

Bill as
Introduced

HB 578 - AS INTRODUCED

2013 SESSION

13-0367
05/09

HOUSE BILL

578

AN ACT

relative to the determination of parental rights based on the best interest of the child.

SPONSORS:

Rep. Oligny, Rock 34; Rep. Burt, Hills 6; Rep. Lambert, Hills 44; Rep. Sapareto, Rock 6; Rep. Itse, Rock 10

COMMITTEE:

Children and Family Law

ANALYSIS

This bill revises the standard for determining parental rights and responsibilities based on the best interest of the child.

Explanation:

Matter added to current law appears in ***bold italics***.

Matter removed from current law appears [~~in brackets and struck through.~~]

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Thirteen

AN ACT relative to the determination of parental rights based on the best interest of the child.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 Determination of Parental Rights and Responsibilities; Best Interest. RSA 461-A:6, I is
2 repealed and reenacted to read as follows:

3 I.(a) The court shall make a determination as to the parental rights and responsibilities for
4 each child. In determining parental rights and responsibilities, the court shall be guided by the best
5 interests of the child, and shall consider the following factors:

6 (1) Any arrangement agreed to by the parties.

7 (2) A court finding by clear and convincing evidence of:

8 (A) Abuse, as defined in RSA 173-B:1, I or RSA 169-C:3, II, and the impact of the
9 abuse on the child and on the relationship between the child and the abusing parent.

10 (B) Neglect, as defined in RSA 169-C:3, XIX.

11 (C) Parental kidnapping or interference with custody or visitation.

12 (D) If a parent is incarcerated, the reason for and the length of the incarceration,
13 and any unique issues that arise as a result of incarceration.

14 (b) The court shall issue an order that provides for frequent and continuing contact
15 between each parent and the minor child or children and for the sharing of responsibilities of child-
16 rearing and encouraging the love, affection, and contact between the minor child or children and the
17 parents, regardless of marital status, unless the court makes an explicit finding that such contact is
18 not in the best interest of the child. There shall be a rebuttable presumption that joint parental
19 rights and responsibilities and approximately equal parenting time are in the best interest of the
20 child or children.

21 (c) An objection by one parent to a proposed parenting arrangement shall not be the sole
22 basis for refusing the entry of an order that the court determines is in the best interest of the minor
23 child.

24 2 Effective Date. This act shall take effect January 1, 2014.

Speakers

Hearing Minutes

HOUSE COMMITTEE ON CHILDREN AND FAMILY LAW

PUBLIC HEARING ON HB 578

BILL TITLE: relative to the determination of parental rights based on the best interest of the child.

DATE: February 12, 2013

LOB ROOM: 206 **Time Public Hearing Called to Order:** 2:17 pm

Time Adjourned: 3:00 pm

(please circle if present)

Committee Members: Reps. Walz, Long, Rollo, Flockhart, Friedrich, Chase, M. MacKay, Alicea, Frambach, Gulick, Stevens, Gargas, DeSimone, Hoell, Itse, Kelleigh Murphy, Nigrella, Oigny, Tremblay and Dumaine.

Bill Sponsors: Rep. Oigny, Rock 34; Rep. Burt, Hills 6; Rep. Lambert, Hills 44; Rep. Sapareto, Rock 6; Rep. Itse, Rock 10

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

Rep. Jeffrey Oigny, sponsor

Introduced the bill to the committee and answered questions.

***Roni Hardy**, Psychotherapist, New Hampshire Child and Family Services - oppose
Testified in opposition and answered questions.

Rep. Laurie Jamison, Berlin, NH, Guardian ad Litem, representing self - oppose
Testified in opposition.

***Attorney Sarah Mattson**, New Hampshire Legal Assistance, Domestic Violence Advocacy Project
- oppose
Testified in opposition, answered questions and submitted written testimony.

Daniel Shepard, North Hampton, NH, representing self - support
Testified in support

Respectfully submitted,



Rep. Debra DeSimone, Committee Clerk

HOUSE COMMITTEE ON CHILDREN AND FAMILY LAW

PUBLIC HEARING ON HB 578

BILL TITLE: relative to the determination of parental rights based on the best interest of the child.

DATE: 2.12.13

LOB ROOM: 206 Time Public Hearing Called to Order: 2:17 pm

Time Adjourned: 3:00 pm

(please circle if present)

Committee Members: ~~Reps. Walz, Long, Rollo, Flockhart, Friedrich, Chase, M. MacKay, Alicea, Prambach, Gulick, Stevens, Gargas, DeSimone, Hoell, Itse, Kelleigh Murphy, Nigrello, Oigny, Tremblay and Dumaine.~~

Bill Sponsors: Rep. Oigny, Rock 34; Rep. Burt, Hills 6; Rep. Lambert, Hills 44; Rep. Sapareto, Rock 6; Rep. Itse, Rock 10

