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Proposed change to parenting time has both sides up in arms

The citizens of Illinois have important decisions to make this fall. The governor's race and state and federal elections have put Illinois and its residents under a national spotlight.

Family law attorneys are not estranged from making big decisions. Nor are they surprised when the General Assembly could make new decisions affecting their practice. Recently, the Illinois Marriage and Dissolution of Marriage Act has undergone several significant changes. Both the maintenance statute and child support calculations have undergone renovation.

On April 11, a committee voted to send HB 4113 to the House floor for a full vote. However, the bill was never read for a third time, so in turn was never voted on by the full House.

Currently, the bill is in the Ruling Committee awaiting further action or inaction.

HB 4113 could require the family law community to prepare for more adaptation as far as the marriage act is concerned. HB 4113 attempts to make significant changes to the act's parenting time and decision-making provisions.

Currently, the marriage act lays out a list of factors for the courts to consider when deciding how to allocate parenting time in accordance with the child's best interest. Now, a judge's decision to restrict parenting time is based on a "preponderance of the evidence" standard.

The proposed changes create a threefold change in the marriage act's current interpretation. First, HB 4113 creates a legal presumption that equal (i.e. 50/50 split) parenting time is in a child's best interests.

Second, a judge would have to find by "clear and convincing" evidence that a parent's parenting time should be restricted. This is a higher evidentiary standard than the marriage act currently provides for.

Third, the proposed changes would remove in its entirety the provision "Nothing in this [a]ct requires that each parent be allocated decision-making responsibilities."

This notion of shared-parenting time has been on the rise across the United States. More than 35 states have decided to presume equal parenting time between the parties at the start of a dissolution of marriage action. On April 26, Kentucky became the first state to pass a law establishing a legal presumption of equal parenting time.

Proponents of the proposal

Many fathers' rights advocacy groups have been involved in drafting and lobbying for HB 4113. The advocacy efforts recognize the need to preserve the strong bonds between children and their parents. These advocacy groups take the position that equal parenting time is crucial to a child's emotional, mental and physical health.

These advocates believe that the current legislation and interpretation by the courts favors mothers when allocating parenting time. Many in this group also see the current child support obligations as overly burdensome. A lack of gender equality has been cited to explain the discrepancies in the allocation of parental responsibility.

Advocacy groups further argue that the "preponderance of the evidence" standard is too low in determining whether to restrict parenting time. They believe a higher evidentiary standard should be used when courts are potentially restricting a parent from seeing his or her child. Because a parent has a constitutional, fundamental right to parent, advocacy groups believe the only adequate standard is that of "clear and convincing evidence."

COLLABORATIVE CONCEPTS

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Fathers have shared personal stories about their parenting time being terminated to provide pathos to the argument. Furthermore, advocacy groups are using statistical analyses of the adverse effects on children when they do not have involved fathers. This data shows that when fathers are less involved, children are less of a likely to succeed academically, socially and emotionally. The main focus of these tactics is to implement HB 4113 into Illinois law.

Opponents of the proposal

Currently, a judge must use discretion in analyzing a list of factors to determine allocation of parenting time. By balancing the child's best interest using this list, a judge can analyze each individual family on a case-by-case basis. HB 4113 opponents warn that stripping away this subjectivity would harm the ability of a judge to look at each family contextually.

Since no two families are alike, opponents of the law express concern about this statutory change. Because of such, several mental health professionals and domestic violence victim advocacy groups contend that this one-size-fits-all approach is impractical.

These professionals also believe the proposed change is unnecessarily burdensome on low-income families and domestic violence survivors, in particular.

Although a 50/50 parenting time schedule may benefit some children, it may be harmful to others. While some children easily transition between two separate households, others are better off living with more continuity.

Opponents to HB 4113 worry that the objectivity imposed by the law will not allow for each family unit to be viewed separately based upon a child's best interest.

The bill also raises concerns from its opposition that parents and children will be burdened to endure exhausting and sometimes unrealistic travel. Children are often involved in extracurricular activities, especially as they grow older. If parents do not live close to one another, a child's well-being may be burdened by the legal obligation to spend half of their time in each household.

Yet another argument against HB 4113 is a parent's work schedule.

A 50/50 parenting schedule might unnecessarily burden each parent and their ability to work, should they be considered fit and proper to receive 50 percent of the parenting time. If a parent works full-time or more, the child may be forced to spend time with alternative caregivers, rather than spending time with one of their actual parents.

A 50/50 split of parenting time has also been deemed to be devastating to survivors of domestic violence. Further, advocates for domestic violence survivors have aired this concern.

They fear this proposed amendment would allow perpetrators of

violence to gain an upper hand in divorce proceedings by placing an unreasonable burden on domestic abuse survivors. This unreasonable burden would be seen by survivors having to rebut the presumption that equal parenting time is not in the child's best interests.

Opponents additionally argue the "clear and convincing evidence" standard is too high and could jeopardize the mental and physical well-being of children.

It is often too difficult to prove how a child is harmed by witnessing domestic violence rather than being a direct victim of such violence. The higher evidentiary standard could put children in a situation where they would end up being harmed more than benefited.

The presumption of equal parenting time has been said to benefit the parent's needs instead of the child's. By presuming each parent should have equal time, instead of balancing factors to determine whether such is appropriate, it puts a parent's right to parent high and above a child's best interest.

Moving forward

More than 6,000 Illinois residents have voiced their opinions on HB 4113. In doing so, they have signed witness slips in favor or opposition of the bill. As the political landscape heats up in Illinois, so will the debate surrounding HB 4113. Advocacy groups supporting each position will continue to lobby on behalf of their beliefs.

To voice your opinion, go to the General Assembly website, where you can search for your district representatives and senators and their contact information.

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