

Shared Parenting Bill

Member's Bill

Explanatory note

The purpose of this Bill is to significantly improve the welfare of children whose parents separate or divorce.

Children inevitably suffer when their parents elect to live apart. The continued absence of one parent is a major source of anguish in a child's life which can be exacerbated by the competition between parents caused by custody and access inequalities.

Currently, the most frequent outcome for families when parents separate, is physical sole custody, whereby the children spend the majority of their time with one parent. The parent who gets sole physical custody effectively gains control of the children and hence commands a strong position in negotiations with the non-custodial parent for their relationship with the children.

Shared parenting, as described in this Bill, has been highly successful in other western countries over the past two decades. It has been shown to improve the welfare of children, reduce arguing between parents, and improve cohesion of the two-parent family unit.

Shared parenting is a starting point where both parents are equally important to the children and it is in the best interests of the children to spend as much time as reasonably possible with each parent. Parents will be considered "joint custodians", and neither parent will be given a superior role to the other parent unless it is proven necessary.

The parents (or a judge, if one is involved) will be able to mutually agree to vary custody arrangements from the 50:50 split of time. Such changes should be the mutual decision of the parents, taking account of the needs of the children.

Unequal sole custody and other custody arrangements will continue to be options, but they will be ranked as lower alternatives. Alternatives will be considered if, for example, one parent fails to co-operate with the other, if one parent tries to alienate the children against the other parent, or if one parent is deemed by a court to be unsuitable.

Government departments, and non-government agencies receiving government funding, will be required to actively promote shared parenting to all parents. Annual reports will be subject to parliamentary scrutiny to ensure proper compliance.

The use of false allegations by one party against another to win custody will not be tolerated. Any false allegations that are made knowingly will draw fines, court costs and possible downgrading of custody rights.

The Government will be required to publish information describing the uptake and impact of the various custody arrangements.

New Zealand has a long tradition of gender equality, including equal voting rights, equal splitting of matrimonial property, and equality in education and the work force. Equal parenting within the family unit is the only realistic long-term public policy option for New Zealand to adopt.

Dr Muriel Newman

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Shared Parenting Act **2000**.

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent. 5

3 Purpose

The purpose of this Act is to improve the welfare of children whose parents have separated, by bringing greater equality to the role of parents within the family unit by— 10

- (a) ensuring that minor children have frequent and continuing contact with both parents after the parents have separated or dissolved their marriage: 10
- (b) encouraging parents to share the rights and responsibilities of child rearing to effect this policy: 15
- (c) assuring parents to the greatest extent practicable, an equal role in the physical and legal custody of their children.

- 4 Interpretation**
- In this Act, unless the context otherwise requires,—
- shared parenting** means joint custody split equally (50:50) between the parents
- joint custody** means joint physical and joint legal custody to both parents, in such a way as to guarantee the child frequent and ongoing contact with both parents 5
- legal custody** means the decision-making rights, responsibilities, and authority relating to the health, education, and welfare of a child 10
- parental alienation** means having the effect of denigrating or degrading a parent involved in custody issues, to the relevant children in custody
- physical custody** means a minor child residing with, or under the care and supervision of, a parent 15
- sole custody** means one parent having physical and legal custody of a minor child.
- 5 Priorities of custody**
- Custody must be awarded in the following order of preference, according to the best interests of the child: 20
- (a) shared parenting to both parents:
- (b) joint custody to both parents:
- (c) sole custody to either parent:
- (d) equal joint, joint, or sole custody to other parties.
- 6 Parental co-operation** 25
- An award of joint custody obligates the parents to exchange information concerning the health, education, and welfare of the minor child and, unless allocated, apportioned, or decreed, the parents or parties must work co-operatively and confer with one another in the exercise of decision-making, responsibilities, and authority. 30
- 7 Domestic violence**
- (1) In every proceeding where there is a determination by the court that domestic or family violence has occurred, there is a rebuttable presumption by the court that it is detrimental to the child and not in the best interests of the child to be placed in 35

sole custody or joint physical custody with the perpetrator of domestic or family violence.

- (2) Despite the provisions in **subsection (1)**, the judge must also take into account what, if any, impact the domestic violence had on the child. 5

8 Penalties for non-co-operation

Any person who frustrates or attempts to frustrate (directly or indirectly) the custody or access of a parent or party, by any means including—

- (a) preventing hand-over of the children: 10
- (b) parental alienation:
- (c) knowingly making false allegations of sexual abuse:
- (d) knowingly making false allegations of domestic violence,

is liable to— 15

- (e) a fine not exceeding \$1000:
- (f) the costs incurred by the aggrieved parent or party because of the non-co-operation:
- (g) in the case of a custodial parent or party, downgrading of joint custody rights to non-custodial status, or the removal of custody rights. 20

9 Parenting plan

If the court finds both parents are suitable parents it may, at its discretion, require the parents to submit an implementation plan for the custody order, or the parents acting individually or in concert may voluntarily submit a custody implementation plan. 25

10 Mutually agreed variations to shared parenting

Parents who have been granted shared parenting or joint custody are free to mutually agree variations to the physical care arrangements as suits their personal and work situations. 30

11 Sole custody consideration

- (1) In making an order for sole custody, the court must consider, among other factors, which parent is more likely to allow the child or children frequent and continuing contact with the non-custodial parent. 35

- (2) The burden of proof that shared parenting or joint custody would not be in the best interests of the child is on the parent requesting sole custody.

12 Promotion of shared parenting

- (1) Every department, Crown entity, and State enterprise within the meaning of: 5
- (a) Schedule 1 of the State Sector Act 1988;
 - (b) Schedule 4 of the Public Finance Act 1989;
 - (c) Schedule 1 of the State-Owned Enterprises Act 1986—
- and any organisation or body entering into a contract with a department referred to in **paragraph (a)** for the provision of goods or services— 10
- must actively promote shared parenting as the preferred option where the activities of that department, Crown entity, State enterprise, or organisation reflects or influences parental custody arrangements. 15
- (2) Every department, Crown entity, State enterprise, or organisation to which **subsection (1)** applies, must include in its annual report, a statement of compliance with the provisions of **subsection (1)**. 20

- ## 13 Court must state reasons shared parenting not awarded
- If a court does not award shared parenting, then the reasons must be explicitly stated in the judgment.

14 Publication of information

- (1) The Department for Courts must include in its annual report the following information: 25
- (a) the outcomes of all custody court cases for the year:
 - (b) the different types of custody awarded:
 - (c) the reasons why shared parenting was not awarded:
 - (d) the number of custody cases in which accusations of sexual abuse or domestic violence were made: 30
 - (e) the gender of the parents involved for each custody outcome:
 - (f) the number of cases in which accusations of sexual abuse or domestic violence were made, which also had custody implications which were not contested in court. 35

- (2) At each national census, the Department of Statistics must ensure information is collected and published on the accumulated number of different custody arrangements in the community (both court awarded and non-court awarded), and the level of total benefits being paid.

