

**State Rep. Robert E. Belfanti Jr.**  
**H.B. 463 – Joint Custody Presumption**

**TESTIMONY – HOUSE JUDICIARY COMMITTEE**  
**SUBCOMMITTEE ON FAMILY LAW**

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Updating Pennsylvania's child custody laws has become vitally important. The current system struggles to serve the interests of children while preserving access and fairness for both parents.

Today's subcommittee hearing will help legislators, parents and other groups understand many of the issues involved with child custody, the proposals that have been made to improve the system, and what has worked in other states.

I would like to apologize for not being able to attend the hearing in person, and to thank the committee chairman, Rep. Kathy Manderino, for holding this public hearing on such a timely and important topic, and for including my legislation on the agenda.

I would request that my remarks below be submitted for the record:

House Bill 463 has been introduced in this legislature in several previous sessions. It reflects a growing view by many parents and groups – backed by a growing body of empirical evidence – that the standard that Pennsylvania currently uses to decide custody cases – namely, "the best interest of the child" – does NOT serve the best interest of the child, nor of either parent, in many cases.

The problem with the "best interest of the child" standard is that too often it is determined based on outdated, inaccurate, or stereotypical views of parenting roles in our society, and the relationships that individual parents have with their children.

House Bill 463 would require courts here in Pennsylvania to set as a starting point in child custody cases the presumption that BOTH parents have a right, an ability and a desire to share the custody of and care for their children after they separate or divorce.

This legislation is admittedly controversial. It is opposed by a variety of groups, in some cases due to parochial interests, in other cases due to misunderstanding or misinformation. So I think it is important to help people understand exactly what it is that this legislation aims to do by pointing out what it is that this legislation DOES NOT aim to do.

The legislation does not do away with the concept of the best interest of the child. That must remain the goal in every child custody case. Therefore, the bill does not diminish judicial

discretion, or mandate any particular type of custody arrangement, or any division of physical custody. In fact, it allows for any reasonable child custody arrangement, and maintains a wide degree of discretion for courts when deciding custody cases.

Unlike the current standard, however, it does so by starting from a point that most research now shows is the BEST post-divorce arrangement for children – two parents.

Prior to a divorce or separation, a child has two parents. Studies show that most children attach equally strongly to both parents at the age of approximately six months. Those attachments to both parents remain equally strong, even when one parent is the primary caretaker and the other parent has limited interaction with the child, as long as the amount of interaction exceeds a modest threshold. Disruption of the attachment to either parent negatively impacts the well-being of a child.

All of these assertions have been amply documented by research. Because prior to divorce or separation, most children have a strong psychological attachments to both parents, shared legal and shared physical custody of children post-divorce – when possible and where appropriate -- comes closest to preserving that relationship throughout childhood.

That is the presumption placed in House Bill 463, but it is not a straightjacket. It is a flexible bill that instructs the court to maximize exposure of the child to each parent as much as possible, and gives it several tools to do that.

It does not require shared parenting nor does it eliminate protections against unfit or violent parents. In fact, it requires parents in contested custody actions to file detailed parenting plans to be considered by the court, and gives the court discretion when reviewing and evaluating those plans.

The bill also emphasizes many other factors that should be part of any final custody determination: the likelihood of parents to cooperate on child care, the willingness of one parent to facilitate access to the other parent; the recommendations of the representative of the child.

I do not doubt that many opponents of House Bill 463 have legitimate concerns. But I am convinced that most of these concerns are misplaced, based on stereotypes that are decades out of date, or encouraged by a rapidly shrinking faction of interest groups that continue to argue from entrenched positions.

More than 30 other states already have some form of a joint custody rebuttal presumption in place. Why? Because the evidence, and common sense, argue for it.

The impact that a fatherless household has on children is startling. According to [divorcemag.com](http://divorcemag.com), a leading online resource for both divorced men and women, fatherless homes account for 63 percent of teen suicides, 90 percent of homeless or runaway children, 85 percent of children with behavioral problems, 71 percent of high school dropouts, 85 percent of youth in prison and more than half of teen mothers.

An analysis of the results of 33 different divorce and custody studies between 1982 and 1999 published by the American Psychological Association showed that children in joint custody arrangements generally had fewer behavioral and emotional problems, higher self-esteem, better family relations and better school performance than children in sole custody arrangements.

And joint custody seems to make more sense for the parents as well as the children. Joint custody reduces litigation and conflict and fosters mutual respect. It reduces the need for parents to continually go to court – and spend thousands of dollars and months or years – in the never-ending battle to prove they are the better parent.

In some cases, a consideration of joint custody as a starting point by the courts could help to avoid the prolonged battles – and in some tragic cases violence and death -- that can result from the desperation that the current system causes for noncustodial parents.

Both mothers and fathers are an important part of most children's lives. When both the mother and father begin a custody case willing and able to provide custody and care for their child, that is the position from which the court should start, as well.

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