

## TESTIMONY re HB 2948 – JOINT CUSTODY IMPOSED OVER OBJECTION

Before the Civil Subcommittee of the House Judiciary Committee of the Oregon Legislature  
March 3, 2021

Submitted by:

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Former Chief Family Court Judge, Multnomah County

Susan Svetkey, Senior Judge  
Chief Family Court Judge, Multnomah County

Chair Power and Members of the Committee,

Our names are Maureen McKnight and Susan Svetkey. We are the former and current Chief Family Court Judges in Multnomah County. Between us, we have served on numerous statewide workgroups on family law matters including the State Family Law Advisory Committee, various legislative workgroups on joint custody, and bench/bar groups focused on increasing attorney representation for children in family law cases. We are not speaking today for the Oregon Judicial Department or any organization, only for ourselves.

### **We oppose shared parental decision-making that the parents have not *agreed to*.**

We believe that the current joint custody statute represents the best, and most child-focused, approach to parental disputes about shared decision-making: Oregon law mandates joint custody when parents agree but prohibits us from ordering that status over parental objection. Our concerns about HB 2947 are:

- ***Forced* shared decision-making unnecessarily exposes children to parental conflict**

Children do best with the involvement of both parents after a separation in almost all cases. Ordering joint custody (shared decision-making) when the parents agree is rightfully a choice we are required to honor. But ordering shared decision-making when the parents do *not* agree is a pronounced risk for the child: it places the child squarely in the middle of conflict. And it is the absence of parental conflict, not equality in parental decision-making, that both research and our experience show is most closely related to post-divorce success in children. We see every day the effect of parental conflict on children – emotional problems including anger and anxiety, negative impact on school performance, and even withdrawal from one or both parents as well as family and friends. Our current law provides well for the greatest number of Oregon’s children while exposing the fewest of those children to harm.

- **Ineffective shared decision-making has negative impacts on children**

Shared decision-making requires child-focused communication and the ability to subordinate one’s negative feelings about the other parent to a perspective prioritizing the child. For parents not committed to this goal, the communication dynamic is usually hostile, disruptive, and rife with impasse. We regularly hear of school registrations missed, opportunities for extracurricular activities the child wanted lost, and even medical recommendations not followed. Disagreement about exposure to dangerous partners and

relatives is another area in which the inability to agree threatens children's welfare. These results are untenable because we can avoid them by not setting parents up to a standard they are not psychologically able to meet, no matter how much the Legislature or Judges wish they would.

- **Judges can already order a 50-50 parenting schedule even with a sole custody order. And we can require that the parent with custody consult with the other parent regarding major decisions.**

The child's *time* with a parent is separate from the decision-making authority. We can ensure optimal time with a parent who does not have decision-making authority. The parenting time schedule is controlled by best interests, so it varies by the child's age and maturity, parental availability, and a host of other factors. If we do not order 50-50 time when we are requested to do so, we must make findings as to why such denial is in the best interests of the child. And we can require that the parent without custody be consulted about major decisions. But children need parental cooperation, not conflict, and decisions, not impasse.

As Family Court Judges, we strongly encourage parents to share decision-making when they can. We even require attendance at classes and mediation processes to help them improve their dispute resolution skills. But we respectfully suggest that the cooperation and effective communication skills that joint custody requires – and children deserve -- is not something that can be conferred by judicial order. We oppose the bill.

Thank you for considering our comments.

Respectfully submitted,

Maureen McKnight, Senior Judge

Susan Svetkey, Circuit Court Judge