



Michigan Coalition to End Domestic & Sexual Violence

MCEDSV Concerns with Presumptive Joint Custody Legislation in Michigan

For decades, Michigan statute has directed that family courts place the best interests of children at the forefront of all custody decisions. **Presumptive joint custody would abandon the best-interest determination as the initial standard for child custody decisions in favor of a parent-focused “one size fits all” approach.**

Joint custody is certainly appropriate for some children and families. Joint custody is not right for every family. And for families that have experienced domestic violence, joint custody puts child and adult victims at significantly increased risk of harm.

The Michigan Coalition to End Domestic & Sexual Violence opposes House Bill 4691 because:

- ❖ **Joint custody already receives special and preferential consideration under Michigan law.** The current law requires courts to inform the parties of the availability of joint custody, consider awarding joint custody if either party requests it, and state the reasons on the record if joint custody is not awarded.
- ❖ **Most custody cases are resolved by the parties coming to an agreement.** Michigan law requires judges to enter such agreements, including those resulting in joint custody, as final custody orders (unless the court finds by clear and convincing evidence that the agreement is not in the “best interest of the child”). Therefore, this proposed presumption would most directly impact those cases where the parties cannot come to agreement. A large number of these cases involve domestic violence.
- ❖ Research and experience indicates that **for joint custody arrangements to be successful for children, parents must be highly motivated and committed to cooperative co-parenting** in different households. Cooperation, compromise, communication and safety are all necessary components of a successful joint custody arrangement. These components are not present or possible in every disputed custody situation, and certainly do not exist where one party has a history of abuse against the other. Joint custody should be an option if both parents support it and if they are capable of cooperation; it should have no presumptive superiority, and it should be disallowed if the parents’ relationship is chronically conflicted or if one parent has abused the other.
- ❖ **Joint custody places a great burden on some children.** Joint custody often requires a child to move back and forth continuously. Even in the best of situations, with highly committed and cooperative parents, the child must live in two households (and often two neighborhoods), in essence negotiating two lives. Some children simply do not have the capacity to thrive under these circumstances.

- ❖ **Joint custody does not improve parental cooperation in high conflict cases.** It has been well documented that joint custody actually increases conflict in these situations, resulting in greater trauma and harm to the child.
- ❖ **Pursuing joint custody is not always done out of a desire to spend time with the child.** In domestic violence situations, abusers frequently use joint custody to prevent the victim from leaving, as many victims will stay rather than risk the child living alone with the abuser. In cases where the victim does leave, obtaining joint custody allows the batterer continued legal access to control and abuse both the adult and child victims. A presumption of joint custody will only make these tactics easier to access and a more effective threat to leaving an abuser.
- ❖ **Joint custody requests are also made as a means to avoid (or lessen) payment of child support.** This often results in decreased resources for children, particularly in the many joint custody cases where one parent remains or becomes the primary caretaker and bears the majority of the expenses, despite the court order presuming expenses will also be shared.
- ❖ Joint custody is more expensive for everyone, as it presupposes the maintenance of two households with sufficient room and necessities for the children. **Joint custody creates particular hardships for low-income families**, especially for TANF recipients. TANF requires a parent to have custody the majority of the time in order to be eligible for many benefits.

HB 4691 is opposed by numerous professional organizations with expertise on children and family dynamics. Notably, the following groups have joined MCEDSV in publicly opposing this bill: National Association of Social Workers, Michigan Chapter; Michigan State Bar Association, Family Law Division; Michigan Judges' Association; Michigan Poverty Law Program, Family Law Task Force; Battering Intervention Services Coalition of Michigan; Michigan Domestic and Sexual Violence Treatment Board.

Many victims of domestic abuse depend on our family court laws for protection. **The radical changes to Michigan's custody laws proposed by HB 4691 would have dangerous consequences, including making it more difficult for victims to leave abusers and create safe and secure futures for their children and themselves.**



MCEDSV is a statewide organization representing a network of more than 70 domestic and sexual violence programs and over 200 allied organizations and individuals. Incorporated in 1978, MCESDV is honored to serve as a voice for survivors of domestic and sexual violence, programs serving survivors, and communities envisioning an end to domestic and sexual violence in Michigan.