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## FISCAL IMPACT REPORT

**SPONSOR** Diamond/Pirtle      **ORIGINAL DATE** 02/26/21  
**LAST UPDATED** 02/28/21      **HB** \_\_\_\_\_  
**SHORT TITLE** Child Custody Equal Time-Sharing      **SB** 374  
**ANALYST** Chilton

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	Uncertain	Uncertain	Uncertain	Uncertain	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to House Bill 216

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Children, Youth and Families Department (CYFD)

Administrative Office of the Courts (AOC)

Early Childhood Education and Care Department (ECECD)

### SUMMARY

#### Synopsis of Bill

Senate Bill 374 makes a number of changes to the Section 40-4 NMSA 1978 primarily to create the presumption that equal time-sharing of children with their two separating or divorcing parents is the standard.

Other changes made in statute include the following:

- The presumption of superiority of equal time-sharing will be retroactive to cases already adjudicated in which joint custody was awarded.
- Factors to be considered in awarding joint custody remain the same, although the wording for consideration of a charge or conviction for domestic violence is changed.
- While there is a presumption that joint custody with equal time-sharing is best, the following are to be taken into account:
  - The child's right to a healthy relationship with the parents,
  - The parents' responsibility to make that relationship strong,

- If there is no domestic violence or other cause of concern, the recognition that being close to and in frequent contact with both parents is best for the child.
- Courts will facilitate the parents’ planning to fulfill their children’s best interests.
- In the definition of “joint custody,” the sentence “does not imply equal division of the child’s time” is removed.

There is no effective date of this bill. It is assumed the effective date is 90 days following adjournment of the Legislature.

## FISCAL IMPLICATIONS

There is no appropriation in Senate Bill 374. Although there is potential for more equal time-sharing to lead to lower costs for child support enforcement (joint custody itself leads to at least a doubling of child support payments being made), the more immediate impact would be in the opposite direction because higher court costs would be associated with having to reopen previously concluded custody arrangements that had not specified equal time-sharing. In addition, increased court time would be required to “facilitate the parents’ planning to fulfill their children’s best interests.”

## SIGNIFICANT ISSUES

AOC indicates equal time-sharing is not always appropriate for a given family grouping and expresses concern that law mandating equal time-sharing may unduly constrain a court’s options in finding the best situation for each family:

This bill creates a presumption that equal time sharing between parents is in a child’s best interest. This could limit the court’s ability to make a determination based on the unique needs and circumstances of the child and the family, especially because the bill does not give any guidance as to what factors the court should consider when making a determination about whether to deviate from the presumption of equal time sharing. (It is possible that the bill intends that courts would use the factors currently in Subsection B of the statute to make time sharing determinations as well as legal custody determinations, but this is not clear.)

Equal time sharing may not be developmentally appropriate given a child’s age. Many court time sharing guidelines, which are based on mental health and child development research, do not recommend equal time sharing in all cases, particularly for very young children, and recommend that time sharing be determined on an individualized basis. (See e.g. [Massachusetts Time Sharing Guidelines](#), [Arizona Court Time Sharing Guidelines](#), [California Court Guidelines](#))

ECECD notes the importance of factors other than custody arrangements in determining children’s adjustment after divorce or separation:

The custody arrangement for children following parental divorce is not a strong or especially important predictor of children’s subsequent mental, emotional, or behavioral well-being. Rather, research repeatedly shows that the best predictors of positive adjustment and psychological well-being for children after divorce have to do first and foremost with the parenting and relationships they experience and secondly with the economic stability of their homes following divorce. More specifically, children are more likely to thrive psychologically following divorce when they experience a family context characterized by: (a) low or contained and well-handled conflict between parents; (b)

ongoing positive relationships with and effective parenting of at least one, preferably both, parents; and (c) economic stability. Furthermore, most children want to maintain relationships with both parents. (C.M. Buchanan, *A Psychological Perspective on Shared Custody Arrangements*, W.F. Law Review, June 2008).

Although there is ample medical literature regarding divorce and its effects on children, a search of the literature (in PubMed) did not turn up articles indicating superiority or inferiority of equal-time arrangements. Both the American Academy of Pediatrics and the American Academy of Child and Adolescent Pediatrics are largely silent on this issue. The American Academy of Pediatrics' Council on Psychosocial Aspects of Child and Family Health, in a 2019 policy statement on pediatricians' roles guiding divorcing or separating families, did state, "If the child spends more time living with the father after the separation, the child-father relationship is likely to be more positive regardless of continuing parental conflict."

In a 2019 review article on the effects of family dissolution on children by Steinbach in the journal *Family Processes*, the following points are made:

In several Western countries, states, and regions, custody laws were revised in the last couple of years that underline the importance of ongoing co-parental involvement (e.g., *Australia*: Smyth & Chisholm, [2017](#); *Belgium*: Vanassche, Sodermans, Declerck, & Matthijs, [2017](#); *Catalonia, Spain*: Solsona & Spijker, [2016](#); *Italy*: De Blasio & Vuri, [2013](#); *Sweden*: Singer, [2008](#); *The Netherlands*: Poortman & van Gaalen, [2017](#); *UK*: Nikolina, [2015](#); *Wisconsin, USA*: Meyer et al., [2017](#)). Interestingly, none of the jurisdictions in those countries legislated with a 50/50 share in mind. "Several countries, however, now require judicial officers and family law system professionals to consider a shared-time arrangement as a starting point but to do so within the broader consideration of children's best interest and the safety of the family members" (Smyth, [2017](#), p. 497). Thus, joint physical custody as a placement schedule that allows the child to have regular and meaningful periods of time with each parent is recognized in the family law of those countries as a legitimate option, challenging previous post-separation family practices by explicitly questioning the default sole physical custody (or primary care model), which is a huge legal shift.

In a 2019 study of custody arrangements in each of the 50 states, the National Conference on State Legislatures concluded the following:

It is often noted that the more time a noncustodial parent spends with their child, the more child support will be paid. A [2011 Census Bureau report](#) showed custodial parents with joint-custody/parenting time arrangements received full child support payments over half of the time, while just 30.7 percent of custodial parents received full child support payment when there was no contact between the child and the noncustodial parent.

All 50 states have established and use presumptive [guidelines for calculating child support](#). Congress has not imposed a similar requirement on states for the development of presumptive parenting time or visitation guidelines, and as such, states generally have left parenting time determinations to the discretion of the courts...

In addition to the Access and Visitation Grants, OCSE [Office of Child Support Enforcement] also operates limited competitive grant programs, such as the [2012 Discretionary Grants for Parenting Time Opportunities for Children in the Child Support Program](#). These grants support projects that plan, pilot, and evaluate strategies to

establish parenting time orders at the same time as initial child support orders.

**CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

SB374 relates to Senate Bill 216, which amends the same statute and requires sanctions of a parent interfering with the other parent’s visiting or time-sharing.

**TECHNICAL ISSUES**

The legislation does not specify how “equal” “equal-time” must be. Is it to be determined on a weekly basis? What happens if one parent travels?

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