

THE TRUTH IS FOR THE BEST INTEREST OF OUR CHILDREN – SB 60

2/7/03

It is understood that there will be opponents to the original Bill 60 and amended version, however, when they are so adamantly opposed to this bill, one has to ask “why?” You decide. In particular, the loudest opponents to this bill come from Legal Consultant David Braun** for the South Dakota Child Support Enforcement agency and members of the South Dakota Bar Association – Family Law Committee. This opposition was reflected the Senate Judiciary Committee testimony and in Senator Apa’s testimony and attempt to amend SB 60 on the Senate Floor. The truth must be told for the best interest of our children. [We believe a shared parenting law that maximizes the amount of time between children and both parents at separation is in the best interest of our children unless detrimental to a child and want to see this put back into SB 60.](#)

Below are their concerns** and our truthful response (and opinions) to these concerns:

1. SB 60 has been in the Legislature 3 years in a row. There was a public outrage when the Legislature passed this relocation bill.

TRUTH: Some general components of SB 60 have been in the Legislature 3 years in a row. However, HB 1144, three years ago, originally had the shared parenting portion in it. This section was taken out by the House Affairs Committee and the relocation section remained, was passed by the House and Senate and was vetoed by then Governor Janklow. Interesting note, there was a list of negative quotes in Governor Janklow’s veto response. However, there were no proponent quotes. There was public outrage? I don’t recall a public outrage in the newspapers or news. Does Mr. Braun expect us to believe there was no support for this bill in from the General Public? There is a new Governor in our State who is really concerned about bettering our State for our children and families. There are many new faces in our Legislature with a sense of cooperation and concern.

2. Mr. Braun indicates that last year, the Legislature passed a bill ([HB 1302](#)) that required the Unified Judicial System to promulgate shared parenting guidelines and indicated that they took this very seriously. Mr. Braun and others indicate that the Supreme Court promulgated these rules after the Legislative directive.

TRUTH: These standard guidelines have been in place in South Dakota for several years. They were the “unwritten law” in practice. They were in place since my separation in 1998. The parenting schedule has remained the same. They have not changed in a minimum of the last 8 years. The UJS has addressed several other concerns but the parenting schedule has not changed. In fact, if you compare the Standard guidelines that were in place before the last year’s bill even came up in the Legislature to the current guidelines, you will find very few changes to the entire document. Prior to this legislation, these guidelines were entitled “Shared Parenting Guidelines’. As Judge Max Gors admitted in testimony last year, these guidelines do

not address Shared Parenting. The legislators never saw these established guidelines during the Session. The South Dakota Coalition for Shared Parenting was never involved in last year's legislation regarding this matter.

The parenting schedule in this guideline is the traditional every other weekend and 1-2 visit per week. Based upon other states and current developmental research, it is outdated and does not reflect the best interest of a child. ([Click here for more information on the South Dakota Visitation Guidelines](#))

3. The Governor's Visitation Committee worked hard to develop last year's bill on the Standard Guidelines.

TRUTH: Perhaps? There was one meeting with the Governor, two phone conferences. They met in January and had the bill developed by February for the House Affairs Committee. According to one committee member, the actual Standard Visitation Guidelines were minimally or not discussed at that time. Senator Kooistra, a strong proponent and knowledgeable advocate of shared parenting was prevented from being a part of this committee.

Opinion: The Governor's Visitation Right's Committee developed legislation that gave a rubber stamp to the UJS to continue using these SAME guidelines already in place AND the guidelines became the Law as the Legislature and Governor empowered and strengthened the Judiciary ability to make the laws in South Dakota. The Judiciary is the branch of government that interprets the law fairly.

4. "We can't legislate good fathers or good mothers...to be good parents".

