

SB 172 #9

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PROPONENT TESTIMONY - SB 172
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JUDICIARY COMMITTEE
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Chair Wheeler, Vice-Chair Hulse, and members of the Senate Judiciary, thank you for the opportunity to provide proponent testimony on SB 172.

My name is 'Don Hubin'. I'm an Emeritus Professor of Philosophy at the Ohio State University and the Founding Director Emeritus of the OSU Center for Ethics and Human Values. I'm also the Chair of the National Board of National Parents Organization. NPO is the nation's largest and most effective shared parenting organization, with chapters in 37 states. We work to promote children's best interest by strengthening the bonds between children and their fit and loving parents when those parents live apart.

I describe NPO as a "child-focused, research-based organization," meaning that we base our advocacy for the best interest of children on the best scientific research available. My testimony will focus on the 40 years of sound scientific research that overwhelmingly reaches the same conclusion: children do best with two parents actively involved in raising them.

Shared Parenting and Child Well-Being

Every parent knows that raising healthy, happy children is not only a rewarding task; it's an extremely demanding one. It's hard enough with two parents actively engaged in their children's lives. It's much harder for a parent to do it alone. Despite many single parents doing a wonderful job of raising their children, children raised without the active involvement of two parents are at risk for a number of serious ills. They are more likely to fail in school,¹ to use

¹ McLanahan, Sara et al., "The Causal Effects of Father Absence," *Annual review of Sociology* 39(2013)399-427; Lundbert, Shelly, "Father Absence and the Educational Gender Gap," *IZA Discussion Papers, No. 10814*, Institute of Labor Economics (IZA), Bonn;

illegal drugs,² to commit crimes,³ to become involved with gangs,⁴ to experience sexual assault,⁵ to engage in early sexual activity,⁶ to become pregnant at an early age,⁷ and to commit suicide.⁸

The research done in the U.S. and globally clearly demonstrates that in the overwhelming majority of cases, children of separated parents do best when both parents are equally involved in rearing them on a day-to-day basis. This is true even in cases where the parents are in (nonviolent) conflict,⁹ even when the parents don't initially agree to shared parenting, and even for infants and toddlers.¹⁰ This last result might surprise some who think that equal shared parenting isn't appropriate for very young children. But a rare consensus report, signed on to by 110 child psychologists, concluded that: "There is no evidence to support postponing the introduction of regular and frequent involvement, including overnights, of both parents with their babies and toddlers. Maintaining children's attachment relationships with each parent is an important consideration when developing parenting plans."¹¹

² Hoffmann, John P. "The Community Context of Family Structure and Adolescent Drug Use." *Journal of Marriage and Family* 64 (May 2002)314-330; Bronte-Tinkew, J., Moore, K. A., Capps, R. C., & Zaff, J., "The influence of father involvement on youth risk behaviors among adolescents: A comparison of native-born and immigrant families," *Social Science Research*, 35(2004)181-209.

³ Demuth, Stephen and Susan L. Brown, "Family Structure, Family Processes, and Adolescent Delinquency: The Significance of Parental Absence Versus Parental Gender." *Journal of Research in Crime and Delinquency* 41-1(February 2004)58-81; Bush, Connee, Ronald L. Mullis, and Ann K. Mullis, "Differences in Empathy Between Offender and Nonoffender Youth," *Journal of Youth and Adolescence* 29 (August 2000)467-478; Coley, R. L., & Medeiros, B. L., "Reciprocal Longitudinal Relations Between Nonresident Father Involvement and Adolescent Delinquency," *Child Development* 78(2007)132-147; Hill, M. A., & O'Neill, J., *Underclass behaviors in the United States: Measurement and analysis of determinants* (1993) New York: City University of New York.

⁴ Davidson, N., "Life without father". *Policy Review*, 51(1990)40-44.

⁵ Heather A. Turner, "The Effect of Lifetime Victimization on the Mental Health of Children and Adolescents," *Social Science & Medicine* 62-1(January 2006)13-27.

⁶ Ellis, Bruce J., et al, "Does Father Absence Place Daughters at Special Risk for Early Sexual Activity and Teenage Pregnancy?," *Child Development* 74-3(2003)801-821.

⁷ *Ibid.*

⁸ Weitoft, Gunilla Ringbäck, "Mortality, Severe Morbidity, and Injury in Children Living with Single Parents in Sweden: A Population-based Study," *The Lancet* 361-9354(January 25, 2003) 289-295,

[https://doi.org/10.1016/S0140-6736\(03\)12324-0](https://doi.org/10.1016/S0140-6736(03)12324-0)

⁹ Nielsen, Linda, "Re-examining the Research on Parental Conflict, Coparenting, and Custody Arrangements," *Psychology, Public Policy, and Law* 23-2(2017)211-231; Nielsen, Linda, "Joint Versus Sole Physical Custody: Outcomes for Children Independent of Family Income or Parental Conflict," *Journal of Child Custody* (2018) DOI:10.1080/15379418.2017.1422414.

