job, we'll keep working at it.

**(26:30) Weiler:** I misspoke, there are 13 factors under the best interests.

**Senator Myrdal:** I'm looking at the history of this legislation. Twice it was on the ballot measure and defeated. On 2011, 2013 and 2017 it's been before the legislature and defeated here, and it's back. We're hearing from the previous speakers that it's improving judiciary. Why do we need this language? Does it do something substantial enough for me to be convinced to overturn all the times it's been heard before?

**Weiler:** This has been a contentious issue and one that's gotten me named a federal defendant in a lawsuit that's still pending in front of the U.S. Supreme Court because the bar association opposed that initiated measure in 2014 and were sued as a result of that. As Mr. Fleming explained, the problem with that initiated measure and with both of the previous session's initial bills was the 50/50 presumption. If this had that in there, I wouldn't be here supporting it; that's the big difference. The concern was that it was not taking the best interest of North Dakota's kids into consideration. That's why my board opposed that in 2014 and ultimately why we were sued. The presumption would require people to come in and rebut that presumption by bringing in all of the negative things that could be brought in, it would have been difficult to overcome and it was not in the best interest of the court system, the kids or the litigants. Last session or the session before, that bill had retroactivity to go back to every child custody decision that was ever made, and that was a problem too. This bill doesn't do any of that. This creates some definitions in code that mean something in practice and would help people understand how they're getting to the kind of child support and

custody arrangement they have and holds courts accountable for explanations. I think that's fair.

**Vice Chairman Dwyer:** What was the basis of the lawsuit, and what are other states doing on this subject matter?

**Weiler:** We were sued by a member who argued that we were using his mandatory bar dues in a manner that violated the constitution. Constitutionally we can only use bar dues to regulate the profession and for the improvement of the practice of law. In the lawsuit we made some changes. We now offer you the ability to opt out of anything we consider to be non-chargeable to the dues. For example, I include any time I spend at the legislature. That's the impetus of the lawsuit. The concern now is if it is constitutional to have a mandatory bar. There has been a push around the country to get this presumption into legislation. I haven't looked lately, but I'm not sure there's any state that starts with the presumption. In any states where the presumption has come in, there have been attempts to defeat that and most have been successful. Again, that's not this bill.

**Chair Larson closes the hearing on HB 1496. Senator Bakke returns to the committee.**

**(33:05) Senator Bakke:** I don't mind the word "equal". I'm of the opinion, when you conceived this child, you both gave equally to that process. When you go into a divorce settlement, unless one has a substantial reason why they couldn't parent, you should always go into it with the idea that it will be a 50/50 split as far as the child's custody. It's up to the court to decide if they're each equally providing nurturing support of what the child needs. When you go into court, the assumption is that you're equal until someone proves in court that you are unequal.

**Senator Myrdal:** We heard that in 1 out of 4 cases, judges do decide equal responsibility, and that's a growing trend. By putting "equal" in it, we're going back to language of presumption, which is a problem. The judge already has the 13 factors of best interest for the child to consider. I like portion of the bill that says the judge needs to explain, but I'm not sure how I feel about the rest. I feel like it's hidden presumption language.

**Vice Chairman Dwyer:** If we were going to require the judge to articulate a decision for awarding or denying a request, we would have to have the definitions of equal or shared. Also if we pass this, we should take out the word "awarding" on line 18 and say "the court shall consider the request" because awarding almost is a presumption that you're going to do one of those.

**Chair Larson:** When you look at the Christmas tree version, it doesn't have that in the back end.

**Senator Bakke:** What is the 35%? Are they saying they start at 35 and go up?

**Senator Luick:** 35% minimum if they are qualified. The judge can still say they're not qualified at all. If you have parents living far apart from one another, the judge has to decide the best split in those cases. The reevaluation of the way that custody amounts are being

evaluated today is 18 months, so the formula can change in about a year and a half if their income goes up or down if requested.

**Joseph Jensen, UND Law Intern, neutral party**

**Jensen:** There were some questions as to whether the court has to state why they're making the decision in child custody. In case law, they do have to do that. As of December of 2018, that is required in a district court decision. They have to say why the factors apply and why they made the decision they did.