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

REP OLIGNY - SPONSOR SUPPORT
* MS ROWI HARDI OPPOSE
MS LAURA JAMISON OPPOSE
* MS SARAH MATSON OPPOSE
MR DANIEL SHEPARD SUPPORT

Respectfully submitted,

Rep. Debra DeSimone, Committee Clerk

Testimony

Testimony re HB 578

Madam Chair and Members of the Children and Family Law Committee:

My name is Roni Hardy and I am a psychotherapist at Child and Family Services. I have been working with children and families for the last 15 years. I am opposed to this bill because I believe that custody should be determined based on what is best for the children, not the parents. As a psychotherapist, I work with a large number of divorced families and my observation has been that the current system has been working well and, in most cases, parents are able to negotiate reasonable parenting plans. However, in those cases where the parents do not agree (those who will be subject to this proposal), imposing 50/50 custody will only invite more conflict as each parent goes about trying to prove that the other should not have the child or children 50% of the time. This takes the focus off the kids and puts it on the parents. It is well-established that children of divorced parents fare best when there is minimal conflict.

Certainly, ideally, a child would have access to both parents equally, but that is only true in cases where both parents are able to parent appropriately—where drugs, alcohol or mental health issues are not factors. In those cases, it is not in the child's best interest to spend equal time with both parents, and limited or no custody is preferable to inappropriate or inconsistent parenting.

Furthermore, it has been my observation that parents who share 50/50 custody must, of necessity, be more flexible and if two parents who have already demonstrated that they cannot agree, are forced into this arrangement, it is the child who will suffer. Not only because of one parent's strict adherence to the schedule, at the expense of a child's extracurricular or community activities, but also because parents are forced to interact more often, thereby creating more opportunity for conflict in front of the children.

In many of these cases, the conflict that exists is often a result of a mental health or substance abuse problem. In those cases, limited or no custody is preferable to inappropriate and inconsistent parenting.

For example, I have been seeing one teenaged girl who lives primarily with her father. Her mother has a substance abuse problem and doesn't have a permanent residence, so if she had to stay with her mother 50% of the time, it would present a significant safety risk. (In fact, tragically, she was raped while staying home alone at her mother's house, because of a poor choice her mother made.) Challenging the presumption of 50/50 custody would lead to unnecessary fighting between the parents, escalating the conflict and further taking the focus off what is best for the girl. Not to mention that hiring an attorney and paying court costs would present a significant financial hardship for this father, possibly forcing this girl into an unsafe predicament. Consequently, if this law were in place at the time when they split up, he might not have been able to prevent his daughter from spending 50% of her time with her mother.

Another family has one parent who is struggling with mental health issues that are unacknowledged by him. (I believe he has schizophrenia.) The kids secretly don't want to spend much time with him because they are afraid of him (with good reason), and afraid to speak up about the problem, but he believes he

is the more appropriate parent and entitled to 50% custody, despite evidence to the contrary, and he forces the kids to stay with him half of the time. (His son has been acting out angrily at school and his daughter has developed an anxiety disorder.)

There is no reason to change the existing law if it is working well for 90% of the families and for the remaining 10% who cannot agree, it is more important to let the best interests of the children dictate the custody arrangement.

Respectfully submitted,

Roni Hardy, MA, LCMHC
Psychotherapist
Child and Family Services
Concord NH
603-518-4195

NEW HAMPSHIRE LEGAL ASSISTANCE

Working for Equal Justice Since 1971



www.nhla.org

Claremont Office

24 Opera House Square
Suite 206
Claremont, NH 03743
603-542-8795
1-800-562-3994
Fax: 603-542-3826

Concord Office

117 North State Street
Concord, NH 03301
603-223-9750
1-800-921-1115
Fax: 603-223-9794

Manchester Office

1361 Elm Street
Suite 307
Manchester, NH 03101
603-668-2900
1-800-562-3174
Fax: 603-622-5576

Portsmouth Office

154 High Street
Portsmouth, NH 03801
603-431-7411
1-800-334-3135
Fax: 603-431-8025

Berlin Office

1131 Main Street
Berlin, NH 03570
603-752-1102
1-800-698-8969
Fax: 603-752-2248

Administration

117 North State Street
Concord, NH 03301
603-224-4107
Fax: 603-224-2053

TTY: 1-800-735-2964

February 12, 2013

Representative Mary Beth Walz, Chair
Children and Family Law Committee
New Hampshire House of Representatives
107 North Main Street
Concord, NH 03301

Via Hand Delivery

RE: Testimony of New Hampshire Legal Assistance
Opposing HB 578

Dear Representative Walz:

New Hampshire Legal Assistance (NHLA) submits this written testimony in opposition to HB 578. NHLA is a statewide non-profit law firm. Our attorneys and paralegals represent low-income and elderly clients in civil cases involving urgent, basic needs, including safety from domestic violence and stalking.¹ NHLA's Domestic Violence Advocacy Project provides free legal advice and representation to low-income survivors of domestic violence in protective order cases under RSA 173-B and domestic violence-related family law litigation including divorce and parental rights and responsibilities. The need for this legal work is vast; NHLA can only help a small fraction of the victims who request our assistance. We therefore target our limited resources at the cases in which the victim's safety is at greatest risk based on the history of abuse. These cases typically involve a great deal of conflict between the parties, and unlike the majority of family law cases, are often resolved by court order rather than court-approved agreement. Based on NHLA's considerable experience litigating difficult family law cases involving severe domestic violence, we oppose HB 578 and encourage the Committee to recommend the bill Inexpedient to Legislate.

