

BARBARA J. HART
JUSTICE CENTER

A project of the Women's Resource Center

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House Committee on Judiciary (by email)

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Dear Members of the House Judiciary Committee:

I write to respectfully request that the House Judiciary Committee oppose HB 1397.¹ Although “equal parenting time” presumptions are cited as being beneficial to children and fair to parents²,

¹ This bill will amend Pennsylvania custody law by creating a rebuttable presumption that “equal parenting time is in the best interest of the child.” See proposed Pa.C.S. § 5227(a). Additionally, when a court deviates from equal parenting time, the court must “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.” *Id.*

the proposed Bill is both unnecessary given current Pennsylvania law and practice and, more pertinently, extremely dangerous for victims of intimate partner violence³ (IPV) and their children. Proposed HB 1397 will have the unintended negative consequence of placing children at more risk of physical and emotional harm.

I have been the Legal Director of the Barbara J. Hart Justice Center⁴ since 2011. I have litigated countless custody cases, am well-versed in Pennsylvania family law practice, and have expertise in representing survivors of IPV. I have also presented at numerous local, state, and national conferences on topics relevant to family law and IPV.

In my opinion, HB 1397 contravenes its intended purpose of benefiting children in contested custody cases, such as cases involving IPV. As such, the bill would be a major setback for Pennsylvania children.⁵

The Bill Would Harm, Rather than Benefit, Children in Custody Cases

Custody cases requiring litigation are undeniably contentious. Most litigated custody cases, however, are more than “contentious” or “high conflict cases.” Litigated cases frequently involve intimate partner violence (IPV). “Recent research shows that approximately seventy five percent of the contested cases that require judicial intervention are cases in which there is a history of domestic violence.”⁶ Any presumption involving equal parenting time, then, most directly impacts cases involving IPV. Most commentators and researchers agree, however, that

² “Proponents of [joint physical custody] have developed an appealing theme to promote a presumption, advocating the benefits of fairness of having both parents equally engage in their children’s lives under a ‘shared parenting’ or ‘co-parenting arrangement.’” Gabrielle Davis, Kristine Lizdas, Sandra T. Murphy, & Jenna Yauch, *The Dangers of Presumptive Joint Physical Custody*, The Battered Women’s Justice Project, 2 (May 2010).

³ Though intimate partner violence will be used throughout this letter the term domestic violence is commonly used in legislation and in the legal system. Intimate partner violence is when a person engages in a course of coercive and controlling behaviors such as physical and sexual violence, financial exploitation and control, psychological and emotional abuse, and the use of threats and intimidation to control one’s partner. “Battered women have been subjected to ongoing strategy of intimidation, isolation, and control that extends **all areas of the women’s life, including sexuality, material necessities, relations with family, children, friends, and work.** Sporadic, even severe, violence makes this strategy of control effective. **But the unique profile of “battered woman” arises as much from deprivation of liberty implied by coercion and control as it does from violence-induced trauma.**” Evan Stark, *Symposium on Reconceptualizing Violence Against Women by Intimate Partners: Critical Issues: Re-Representing Woman Battering: From Battered Woman Syndrome to Coercive Control*, 58 ALB. L. REV 973, 986 (1995).

⁴ The Barbara J. Hart Justice Center, a project of the Women’s Resource Center, is a non-profit organization which provides free civil legal representation to low-income survivors of domestic and sexual violence.

⁵ Merle H. Weiner, Philip H. Knight Professor of Law, astutely contended that Oregon proposed SB 318, which proposed equal parenting time, was unnecessary due to existing law and that joint custody presumptions negatively impact children and victims of IPV in her written testimony for the Oregon Senate Committee on Judiciary, March 6, 2019. Oregon decided not to pass the proposed bill.

