



clackamas women's services  
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March 3, 2021

Judiciary House Subcommittee on Civil Law  
RE: HB 2948

Subcommittee members:

I write to you today to express the great concern I have with the bills which are before you today for consideration, however this testimony will focus on HB 2948. I am an attorney who works almost exclusively with victims/survivors of domestic/interpersonal violence through Clackamas Women's Services. When domestic violence is a component of a relationship that appears before the courts, what the court sees and hears is often not what is truly reflective of the relationship. What the court sees and hears is often what the abuser wants the court to see and hear. The courtroom dynamic between the parties must be given great consideration when thinking about these bills. Men have historically had greater access to courts and resources. Therefore, women entering the courtroom are at a great disadvantage (further compounded by any other characteristic and/or inequity which excludes you from the legal process). This dynamic and manipulation unsurprisingly impacts the children of the relationship: children then become the bargaining chip between two individuals with unequal access to power and resources. Further, this requires greater exposure to the child of the abuse between their parents which we know will have lasting impacts on both emotional and physical health and the current systems of support barely meet the ever growing mental health needs of youth.

The fear that exists in the victim of an abusive relationships lives longer than the court appearance and is more extensive than is obvious to the listener or judicial officer. I have seen situations where the courts have taken the testimony of youth who have been bribed, coached, threatened by one parent to testify against the other parent, all while the victim parent tries in vein to let the court know what is really happening. Only to have the abuser – who is calm and collected tell the court otherwise. What invariably will happen if this bill were to pass is increased litigation to undo what has gone wrong. The role of the courts is not to micromanage a household and this bill would create a situation where the court is doing just that. Forcing parenting decisions between parties of great power disparity is not helpful but rather is akin to slowly adding fuel to the fire or death by a thousand papercuts.

Victims often come to court without representation and the abuser often comes with representation: victim has little to no resources and abuser has enough to find counsel and upend lives. Forcing the victim to show joint custody is not in the child's best interest is a Herculean task. Imagine, walking into court, terrified that your abuser is there and they are giving you that look that says 'when we're out of here, I'm going to ruin your life' and that victim, panicked with fear that the protection of the court is limited to this proceeding and now with that anxiety coursing her body, she/victim must explain to the court why joint custody is not okay. The victim who can barely remember their name because of the stress and trauma response that is bubbling up simply appearing in court is often too steep a hill for a victim to traverse: this is the antithesis of trauma informed law. It is the dynamic of the abusive relationship that will get overlooked with these bills creating greater imbalance in favor of the abuser. This bill is particularly troubling for those who are moderate to low income who cannot afford the process: the clients that will be most impacted by this bill who will continue to need services of the courts to undo the wrongs this bill will create. Requiring mediation between parents who have not even parented equally in the past, is not going to yield positive results. Philosophically, there are many problems with requiring the aggrieved to show why they are aggrieved because that rewards an emotional response (i.e., crying, sobbing etc. will yield a response in favor of the one with emotion which may or may not be accurate) versus the victim who has compartmentalized their emotion because that is how they cope and now they will lose because they could not show that emotion. Forcing the party who cannot emotionally withstand mediation to participate in a hearing to explain why they cannot emotionally endure mediation is counterintuitive.

For the occasion which this proposed bill is a solution there are many more occasions which this bill would have devastating negative consequences. For these reasons, CWS urges this committee against moving forward on these bills as written.

Marisha Childs, LEAP Managing Attorney

Co-signed: Melissa Erlbaum, Executive Director