**Senator Myrdal:** Shared residential responsibility is already a term used. I would strike "equal" and just say "shared residential responsibility". You don't want to codify "equal" because then you're binding the judge to equal. I also agree that "awarding" is not a good word.

**Vice Chairman Dwyer:** Shared residential responsibility is a new definition too.

**Chair Larson:** Mr. Fleming said that they use that in child support already.

**Senator Bakke:** It's defined as "but not an equal amount of time", so we need "equal".

**Senator Myrdal:** Judges already do that and that's already there, so why are we specifying those three definitions? We're tightening it up.

**Senator Luick:** I think that it comes down to the fact that it encourages more support for the welfare of the kids themselves. When you have the agencies like the state bar association supporting and suggesting that this is a good process, I am in favor of it. I think any encouragement we can give parents in keeping those attitudes focused on the kids, we need to try to do. We have enough family problems as it is, and I don't think that this will do harm.

**Senator Bakke:** Who testified?

**Chair Larson:** Representative Kading and Tony Weiler with the State Bar were in support and Jim Fleming with child support was neutral.

**Senator Bakke:** Did they like the amendments?

**Chair Larson:** They were fine, but said number 3 on page 1 (the extended parenting time definition) is not needed.

**(47:30) Vice Chairman Dwyer:** Let's say we keep these two definitions. Shared residential responsibility means they're sharing but it's unequal. Would we want to dictate that it has to be 35%? Why couldn't the court choose less?

**Senator Myrdal:** Yes, that's what I don't understand- judges can do whatever they want anyway.

**Senator Bakke:** Isn't extended parenting time the same as shared residential responsibility?

**Chair Larson:** Shared parenting is between 35% up to 50% of the time.

**Senator Myrdal:** Section 1 is the definitions. It gives the definition of extended parenting time that isn't mentioned in the actual law; it's frivolous. Equal and shared responsibility are the two definitions we're dealing with.

**Chair Larson:** where does this allow for 20%?

**Senator Myrdal:** section 2 subsection c tells the judge he has to award equal or shared responsibility.

**Chair Larson:** or tell why not.

**Vice Chairman Dwyer:** We would have to take out the word "awarding" and say that the court shall consider the request for shared or equal to make it neutral.

**Senator Myrdal:** Shall or may?

**Senator Bakke:** We can take out number 3 on page 1 and reword number 10 on page 2 to say "Shared residential responsibility" means each parent has residential responsibility for a portion of time spent with a child, but not an equal amount of time. We'll take the 35% out and then basically you're saying it's either equal or it's shared and shared can be any combination that is in the best interest of the child, that works for the parents and that the court is okay with.

**Chair Larson:** That's a smart observation and makes a lot of sense. If we do pass this bill, we will have something in Century Code that can be amended in future years rather than bringing another bill forward again. It's been defeated 5 times as Senator Myrdal explained.

**Senator Myrdal:** I won't vote for it as is, but perhaps we can amend it further.

**Senator Bakke:** Let's strike out the definition of extended parenting and amend the definition of shared parenting to simply say an unequal amount of time.

**Vice Chairman Dwyer:** What you said earlier- a portion of time, but not an equal amount of time.

**Senator Bakke:** Yes. It takes the 35% out and gives the judge more discretion.

**Senator Myrdal:** I can go to legislative counsel and have them draw up these changes.

**Senator Bakke:** please remove number 3 in section 1.

**Vice Chairman Dwyer:** and replace "awarding" with "the request for" so it's neutral.

**Chair Larson:** Yes, it will be good to put something into Code but still leave it up to the judge's discretion. These are good ideas for amendments.

**Chair Larson ends discussion on HB 1496.**

# 2019 SENATE STANDING COMMITTEE MINUTES

**Judiciary Committee**  
Fort Lincoln Room, State Capitol

HB 1496  
3/18/2019  
#33892 (17:37)

- Subcommittee  
 Conference Committee

Committee Clerk: Meghan Pegel

## Explanation or reason for introduction of bill/resolution:

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 shared parenting time and responsibility.

