

Dear Chair Prozanski and Committee Members:

I am a custody and parenting time mediator contracted with Marion County to provide mandatory mediation services for parents divorcing or changing custody. I am also a licensed attorney and have been practicing Family Law in Oregon for seven years. On behalf of myself and my colleague Kate Hall, who is also a family law attorney and court connected custody and parenting time mediator in Marion County, I offer the following testimony in opposition to SB 318.

We work with parents who are divorcing and modifying their custody and parenting time daily. It often takes a lot of work, but when parents are truly working in the best interests of their children, they are generally able to come up with a plan that maximizes quality parenting time for the children and prevents painful and expensive trials. Maximizing *quality* parenting time does not always mean equal parenting time, because quality time is dependent on what the children's current specific needs are. SB 318 will increase parental conflict, encourage litigation and move the court's focus from a solution that benefits children to examining the flaws of each parent.

SB 318 will negatively impact the willingness of parents to work together in mediation to come up with a parenting plan that is in the best interests of their children, and will result in the loss of a crucial opportunity for parents to move out of a litigation-focused, high-conflict mindset and practice working together to become effective, low conflict co-parents that are flexible to meet the future needs of the children on their own. Research suggests that high conflict parenting is predictive of more negative and distant parent-child relationships and an increase in children's emotional and behavioral problems.<sup>1</sup>

A rebuttable presumption that favors equal parenting time will discourage many parents from negotiating in good faith because they will have nothing to lose by going to trial. This will lead to more litigation and fewer parenting plans that were developed with the input of both parents, which will in turn lead to more modifications and require increased judicial resources.

SB 318 does not consider what is developmentally and/or age appropriate for children. It does not consider that infants and young children are in a critical state of forming attachments that could potentially be severely disrupted. Healthy attachment is crucial for children to function normally as adults. In 2015, the Multnomah County Circuit Court issued a publication on attachment parenting called "Birth Through Three" which provides in part, "For a young child whose parents are separating, there are many possible sources of stress. The child may be separated from her primary attachment figure for periods of time. If those periods happen too

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<sup>1</sup>E.g. Johnston, J.R. Family transitions and children's functioning: The case of parental conflict and divorce. In *Family, self and society: Toward a new agenda for family research*. P.A. Cowan, D. Field, D.A. Hansen et al., eds. Hillsdale, NJ: Lawrence Erlbaum Associates, 1993, pp. 197-234.

often or last too long, it may have a negative effect on secure attachment.”<sup>2</sup> SB 318 does not consider that some children have developmental delays or other diagnoses that require solutions unique to the child to allow for successful transition between households.

We often hear that a parent wants equal parenting time because that is what is fair or what is right. Having less than equal parenting time is not “fair.” What is “fair” would be never having to spend a night away from their children. That is simply not reality when a child or children have to navigate two households. In an effort to make things more “fair” SB 318 unduly requires the court to focus on the adequacy of each parent, which will impair its ability to consider the needs of the child.

We also often hear a parent argue that they should have equal parenting time because they are not a bad parent. Currently, not having equal parenting time is not a reflection on an individual’s ability to parent, rather a reflection of their child’s needs. SB 318 changes that substantially and will make that a central issue. A process that is already highly emotional will become supercharged with animosity as trial will become a circus for parents to throw every parenting mis-step into the ring and see who is the last one standing. Children will lose.

We do believe that the current system needs to be changed but creating a rebuttable presumption of equal parenting time is not the right way to go about it. For these reasons, we oppose SB 318.

Respectfully submitted,

Sara Hernandez & Kate Hall, Family Law Attorneys & Court Connected Mediators

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<sup>2</sup> <https://www.courts.oregon.gov/programs/family/children/Documents/BirthThroughThree.pdf>