

MEMORANDUM

TO: Judiciary Committee

FROM: Attorney Shirley M. Pripstein

On Behalf of Legal Services

RE: H.B. 5600
AAC parenting time and parental responsibility with respect to the custody of a minor child.

Recommended Committee Action: REJECT THE BILL

This bill would amend C.G.S. §46b-56a by adding a provision that “there shall be no presumption that ... substantially disproportionate parenting time” is in the best interest of a minor child. This bill should be rejected as superfluous and in contradiction with the comprehensive amendment to C.G.S. 46b-56 regarding child custody passed just last year.

A legal presumption is a rule of law that requires a particular finding unless evidence is introduced sufficient to support a contrary finding. In Connecticut, we have never had presumptions either in our statutes or our case law regarding the best interest of the child and the apportionment of parenting time in child custody cases. A law stating that there shall be no presumption when there isn't any is therefore not only superfluous, but dangerous in that it will cause judges to wonder what the legislature actually meant to say. Who knows what mischief may result.

Just last session the legislature passed, and the governor signed, PA 05-258, which amended C.G.S. §45b-56 by setting forth sixteen factors for the court to consider when making orders of child custody and apportioning time between parents. Among those factors were the following:

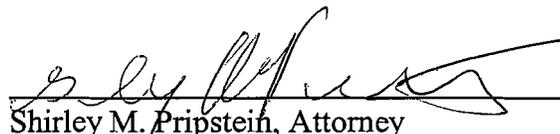
“ (6) the willingness and ability of each parent to facilitate and encourage such continuing parent-child relationship between the child and the other parent as is appropriate, including compliance with any court orders; (8) the ability of each parent to be actively involved in the life of the child; (9) the child's adjustment to his or her home, school and community environments; (10) the length of time that the child has lived in a stable and satisfactory environment and the desirability of maintaining continuity in such environment,; (11) the stability of the child's existing or proposed residences, or both; ...”

These factors appropriately recognize and attempt to balance the need of a child for stability against the need of a child for contact with both parents, and recognize that there other factors that the court should consider in deciding what orders to make regarding child custody when the parents are unable to agree.

This bill may be an ill-advised attempt to elevate the parental time considerations above the other factors set for in P.A. 05-258. If so, the bill is in direct conflict with P.A. 05-258, which appropriately states at the conclusion of the factor list that “The court is not required to assign any wight to any of the factors that it considers.”

Alternatively, this bill may be an attempt to contradict or override the weight of psychological research which shows that children have a need for stability. Some may find the psychological evidence inconvenient to their belief that when parents divorce children should be divided equally, just as some find the geological evidence as to the age of earth inconvenient to their belief that the earth is only 15,000 years old. The Connecticut legislature should be above trying to legislate away inconvenient scientific facts.

By


Shirley M. Pripstein, Attorney
Greater Hartford Legal Assistance, Inc.