TRUTH AND OPINION: The State cannot force any person to be a good father or good mother. However, we have to assume that both parents are good fathers and mothers in South Dakota unless proven otherwise. Most South Dakota parents are. Yet we have laws that pit one parent against another by deciding who is the better parent. We presume that if both parents do not agree on a parenting schedule, the court will provide a child with 26% of the time with one parent and the rest with the other. One parent is going to be the winner; one parent is going to be the loser. We presume that children need one place to live. We presume the mother is the best parent, we presume the father is not, we presume that the children only need a limited time with one parent and more time with other parent. We presume that the parent who "makes the meals, who washes the clothes, who changes the diapers" should be the custodial parent and have complete control over the children, disregarding the significant importance of the other parent...all in the name of the "best interest of the child". This is the law and practice in South Dakota.

The current law opens the door for conflict, fighting and hostility. What the current law does is legislate a perverse opportunity for the destruction of families of separation and divorce. Certainly, we can change this for the true "benefit of the child". When you put two parents the same level, what is there to fight over? When you empower parents as

you empower employees in successful business's, the company thrives. In the same token, Children AND parents thrive. Yes, there will always be "bad" parents, however, SB 60 addresses this and opens the door for 95% of the parents who are fit, good, loving and want to parent their children equally following separation or divorce.

5. "In the collection of child support, I can't make a person responsible in the payment of child support...but we can make their life miserable".

OPINION: Is this what we want? Or should we work very hard to maximize the time between parents after separation or divorce so that both parents will be able to financially AND emotionally support their children. Statistics show that shared parenting increases the compliance to child support.

6. If the portion of Section 2 (primary caregiver in the past 30 days) is eliminated, who will take care of the child. "The child has to be someplace".

TRUTH and OPINION: Parents will take care of that. They have before this law came into effect. It is not for the State to intrude immediately and say that one parent has primary custody of the child and one parent does not. Both parents will take care of their children after separation. There will be two homes and they will do the best they can. However, if one parent is unwilling to do this, then by default, the children will live with the other parent. This action by the one parent unwilling to care for the children will be considered if there is a hearing. I strongly doubt that a parent who is unwilling to care for their children in a meaningful way would ever ask for a Shared Parenting Agreement and according to SB60, the motive (along with the 12 other considerations in SB 60 – Section 3) would be strongly considered by the Judge in a due process hearing. The removal of this wording in our current law is supported by the Family Law Committee of the South Dakota Bar Association.

Although the primary caregiver is important, it disregards the role of the other parent. Both parents mutually agreed to their various roles in a family together and it is the collective support of all members of the family that provided for the needs of their children. After separation, both parents will assume all family roles in their respective households. Keep in mind, Minnesota prohibits a determination of custody based upon the sole criterion of primary custody. South Dakota does not.

7. Minimizing a parent's (Kelly Crumrine's) testimony by raising a questions of her credibility and truthfulness.

Contact Mrs. Crumrine and she will tell you the truth.

8. “We can not change these laws every July 1st and talk about stability in the families”

TRUTH AND OPINION: The Standard Guidelines (parenting guidelines) to which SB 60 refers to have not changed over the years. There have been more additions to them and they have been dressed up, however the meat of these guidelines has not changed. It is time they change. It is time we realize that both parents are extremely important to a child and that the law encourages and promotes the equal involvement of both parents in the life of their children after separation or divorce unless detrimental. Many states have or are moving in this direction (Wisconsin 2000 is one of them). Mr. Braun believes the best way is the old traditional way. If that were true, we would not need a Legislature, Governor and Judicial system because the old way would be acceptable. It is not! Especially in this area of family law.

The standard visitation guidelines passed last year are providing significant inroads to resolving this problem. They are working.

- 9. TRUTH:** The standard guidelines were not passed last year. They have been in place (officially or not) for a significant number of years. They are primarily responsible for hundreds and perhaps thousand of children over the past years who do not have full access to both parents following divorce or separation. Have they been working? [My experience with the "custodial system" and many other parent's experiences say otherwise.](#)

10. How can there be stability if year after year we walk into the legislature or the Supreme Court and change the rules for the families?

