

**Report on Public Policy Position****Name of section:**

Family Law Section

**Contact person:**

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[HB 5114](#) (Calley) Family law; child custody; joint custody; mandate in every custody dispute between parents except in certain circumstances. Amends sec. 6a of [1970 PA 91](#) (MCL [722.26a](#)).

**Date position was adopted:**

March 6, 2010

**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:**

21

**Number who voted in favor and opposed to the position:**

19 Voted for position

0 Voted against position

0 Abstained from vote

2 Did not vote

**Position:**

Oppose

**Explanation of the position, including any recommended amendments:**

HB 5114 is the current incarnation of the mandatory equal physical custody bill, which is also now a ballot initiative. The bill mandates equal physical custody to parents who live in or near the same school district, unless one parent is proven by clear and convincing evidence to be unfit, unwilling or unable to care for their child. The court may not consider the best interests of the child unless a parent is found, clearly and convincingly, to be unfit, unwilling or unable to care for the child. This is currently the standard for entirely terminating parental rights for neglect or abuse, yet the bill sets this as a standard for any consideration of the children's interests.

The committee believed that the focus in custody cases should remain the best interests of the children. Good parents usually substantially share parenting in a variety of schedules, depending on their children's needs and the parents' availability. HB 5114 mandates one result for all families, and not a result that the majority of families work out for themselves. The bill does not help good parents, who end up with substantially shared parenting time under

current law, but it really benefits bad parents. The court would no longer be able to control malicious or dangerous parenting. As long as a parent could not be proven unfit, they would be entitled to equal time with their child no matter how poor their care was, no matter how much they sought to damage the child's relationship with the other parent, no matter how distraught, unhappy or even suicidal the children became under their care.

So why would an uninvolved or uncaring parent insist on their right to equal time? The arrangement would vastly reduce their child support, and in many instances they would be able to obtain support from the parent who was the primary nurturing parent. HB 5114 gives tremendous leverage to a bad parent, by giving them an almost absolute right to 50% of the parenting time. A bad parent can refuse to agree to any schedule that is in the child's best interest, unless their financial demands are met. This could include a radically skewed property division, exorbitant alimony, or concessions in child support.

The Family Law Section opposes this bill.

**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?2009-HB-5114>