## Minutes:

1 Attachment

**Chair Larson** begins discussion on HB 1496.

**(see attachment #1)**

**Senator Myrdal:** We wanted to amend out lines 14 and 15 on section one page one, extended parenting. These are my amendments, not the committees. The other thing we talked about was taking out the 35% on page two, subsection 10. Legislative council said if you take that out and leave the remaining, it doesn't make sense at all. The amendment you have before you is what I asked for personally because I couldn't support the bill as was. I put the bill kind of back in its original version but taking out the word equal then keeping page two the same except replacing "the request for" instead of "awarding". The committee asked to take out lines 14 and 15 and to change it from awarding to the request for. I accomplished those two things, but I did not take out the 35%. I also took out the equal residential responsibility definition out.

**Chair Larson:** Most of this amendment on the top part is just renumbering the numbers.

**Senator Myrdal:** Yes, because I'm taking all of those definitions out.

**Senator Bakke:** By taking out lines 12 and 15, then you're saying that one person has to have 35% and the other one has to have 65%. You're not allowing for equal shared parenting.

**Senator Myrdal:** They were supposed to just take the word "equal" out, not the entire overstrike. I'll bring this up again. I just knew I couldn't support the bill as is because "equal" is all throughout the bill and puts the judiciary and judge in a difficult position. However, I do

think they should explain to the parents the reasoning for it. that's a good part of the bill that I can support.

**Chair Larson:** If you're looking at the bill on line 12, the way you discuss it, 12 and 13 would say, "residential responsibility" means each parent has residential responsibility for the child for an amount of time as determined by the court".

**Senator Myrdal:** Yes, exactly. That's what I asked for.

**Senator Luick:** Can we just change remove lines 12-15 and just leave it at lines 14 and 15?

**Senator Myrdal:** The word "equal" is very obfuscating to the court to have that.

**Vice Chairman Dwyer:** I had written down that I wanted to take out the 35% and instead say, "each parent has residential responsibility for a portion of time" because 35% is so arbitrary.

**Senator Myrdal:** That's what I brought to legislative council, but they said it would be an issue, that you'd have to change different parts of the code as well.

**Chair Larson:** I had written that down as well, "a portion of time, but not an equal amount of time".

**(8:30) Senator Bakke:** We said we didn't need the number 3 definition because there can either be 50/50 or an unequaled time determined by the judge. We didn't want to put a 35% in there because then the judge is stuck to a 35%. It's better to say a parent has responsibility for a period of time but not an equal amount of time. The extended period of time is not clear. They're either equal or the judge can divide the time as they see fit. A lot of kids are equal time. I don't know why we would want to eliminate that when really that's the preferable thing if both are qualified parents.

**Senator Myrdal:** I respect that too. We heard over a quarter of people who get divorced do equal. I won't promote this amendment until we clarify with legislative council. The way the bill reads to me originally, it doesn't give enough discretion to the judge to not do it equal. The way it reads, I can't vote for something that has hidden presumptuous language in it to me.

**Chair Larson:** Did they talk at all about the ability to remove number 10 on page 2?

**Senator Myrdal:** No, I don't think so. I'll go back up and talk to them.

**Vice Chairman Dwyer:** On page 2 on subparagraph c, if you're going to use the term "shared residential responsibility", then you would want to have some definition of what that means.

**Senator Myrdal:** We have several definitions. Extended parenting time is defined but not used. Overall, this bill is drafted very ambiguously; I don't think it's in the best interest for any party.

**Senator Bakke:** We were just saying they get either equal or unequal. That would be worked out between the judge and parents. When you have that extended parenting in there, it got confusing because no one knew what they meant by “not to exceed an annual total of 100 overnights”. That seems weird. If you’re going to say you want them with the parent 50/50, you also have to provide a definition for something that’s not 50/50 if that’s in the best interest of the child. That’s what number 10 shared parenting is. It’s saying both of them have shared responsibility, but it’s not a 50/50 split.

**Chair Larson:** The original amendments we were looking at would say residential responsibility for the child for at least a portion of time but not an equal amount of time. To specify that in there was what we were looking for.

**Senator Bakke:** I think “awarded” to “request” makes sense to me as well.

**Senator Myrdal:** I brought all of those to legislative council, and I don’t remember why, but there was a problem with replacing 35% with a portion of time maybe because of other laws.