TRUTH: In practicality, most negotiated settlement agreements, and indeed most court-ordered custody and visitation arrangements, have traditionally relied on the “default” visitation schedule, whereby the noncustodial parent has custody every other weekend, usually from Friday evening until Sunday evening, and one evening during the week, although even this is sometimes only on the off week. Although devised to encourage stability in that the child is not constantly being shifted from household to household, the fact is that this arrangement fosters the idea of one home, the custodial one, where the child “lives,” and one home, the noncustodial one, where the child “visits”. Under this arrangement, where strictly followed, children and noncustodial parents do not normally see each other much more than every other week. The effect, if not the intent, is to promote isolation from the noncustodial parent, and exacerbate the societal image of the noncustodial parent as an unnecessary, almost intrusive part of the child’s life, with little to no authority. [Marsha B. Freeman \(2001\) reconnecting the Family: A Need for Sensible Visitation Schedules for Children of Divorce. Whittier Law Review, Spring, pps 3-4 Excerpts](#)

11. We have made significant strides in this area. We have applied for federal grant money to establish the visitation centers.

TRUTH: the state did receive \$50,000 in grant money which was further increased to \$100,000 per year. This was an initiative by President Bill Clinton to “support and facilitate Noncustodial parents' access to and visitation of their children”. All states were allocated this amount for the asking. “Program activities may include mediation (voluntary and mandatory), counseling education, development of parenting plans, visitation enforcement (including monitoring, supervision, and neutral drop-off and pickup), and development of guidelines for visitation and alternative custody arrangements”.

The South Dakota Coalition for Shared Parenting submitted a grant proposal in 2000 to the Visitation Enforcement Task Force in South Dakota. [Click here to View Application.](#) The primary purpose of this application was to enhance a strong parent-child relationship during and after divorce, separation or nonmarriage and to encourage a team approach to responsible parenting. This proposal addressed several areas in order to benefit the children of divorced, separated and unmarried families and to minimize the risk of immediate and long-term adverse consequences from this substantial family disruption. It was intended to promote the “best interest of the child” doctrine while preserving the dignity and necessity of the “family system”.

Funding for our initiative was denied in favor of visitation centers. [See “Denial Response” for more information.](#)

14. The Family Law Committee of the South Dakota Bar Association is “totally against” a presumption of 50/50 and they find that, the most offensive of SB 60. “we need to trust our Judiciary”. The standard guidelines were well thought out by consultation with children experts and family law experts. These are the standards across the United States, not here just in South Dakota. We need to trust the guidelines.

TRUTH: Trust the Judiciary in Family law? See # 2 and # 4 above. [Wisconsin essentially has a 50/50 shared parenting law as well as other states.](#) The standard guidelines were probably well thought out back prior to 1997 but times have changed, developmental research has changed, other state laws have changed in the past 8 years. There are not necessarily the standards across the United States. They are for the “traditional” states that have not kept up with the emphasis of both parent being an equal and significant part of a child’s life after separation or divorce. In “shared parenting” states, there is no need for prescriptive parenting schedule guidelines. Texas allows a child a minimum of approximately 150 overnights with the “noncustodial” parent. South Dakota allows an estimated 93 overnights with the noncustodial parent.

15. “I call it the no moving without advanced notification provision”. Opposed. The family law committee of the ABA agrees this statute needs to be fixed but they have a problem with providing notice if the distance is less than 200 miles (as per the standard guidelines) and agree that the notice should be 60 days at a minimum.

TRUTH: The relocation portion of this bill reflects The 1997 Proposed Model Relocation Act as proposed by the American Academy of Matrimonial Lawyers. However, the factors to consider in relocation (in the model) are not reflected in SB 60. Quote from this model “Any move of even a relatively short distance may create other problems if it impedes access to the children or involves a change of school district. Any move from the child's principal residence. 60 day notice, requirements of notice, protection health or safety issues that would put a person or child at risk upon disclosure (still need to get judges approval), and factors to determine contested relocation...”

More quotes from other sources: “The wish to relocate poses the most dramatic example of the conflicting needs and wishes of parents and children and of the conflicting needs and wishes of custodial and noncustodial parents. For the most part, children do not wish to leave the environment in which they live nor do they wish to leave their noncustodial parent, who also does not want them to go. Again it becomes a balance act that needs to be carefully scrutinized and should not be easily permitted without strict due process. It is difficult for the courts and the parties”.

