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**TESTIMONY TO HOUSE JUDICIARY COMMITTEE  
OPPOSING SENATE BILL 157**

**March 5, 2020**

Kansas House Committee on Judiciary  
Representative Fred Patton

RE: Opposing Senate Bill 157: An act creating a presumption of equal parenting time as part of temporary orders.

Please consider this written testimony as opposition to Senate Bill 157 because I view the proposal of a presumption of equal parenting time for temporary orders in child custody cases as inconsistent with the best interests of children. The additions to this bill from that previously presented last year do not improve the bill.

My name is Milfred D. Dale, Ph.D. (ABPP), J.D. I have been a licensed Ph.D. psychologist in Kansas since 1989. I have also been a licensed attorney in Kansas since 2009. My dual training as a psychologist and attorney has allowed me to serve children and families in numerous different ways. As a psychologist, I have treated: children of divorce – both boys and girls; mothers, fathers, and step-parents in divorce situations. I have performed couples therapy, cooperative parenting therapy, and family therapy in divorce cases. For eleven years, I co-taught a psycho-educational class for families in high conflict parents and their children in Shawnee County, Kansas. I have also conducted evaluations in contested custody matters. As an attorney, I have mediated and litigated custody disputes in Kansas courts. I have also served as a domestic case manager in high conflict custody cases. And finally, I have presented in Kansas and in numerous forums across the United States and have written extensively about children and families of divorce and parental separation. I have also conducted a comprehensive meta-analysis the impact of shared parenting on children.

"Don't Forget the Children." The best interests of the child standard in child custody and the requirement for individualized decision making is the most powerful protection children have during periods when the conflicts and decisions of their parents place them at risk.<sup>1</sup> We should pay close attention to the notion that we should not forget that children are especially vulnerable when parents separate and divorce. This is a period of heightened conflict and risk. The period when separations are occurring is an emotional one often

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<sup>1</sup> Milfred D. Dale, *Don't Forget the Children: Court Protection from Parental Conflict is in the Best Interests of Children*, 52(4) FAM. CT. REV. 648 (2014).

fraught with a myriad of emotions for all involved. Anger, a sense of betrayal, or a lack of trust are a few of the many emotions making this period especially difficult for the parties. In instances of abuse or domestic violence, this period is more dangerous and carries heightened risks for increases rather than decreases in violence. Bullying, coercive control, and power dynamics are often part of the disagreements that led to the divorce and make finding solutions more difficult.

Imposing an equal time parenting plan on children during one of the most vulnerable times of their lives is not in the best interests of children. It instead places them at heightened risk for behavioral, emotional, and psychological problems and stresses, particularly when the dispute of the parents involves conflict, disagreement, and abuse or violence.

The available social science research does not support equal parenting time as best for all children. During 2018 and 2019, I systematically reviewed the claims by the father's rights and equal parenting presumption advocates. These claims have included the impossible notion that the research demonstrates that joint physical custody "causes" positive child adjustment. This is simply not true.

The research does show that children of divorce or parental separation do better when both parents are involved. It does show that the way children are treated by their parents matters and that authoritative parenting, where parents are involved in their children's lives and have positive relationships, is good for children. But the research also shows that not all parents are good parents, not all of them have been involved with their children in positive ways, and not all parents can relate to their children in ways that benefit the children. In short, parents can positively influence their children, but whether they do is a fact-specific issue.<sup>2</sup> Social science research continues to show that children of divorce and separated parents often score lower (as a group) than children of married parents or intact families. I have presented this data at two international conferences and numerous bar associations meetings.<sup>3</sup>

Most child custody experts believe shared or equal parenting time approaches have their place and should be considered under the right circumstances. In 2013, I participated with more than thirty other child custody experts in a national Think Tank About Shared

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<sup>2</sup> Milfred D. Dale, *Of course, quantity AND quality of nonresidential father involvement matters ... as part of every individualized best interests of the child determination: Commentary on Adamsons 2018 article*, J. CHILD CUSTODY (2019).