¹⁰ Warshak, Richard, et al., "Social Science and Parenting Plans for Young Children: A Consensus Report," *Psychology, Public Policy, and Law* 20-1(2014)46-67; Warshak, Richard, "Night Shifts: Revisiting Blanket Restrictions on Children's Overnights With Separated Parents," *Journal of Divorce & Remarriage* 59-4 (2018)282-323; Fabricius, William V. and Go Woon Suh, "Should Infants and Toddlers Have Frequent Overnight Parenting Time With Fathers? The Policy Debate and New Data," *Psychology, Public Policy, and Law* 23-1(2017)68-84; Bergström, Malin et al., "Preschool Children Living in Joint Physical Custody Arrangements Show Less Psychological Symptoms Than Those Living Mostly or Only With One Parent," *Acta Paediatrica* 107(2018)294-300.

¹¹ Warshak, Richard, et al., "Social Science and Parenting Plans for Young Children: A Consensus Report," *op. cit.*, p. 60.

The Value of *Equal* Shared Parenting

It is sometimes claimed that the amount of time children spend with each parent doesn't matter: it is the *quality* of the time that matters, not the *quantity*. But, in fact, *both* matter. The benefits for children of shared parenting increase when children have equal time with each parent. Children who enjoy equal time with each parent have secure attachments to both parents, which leads to significantly better outcomes for children.¹²

The Value of a *Presumption* of Shared Parenting

It is not just the *practice* of shared parenting that promotes children's interests. Children benefit from there being a legal *presumption* of shared parenting. As research psychologist William Fabricius concluded, "The evidence that is now available is compelling that failure to enact presumptions of equal parenting time risks unnecessary harm to children's emotional security with their parents, and consequently unnecessary harm to public health in the form of long-term stress-related mental and physical health problems among children of divorce."¹³

Shared Parenting and Intimate Partner Violence

Family law must protect victims of intimate partner violence (IPV) and shield children from the effects of such violence. Some have, without providing any evidence, opined that presumptions of equal shared parenting expose victims of IPV to harm. It is worth noting at the outset, though, that if courts are doing a poor job of protecting victims of IPV, the problem is not that the typical parenting time moves from every other weekend and a weekly evening to half of the parenting time. Courts must reliably identify abusers and protect their intended victims regardless of the presumptive parenting time.

But, *do* presumptions of equal shared parenting expose people to increased risk of IPV? Fortunately, the research that is available concerning the effects of presumptions of shared parenting on the incidence of IPV indicate that, far from exacerbating IPV and further endangering victims, presumptions of shared parenting *reduce* the frequency of IPV. Support for this conclusion comes from research in Kentucky and Spain. In Kentucky, the incidence of domestic relations cases cross referenced with domestic violence cases dropped by more than half—from 973 to 454—between 2017 and 2022, the period during which Kentucky implemented its equal shared parenting presumption.¹⁴ Spain presents a natural experiment because early in the early 2010s about half the jurisdictional regions enacted presumptions of

¹² Fabricius, William V. "Equal Parenting Time: The Case for a Legal Presumption," *The Oxford Handbook of Children and the Law* (2020) Oxford University Press; Amandine Baude, Jessica Pearson, and Sylvie Drapeau, "Child Adjustment in Joint Physical Custody Versus Sole Custody: A Meta-Analytic Review," *Journal of Divorce and Remarriage* 57, no. 5 (July 2016): 338–360.

¹³ Fabricius, William V. "Equal Parenting Time: The Case for a Legal Presumption," *op. cit.*

¹⁴ "Equal Shared Parenting and Domestic Violence: Paying Attention to the Data," National Parents Organization, available at: <http://bit.ly/3Zy55C9>.

shared parenting and the other half did not. Since that time, the regions with shared parenting presumptions experienced an almost 50% *decrease* in IPV compared to those that did not.¹⁵

It is worth noting, too, that parents' concerns about losing custody of their children is a source of—not a remedy for—parental conflict. Research supports this conclusion¹⁶ and independent polling has consistently shown that between 72% and 85% of citizens believe that “when there is conflict between parents, awarding sole custody of children to just one parent *increases* that conflict.”¹⁷ South Dakota was at the high end of this range with 85% of citizens agreeing that awards of sole custody increase parental conflict.¹⁸

Shared Parenting and Child Maltreatment

As a child-focused organization, NPO is especially concerned about the effect of presumptions of shared parenting on child maltreatment. The available research does *not* support the claim that presumptions of shared parenting put children at risk. Quite the contrary! Kentucky enacted an equal parenting presumption for temporary orders in 2017 and the nation's first *explicit* equal parenting presumption for final orders in 2018. According to data from the Children's Bureau of the U.S. Department of Health and Human Services, Ohio and Kentucky have had dramatically different experiences with child maltreatment during this period. Ohio experienced a 1.8% decline in the number of children who received an investigation or alternative response. In Kentucky during the same period—the period during which Kentucky enacted presumptions of equal shared parenting—the number of such children declined by 30.9%!¹⁹ And, also during this period, the number of child *victims* in Ohio dropped by 2.5% while the number of child victims in Kentucky dropped by a remarkable 33.2%!²⁰