¹ This written testimony is submitted without prejudice to the rights of current or future NHLA clients to take different legal positions in current or future litigation. The absence of specific mention of a particular provision of HB 578 should not be interpreted as support for the provision.

Our parenting rights and responsibilities statute, RSA 461-A, adopts a common-sense approach that permits the tailoring of court orders to a family's unique circumstances. The statute requires courts to determine parental rights and responsibilities based on the "best interests" of the parties' minor children. RSA 461-A:6, I. The children's best interests, rather than the rights of the parents, are first and foremost for the judicial officers who must issue orders governing a family's future. HB 578 would eliminate a host of factors that courts currently consider when evaluating the children's best interests, including the children's relationship with each parent, each parent's ability to provide care for the children, each parent's ability to foster the children's positive relationship with the other parent, and whether contact between parents or a parent and a child is likely to result in harm to the child or a parent. Instead, HB 578 would create a rebuttable presumption that joint parental rights and responsibilities and approximately equal parenting time are in the children's best interests. Absent an agreement between the parents, HB 578 would allow deviation from joint parental rights and responsibilities and approximately equal parenting time only in very narrow circumstances.

HB 578 does not adequately incorporate domestic violence into its version of the best interests analysis. It only allows judicial officers to consider a history of domestic violence if the court finds "clear and convincing evidence" of abuse. The "clear and convincing" burden of proof is a very high standard, unusual in civil cases and exceeded only by the "beyond a reasonable doubt" standard applied in criminal prosecutions. By contrast, domestic violence survivors may obtain protective orders under RSA 173-B if they prove domestic violence by a "preponderance of the evidence," the ordinary civil burden of proof. HB 578 would make it harder for a domestic violence survivor with a protective order to get the court to consider the history of domestic violence with respect to the children's best interests than it was for him or her to obtain the protective order in the first place. This change utterly disregards the effect of domestic violence on children and on parents' ability to share parenting time and make joint decisions. It discourages the long-term safety of domestic violence survivors by making it harder to protect survivors and their children from further exposure to abuse. Finally, it wastes valuable judicial resources: even in cases where a parent already has a domestic violence protective order in place, the parties will have to re-litigate the issue of domestic violence as it relates to the best interests of the children (because of the heightened burden of proof).

To the extent HB 578 aims to promote shared parenting arrangements, it is unnecessary. At NHLA, our family law practitioners have found that judicial officers start from the assumption, as set forth in RSA 461-A, that "children do best when both parents have a stable and meaningful involvement in their lives [and there is] frequent and continuing contact between each child and both parents" RSA 461-A:2, I(a). Essentially this means that judicial officers consider shared parenting as the starting point for the best interests analysis. Any deviation

from that standard starting point is guided by the several factors currently listed in RSA 461-A:6, I, including any history of abuse. See RSA 461-A:6, I(j). Knowing how carefully judicial officers approach parenting rights and responsibilities cases, NHLA prepares all of our contested cases with the understanding that we must prove not only that there was abuse as defined by RSA 173-B, but also that the children were negatively affected by it. To limit the abusing parent's involvement with the children, we must demonstrate that frequent and continuing contact with that parent is not in the children's best interests, whether because of likely continuing exposure to violence, ongoing threats to the safety and well-being of the child, and/or heightened danger to the victimized parent.

RSA 461-A currently permits courts to consider evidence of abuse, along with a multitude of other factors, using the ordinarily civil burden of proof. It allows courts to examine each family's unique strengths and weaknesses in order to craft an individualized parenting schedule that responds to the family's needs. The one-size-fits-all approach designed by HB 578 unduly minimizes the impact of domestic violence and may prevent courts from issuing decisions that adequately address crucial safety needs.

NHLA respectfully requests that the Committee recommend Inexpedient to Legislate on HB 578. If you have any questions, please don't hesitate to call me at 206-2214.

Very truly yours,

A handwritten signature in cursive script that reads "Sarah Mattson".

Sarah Mattson, Esq.
Staff Attorney

When I was about the age of thirteen, my parents had filed for a divorce like many other parents in the U.S. Little did I know I was in for a couple of very rough years, because I was under the influence of Parental Alienation. Parental Alienation is a social dynamic, generally occurring due to divorce or separation, when the hostility and negative affect of one parent severely harms the relationship of a child with the other parent. Unfortunately, I have been dealing with Parental Alienation and was not even aware of this until recently.

