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House Committee on Judiciary
Oregon State Legislature
900 Court St NE
Salem, Oregon 97301

Re: HB 3095-Rebuttal Presumption of Equal Parenting Time

Dear Chair Kropf and Members of the House Committee on Judiciary,

My name is Krischele Hampton Whitnah. I have been an attorney in private practice since 2006. My practice primarily focuses on family law related issues, including custody, parenting time, third party custody and visitation, DHS-Child Welfare involved cases, and adoptions. In my career, I have advocated for mothers, fathers, grandparents, and other individuals that have served as the psychological parents of children. I have won custody for individuals within each of these demographics. I have similarly settled and litigated parenting plans that were favorable for individuals in each of these demographics. I believe the individualized best interest analysis that is the current basis of Oregon law best serves all Oregonian children and families because each family and that families' circumstances are unique.

I write to express that I strongly oppose HB 3095. On its surface, HB 3095 may seem 'fair' and well intentioned; however, the ramifications of the bill are to place the heaviest burden on the most vulnerable individuals involved in family court systems. Oregon law already has strong policies and protections for parents. Our statutes are gender neutral. Our Court's already have the authority to award equal parenting time where it is appropriate. Further, federal constitutional law bolsters parents' rights within our analysis. Our court systems already place a strong emphasis on shared parenting time and both parents being involved in a child's life. Put simply, this bill is unnecessary and poses serious unintended consequences.

In my capacity as a litigator, I have seen many cases where protective parents were forced to spend tens of thousands of dollars to protect their children from physical abuse and/or sexual abuse. These cases are incredibly difficult without an arbitrary rebuttable presumption. They will only become more expensive and difficult. These are the types of cases that don't resolve out of

court and a rebuttable presumption is not going to change the dynamics of these cases. The proposed statute fails to address domestic violence, personality disorders, substance abuse, etc. Worse, it can be anticipated that many of the cases that have historically settled will no longer settle if this bill passes. The best suited cases for 50-50 parenting time are those where both parents agree to that schedule and are low conflict. Those cases are already leaving our mediation and court systems with an equal parenting time award. However, many other cases that currently settle with considerable shared parenting time (but something less than 50-50) can be expected to devolve into unnecessary conflict and litigation because the proposed bill takes the focus away from the child's needs and places it on 'fairness' between the parents. Parental conflict quite literally results in bad mental health outcomes for children, often lasting into adulthood.

The bill, as drafted, entirely fails to consider continuity of care for children, something science and common sense have long told us is critical for good outcomes for children. It fails to consider the needs of young children. The Oregon Judicial Department in the last decade has spent considerable time and effort looking at the issue of parenting plans for young children and the impact of overnights on a young child's development. I would encourage you to consider the work that was done and materials that are available at https://www.courts.oregon.gov/programs/family/children/pages/birth-through-three.aspx. If you do review those materials one of the conclusions that is clear is that each child's circumstances are different and as a result each child (the total innocent in these cases) deserves the attention of thoughtful professionals and judges in crafting the parenting plan that will guide their life, especially when their parents can not agree.

In my experience, it is rarely the cases with two fit, healthy, and involved parents that end up in court. It is not the parents that are equally yoked in ability and parenting philosophy that end up in court. It is not the parents that can agree on similar rules for each household that end up in a courtroom. The cases where parents cannot agree on a parenting plan are typically the cases where there is a good reason for disagreement, e.g. unmitigated substance abuse, serious personality disorders where children can be harmed psychologically, physical abuse, etc. On a practical level, proving these issues is already a significant hurdle for experienced practitioners and sophisticated parents. Children of lower income individuals without the means for attorney and expert support are already at risk of bad outcomes and will be even more so if this bill is passed.

I have noted that many of the letters in support of this bill are from proponents that claim that parental alienation has caused them to be excluded from their children's lives for decades. Parental alienation is a complex issue. Early in my career, I spent considerable time reading books and literature about parental alienation. I also wondered if parental alienation would be added to the DSM-V. What I learned in reviewing literature, especially that written by objective experts in the field, is that when parental alienation actually exists it can be caused by one parent (either the residential or nonresidential parent), both parents, or other outside influences. A rebuttable presumption in my view is unlikely to fix these dynamics; but is especially no fix for long term healthy relationships where the nonresidential parent is contributing or causing the alienation.

