

BILL NO: Senate Bill 0521
TITLE: Child Custody – Rebuttable Presumption of Joint Custody
COMMITTEE: Judicial Proceedings
HEARING DATE: February 7, 2025
POSITION: **OPPOSE**

Senate Bill 0521 creates a presumption of joint legal custody and physical custody for equal periods of time for each parent. The Women’s Law Center opposes the presumption for joint legal and equal physical custody created by this Bill. SB 0521 is particularly egregious in that there is no exception for situations in which there has been domestic violence. The current standard of “best interests of the child” is the most child-centered and appropriate standard for physical custody and decision-making.

SB 0521 includes some factors the court can use when determining custody. However, it does not include key issues, such as the capacity of the parents to communicate and to reach shared decisions affecting the child’s welfare, and the willingness of the parents to share custody. The factors in case law now recognize that it requires a high level of cooperation and commitment to equally parent a child after a relationship has been dissolved. Joint legal custody is a challenging legal arrangement and the presumption for joint legal custody proposed by Senate Bill 0521, despite including *some* factors for consideration, would make it more likely that joint custody would be imposed in inappropriate situations. Furthermore, the cases that require judicial intervention are the highest conflict cases, where the very fact that the parties are in court indicates an inability to work together in the best interests of the child. Finally, custody cases are not cookie cutter, where each case ends in the same arrangements. Every family law case is different. SB 0521’s presumption assumes that these cases are more or less the same.

The preference for joint custody and equal physical custody is particularly problematic when domestic violence is involved. A joint legal custody and equal physical custody arrangement requires an intense level of communication and contact between the parents. This degree of interaction could put the victim of domestic violence at significant risk. *In families where violence occurs, the children are often used as a tool to control the victim.* If joint custody is awarded, the capacity to use the children in this negative way is enhanced. It is also extremely difficult for a victim of domestic violence to negotiate on equal footing regarding parenting decisions. Senate Bill 0521 completely ignores the risks inherent in this situation. It also places a legal burden of overcoming a presumption on the domestic violence victim. And in 80% of family law cases, at least one if not both parties are unrepresented, and may not even understand the concept behind a rebuttable presumption.

The Women’s Law Center recognizes and deeply respects the benefits of having both parents actively involved in a child’s life. However imposing a preference for joint legal custody and equal physical custody that is difficult to overcome would increase the incidence of this type of custody arrangement when it is not appropriate or constructive. This could be counter-productive and detrimental to the well-being of the child and the parents’ ability to work together.

Therefore, the Women’s Law Center opposes Senate Bill 0521 and urges an unfavorable report.