February 22, 2025

Greetings.

I submit this testimony on HB 3095 as a private citizen who is interested in good governance and precision in the legislative process.

I take no position on HB 3095. However, I wish to draw the committee's attention to specific wording in the draft bill that I think could cause confusion.

As currently drafted, the bill creates a rebuttal presumption that equal parenting time is in the child's best interests. Section 1(6); Section 2(5)(c). No drafting problem there; statutes often create rebuttable presumptions to be applied in court proceedings. *E.g.*, ORS 25.091(5).

However, Section 2(5)(c) goes on to state: "**If the court rebuts the presumption**, the court shall develop a parenting time schedule that maximizes the practicable parenting time with each parent." (Emphasis added.) I am not aware of any existing Oregon statute that gives *the court* the job of rebutting a presumption. Rather, in an adversarial court proceeding, the burden is generally on a party to produce evidence that would rebut a statutory presumption (if the party wishes to do so, of course). *E.g.*, ORS 25.091(5).

Thus, as drafted, the bill seems to contemplate that *the court* would produce evidence to rebut the statutory presumption. I doubt that is what the drafters intended. Perhaps the wording of the statute could be changed to reflect what is more common: That the court will decide, based on the evidence admitted in court, *whether* the presumption has been rebutted. That could be accomplished by changing the pertinent sentence in Section 2(5)(c) to start something like this: "If the court finds that the presumption has been rebutted, the court shall…."

This may seem a minor matter, but if the draft bill were to pass as currently worded, it could create confusion for lawyers and judges regarding how the rebuttable presumption could be rebutted, and who would have responsibility for doing so.

Thank you for considering this matter.

Respectfully,

Erika Hadlock