⁶ Judith G. Greenberg, *Domestic Violence and the Danger of Joint Custody Presumptions*, 25 N. ILL.U.L.REV. 403, 411 (Summer 2005).

joint custody – however desirable it is for some families – is likely to be extremely problematic for families in which one parent is violent or otherwise abusive toward the other parent. In these instances, joint custody is likely to facilitate the continuation of the violence and abuse because it is more likely to require the parents to interact with each other about the children.⁷

In the context of cases involving IPV, parental equality does not exist because of the very nature of IPV. Rather, a parent who has exposed (and continues to expose) a child to his on-going abuse has already demonstrated a degree of parental unfitness and uncooperativeness. As such, an equal parenting time presumption functions to obscure IPV and the negative effect it has on children.

A. The Bill Will Elevate Equal Parenting Time Above Best Interest Factors, Including Domestic Violence⁸

An equal parenting time presumption “starts with the legal conclusion that JPC⁹ is in the best interest of the child.”¹⁰ Problematic with this conclusion is that it “mandates a finding that JPC is in the best interest of the child.”¹¹ Research, however, has demonstrated that shared parenting arrangements can be harmful to children, particularly where litigation is protracted, embattled in conflict, and/or IPV is present.¹² “The research suggest, among other things, that post-separation shared parenting arrangements can negatively impact children’s emotional and physical development, particularly where the parents are engaged in entrenched conflict.”¹³

In starting with a set legal conclusion, an equal parenting time presumption focuses more on the presumption than on the actual best interest and individualized needs of the child.¹⁴ Under current Pennsylvania law, a court determines custody by considering the best interest of the child.¹⁵ No factor that the court considers when determining custody is given more weight than any other factor unless it affects the safety of the child.¹⁶ Generally speaking, then, the sixteen statutory factors that a court considers when determining the best interest of the child are evaluated equally. A presumption of equal parenting, which can only be rebutted by clear and convincing evidence, however, tips the scale favoring an outcome of shared custody.¹⁷ This results in equal parenting time being given more weight than the court considering the best

⁷ *Id.* at 407.

⁸ *See Merle, supra* note 5.

⁹ JCP is “joint custody presumption” which is equivalent to “equal parenting time.”

¹⁰ *Davis et. al., supra* note 2, at 6.

¹¹ *Id.*

¹² *Id.*, at 8-9. *See infra* Section B and C for discussion on harmful effect exposure to IPV has on children.

¹³ *Id.* (citing study conducted by Eleanor E. Maccoby & Robert H. Mnookin on joint custody families.)

¹⁴ *Id.* at 9.

¹⁵ 23 Pa.C.S. § 5329.

¹⁶ *Id.* Though IPV affects the safety of a child it is often given little weight in judicial decisions unless the minor children were directly physically or sexually abused.

¹⁷ *Merle, supra* note 5, at 3.

interest of the child.¹⁸ This is a dangerous and harmful result, as discussed in Parts B and C, for families experiencing IPV.

In fact, unless a parent challenges the presumption, “courts do not have to think about the child at all.”¹⁹ Yet, when a parent challenges the presumption to protect herself and the minor child it could actually back-fire on her.²⁰ One of the custody factors that Pennsylvania considers is which parent is likely to encourage continuing contact with the other party.²¹ A court may infer that when a parent is challenging the presumption, she is seeking to limit contact between the parent and child:

A parent who, in good faith, seeks to challenge the JCP presumption implicitly communicates to the court a belief that frequent and continuing contact between the child and the other parent is not good for the child. . . . Consequently, the very act of challenging the presumption can create the perception, whether real or imagined, that the challenging parent would prefer to limit, rather than encourage, contact with the other parent. That perception, in turn, can be – and often is - used against the challenging parent in the court’s best interest of the child analysis. Since a good faith challenge to the JCP presumption represents an effort to protect the child, the very act of protection can have the ironic effect of placing the child at greater risk of harm. **Consequently, the rebuttal to the JCP presumption works *worst* when the child needs it *most*.**²²

B. Effect of IPV on Children

An equal parenting presumption will have the most harmful and negative impact in families experiencing IPV. Violence against women and children’s exposure to this violence is a global epidemic.²³ One (1) in four (4) women in the United States experience physical violence, contact sexual violence and/or stalking by an intimate partner during their lifetime and reports some form of intimate-partner violence during her lifetime.²⁴ Studies estimate that over three (3)

¹⁸ Mele, *supra* note 5, at 3. “SB 318 requires a parent to rebut the presumption of equal parenting time by clear and convincing evidence. That formulation gives equal parenting time a thumb on the scale that no other factor...receives.” (Proposed SB 318 was an equal parenting time presumption bill which Oregon ultimately rejected). A joint custody presumption “treats every case the same, regardless of the developmental needs of the children or the level and context of parental conflict. Davis et al., *supra* note 2, at 9.

