WRITTEN TESTIMONY

OF

GILLIAN CHADWICK, ESQ.
ASSOCIATE PROFESSOR OF LAW
ASSOCIATE DIRECTOR, CHILDREN AND FAMILY LAW CENTER
WASHBURN UNIVERSITY SCHOOL OF LAW

IN OPPOSITION TO SB 157

KANSAS HOUSE COMMITTEE ON JUDICIARY

FEBRUARY 9, 2020

Thank you, Chair Patton and members of the Committee, for allowing me the opportunity to submit testimony in opposition to SB 157. Although I support healthy and loving parental involvement in children's lives after parental separation, this bill is deeply flawed and will have extensive harmful consequences. It is a misguided effort to prescribe an inflexible approach for all families in an attempt to remedy an extremely small number of situations that the proponents feel were unfair. This is not the approach that is best for most families and children in Kansas.

Unfortunately, although it is well-intentioned, this bill would:

- Constrain judicial discretion and impose a one-size-fits-all approach to complex family law cases rather than an individualized analysis of the best interest of the child; and

- Increase litigation by encouraging otherwise uninvolved parents to seek equal parenting time in order to unfairly decrease child support obligations even when they do not intend to share the responsibility and expense of parenting.

SB 157 does not represent what is best for children in Kansas.

I. COMPLEX FAMILY LAW CASES SHOULD BE DECIDED BASED ON AN INDIVIDUALIZED BASIS ACCORDING TO THE BEST INTEREST OF THE CHILD, NOT A ONE-SIZE-FITS-ALL APPROACH.

Each child is different and each family is unique. The law must be flexible enough to be responsive to those differences. Currently, Kansas statutes recognizes that the single most important element in all of custody law is the best interest of the child. The beauty of the best interest standard is that it is flexible and adaptable to fit the needs of all children in Kansas. The best interest factors are outlined in K.S.A. 23-3203; and the language of that section makes clear that the list of factors is non-exhaustive and meant to be customizable

as applied to each family. K.S.A. 23-3208 entitles each parent to *reasonable parenting time*. The flexibility of these provisions is by design, aimed at meeting the unique needs of each child. Currently, the law recognizes that what is best for one child may not be best for another. This bill, by contrast, would significantly limit that flexibility by requiring the same prescribed presumptive result for all families.

Custody arrangements can and should be adapted to meet the needs of each family. That goal is much better served without the strictures of a one-size-fits-all presumption. This bill would impose a presumption of equal parenting time regardless of the facts of any particular case or the needs of any particular child. Parents would have to fight to overcome the presumption, creating needless conflict (as outlined below).

Children deserve to have their fates set not by statutory boilerplate language, but by an individualized analysis to determine what is in their best interest. The one-size-fits-all approach of this bill does not meet the needs of Kansas children and families.

II. THIS BILL WILL ENCOURAGE DESTRUCTIVE LITIGATION BY INCENTIVIZING UNINVOLVED PARENTS TO SEEK EQUAL PARENTING TIME IN ORDER TO UNFAIRLY DECREASE CHILD SUPPORT OBLIGATIONS EVEN WHEN THEY DO NOT INTEND TO SHARE THE RESPONSIBILITY AND EXPENSE OF PARENTING.

If this bill were to pass, a parent who has been completely absent from a child's life would be presumptively entitled to equal parenting time. Equal parenting time would generally eliminate the absent parent's child support obligation (and may even shift the obligation to the caretaker parent), even when there is no evidence indicating that the absent parent actually plans to share in the obligation and expense of co-parenting. Equal parenting time would be presumed even if the child had not seen the absent parent for years—even if the child had *never met* the absent parent. No matter how it might affect or disrupt the child, equal parenting time would be presumed. A primary caretaker parent would have to go to court and rebut the presumption of shared custody, thus creating a need for litigation.

Based on my previous professional experience, I am very familiar with the problems that a joint custody presumption creates. Before I joined the faculty at Washburn University School of Law, I practiced for seven years representing low-income victims of domestic violence in the District of Columbia, one of the few jurisdictions at the time that had a statutory presumption in favor of joint legal custody.[1] That presumption created a number of disastrous problems for families in D.C.

[1] Maritza Karmely, *Presumption Law in Action: Why States Should Not Be Seduced into Adopting A Joint Custody Presumption,* 30 NOTRE DAME J.L. ETHICS & PUB. POL'Y 321 (2016) ("There are a few jurisdictions, however, that have enacted more than a preference for joint custody or shared parenting. By way of example, both Louisiana and the District of Columbia have enacted statutes which contain a presumption that joint custody is in a child's best interests when the parents are not in agreement.").

Under D.C.'s statute, we saw far more custody litigation and conflict than we see in Kansas. This increased litigation strained the court system, legal service providers, families, and children. As a rule, previously uninvolved parents in D.C. were inclined to request equal parenting time (or even primary custody) because they felt they had "nothing to lose" at trial due to the presumption of joint custody. Within the context of domestic violence, abusers saw an opportunity to subject their victims to protracted legal proceedings and intense fear of losing primary custody of their children. Settlement was rare because parenting time was seen as a zero-sum game where the goal was to "win" at least equal time, if not more.

Primary caretaker parents were placed in a horrible position where they had to either accept the inevitability of shared custody or risk being seen as "unreasonable" for pushing for the parenting time that best fit the needs of their child. Often, uninvolved parents would be awarded joint custody and significant parenting time. As a result, the uninvolved parent would not owe any child support, even if they had no real interest in sharing the obligations and expenses of parenting. Over and over, I saw uninvolved parents "win" 50/50 physical custody and then regularly fail to pick up the child for parenting time, thus saddling the primary caretaker with all the expenses and no child support.

Overall, I have been impressed with how much more fair and reasonable Kansas's custody laws are and how much less conflict we see in custody disputes than in D.C. The current standard of "best interest of the child" encourages a much more realistic assessment of the situation because each party knows that the outcome from litigation will be tailored to the fact of the specific case. I urge this Committee to reject this bill and maintain our current statutory framework, which is much better for children and families in Kansas.

For the foregoing reasons, I urge the Committee to oppose SB157

Respectfully submitted,
Gillian Chadwick