

To: Children and Family Law Committee  
From: Lauren Warner, Deputy General Counsel on behalf of the NH Judicial Branch  
Date: February 17, 2026

Re: HB 1770 – An Act Relative to the Allocation of Parental Rights and Responsibilities and Establishing a Presumption of Equal Parenting Time.

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The Judicial Branch does not take a position on HB 1770, as it leaves all matters of policy up to the Legislature. This written testimony serves as further explanation as to HB 1770's potential impact. I am happy to answer any additional questions the Committee might have in relation to this bill.

HB 1770 creates a new constitutional right to equal parenting time without following the constitutional amendment process. In doing so, HB 1770 requires the court to begin "with a constitutional presumption that equal parenting time is the least restrictive means of protecting the rights of the child, or children, and both parents." HB 1770 defines equal parenting time "such that each parent receives 50 percent of the annual overnights, with no parent receiving more than three overnights more than the other in any given year." HB 1770 allows a constitutional presumption to be rebutted by clear and convincing evidence of "abuse, neglect or domestic violence that poses actual harm;" "a parent's incapacity rendering them unable to safely care for the child;" "or specific, identifiable harm to the child." (emphasis added). HB 1770 also delineates that "[g]eneral conflict, parenting style differences, or judicial opinions of 'best interest' are insufficient grounds to rebut equal parenting." If a judge does order unequal parenting time, HB 1770 requires the court to make additional findings and subjects the order to strict scrutiny.

The most pressing concern with HB 1770 is that it converts a current statutory preference, see RSA 461-A:2 (encouraging equal parenting time), into a constitutional right while by-passing the constitutional amendment process. Specifically, HB 1770 envisions a constitutional right to equal parenting time that has never been found to exist. Part I, Article 2 of the New Hampshire Constitution provides for natural or inherent rights, including "[t]he right of biological parents to raise and care for their children," In re Berg, 152 N.H. 658, 661 (2005). The key rights that make up the parental right to raise a child are the right to care for, make decisions about, and control the upbringing of their child, including the moral or religious training for their child, the right to choose schools and review school records, the right to access medical records and make medical decisions, and the right to be notified if certain individuals believe a crime has been committed against their child. Additionally, parents are presumed fit to raise their child until proven otherwise. See In re Jeffrey G., 153 N.H. 200, 204 (2006) (finding that even though a parent's skills may not be ideal, "biological and adoptive parents are presumed to be fit parents"). However, these "[p]arental rights are not absolute, but are subordinate to the State's *parens patriae* power, and must yield to the welfare of the child." Id. In sum, HB 1770 seeks to create a new constitutional right for parents and subordinate the best interest of the child to those rights.

Operationally, the creation of a new constitutional right of equal parenting time could result in a significantly increased workload to the Judicial Branch, and increased costs as a result. First, HB 1770 is to apply to "any suit affecting the child-parent relationship, including initial determinations, temporary orders, and modifications of parenting time." This provision appears to entitle all parents, based on their newly delineated constitutional right to bring forward their parenting orders to demand equal parenting time. Although at this time, I am unaware of the number of cases pending with a parenting agreement that has more than 3 nights granted to one parent over the other, based on training and experience this would be a sizable number of cases. Second, the new constitutional right would impact additional sections of RSA chapter 461-A, including, but not limited to RSA 461-

A:11 which provides for the modification of parental rights and responsibilities but would have a differing standard the Court should apply competing with a new parental constitutional right. Third, this bill could hinder cooperation among co-parents, as could allow for less flexibility of one coparent taking over several necessary overnights without that time being accounted for later. This could lead to more family access motions or contempt proceedings that now must deal with a parental constitutional right rather than merely the possible disobeying a court order. Finally, this development of a new constitutional parental right subject to only findings of an undefined “actual harm” in cases of abuse, neglect, or domestic violence or a generalized “specific, identifiable harm” to the child. As the bill does not define the proper standard for actual harm, it could also impact proceedings outside of the parenting time context and impact cases in the abuse, neglect, and termination of parental rights areas without directly amending those statutes. In sum, this bill could have a significant impact on court operations and the current legal landscape of issues related to parenting.