¹⁹ Davis et. al., *supra* note 2, at 7.

²⁰ *Id.* at 10. The terms she/her will be used throughout this letter for victims of IPV because IPV is a gendered crime, impacting more women than men.

²¹ 23 Pa.C.S. 4328(a)(1).

²² Davis et. al. *supra* note 2, at 10-11. (emphasis added)

²³ The 2012 National Task Force on Children Exposed to Violence found that of the 76 million children in the United States, an estimated 46 million are exposed to violence, crime and abuse on an annual basis. Exposure to domestic violence was one of the forms of violence highlighted in the report. Report of the Attorney General’s National Task Force on Children Exposed to Violence, December 12, 2012, <https://www.justice.gov/defendingchildhood/cev-rpt-full.pdf>, last visited May 19, 2019.

²⁴ *Id.* at 8. “Contact sexual violence is a combined measure that includes rape, being made to penetrate someone else, sexual coercion, and/or unwanted sexual contact” *Id.* at 7. “Intimate partner violence-related impact includes

million children are exposed to IPV each year.²⁵ Exposure to IPV includes, but is not limited to, children directly observing the violence, hearing their mother screaming for help or crying; observing the aftermath of the violence such as mother's injuries, torn clothing, broken or damaged items; hearing their father degrade, belittle and/or threaten their mother.²⁶ Additionally, approximately one-half (1/2) of children living in households with on-going abuse are also physically assaulted by their father.²⁷

One study that interviewed 54 children and 48 abused mothers found that 85% of the children were eyewitnesses to the abuse, 52% were physically abused, 11% were sexually abused, 60% were emotionally abused, 31% experienced controlling behavior, and 58% of the children overheard the violence.²⁸ In addition 31% of the families reported that the parent who was abusive also utilized controlling behaviors against their children.²⁹ Controlling behaviors included not allowing children to play, depriving children of sleep, and holding the children hostage.³⁰

Children exposed to domestic violence often develop post-traumatic stress disorder, resulting in above-average risk for self-destructive behaviors such as suicide, substance abuse and sexual promiscuity.³¹ Children also "tend to show negative effects on a range of measures of mental health... and to show significantly elevated rates of behavior problems, hyperactivity, anxiety, withdrawal and learning difficulties."³² They are more frequently absent from school and suspended for behavioral problems.³³ "Negative emotional effects from exposure to domestic violence can persist into adulthood, leading to higher rates of emotional distress and lower rates of successful social connection...and higher rate of depressive symptoms."³⁴ Additionally, children exposed to IPV are "twice as likely to have juvenile court involvement and three times

experiencing any of the following: being fearful, concerned for safety, injury, need for medical care, needed help from law enforcement, missed at least one day of work, missed at least one day of school." *Id.* at 11. IPV is the leading cause of injury for women, even more common than car accidents, muggings and rapes combined; and an estimated forty-one percent (41%) of murdered women are killed by their intimate partner. Nancy Ver Steegh, *Children in the Law Issue: The Silent Victims: Children and Domestic Violence*, 26 WM. MITCHELL L. REV. 775, 778-779 (2000).

²⁵ Amy Haddix, *Unseen Victims: Acknowledging the Effects of Domestic Violence Through Statutory Termination of Parental Rights*, 85 CALIF. L. REV. 757, 760 (1996).

²⁶ Steegh, *supra* note 24 at 784. See also Leslie D. Johnson, *Caught in the Crossfire: Examining Legislative and Judicial Response to the Forgotten Victims of Domestic Violence*, 22 LAW & PSYCOL. REV. 271, 273-274.

