Testimony Regarding HB 3095 (Equal Parenting Time Presumption)

House Committee on Judiciary

February 25, 2025

Submitted by: Amy D. Fassler, Portland

My name is Amy D. Fassler. I am an attorney at Schulte, Anderson, Downes, Aronson & Bittner, P.C. My practice has been limited to family law since I first started practicing in 2009. I submit this testimony in opposition to HB 3093, which would create a legal presumption in favor of equal parenting time.

When the legislature last considered an equal parenting time presumption in 2019 (SB 318), the Honorable Sean Armstong submitted testimony in opposition to that bill. I agree with every reason articulated by Judge Armstrong. His reasons for opposing SB 318 are just as applicable to HB 3095. Judge Armstong's testimony can be found below.

In addition to the reasons articulated by Judge Armstrong, I further oppose this bill because it is unclear what it will functionally do that current law does not. While the bill would add language to ORS chapter 107 creating a rebuttable presumption that equal parenting time is in a child's best interest, the court can simply make findings as to why equal parenting time is not in a child's best interest. This is functionally the same as the current requirement in ORS 107.102(5)(B)(c), which requires the court to make written findings if a parent asks for equal parenting time and the court does not order equal parenting time.

Furthermore, HB 3095 would create contradictions within ORS Chapter 107. Under HB 3095, if the court declines to order equal parenting time, the court would then be required to "develop a parenting time schedule that maximizes practicable parenting time with each parent." That plainly contradicts the proposed amendment in HB 3095 to ORS 107.102(5)(B)(b) that in developing a parenting plan "the court shall consider only the best interests of the child and the safety of the parties." Thus, in developing a parenting plan, the court is obligated to only consider the best interests of the child and safety of the parties, but, if it does not order equal parenting time, then it is obligated to create a plan focused on "maximizing practicable parenting time with each parent." What is the court to do when those goals are at odds, as they often are in family law cases? What should a trial judge do when parents are practically able to share parenting time on a close-to-equal basis, but doing so is not in a child's best interest?

In addition to the conundrum this contradiction in terms will create for trial judges, it will also create additional, unnecessary work for the Court of Appeals, who will be tasked with trying to make sense of the contradiction. Unfortunately, that also means parties

will spend tens of thousands of dollars on appeals that they would otherwise be able to spend on their families.

While equal parenting time is often a laudable goal for families experiencing divorce or separation, it is not right for every family and is not in every child's best interests. The legal presumption that would be created under HB 3095 is functionally weak and does not appear to do anything that ORS 107.102 does not already do. And, if the court overcomes the presumption, then the court is faced with two contradictory directives to maximize parenting time with each parent as is practicable, while also only considering a child's best interest and safety of the parties.

For all of these reasons, I strongly opposed HB 3095.

Amy D. Fassler

OSB#094601

s/Amy D. Fassler

TESTIMONY REGARDING SB 318—EQUAL PARENTING TIME

Before the Senate Judiciary Committee of the Oregon Legislature
March 6, 2019

Submitted by:
Sean Armstrong, Circuit Court Judge
Marion County

Chair Prozanski, Vice-Chair Thatcher, and Members of the Committee:

My name is Sean Armstrong. I am a Circuit Court Judge in Marion County. I serve as the chair of the Marion County Family Law Executive Committee. I am the Judge member of the Marion County Domestic Violence Council. I am a current member of the Parental Involvement & Outreach Subcommittee of the Oregon State Family Law Advisory Committee, and a past Member of the Oregon State Bar Family Law Executive Committee.

In addition to my regular caseload, I also presently run the entire self-represented family law litigant docket in Marion County. I also routinely serve as a settlement conference judge, handling as many as three settlement conferences each week for family law litigants who seek alternative dispute resolution in lieu of trial. Prior to taking the bench, I was a shareholder at Garrett Hemann Robertson PC in Salem, where I practiced family law for 14 years.

These thoughts are my own. I offer this testimony based upon my experience as both a Circuit Court Judge and family law practitioner. I am not representing the Oregon Judicial Department today.

I oppose SB 318 for three reasons.

1. **Families, and their needs, are unique.** When families are in crisis (as if often the case at the end of a relationship) they need courts to have wide latitude to craft a child-focused parenting plan. A bill that mandates an equal parenting plan in all cases ignores the wide variety of family and parent/child dynamics at play. Even in cases where no actual physical or emotional abuse occurs, families have varying power structures. Parents have differing skill sets. Children have a variety of needs based upon their ages, emotional maturity, and level of attachment to each parent. The current state of the law appropriately requires the court to focus solely upon the best interests of the children without regard to what their parents perceive as "fair." There is no evidence that perceived "fairness" is a reliable mechanism for predicting appropriate outcomes for children.

2. **Equal parenting time, as conceived of here, rarely exists in intact families.** The presumption of equal parenting time is not the reality for most families, who have long ago figured out who will serve as the primary parent—who will handle medical appointments and school counseling, who will prepare meals for the children, bathe them, dress them, and take them to school. In my experience, these tasks are rarely equally shared. While children are undergoing the difficult transition from intact to separated family, they need above all else a stable and effective transition that relies upon education and skill-building for the parents, rather than an artificial plan that would rarely reflect the reality of their intact family childhood experience.

3. **This bill would shift the focus of litigation from a child-based model to a parent-based model.** I spend hours educating parents about the value of working together in mediation to agree on a plan that actually benefits their children, with the objective of recognizing that their individual strengths and weaknesses should be respected rather than attacked. Most litigants, whether self-represented or represented by attorneys, start with the presumption that custody and parenting time decisions depend upon maligning the other parent's skills or life choices in an effort to "prove" they are the superior parent. While that is not the case under current law, this bill makes attacking the other parent mandatory because it is the only mechanism for adjusting a parenting plan—even when, for example, the plan should really be changed to accommodate relocation of a parent, a change in work schedules, changes to a child's school or daycare arrangements, or scheduling around extracurricular activities. Forcing a parent to attack the other based upon perceived inability to parent can only serve to increase the emotion associated with litigation at time when children are particularly vulnerable.

Thank you for considering my comments.

Respectfully submitted,

Sean Armstrong, Circuit Court Judge