**Chair Larson:** It could be a percentage of time

**Senator Myrdal:** There was an issue not having a number for some reason.

**Vice Chairman Dwyer:** We should have separate amendments because one is clean up with taking out extending parenting and changing to awarding. Then we should have an amendment on the equal because that’s a standalone issue.

**Chair Larson:** To take the word equal out of the whole bill?

**Vice Chairman Dwyer:** Yes. Primary residential responsibility talks about a percent.

**Senator Bakke:** That says with more than 50%.

**Chair Larson:** It does say the word “percent”. We will consider this again another day.

**Chair Larson** ends discussion on HB 1496.

# 2019 SENATE STANDING COMMITTEE MINUTES

**Judiciary Committee**  
Fort Lincoln Room, State Capitol

HB 1496  
3/27/2019  
#34301 (09:40)

- Subcommittee  
 Conference Committee

Committee Clerk: Meghan Pegel
-------------------------------

## Explanation or reason for introduction of bill/resolution:

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 shared parenting time and responsibility.

## Minutes:

2 Attachments
---------------

**Chair Larson** begins discussion on HB 1496.

**Senator Myrdal:** After going back and forth with legislative council on that particular issue, I decided I won't bring any amendments. However, I did bring information on what other states do. **(see attachment #1)**

**(see attachment #2)**

**Senator Bakke:** I have amendments with the Christmas version. On page 2, line 4, it had at least 35%. We had wanted that taken out and have a portion of the time. Jill Grossman talked to us and said that if you leave it that way, it's conceivable that they may say the parent could have the child one day. We want the judge to make that decision of whether it's one day or 35% of the time. She said you can leave it that way, but it's usually advisable to have a threshold of some kind of the bare minimum. I don't know how you would do that when every case is so different. We're saying that they either have a 50/50 split or some other combination.

**Chair Larson:** Thank you for the work you put into this, but this bill has many flaws, and I would like to kill it. I don't think it's fixable.

**Senator Bakke:** I want to fix it if they override us on the floor. I believe the person who sees all of the evidence and is looking at all of the reports of the parents' abilities and what's in the best interest of the child should determine. It isn't always going to be clear-cut. You can't say it's the same for every kid. If we put it into law saying 35%, then we're going to come across a kid that should only be with the parent 25% for one reason or another. I agree with you; this is a difficult one.

**Senator Myrdal:** I agree. The people of North Dakota have defeated this twice on the ballot. We've had it before this body twice, and now this is the third time. I understand the intent of the sponsor. Divorce for whatever reasons is a broken thing. It's broken for the children regardless for the reasons for divorce. Every case is different, and we already have in law, the best interest of the child. That's who I care about here. No matter what lipstick we put on this bill, I will vote no.

**Senator Luick:** There was one other thing we talked about on line 12 with the "equal residential responsibility". We were going to take that equal out because that won't work. Equal means 50/50.

**Senator Bakke:** We took the one below it, 14 and 15, out because that's the one we didn't seem to need because the equal meant it's 50/50. The one on the back meant that it's something other than 50/50.

**Chair Larson:** I had notes to take out lines 12-15 altogether.

**Senator Luick:** That's what I have.

**Senator Myrdal:** That is one of the reasons I handed you all the study of 7 other states. I don't think there is anything there that's better than what we already have in law. This committee consistently leaves the judiciary discretion to prosecutors and judges because they're the ones that see it. We write the law but don't enforce it. On this issue, let's leave it to the discretionary of the judges the way it sits now with the concern of the best interest of the child. I feel the language in the law as it stands now protects children to the utmost that we can.

**Chair Larson:** Just like us, if the judge isn't doing their job the way they should, they need to be replaced.

**Vice Chairman Dwyer:** To confirm what Senator Myrdal is saying, apparently the courts are giving equal to about 25% of the cases, so they're doing it.

**Senator Myrdal: Motions for a Do Not Pass.**

**Senator Bakke: Seconds.**

**Chair Larson:** It is difficult when we try to dictate to a judge how they need to find when it involves the best interest of an individual child. It's too heavy of a burden for us to legislate; that needs to be a judicial decision in my opinion.

