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H.B. 6286 -- Disproportionate parenting time

Judiciary Committee Public Hearing -- February 26, 2007
Testimony of Raphael L. Podolsky

Recommended Committee action: **REJECTION OF THE BILL**

This bill is apparently an indirect effort to create a statutory presumption in favor of equal parenting time in all divorces, without calling it a "presumption." It does this by declaring that "there shall be no presumption" in favor of "disproportionate" parenting time for one parent if both parents are "capable," unless the best interests of the child "require" disproportion. There is, however, no existing presumption either in favor of or against equal or disproportionate parenting time. The only rule is that custody, visitation, and parenting time and responsibility decisions are to be based on the best interests of the child. This bill, in sharp contrast, tries to elevate the claims of the parents above the child's best interests and treats the child almost as divisible parental property. Under the formulation proposed by the bill, the child's best interests come into play only in the narrow circumstance where they "require" that more time be spent with one parent than the other – not that it would be better for the child, but that it is a necessity. This effort to overturn the long-established focus on the interests of the child should be rejected and the existing law left unchanged.

This proposal is particularly unnecessary because of the adoption in 2005 of P.A. 05-258, which explicitly lists 16 factors which the Superior Court is required to consider in acting on parenting plans. H.B. 6286 inappropriately attempts to elevate one factor over all others. In addition, the creation of this presumption-like non-presumption, which seems to ignore the child's need for stability, will unnecessarily limit the ability of judges to come to the best decision in light of the individual facts of each specific case and will in many cases produce a result which is detrimental to the child. Split custody arrangements can be very beneficial for a child; but they tend to work only when the parents are committed to working cooperatively with each other on a long-term basis and to maintaining residences in proximity to each other. H.B. 6286, in contrast, explicitly applies its indirect presumption to contested cases in which the parents cannot agree and are both seeking sole custody, i.e., *"...where both parents...are seeking substantially equal or greater parenting time and responsibility..."* (l. 14-16). Existing law already requires the court to justify any refusal on its part to accept a request for joint custody in cases in which the parents are in agreement.

There is sometimes a tendency for litigants who disagree with a particular judge's decision in a particular case to try to get the law changed. Family law, however, inherently involves judges closely weighing facts, equities, and probabilities in matters which may hotly be contested by the parties. No system can guarantee that the results will be perfect. Our system, we believe, has worked well; and we have just two years ago made further changes which address the very issue raised by this bill. There is no need to be adopting further changes.