For several years my mother has tried to alienate me from my father. I restored my relationship with my father several months ago. I isolated myself out of his life thinking that he wanted nothing to do with me. I did not realize that it was the influence of my mother causing me to think negative thoughts about my father. In time, I came to believe the things my mom had been saying about him were true and I thought he was one of the worst people around. I believed he did not want me in his life and I believed he preferred my brother over me. For years, my mother told me these things about him and I forced myself to blame him, when I should not have. I should not have believed that my father did not want me around nor that he wished I was a male. I was lead to believe that he was a dead-beat dad and that he was a homosexual. I even let my mother convince me that my father would abuse me when I should have known this was not true because he had never been abusive in the past. These are just a few of the things I was told. After experiencing this, I am becoming aware of the toll this has taken on my life. During my freshman year, it was noticeable that my grades were falling. Throughout my sophomore and junior year I struggled to maintain a steady grade point average. I stopped participating in some of my favorite extracurricular activities. After I started restoring my relationship with my father, my grades improved.

Parental Alienation Syndrome was first identified by Dr. Richard Gardner in the 1980's and Parental Alienation Disorder is what will likely be included in the next version of the Diagnostic and Statistical Manual of Mental Disorders (DSM-V). Parental Alienation is a relatively new field of study in psychology. Because of my experience and what I have been through, I can bring a unique perspective to the study of this area of psychology and its practice after graduation. My hope is to bring more of an understanding to this area of study for the field of psychology and to help others that have to endure such traumatic events. I look forward to the opportunity to share my experiences with other students as well as furthering my own education.

This life experience is part of why I want to study psychology and it is my hope that my academic community will benefit as much from my presence and experiences as I know I would benefit from an education in psychology at the University of [REDACTED]

Law Offices of
JOHN D. CAMERON, PLLC
174 Court Street
Laconia, New Hampshire 03246

JOHN D. CAMERON

*Admitted to Practice in
New Hampshire and Maine
*New Hampshire Certified
Marital Mediator
*Collaborative Law Attorney
*Parenting Coordinator

Phone: 603.528.2200
Fax: 603.528.2199
Email: johncameron@cameronlaw.us
Web: www.cameronlaw.us

11 February 2013

Via Email Only

Representative Mary Beth Walz
Chair, Children and Family Law Committee
New Hampshire House of Representatives
107 North Main Street
Concord, NH 03301

Dear Representative Walz:

I am a family law attorney, state certified family mediator, state certified guardian *ad litem*, and parenting coordinator. For the past 18 years I have focused my professional efforts on family issues and, in particular, the plight of children caught in the web of their parents' divorce or separation. I teach workshops on understanding and handling conflict, and I teach skills to divorced and separated parents that will help them move from conflict to co-parenting.

Regrettably I am unable to provide in-person testimony on HB578 to the Children and Family Law Committee on Tuesday, 12 February 2013 due to my commitment to the Superior Court SCOPE program.

I have spoken and written in opposition to legislation similar to HB578 in the past, and I write in opposition to HB578 now. In doing so I once again express the deep concern I have for the children of New Hampshire: if HB578 is passed, the Legislature would be shirking its responsibility to insure that our children's best interests are protected. The sponsors of the bill have once again drafted a parent-focused bill but provided no documented, factual evidence to show that HB578 will (1) solve any existing problem and (2) that the bill will protect and enhance the best interests of the children who are the unwitting and innocent victims of the divorce and separation of their parents.

Not only does HB578 not fulfill the Legislature's duty to prioritize the best interests of the state's children, it in fact subordinates the welfare of children to the interests of the parents - parents who, when involved in contested divorces and parenting issues, are typically so wrapped up in their own emotional baggage that they are unable to think logically and caringly about the children, despite what they may say to the contrary. I know that parents - and in particular disgruntled fathers - have given testimony before the Children and Family Law Committee about

Representative Mary Beth Walz
11 February 2013
Page 2

how unfairly they were treated by a court process that left them with less parenting time than they may have demanded. But has the Children and Family Law Committee ever reviewed the court records of the fathers who claim they have been biased against by the courts? I am confident that the majority of these angry people will, in general, have a court file that shows they have not been the victim of gender bias or court bias, but rather have been the recipients of a reasoned order based on facts that show their inability to effectively and cooperatively parent their children following their divorce.

