

Testimony Before House Subcommittee on Family Justice

HB 2916

by

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Good afternoon. Thank you for the opportunity to speak with you today regarding HB 2916. My name is Dr. Lance T. Laurence. I am a Clinical Psychologist and serve as the Director of Legislative and Professional Affairs for the Tennessee Psychological Association. Our association represents over 500 licensed practitioners of psychology in Tennessee, many of whom you have heard from in the last week. It is my privilege to report to you our association's policy positions on these important matters of divorce law and shared parenting considerations. In addition to my duties with the Tennessee Psychological Association, I am an Associate Professor & the Director of the Psychological Clinic at the University of Tennessee-Knoxville. I also maintain an independent practice in Knoxville in clinical psychology. In both of those positions, I have conducted and supervised comprehensive child custody and parenting fitness evaluations for nearly three decades. Additionally, twenty years ago, an unexpected and unwanted divorce

occurred in my life. It was necessary for me to go to court three times in nine months in order to see and secure substantial co-parenting time with my then two year old daughter. Hence, I speak to you today with a good deal of professional and personal experience on these matters.

The professional literature contains over 500 peer reviewed publications on divorce law, child custody studies, and related considerations pertinent to the legislation before you. My task this afternoon is to rapidly familiarize you with the status of the professional literature on these subjects which will result in you understanding why our association does not support the language of HB 2916. While there is much to like about the spirit and intention of shared parenting reform bills such as HB 2916, we are concerned the language in the bill will be counterproductive to efforts aimed at helping our children and parents adjust to the upheaval and challenges of divorce.

The language of HB 2916 is not uncommon in those legislative efforts aimed at reforming public policy on divorce law and child custody considerations. For several decades now, the divorce rate in our country has consistently run in the mid to high forties for those marrying the first time. No one goes into a marriage hoping one day to experience the sorrow of divorce. For some it is the most constructive option available to them. It is an extraordinarily painful process for all concerned, and especially if there are children involved. With the frequency of divorce in our society, we see all too often children who suffer due the effects of divorce, and some mightily so. In many divorces, the drop in income levels negatively harms children

and their new family structures. In some situations one parent, often fathers, disappear from the scene following a divorce. In other scenarios, we have caring and concerned fathers who are prevented from having needed, substantial parenting time with their children due to malfunctions with our legal system. Some of these caring fathers are out-lawyered or they are the victims of an outdated “tender years doctrine” that essentially gave mothers a judicial upper hand in custody disputes if the child were of a young age. Other divorce stories have mothers doing most to all of the child-rearing themselves, and often without the economic support they need to provide for their children. Then there are those divorces which continue the parental battle long after the legal dust has settled, often resulting in the most damaging, negative effects on children of divorce.

What we do know about divorce is the following: children of divorce are on average, not as well adjusted as those in intact families, although this relative disadvantage does not automatically result in a nervous and mental disorder nor does it necessarily result in a negative developmental trajectory for these children. We know that the postdivorce adjustment of children varies considerably, depending in part upon their exposure to parental conflict and the quality of parenting the children receive from both parties. Considerable research has shown that high quality parenting from the custodial mother is associated with a better post-divorce adjustment of the child. Similarly, research studies show that the quality of a father’s relationship with his children following divorce is positively related to his children’s well-being. Like that of a caring mother, the more a caring father is involved in the children’s activities (homework and school), the more he

provides effective discipline and role-modeling, and the more he affirms in a close, loving fashion the strength of the positive affective bond between father and child, the better the child's well-being after a divorce.

Given these findings, why would an association such as ours oppose legislation that specifically prescribes a presumption of equal parenting time in divorce situations like that contained in HB 2916? To understand our concerns, let us first focus on the typical necessary ingredients of a successful equal time, joint custody postdivorce parenting plan. Parenting plans such as these typical require the following: (1) geographical proximity, (2) adequate emotional maturity of each parent as demonstrated by each parent's capacity to act in accordance with their child's best interest rather than a focus on parity of time, (3) to contain and manage any leftover acrimony and dissatisfaction from the divorce, ensuring that unresolved parental differences after the finalization of the divorce do not get negatively transmitted to the child, (4) a shared perception that the child is safe with the other parent, (5) shared responsibility for financial matters, (6) a business-like working relationship between the parents, including the ability of the parents to get along reasonably well, (7) a commitment from both parents to make shared parenting work, and lastly but not unimportantly, (8) the child's own happiness or contentment with a shared arrangement.