<sup>3</sup> Milfred Dale, *A Meta-Analysis of Child Adjustment in Different Custodial Arrangements*, AFCC Webinar Series, July 17, 2019; Milfred Dale & Austen McGuire, *More Data, Less Woozle: Defending Individualized Best Interests in the Shared Parenting Debate*, 56<sup>th</sup> Annual AFCC Conference, Toronto, CA; Milfred Dale, *The Woozling for 50/50 Parenting Time & the Actual Research Data: Implications for Best Interests Determinations & Family Lawyers*, Sedgwick County Bar Association Meeting, Wichita, KS, May 3, 2019; Milfred D. Dale, Stephanie Gusler, & Austen McGuire, *To Stop a Woozle: A Meta-Analysis of Shared Versus Primary Parenting*, AFCC 13<sup>th</sup> Symposium on Child Custody, Denver, CO., November 9, 2018; Milfred D. Dale, Stephanie Gusler, & Austen McGuire, *The Woozling of 50/50 Parenting Time and the Actual Research Data: Implications for Family Law*. Wyandotte County Bar Association Meeting, Kansas City, Kansas, October 17, 2018.

Parenting sponsored by the Association of Family and Conciliation Courts (AFCC). This group spent three days extensively reviewing the scientific literature, the social policy debates, and the needs of children and families in relation to shared parenting. It issued two papers about shared parenting. Please note, the term “shared parenting” in the professional literature references parenting plans where the nonresidential parent has the child at least 35% of the time. SB 157 is talking about “equal time.” In summarizing the literature on shared parenting time, this Think Tank provided five conclusions:<sup>4</sup>

1. The most effective decision making about parenting time after separation is inescapably case specific.
2. Statutory presumptions prescribing specific allocations of shared parenting time are unsupportable because no prescription will fit all, or even the majority of, families’ particular circumstances.
3. Social science research strongly supports shared parenting (i.e., frequent, continuing, and meaningful contact) when both parents agree to it. There is also empirical support for shared parenting under broader conditions (e.g., some forms of parental conflict or disagreement) for children of school age or older.
4. There is no “one-size-fits-all” shared parenting time even for the most vulnerable of families. [There is no conclusive research evidence about the impact of overnights on long term parent-child relationships and child well-being. Shared parenting in the midst of high conflict is generally not in the children’s best interests. And family violence usually precludes shared parenting.].
5. A majority of the Think Tank participants supported a presumption of joint decision making, while a substantial minority espoused a case-by-case approach.

One expert commenter wrote against shared custody presumptions, particularly when parents could not resolve things themselves, noting:

Entering a courthouse to ask a judge to decide a parenting plan for children communicates an inability for one or both parents to work together in the best interests of children. . . . [B]y the time most parents face a judge, one can safely assume that they have had access to many friends, family members, counselors, lawyers, parent education programs, or mediators who have told them to work out their differences. Countless people would have told them that, while they are separating as intimate partners, they will be parents forever. Many people have told them that conflict hurts children. By this stage of appearing in court, the average parent should be starting to appreciate the emotional and financial costs of litigation.<sup>5</sup>

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<sup>4</sup> Marsha Kline Pruett & Herbie DiFonzo, *Closing the Gap: Research, Policy, Practice, and Shared Parenting*, 52(2) FAM. CT. REV. 152 (2014); Volume 52, Issue 2 of the 2014 Family Court Review is devoted to the debate about the drawbacks, effects, and impacts of shared parenting.

<sup>5</sup> Peter Jaffe, *A Presumption Against Shared Parenting for Family Court Litigants*, 52 FAM. CT. REV. 187 (2014).

