

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

Judicial Conference Section

**Contact Person:**

Hon. Milton Mack

**E-mail:**

mmack@wcpc.us

**Bill Number:**

[HB 4564](#) (Steil) 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:**

December 7, 2007

**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:**

27

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

23 Voted for position

0 Voted against position

0 Abstained from vote

4 Did not vote

**Position:**

Oppose

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

The Judicial Conference opposes HB 4564 which would require judges to apply a presumption of joint custody in contested disputes between parents. Under current law, trial courts are already mandated to consider joint custody at the request of either party. Further, custody decisions must be analyzed within the framework of 12 factors focused on the "best interest of the child". As a result, the decision-making focuses on a child's needs rather than a parental preference. This distinction is important because there are times, particularly in high conflict custody disputes, when joint custody is not best for a child. Although the bill provides for an exception when one parent is "unfit", this threshold is misleading for several reasons. First, "unfit" is not defined in the Child Custody Act. Second, "unfit" as defined under the Probate Code, sets forth procedures to protect a child from potentially harmful behaviors. Finally, the types of behaviors enumerated under the Probate Code are not entirely reflective of the types of behaviors which are--and should be--barriers to joint custody. When parents cannot agree on how to prioritize their child's needs above their own, forcing a split down the middle, as suggested by HB 4564, ignores

both the underlying dysfunction and the best interest of that child. Therefore, the Judicial Conference must oppose HB 4564.

**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?2007-HB-4564>

**FOR LEGISLATIVE ISSUES ONLY:**

- ✓ This position falls within the following Keller-permissible category:
- ✓ The regulation and discipline of attorneys NO
- ✓ The improvement of the functioning of the courts YES
- ✓ The availability of legal services to society NO
- ✓ The regulation of attorney trust accounts NO
- ✓ The regulation of the legal profession, including the education, the ethics, the competency, and the integrity of the profession. NO

**Keller-permissible explanation:**

The proposal would impair the ability of judges to determine the best interests of children in child custody disputes.