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HOUSE BILL 6685 -- AN ACT CONCERNING PARENTING TIME AND PARENTAL RESPONSIBILITY WITH RESPECT TO THE CUSTODY OF A MINOR CHILD

Judiciary Committee

STATEMENT OF ATTORNEY SHARON WICKS DORNFELD, PAST CHAIRPERSON,
THE FAMILY LAW SECTION OF THE CONNECTICUT BAR ASSOCIATION

April 5, 2013

Senator Coleman, Representative Fox, and Members of the Committee:

The Family Law Section of the Connecticut Bar Association **opposes** the changes to our existing family law statutes proposed in H.B. 6685 for the following reasons:

- § Section 1 of this Bill would amend C.G.S. §46b-56a(1) by eliminating the status of joint custody (legal and/or physical) and creating a legal presumption in favor of “shared custody,” meaning “shared decision-making by the parents on matters relating to a child’s welfare, including, but not limited to, matters relating to education, medical care, and emotional, moral, social and religious development” where “each parent exercises physical care of the child for substantial periods of time.”
- § It also would eliminate the current option of separate awards of joint legal custody with or without joint physical custody and joint physical custody with or without joint legal custody.
- § It would also, we believe, reduce the likelihood of agreements between parents and increase the number of fully contested custody cases.

A legal presumption is a rule of law that requires a judge to make a particular finding unless sufficient evidence is introduced sufficient to support a contrary finding. A presumption shifts the burden of proof in favor of a certain outcome, which ordinarily lies with the proponent of a plan, to the opponent of the plan. In Connecticut, we have never had presumptions either in our statutes or our case law regarding the best interests of child and the apportionment of parenting time in child custody cases. In this context, it would no longer be necessary to prove that a “shared custody” plan would be in a child’s best interests; it would be presumed that such a plan is best. There is no consensus among psychologists and other experts in child welfare that such is the case. Children are individuals and each family is unique. One size does not fit all, nor should children be forced to adjust to plans which may serve only parental interests.

The Section believes that the phrase “substantial periods of time” is vague and likely to result in additional litigation, as is the expansion of the list of subject areas requiring parental agreement.

Further, the Section believes that the substitution of the phrase “shared custody” will create confusion and have a perhaps unintended impact on child support orders. Our child support guidelines provide for a deviation from the presumptive support amounts under circumstances of “shared physical custody” which is defined as “a situation in which each parent exercised physical care and control of the child for periods substantially in excess

of a normal visitation schedule. An equal sharing of physical care and control of the child is not required for a finding of shared physical custody.” If enacted, the proposed language would likely be invoked by Obligor to circumvent our child support scheme to the detriment of the children depending upon the support.

§ Section 1 would also change the language of §46b-56(d) to require that each parent file a proposed parental responsibility plan which would require that both parents share decision-making “regarding the child’s welfare, including, but not limited to, matters relating to education, medical care and emotional, moral, social and religious development.”

This language would eliminate the current option of one parent asking the Court for an order of sole legal custody and, hence, the right to be the sole decision-maker for the child, and expands, without definition, the subject areas about which parents would need to agree. Our members are unable to think of any individual aspect of a child’s life which does not “relate” to education, medical care, emotional, moral, social or religious development. The Section believes that such an expansion would lead to additional litigation.

§ Section 3 of the Bill, if enacted, would eliminate the explicit authority of the court to separate an award of joint legal custody (decision-making) from joint physical custody, would impose the “shared custody” language requirements of “substantial periods of time” and would expand the list of undefined subject areas requiring parental agreement.

The Section is greatly concerned about this proposed change to our law. It would limit the options available to judges to make awards of joint legal and physical custody rights in the context of the particular circumstances of that family. If a judge were not to agree that “shared custody” as defined in Section 1 would serve the children’s best interests, only an award of sole custody to one of the parents would remain an option. Such an imposition on the discretion of a judge is unwarranted and inconsistent with the court’s obligation to enter orders in the children’s best interests upon consideration of the 16 factors enumerated in the paragraph (§46b-56(c))¹ which would immediately follow in the same statute.

§ Section 4 provides for criminal penalties for perjury by parents in custody litigation.

The Family Law Section is puzzled by the inclusion of Section 4 of the Bill and believes it to be an unnecessary and redundant provision in light of the criminal penalties for perjury already incorporated in Conn. Gen. Stat. §

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(c) In making or modifying any order as provided in subsections (a) and (b) of this section, the court shall consider the best interests of the child, and in doing so may consider, but shall not be limited to, one or more of the following factors: (1) The temperament and developmental needs of the child; (2) the capacity and the disposition of the parents to understand and meet the needs of the child; (3) any relevant and material information obtained from the child, including the informed preferences of the child; (4) the wishes of the child's parents as to custody; (5) the past and current interaction and relationship of the child with each parent, the child's siblings and any other person who may significantly affect the best interests of the child; (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; (7) any manipulation by or coercive behavior of the parents in an effort to involve the child in the parents' dispute; (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, provided the court may consider favorably a parent who voluntarily leaves the child's family home pendente lite in order to alleviate stress in the household; (11) the stability of the child's existing or proposed residences, or both; (12) the mental and physical health of all individuals involved, except that a disability of a proposed custodial parent or other party, in and of itself, shall not be determinative of custody unless the proposed custodial arrangement is not in the best interests of the child; (13) the child's cultural background; (14) the effect on the child of the actions of an abuser, if any domestic violence has occurred between the parents or between a parent and another individual or the child; (15) whether the child or a sibling of the child has been abused or neglected, as defined respectively in section 46b-120; and (16) whether the party satisfactorily completed participation in a parenting education program established pursuant to section 46b-69b. The court is not required to assign any weight to any of the factors that it considers.

53a-156.² The members of the Section are unaware of any unusual incidents or frequency of false statements by parents regarding the care and custody of children. Judges may already, and sometimes do, make referrals to the State's Attorney pursuant to their existing authority.

Thank you for your consideration of our opposition to this legislation.

² **Sec. 53a-156. Perjury: Class D felony.** (a) A person is guilty of perjury if, in any official proceeding, such person intentionally, under oath or in an unsworn declaration under sections 1-65aa to 1-65hh, inclusive, makes a false statement, swears, affirms or testifies falsely, to a material statement which such person does not believe to be true.

(b) In any prosecution for an offense under this section, it shall be an affirmative defense that the actor was coerced into committing such offense by another person in violation of section 53a-192.

(c) Perjury is a class D felony.