

COMMON MYTHS ABOUT SHARED CUSTODY

1. IF PARENTS CAN'T AGREE TO SHARED CUSTODY, THEY CAN'T COOPERATE AS PARENTS.

THE MYTH

One parent's refusal is recast as proof that the parents cannot agree—and therefore lack the capacity to cooperate under a shared-custody order.

NO AGREEMENT = NO CAPACITY TO COOPERATE.

THE REALITY

A parent's litigation position is not evidence of how the parents will function under an order. A refusal may reflect financial incentives, outside pressure, lawyer influence, strategy, control, or spite. The family's actual history of caregiving and cooperation is better evidence.

DECIDE FROM EVIDENCE—NOT A STATUTORY BAR.

2. SHARED CUSTODY MEANS CONFLICT OVER EVERY DECISION.

THE MYTH

Shared custody is portrayed as turning bedtime, breakfast, and ordinary household choices into joint decisions that create conflict or send parents back to court.

EVERY DECISION BECOMES A DISPUTE.

THE REALITY

Legal responsibility covers major, non-routine decisions. Each parent controls daily choices during their own time, avoiding undue control over the other parent. Questions such as school placement arise occasionally; divided authority, a limited tie-breaker, or focused review can resolve deadlock.

OCCASIONAL DEADLOCK ≠ EVERYDAY CONFLICT.

3. PARENTS CAN'T BE FORCED TO COOPERATE.

THE MYTH

Because cooperation is said to depend entirely on goodwill, the court may ask parents to cooperate—but supposedly cannot require it.

WITHOUT CONSENT, A SHARED ORDER IS IMPOSSIBLE.

THE REALITY

Courts already order schedules and exchanges; information and notice; written communication; decision rules and tie-breakers; enforcement and review; and safety limits. The law can require conduct even when goodwill is absent.

GOODWILL IS OPTIONAL. COMPLIANCE IS NOT.

4. COURT-ORDERED SHARED CUSTODY IS WORSE FOR CHILDREN.

THE MYTH

Court-ordered shared custody is portrayed as risky, experimental, or contrary to children's interests because the parents did not choose it together.

DISAGREEMENT MAKES SHARED CARE HARMFUL.

THE REALITY

More than four decades of research do not support the claim that shared care is inherently harmful. In studies accounting for nonviolent parental conflict, shared-care outcomes were generally equal or better. Disagreement alone is not harm.

SHARED CARE IS LINKED TO BETTER OUTCOMES.

5. A PRESUMPTION OF SHARED CUSTODY CREATES MORE LITIGATION AND EXPENSE.

THE MYTH

A presumption is portrayed as requiring a detailed, custom order for every family—creating more hearings, more lawyer time, and more expense.

PRESUMPTION = MORE LITIGATION AND COST.

THE REALITY

Winner-take-all rules make parents spend their last dollar fighting not to lose their children. A sharing presumption removes that all-or-nothing prize: start by sharing; tailor only when abuse, unusual needs, or complex dynamics require it. A 2012 meta-analysis found equivalent or better conflict and relitigation outcomes under joint custody.

REMOVE THE FIGHT. LOWER THE COST.

6. SHARED CUSTODY PUTS CHILDREN AND ABUSE SURVIVORS AT RISK.

THE MYTH

A presumption is portrayed as forcing children and survivors into unsafe joint control—even when evidence shows abuse or danger.

A PRESUMPTION OVERRIDES SAFETY.

THE REALITY

Any presumption is rebutted by evidence of abuse or danger. Vermont law weighs abuse and now recognizes coercive control; restricts abusive litigation; strengthens assault protections; and permits supervision, protected exchanges, no overnights, confidentiality, and other safety limits.

**ABUSE REBUTS THE PRESUMPTION.
SAFETY CONTROLS THE ORDER.**

7. A SHARED-CUSTODY PRESUMPTION TAKES AWAY JUDICIAL DISCRETION.

THE MYTH

A presumption is portrayed as tying judges' hands and producing an automatic result regardless of the family's history or the evidence.

A PRESUMPTION TIES THE JUDGE'S HANDS.

THE REALITY

A rebuttable presumption sets a starting point—it does not dictate the outcome. Evidence and findings justify a different order. Courts already use such presumptions, including federally required child-support guidelines. Current law ties the court's hands: without agreement, § 665 bars shared custody.

**CURRENT LAW REMOVES DISCRETION.
A PRESUMPTION RESTORES IT.**

8. SHARED-CUSTODY PRESUMPTIONS WILL FLOOD THE COURTS.

THE MYTH

A shared-custody presumption is predicted to overwhelm courts with new cases, repeat hearings, and parents unable to settle.

A PRESUMPTION WILL FLOOD THE COURTS.

THE REALITY

Kentucky Family Court Judge Mica Wood Pence says judges were initially hesitant. After applying the 2018 presumption: "I love it." She reports fewer filings, easier settlements, and less combative, more "team" discussion—while judges still tailor plans to each family.

**FEWER FILINGS. EASIER SETTLEMENTS.
LESS COMBAT.**

**SHARED PARENTING IS FAMILY CONTINUITY.
CHILDREN FIRST.**

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Law and plans: 15 V.S.A. §§ 664–666, 668–668a. Safety: §§ 665(b)(9), 665a, 1101, 1103–1104, 1181–1185. Civil relief-from-abuse orders use a preponderance standard.
Safety developments: 2013 No. 197 (Adj. Sess.) strengthened sexual-assault and trafficking protections; 2023 No. 48 addressed abusive litigation; 2024 No. 103 recognized coercive control.
Outcomes: Vowels et al. (2023), systematic review of 39 studies; reported advantages are associations and most included evidence was observational.
Conflict and child outcomes: Nielsen (2018), review of 60 studies; 19 studies accounted for parental conflict.
Conflict and relitigation: Bauserman (2012), *A Meta-analysis of Parental Satisfaction, Adjustment, and Conflict in Joint Custody and Sole Custody Following Divorce*.
Presumptions: 42 U.S.C. § 667(b)(2) requires rebuttable child-support guideline presumptions and permits departure through written or specific findings.
Judicial experience: Kentucky Family Court Judge Mica Wood Pence, letter supporting Alabama HB 229 (Apr. 29, 2025); Hubin testimony supporting Michigan HBs 5211–5213.
Practice: Justice Canada, *Making Appropriate Parenting Arrangements in Family Violence Cases* (2023). Article analyzed: Seven Days, *Winner Takes All* (Apr. 3, 2013).