**A Roll Call Vote Was Taken: 5 yeas, 1 nay, 0 absent. Motion carries.**

**Senator Myrdal will carry the bill.**

**2019 SENATE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. 1496**

Senate Judiciary Committee

Subcommittee

Amendment LC# or Description: \_\_\_\_\_

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 Bakke

Senators	Yes	No	Senators	Yes	No
Chair Larson	X		Senator Bakke	X	
Vice Chair Dwyer	X				
Senator Luick		X			
Senator Myrdal	X				
Senator Lemm	X				

Total (Yes) 5 No 1

Absent 0

Floor Assignment Senator Myrdal

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

**REPORT OF STANDING COMMITTEE**

**HB 1496, as engrossed: Judiciary Committee (Sen. D. Larson, Chairman)** recommends  
**DO NOT PASS** (5 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING).  
Engrossed HB 1496 was placed on the Fourteenth order on the calendar.

**2019 TESTIMONY**

**HB 1496**

#1  
HB 1496  
2-5-19  
Pg 1

Mr Chairman and members of the committee,

Before you is House Bill 1496. This bill provides a basic definition of shared parenting and provides guidelines for as to how a judge should apply parenting time.

**Reason**

One of the reasons I brought this bill forward again is because I was approach by both the opposition last time and the proponents. Both sides wondered as to if the topic was going to be introduced again and thought that it would be prudent to at least have a conversation concerning the matter. Both sides seemed to think that the bill in front of you was at least an ok compromise. I know some of both sides probably have some objections, but it is a compromise. Both sides seem to think additional progress on this issue is important and this bill is a good manner in which to pursue such aims.

Another reason I brought this forward is the fact that I believe it is important to protect the rights of both parents and the child. Good parents should have the right to see their child and most importantly, children should have the right to access both of their parents.

This bill does not apply to "bad" parents and situations that are not in the best interest of the child as defined by the court.

**Effect of the Bill**

Neither parent "wins" in a custody, so we must put the child first. When there are two good parents in a child's life, it is important for that child to have both of their involvement. It is not good for the court and for society to alienate or make one less involved.

"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."

On page two, the bill states a judge shall consider awarding 'Shared parenting time and residential responsibility' if requested. In the event the judge decides it is not in the best interest of the child, the judge shall articulate the decision.

It is my understanding most judges in ND are beginning to do this already, but I am not personally aware of the supporting data. It is just what I am told.

Child support is not expected to have much of an effect on this bill. Child support possibly changes when custody is exactly 50/50. Minor adjustments come into effect when the custody gets within 10% of 50%.

**Conclusions**

I think both sides of this issue will acknowledge there is a problem here. Ultimately, we must do right by the child and protect the child's rights. This bill doesn't create a drastic change, rather it continues to encourage courts to establish both parents are important to a child. I believe a child should have fair access to both of the child's parents and this bill helps achieve that aim. Please give this bill a do pass.

#1  
HB 1496  
2-5-19  
PZ

Situations where this bill could apply:

- When there are two “good” parents
- When the parents live in the same geographic area

Situations where this bill does not apply:

- 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 not in same geographic area
- 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
- An so on

**NDLA, H JUD - Shimek, Delores**

#2  
HB 1496  
2-5-19  
1991

**From:** Betsy Elsberry <betsy@nodaklaw.com>  
**Sent:** Tuesday, February 05, 2019 12:02 PM  
**To:** Koppelman, Kim A.; Karls, Karen; Becker, Rick C.; Buffalo, Ruth; Hanson, Karla R.; Jones, Terry B.; Magrum, Jeffery; McWilliams, Aaron; Paulson, Bob L.; Paur, Gary A.; Roers Jones, Shannon; Satrom, Bernie L.; Simons, Luke; Vetter, Steve M.  
**Cc:** Kimberlie Larson; Alyssa Lovas; Jason McLean; DeAnn Pladson  
**Subject:** HB 1496

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

Mr. Chairman and members of the House Judiciary Committee,

I am writing as to HB 1496. I practice family law in Bismarck, and I have discussed this bill with family law practitioners Kimberlie Larson, Alyssa Lovas, Jason McLean, and DeAnn Pladson, all of whom are copied on this email. Unfortunately, none of us are able to testify at the hearing scheduled for today, but we want to provide our comments to the Committee, as follows:

