Law Office of
**CHARLES F. HARRIS**

Telephone (316)684-1050

email: charris@cfharrislaw.com

252 S. Bleckley
Wichita, KS 67218

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## WRITTEN TESTIMONY OF CHARLES F. HARRIS IN OPPOSITION OF SB 157

I am attorney who has practiced family law in Wichita for 39 years. I have been a member of the Family Law Advisory Committee to the Kansas Judicial Council and a member of the Kansas Supreme Court Child Support Guideline Committee since 1990. I am testifying in opposition to Senate Bill 157 on behalf of myself.

I oppose Senate Bill 157 because it will be harmful to parents and children of Kansas. This bill is a giant step backward in how we handle the important issue of child residency in Kansas.

SB 157 is the latest attempt to impose some type of mandatory shared residency on the children of Kansas. In the 2017-2018 session, the proponents submitted identical bills HB 2529 and SB 257 which sought to impose mandatory shared residency at both the temporary and permanent residency stages. After hearings on both bills, which were strongly opposed, the bills were never worked.

In 2018-2019 session, the proponents submitted HB 2196, which imposed mandatory shared residency at the time a divorce was filed but did not address the permanent residency stage. That bill had a provision that the mandatory presumption could be rebutted by an evidentiary showing that the shared arrangement was not in the child's best interest. It required a preponderance of the evidence showing to rebut the presumption. The problem this created was that it still required an evidentiary hearing which might take months to occur. This bill did not advance.

Not to be deterred, the proponents also submitted SB 157. Unlike HB 2196, the bill imposes an **absolute** presumption that shared is in the best interest of the child in every divorce filed. There is no empirical data to support this absolute presumption. However in SB 157, the proponents have taken a more extreme approach by removing the provision that the presumption for mandatory shared residency can even be rebutted by an evidentiary showing that shared residency is not in the child's best interest. This bill was amended by the Senate Judiciary Committee to add a vague domestic violence exception and was passed by the Senate.

Currently, in Kansas, in determining residency, the trial court has discretion to determine the residential custody that is in the best interest of the child on a case by case basis. There is no presumption for any type of residential custody arrangement and neither parent is given a preferred status in that determination. The Legislature has provided our judges with eighteen (18) statutory factors they must consider in making the residency determination. SB 157 deprives our judges of their ability to make a decision at least until an expensive and time consuming evidentiary hearing

can be conducted which might be months after the entry of the temporary order. This **"one size fits all"** approach might work for hats but it certainly does not work for our children.

In 2018, after the two bills failed to advance, Blaine Finch, former Chair of the House Judiciary Committee, requested that the Judicial Council conduct a study of the issue of mandatory or presumptive shared residency which has been adopted by some states. I was the Chairman of the Family Law Advisory Committee that conducted the study. We looked at a number of states that had adopted some type of presumption or preference for shared residential custody as compared to the flexible, discretionary approach we use in Kansas.

The study revealed these mandatory shared residency provisions actually increased litigation. As originally drafted, SB 157 did not contain an exception for cases where there is a history of domestic violence. We also found that most of the states that had adopted mandatory shared residency provisions, had been forced to carve out exceptions for those situations involving abuse or drug/alcohol issues to protect the children. SB 157 requires that in every case, when a divorce is filed, the court is must impose an equal shared residential custody arrangement. This makes no sense and will be bad for the our children. In the amended version, a vague domestic violence provision was added but the way it is worded the bill still requires an evidentiary hearing to present the documentation, during which time the mandatory shared arrangement will be in effect.

Contrary to the claims made by the proponents of mandatory shared residency, the study revealed that judges in Kansas are regularly awarding shared residential custody in both agreed and contested situations. We have come a long way since 1994 when the Kansas Supreme Court first incorporated a special formula for calculation of child support in shared residential custody situations.

The Judicial Council study concluded that the flexible arrangement we now have in Kansas where the judge exercises discretion by applying the eighteen statutory factors on a case by case basis, is the best way to deal with this important issue.

Even as amended, SB 157 creates a constitutional problem because it will not apply to paternity cases. As a result, children in paternity and divorce cases will be treated differently, creating an equal protection defect.

SB 157 has two additional significant detrimental effects. It would have the effect of automatically reducing child support by between 66% and 75% by imposing shared residency in every case because of the special shared child support formula contained in the Kansas Child Support Guidelines. Clearly, for some proponents this is an unstated goal. It also automatically

places the child in suspended animation between two conflicted parents until the permanent residency state. How can this be in the best interest of the child?

The real winners from this bill are not the children of Kansas but the lawyers who will get to litigate the facts to try to undo the mandatory shared residential custody imposed at the temporary stage. I do not think that is the intended purpose of the bill. This is a bad bill that we cannot afford to adopt. Please join me in opposing Senate Bill 157.

LAW OFFICE OF CHARLES F. HARRIS

BY: CHARLES F. HARRIS