

**THOMAS C. FOLEY**  
**Three Pickwick Plaza**  
**Greenwich, CT 06831**

**Statement for the Judiciary Committee**  
**February 26, 2007**

**Regarding**

**HB 6286 – An Act Concerning Parenting Time and Parental  
Responsibility with Respect to the Custody of a Minor Child**

My name is Tom Foley. I submit this testimony as a private citizen who has become interested in the Connecticut divorce and custody determination system as a result of my personal experience with divorce, my passion for the well-being of children, and my service as a Co-Chair of the 2002 Governor's Commission on Divorce, Custody and Children. I strongly support and encourage the Judiciary Committee to approve HB 6286.

HB 6286 would apply to very few custody cases, perhaps 5% or less, and merely affirms in statute what experienced family court judges say is our common law – which is that there is no presumption that substantially disproportionate time with one parent is in a child's best interest.

HB 6286 wouldn't be needed if our common law was applied consistently. Courts in Connecticut consistently frame their decision in contested custody cases as "which parent is the better parent and therefore should be awarded custody and most of the time with the child?" This framing of the courts decision is a holdover of the discredited 'tender years doctrine' which presumed that during the 'tender years' children were better-off with their mothers most of the time. As the tender years doctrine left our courts, courts have stopped presuming that children should be with their mothers, but haven't stopped presuming that children should be primarily with one parent and 'visit' the other. What the courts should have done after the tender years doctrine fell out of favor is move toward more balanced time with both parents. In the few cases where both parents are seeking half or more of the time with the child and balancing time between both parents is a practical consideration, the court should frame its decision not as "which parent should have most of the time and control", but rather as "are there any compelling

reasons why one parent should be awarded substantially more time than the other?" That is all that HB 6286 would do.

The 2002 governor's Commission on Divorce, Custody and Children recognized the importance of continuing involvement by both parents in a child's life. The Commission identified the continuing involvement of both parents as one of the five critical system challenges affecting outcomes for children. The Commission's recommendations addressed this challenge by, among other things, proposing revisions to Sec. 46b-56 of the Connecticut Statutes. As a result of the Commission's recommendations, the statute now says with respect to custody orders that: "...the court shall enter orders which serve the best interests of the child and which provide the child with the active and consistent involvement of both parents commensurate with their abilities and interests."

Although HB 6286 would apply in only a very small percentage of divorce cases, they are important cases because they are often the most risky for children. Courts often make decisions that doom children with cruel predictability. The problems between parents that result in contested custody cases all too frequently lead to the parent who is awarded custody and most of the time with the child, driving the other parent out of the child's life. This is achieved by the custodial parent disparaging the other parent, frustrating the other parent's efforts to spend time with the child, and, if able, eventually orchestrating a distant relocation. When parental roles and time are balanced, alienation of a parent is far less likely to occur. Since we know that substantially balancing the time between parents reduces the chance of harm resulting from a parent not being involved in a child's life, the courts should start there and work back to disproportionate time with one parent if it is shown that such an arrangement is better for the child.

Critics may cite specific cases where, for compelling reasons such as the presence of continuing domestic violence, balanced involvement by the parents would not be in a child's best interest. Under HB 6286, these same compelling arguments would be made to the court and the court presumably would find them compelling, too, and not decide in favor of balanced parenting roles. Others may criticize the bill for being parent-focused. HB 6286 addresses important risks to children and is solely focused on the best interests of the child. HB 6286 makes no claim in favor of nor does it create any parental right.

HB 6286 is a bill that will affect very few divorces, but will do a lot to help children who are most at risk from divorce. It only seeks to insure that Connecticut children are delivered what is currently provided for them under the law – an active and consistent involvement of both parents. I strongly urge your committee to support HB 6286.