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Written testimony in support of Senate Bill 157

I am a family law attorney from Wichita, Kansas. I primarily practice in family law and deal with situations this bill covers regularly. I do not understand what could be wrong with a bill that has a presumption of being equal. If two parents come before a judge and the judge knows nothing about either parent, why would the judge do anything but presume the parties are equal? In this day and age when everyone wants to be treated equal, I do not understand why anyone would oppose the presumption of equality. Many people are often afraid of change and afraid of changing with the times. They try to scare everyone in to resisting change.

Prior to 1993 judges in criminal law had no guidelines on sentences. One judge could send a person to prison and another judge would give the person probation. The lawmakers decided there would be sentencing guidelines that were to be followed by the judges unless there were substantial and compelling reasons to do otherwise. These sentencing guidelines have been in place since 1993. This is a similar situation to this bill. One parent may get one result from a judge and another person with similar facts and circumstances could get a completely different result with another judge. If there was a standard of presuming shared custody, then it would help create uniformity and prevent situations where a judge can just do whatever he/she wants. This bill presumes 50/50 unless you can prove why it should not be 50/50.

This bill allows both parents to be on an equal playing field from the beginning. In Sedgwick County, there is a race to the courthouse to file first because it seems there is an advantage to the parent who files for divorce first. The person who files first gets to set the ex parte temporary order (meaning the other parent is not present). The ex parte temporary order goes into effect. The person who did not file first must then file a motion to modify or vacate the temporary order. Sometimes that can take a week and often longer to get before a judge. Then in Sedgwick County when you do get a hearing it is not an evidentiary hearing. The hearing is based upon proffers or arguments of what the evidence is (no actual testimony or exhibits) and the judge rules. In Sedgwick County they will then often send parents to alternative dispute resolution which delays having an evidentiary hearing even further. So whichever parent has the temporary order in their favor (which tends to be the person who filed first) then they tend to have an advantage because by the time there is an evidentiary hearing, which often can take as long as a year to get an evidentiary hearing. Then at the evidentiary hearing the parent argues that the temporary order should stay in place as a final order because it has been in place during the pendency of the case.

I believe this bill will also promote settlement and cut down on litigation. Parents, lawyers, and judges will know that the standard is shared custody unless you can prove otherwise. Having a standard

will help everyone know what they are facing as opposed to a free for all not knowing what each different judge will do. There are circumstances in which this presumption could be overcome. For example: when there is domestic violence, one parent has been a stay-at-home mother/father, work schedules that do not allow 50/50, special needs of the child, etc.

There is no harm to treating people equal as the bill proposes. This bill should be passed.