Those parents able to divorce and craft a parenting plan like that aforementioned are a special breed of people. They have been able to put aside their personal pain associated with the loss of the nuclear family and proceed to constructively put the best interests of the children first and foremost. Typically

they arrive at their parenting plan by agreement and do not undergo a contested child custody dispute. They craft the parenting plan and bring it to the court; they don't trust the lawyers or courts to "get it right" for their children. For these families now creating two homes, "mom's house" and "dad's house", the parents share the financial responsibility of raising their children so that no one family's new income level results in producing inordinate suffering for the children. The children's loving relationship with both parents is preserved, protected, and encouraged. While all mourn the loss of the nuclear family, they are able to grieve, move on, and *these* children of divorce clearly do much better than other children coming from homes that do not navigate the postdivorce process as successfully. For those parents able to craft this type of shared parenting arrangement, a presumption of shared, equal coparenting time for both parents clearly benefits the children, makes good sense, and should be enacted.

BUT, do all parents getting divorced, especially those in contested child custody disputes, navigate the challenges of divorce as effectively as those parents just described? Regrettably, "no". The problem with socially constructive legislative efforts such as HB 2916 is not what the bill says, that coparenting is good for children and parents, but for what it **DOES NOT SAY**. That is, regrettably, cooperative equal time coparenting is not feasible for all parties. One can easily legislate that those who are abusive or with a history of destructive parenting behavior will not merit the presumptive assumption however, the problem of insuring "good enough parenting" goes far beyond these extreme examples of "bad

parenting”. A presumptive equal parenting plan requires two committed, mature adults able to constructively work together in an integrative fashion—an intentionality difficult to achieve for some who are divorcing. There are concerns that some divorcing parents will opportunistically capitalize on the language of the bill to reduce their anticipated child support responsibilities rather than reflecting a committed desire to parent. If such a ploy does exist, there is risk the committed parent will be left with the lion share of the parenting responsibilities after the legal battle is over, but with less income to parent. If misapplied, presumptive, equal coparenting on a continuous basis risks potential negative consequences for the children who then get “caught in the middle” of two warring parents and homes that don’t see “eye to eye”, even after the legal battle is over. There is consistent evidence that high levels of parental conflict has negative and long-lasting implications for children’s adjustment. If legislation requires these parties to work with other another in an equal parenting matrix, will it promote the aspirational goal of better cooperation between parents as claimed by proponents or will it result in a continuation of the family dysfunction long after the finalization of the divorce and ultimately damage the children even further?

In the end, legislative efforts should seek to do no harm to parents and children already damaged by divorce and to find some way to positively impact the parenting of our children after the divorce. In the past, child custody policies attempted to obtain this goal by utilizing the “best interest of the child” guideline which takes into account a host of factors including but not limited to the parents’ preferences, the parenting capabilities of both adults, the “goodness of fit” between the child and

each of the parent's homes/personalities, the child's emotional adjustment, and the child's preferences. Fathers' groups typically are weary of "best interest of the child" standards for fear the standard is too vague, too subject to judicial interpretation, too vulnerable to skillful lawyering that trumps the child's best interest, and too prone to relying on the "tender years doctrine" or "motherly instinct" as the best default position in a contested divorce. These caring fathers do not want to trust the courts to define "best interest of the child"; instead, these caring fathers prefer to require the "presumptive equal parenting clause" in statute. While their concerns are understandable, the question is what is the best public policy direction to pursue on this matter?

Our association does not favor the "presumptive equal parenting" language of HB 2916. The language is simple, but the issues too complex for this sort of standard. If enacted, we fear the legislation will result in unintended consequences for those undergoing a contentious divorce. We prefer and recommend the "best standard of the child" standard in child custody decisions and parenting plans with more definition of what is meant by "best interests of the child". For example, HB 2916 could read "Parenting plans shall be in accordance with best interests of the child. Best interest of the child does not favor one parent over the other". Such language controls for the problems associated with the "tender years doctrine" while not legislating equal parenting plans for those for whom such plans could potentially hurt our children of divorce. Additional language specifying the meaning of "best interest of the child" could be added should legislators feel so

inclined. In the end, we urge child custody legislation that preserves and strengthens the concept of “best interests of the child”.

Thank you for this opportunity to speak with you. We are confident you will make a decision that will benefit us all.