

Public Policy Position
HB 5460

The Family Law Section is a voluntary membership section of the State Bar of Michigan, comprised of 2,589 members. The Family Law Section is not the State Bar of Michigan and the position expressed herein is that of the Family Law Section only and not the State Bar of Michigan. To date, the State Bar does not have a position on this item.

The Family Law Section has a public policy decision-making body with 21 members. On November 6, 2021, the Section adopted its position after a discussion and vote at a scheduled meeting. 16 members voted in favor of the Section's position, 0 members voted against this position, 0 members abstained, 5 members did not vote.

Oppose

Explanation:

These bills (5459 and 5460) would amend the Child Custody Act to add a presumption that it is presumed to be in the best interests of the children to have equal or approximately equal parenting time, which can only be rebutted by clear and convincing evidence placed on the record that it is not in the children's best interest. The bills also require family court judges to make findings and conclusions of law in writing. The Section perceives that these bills are parent-focused rather than child-focused. Presumptions are not appropriate in custody cases where facts vary substantially from case-to-case. The bills assume both parents were equal caregivers prior to the filing of the divorce or custody action. This is often not the case, including, but not limited to, cases of unmarried individuals or paternity cases, where often only parent has been involved in the child rearing and parenting for the child's entire life. Yet these bills would create a presumption of equal parenting time, forcing the custodial parent to prove by clear and convincing evidence that it is not in the child's best interests to do so. These bills would all but eliminate the concept of an "established custodial environment", which is foundational in child custody determinations. There was also concern that the requirement that the ruling be "in writing" will considerably slow down custody decisions when a prompt ruling is often imperative. The ability to make findings and issue a ruling that is read into the record is often beneficial or even critical to the safety and welfare of a child, and accomplishes the same goal of having a record for appellate purposes. There was also continued support for a dedicated family court (as opposed to having a Family Division of the Circuit Court), which will lead to better outcomes by having judges run specifically for family court seats, with the intention of staying there long-term, rather than assigning new judges to the family division before ultimately moving on. Having judges with a background in family law and a desire to serve as a dedicated family court judge will lead to better

outcomes for families. The current Child Custody Act is child-focused and gender neutral. The heavy-handed approach of creating presumptions of equal parenting time is opposed by the Section.

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