Public Policy Position
HB 5211 – HB 5213

The Family Law Section is a voluntary membership section of the State Bar of Michigan, comprised of 2,621 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 21, 2025, 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, 2 members abstained, 3 members did not vote.

Oppose

Explanation:
HB 5211, HB 5212, and HB 5213 are this term's version of the mandatory joint physical custody bill that would upset decades of law that prioritizes the best interests of each child. Instead, they mandate joint decision-making regardless of the evidence, and would create a right for a minimally acceptable parent to equal parenting time regardless of the effect on the child. The Family Law Section believes that the quality of parental decision-making and hands-on parenting matters to children and rewarding absent and unengaged parents with the lower child support that comes with a presumptive right to equal parenting time is not sound public policy. Therefore we **OPPOSE** these bills.

I. The Family Law Section believes that shared decision making for all parents is not in the best interest of children or the court system.

- The proposals will delay critical decisions where parents have an established history of not agreeing on medical, educational, and other decisions for their child because it does not allow any exception to joint custody, defined as decision-making authority as to the important decisions affecting the health, safety, education, religion, and welfare of the child." This is the same concept currently labeled "joint legal custody" in caselaw.

- Decades of experience by Family Division judges, attorneys, appellate judges, and others reveals that there are just some co-parents who cannot or will not cooperate and generally agree about what is best for their child. In those cases, the court currently

has two options – to conduct a series of evidentiary hearings and make each the decision for the family or to award one parent sole legal custody. That second option is removed in this proposed legislation.

II. The Family Law Section believes that the focus on what is currently known as "physical custody" and parenting time decisions should remain the best interest of each child. Without that being the priority, a myriad of problems are likely to occur, such as:

- The developmental needs of the child involved in the case are ignored. These needs vary widely between infants and teens as well as among different children, treating all children (and all parents) as if they were not unique individuals.

- The bond or attachment between the child and the parent to whom they are closely bonded or attached is disrupted by a radical change in their custodial environment, causing insecure attachments with all the consequences thereof;

- Equal parenting time encourages "parentification" of older children, who must step into the role of the consistent presence for their younger siblings in the home of the parent who was previously less hands-on or uninvolved;

- Equal parenting time disregards the distance between parents' homes

    - Distance often makes travel for school burdensome on the child;

    - Distance may require change of school from semester to semester if daily travel is not realistic;

    - Distance can prevent a child from participating in extracurricular activities that are inconvenient for one parent, or require them to select activities in between the parents' homes without their friends and school-mates

    - Distance impairs a teen's ability to work part time

- Reduces the child's ability to enjoy the consistent support of the hands-on parent for academic and social support, and for school-related activities;

- Excessive time with an abusive parent exposes a child to increased likelihood of domestic abuse, and being required to participate in coercive control when the child is used as a pawn;

- Equal time in both homes exposes a child to more irresponsible parental behaviors by requiring them to spend more time in the home of a parent who has, for example, substance use disorder or anger management issues;

- Equal time in both homes reduces the likelihood of consistent medical care, therapies, and counselling;

- Equal time in both homes reduces the resources available to provide for the cost of the child's activities since increased parenting time reduces the child support obligation without a corresponding obligation to fund the child's needs beyond food, clothing, and shelter; and

- Equal time in both homes increases the temptation of a parent to engage in alienating behaviors to secure a child's preference in an effort to elicit or defend against "clear and convincing evidence" against the other parent or, conversely, to make allegations of egregious behavior.

III. Presuming 50/50 parenting time also negatively impacts the parent who has the history of dedicated childcare.

- Where clear and convincing evidence is available, the parent still has to go through the time and expense of a trial to present the evidence.

- Even if one parent does not appear and participate in the case, the parent still has to go through the time and expense of an evidentiary hearing to present the evidence.

- The presumption gives a less-involved parent significant leverage in negotiations to resolve divorce cases – by letting them insist on unfair property divisions or spousal and/or child support terms in order to agree to a parenting time schedule the dedicated parent knows is best for the child.

- The presumption allows a controlling and/or abusive co-parent to continue their mistreatment of the dedicated parent.

- Studies in states that have adopted a 50/50 presumption show that it incentivizes abused parents to stay in those relationships so they can be there to protect their children from the abusive partner.

- Engaging in efforts to protect a child by trying to defeat the presumption with a clear and convincing evidence standard in place is more expensive for the parent seeking that protection.

IV. Bias in parenting time awards is not a widespread problem.

- There have been a small number of vocal individuals who have repeatedly brought this issue forward, based on practices that used to be widespread and are becoming increasingly rare. Good parents almost always share parenting by agreement. The days of "alternating weekends and every Wednesday evening" are over – unless there is a child-focused reason for this type of schedule in a particular family. The fact that more parents how share parenting after their relationship ends is a reflection of the societal changes that have more parents involved with their children during the relationship. Forcing children into a 50/50 arrangement when that was not their experience before the parental break-up is not warranted.

- Also, while it is true that studies support the conclusion that children do better when their parents share custody, none of those studies involved mandatory or presumptive 50/50 parenting time. Rather, all of the studies define "shared parenting" as a situation where a child spends at least 25% or 30% of the time with each parent (or 91-120 overnights per year, 4 or 5 every 2 weeks).

- The phrase "approximately equal parenting time" has not been defined.

V. HBs 5211, 5212, and 5213 contain other provisions that will have negative consequences to the judiciary.

- It requires "best interest" evidentiary hearings in all custody cases where the agreed resolution is not equal or approximately equal parenting time. Those parents who care and cooperate enough to resolve their cases in a child-focused way for something other than 50/50 would be put through the time and expense of a hearing – and undoubtedly a significant number of additional family division judges and referees will need to be hired and provides with courtrooms and staff.

    - The 2023 statistics show that over 47,000 cases involving children that did or could have a custody component were filed in Michigan. Almost 28,000 were dismissed, leaving about 19,000 that were decided. Bench verdicts were issued in only 321 of them or 1.6% and virtually all the rest were settled.

    - The cost of additional judicial resources to conduct hearings in the cases where the best interest of the child is not to be treated like a bank account to be divided in half is going to be astronomical and the delay in getting cases resolved (because the necessary resources won't be provided) will hurt all families who need our court system.

    - If that weren't enough, there are uncounted numbers of post-judgment motions that implicate custody and parenting time that would also

- The HB 5211 requirement that all best interest decisions include written findings of fact and conclusions of laws would be a massive amount of additional work for the Family Division judges who are already significantly burdened by large dockets which are made more difficult by the large percentage of self-represented litigants who do not present evidence in a way that facilitates the extensive analysis judges are required to undertake in decision-making.

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