

DOMESTIC VIOLENCE COMMITTEE
Respectfully submits the following position on:

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HB 4120

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The Domestic Violence Committee is comprised of members appointed by the President of the State Bar of Michigan.

The position expressed is that of the Domestic Violence Committee. The State Bar of Michigan has authorized the Domestic Violence Committee to advocate its position.

The State Bar position on this matter is oppose.

The total membership of the Domestic Violence Committee is 18.

The position was adopted after a discussion and vote at a scheduled meeting. The number of members in the decision-making body is 18. The number who voted in favor to this position was 10. The number who voted opposed to this position was 0.

Report on Public Policy Position

Name of committee:

Domestic Violence Committee

Contact person:

Rebecca Shiemke

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Bill Number:

[HB 4120](#) (Rogers) Family law; child custody; joint custody in every custody dispute between parents; mandate except in certain circumstances. Amends secs. 5 & 6a of [1970 PA 91](#) (MCL [722.25](#) & [722.26a](#)).

Date position was adopted:

March 14, 2013

Process used to take the ideological position:

Position adopted after discussion and vote at a scheduled meeting.

Number of members in the decision-making body:

18

Number who voted in favor and opposed to the position:

10 Voted for position

0 Voted against position

0 Abstained from vote

8 Did not vote

Position:

Oppose

Explanation of the position, including any recommended amendments:

Mandatory joint custody requires ongoing communication between parents and thus compromises the safety of battered women by providing the batterer with continuing opportunities for control, abuse and violent contacts leading to further victimization of the victim and children. Children are adversely affected when they witness domestic violence or are present in homes characterized by violence. A presumption of joint custody gives batterers an advantage in a custody dispute and unfairly burdens the victim of domestic violence with rebutting the presumption. The standard to prove that a parent is unfit is that standard used in parental termination cases and imposes a very high burden of proof on the fit parent.

More generally, the presumption does not allow the trier of fact to consider all the issues in a particular family or consider cases on their individual facts. The bill will raise the level of conflict between parents at the initial filing

because it will require a parent who doesn't believe that joint custody is in the child's best interests to raise allegations of unfitness against the other parent. This practice could increase the risk of harm to domestic violence survivors.

The text of any legislation, court rule, or administrative regulation that is the subject of or referenced in this report.

<http://legislature.mi.gov/doc.aspx?2013-HB-4120>

FOR LEGISLATIVE ISSUES ONLY:

This position falls within the following Keller-permissible category:

- The regulation and discipline of attorneys**
- ✓ **The improvement of the functioning of the courts**
- ✓ **The availability of legal services to society**
- The regulation of attorney trust accounts**
- The regulation of the legal profession, including the education, the ethics, the competency, and the integrity of the profession.**

Keller-permissible explanation:

a. The bill would establish a judicial presumption with a high burden on a party to overcome it, which limits court discretion.

b. The bill would affect litigants' access to legal services and the courts by establishing a presumption that limits and burdens a litigant's ability to challenge joint custody.