

**DOMESTIC RELATIONS TASK FORCE HEARING****Conference Room 409****Allegheny County Court House****Pittsburgh, Pennsylvania****Written Testimony of Kevin Sheahen****President of the Greater Pittsburgh Chapter of****National Congress for Fathers and Children****July 15, 1997****PRESUMPTIVE JOINT CUSTODY**

Thank you for inviting me to testify here today. My name is Kevin Sheahen. I am my kids dad and the local chapter president of National Congress for Fathers and Children. Our group is a 501(c)(3) nonprofit advocacy group. We advocate the best parent is both parents. Pennsylvania's families and children are suffering from the present domestic relations system. Children are routinely denied access to one parent in divorce and paternity situations. Fathers' constitutional rights and equality are compromised by the present PFAs (Protection from Abuse Orders). Support awards have become entitlement programs for the custodial parents putting noncustodial parents into untenable situations. Pennsylvania's domestic relation courts have become an industry for judges, attorneys and court related professions. This industry uses family resources at a time when those families need those resources the most. This industry has excluded families who cannot afford the legal costs and thus denied them due process.

I am here to talk about the problems with the present custody system and to present a solution that is being submitted to Pennsylvania's House as draft legislation.

Pennsylvania's custody statutes are gender neutral. Yet mothers are awarded primary custody 90% of the time. Judges rarely order joint custody when custody is contested. Their reasons are the parents bring custody to court, therefore they cannot get along. (Why do you think they divorced?) The judges then refuse to follow the present statutes to determine which parent or both parents is not cooperating about the children. In essence, the judges are rewarding the custodial parent's noncooperation by denying joint custody.

Where is the problem? Many family law attorneys in Allegheny County say 95% of the problem is with the judges. Why are the judges the problem?

One answer is what is called a confirmatory bias. A confirmatory bias is described as mental health professionals who display a tendency to skew the material to fit a

preconceived hypothesis. Poorly trained clinicians frequently fail to explore alternative explanations or seek information that is discrepant to their favorite theory or hypothesis.

Is a judge a mental health professional? No, usually his training is not in this field. Usually our judges come from the ranks of the Bar Association. However, in the present form of Pennsylvania's custody decision making process the judge is called upon to use his "discretion" to determine "the best interests of the children". What happens in the courtrooms is the application of the confirmatory bias of the judges. This bias all too often follows our society's historical roles of fathers being the bread winner and the mothers being the nurturers. (a.k.a.; the tender years doctrine)

Our society suffers greatly from the absence of an involved father. A child who grows up without an involved father has a 400% greater chance of being involved with crime, substance abuse and early sexual activity. Judge Baer is the Administrative Judge of Family Division AND Juvenile Court in Allegheny County. On January 31, 1997, he made a statement while wearing his Juvenile Court hat that ". . . there is too much fatherlessness in this county . . .". Yet this is the same judge who routinely limits noncustodial parents, usually fathers, to spending only four days a month with his children.

Four days a month. How can a parent be a parent four days a month? The answer is that he cannot be a parent. He becomes a visitor and our court labels him as such. How would you like to be called a visitor of your own children? This adversarial and degrading system of our children's parents does not have to be this way. This system, in fact, promotes parents to become absent, or "dead beats". I like to quote Dr. Robert Fay that most "dead beat" dads were in fact beaten dead first by our court system.

What can you, as our state legislators do to help this problem?

The first answer is for the public to vote the prejudice judges out of office. But that is easier said than done. Legislation is needed to limit the discretion of the judges when it comes to determining parenting skills.

Representative Mike Veon has drafted such legislation. His draft legislation presently has 18 sponsors within the Pennsylvania House of Representatives. A copy of the proposed bill is attached.

I would like to briefly discuss some of the highlights of this proposed legislation. First is changing Pennsylvania's definition of shared custody to joint custody. Why is this important? Most states use the term of joint custody over shared custody.

Joint custody is a more legalistic term than shared custody. Joint custody implies a greater degree of parental equality than shared custody.

The most important aspect of this legislation is stated as follows; **"There shall be a rebuttable presumption that an award of joint custody is in the best interest of the child."** What does a rebuttable presumption mean? A rebuttable presumption means that the confirmatory bias of the judges is now limited. If they award anything less than joint custody, then the judge must put in writing on the order the reason for denying joint custody.

What if a parent is unfit? The existing statutes currently list some objective measurements to consider, such as criminal convictions (notice the word convictions and not allegations), in determining a custody award. These would remain intact in this proposed legislation. Some of these objective criteria include 18 Pa.C.S. Ch. 25 (relating to criminal homicide), 18 Pa.C.S. 2901 (relating to kidnapping), 18 Pa.C.S. 2902 (relating to unlawful restraint) and the list continues as it already does in Chapter 5303. The same guidelines for determining parental fitness should also cover court appointed psychologists. However, this proposed bill does not address that industry. One Pittsburgh court appointed psychologist used my height as a factor in not recommending shared custody.