1. For various reasons, including how residential responsibility is tied to child support, and the practical effects of defining shared parenting, we suggest the following definitions:
  - “Shared residential responsibility” means that each parent has residential responsibility for the child or children at least thirty-five percent (35%) of the time, but not an equal amount of time.
  - “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. (This is the definition according to N.D.A.C. 75-02-04.1-08.2.)
  - “Extended parenting time” means parenting time between a child and a parent scheduled by court order to exceed an annual total of 100 overnights. (This is the definition according to N.D.A.C. 75-02-04.1-08.1)
  
2. As for Section 2, Subsection C, we suggest the following:
  - “.....if one party has requested shared or equal residential responsibility, the court shall consider awarding shared or equal residential responsibility and shall articulate in its decision its rationale for either awarding or denying the request for shared or equal residential responsibility.”

Case law requires North Dakota courts to explain decisions through the best interest factors. If the Legislature intends on codifying this requirement as it pertains to a request for shared residential responsibility, we recommend that it also pertains to a request for equal residential responsibility.

Thank you for your time, and should you have any questions, please let us know.

**NOTE: As of June 20, 2017 our address has changed as indicated below.**

**Betsy A. Elsberry**

**Elsberry & Shively, P.C.  
103 South 3rd Street, Suite 5  
Bismarck, ND 58501**

**[betsy@nodaklaw.com](mailto:betsy@nodaklaw.com)**

**(p) 701.557.3384**

**(f) 701.425.0500**

#2  
HB 1496  
2-5-19  
p.z.

NOTE: THE MESSAGE AND INFORMATION CONTAINED IN OR ATTACHED TO THIS COMMUNICATION IS PRIVILEGED AND CONFIDENTIAL AND INTENDED ONLY FOR THE PERSON NAMED ABOVE. IF YOU ARE NOT THE INTENDED RECIPIENT OF THIS TRANSMISSION, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION TO ANYONE OTHER THAN THE INTENDED RECIPIENT IS STRICTLY PROHIBITED. IF YOU RECEIVED THIS COMMUNICATION IN ERROR, DO NOT READ IT. PLEASE IMMEDIATELY REPLY TO THE SENDER THAT YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR AND THEN PLEASE DELETE THIS COMMUNICATION FROM YOUR COMPUTER. THANK YOU.

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.

**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

#1 HB 1496  
2-27-19

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 service member, 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

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1496

Page 1, line 2, replace "parenting time and" with "residential"

Page 1, remove lines 12 through 15

Page 1, line 16, remove the overstrike over "~~2.~~"

Page 1, line 16, remove "4."

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

Page 1, line 18, remove "5."

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

Page 1, line 20, remove "6."

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

Page 1, line 22, remove "7."

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

Page 1, line 23, remove "8."

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

Page 2, line 1, remove "9."

Page 2, line 3, replace "10." with "8."

Page 2, line 17, remove "or equal"

Page 2, line 18, replace "awarding" with "the request for"

Page 2, line 18, remove "or equal"

Page 2, line 20, remove "or equal"

Renumber accordingly

#1  
HB 1496  
3-27-19

**Myrdal, Janne**

---

**From:** Grossman, Jill A.  
**Sent:** Monday, March 25, 2019 2:05 PM  
**To:** Myrdal, Janne  
**Subject:** RE: 1496

Senator Myrdal,

I apologize for not getting back to you sooner on this-last week ended up being quite busy! In looking at different states' custody laws, there appeared to be a broad range of tactics to describe or define shared or joint physical custody or parenting time. Some states had a specific amount of time defined (certain percentage of the year or a specified number of overnights), while others used broader, more ambiguous terms such as "significant periods of time" or "substantial contact." Below, I've outlined how several states have tackled this issue:

In Alaska, a parent has shared physical custody of a child if the child resides with the parent for at least 30, but no more than 70, percent of the year.

In West Virginia, there is basic shared parenting or extended shared parenting. "Basic shared parenting" means "an arrangement under which one parent keeps a child or children overnight for less than thirty-five percent of the year and under which both parents contribute to the expenses of the child or children in addition to the payment of child support." "Extended shared parenting" means "an arrangement under which each parent keeps a child or children overnight for more than thirty-five percent of the year and under which both parents contribute to the expenses of the child or children in addition to the payment of child support."

