Submitter: Shannon L. Hall

Committee: House Committee on Judiciary

Measure: HB3095

My name is Shannon L. Hall. I have been an Oregon attorney since 2011, with my practice focusing exclusively on family law matters. I have worked at law firms based in Eugene, Salem, and now Portland, and handled family law cases in counties throughout the entire state of Oregon.

I write in opposition to HB 3095. Since 2021, I have been appointed by both Clackamas and Multnomah County judges to represent children in numerous cases where their parents are battling each other over parenting time and/or legal custody.

Representing children has provided me with the gift of seeing their perspectives. A common thread in my child-representation cases is the loyalty conflicts these children feel. Children *know* when their parents are in conflict over them. Often a child may feel they are letting one parent down if they do not agree with what the parent wants for a parenting plan (among other issues), creating real emotional strain. In many of my child-representation cases, my young clients share that they want to see their parents the same amount of time, even when they really do not understand the implications that would result.

Something I will never forget is a comment that an 8-year-old client made to me when I asked what he would do with three magic wishes. His first wish was that he would be allowed to go live at a boarding school and that *his parents* would go back and forth to see *him* on the weekends. Too often, parents fail to recognize how seriously their adult decisions have impacted their children – they upend the child's entire world, and then expect that *child* to be ready to immediately start moving between two households on a schedule that the parents find to be "fair."

It seems that parents often forget that their children are *grieving* the loss of the family unit they had known their entire lives, and love both of their parents. Children want their parents to be happy with them, so children often tell parents what they think the parent wants to hear. It is a coping mechanism. This is not an assumption that I make; I have had child clients tell me that they lie to their parents for many reasons, such as to make them happy, and to get the parent to stop asking them questions about the other parent. Making it worse, parents will frequently take their child's comments as a directive to litigate under the pretext that they are doing what the child wants – placing the child directly in the middle of the conflict.

On countless occasions, I have heard parents say that the parenting plan the other parent wants, or the judge orders, is "unfair" to them. It is much less common for me to hear parents focus on how a parenting plan impacts their children's best interest.

HB 3095 will lead to *more* family law cases going to trial.

From my experience as a family law attorney, I am certain that HB 3095 would lead to more contentious litigation and trials over parenting time.

When parents have truly shared near equal responsibility for raising their children during their relationship, they most often will come to an *agreement* to continue that shared parenting structure. Those are generally not the cases that must be decided by a judge.

The cases that will end up going to trial are those where one parent has been primarily in charge of the needs of the children, and the other parent (who I will call the "non-primary parent" for ease of reference) has *not* been anywhere near a participant for all sorts of reasons. Those non-primary parents will push their cases to trial more often if there is a presumption that they should have equal parenting time. It will place a burden on the children. Additionally, it will place the burden on the primary caregiver to focus court time on all the reasons why the non-primary parent should not have equal parenting time, rather than focusing on how the primary parent's proposed schedule best supports the intersts of the children.

These post-HB 3095 trials will have an even heavier emotional toll on the whole family than usual, and will lead to a further breakdown of any co-parenting relationship that has formed. That is not in a child's best interest.

Communication

When children have equal time with their parents, it is critical that the parents are willing and able to communicate effectively and politely about their children. When a child is spending half of their life in the other household, parents need to share a plethora of information to make sure that each parent has the information to best support the child's needs during the other half of their time. For example, as addressed below, parents will need to communicate about scheduling, school projects and homework, field trips, social events, medication management, counseling or other health care, extra-curricular activities, lessons, tutoring, injuries, behaviors, among countless other topics.

When parents cannot communicate well, or refuse to communicate entirely which is common, it is their children who suffer the consequences.

Children's Activities and Peer Socialization

A substantial problem that arises in nearly all high conflict cases is how to handle a child's weekly activities, such as extracurriculars (sports, music lessons, clubs, etc.) or even regular social events (friends' playdates, church groups, etc.).

Many activities, such as team sports or performing arts, require consistent attendance in order to develop skills, build relationships, and make progress. An equal parenting time arrangement may prevent children from fully engaging in these activities, either because they have to miss sessions due to being with the other parent or because the inconsistency of their schedule means they cannot commit to the activity at all.

