Testimony of
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HB 5600
"An Act Concerning Parenting Time and Parental Responsibility with Respect to the Custody of a Minor Child"

I oppose HB 5600 because this law will make it **less likely** that a court considering a particular custody case will make a decision that is centered **only** on what it good for *this* child, based *solely* on the unique circumstances if this child's family and parents. It makes it more likely that a court will impose an equal parenting time schedule on parents who cannot make such a plan work for the child.

For the record, I am on the faculty at Quinnipiac University School of Law. I teach family law courses and Negotiation and Mediation, I represent mothers, fathers, and children in my law clinic, and I research and write articles about children, custody, and family law. I am also a mediator.

HB 5600 hints, with confusing language and in a backhanded way, that a parent's rights are more important than a child's needs. The "rights of a parent" are important only when the law in question addresses the balance between parents and non-parents or between parents and the power of the state. However, a "parental rights" approach has no business in any law that addresses custody or parental responsibility between two parents. Because any two legal parents come to the table with equal legal rights, the court can, and should, ignore their rights when analyzing what parenting arrangement should apply for this particular child. The court should be guided only by what is in the best interests of the child.

The parents, their lawyers, the child's lawyer, and the judge need to approach each case with a completely clean slate. Only that clean slate permits the decision-makers to craft a unique plan tailored only to fit the needs of this family. There should be no presumption, or policy, that suggests that one particular solution, or parenting plan, is "probably" more appropriate for "most families." The legislation that was passed a year ago, now codified as Section 46b-56, is helpful because it lists a set of factors that a court may consider, and then leaves it to the court to decide what factors will assist the court to decide the best interests for *this* child.

Child custody laws should not become the battleground in the gender wars. Children

suffer when they are turned in to pawns, or prizes to be won. They lose when the courts are forced to apply a template, or "one-sized fits all" approach that will apply unless circumstances are proved that removes this case from a "norm." Even if on the average, most kids do thrive in situations where parents have equal parenting time, it does NOT follow that the law should codify any particular approach, or force the court to impose an equal time arrangement.

For the child who would NOT thrive in a equal parenting time arrangement, the legislated norm would be devastating, especially when imposed by a court. We cannot assume that the result will always "come out right" simply because the law permits the court to determine the best interests based on the facts of the case. A parent - who may or may not be able to afford counsel - will not always be able to present adequate evidence to overcome the norm embodied in the policy-based, and politically-based, statute.

HB 5600 says it does not create a "presumption" but I fear that judges will interpret that it does create a presumption: one of equal parenting time. I agree with many other legal commentators who have concluded that the use of evidentiary presumptions is confusing because presumptions are "slippery"and, too often, imprecisely used. Presumptions usually mean that there is a logical probability that the existence of one fact renders another fact to be true. The use of a "presumption" ought to be reserved for those situations where there is a logical nexus, or even rarer, when strong public policy dictates that the presumption does affect the outcome: that it should control a legal finding when the trier of fact's mind is at equilibrium. Thus, for example, we do have a "presumption of innocence" in our criminal laws – not because we actually believe it is more likely than not that the defendant is really innocent, but because we have adopted a policy that places the burden of persuasion on the state.

I oppose the use of devices even remotely like a presumption in the context of custody decisions between two parents. There is no logical nexus that any one particular parenting plan is more likely than not "best" for any particular child. I also advocate that the public policy of this state should of one that requires courts to examine each child and his or her family and as set of unique individuals.

We can presume that ALL children need the following:

- to be loved;
- to be safe;
- to be able to complete the developmental tasks that are appropriate for their age;
- to feel secure;
- to have at least one true "home;"
- to live in a world free from parental conflict.

The trick is to create parenting plans that comes as close as humanly possible to meeting these needs for each individual child. That may or may not mean an "equal" parenting time arrangement. It certainly will rarely, if ever, mean a judicially-imposed

"equal time" schedule.

The sad fact is that "equal parenting time" only works - that is, meets the needs of the child - for extraordinary parents. First of all, we should always measure whether it "works" by the effect on the child, not whether one or more parents is satisfied. Parental needs and desires should be irrelevant. Second, it is actually very difficult for most parents to work cooperatively after they have ended a relationship. Many parents do not have the emotional health, post-divorce psychological adjustment, time flexibility, and parenting skills to make it work. A child does not thrive when warring parents merely divide the time. Such an arrangement only serves to split the child.

Parents who do desire an "equal parenting time" arrangement - and have the selfless commitment to make it work - currently have the opportunity to choose such an approach. Nothing stands in their way, and I applaud those who succeed. We do not need a new law to encourage those parents. For them, I have no doubt that an equal parenting time would, indeed, be best for their child. Lucky child!

The question, then, is whether we should have a law that makes it more likely that a court may order an equal parenting time arrangement in a contested case. The answer is no. No court should ever impose an equal parenting time arrangement on a family after litigation. The child will be at risk for decidedly poor parenting by both parents. Equal parenting time is difficult enough for parents who agree on it and are committed to making it work. When there is anything less that shared commitment, there will be ongoing disagreement, argument, tension, conflict. The court ruling would not end the parental conflict; it would exacerbate it. If the parents cannot find a way to make their approaches coordinated – not identical, but coordinated – the child will have to be the one who adjusts. He or she will be the one who bears the brunt of trudging back and forth, living in two contradictory worlds; never being able to be secure that he or she is truly home. That child does not have two homes, she has no home.

Does this mean that litigation will always result in a child with an unhealthy relationship with one or both parents? Again, no. Healthy relationships between parents and children do not depend on the amount of time they have together. More time does not necessarily translate into better relationships, or more successful parenting arrangements for the child. Orders that speak in terms of equal time also promote the actuarial approach to parenting, rather than encourage the parents to adapt their own needs to the child's schedule. Parents need to stop counting minutes and start being flexible and selfless. Their children will thank them for such behavior.

Finally, HB 5600 is worded in a very confusing manner. Although it professes to eradicate a presumption, the message to the court is clear: the judge should start from the assumption that equal time is the best, unless the court finds that the evidence suggests otherwise.

HB 5600 law would encourage two results that are both bad for children:

- First, some parents will settle for equal time because they cannot afford the costs of the litigation necessary to rebut the equal time result; and
- Second, the court will impose more equal time arrangements.

I have no objection to laws that create procedures, and support professionals, to educate parents to reduce conflict and learn to cooperate. I would rejoice in any law that helps parents - on their own - put their tensions aside and embrace a truly shared parenting. Most children would benefit, I am sure, if we devoted the resources to helping parents affirmatively choose equal time parenting. That is where the efforts of courts, lawyers, and this legislature should focus. Family lawyers, for example, should be agents of healing and reason, encouraging parents to embrace cooperation as co-parents rather than litigation as enemies.

But in the meantime, we do not accomplish a better world for the children whose parents are split up by legislating a mechanical solution. We do not help children by tying a judge's hands, forcing him or her to impose a "default" solution if the other parent can't show the facts of the case to rebut the default. Our policy - our only policy - should be to make the effects of the parents' decision to live apart be less harmful to the child.