



# North Dakota House of Representatives

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## **Representative Kathy Frelich**

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## **COMMITTEES:**

Vice Chair Human Services  
Transportation

Good morning, Chairman Klemin and House Judiciary Committee,

For the record, my name is Kathy Frelich, and I am honored to represent District 15. I am here to introduce HB 1242 which is related to parental rights. This Bill makes changes to the section of code related to how the courts consider parental responsibility in custody cases.

Section 1 includes the addition of definitions of shared decision-making responsibility and shared residential responsibility.

Section 2 adds the line Rebuttable Presumption to the Code, and it is described in Subsection 2. In court hearings, unless otherwise agreed upon by the parties, there will be the presumption that shared decision making responsibility and shared residential responsibility is in the best interest of the child. Subsection 2b indicates this presumption may be rebutted if there exists a preponderance of evidence to do so. The Bill lists criteria for this rebuttal. If the judge believes the shared parenting presumption may harm the child, may endanger the child's physical or emotional health, or is not feasible because of parental circumstances, the judge may deviate from the presumption.

Obviously, as stated in subsection 3. a, b, and c, domestic violence or abuse of a child, would cause the presumption to be voided. The goal throughout this legislation is always to look at the best interest of the child and their well-being trumps the expectation of the presumption.

In Subsection 4, it lays out the expectation of the court to proceed with the presumption and award shared decision responsibility and to construct a schedule for shared residential responsibility. Subsection 5 asks the court to provide specific findings if the presumption is not considered to be in the best interest of the child. The rest of the Code remains the same, except for a few minor grammatical changes and re-numbering corrections.

Now that I've explained the Bill, I'd like to share with you why I brought it forward. In full disclosure, I believe in the sanctity of marriage, and I wish divorce was not so prevalent in our society. I understand marriage is tough, but I believe it is worth fighting for. That said, I have not been personally impacted by divorce nor have my children. I do not have an axe to grind and feel I am about as objective as a person can be regarding this piece of legislation. That being said, I understand this is a subject that is going to evoke emotion on both sides of the issue, and I am truly sorry for any family that has undergone a painful custody situation.

A constituent who went through his own painful experience with family court, asked me to bring this Bill forward. You'll see his testimony is on record and it describes the failure of our current system. This Bill is too late to help his situation, but he felt compelled to reach out to his legislator anyway.

Since deciding to sponsor this Bill, I have been inundated with personal emails and stories about our Family Court system and how our system potentially leads to children in crisis. This is my second session on the Human Services Committee, and I have been blown away and frustrated by the situations we hear. We are using band-Aids to fix the problems of our society, and my heart breaks at the struggles we hear our children are experiencing. This is the first idea I feel is trying to hit at the root of the problem. I believe our children thrive best with both parents and their extended family support system.

Divorce is ugly and it's prevalent, so I understand people would have opinions based on personal experiences. What I am asking you to do is to put aside any personal situations you may have experienced and simply look at the law. This Bill is asking a judge to presume that a parent is fit, willing and able to care for their children unless there is good evidence to the contrary. Presumed innocence is a fundamental part of our judicial system, why wouldn't it be the same for custody cases?

You should know that similar legislation was brought forward in 2017. It passed the House but was amended and defeated in the Senate. Included in the 2017 version was a study of the Family Law system including a study of the use of the 14 Best Factor used by the courts. Since the Bill was defeated, the study never occurred. And here we are today, with the same broken system. Parents fighting for access to their children, in situations where oftentimes, the winner is the one with the most money to litigate. My hope is that this Bill removes children as a weapon in divorce proceedings and parents understand that in all cases, their children's well-being comes first.

Thank you, Chairman Klemin.