Weekly activities can enhance a child's academic performance by improving focus, discipline, and time management. Consistent participation in weekly activities can also help children form strong, lasting friendships and social networks. If a child misses important social events or weekly activities, they may feel isolated or left behind in comparison to their peers who attend weekly. This lack of stable social interaction can negatively impact their sense of self-worth, confidence, and emotional well-being. Similarly, consistent involvement in social groups or sports can foster teamwork, leadership skills, personal growth, and social connections, all of which are vital to a child's overall development.

You may wish to believe that parents will accommodate their children's participation in such weekly activities, but from my 13+ years of family law practice, I can say with certainty that is not the case. Parents who are already in conflict (which they would be, since they did not simply agree to an equal plan), are often unwilling to accept what the other parent schedules for a child if it will disrupt "their" parenting time. This is a constant problem that arises in my practice, and it is the children who suffer when they may either only attend the activity half-time, or cannot attend at all. I have had been involved in cases where one parent will not agree to recurring educational or health care activities such as tutoring and counseling. These are not problems that can always be solved with parenting plan drafting, and each type of equal parenting plan has its own pros and cons for children.

The presumption of equal parenting time, while well-intentioned, can negatively impact a child's ability to participate in regular, weekly activities that are essential for their emotional, social, and academic development.

Logistics of equal time are not always realistic

Equal parenting time is not always logistically feasible or practical. For example, when parents live in different school zones, or there is a significant distance between residences or from one residence to the child's school. Mileage is not the only consideration; a parent could live 10 miles away from the other, but depending on the locations and time of day, that could take upwards of 45-60 minutes to travel. This is something that must be considered in determining the feasibility of an equal parenting plan.

Inconsistency in routines and structure

Additionally, children benefit from routines as they provide structure and predictability, which can help in reducing anxiety and ensuring emotional stability (something very important for children coping with separated parents). It is very common that parents have different household rules, routines and expectations of a child. With equal parenting time, these differences become more significant and impactful on children. A blanket presumption of equal time ignores the reality of how different household expectations can impact a child.

If equal time is NOT ordered, then what does "practicable" mean?

HB 3095 states that if equal time is not ordered, because "the court rebuts the presumption, the court shall develop a parenting time schedule that maximizes the practicable parenting time with each parent." (Emphasis added; see Section 2 of proposed ORS 107.102(5)(c)).

First, and most significantly, there is *no reference to the child's best interest* in that sentence. It is focused on maximization and not the child's best interest.

Second, there is no definition of "practicable" in HB 3095. The Merriam-Webster dictionary definition of practicable is: "*capable of being put into practice or of being done or accomplished*." (https://www.merriam-webster.com/dictionary/practicable). Again, a provision that requires the court to order a parenting plan that, after the court rebuts the presumption that equal time is best for the child, *maximizes* parenting time so long as it is *capable of being done or accomplished*, is not focused on a child's best interest.

Impact on forms of intimate partner violence

I agree with the other opposition statements that discuss the impact HB 3095 would have on intimate partner violence. I will add that, while Oregon's restraining order statutes define "abuse" as a manifestation of physical harm or threats of physical harm, the truth is there are *many* cases where the abusive behavior is exerted through emotional and verbal threats and manipulation, and through exertion of control.

A very likely outcome of HB 3095 is that non-primary parents will be emboldened by the presumption that they would have equal time with the children and will use the threat of going to trial to "take" the children from the other parent and their usual routines and contact with the other parent if he/she/they do not concede on some other issue (e.g. financial). This type of manipulation already occurs, but would be significantly exacerbated by HB 3095.

Conclusion

These are just some of the considerations that judges must consider when focusing on parenting plans that focus on a child's best interests. Each child and family situation is unique, and their parenting plans should be tailored to ensure stability, reduce conflict, and prioritize the child's emotional, psychological, and developmental needs.

HB 3095 would place parental "fairness" above a child's best interests, and would inhibit a judge's discretion to craft a parenting plan that is unique to the needs and best interests of each child and family. Please maintain the ability of the court to craft detailed parenting plans that are focused on the unique needs of children by focusing on what plan serves the specific child's best interests.

Sincerely,

Shannon Hall