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NOW - NEW YORK STATE OPPOSE MEMO

A-00330 and S-291 - Presumption of Joint Custody / Shared Parenting for Minor Children March 2005

The National Organization for Women, New York State, Inc. strongly urges the Assembly and Senate of New York to oppose this legislation. This bill seeks to "create the statutory of presumption of joint custody for all minor children whose parents are no longer married, so that both parents can continue to share in the responsibilities and duties of the children's upbringing."

"Shared Parenting" is defined as "the award of custody to both parties so that both parties share equally the legal responsibility and control of such child and share equally the living experience in time and physical care of assure frequent and continuing contact with both parties, as the court deems to be in the best interests of the child, taking into consideration the location and circumstances of each party."

The assertion that "shared parenting is in the best interests of minor children" is on its face untrue and is directly contradicted by the body of academic research on this subject, as well as the disastrous experience of California (one of the first states to adopt this experiment).

The following facts continue to be true with respect to mandatory joint custody of the children:

- * To arbitrarily reassign a child's primary caregiver, or disrupt a child's attachment to a primary caregiver creates an unstable, even traumatic situation for the children.

- * Increased father involvement does not necessarily result in positive outcomes for children. This involvement by the father will have positive consequences only when it is the arrangement of choice for the particular family and when there is a relatively cooperative and low conflict relationship between the parents.

- * In families where there is a high level of conflict between the mother and father, joint custody arrangements are harmful to children, placing them in the middle of ongoing bickering and a stressful, unstable environment with no escape.

- * Where there is domestic violence, joint custody/shared parenting arrangements are NEVER appropriate.

- * Legislating "shared parenting" will not make it so, or guaranty continued relationships between fathers and children.

- * Joint Custody bills have been designed to establish rights without responsibilities. Joint custody facilitates using the children to maintain access to a former partner and ongoing control of their life. Father's rights groups continue to push for this legislation in spite of the body of evidence that in the majority of cases, joint custody is not in the best interest of the children.

- * Fathers Rights groups continue to promote the myth that courts are biased in favor of mothers. In litigated cases, father who sue for custody almost always win. In fact, fathers are often awarded sole custody even when sexual and physical abuse of the children is alleged and substantiated. According to The American Judges Association, 70% of the time the abuser convinces the court to give him custody.

- * Existing law currently says that there is no preference for shared parenting in New York. The court may award joint custody, but in practice rarely does so. Legislators should be aware that the reason that more mothers have custody after divorce is that most arrangements are worked out between the parents. 95% of the litigated cases, including matrimonial cases, are settled out of court.

- * Legislation providing for mandated joint custody ignores the issues of domestic abuse, including child abuse. Mothers are too often held more accountable by Child Protective Services for child abuse perpetrated by the father, than the fathers themselves are. Mothers often accused of Parental Alienation Syndrome, discourages women from protecting their children since raising the issue of child abuse leads to retaliatory accusations of alienating the children, and frequently, to an award of custody to the abusive father.

The National Organization for Women-New York State, Inc. is in favor of primary caregiver presumption. This means that the parent who assumed primary responsibility for the children during the marriage, either father or mother, should continue to be the custodial parent.

Establishment of a presumption of joint custody is harmful to the children. NOW New York State urges the passage of primary caretaker legislation, a realistic solution for children. NOW New York State urges the New York Legislators to defeat A00330/S291 and to look to research regarding the damage to children by passing mandated joint custody. Specifically: Richard Neely, former Chief Justice of the West Virginia Court of Appeals, citing West Virginia primary caretaker presumption law and its effectiveness.

Marcia A. Pappas, President, NOW-NYS, Inc.
Lori Gardner, Executive VP
Barbara Kirkpatrick, Legislative Vice President

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Feminists might be granted own hearing on divorce law

Boycotted consultations

Chris Cobb, with files from Ralph Bodirsky, National Post
 Southam News, with files from National Post

OTTAWA - Women's groups who boycotted nationwide government consultations on changes to divorce law because they refused to sit at the same table as men could get the female-only hearing they have demanded.

Although the consultations ended last month, the Justice Department and its provincial partners are considering a special session for "women's equality-seeking organizations" that are fighting proposed changes to the federal Divorce Act. Those changes would give separated and divorced parents an equal say in raising their children under a new concept called shared parenting.

The women's groups are urging governments "not to cave into a father's rights groups agenda."

Justice Department lawyer Virginia McRae, co-chairwoman of the consultations, said the request from the women's groups for a separate hearing is being considered by the family law committee, a group of about a dozen federal, provincial and territorial bureaucrats.

The boycotting organizations included the National Association of Women and the Law, numerous women's shelters and the Ontario Women's Network on Custody and Access. The women's network was formed in March to fight shared parenting and other changes proposed by a joint Senate and House of Commons report tabled two years ago after cross-Canada hearings.

