

Michigan House Bill 4691 would create a mandatory presumption of joint legal and physical custody in all family court cases brought under Michigan's Child Custody Act. This bill, if passed, would abandon "the best interests of the child" as the starting point in custody cases, replacing it with a one-size fits all automatic presumption of joint custody. This presumption would apply regardless of family circumstances or previous parental behavior. HB 4691 would most directly impact cases where parties cannot agree. A large number of those cases involve serious child safety concerns, such as domestic violence, untreated substance abuse, or untreated mental health issues.

Joint custody currently receives special and preferential consideration under Michigan law. Michigan statute requires that the court 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. Additionally, our state's existing parenting time statute contains a presumption, which may only be overcome by "clear and convincing evidence," stating that courts shall grant parenting time to promote a strong relationship between the child and each parent. These laws already encourage joint custody and shared parenting.

The research being used to support HB 4691, claiming "positive outcomes in joint custody cases," fails to distinguish between voluntary and court-mandated custody arrangements. In fact, there is no research that concludes mandated joint custody leads to positive outcomes for children. Research and experience indicate that cooperation, compromise, communication, and safety are all necessary components to a positive joint custody arrangement for children. These components are not present in every situation. They certainly do not exist where one party has a history of abuse against the other. Joint custody does not improve parental cooperation in high conflict cases. To the contrary, it has been well documented that joint custody actually increases conflict in these situations, resulting in greater trauma and harm to the child.

The assertion that HB 4691 contains sufficient protections for victims of domestic violence is false. As currently written, these provisions are complex, convoluted, contradictory, and inadequate. An abuser will frequently use the threat of obtaining custody to prevent the victim from leaving. And many victims stay rather than risk their children living alone with an abuser. If the victim does leave, the benefit of such a presumption would empower and support the perpetrator rather than the victim. To be clear, this bill does not protect victims of domestic and sexual violence. It will put them and their children at great risk.

Mandating a presumption of joint custody, especially in disputed cases, would be contrary to the best interests of Michigan's families. It would also be extremely dangerous for child and adult victims of domestic violence.

All Michigan children and families deserve individual consideration in disputed custody cases. Victims of domestic and sexual violence deserve protection in our family courts.
Oppose HB 4691.

Kathy Hagenian is the Executive Policy Director for the Michigan Coalition to End Domestic and Sexual Violence. 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.