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Proponents: LB 22 in the best interest of children

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A bill proposing changes to the factors that judges should weigh in divorce and custody cases is about children, supporters of the bill told the Star-Herald this week.

During the 2013 legislative session, Sen. Russ Karispek identified LB 22, a bill that proposes changes to the Nebraska Parenting Act, as a priority bill. Karispek said he identified the bill, introduced by Sen. Galen Hadley of Kearney, as a priority bill after his own proposed bill, LB 212, failed to make it out of the Legislature's Judiciary Committee. He said it was obvious that the committee didn't care for his bill — which directed that courts must presume parents are entitled to at least 45 percent parenting time unless certain factors exist — and LB 22 “seemed to be much more amicable

for everyone.”

However, the bill has been debated heavily. In recent weeks, representatives of the Nebraska State Bar Association told the Star-Herald they opposed the bill as currently written. The article itself became news with Karispek writing a letter to Judiciary Chair Beau McCoy and proponents chastising the Star-Herald in emails for not including a response from supporters in its Sept. 25 article.

LB 22 proposes that courts start with a presumption that parents will have equal parenting time. Karispek said he fails to understand why the proposed presumption has been a hot button issue for the NSBA and some judiciary officials. “When we look at the statistics, we have seen that 60 percent of the time, full custody is awarded to the mom, 10 percent of the time it is to the dad and 30 percent is joint custody,” Karispek said.

In most cases involving joint custody, he said, mothers and fathers have agreed to joint custody. Instead, he said, judges should start with a presumption that parents are equally fit and able to share custody of their children.

Karispek — who admits that he is a child of divorce and a divorced dad — said some have accused him of pushing the bill because of his own issues. Karispek and his former wife have joint custody of their children, he said, and have found that the arrangement works for them. He said he realizes some factors — such as living in different communities or more serious issues of child abuse, neglect or other factors — may mean that shared custody doesn't work for everyone.

Like Karispek, Amy Sherman, a divorce attorney practicing in Omaha, said her work and personal experience — she and her

ex-husband have shared joint and legal custody of their children for 15 years — have made her a proponent on the issue of LB 22.

“It hasn't always been easy,” she said of sharing legal and physical custody with her ex-husband. “Parenting isn't always easy, but we have gone through our ups and downs and in the long run, it was the best for our kids. Doing that work is part of being a parent, whether it is being a parent who is divorced or still living in the house together.”

Sherman and Karispek said the presumption of shared physical and legal custody by the court is important to establish that parents entering a court room are on equal footing. Sherman said she believes a higher percentage of cases would

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be resolved out of court if parents understood that the court would start with the presumption of shared legal and physical custody.

That is not how it is done now, she says. The standard approach by the courts has been that two people getting divorced are unable to get along and share physical and legal custody. “Just because two people are getting divorced, it doesn't mean that they can't co-parent,” she said.

Some people have called LB 22 a father's rights bill, to Karispek's chagrin. Karispek said he has heard from mothers, from fathers,

from grandmothers, aunts and even spouses of people involved in custody cases. The bill is about the children, who should experience having both mom and dad involved in their lives.

“I just think that it is very important for both parents to be involved in a child's life if they are both responsible, fit parents. If it is at all possible, that time needs to be as equal as possible. It is hard to be a good parent when you

see your kids only four days a month,” he said, referring to common arrangements of visitations every two weeks, on weekends, in such cases. Studies have also shown that the involvement of both parents in children's lives is

important to their physical and mental development.

He said he also takes issue with people who focus on the issue of child support. In fact, Karispek said, he thinks Nebraska Child Support guidelines should not be tied to custody of children and feels the state needs to address the issue.

Uncoupling visitation from child support may reduce conflicts over visitation and custody.

It's important that all parents, no matter the judge or the area of the state that their case is being handled, start from the same premise. A judge should only consider not awarding a parent shared legal and physical

custody if the other parent has proven that it is not in the best interest of the child.

Karispek said he realizes that shared physical and legal custody is not going to work for everyone, depend-

ing on their situation and especially not in so-called “high-conflict cases.”

However, he thinks that the main reason LB 22 has been opposed so vehemently is because if a judge defers from shared physical or legal custody, the facts and findings for that determination must be outlined in an order.

“It shifts the burden of proof,” he said. “No longer does dad have to prove why he should share custody with mom, but mom has to prove why dad isn’t capable

of sharing custody.”

Karispek said his hope is that a compromise can be reached on LB 22 and that the bill will be considered during the upcoming legislative session. If a compromise isn’t reached, he said, he intends to bring a similar bill before the Legislature during the 2015 legislative session. Because of term limits, he said, he is pressed for time in getting the issue addressed.

Visit starherald.com to see copies of LB 22 and LB 212.