The 35 consultation sessions, held last month at a cost of about \$1.5-million, were seen by many "father-friendly" groups as an effort by the Justice Department to undermine the committee's recommendations. The sessions were effectively private and no verbatim public record was taken.

The president of a men's rights group said yesterday he finds it disgusting that the women's groups could get their own hearings.

Ross Virgin, president of In Search of Justice, said the fact the committee is considering giving women separate hearings shows the pro-feminist bias of Anne McLellan, the Justice Minister.

"Women's groups constantly yatter about equality, but they don't want equality. They want special treatment," said Mr. Virgin, who estimated his group has 12,000 to 14,000 members throughout the country.

The women's groups that boycotted the consultations said they did so because the process could lead "to the further subordination of women" and sitting at the same table as fathers' rights groups created an "adversarial" atmosphere.

The joint committee spent a year from January, 1998, holding hearings on custody and access. The cornerstone of its many recommendations is to replace the words custody and access with the term "shared parenting" under which both separated or divorced parents would have an automatic right to be involved in the raising of their children. That does not necessarily mean equal time with each parent but rather a continuation of the parenting pattern before the parents separated.

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"Father's Rights" Groups: Beware Their Real Agenda

by Gloria Woods,
President, [Michigan NOW](#)

"Shared Parental Responsibility." In our work as women's advocates, how often have we heard custodial moms wish that their children's father would share the parental responsibility? Unfortunately, "shared parental responsibility" is the new doublespeak for joint physical custody by so-called "father's rights" groups.

For example, in Michigan proposed [legislation](#) supported by these groups would impose joint custody on parents who are in conflict over custody. Most studies report that joint custody works best when both parents want it and agree to work together.

The Michigan legislation states that in a custody dispute the judge must presume that joint custody is in the "best interests of the child" and "should be ordered." To make any other decision, a judge must make findings why joint custody is not in the children's "best interest." This is a high legal standard that makes it very difficult for judges to award any other custody arrangement. It is also a departure from the generally accepted standards determining what's in the best interest of the child.

[Michigan NOW](#) opposes forced joint custody for many reasons: it is unworkable for uncooperative parents; it is dangerous for women and their children who are trying to leave or have left violent husbands/fathers; it ignores the diverse, complicated needs of divorced families; and it is likely to have serious, unintended consequences on child support.

Forced joint custody is also a top legislative priority of fringe fathers' rights groups nationwide. These groups argue that courts are biased and sole custody awards to mothers deny fathers their right to parent. They allege that, in most cases, mothers are awarded sole custody, with fathers granted visitation rights. The men cite this as proof of bias against fathers.

The truth is that in 90 percent of custody decisions it is mutually agreed that the mother would be sole custodian. According to several studies, when there is a custody dispute, fathers win custody in the majority of disputed cases.

The legislature's determination to impose joint custody on parents in conflict is a frightening proposition for many women and places them and their children in harm's way.

There is documented proof that forced joint custody hurts children. "In the majority

of cases in which there's no desire to cooperate, joint custody creates a battleground on which to carry on the fight," one researcher reported in the legal magazine, The Los Angeles Daily Journal (December 1988).

In "Ongoing Postdivorce Conflict: Effects on Children of Joint Custody and Frequent Access," Janet Johnson and her colleagues compared children in court-ordered joint custody with children in sole-custody homes. In both situations, the parents were in "entrenched conflict." This study showed that under these circumstances frequent shuttling between both parents in joint custody "is linked to more troubled emotional problems" in children than the sole-custody arrangement.

Imposed joint custody is particularly dangerous to battered women and their children. As the director of the Michigan Domestic Violence and Treatment Board said in her testimony opposing this bill, "...the exchange of children during visitation can be the most dangerous time for the [domestic violence survivor] and her children."

"My experience with presumptive joint custody as a domestic relations lawyer in Louisiana was almost uniformly negative," said NOW Executive Vice President [Kim Gandy](#). "It creates an unparalleled opportunity for belligerent former spouses to carry on their personal agendas or vendettas through the children -- and with the blessing of the courts.

"Attorneys often referred to it jokingly as the 'lawyer protection act' because repeated trips to court over minor issues kept the fees rolling in, and the mothers were more likely to suffer," Gandy said.

Joining Michigan NOW in opposing this legislation are: antiviolence/ women's shelter groups, the bar association, child psychologists, social workers, family law experts, judges, lawyers, and even the Family Forum (a right-wing, "traditional family values" group).

You can check out the supporters of this bill and become familiar with the groups' real agenda by logging on to the Internet using any search engine such as Yahoo to search for "fathers' rights," or connect to: <http://www.speakeasy.org/fathersrights/> or <http://web2.aimail.net/fathers4> to learn more about their activities.

Further information on forced joint custody, including a list of studies and reports on its dangers, is available from the [NOW Foundation](#) at 202-331-0066.