²⁷ *Id.* at 779.

²⁸ Davis et. al, *supra* note 2, at 18-19. (citing, MCGEE, CHILDHOOD EXPERIENCES OF DOMESTIC VIOLENCE, 15 (2000)).

²⁹ *Id.* at 19.

³⁰ *Id.* at 19-20.

³¹ Johnson, *supra* note 26, at 274. "Children from violent homes are more likely to run away, use drugs and alcohol, attempt suicide and exhibit assaultive behavior." Steegh, *supra* note 24, at 786.

³² Lundy Bancraft, Jay Silverman, & Daniel Ritchie. *The Batterer as Parent: Addressing the Impact of Domestic on Family Dynamics*, 2nd Ed., 44, Sage Publications (2012).

³³ *Id.*

³⁴ *Id.* at 45.

likely to be in juvenile court for a violent offense.”³⁵ Female children exposed to IPV are more likely to become victims of violence while male children are more likely to become violent towards a partner.³⁶ Studies have also found that exposure to IPV results in alterations in children’s brain structure.³⁷

C. Post-Separation Violence and Perpetuating the Violence

The on-going nature and harmful effects of IPV is often minimized in child custody cases.³⁸ The family court system and the public all too often postulate that once parties are separated, IPV is not only no longer relevant to the case, but also no longer occurring. To the victim of partner abuse, however, coercive control and abuse does not end once she leaves the abusive relationship (she does not own the abusive relationship nor is she responsible for his abuse). Instead, she and the children are more at risk of harm when attempting to leave or recently separated.

Separation violence is defined as the time when survivors are most at risk for serious injury or death³⁹; if the party has children the children become pawns in the abuser’s fight to retain control.⁴⁰ Abusers’ use the child(ren) as a means to continue their emotional, economic, and

³⁵ *Id.*

³⁶ Johnson, *supra* note 26, at 275.

³⁷ Areti Tsavoussis, Stanislaw P.A. Stawicki, Nicole Stocicea, & Thomas Papadimos, *Frontiers in Public Health* (2014) *Child-Witnessed Domestic Violence and Adverse Effects on Brain Development: A Call for Societal Self-Examination and Awareness*, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4193214/> (last visits May 21, 2019). “The impact on the community at large is of importance and concern; the effects on child witnesses of DV extend beyond the families and children. These children have impaired learning skills, poor school performance, poor life developmental skills, and lose their ability to self-regulate. As these children age, they will have different existential memories and respond in a different manner than they would have otherwise. Consequently, society may have difficulty preserving individual safety through an inability to decrease violence, while at the same time it has to support unproductive or underproductive members of society. **Cumulatively, these findings support the presence of neuro-biological-developmental alterations in children witnessing DV, their ensuing PTSD, and the impression that cumulative childhood trauma (and not adulthood trauma) may predict the overall symptom complexity in adults.**” *Id.* (emphasis added).

³⁸ See Peter Jaffe, Nancy Lemon, & Samantha Poisson, *Child Custody & Domestic Violence: A Call for Safety and Accountability* (Sage Publications 2003)

³⁹ See, e.g., Jacquelyn C. Campbell, et. al., *Risk Factors for Femicide in Abusive Relationships: Results From a Multisite Case Control Study*, 93 AMER. J. OF PUBLIC HEALTH, (July 2003)(reporting there is a higher risk of femicide after separation); Walter DeKeserdy, McKenzie Rogness, and Martin D. Schwartz, *Separation/Divorce Sexual Assault: The Current State of Social Scientific Knowledge*, 9 AGGRESSION AND VIOLENT BEHAVIOR (2004) “Note, too, that data generated by the redesigned National Crime Victimization Survey reveal that separated women were assaulted three times more often than divorced women and close to 25 times more than married women”; “...found that compared to coresiding couples, separation entails a six-fold increase in homicide risk for women.”

