The Kansas District Judges' Association

SENATE COMMITTEE ON JUDICIARY

Hon. Sen. Rick Wilborn, Chair
Hon. Sen. Eric Rucker, Vice Chair
Hon. Vic Miller, R. M. Member
March 7, 2019 at 10:30 a.m.
Room 346-S

Chief Judge Merlin G. Wheeler

Fifth Judicial District

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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.

This bill amends the provisions of our family law relating to temporary custody orders to create a presumption that it is in the best interests of a child "…for fit, willing, and able parents to have temporary joint custody and share equally in parenting time. (emphasis added.) This legislation appears to be yet another in a series of bills (See 2018 SB 257/HB 2529) designed to impose presumptions in favor of equal parenting time in child custody proceedings.

Judge O'Grady has delivered testimony to this committee outlining a number of reasons why this legislation should not proceed further. KDJA agrees with the analysis he has offered and, at risk of being redundant, would offer similar comments.

Foremost among our objections is that this legislation removes from consideration the best interests of a child in favor of a presumption of equal parenting time. 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 would impose a standard practice without consideration of a number of 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.

Further, trial judges would be called upon to impose the equal parenting time in an *ex parte* manner that would not permit an unwilling parent to address the 50/50 issue without formal motion and hearing. The result of such a presumption would, rather than reduce the classic "race to the courthouse" to file a divorce, cause even greater impetus to be the first to file a divorce and custody action. Further, since the presumption becomes effective upon the claim of only one parent, judges have no way at the inception of the case to determine either fitness, willingness or ability absent a subsequent contested hearing.

We also foresee a significant increase in the use of PFA/PFSSAHT cases in order to attempt to circumvent this presumption along with more vigorous and robust litigation over custody matters. Most trial judges that hear cases of this type are capable of describing 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 that anything other than an escalation of this practice if this presumption would come into play.

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 be faced with parents who have the financial

ability to provide living arrangements and facilities immediately upon filing a divorce that are appropriate living arrangements for children. Similarly such a presumption ignores that typically there is one parent who has born the bulk of the responsibility for the care of a child or children and without more than a simple request, trial judges will not be able to evaluate the ability of the parent who is first to file to effectively provide for the needs of the child.

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,

Hon. Merlin G. Wheeler
Chief Judge 5th Judicial District

Hon. Thomas Kelly Ryan
Chief Judge 10th Judicial District

Hon. Glenn R. Braun
Chief Judge 23rd Judicial District