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Uniform guidelines sought for custody

A petition asks Nebraska's high court to allow qualified parents equal time with kids

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WORLD-HERALD BUREAU

LINCOLN — Judicial luck of the draw can decide whether divorcing parents get four or 14 days per month

with their children.

Omaha attorney Amy Sherman said that's been her experience in two decades of practicing family law, mostly in Douglas County. So when a father says he wants equal time with his children, she tells him "a lot is going to depend on what judge we get."

The disparity in how Nebraska judges award parenting time prompted Sherman to sign a petition that was filed Thursday with the Nebraska

Supreme Court. The petition asks the court to adopt uniform rules requiring courts to order equal parenting time in divorce cases unless there is a compelling reason to do otherwise.

State Sens. Russ Karpisek of Wilber and Galen Hadley of Kearney, each of whom has tried unsuccessfully to pass

See Parenting: Page 2

Parenting: Changes would still let judges limit visitation in abuse cases

shared-parenting bills in the Nebraska Legislature, also signed the four-page legal petition. It argues that the lack of judicial uniformity in awarding parenting time violates both the U.S. and Nebraska Constitutions.

"I just felt the difference in the way it is handled across the state is a problem," Hadley said Thursday. "I thought it would be valuable to pursue this."

Advocates for children and victims of domestic violence have in the past raised serious concerns about equal parenting time requirements, but their representatives had not yet seen the petition Thursday and therefore declined to comment on it.

Tara Muir, director of the Domestic Violence Council in Omaha, said her organization has viewed past legislation as incompatible with the "best interests of the child" standard.

"When a family decides to leave an abusive relationship, it is the most dangerous time for them. That's when homicides happen," Muir said. "Parenting statutes or guidelines must take this seriously."

By filing the petition, supporters of shared parenting are attempting to follow a similar process used by Sen. Scott Lautenbaugh of Omaha, who petitioned the high court to end mandatory membership by Nebraska attorneys in the Nebraska State Bar Association. The court ruled in December that the bar association could no longer charge dues for programs that are not related to the regulation of the legal profession.



State Sens. Russ Karpisek, above, and Galen Hadley, left, have tried in the past to get shared-parenting bills passed in the Nebraska Legislature and have signed the petition presented Thursday to the State Supreme Court.

Shared-parenting supporters said they hope the Supreme Court will submit a request for public comment that would be used to create new rules for judges to follow when deciding custody disputes.

The petition refers to a 2013 study by the Nebraska Court Administrator's Office that found that mothers were awarded sole or primary custody in 72 percent of cases. The study, which reviewed 10 years of child custody cases, also found that, on average, courts grant noncustodial parents less than 20 percent of the child's time.

The study also revealed that the

state's 12 judicial districts produce sharply different outcomes in child custody cases. For example, joint custody with nearly equal visitation arrangements are ordered in 26 percent of cases in one judicial district and in zero cases in another. Three judicial districts, including in Lancaster County, have adopted written guidelines for parenting time, but all are different. Douglas County does not have guidelines.

The petition argues that such variations violate the Nebraska Constitution, which requires courts to be uniform in practice across the state. Additionally,

it argues that the disparity violates the 14th Amendment to the U.S. Constitution.

The U.S. Supreme Court "has characterized a parent's right to raise his or her child as 'perhaps the oldest of the fundamental liberty interests recognized by this court,'" the petition states.

The petitioners also asked the Nebraska Supreme Court to consider guidelines that would allow each qualified parent to receive a minimum of 40 percent of the time with the children.

A traditional child custody order gives the noncustodial parent two weekends per month plus Wednesday evenings with the children. Such arrangements equate to a little less than 20 percent of the parenting time.

Conversely, some judges order children to live with the parents on alternating weeks throughout the year, which brings the division of time close to equal.

Advocates point to research that shows children who spent significant time with both parents are more emotionally healthy and do better in school.

Opponents say bringing high-conflict parents into regular contact can be emotionally damaging to children and can expose victims of domestic violence to danger. They say it's better to let judges decide what's best for the children caught in the middle.

However, petition supporters say judges would retain the discretion to reduce or deny visitation time if one of the parents has committed abuse or is otherwise deemed unfit.

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