



Appellate Court
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**Testimony of the Honorable F. Herbert Gruedel,
Judge of the Appellate Court**

**Judiciary Committee
March 10, 2006**

**Raised Bill 5600, An Act Concerning Parenting Time and Parental
Responsibility with Respect to the Custody of a Minor Child**

Good morning. My name is Herbert Gruedel, and I am a judge of the Appellate Court. I appear before you today on behalf of the Judicial Branch to respectfully urge the members of this Committee not to act favorably on **Raised Bill 5600, *An Act Concerning Parenting Time and Parental Responsibility with Respect to the Custody of a Minor Child.***

By way of background, for almost all of the seven years I was a Superior Court judge I presided over family cases, and for nearly five years I was the Chief Administrative Judge for Family Matters in the Superior Court. I was also a member of the Governor's Commission on Children, Custody and Divorce, which spent a year considering the impact of divorce on children. The legislature passed some of that commission's recommendations into law last year, and they became effective on October 1.

My principal opposition to this bill is that I think it will be harmful to some - perhaps many - children whose parents are involved in custody disputes. When a family with children gets involved in divorce or custody litigation, there are not just two parties who have a stake in the process. The children have a stake, as well, and a very profound one.

With no fault on their part, and with an inability proportionate to their age to understand what is happening or why, their world is coming apart. Many will lose the home they know, the school they love, the friends they enjoy, and the lifestyle they have always experienced.

They need a voice in the process to protect their interests. Under our present system, they have such a voice. They have the opportunity to participate indirectly through their attorney or guardian ad litem. They have the opportunity to a thorough and professional analysis of their needs by a family relations counselor or a private forensic mental health

professional. And they have the ability, exercised in our courts every day, to have an interested and concerned judge consider what is in their best interests. I am concerned that any bill which creates a presumption on behalf of parents, no matter what that presumption may be, will take away the children's voices, their opportunity to be heard, respected, and listened to.

I hope you will permit me a few moments to explain why I have reached that conclusion. Judges listen to the legislature. They work very hard to understand what you have said is the law and to follow that law faithfully. In the area of family law, the trial judges as well as the Appellate and Supreme Courts have recognized that the statutes governing family matters must be strictly followed. Part of that deference to legislative authority over these matters is implicated in the concept of subject matter jurisdiction. Numerous cases have held that, if the legislature has not specifically provided for a family court to decide a particular issue, the court lacks subject matter jurisdiction to consider it. Other cases have held that, if the legislature has specifically directed the court to do something, the court must do so.

That means that when you create a presumption, we follow it. If this bill becomes law, it will create a presumption. It is, I believe, intended to do so. The presumption it is designed to create is that it is always in the best interests of a child for his or her parents to have substantially proportionate or equal parenting time, and that presumption must be followed by the courts unless it is overcome. The presumption will favor the parents, but it will also ignore the children, and children have rights, too.

My second concern about the proposed bill is related to the first. It has the potential to create more litigation, and, more importantly, more destructive litigation. Rather than trying to create a healthy relationship between the children and both parents, parents will be litigating to overcome the presumption the bill creates. They will be forced to prove that it is not in the best interests of their child that substantially equal parenting responsibility be awarded. This would be harmful to the children and difficult for the courts. It would be harmful to the children because it may increase conflict, and both common sense and social science research recognize that children's adjustment and development are harmed significantly by conflict between their parents. It would be difficult for the courts because family caseloads are already high, and this proposal would result in increased and more contentious litigation, without more resources.

The Governor's Commission dealt with the concept that gives rise to this proposal, and in its unanimous report flatly rejected it. I urge you to do the same. I would be pleased to answer questions if the members of the committee have any.