Within Ohio, the Ohio Department of Job and Family Services compiles county-by-county statistics on child abuse and neglect. NPO correlated these statistics with the type of local parenting time rule that the county's domestic relations court has adopted. What we found is instructive. Those counties that have equal or nearly equal local parenting time rules had significantly lower, and declining rates of child abuse and neglect. In 2012, these counties had rates of child maltreatment slightly higher than the statewide average of 8.0 per 1,000 children. By 2021, the child maltreatment rate in these presumptive equal shared parenting

¹⁵ Fernández-Kranz, Daniel; Nollenberger, Natalia; Roff, Jennifer Louise (2020) : “Bargaining under Threats: The Effect of Joint Custody Laws on Intimate Partner Violence,” *IZA Discussion Papers*, No. 13810, Institute of Labor Economics (IZA), Bonn.

¹⁶ Kruk, Edward, *The Equal Parenting Presumption*, McGill-Queen's University Press, 2013.

¹⁷ “Shared Parenting Polling: A National Consensus,” National Parents Organization website: <https://www.sharedparenting.org/s/NPO-Nationwide-Polling-Report.pdf>.

¹⁸ See <https://sharedparenting.org/s/NPO-South-Dakota-Polling-Report.pdf>.

¹⁹ *Child Maltreatment 2021*, U.S. Department of Health & Human Services, Administration for Children and Families, Children's Bureau, Table 3.1, p. 30, available at: <https://www.acf.hhs.gov/sites/default/files/documents/cb/cm2021.pdf>.

²⁰ *Ibid.* Table 3.3, p. 34.

counties was half that: 3.98 per 1,000 children. The statewide average in 2021 was 6.89 per 1,000 children. And the average of those counties with the most unequal parenting time rules was 7.97, more than a full point above the statewide average and more than twice the rate of the shared parenting counties.²¹

Divorce Professionals' Reactions to Shared Parenting Presumptions

Arizona enacted a shared parenting law in 2012. While it's not an *explicit* equal parenting time law, it does require courts to "adopt a parenting plan that provides for both parents to share legal decision making regarding their child and that maximizes their respective parenting time" (ARIZ. REV. STAT. § 25-403.02). Subsequent research has demonstrated that the Arizona law functions as a presumptive equal shared parenting statute. When the law was enacted, many divorce professionals voiced concerns. But the subsequent research has shown that the new law is supported by the *majority* of conciliation court staff, of mental health providers, and of *judges*. And, even among *attorneys*, the *plurality* evaluated the law positively.²²

Public Support for Shared Parenting

Polling by independent polling companies confirms that equal shared parenting and, importantly, a rebuttable *presumption* of equal shared parenting are strongly supported by the public, both nationally and in South Dakota, a state in which 84% of citizens support the creation of a rebuttable legal presumption of equal shared parenting.²³ This strong support for presumptions of equal shared parenting cuts across every demographic divide—race, ethnicity, religion, income, educational level, political affiliation, and gender—which is a rare thing in our politically polarized times. And follow-up polling that was done in Kentucky after the enactment of its equal shared parenting law show overwhelming support for the law in the Bluegrass state.

NPO recognizes that equal shared parenting isn't always appropriate. Sometimes it's not what the parents choose, which is why SB 172 requires courts to defer to parental agreements absent evidence that their plan would be detrimental to the children. It's not appropriate in cases where there is domestic violence or child maltreatment by one of the parents, which is why SB 172 establishes an exception to the presumption of shared parenting in those cases.

The equal parenting presumptions established by SB 172 are not by any means a "one size fits all" solution. The requirement to begin with the presumption of equal parenting time allows

²¹ "Shared Parenting and Child Abuse and Neglect: An Ohio Study," National Parents Organization, 2023, available at: <http://bit.ly/3l1DkCY>.

²² William V. Fabricius, Michael Aaron, Faren R. Akins, John J. Assini & Tracy McElroy (2018) "What Happens When There Is Presumptive 50/50 Parenting Time? An Evaluation of Arizona's New Child Custody Statute," *Journal of Divorce & Remarriage*, 59:5, 414-428, DOI: [10.1080/10502556.2018.1454196](https://doi.org/10.1080/10502556.2018.1454196)

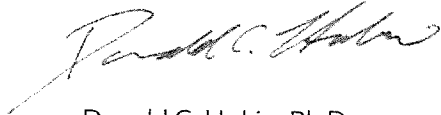
²³ See <https://sharedparenting.org/s/NPO-South-Dakota-Polling-Report.pdf>.

for a very wide variety of parenting schedules to meet the families individual needs and to adjust in ways that are appropriate for the children's ages.

Because too many South Dakota children are being needlessly deprived of a full relationship with one of their fit and loving parents, the South Dakota legislature must act to ensure that courts begin with presumption that it is in children's best interest for both parents to remain equally involved in the lives of the children they both created and are responsible for.

Chairman Wheeler and members of the committee, thank you again for allowing me to provide testimony in support of SB 172.

Respectfully,

A handwritten signature in cursive script, appearing to read "Donald C. Hubin".

Donald C. Hubin, Ph.D.

Note: Cited articles available upon request.