⁴⁰ “Survivors are at increased physical violence when they take steps to leave abusers [and] ...the risk of violence, including sexual assault, is highest when victims attempt permanent separation through legal or other action.” Deborah Goelman & Darren Mitchell, *Protecting Victims of Domestic Violence Under the UCCJEA*, 61 JUV. & FAM. CT. J. 1(2010). In addition to the physical risks of separation violence, perpetrators often pursue protracted litigation as a means of controlling their former partner. Perpetrators may manipulate custody proceedings to obtain information about their former victims, to continue monitoring them, or to create opportunities for contact in order to perpetrate additional violence. *Id.*

sometimes sexual and physical abuse. In a case I litigated, for instance, the father had the minor child videotape his mother during her custodial time so father could “keep an eye on her.” Father would also follow mother when she was walking in town, cursing and berating her in front of the minor child and had a prior history of physically hitting the mother and the child.

Equal parenting time affords parents who are abusive even more access and opportunity to continue the IPV.

Indeed...the abuse becomes worse at separation. Batterers use any opportunity or contact to perpetuate the abuse in an effort to maintain their control. Some use the continuing connection that comes from joint custody or visitation rights to harass or verbally abuse their victims. Others use it as an opportunity to pressure the victim to return to the batterer. Still others continue their physical abuse during these times. For example, in one study a victim reported that during visitation the children’s father pressured her to engage in sexual relations with him. When she refused, he attacked her, choking her and stabbing her in front of their three year old son.⁴¹

Consider a case I am currently litigating. Mother obtained a protection order against her daughter’s father because he had been physically and emotionally abusive. After the parties separated, the judge insisted that the parties have equal parenting time despite the documented abuse of mother. Since shared custody was ordered, father has used the shared custody arrangement as a means to further harass and abuse mother. He, for instance, will repeatedly contact mother via text messages or telephone calls stating that he has to discuss their daughter. Once on the telephone, father will berate mother and call her offensive names. Father also constantly interrogates their daughter about her mother, asking, for instance, who is at mother’s apartment, what mother is doing, and whether mother is dating anyone. He told the child that if they go to court, he will get full custody of her (thereby taking her away from her mother with whom the child feels safe). Father’s abusive behaviors have negatively impacted the child: she is often anxious and frequently becomes hysterical if she cannot answer father’s telephone calls immediately because she fears that he will become mad (and act out) at her or her mother. Even the school has observed negative changes in the child’s behavior, specifically that she is distracted, unfocused, and inattentive. Here, even though the parties have been separated for over two years, the abuse continues having a negative impact on the minor child.

In practice, equal parenting time presumptions reinforce and perpetuate IPV placing both adult victims and children at increased risk of harm. The model proposed by **HB 1397** is “less a

⁴¹ Greenberg, *supra* note 6, at 411-412. See also Dana Harrington Conner, *Back to the Drawing Board: Barriers to Joint Decision-Making in Custody Cases Involving Intimate Partner Violence*, 18 Duke J. Gender L. & Pol’y 223, 228 (“...frequent contact among highly conflicted parents only ‘serves to sustain hostilities and predict on-going aggression.”)

workable parenting arrangement for battered women than a court-sanctioned means for batterers to have continued contact and control over them.”⁴²

D. Requirements for Successful “Equal Parenting Time”

Essential elements for successful shared legal custody and equal parenting time are the ability for parties to effectively “communicate, cooperate, build trust, behave appropriately toward each other, and set and respect boundaries.”⁴³ In cases involving IPV, however, these elements are not present due to the power imbalance in the relationship.

