

## **Testimony in Opposition to House Bill 1242**

Dear Members of the North Dakota Legislative Assembly,

I am writing to respectfully oppose House Bill 1242, which proposes a presumption favoring shared decision-making responsibility in child custody cases.

While the bill may be intended to promote fairness, its universal approach to parenting time is unworkable for many families and undermines the court's ability to tailor custody arrangements to the best interests of children.

### **Key Concerns:**

#### **Child-Centered Outcomes:**

The best interests of the child must always remain the priority in custody decisions. A universal presumption for shared decision-making overlooks the unique and diverse circumstances of individual families. For some children decision-making may not be appropriate or beneficial, particularly in cases involving abuse neglect or significant parental conflict.

Often times there is a bread winner and a non-breadwinner. This is set up this way in many families to have a primary caregiver support the children (and maintain a career) while the other caregiver focuses on building the wealth of the family. The high conflict co-parent I am working with often cannot fulfill parenting time commitments due to work constraints, and rigid mandates would exacerbate these challenges.

#### **Judicial Autonomy:**

Currently, judges have the ability to carefully evaluate the nuances of each case, including factors such as the child's needs, parental capacity, and the history of parental relationships. The bill risks reducing judicial discretion, which is essential for creating custody arrangements that reflects the specific needs of children and families.

My high-conflict divorce has been through mediation, arbitration, and two court hearings over the last 3 years. It continues to be litigated because my ex-husband refuses to follow the court order. However, the parenting time was determined easily and immediately making it possible to legally divorce within the first year. The 60/40 plan has been essential to accommodating my ex-spouse's limited availability, ensuring stability for our children. For example, his parenting days start at 3 p.m. and he picks them up at 6 p.m. while I cover the time after school. He gets approximately 13 days of parenting time and rarely does he attend all 13 days of his parenting time due to last minute work changes or travel. This works well for us, and we needed the flexibility of the parenting plan.

#### **Conflict & Its Impacts:**

In high-conflict or adversarial parental relationships, mandating shared decision-making could intensify disputes and place undue stress on children. The potential for prolonged conflicts, strained communication, and repeated legal battles may negatively affect the emotional and mental health of the children. Many families lack the resources to navigate such conflicts effectively.

### **Implementation Challenges:**

The bill does not adequately address how shared decision-making would be enforced or resolved in instances where parents cannot agree. This could lead to increased litigation and additional burdens on the court system, ultimately delaying resolutions that are critical for the stability of children. Families with limited means would face significant hurdles in securing legal support to advocate for their children's needs.

### **Recommendations**

Rather than adopting a universal presumption, I urge the legislature to invest in **family-focused solutions**, such as:

- **Enhanced Mediation Services:** Foster collaborative, family-specific solutions.
- **Parental Education Programs:** Equip parents with tools to prioritize their children's well-being.
- **Case-by-Case Flexibility:** Preserve judicial discretion to address unique family dynamics.

My co-parenting plan acknowledged the limited availability of the bread winning co-parent and relied on my role as the primary caregiver. Supporting initiatives that encourage cooperative parenting could better achieve the bill's goals without compromising the individualized approach essential to custody decisions.

### **Conclusion:**

House Bill 1242, though well-intended, risks undermining the principle of placing the child's welfare above all else. My personal experience demonstrates the necessity of maintaining judicial flexibility and rejecting rigid mandates that cannot account for real-life complexities. I respectfully urge you to reject this bill in its current form and explore alternative strategies that support the best interests of North Dakota's children.

Sincerely,

Jennifer Boub