

**AN ACT CONCERNING PARENTING TIME AND PARENTAL RESPONSIBILITY
WITH RESPECT TO THE CUSTODY OF A MINOR CHILD (H.B. 5600)**

Judiciary Committee

STATEMENT OF ATTORNEY SHARON WICKS DORNFELD

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Mr. Chairman and Members of the Committee:

Thank you for the opportunity to address you today regarding HB 5600, which proposes to negate a presumption which does not now exist in our family law statutes or practice.

My perspective on HB 5600 is drawn from my experience as an attorney in private practice in Danbury. Since 1988, I have devoted my practice to representing minor children in custody disputes. I am appointed by the Court, and my duties include investigating the family circumstances, helping to resolve disputes, identifying needs of the children, and, most importantly, advocating for the children's interests. Over the last 18 years, I have been involved in hundreds of cases and represented many hundreds of children.

Many, if not most, responsible parents are able to agree between themselves on a parenting plan which serves the interests of all of the family members. I don't meet those people. In a relatively small percentage of divorces, for whatever reason, the parents are unable to agree, even with aggressive efforts by the Court, the Family Relations Division, and the attorneys involved. Those cases are the ones that come before a judge and the cases in which I am appointed to represent the children. They are the hard cases and the ones in which the parents are least able to communicate effectively and set aside their own issues to focus on meeting the children's needs. Those are the cases which would be most affected by HB 5600, and the reason I oppose the passage of HB 5600.

The children, of course, didn't ask for their parents to be divorced, nor did they ask for the reduced financial circumstances which usually follow for both parents who need to stretch the family income to support two households instead of one. They certainly didn't ask to be separated from either parent. Their parents make the choices from which those consequences flow to the children, and the children, so far as possible, should be insulated from the effects of those choices with individually-crafted parenting plans.

HB 5600, if enacted, would further erode the long-established and codified policy that "In making or modifying any order with respect to custody or visitation, the court shall . . . be guided by the best interests of the child . . ." and giving substantial discretion to the Trial Court to fashion custody or visitation orders which meet the needs of the individual children within each family's circumstances. Last session, this body enacted P.A. 05-258 which down-graded the children's best interests from the guiding factor to one which must merely be "considered."

The rather tortured language of HB 5600 suggests that there is a presumption that awarding substantially disproportionate parenting time and responsibility is in the best interests of a minor child.

There is no such current presumption in either statute or caselaw. I fear that the effect of this bill would be to create a back-door presumption in favor of children spending approximately equal time with each parent and would further limit a judge's discretion.

While I certainly support children spending as much time with both parents as is feasible and work toward that end, I can't recall any two families in which the children's needs or family circumstances were identical. There is no "one size fits all" parenting plan which would serve the children of divorcing parents. Children have different temperaments and developmental needs. Parents have different strengths and abilities to meet the children's needs. Parents may live at distances inconvenient for the children, which interferes with the children's ability to participate in extracurricular and sports programs and casual social interaction with their friends, not to mention the problem of trying to do homework in the car between one parent's home and the distant school.

Shared custody works very well for some kids. It doesn't for others. Some of my young clients in shared custody arrangements have told me, in so many words, that they don't really feel they have a "home," but rather--and merely--two houses. Surely that is not what any of us would wish for our children, no matter how much we might miss them when they are with the other parent.

I would also be concerned that passage of HB 5600 might have a negative impact on the amount of financial resources available to the children in one parent's home. Our current child support guidelines create a presumption of the amount of child support paid by the higher-income parent to the other. There are, however, a number of circumstances in which that presumption can be set aside and what we lawyers call "shared custody" is one of them. In its most benign light, a presumption of shared custody would naturally reduce child support payments from the higher-income parent to the other, because neither parent would bear a grossly disproportionate share of the children's expenses. In its worst light, I have seen parents use a claim for "shared custody" as a threat to negotiate paying reduced amounts of child support. Of greater concern, I have seen the parent who is more appropriate, better skilled and better able to place the child's interests first agree to accept a less than equitable amount of child support in order to ensure that the children's care needs are met. Again, that is surely not what is intended. But that may very well be the result.

At least one parent is unhappy at the end of every one of my cases. That parent usually feels that the process was unfair and the judicial system and its various actors are biased. I understand that. I understand the desire of parents to try to "level the playing field." But this bill, and, in my view, the bill passed last session, is tilted toward the best interests of the parents, rather than the best interests of the children. They are often not identical, and attempts to create presumptions about what is the "right" parenting plan for children denies the reality that the children have their own individual needs and desires which are most worthy of protection by our State.

In the words from Anna Karenina by Leo Tolstoy, "Happy families are all alike; every unhappy family is unhappy in its own way." I'll close with that thought.