

A Kansas Move Toward 50/50 Custody Has Some Wondering If Kids Win

Madeline Fox



A push to make more divorcing Kansas parents split custody evenly could, some critics contend, make the break-ups harder for children. What's more, they worry a shift to a 50/50 custody standard could prevent a spouse's escape from an abusive relationship.

A bill creating a new equal custody standard would significantly raise the standard needed for a judge to give one parent more time with the children than the other.

Most parents, between 80 and 90 percent, agree on a custody plan before getting to court. The new standard would only come into play for the parents who don't.

Yet Burton Taylor, spokesperson for the National Parents Organization that sprung from the fathers' rights movement, said he hopes it will also affect those out-of-court agreements.

"When you're negotiating a parenting plan with your ex ... oftentimes you'll make concessions to avoid costly and drawn-out (litigation)," said Taylor, a divorced dad.

When the norm is set to equal time, he said, parents who would have conceded to less time will feel empowered to push for more custody before going to court.

Under the current system, Kansas judges consider at least 11 factors when determining how residency of kids should be split – including domestic abuse, whether parents are able to respect each other's bond with their children, and what the kids themselves want.

Attorney Charles Harris, who testified against the bill, said a move to a presumption of equal time could override some of the factors that protect the best interests of the child.

"The problem with this bill is that it's one-size-fits-all," he said. "Your children are going to be different, have different needs and expectations, than my children."

The bill also kicks up the standard of evidence for parents going to court over custody, from a preponderance of evidence — meaning something's more likely true than not true — to clear and convincing. Divorce attorneys, victim advocates and psychologists are worried that could put abused partners at the mercy of their abusers.

Abusers can take advantage of concern for the kids and the costliness of legal battles, to assert control over their victims, said Dorothy Stucky Halley, director of the Kansas attorney general's victim services division, in her testimony about the bill.

Family law attorney Ashlyn Yarnell said that in the high-conflict cases she sees most often, clear and convincing evidence can be a significant barrier for abused partners.

Some spouses are controlling or verbally abusive in ways that are hard to document with police reports, photographs and other evidence that would meet that clear and convincing standard.

For Sen. Steve Fitzgerald, who's sponsoring the Senate bill, the idea that domestic violence victims can't provide clear and convincing proof required to overturn the equal parenting presumption doesn't pass the smell test.

"To bring charges of domestic against somebody without any proof whatsoever, really?" he said. "How do we adjudicate, how do we apply the law, if we're going to do things without proof?"

Equal custody could prove a strain even in non-abusive relationships, said psychologist Wes Crenshaw. Especially among parents who couldn't carve out a custody agreement without court help, he said, frequent switches between parents can provide regular opportunities for conflict. Changing the law, he said, isn't going to make that process any easier for kids.

"I know kids who love shared residency, and I know kids who hate it," Crenshaw said. "A law is going to have very little impact on that dynamic."

Attorney Ron Nelson, who helped create several of the factors that are taken into account under the current custody system, said he understands that courts don't always get custody cases right. But he sees creating a presumption of equal parenting time, and putting up a higher barrier of proof to change it, as an overcorrection that could do real harm.

Problems that give one equally capable parent less time with kids come from lawyers who push more for what their client wants than what's best for the kids, or with judges who have outdated ideas about parenting, he said, "not with the law."

"The law is the way it should be now," he said.

Madeline Fox is a reporter for the Kansas News Service, a collaboration of KCUR, Kansas Public Radio, KMUW and High Plains Public Radio covering health, education and politics. You can reach her on Twitter [@maddycfox](https://twitter.com/maddycfox). Kansas News Service stories and photos may be republished at no cost with proper attribution and a link back to the original post.