OPINION: We hear we are a mobile society. We hear that a lot. Sure, we are...but that doesn't make it right. For a typical family together, the parents and children move together adding to the stability of the move. It's a change for sure and one that will be adapted to without minimal effect on a child. However, in a family of separation or divorce, when one parent moves away from the other parent, and takes the children with them for perhaps a better job or to get away from the other parent (without sufficient reason), it affects the relationship between the child and the other parent and can have lasting emotional consequences for the child. It doesn't matter how far that is.

If there is distance, there is risk of harm to the emotional well-being being of the child. Whether the mother or father moves. Consider the children, not only their established relationship with both parents but their relationship with their schools, their churches, their friend and relatives. We must be very cautious and careful about moving a child from this stable environment and we must account for the established relationship with the other parent who is moving or not. If this move is approved, there must be sufficient time and the means to continue that relationship throughout the year...not just during the summer. Otherwise, the other parent will become like a relative who has their grandchildren visit for part of the summer. I believe we need a law that discourages moving the children away from the other parent and out of their stable environment.

This is for parents who don't agree that the relocation with the children is in the child's best interest. What parent, who does not love their children would NOT fight for their children to stay where they are at? Would they say, that's ok, Get em out of here? Probably for that 5% of irresponsible, “bad parents”.

I'm not one of them. What would I say? I'm will say, “you're a good mother, I'm a good father. I love our children as much as you do. But they have grandparents, uncles, cousins and friends that live around here next to them and they also support our

children. If you want to go to get a better job, then go, but leave the children here in their same environment, where they can grow and live near their relatives, where they can graduate from school.... I'll be here, I'll take care of them. Let's develop a parenting schedule with flexibility and come up with ways so that they will be able to maintain a close and healthy relationship with you."

It would be great if both parents were able to move to the same location at the same time. This is not always the case. The focus has to be on the children. If there is a potential move, it needs to be seriously considered by the judge. From what I hear around the state, this is not the case. Currently, if you are the custodial parent, you have the right and privilege to move your children wherever you want. You don't even have to notify the other parent.

If we believe that both parents are extremely important to a child and that the child is extremely important to both parents, wouldn't we want to look at this very closely? Would we support a move with the custodial parent, just because they are the custodial parent and just because they "made the meals, washed the clothes or changed the diapers"?

16. Opposing some of the language in the 13 factors provided in SB 60, Section 3 -- which give considerations to the Judicial system regarding when deviating from a shared parenting schedule.

TRUTH: Most of these items are common sense and are completely relevant to the issue at hand. They reflect the wording that is reflected in South Dakota statute 25-5-29 and 25-5-30, which applies to third party custody. This is the Timmy Medrum bill that was passed last year. The family law committee of the South Dakota Bar supports these 13 factors.

17. Using an editorial in the Sioux Falls Argus Leader to support their position against then, HB 1144 (relocation bill) and now, SB 60.

TRUTH: This is one "opinion".

18. Child Support or the Issue of "money" (click on these links)

TRUTH AND OPINION: [THE ISSUE OF MONEY RE: SB 60](#)
(as disgusting as it may be)
[The Issue of Visitation and Child Support](#)

[Other truths and opinions may be found on our website.](#) In particular, we invite you to view the following:

[Questions & Answers regarding a Rebuttable Presumption of Joint Physical Custody](#)

[Legal and Research Support for a Presumption for Joint Physical Custody](#)

[Information provided to all Legislators, Governor Rounds, Judicial \(UJS\) and additional resources](#)

[Critical Thinking for a Complex Issue -- Senate Bill 60
"Thinking Outside the Box"](#)

[Edited Testimony on SB60- Senate Judiciary Committee - 1/24/2003 - Steven Mathis](#)

[If you have further questions, feel free to ask them and I will try to be as truthful as possible.](#)

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