It is often not safe for a victim of domestic violence to speak freely with her abuser. The victim is silenced by the abuse and her abuser. She is not at liberty to express her opinion or make suggestions that will be reasonably considered. Joint decision-making requires joint participation – two voices, two minds, and two opinions merging to a resolution for the betterment of the child. For the batterer, however, there is only one voice, one opinion, and one correct resolution – his own.⁴⁴

This disconnect between factors needed for successful shared parenting and how IPV is experienced negatively impacts children as they “undergo stress related to their exposure to the arguments and the unpredictability of the hostile decision making process” caused by the parent who is being abusive.⁴⁵ Research has found a strong correlation between negative child experiences and poor adult health.⁴⁶ “The higher the level of exposure to negative childhood experiences, the more likely the possibility of health risk factors, such as increased smoking, obesity, depressed mood, suicide attempts, alcoholism, drug use, and history of sexually transmitted disease.”⁴⁷

The Bill is Unnecessary Given Pennsylvania’s Current Custody Statute

Pennsylvania law already permits judges to award shared legal custody and/or shared physical custody.⁴⁸ Shared legal custody is the “right of more than one individual to legal custody of the child.”⁴⁹ When shared legal custody is ordered parties must jointly decide on major decisions involving the child, such as where the child will attend school. If parties are incapable of

⁴² Davis et. al., *supra* note 2, at 13. (emphasis added)

⁴³ Conner, *supra* note 41, at 230. “A survey of family law judges suggests they believe the key to successful joint custody lies in the ‘maturity and stability of the parents, their willingness and commitment to cooperate, and their ability to communicate.’”

⁴⁴ *Id.* at 234.

⁴⁵ *Id.* at 245.

⁴⁶ *Id.*

⁴⁷ *Id.* (citing Vincent J, Fellitti et al., *Relationship of Childhood Abuse and Household Dysfunction to Many of the Leading Causes of Death in Adults: The Adverse Childhood Experiences (ACE) Study*, 14 AM. J. PREVENTATIVE MED. 249-50).

⁴⁸ 23 Pa.C.S. §5322(a)

⁴⁹ *Id.*

reaching an agreement major, then the court intervenes and decides. In my experience, judges rarely order sole legal custody *even when there is ample evidence that the parents are unable to communicate and cooperate.*

When shared custody is ordered, both parents are awarded “significant periods of physical custodial time with the child.” In practice, this often translates to equal parenting time or its close approximate. Based on over ten years experience of litigating cases and countless conversations with litigants, lawyers, and advocates, courts frequently order equal parenting time or its close approximate, *even when there is a history of past and on-going IPV that places the child at risk of harm.*

Pennsylvania law is also gender neutral: “In any action regarding custody of the child between parents of the child, there shall be no presumption that custody should be awarded to any particular parent.”⁵⁰ Thus, mothers are given no preference over fathers in custody actions or vice versa. Additionally, despite popular misconception that mothers are favored in custody cases, studies have found that “courts consistently held [mothers] to higher standard of proof”⁵¹ than fathers, with “women often measured against the standard of ideal, while fathers are measured against a different and lower standard.”⁵² Mothers are also “evaluated on their actual history of performance as parents and fathers evaluated on the basis of their expressions of their emotions and their stated intentions for the future.”⁵³ **When fathers actively seek custody they obtain primary or shared custody over 70% of the time.**⁵⁴

Illustrative of how shared custody arrangements are already being awarded in the court system, even without a legislative presumption and to the detriment of children, is a case that my office handled. Mother and father had a young child. Mother fled from the relationship after enduring years of physical, emotional and financial abuse including father strangling her, slamming her head off the floor, attempting to rape her, and not allowing her to leave the apartment. After mother fled, father exploited the court system to further control and abuse mother and child by obtaining a temporary protection order against mother even though she had committed no offense, which included the minor child as a protected party.⁵⁵ The minor child was still breast

⁵⁰ 23 Pa.C.S § 5327.

⁵¹ Joan S. Meier, *Domestic Violence, Child Custody and Child Protection: Understanding Judicial Resistance and Imagining the Solutions*, 11 AMER. U.J. GENDER SOC. POL'Y & LAW, 657, 687 (2003).

⁵² Gender Bias Study of the Court System in Massachusetts, 833. “The courts, as in the rest of society, expect far more from women as caretakers than as men. Any shortcomings the woman has, whether directly relating to her parenting or not, are closely scrutinized. Whereas, if a father does anything by way of caring for his children, this is an indication of his devotion and commitment.” *Id.*; “A woman's history of motherhood is subject to intense scrutiny. A father's history of fatherhood is only examined from the time of the petition.” *Id.*

⁵³ BANCROFT et al. *supra* note 32, at 148.

