The Kansas District Judges' Association

HOUSE COMMITTEE ON JUDICIARY

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March 9, 2020

Chief Judge Merlin G. Wheeler

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WRITTEN TESTIMONY IN OPPOSITION TO SENATE BILL 157

Thank you for the opportunity to present testimony in opposition to SB 157. I am Merlin G. Wheeler, Chief Judge of the Fifth Judicial District (Lyon and Chase Counties) and a member of the Executive Committee of the Kansas District Judges Association (KDJA). I also serve as one of three Legislative Co-Chairs of the association along with Chief Judge Thomas Kelly Ryan of the 10th Judicial District and Chief Judge Glenn R. Braun of the 23rd Judicial District. It is the importance of the well-being of our children and the interest we take in their protection that compels us to offer this testimony in opposition to SB 157, much as we have done in previous years on similar legislation. (See 2018 SB 257/HB 2529 which are examples of a series of bills designed to impose presumptions of equal parenting time in child custody proceedings.)

This bill differs from previous legislative efforts to impose presumptions of equal parenting time in child custody proceedings in that it makes the presumption applicable to temporary parenting time orders, which would include *ex parte orders*. Although we express no objection whatsoever to the concept of shared or equal

parenting time as an appropriate parenting plan, we object to this bill--or its companion HB 2196--for the following reasons:

1. Although Section (c)(1) permits the court to avoid the effect of the presumption upon presentation of documentation or other information that domestic abuse has occurred, this ignores the practical reality that temporary orders are often sought under circumstances where the opposing party has no opportunity to present documentation or information prior to entry of the temporary order. There is no language in this bill, other than the requirement that the parents be "fit, willing, and able" that would permit a court to refuse to follow the presumption, nor is there any evidentiary standard to use in that regard. Rather than giving the trial judge the ability to consider all available factors in determining placement of a child--which already allow for equal parenting time considerations--this statutory language requires a judge to ignore multiple factors that impact the well-being of the child. Mandating this presumption when most parents are not highly cooperative and communicating well simply does not bode well for the child(ren).

2. The result of such a presumption at the time of entry of temporary orders would, rather than reduce the classic "race to the courthouse" to file a divorce, cause even greater impetus to be the first to file.

3. Judges will have no way at the inception of the case to determine either fitness, willingness or ability absent a subsequent contested hearing--particularly in light of electronic filings. Consequently, it is likely that judges will refuse to enter any *ex parte* orders and will consider temporary orders only after full hearings. This will result in numerous and lengthy pre-trial proceedings. We point your attention to the fiscal note provided by the Office of Judicial Administration indicating the likelihood, although difficult to quantify, of additional costs to the Judicial Branch.

4. We also foresee a significant increase in the use of PFA/PFSSAHT cases in order to attempt to circumvent this presumption. Trial judges can recount many situations where these statutes have been intentionally misused in an attempt to circumvent considerations normally present in a custody case. There is no reason to expect anything other than an escalation of this practice if this presumption would come into play.

5. The presumption of 50/50 parenting time also ignores some of the practical realities found in most divorce situations involving children. It is extremely rare for us to find parents who have the financial ability to provide duplicate living arrangements and facilities immediately upon filing a divorce. Similarly such a presumption ignores that typically there is one parent who has borne the bulk of the responsibility for the care of a child or children. As a result of the presumption, trial judges will not be able to evaluate whether the parent who is first to file has the ability to provide for the needs of the child(ren).

6. Another reality ignored by this presumption is that most parties are poorly prepared to deal with the complexities of shared parenting time. They do not plan for divorce or discuss custody issues in advance and the emotional turmoil generally places them in the position of putting children's best interests behind those of the wishes of the parent. I do not suggest this is a conscious decision, but rather the product of the circumstances. Shared time may be a workable arrangement, but only if parents dedicate themselves to putting personal interests aside and cooperatively parenting. It is an extremely rare occasion that they are ready to do so at the outset of a case. Imposing any presumption at this stage will likely lead only to greater turmoil and conflict.

7. Finally, this presumption ignores another practical reality that many claims for shared parenting come from a parent who is most likely to be ordered to pay support. It is often done based upon a misguided assumption that equally shared parenting means that there will be no support obligation ordered. These parents then use this situation as a threat of financial distress to the parent least capable of financial stability as a single parent. Thus imposition of this presumption can subject a parent and the child(ren) to additional stress and under some circumstances, abuse.

KDJA does not ignore or, in any way, attempt to minimize the use of equal parenting time as a tool to be used in deciding what is in the best interests of a child. Rather, we point out that if we are to be charged with finding a child's best interests, it is counterproductive for judges to be limited, at the outset of a case, to be

limited to only one presumption. For this and other reasons described in this testimony, KDJA respectfully opposes passage of 2019 SB 157.

Thank you,

Merlin G. Wheeler
Chief Judge
Fifth Judicial District