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Fathers back bill on rights of parents

Say judges must consider joint physical custody



Brian Ayers of Brookfield wants to have more time with his 14-month-old son. (Nancy Palmieri for The Boston Globe)

By [Brian MacQuarrie](#)

Globe Staff / July 5, 2010

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Brian Ayers of Brookfield, a part-time police officer who juggles two jobs, is the proud father of a 14-month-old son. He gazes lovingly at a photograph of himself with his son, talks excitedly about their recent trip to a hot-air balloon festival, and says he wants to build the same kind of close relationship he enjoys with his father.

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But Ayers, whose former girlfriend discovered she was pregnant after they broke up, does not share joint physical custody of his only child. And this status, he argues, is one of many examples of how fathers in Massachusetts face discriminatory obstacles in custody decisions.

"I was very upset," said Ayers, 30. "I thought, in this country, you wouldn't have to necessarily fight to spend time with your own child."

That struggle, according to fathers' rights groups, is a product of a Massachusetts probate system that they say tilts physical custody of children to the mothers. As a result, they are championing a pending House bill that would begin each custody case with a presumption that fathers and mothers are entitled to equal amounts of time with their children. "What we have right now is essentially a maternal veto" over joint physical custody, said Ned Holstein, executive director of Fathers & Families, a national advocacy group based in Massachusetts. "We don't understand why mom should have a veto over what is in the best interests of children."

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James Edwards, a family-law attorney who represents the mother of Ayers's child, said the custody settlement signed by both parents is relatively generous in the parenting time granted to the father. Ayers cares for his son every other weekend and has other sleepovers and meals built into the agreement.

But to Ayers, who said he could not afford to go to trial to seek equal time with his son, such a right should be the norm unless evidence shows otherwise.

The fathers' rights movement has made its way into the 2010 election, as three candidates for the Governor's Council, which votes on judicial nominations, are members of The Fatherhood Coalition of Massachusetts.

Joe Ureneck of Dorchester, one of the candidates, said fathers' rights is the "underlying foundation" of his candidacy.

"Generally, you have men who have a very hard time in the courts, who want to be involved in their children's lives, and have a hard time in playing the role of the father," Ureneck said.

However, organizations that deal with women's and children's issues say there is no such thing as a maternal veto. And if the bill became law, officials in these groups argue, judicial discretion would suffer, less attention would be paid to the specifics of each divorce, and children might be subjected to more acrimony.

"If the world were a perfect place where everybody was just able to get along and put their differences aside, we might have a different lens on this," said Nancy Allen Scannell, director of policy and planning for the Massachusetts Society for the Prevention of Cruelty to Children, which opposes the bill. "But we all know the reality of what happens."

Scannell said the process already prefers joint physical custody. But circumstances in divorces often make strictly equal parenting difficult because of financial or logistical problems.

"The MSPCC's position is that we emphasize a look at families from an individualized perspective," Scannell said.

Groups from both sides of the issue could not point to a statewide study on custody decisions, but a 1999 doctoral thesis by Joseph McNabb, the president of Laboure College in Dorchester, found that joint physical custody was awarded at Worcester Probate and Family Court only 8 percent of the time in 501 cases in 1993. Mothers obtained sole physical custody 83.2 percent of the time, and fathers received sole physical custody in 8.8 percent of the cases, according to the study.

The bill is opposed by the Massachusetts chapter of the National Organization for Women. "I think it's an unnecessary step," said Christina Knowles, state director of NOW. "I think judges explain their decisions anyway. It seems redundant."

Thomas Barbar, cochairman of the Massachusetts Bar Association's family law section council, said custody cases are often so thorny and nuanced that judges, with the help of mediators and the attorneys, usually take considerable time to decide.

"What I've noticed," Barbar said, "is the court tries to make sure that the kids are spending time with each parent and nobody is being prejudiced. They try not to make decisions rashly."

But in Holstein's view, judicial perspective would be enhanced by the shared parenting bill. Under its terms, judges would be required to explain their decisions in writing if they deny joint physical custody.

The bill, filed in 2008 by Representative Colleen Garry of Dracut, is being considered by the joint Judiciary Committee. A committee aide said the panel has

a July 13 deadline to take action on the bill, but an extension might be requested.

Ayers said he became active in the fathers' rights movement when a lawyer told him he would need a minimum of \$15,000 in legal fees to seek joint physical custody in court.

"In the probate court, you're guilty of being a deadbeat dad the minute you walk through the door," he said. Ayers, who said he pays \$320 a week in child support and lives in his parents' basement, added that he has a clean criminal record and has never been the subject of a restraining order.

But in this case, Edwards said, the mother's argument for sole physical custody was aided by the child's status as a newborn, her occupation as a nurse, and third-shift work that enabled her to care for the baby during the day. Ayers, however, insisted he has been treated unfairly.

"I've got to keep doing the right thing," Ayers said. "And the right thing is to take care of my son, and to keep fighting for what's right."

Brian MacQuarrie can be reached at macquarrie@globe.com. ■

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