But more importantly, how about the unfair way that children are often treated when it comes to the divorce or separation of their parents? Here are just two of many examples I can provide from my personal experience as a guardian *ad litem* or parenting coordinator. The names are fictitious, but the facts are real; and I have purposely refrained from identifying the gender of the parents:

In the Case of Emma. Emma is fourteen years old. Her sister is eight. When her parents were divorced three years ago they were awarded approximate same parenting time. An analysis of what may have been in the best interests of the children was not made. Nor was the history of controlling behavior by one parent (Parent A) against the other (Parent B) disclosed. Since the divorce Parent A has continued attempts to control Parent B, waging a war through the children intended to affect Parent B's parenting time if not deprive Parent B of a substantial amount of parenting time. The children have been regularly exposed to lectures by Parent A attacking Parent B with degrading descriptions, including accusations of mental illness and blaming the other parent for the divorce. Emma, after three years of being caught in the wake of this behavior, has taken to cutting herself (knife or razor cuts to her fore-arms), has had several "melt-downs" during school resulting in her needing to leave school for the remainder of the day, and has begun to act out sexually. She is now in therapy.

In the Case of Jennie. Jennie is seven, one of four children. The parents had a regular temporary parenting plan that, although it was not a 50-50 or approximately equal schedule, the children spent substantial time with both parents. Again, no analysis of what may have been in the best interests of the children was made in determining the schedule. Nor was the history of controlling behavior by one parent against the other sufficiently assessed. During a weekend at Parent A's home in August 2012 that parent became angry when Jennie proudly showed off her newly pierced ears and earrings. Jennie and her other parent (Parent B) had really enjoyed their outing together the day before when she had her ears pierced. Parent A demanded that Jennie let Parent A remove the earrings. Upset and crying, Jennie ran to her bedroom. Parent A and Parent A's significant other chased after her, and while Parent A held Jennie down the significant other removed the earrings. Jennie was seriously traumatized. Parenting time with Parent A had to be suspended. Jennie is just now beginning to feel as though she can spend time with Parent A, after a period of closely monitored supervised visits, although the violent experience she had with that parent and her earrings is

indelibly etched in her mind.

Can we honestly risk the harm that children like Emma and Jennie could be exposed to if the court rubber stamps parenting cases with a presumption of equal parenting time, or of any guaranteed amount of parenting time for that matter?

In 2006 the Australian government amended that country's Family Law Act. Similar to New Hampshire's Parental Rights and Responsibilities Act that went into effect in October 2005, the Australian amendment encouraged parents to maintain a meaningful presence in the lives of their children, and took the further step of encouraging equal parenting (which New Hampshire's act did not do). This "encouragement" was misinterpreted to be a mandate, and many divorces resulted in equal parenting relationships. Two studies were conducted in Australia following the implementation of the 2006 amendment that have seriously questioned the wisdom of shared parenting when divorcing and separating parents are acrimonious. It has been found that children, especially younger children under age 10, whose care was shared by parents who did not get along well and who continued in conflict, did poorly because they were often exposed to fights, tension-ridden parenting exchanges, and the ongoing denigration by one parent over the other. The parents' ability to communicate and cooperate basic tenets for effective shared parenting - was absent. The studies concluded that the courts must be cautious when ordering shared or equal parenting.

HB578's rebuttable presumption of "equal" parenting does not allow for the cautions the Australians have determined to be necessary. It does not take into consideration the needs of children - in fact, it eliminates the inquiry required of the judge in contested cases that would address and protect the best interests of children. It is, in effect, a retrograde step in New Hampshire family law, one that is likely to open further, not help close, the conflict between parents over their children in divorce and parental separation cases and the manipulation of children by one parent against the other parent.

In the July 2011 issue of Family Court Review published by the Association of Family and Conciliation Courts (AFCC), Volume 49, No.3, authors Alan Sroufe and Jennifer McIntosh (Jennifer McIntosh was also involved in the Australian studies mentioned above) conclude: *Children do not need [nearly equal or equal time with each parent] to achieve two meaningful relationships. [Such a notion] is developmentally ignorant and it also shows no understanding of attachment relationships. It puts too much into the quantity part [of parenting].*

The authors further conclude that one of the key elements necessary for co-parenting is that each parent is able to accommodate the child(ren) missing the other parent so that the child(ren) can develop a secure base of attachment and relationship with both parents - something that conflicting parents typically cannot do.

Emotion and logic are inversely proportional - this may be obvious to many, but it is a fact also supported by numerous studies that point out this inverse relationship. Does our Legislature want to entrust the welfare of children in the equal care of conflicting parents who

are laden with emotional baggage, without first inquiring of each parent's ability to parent and co-parent? I would seriously hope not. The place for cooperative decision making and equal parenting is with cooperative, not conflicting, parents. You cannot legislate emotion and the control of emotion; you cannot legislate cooperation. HB 578 ignores the existence of negative emotions of parents in divorce and the detrimental impact on the children of the exposure to the ongoing negative emotionalism. It may be appropriate for the Legislature to promote co-parenting education, but how will the force-feeding of equal parenting provide the emotional control and cooperative interaction required for successful co-parenting. The best environment for equal or shared parenting is that in which the parents are proven to be able to cooperate and communicate on behalf of their children, and these parents should make the equal parenting decision, not the legislature.

