

**Testimony in Opposition to Senate Bills 318
Before the Senate Judiciary Committee**

March 6th, 2019

Chair Prozanski, Vice Chair Thatcher, and members of the Committee:

On behalf of the Oregon Law Center (OLC), I submit this testimony regarding Senate Bills 318. I thank you for the opportunity to submit comments.

OLC is a statewide non-profit law firm whose mission is to provide access to justice for the low-income communities of Oregon by providing a full range of the highest quality civil legal services. Because we are not able to help all who qualify for our services, we prioritize the provision of assistance to the neediest Oregonians – the lowest of income, the most vulnerable. The single most frequent request for help from our offices is in the area of family law. Often, our clients are struggling to escape domestic violence. Rarely are the issues facing our clients more compelling than when parents seek our assistance in establishing safety and stability for themselves and their children in the aftermath of a separation. In all cases, we look for outcomes that, tailored to the needs and circumstances of the individuals involved, will enable the children to thrive. It is through this lens that my testimony is provided regarding the bills before the committee this morning.

SB 318 would negatively impact families by presuming a one-size fits all standard for making determinations of parenting time. The bill proposes codification of a legal presumption that equal (50/50) parenting time is in the best interests of children. The bill provides that this presumption could only be rebutted by one parent's showing, by clear and convincing evidence, that the other parent's "lack or inability with respect to the child will cause substantial risk of harm to the child's health or safety." Despite good intentions, this standard would exacerbate parent conflict and would have significant negative impact on children and families.

It is absolutely the case that children benefit with ample and regular access to loving parents. Oregon statutes establish several principles regarding the importance of both parents in the establishment of parenting time orders, against the foundation of a consideration of the best interests of the children and the safety of the parents:

Policy Regarding Parenting:¹

- Assure frequent/continuing contact with parents who have shown the ability to act in the child's best interest;
- Encourage fit parents to share in rights/responsibilities of raising children;
- Terms of parenting plan for benefit of child, not parents;
- Encourage parents to develop own parenting plans - wide discretion;
- Best interests of the child and safety of the parents must be considered.

When parents cannot agree about the terms of custody and parenting time, and need a judge's decision on the matter, Oregon's law provides a nationally recognized standard for determining the appropriate

¹ ORS 107.101, 107.102, 107.106, 107.149

order. The judge must consider the facts and circumstances of the individual family, and make a determination about what would be in the child's best interests:

Best Interests of the Child Standard:²

Consider all of these factors:

- Emotional ties between child and family members;
- Interest of parties in child and attitude towards child;
- Desirability of continuing existing relationships;
- Abuse of one parent by the other;
- Preference for primary caregiver of the child, if the caregiver is fit;
- Willingness and ability of parent to facilitate relationship between child and other parent;
 - May not consider this factor in cases of sexual assault or pattern of abuse, if continuing relationship would endanger health/safety
- Rebuttable presumption that it is not in the best interests of the child to be in sole or joint custody of parent who has committed domestic violence;
- Marital status, income, social environment, conduct, or lifestyle not considered unless causing or may cause damage to child;
- No preference to mother over father or father over mother.

Our current statutes recognize that all families are different, and have myriad factors that are relevant to the best interests of children. For example, factors such as the parents' employment schedules, the children's ages and developmental stages, where the parents live, physical or mental health issues, development stages, school and sports schedules, and more can more often than not mean that 50/50 splitting of time is not in the child's best interests. Low-income families in particular may have financial burdens, transportation issues, job schedules, and other challenges that would make a 50/50 parenting time schedule extremely difficult for children.

The bill would impose barriers to a court's ability to fashion a parenting time schedule that works best for the child. The requirement that a parent must show by clear and convincing evidence that the other parent poses a significant risk to the child, before any deviation from the presumed 50/50 split could be allowed, would increase rancor and litigation costs in family law proceedings. In low-income families, or in families where one party's resources outweighed the other's, the bill's standard would significantly disadvantage the lesser-resourced parents. In all cases, the bill's proposed standard would decrease the court's ability to get to the issue of the best interests of the child.

All families are different, and have different challenges, strengths, and needs. The consequences of having an inappropriate order regarding parenting time are severe. Oregon's current law strikes a balance that facilitates a court's ability to consider relevant factors designed to encourage the crafting of an order that works best for children. This is the appropriate focus for our family law statutes. For these reasons, we oppose Senate Bill 318.

Thank you for the opportunity to testify.

² ORS 107.137