Another important change in chapter 5303 recommended by Mike Veon is to require parents to submit a parenting plan. Allegheny County is close in this aspect with the Generations Program. In this program, parents meet with a mediator for two hours. The parent with the most reasonable parenting plan has come away from these mediation sessions ahead of the other parent. There has been some custody cases settled with this program and that is good. Research and common sense tell us that a custody order or parenting plan consented to by both parents is more likely to be honored by both parents. Children also know that their parents care enough about them to overcome their personal conflicts when it comes to this issue. Another positive note about the Generations Program is the non involvement of attorneys during this process. There are two good reasons why this is in the best interests of the children and the parents. First, the cost to the family is one fifth than if the same hearing was held during a conciliation. The second, and more important reason is now both parents have become educated on what custody is, how children are affected and have become exposed to mediation or conflict resolution, a skill all separated parents need to acquire. The parents are right there, not the attorneys "speaking for them".

What if a parent does not want joint custody? What if a parent only wanted to see his kids four days a month? The answer is a simple one. That parent can submit his parenting plan taking less than 50/50 time with his kids. With the adversarial

court system Pennsylvania has, it is easy to give time up. It is damn difficult to get more time. I have spent \$85,000 and five lost years with my kids because I want to be with them more than four days a month.

The Allegheny Family Division has taken five and a half years in my attempts to become an involved parent for my kids and it is still not resolved. The trial judge took 6 months to write his written opinion on appeal the first time (County court rules allow him to write it in 45 days) and he never even bothered to write one in a six month time period the second time when I appealed the remanded decision by the Superior Court.

Why is joint custody in the best interests of the children? In June of 1995, the American Psychological Association, Division 16, recommended joint custody as the next best parenting plan for children besides an intact marriage. We have seen in our young people the devastation brought about by fatherless children. Presumptive joint custody gives the children the chance they deserve to be raised by both parents when there is a dissolution of a marriage or a relationship. Presumptive joint custody gives both parents a chance to be more than visitors in their children's lives without having to spend their life's savings and five years of litigation.

Another benefit of joint custody is related to support enforcement. The Census Bureau statistics of 1991 indicate that when there was joint custody, support was paid in full 90% of the time. That is 90% compliance! Think of the savings our state would see if we could attain 90% support compliance. If a noncustodial parent does not have his visitation followed, support compliance drops to 45%.

In either argument, the children benefit from joint custody. They benefit from the emotional involvement of both parents and they benefit from the financial support of both parents.

Thank you for giving me the opportunity to speak in front of this task force.

Respectfully submitted,

Kevin Sheahen, My kid's dad.  
Local Chapter President of National Congress for Fathers and Children  
300 Mt. Lebanon Boulevard  
Suite 229-B  
Pittsburgh, PA 15234  
412-563-DADS  
fax 563-3740            email: pghdads@aol.com

**Attachments:**

1. Draft presumptive joint custody legislation authored by Representative Mike Veon dated March 11, 1997.
2. Appellant brief of an appeal for the denial of joint custody. Sheahen v. Sheahen; April 30, 1997.
3. "Policy Implications of Joint Custody" by Jim Cook of the Joint Custody Association dated October 7, 1993.
4. "Children of America at Risk"; a special presentation to The White House, November 27, 1995, by Travis Ballard, J.D.

DON WALKO, MEMBER  
219 SOUTH OFFICE BUILDING  
HOUSE BOX 202020  
HARRISBURG, PENNSYLVANIA 17120-2020  
PHONE: (717) 787-5470



COMMITTEES

URBAN AFFAIRS  
SUBCOMMITTEE CHAIRMAN ON CITIES,  
COUNTIES - SECOND CLASS  
LABOR RELATIONS  
LOCAL GOVERNMENT  
POLICY

NORTHSIDE OFFICE:  
3722 BRIGHTON ROAD  
PITTSBURGH, PENNSYLVANIA 15212  
PHONE: (412) 734-9740  
FAX: (412) 734-9741

SECRETARY/TREASURER,  
ALLEGHENY COUNTY DEMOCRATIC  
DELEGATION

LAWRENCEVILLE OFFICE:  
204 37TH STREET  
PITTSBURGH, PENNSYLVANIA 15201  
PHONE: (412) 621-2818

House of Representatives  
COMMONWEALTH OF PENNSYLVANIA  
HARRISBURG

APPOINTMENTS

STATE PLANNING BOARD

**FOR IMMEDIATE RELEASE**

**CONTACT: DON WALKO**      *Office: (412) 734-9740*  
*Home: (412) 322-3705*

**--MEDIA ADVISORY--**

***WALKO TO HOST PUBLIC HEARING ON DOMESTIC RELATIONS***

Harrisburg, July 14 -- State Rep. Don Walko, D-North Side, will host a special House task force public hearing from 9:00 a.m. to 11:30 a.m. Tuesday, July 15 in Conference Room 409 of the Allegheny County Courthouse to examine domestic relations issues in Pennsylvania.

"We want to give our family courts the tools they need to move into the 21st century," said Walko, a member of the House Judiciary Committee and host of the task force hearing. "The courts have made a number of improvements in Allegheny County. We want to learn about these improvements and see if we can help even more."

The hearings will focus on child custody, family court reform, division of property and economic justice for dependent spouses.

"I believe that modernizing the courts could ease the burden on families in difficult times," Walko said.

Judge Max Baer of the Allegheny County Court of Common Pleas will open the hearing. He has instituted several innovative methods for handling domestic cases, including the one-judge, one-family system, where the original judge hears all the ensuing cases of a single family.

A number of other speakers will testify at the hearing. A full schedule of speakers follows this release.

***Media coverage is invited and welcome.***

##kmk