How does HB578 protect from harm a developing 3-month old nursing child if a court is required to order equal parenting? Does it address child development considerations and the stress and anxiety placed upon young children in divorce? No, but these should be concerns, and these things are addressed in existing law.

How will HB578 address and prevent the power and control that one parent may exercise over the other but which goes undetected (as it often does) as one parent uses fear tactics to gain parenting rights and thereafter uses the children as weapons to perpetuate this power and control?

How will HB578 protect the child(ren) from conflict?

How will HB578 make parents act calmly, rationally, and in the best interests of the children following a highly emotion-charged experience of divorce or parental separation?

How will HB578 compensate for the potential lack of geographic proximity of the parents following their separation? Doesn't the legislation simply say, "Tough luck, kid - your parents now live 65 miles apart and you have to deal with it because they have to share you equally - you'll adjust to having to get up at 5 a.m. to get to school"?

How will HB578 address the lack of coordination and availability of one or both parents during their parenting time because of their jobs?

How will HB578 consider the stage of development, the special needs, and the temperament of the children?

How will HB578 address the issue of one parent having never really looked after the child(ren) except on rare occasions? Parents should have been actively and meaningfully involved in their child(ren)'s life to be an equal parent following the marriage/relationship breakup.

How will HB578 address the parents who never married, perhaps never lived together, and never formed a relationship, let alone a parenting relationship? What do we

Representative Mary Beth Walz
11 February 2013
Page 5

do with the child from a one-night stand once the father has been adjudicated the father, is tracked down for child support, and comes out of the woodwork insisting that he be permitted equal parenting of a child he does not know?

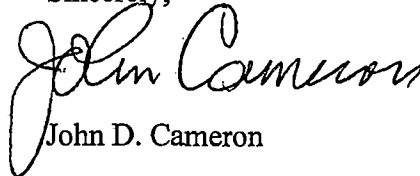
And finally, isn't there an obvious contradiction inherent in HB578? The parents are in court because they themselves cannot make a cooperative, informed, rational decision about the children. And now we want to automatically and presumptively plunk the children in the middle of this conflict with equal parenting. What about the children? What about the children?

Every family is different. A cookie-cutter approach to parental rights and responsibilities ignores the differences from family to family, parent to parent, and child to child. RSA 461-A provides adequate direction for judges to follow for maximizing a child's time with each parent. It necessarily requires a judge to look at each family as a unique circumstance - and each family is a unique circumstance - and determine how to meet a child's best interest following the divorce or separation of the parents. The judge has the ability and authority to call on experts to assist him/her in making this determination. Without this "every family is different" approach to parental rights and responsibilities, we put our children at risk of unnecessary and unfair turbulence and anxiety - the kind of trauma and harm that Emma and Jennie are going through.

HB 578 is not child-friendly legislation. It is not in the best interests of our children. It should not and must not become law in any form.

Thank you and the Children and Family Law Committee for your kind consideration of this letter.

Sincerely,



John D. Cameron

JDC/jc

Voting Sheets

HOUSE COMMITTEE ON CHILDREN AND FAMILY LAW

EXECUTIVE SESSION on HB 578

BILL TITLE: relative to the determination of parental rights based on the best interest of the child.
DATE: March 5, 2013
LOB ROOM: 206

Amendments:

Sponsor: Rep. OLS Document #:
Sponsor: Rep. OLS Document #:
Sponsor: Rep. OLS Document #:

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep. Long

Seconded by Rep. Rollo

Vote: 12-4 (Please attach record of roll call vote.)

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep.

Seconded by Rep.


Vote: (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE NO

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,


Rep. Debra L. DeSimone, Clerk

HOUSE COMMITTEE ON CHILDREN AND FAMILY LAW

EXECUTIVE SESSION on HB 578

BILL TITLE: relative to the determination of parental rights based on the best interest of the child.

DATE: 3-5-13

LOB ROOM: 206

Amendments:

Sponsor: Rep.

OLS Document #:

Sponsor: Rep.

OLS Document #:

Sponsor: Rep.

OLS Document #:

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep. LONG

Seconded by Rep. ROLLO

Vote: 12-4 (Please attach record of roll call vote.)

