

# STATE OF NEW HAMPSHIRE

## HOUSE OF REPRESENTATIVES

Committee: House Children and Family Law Committee

Bill: HB 1770-FN (2026 Session)

Title: Relative to the Allocation of Parental Rights and Responsibilities and Establishing a Presumption of Equal Parenting Time

Submitted by: Representative Joseph J Barton; Grafton District 1

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## WRITTEN TESTIMONY IN SUPPORT OF HB 1770-FN

### *I. POLICY RATIONALE FOR PASSAGE*

HB 1770-FN establishes a rebuttable presumption that approximately equal parenting time is in the best interests of children when both parents are fit. The bill does not mandate equal parenting in all cases; rather, it creates a constitutional starting point that may be rebutted by clear and convincing evidence of abuse, neglect, incapacity, or demonstrable harm.

Children benefit from stability and meaningful involvement from both parents. A clear presumption reduces uncertainty, discourages strategic litigation, and encourages cooperative parenting. By defining equal parenting in objective terms (approximately 50 percent of annual overnights), the bill enhances predictability and fairness.

### *II. CONSTITUTIONAL FOUNDATION – PART I, ARTICLE 2 & ARTICLE 15*

Part I, Article 2 of the New Hampshire Constitution protects natural and essential rights, including parental liberty interests. Part I, Article 15 guarantees due process before deprivation of liberty. When a court substantially restricts parenting time, these constitutional protections are implicated.

Under strict scrutiny, the State must demonstrate a compelling governmental interest and narrow tailoring. See *State v. Robert H.*, 118 N.H. 713 (1978). HB 1770-FN aligns RSA 461-A with this constitutional requirement by imposing a clear and convincing evidentiary standard and requiring written findings for deviation.

### *III. LEGISLATIVE FINDINGS SUPPORTING CONSTITUTIONAL DEFENSIBILITY*

- 1. Parents possess fundamental liberty interests in the care and custody of their children.
- 2. The State has a compelling interest in protecting children from demonstrable harm.

- 3. Absent harm, children benefit from substantial relationships with both parents.
- 4. Objective presumptions reduce adversarial incentives and promote cooperative parenting.
- 5. Any restriction of parenting time must be narrowly tailored to specific findings of harm.

#### ***IV. ANTICIPATED QUESTIONS & RESPONSES***

- Does the bill remove judicial discretion? — No. It structures discretion within constitutional limits and preserves authority to protect children.
- Could equal parenting endanger children in high-conflict cases? — No. The presumption is rebuttable upon clear and convincing evidence of harm.
- Will this increase litigation? — Clear statutory baselines reduce unpredictability and discourage strategic positioning.
- Does this eliminate the best interests standard? — No. It refines the framework to ensure constitutional protections are respected.

#### ***V. CONCLUSION***

HB 1770-FN promotes child welfare, constitutional fidelity, and judicial consistency. It protects children from harm while ensuring fit parents are not unnecessarily restricted. For these reasons, I respectfully urge the Committee to recommend Ought to Pass.