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The Committee on Judiciary

RE: Raised Bill No. 6286, An Act Concerning Parenting Time and Parental Responsibility with Respect to the Custody of a Minor Child

Dear Committee Members,

I am writing to request you not approve Raised Bill No. 6286 and offer the following in support of that position:

1. No such presumption exists in the law. This Bill purports to refute a presumption that is not contained within the statutory or common law. By establishing in the law a “non-presumption” we run the risk of creating the opposite legal presumption (that it is *never* in the best interests of children to spend more time with one parent). Legal presumptions carry weight in litigation. They can only be overcome by a preponderance of the evidence to the contrary. This Bill will lead to additional unnecessary litigation on the issue of this “non-presumption,” detracting from the primary purpose of establishing what individualized schedule is in the best interests of each family.
2. Equal physical custody schedules are not in the best interests of all children. Raised Bill No. 6286 suggests that all children of divorcing parents would benefit from a schedule in which they see each parent an equal amount of time. There is no social science research to support this conclusion. In fact, social science research *flatly refutes* this presumption. “The notion that children fare best when under the care of or spending equal time with both parents is not validated by an exhaustive review of research and literature to date.”^{1 2}

Research suggests that the age of the child plays a *critical* role in determining the appropriate physical access schedule. For example, children under age three do not have a developed sense of the future, and may be upset by the overnight visits implicit in a shared custody arrangement.³ By contrast, a teenager will benefit more from the moral consistency of a parent than visiting him or her at a particular time or place, making the physical access schedule less relevant to his or her well-being.⁴ These findings underscore the inadequacy of the one-schedule-fits-all approach of this bill.

The vast majority of research on the topic supports the intuitive conclusion that each child and family circumstance is unique, and must be approached as such by the courts. “No single custody

¹ Susan P. Sherkow, M.D., *The Psychological and Developmental Issues Affecting Custody Decisions, With an Emphasis on Children Ages 0-5*, 2005 Family Law Update, 145, 149 (2005).

² See also Kline, Tschann, Johnston and Wallerstein, *Children's Adjustment in Joint and Sole Physical Custody Families*, *Developmental Psychology*, Volume 25, Issue 3, 430-438 (1989). “[N]o evidence was found that joint physical custody arrangements are different from sole physical custody arrangements with regard to child adjustment postdivorce.”

³ Sherkow, M.D., *supra* at 161.

⁴ Sherkow, M.D., *supra* at 169.

arrangement seems to be clearly superior in promoting the child's well-being."⁵ However, two factors have been found to most clearly impact the children of divorce: the age of the child and the level of conflict between the parties.⁶ Changing the focus of C.G.S. § 46b-56a from the best interest standard to the proposed focus on equal time does a disservice to the children of Connecticut.

3. The language of this bill places the desires of the parents above the needs of the children. The changes proposed by this bill place greater emphasis on the conflict between the parents rather than the needs of the children. The addition of the term "substantially disproportionate parenting time" in paragraph (2) illustrates this emphasis. The parenting schedule of the children will be scrutinized on the basis of hours per parent, rather than the needs of the children. This use of the child as a pawn of the parties, with parenting time as the prize, is offensive. At best, this scheme would chill the rights of parents to raise legitimate concerns about the parenting schedule. At worst, it elevates the conflict between the parents above the best interests of the child

Thank you for your kind attention. I welcome questions and further discussion on this Bill, should it be of assistance to the Committee.

Sincerely,

Jane Grossman, Staff Attorney
On Behalf of the New Haven Legal Assistance Family Law Unit

⁵ Felner, R.D. & Terre, L., *Child Custody Dispositions and Children's Adaptation Following Divorce*, Psychological and Custody Determinations, 106-153 (L.A. Weithord, ed., 1987); Richard A. Warshak, *Payoffs and Pitfalls of Listening to Children*, Family Relations Vol. 52 No. 4, 373, 379 (2003).

⁶ Jacobs, J.W. *Divorce and Child Custody Resolution: Conflicting Legal and Psychological Paradigms*, 143 American Journal of Psychology, 192-197 (1986) ; Felner, R.D. & Terre, L., *supra* note 2; Rutter, M., *Stress, Coping and Development: Some Issues and Some Questions*, 22 Journal of Child Psychol. and Psych. 323-356 (1981); Goldstein, J., Freud, A., & Solnit, A.J., *Beyond the Best Interests of the Child* (1979).