Utah outlines a very detailed minimum schedule for parenting time based on whether the child is under 5 years of age (Utah Code § 30-3-35.5) or between the ages of 5 and 18 (Utah Code § 30-3-35).

New Mexico law states an award of joint custody means each parent "shall have significant, well-defined periods of responsibility for the child."

Idaho defines "joint physical custody" as an order awarding each of the parents significant periods of time in which a child resides with or is under the care and supervision of each of the parents or parties.

Alabama defines "joint physical custody" as "physical custody is shared by the parents in a way that assures the child frequent and substantial contact with each parent. Joint physical custody does not necessarily mean physical custody of equal durations of time."

In Missouri, "joint physical custody" means an order awarding each of the parents significant, but not necessarily equal, periods of time during which a child resides with or is under the care and supervision of each of the parents. Joint physical custody shall be shared by the parents in such a way as to assure the child of frequent, continuing and meaningful contact with both parents."

Please let me know if you have further questions or if you need anything else!

Thanks,

Jill

Sixty-sixth  
Legislative Assembly  
of North Dakota

ENGROSSED HOUSE BILL NO. 1496

Introduced by

Representatives Kading, Meier, Rohr, Vetter

Senator Luick

1 A BILL for an Act 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 shared parenting time and  
3 responsibility.

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 residential responsibility" means each parent has residential responsibility for  
13 the child for an equal amount of time as determined by the court.

14 3. "Extended parenting time" means parenting time between a child and a parent  
15 scheduled by court order to exceed an annual total of 100 overnights.

16 ~~2.4.~~ "Parental rights and responsibilities" means all rights and responsibilities a parent has  
17 concerning the parent's child.

18 ~~3.5.4.~~ "Parenting plan" means a written plan describing each parent's rights and  
19 responsibilities.

20 ~~4.6.5.~~ "Parenting schedule" means the schedule of when the child is in the care of each  
21 parent.

22 ~~5.7.6.~~ "Parenting time" means the time when the child is to be in the care of a parent.

23 ~~6.8.7.~~ "Primary residential responsibility" means a parent with more than fifty percent of the  
24 residential responsibility.

1 ~~7.9.8.~~ "Residential responsibility" means a parent's responsibility to provide a home for the  
2 child.

3 ~~10.9.~~ "Shared residential responsibility" means each parent has residential responsibility for  
4 the child ~~at least thirty-five percent~~for a portion of the time, but not an equal amount of  
5 time.

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

8 1. a. A court issuing an order that deals with parenting rights and responsibilities of a  
9 child entered under this chapter shall award the parental rights and  
10 responsibilities concerning the child to a person, agency, organization, or  
11 institution as will, in the opinion of the court, promote the best interests and  
12 welfare of the child.

13 b. Between the mother and father, whether married or unmarried, there is no  
14 presumption as to whom will better promote the best interests and welfare of the  
15 child.

16 c. In any proceeding to establish or modify a judgment for providing for parenting  
17 time and residential responsibility and subject to the requirements of section  
18 14-09-06.6, if one party has requested shared or equal residential responsibility,  
19 the court shall consider ~~awarding~~the request of shared or equal residential  
20 responsibility and shall articulate in its decision its rationale for either awarding or  
21 denying the request for shared or equal residential responsibility.

March 18, 2019

# 2  
HB1496  
3-27-19

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1496

Page 1, line 14, remove "Extended parenting time" means parenting time between a child and a parent"

Page 1, remove line 15

Page 1, line 16, remove "4."

Page 1, line 18, replace "5." with "4."

Page 1, line 20, replace "6." with "5."

Page 1, line 22, replace "7." with "6."

Page 1, line 23, replace "8." with "7."

Page 2, line 1, replace "9." with "8."

Page 2, line 3, replace "10." with "9."

Page 2, line 4, replace "at least thirty-five percent" with "for a portion"

Page 2, line 4, remove the second "the"

Page 2, line 18, replace "awarding" with "the request of"

Re-number accordingly