

Submitter: Andrew Newsom
On Behalf Of:
Committee: House Committee On Judiciary
Measure, Appointment or Topic: HB3095

I am an appellate attorney who specializes in domestic relations cases, and particularly in the divorce/child custody cases that this bill will impact. I now handle appeals only, but I have nearly 15 years of experience handling custody trials in the Portland Metro Area. I am also the co-author of the "Custody, Parenting Time and Visitation" chapter in the OSB guide for attorneys, "Family Law in Oregon."

I strongly oppose the bill. The most obvious reason is that the bill would require the trial courts to presume something that is untrue. There could theoretically be a class of cases where a 50/50 presumption makes sense, but it's very difficult to define that class in a responsible way. There is little doubt that an equal schedule should NOT be presumed to be in the best interest of children who are very young, around 0-3 years in age. Very young children are at heightened risk of developmental problems and trauma if they are separated from their primary attachment figure for long periods of time, particularly overnights, or even non-overnight if the separations come with great frequency.

Even for older children, it is wrong to conclude that an equal schedule is generally best as long as the parents are generally capable. There is huge swath of the divorced parent population in which the two parents are fine in terms of their overall parental functioning, but poor (or worse) in terms of their ability to cooperate, communicate and adapt for the benefit of the children. Some people call these cases "high conflict," but the degree of conflict can be hard to spot, especially to the untrained eye. In any case, from the perspective of the children, the conflict is extremely destructive. These children feel pressure to align with one parent or both. They experience stress by having to manage two different realities/schedules/set of rules in two households. Often these parents will try to distinguish themselves from the other rather than doing what they should be doing, which is to try to get on the same page so the child can more easily transition between household. It is generally a bad idea to follow an equal schedule when these types of dynamics are present. Of course, the devil is in the details.

Proponents of the bill will likely reason that these exceptions can easily be accommodated through a rebuttal finding. That assumption ignores the practical realities of how these presumptions tend to play out. We already know how 50/50 presumptions play out, because we already have a 50/50 presumption in the property division context, wherein it is presumed that the spouses have contributed equally to marital assets. What tends to happen is this: trial judges (who are usually overworked, and sometimes just disinterested) will use the presumption to simplify

their job. Many trial attorneys will do the same thing, because usually there are many issues to resolve in a divorce and not nearly enough money to give them all adequate attention. As always, this pressure will disproportionately impact the populations who are already the most disadvantaged. Parents who are poor, who do not communicate well, or do not speak English. Parents who are unsophisticated and unlikely to do their own research. These people will gather that 50/50 is the general rule, and that it will be difficult and expensive to obtain a different result. Many of them will assume that 50/50 must best for their child, or else why would the state would have this law? Again, that is likely to be untrue for many families, especially those with very young children.

Children are not property. The State of Oregon has recognized and respected this fact for a very long time. Oregon has a strong interest and moral responsibility in helping its younger generations. The proposed bill is going to cause disproportionate harm to Oregon's most vulnerable populations. It is ill-considered, if not outright cynical. Our representatives should not support it.