Legal Assistance Resource Center ❖ of Connecticut, Inc. ❖

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H.B. 6685 -- Shared custody

Judiciary Committee public hearing -- April 5, 2013

Testimony of Raphael L. Podolsky

Recommended Committee action: **NO ACTION ON THE BILL**

This bill creates a presumption in all divorce cases that courts should order "shared custody" (which seems to be a form of "joint physical custody") in which the child lives with each parent "for substantial periods of time." That is often a good arrangement for the child, but it is not an appropriate solution in every case, or even in most cases. The bill anticipates ordering shared custody, even over the objections of the divorcing parents. Legal presumptions work only if they produce the right result nearly all of the time. The key to successful shared custody is parental cooperation, and residential custody that approximates equal time requires even more. Such arrangements work only if the parents are able to work together and to make joint decisions for the child. Divorces, however, often result from the inability of the parents to function well together. There are many, many circumstances in which single parent custody, or joint legal custody with one primary residence, is much better for the child. For example, there are many divorces in which the non-custodial parent is not involved with the child and, indeed, may not even file an appearance in the case. There are parents who are incarcerated, drug-addicted, abusive, or otherwise unable to parent adequately. What sense does it make in such instances to impose a presumption of shared custody? Without parental cooperation and parental interest, forcing joint arrangements merely transfers the hostilities or the failures of the marriage into the post-divorce period.

Existing Connecticut law properly recognizes this fact by creating a presumption in favor of joint custody when the parents agree. Judges are prohibited from rejecting mutually agreed-upon joint custody arrangements without compelling reasons. Absent agreement, however, joint custody has no greater status than any other form of custody -- the parties must show what would be best for the child. And that is the way it should be. An across-the-board presumption of joint custody is likely to produce inappropriate or harmful results in many cases.

Shared or joint physical custody should not be confused with liberal visitation. Connecticut family policy should be to promote maximum contact between each parent and the child, but this does not require shared custody. Whether shared custody is the best way to encourage close emotional and physical ties between the child and both parents needs to be decided on a case-by-case basis and not be an inappropriate statutory presumption. Connecticut law already addresses this issue in the proper way.