If this bill passes, it can be anticipated that a level of common sense in the creation of parenting plans will go out the window. Shall Oregonian two years olds be required to travel out of state some sixteen hours to another state for alternating two-week blocks of parenting time because of the presumption? Shall that same family be required to return to an Oregon court when the child is school aged for what can only be anticipated to be a high stakes/high conflict trial to see which parent the child will live with during the school year? Or shall that child be homeschooled for the sake of equal parenting time? What if neither of the parents is equipped to homeschool? Does school age mean first grade? Will that child be allowed to benefit from early education like his or her peers? Can that child be expected even more than his or her peers to need early education interventions? In corresponding with a colleague in a state with a rebuttable presumption of 50-50 parenting time (and I might add a considerable list of additional factors for the court to consider when rebutting the presumption that this bill fails to include) these are the absurd results that are being seen, especially when parties are self-represented. The vast majority of Oregon family law cases involve at least one party that is self-represented. This cannot be the best path forward for Oregonian children.

I noted that some of the proponents of the bills have criticized attorneys, judges, and child psychology experts as having a claimed conflict of interest in opposing this bill. Their belief being that this bill will result in less litigation. However, I would encourage the committee to consider the opinion of the people with boots on the ground. The people that have dedicated their lives to this work are predicting more litigation and more clogged court rooms. They are predicting more vehemence and conflict. More modification proceedings. More educators and children can be expected to have to testify when 50-50 parenting time doesn't go well. And what will a judge do in a modification proceeding when he is hearing from educators that little jimmy doesn't show up to school on time, clean, or fed every other week? Or will little Jimmy need to talk to a judge or custody evaluation expert about the yelling that happens and how much shame and blame he is placing on himself for the fight that ensues between his parents when he forgets his school work? Is a judge legally supposed to care? Is that sufficient to rebut the presumption? I would also add that no attorney writing in opposition to this bill is in need of more work. We are already turning away significant numbers of cases, which common sense would think would be evident in light of the number of self-represented litigants. Our incomes are not likely to decrease if the bill passes. I believe the professionals writing in opposition to this bill are genuinely writing out of concern for Oregon's children.

It is not only young children that the committee should be concerned about. What happens to the school aged child that has parents that live 60 to 249 miles apart? Does that child lose friendships and social connections as they hit tween and teenage years because that child is required to live in one community during the school year and a different community during the summer? Does that child lose the opportunity to pursue extracurricular activities that his or her peers enjoy because the focus has been placed solely on equal parenting time? Does that child return to their school year community for the start of a sports season or get to show an animal at the county fair? Or does that child miss those opportunities in the name of equal or maximized parenting time? Oregon judges currently have the discretion to balance the needs of the child for robust time with both parents and the child's other developmental needs; something that

some parents are unable to weigh because they are so focused on their own needs and/or view of fairness. Oregonian children will be better off if our Judges continue to have the discretion to consider all of the child's needs.

I join many of my colleagues in criticizing the drafting of this bill. As has been mentioned in other letters in opposition to this bill, Court's do not rebut presumptions litigants have the burden to do that. Is this presumption rebutted by a preponderance? What are the factors that a court would consider that would overcome this rebuttable presumption? Is it truly best for a child to have his or her world upended when a previously uninvolved parent comes to court asserting his or her right to equal parenting time and receives a presumption in his or her favor? Shouldn't the weight of the parent's right be commensurate with the responsibility the parent has taken in the child's upbringing? In a scenario where one parent has abandoned their responsibility to the child for months or years, is it really fair to place the burden on the healthy parent that has cared for the child to rebut the presumption that this bill would automatically give to a derelict parent?

As a trial attorney, I am concerned about the considerable risk of overworked (and a certain percentage of disinterested) judges rubber stamping 50-50 parenting time when it is not well suited for a child because the bill provides a cop-out to skip over true analysis of what is in the child's best interests based upon that child and family's unique circumstance.

I urge you to carefully read the article submitted by Professor Weiner and the robust analysis therein.

The current policies supporting shared parenting coupled with an individualized best interest analysis strike the best balance in terms of a legislative directive to Oregon judges, attorneys, professionals, and litigants. I urge you to vote against HB 3095.

Respectfully,

Krischele H. Whitnah
Attorney at Law