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote: (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE: {Type VOTE} NO 12-4

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,



Rep. Debra DeSimone, Clerk



STATE OF NEW HAMPSHIRE
OFFICE OF THE HOUSE CLERK

1/7/2013 3:38:53 PM
Roll Call Committee Registers
Report

2013 SESSION

CHILDREN AND FAMILY LAW

Bill #: 578 Title: Relative to the determination of Parental rights based on the best interest of the child
PH Date: 1 1 Exec Session Date: 3 1 5 13
Motion: ITC Amendment #: _____

MEMBER	YEAS	NAYS
Walz, Mary Beth E, Chairman	✓	
Long, Patrick T, V Chairman	✓	
Rollo, Deanna S	✓	
Flockhart, Eileen C	✓	
Friedrich, Carol H	✓	
Chase, Cynthia L	✓	
Alicea, Caroletta C	✓	
Frambach, Mary E	✓	
Gulick, Ruth P	✓	
Mackay, Mariellen J	NO	
Stevens, Audrey M	A	
Gargas, Carolyn M	✓	
Itse, Daniel C		✓
DeSimone, Debra L	✓	
Oigny, Jeffrey D		✓
Dumaine, Dudley D	A	
Hoell, J.R.	A	
Tremblay, Stella S		✓
Murphy, Kelleigh D		✓
Nigrello, Robert L	✓	
TOTAL VOTE:	12	4

Committee Report

REGULAR CALENDAR

March 6, 2013

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

**The Majority of the Committee on CHILDREN AND
FAMILY LAW to which was referred HB 578,**

**AN ACT relative to the determination of parental rights
based on the best interest of the child. Having
considered the same, report the same with the following
Resolution: RESOLVED, That it is INEXPEDIENT TO
LEGISLATE.**

Rep. Mary Beth E Walz

FOR THE MAJORITY OF THE COMMITTEE

**MAJORITY
COMMITTEE REPORT**

Committee: **CHILDREN AND FAMILY LAW**

Bill Number: **HB578**

Title: **relative to the determination of parental rights
based on the best interest of the child.**

Date: **March 6, 2013**

Consent Calendar: **NO**

Recommendation: **INEXPEDIENT TO LEGISLATE**

STATEMENT OF INTENT

This bill would significantly change the standard used in determining parental rights and responsibilities for children. "Best interests of the child" is a nationally-accepted standard for determining a family's future. It ensures that the courts determine what is best for the child rather than base its determination on the desire of the parents. The bill would effectively eliminate many factors used by the courts to determine parenting time with a child. Gone would be a consideration of the child's relationship with each parent, each parent's ability to provide for and care for the child, and whether contact between the parent and child is likely to harm the child. This bill also fails to incorporate domestic violence considerations into its vision of a "best interest" analysis. There is a long-time national and state-wide consensus that the current "best interests" language is the best standard to be used in determining a child's time with each parent. Testimony suggested that abandoning this language could have disastrous consequences.

Vote 12-4

Rep. Mary Beth E Walz
FOR THE MAJORITY

Original: House Clerk
Cc: Committee Bill File

REGULAR CALENDAR

CHILDREN AND FAMILY LAW

HB 578, relative to the determination of parental rights based on the best interest of the child.
INEXPEDIENT TO LEGISLATE.

Rep. Mary Beth E Walz for the **Majority** of CHILDREN AND FAMILY LAW. This bill would significantly change the standard used in determining parental rights and responsibilities for children. "Best interests of the child" is a nationally-accepted standard for determining a family's future. It ensures that the courts determine what is best for the child rather than base it's determination on the desire of the parents. The bill would effectively eliminate many factors used by the courts to determining parenting time with a child. Gone would be a consideration of the child's relationship with each parent, each parent's ability to provide for and care for the child, and whether contact between the parent and child is likely to harm the child. This bill also fails to incorporate domestic violence considerations into its vision of a "best interest" analyses. There is a long-time national and state-wide consensus that the current "best interests" language is the best standard to be used in determining a child's time with each parent. Testimony suggested that abandoning this language could have disastrous consequences. **Vote 12-4.**

Original: House Clerk

Cc: Committee Bill File

REGULAR CALENDAR

CHILDREN AND FAMILY LAW

MAJORITY REPORT

HB 578, relative to the determination of parental rights based on the best interest of the child.

RECOMMENDATION: INEXPEDIENT TO LEGISLATE

VOTE: 12-4

This bill would significantly change the standard used in determining parental rights and responsibilities for children. "Best interests of the child" is a nationally-accepted standard for determining a family's future. It ensures that the courts determine what is best for the child rather than base it's determination on the desire of the parents. The bill would effectively eliminate many factors used by the courts to determining parenting time with a child. Gone would be a consideration of the child's relationship with each parent, each parent's ability to provide for and care for the child, and whether contact between the parent and child is likely to harm the child. This bill also fails to incorporate domestic violence considerations into its vision of a "best interest" analyses. There is a long-time national and state-wide consensus that the current "best interests" language is the best standard to be used in determining a child's time with each parent. Testimony suggested that abandoning this language could have disastrous consequences.

Rep. Mary Beth Walz

MW

COMMITTEE REPORT

COMMITTEE:

Children and Family Law

SPLIT

BILL NUMBER:

HB 578

TITLE:

DATE:

3.5.13

CONSENT CALENDAR:

YES

NO

OUGHT TO PASS

OUGHT TO PASS W/ AMENDMENT

INEXPEDIENT TO LEGISLATE

INTERIM STUDY (Available only 2nd year of biennium)

Amendment No.