There is research that parents who choose to do shared parenting are healthier (and so are their children)<sup>6</sup> and wealthier,<sup>7</sup> but this data does not demonstrate shared parenting “causes” or “produces” healthier children. The research does reflect that children do better in shared parenting plans when the parents are more child-centered and when the parents are capable and willing to make the extra effort the arrangement requires.<sup>8</sup>

Shared and equal time parenting schedules create high demands for high levels of parental engagement, when the research shows that as many as 40 percent of divorced families eventually settle into parallel parenting arrangements where parents have little interaction with each other.<sup>9</sup> Most estimate that between 25 and 30 percent of families accomplish truly engaged and shared parenting. The remaining 20 to 25 percent have difficulties with varying levels of parental conflict, abuse, alienation, mental illness, and substance abuse. There is also the unfortunate reality that many fathers have no contact with their children.<sup>10</sup>

But the most important rationale against a shared or 50/50 shared parenting presumption is that it shifts the focus from meeting the children’s needs to the desires and rights of the parents. The strongest argument for individualized parenting plans for every child is that

... each recommendation, each decision made, considers the individual child’s developmental and psychological needs. Rather than focusing on parental demands, societal stereotypes, cultural tradition, or legal precedent, the best interest standard asks the decision makers to consider what this child needs at this point in time, given this family and its changed family structure. There is no other way to address a child’s best interest. The best interest standard represents a willingness on the part of the court and the law to consider children on a case-by-case basis rather than adjudicating children as a class or a homogeneous grouping with identical needs and situations. Even though time-consuming, it is society’s way of acknowledging that children’s needs are important and unique.<sup>11</sup>

In 2018, I wrote about the importance of quantity and quality of nonresidential father involvement in response to an article that proposed shared or equal parenting time. The title of this article is: “Of course, quantity AND quality of nonresidential father involvement matters ... as part of every individualized best interests of the child determination:

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<sup>6</sup> Linda Nielson, *Joint Versus Sole Physical Custody: Outcomes for Children Independent of Family Income and Parental Conflict*, J. CHILD CUSTODY 1 (2018); Robert Bauserman, *Child Adjustment in Joint-Custody Versus Sole-Custody Arrangements: A Meta-Analytic Review*, 16(1) J. FAM. PSYCHOL. 91 (2002).

<sup>7</sup> Marygold S. Melli & Patricia R. Brown, *Exploring a New Family Form – The Shared Time Family*, 22 INT’L J.L. POL’Y 231 (2008).

<sup>8</sup> CHRISTY M. BUCHANAN, ELEANOR E. MACCOBY & SANFORD M. DORNBUSH, *ADOLESCENTS AFTER DIVORCE* (1996).

<sup>9</sup> Matthew J. Sullivan, *Coparenting and the Parenting Coordination Process*, 5(1) J. CHILD CUSTODY 4 (2008).

<sup>10</sup> For a review of living arrangements and father involvement, see Pew Research Center website: <http://www.pewsocialtrends.org/2011/06/15/chapter-1-living-arrangements-and-father-involvement/>.

<sup>11</sup> Joan B. Kelly, *The Best Interests of the Child: A Concept in Search of Meaning*, 35(4) Ass’n Fam. Concil. Cts. 377, 385 (1997).

Commentary on Adamsons 2018 Article.” I noted that Justice Sandra Day O’Connor famously noted in *Troxel v. Granville*, a famous case about parental rights to the care, custody and control of children, that:

“The demographic changes of the past century make it difficult to speak of an average American family. The composition of families varies greatly from household to household.”<sup>12</sup>

My response was that, “If there are no ‘average’ fathers and no ‘average’ families, we should remain committed to the idea that there are no ‘average’ children. As the standard for child custody issues, the best interests of the child embraces the notion that there is no average child(.)”<sup>13</sup>

I support the individualized decision-making found in the best interests of the child standard as what is best for children. This should be the criteria throughout the process. It is the social policy that will best serve children and families. For the reasons above, I oppose the equal parenting premise of Senate Bill 157.

Respectfully submitted,



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<sup>12</sup> *Troxel v. Granville*, 530 U.S. 57, 63 (2000).

<sup>13</sup> Milfred D. Dale, *Of course, quantity AND quality of nonresidential father involvement matters ... as part of every individualized best interests of the child determination: Commentary on Adamsons 2018 article*, J. CHILD CUSTODY (2019).