



**Testimony submitted to the Joint Committee on the Judiciary  
In opposition to H1518 An Act Relative to Shared Parenting  
By Palma McLaughlin, LWVMA Specialist on Children and Family Issues  
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The League of Women Voters of Massachusetts, representing 43 local Leagues from Cape Cod to the Berkshires and thousands of members, urges you to oppose H1518 An Act Relative to Shared Parenting.

The League supports policies and programs at all levels of the community and government that promote the well-being, encourage the full development and ensure the safety of all children.

LWVMA also supports the consideration by the probate court of a history of domestic abuse when making divorce, child custody, and visitation decisions and ensuring that parents contribute to the support of their children.

This bill proposes to completely rewrite the Commonwealth's current custody law. The current law allows for an individualized, child-centered approach to child custody as recommended by the Association of Family and Conciliation Courts. "The most effective decision making about parenting time after separation is inescapably case specific. Statutory presumptions prescribing specific allocations of shared parenting time are unsupportable because no prescription will fit all, or even the majority of, families".<sup>1</sup>

The proposed change would constrain judges from making custody decisions in the best interests of the child and discourage them from considering indicators predictive of success or failure. The bill presents the "one-size-fits-all" custody determination model with a strong presumption of forced joint custody rather than the well-being and best interest of the child. During the initial vulnerable post separation period, maximizing stability is key to child wellbeing. Yet, this proposed bill would require that judges ignore the caregiving structure of the family in favor of a new unfamiliar arrangement that destabilizes.

It is a fallacy that the welfare of children is enhanced by frequent and continuing contact with both their parents in all cases.<sup>2</sup> The consensus is that children of higher income, better educated, motivated parents who live in proximity to one another, communicate well, and have flexible work schedules may do better in shared parenting arrangements.<sup>3</sup> These children also tend to do better in sole custody arrangements. This bill is not about these families; it is not about families

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<sup>1</sup> Pruett, Marsha Kline, and J. Herbie DiFonzo. "Closing the Gap: Research, Policy, Practice, and Shared Parenting." *Family Court Review* 52.2 (2014): 152-74.

<sup>2</sup> Brinig, Margaret F. "Shared Parenting Laws: Mistakes of Pooling?" *Notre Dame Legal Studies Paper*.1426 (2014).

<sup>3</sup> Ibid.

that decide parenting arrangements on their own. This bill is about the small percentage of high conflict child custody cases where shared parenting is likely to cause ongoing trauma to children and protective parents and poor outcomes.

Presumed shared parenting would have a chilling effect on victims of domestic violence who would be forced into ongoing contact with an abusive partner/parent and discouraged from disclosing justifiable concerns for fear of being accused of “alienating” behavior.<sup>4</sup> A 2013 study of the Massachusetts Family Courts found that 74%-87% of child custody and child support cases involved domestic violence.<sup>5</sup> Yet, in only a very small minority of the cases was domestic violence considered in making custody decisions.

This bill would create an untenable bounded rationality<sup>6</sup> through which best interests of the child would be subsumed. That is, although the proposed legislation considers shared parenting a “rebuttable presumption”, it is not unrealistic to anticipate that an overburdened Family Court judge with an assigned workload of more than 2,000 complex cases, many of which consist of hundreds of pages, will be nudged into presumed shared parenting decisions, however detrimental and destructive, due to the choice architecture of this bill.<sup>7</sup> Presumptive custody and parenting arrangements mandated by the legislature and ordered by the court can expose survivors and children to further coercive control, manipulation, and abuse<sup>8</sup> especially in light of inadequate training on survivor lived experience and prevalence of distorted theory.<sup>9</sup>

Forcing children to endure and participate in frequent and ongoing conflict is detrimental and potentially dangerous if indicators of domestic violence are missed or misread. Unless and until the Family Courts can address coercive control and abusive and manipulative behavior that characterize these high conflict custody cases, no changes should be made that would serve to weaken protections for victims of domestic violence and their children.

The League of Women Voters of Massachusetts urges you to oppose this bill.

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<sup>4</sup> Meier, Joan S. "US child custody outcomes in cases involving parental alienation and abuse allegations: what do the data show?." *Journal of social welfare and family law* 42.1 (2020): 92-105.

<sup>5</sup> Driggers, Monica et al. *Family Court Approaches to Intimate Partner Violence and Abuse: Stakeholder Perceptions and Implications for Systemic Change*. The Boston Foundation/Wellesley Centers for Women, 2013.

<sup>6</sup> Jones, Bryan D. "Bounded rationality." *Annual review of political science* 2.1 (1999): 297-321.

<sup>7</sup> Thaler, Richard H., Cass R. Sunstein, and John P. Balz. "Choice architecture." *The behavioral foundations of public policy* 25 (2013): 428-439.

<sup>8</sup> The White House. *U.S. National Plan to End Gender-Based Violence: Strategies for Action*. May 2023.

<sup>9</sup> Meier, op. cit.