STATEMENT OF INTENT:

See attached

COMMITTEE VOTE:

12-4

RESPECTFULLY SUBMITTED,

- Copy to Committee Bill File
- Use Another Report for Minority Report

Rep. _____

For the Committee

Many Still Works for the Majority

#B578

This bill would significantly change the standard used in determining parental rights and responsibilities for children. "Best interests of the child" is a nationally accepted standard for determining a family's future. It ensures that ^{the} courts determine what is best for the child rather than base its determination on the desire of the parents. The bill would effectively eliminate many factors used by the courts to determine parenting time with a child. Some would be a consideration of the child's relationships with each parent, each parent's ability to provide for and care for the child, and whether contact between the parent and child is likely to harm the child. This bill also fails to incorporate domestic violence considerations into its version of a "best interests" analysis. There is a long-time national and state-wide consensus that the current "best interests" language is the best standard to be used in determining a child's time with each parent. Testimony suggested ~~that~~ that abandoning this language ~~would~~ could have disastrous consequences.

REGULAR CALENDAR

March 6, 2013

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

**The Minority of the Committee on CHILDREN AND
FAMILY LAW to which was referred HB 578,**

**AN ACT relative to the determination of parental rights
based on the best interest of the child. Having
considered the same, and being unable to agree with
the Majority, report with the recommendation that the
bill OUGHT TO PASS.**

Rep. Jeffrey D Oligny

FOR THE MINORITY OF THE COMMITTEE

**MINORITY
COMMITTEE REPORT**

Committee: **CHILDREN AND FAMILY LAW**

Bill Number: **HB578**

Title: **relative to the determination of parental rights
based on the best interest of the child.**

Date: **March 6, 2013**

Consent Calendar: **NO**

Recommendation: **OUGHT TO PASS**

STATEMENT OF INTENT

The bill removes the subjective language which allows the family court to remove children's fit parents from their lives in matters of child custody or divorce. Current law (RSA 46-1-A:6) allows the court to consider "any other additional factors the court deems relevant" in deciding whether or not to remove fit parents from children's lives. Other adequate statutes exist to protect children from bona-fide cases of real abuse or neglect. Removing children's fit and loving parents from their lives is not good public policy and costs the state to provide parenting that is inferior to their actual parent.

Rep. Jeffrey D Oligny
FOR THE MINORITY

REGULAR CALENDAR

CHILDREN AND FAMILY LAW

HB 578, relative to the determination of parental rights based on the best interest of the child.
OUGHT TO PASS.

Rep. Jeffrey D Oigny for the **Minority** of CHILDREN AND FAMILY LAW. The bill removes the subjective language which allows the family court to remove children's fit parents from their lives in matters of child custody or divorce. Current law (RSA 46-1-A:6) allows the court to consider "any other additional factors the court deems relevant" in deciding whether or not to remove fit parents from children's lives. Other adequate statutes exist to protect children from bona-fide cases of real abuse or neglect. Removing children's fit and loving parents from their lives is not good public policy and costs the state to provide parenting that is inferior to their actual parent.

REGULAR CALENDAR

CHILDREN AND FAMILY LAW

MINORITY REPORT

HB 578, relative to the determination of parental rights based on the best interest of the child.

RECOMMENDATION: OUGHT TO PASS

The bill removes the subjective language which allows the family court to remove children's fit parents from their lives in matters of child custody or divorce. Current law (RSA 46-1-A:6) allows the court to consider "any other additional factors the court deems relevant" in deciding whether or not to remove fit parents from children's lives. Other adequate statutes exist to protect children from bona-fide cases of real abuse or neglect. Removing children's fit and loving parents from their lives is not good public policy and costs the state to provide parenting that is inferior to their actual parent.

Rep. Jeffrey D. Oigny

mw

MINORITY REPORT

COMMITTEE:

CFL

BILL NUMBER:

HB 578

TITLE:

Relative to determination of parental rights based on the best interests of the child.

DATE:

3/5/12

CONSENT CALENDAR:

YES

NO

OUGHT TO PASS

OUGHT TO PASS W/ AMENDMENT

INEXPEDIENT TO LEGISLATE

INTERIM STUDY (Available only 2nd year of biennium)

Amendment No.

STATEMENT OF INTENT:

The bill removes the subjective language which allows the family court to remove children's fit parents from their lives in matters of child custody or divorce. Current law ^(RSA 461-A:6) allows the court to consider "any other additional factors the court deems ~~to~~ relevant" in deciding whether or not to remove fit parents from children's lives. Other adequate ^{rules} statutes exist to protect children from bona-fide cases of real abuse or neglect. Removing children's fit & loving parents from their lives is not good public policy & costs the state to provide parenting that is inferior to their natural parents.

COMMITTEE VOTE:

RESPECTFULLY SUBMITTED,

• Copy to Committee Bill File

Rep.

Jeffrey D. Oliguy

For the Minority

JDO