

WRITTEN TESTIMONY SUBMITTED TO THE HOUSE

JUDICIARY SUBCOMMITTEE ON FAMILY LAW

ON HOUSE BILL 1397

BY

THE PENNSYLVANIA PSYCHOLOGICAL ASSOCIATION

November 20, 2019

Written Testimony Before the House Judiciary Committee
on House Bills 1397

Good morning, my name is Ann Marie Frakes and I am the Executive Director of the Pennsylvania Psychological Association. I first want to thank Representative Kauffman and Representative Briggs and the other members of the House Judiciary Committee for allowing the Pennsylvania Psychological Association to provide written testimony on this bill dealing with child custody. The Pennsylvania Psychological Association has an active child custody committee that cooperates with family law attorneys, judges, and other interested parties in trying to find effective alternatives to custody litigation, and ways to optimize the benefits to children when litigation cannot be avoided.

Our testimony today deals with a presumption of joint legal custody.

Presumption of Custody

House Bill 1397 (§5327) states that, “In any action regarding the custody of the child between the parents of the child, there shall be a presumption, rebuttable by clear and convincing evidence, that shared physical and legal custody and equal parenting time is in the best interest of the child. If a deviation from equal parenting time is warranted, the court shall order a parenting time schedule that maximizes the time each parent has with the child, to the extent consistent with the child's best interest.”

The position of the Pennsylvania Psychological Association is that there should be no presumption of any particular custody arrangement. Because of the unique characteristics of each family, a parenting arrangement needs to be made that matches of

the abilities of the parents with the developmental needs of the children to ensure the healthy growth and adjustment of the children.

It is true that data from several studies show that many children do well in shared custody arrangements, and often do better than children living in sole legal custody arrangements. However, these results should not be interpreted to mean that shared custody arrangements necessarily create better conditions for all children. Instead, research has shown that shared custody is most effective when parents communicate respectfully with each other for the welfare of their children, and when they do not expose the children to ongoing hostility, conflict or violence. Most likely it is this ability to communicate respectfully and the willingness to shield their children from conflict that gives judges the confidence to order shared custody with a particular family. We should not assume that shared custody necessarily helps make parents better parents, or that it automatically leads to better adjustment in the children. In fact, children exposed to ongoing parental conflict show poorer adjustment in many areas of their lives.

Most custody orders are reached by agreement between the parents. It is a sign of increased conflict when the parents cannot agree and must ask for the Court to make a decision. Conflict between parents puts the children in danger of psychological damage, and at risk for physical harm. A statutory presumption of custody will put many children at risk. It is important to have the Court evaluate the best interests of the child who comes before them, rather than put him or her in danger of harm because of statutory rules.

– Thank you for the opportunity to present our view on this important issue. Once again, it is our position that there should be no presumption of joint legal custody.