Testimony of the Honorable F. Herbert Gruendel, Judge of the Appellate Court

Judiciary Committee
February 26, 2007

House Bill 6826, An Act Concerning Parenting Time and Parental Responsibility with Respect to the Custody of a Minor Child

Good afternoon. My name is Herbert Gruendel. I am here this afternoon to testify against the enactment of **House Bill 6286,** ***An Act Concerning Parenting Time and Parental Responsibility with Respect to the Custody of a Minor Child.***

My interest in the subject of this bill is perhaps life-long, but it developed most fully during the seven years when I sat as a family judge in the Superior Court, including the almost five years I spent as Chief Administrative Judge for Family Matters and the one year I spent as a member of the Governor's Commission on Children, Custody, and Divorce. During those years, I was involved in witnessing, mediating, or trying literally hundreds of cases involving the custody of minor children whose parents were dissolving their marriages. The vast majority of those cases were resolved by the parties, but many were not, and some deteriorated into very nasty squabbles. During those years, I also learned about the difficulties of custody disputes from my colleagues, from the attorneys who represented the parents and the children, and from the family relations counselors and other mental health professionals who participated in the process. Child custody is not a simple problem. Its resolution affects the lives of parents and children far into the future.

The legislature gave the courts (and the parties) the essential tools to work effectively with child custody cases when it adopted the best interests of the child standard. It enhanced the effectiveness of those tools when it expanded the statute, 46b-56, to include a requirement that, in deciding best interests, the court take into consideration the importance of the active and consistent involvement of both parents and set forth sixteen specific factors which should, among others, be considered by a court in making its custody determinations. The interest of the legislature and this committee in particular in this issue both historically and over the past few years has been gratifying.

All of your previous legislation in this area has permitted the courts to operate from the bottom up -- from the perspective of the child and the child's rights and best interests. The bill before you today and others that have been presented in the past have the effect of doing the opposite. They require the courts to begin their analysis from the top -- from the perspective of certain presumptions about what the parents are entitled to. I do not for one moment minimize the rights of parents with respect to their children. Rather, I emphasize that we must also recognize the rights and needs of children. They, too, are citizens protected by our Constitution and by the tradition of respect paid to them both in the legislature and in the courts, and it is essential that the courts should be able to look into their needs as people, not as presumptions.

I would also note that this particular legislation is unnecessary. There is no presumption either in statute or case law that it is in the best interests of a child to award substantially disproportionate parenting time and parenting responsibility is in the best interests of the child when both parents are capable. Many people who resolve their custody disputes between themselves or through the use of the alternative dispute mechanisms available to them in fact make provision for substantially equal time and responsibility, and the courts in their decisions often do so.

You might well ask: if there is no presumption concerning disproportionate time, why not say so by statute? I think the answer has to do with how these disputes will be conducted in the trial and appellate courts if the statute is amended to include this language. I think it will lead to more litigation, as people test and probe to seek to undo the presumption created and to figure out exactly what is meant in the statute. My experience satisfies me that while litigation is often necessary in family matters, the litigation rarely provides much benefit or relief for the children whose lives ought to be the real focus of everyone's attention.

Thank you for listening.