

Dear Senate Inquiry - Shared Parental Responsibility Bill 2005

This is a my submission to the Senate Inquiry into the provisions of the Family Law Amendment (Shared Parental Responsibility) Bill 2005

Washington, District of Columbia, is a local government as well as the seat of the national government in the United States. When the District of Columbia was debating a presumption of joint custody, opponents used all of the same scare tactics that you are seeing in your current debate.

Although never divorced, I am an attorney and helped write the District of Columbia statute. This service to our city's children is one of my proudest accomplishments. I would be happy to provide information regarding the research, testimony and legislative history that led to our successful statute.

The sole custody advocates work on the basis of what became known here as a presumption of pathology. That is, they begin with the assumption that men and fathers are bad and they work to impose barriers between father and child. If successfully argued, the presumption of pathology forces each father who lived comfortably for years with his child to overcome bias in the family courts simply to be allowed to maintain his parenthood.

Most parents are normal, loving people who simply want to continue to be parents to their children despite the parents' divorce of each other. Remember also that the child is not seeking a divorce from either parent. The presumptions in the law should be built around the great mass of normal, loving parents. That is, begin with the presumption that each parent should continue to be a fully involved parent while maintaining procedures to restrict access where a need is shown because of a problem (drug abuse, emotional instability, child abuse or neglect) with either parent. The District of Columbia rejected the presumption of pathology and enacted a statutory presumption of joint custody that has now served us very well for nearly a decade.

As to the safety of children, your statistics are no different than ours and a simple look will confirm that most child abuse and neglect is committed by mothers. Indeed, your data shows that sole maternal custody is the most dangerous form of custody since (1) the mother becomes overloaded and loses control; (2) the father is not around as a safety valve and as a monitor; and (3) non-parents who lack the incest taboo and protective parental bond enter the home of the mother.

As to conflict between the parents and the notion that joint custody "allows men to control women", think for a moment beyond the advocates' soundbite. When one parent says, "Let's share custody" and the other parent says, "No, I want sole custody," which one is demanding to be in control? When choosing between a system in which parents fight for sole custody in order to avoid being reduced to a mere occasional visitor or a system in which both parents are assured continued joint custody and access to their children, which system is more likely to generate conflict? Which system is more likely to generate bitter litigation? Which system is more likely to damage the child through loss of an active parent or exposure to conflict?

When you consider the interests of children rather than the gender-biased scare tactics of sole custody advocates, the merits of a presumption of joint custody are clear. In a nation (like my own) in which no one argues that children are suffering from too much parental involvement and attention, we should rejoice in each case where a presumption of joint custody avoids the tragedy of a child who walks in to court with two parents and walks out with only one.

Respectfully submitted,
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Thank you for reading my submission

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