REVIVE
LAW GROUP

February 11, 2025

House Judiciary Committee
State Capitol
600 East Boulevard Avenue
Bismarck, ND 58505

Re: HB 1242 (Bill relating to parental rights and responsibilities)

To Whom it May Concern,

Kristin Binder and I are family law attorneys, with years of experience in family law cases. In addition to handling dozens of family law cases a year, we are qualified as guardians ad litem as well as parenting investigators, and I am trained in family law mediation. Between the two of us, we have handled hundreds of family law cases. We represent both mothers and fathers in equal numbers.

We are writing in opposition to HB 1242. North Dakota has a long-standing commitment to ensuring that the best interests of children are of paramount importance in family law cases. The current statute carefully outlines the factors a court considers when determining residential responsibility and parenting time. Although there have been – and will continue to be – mistakes made, our judiciary does a good job of applying these factors and making decisions that prioritize the child's wellbeing, rather than the parents' wants and desires.

There is a wealth of research showing that children benefit when both parents are actively involved in all aspects of their lives. However, it is important to note that this research does not show that equal custody is best for children. Rather, it shows that active involvement of both parents is important. See, for example, the American Psychological Association article, "Children Likely to Be Better Adjusted in Joint vs Sole Custody Arrangements in Most Cases, According to Review of Research[1]." It is especially important in high conflict cases that courts make a case-by-case determination (for example, there may be differences in outcome depending on the gender of the child, quality of parenting, interparental conflict, and other variables)[2].

[1] https://www.apa.org/news/press/releases/2002/03/custody#:~:text=Children%20in%20joint%20custody%20arrangements,children%20in%20sole%20custody%20arrangements. The studies compared child adjustment in joint physical or joint legal custody with sole-custody settings and 251 intact families. **Joint custody was defined as either physical custody** — where a child spends equal or substantial amounts of time with both parents **or shared legal custody** — where a child lives with primarily one parent but both parents are involved in all aspects of the child's life.

[2] "Does Shared Parenting Help or Hurt Children in High Conflict Divorced Families?" https://pmc.ncbi.nlm.nih.gov/articles/PMC7986964/. The research indicates shared parenting is typically defined as living with each parent a minimum of 30% of the time.

107 1ST AVE. NW, MANDAN, ND 58554
PHONE: (701) 751-7188 | FAX: (701) 751-7189 | WWW.REVIVELAWGROUP.COM

Although we cannot speak to all districts, the South Central Judicial District does not discriminate between mothers and fathers when making a decision. Almost all competent parents are awarded equal residential responsibility, unless there is a reason to do otherwise. Reasons may include: one parent, although generally competent, making decisions that could adversely affect the child; individuals in the home of one parent that could negatively affect the child's wellbeing; a parent, by choice, failing to consistently participate in the child's life; and a myriad of other reasons. As proposed, HB 1242 would arguably take into consideration the aforementioned factors, but only with a preponderance of the evidence supporting the same. Further, without evidence showing that a child has been negatively impacted directly by the action a party is claiming is harmful, practitioners will have legitimate arguments on either side, increasing litigation until case law is established.

While a default equal residential responsibility regime sounds reasonable in theory, in practice, it would be a nightmare to untangle. As written, the only reasons a court can award anything other than equal residential responsibility include harm or endangerment to the child, or the lack of feasibility of an equal parenting time schedule. As to the latter, a parent's circumstances, which may allow for "exchanges of the child…at least every seven days," may still not be conducive for shared parenting, or "approximately equal amount of time." In the case of a parent consistently traveling out of town for work who may be gone for much of the work week, or in the case of a parent who works odd hours and is unable to provide alternative care for the child during the time they work. Another problematic example is parents living in different towns when they have a school-aged child. Sixty miles, for example, may not be problematic prior to the child beginning school. However, that will likely change when the child starts school, although it is still likely the parties could accommodate an exchange "at least every seven days." These examples may elicit a response along the lines of, of course, one parent would likely need to have primary residential responsibility. While, as practitioners, we would have legitimate arguments on both sides with these proposed amendments. The result, again, is increased litigation until case law is established providing additional guidance.

As to rebutting the presumption by showing harm, proving the same in family law is a high burden. This bill, as proposed, would make it far more likely for a parent to attempt to involve a child in litigation to support the claim of harm. Generally, children should not be on the stand in custody cases, nor be significantly involved in any capacity. Although there are mechanisms in place which can help give voice to a child without direct testimony (such as appointment of a parenting investigator or guardian ad litem), few families can afford one.

With the proposed amendments, there is also the potential for a parent to attempt to obtain a domestic violence protection order or disorderly conduct restraining order, to try to gain the "upper hand" in a residential responsibility proceeding. Some of these may be legitimate, and some may not. With the presumption largely being rebuttable by harm or endangerment to the child, these actions will become about proving who is the worse parent, rather than focusing on the overall best interests of the child.

Another notable issue with the proposed amendments is the very definition of shared residential responsibility. Specifically, "shared residential responsibility means each parent has residential responsibility for the child for an equal or approximately equal amount of time, as determined by

the court." The verbiage of "an approximately equal amount of time" leaves the statute too broad and, until case law is established as to what precisely that means, litigation will increase. One parent may believe 51% is approximately equal, while another may believe 60% is approximately equal. The statute leaves that determination up to the Court, which means the likelihood of these cases being resolved during informal settlement negotiations or mediation is slim. Currently, most family law cases settle. Settlements are generally based on what is best for the children and what works for parents' schedules.

This statute is likely to increase costs to parties and harm to children. Rather than the best interests of a child being the guiding principle in family law cases, they become a throwaway reference (under the proposed §14-09-29(4)), "The court may consider [the best interest factors] under section 14-09-06.2 when constructing the parenting time schedule." It is essential that North Dakota continue to prioritize children, rather than the wants of angry adults.

The proposed language in this bill will wreak havoc in family law cases, diminish the possibility of settlement, increase litigation costs, and, most importantly, reduce the focus on what is in the best interests of the children. It will instead turn into a mud-slinging contest between the parents. While we understand the goal behind the bill, the way it is currently worded will increase turmoil in these already often contentious cases. Therefore, we strongly encourage you to reject this proposed amendment to 14-09 of the North Dakota Century Code.

Sincerely,

Heather M. Krumm
Attorney at Law
heather@revivelawgroup.com

Kristin A. Binder
Attorney at Law
kristin@revivelawgroup.com