⁵⁴ Gender Bias Study, *supra* note 9. (emphasis added).

⁵⁵ Father's false allegations against mother also resulted in her being criminally charged. All criminal charges were later dismissed against mother but she had to endure multiple court appearances, delaying any results in her family law cases, before the charges were dismissed. Unfortunately, falsely filing protection orders and criminal charges against women is a common tactic used to further abuse, harass, and control women.

feeding and had never been separated from Mother. Pending the hearing on the case, Mother was provided no visitation or contact with her nursing baby. The judge appointed a *guardian ad litem* (GAL) in the case because he “didn’t know what was happening”. In her report and recommendation to the court, the GAL opined that father was very abusive and controlling and that he had a history of abusing prior girlfriends and family members. The GAL, however, *still* recommended a shared custody arrangement. Her recommendation was based on two illogical and disturbing conclusions: 1) that the child would be taken from father and this would be confusing for the child because he had been in the care of father due to the temporary protection order (which was ultimately dismissed because he falsely filed it) and 2) it would put mother and child more at risk if father did not have shared custody. Though the judge acknowledged father had engaged in litigation abuse and was abusive, he agreed with the GAL and ordered shared custody. Here the GAL and court credited the violence as it occurred to mother, but *still* awarded equal parenting time to the detriment of mother’s and the child’s safety. Such decisions are not uncommon in family courts because the courts strive to award some form of joint custody above all else, *even despite risk factors for family violence victims*.

Any codified presumption for equal parenting time would reinforce disturbing decisions such as the one discussed above because it permits, as discussed above, courts to shift the focus from the child by “elevat[ing] the importance of equal parenting time above other relevant factors.”⁵⁶ In addition, the law is unnecessary because the enacted custody law and judicial interpretations of it already permit shared custody arrangements.

Parental Alienation Lacks Scientific Merit

Proponents of HB 1397 cite parental alienation as the reason why Pennsylvania should adopt an equal parenting time presumption. Parental alienation, also known as parental alienation syndrome (PAS), is the theory that one parent actively seeks to alienate the child from the other parent, thus destroying the child’s relationship with that parent.⁵⁷

Problematic with PAS is that it is not based in scientific evidence. In fact, PAS has been dismissed as lacking in scientific merit by the American Bar Association, the National Council of Juvenile and Family Court Judges, the American Psychological Association, the National District Attorney’s Association, and the American Prosecutors’ Research Institute.⁵⁸

The National Council of Juvenile and Family Court Judges (NCJFCJ) likewise finds PAS lacking in scientific merit, advising judges that based on evidentiary standards, “the court should not accept testimony regarding parental alienation syndrome, or ‘PAS.’ The

⁵⁶ Merle , *supra* note 5, at 3.

⁵⁷ BANCROFT et al., *supra* note 32, at 170.

⁵⁸ Rebecca M. Thomas & James T. Richardson, *Parental Alienation Syndrome: 30 Years on and Still Junk Science*, The American Bar Association (July 1, 2015).

https://www.americanbar.org/groups/judicial/publications/judges_journal/2015/summer/parental_alienation_syndrome_30_years_on_and_still_junk_science/ (last visited June 16, 2019).

theory positing the existence of PAS had been discredited by the scientific community”; and “the discredited ‘diagnosis’ of ‘PAS’ (or allegation of ‘parental alienation’), quite apart from its scientific invalidity, inappropriately asks the court to assume that the children’s behaviors and attitudes toward the parent who claims to be ‘alienated’ have no grounding in reality.”⁵⁹

In custody cases, parental alienation has been used – typically by abusive fathers – “as a strategic response to allegations of domestic violence or child abuse, or to children’s refusal to go on visitation”.⁶⁰ Rather than having scientific merit, then, parental alienation is used “to divert the court’s attention” from evidence of abuse.⁶¹

Notably, there is no evidence that children “who are alienated from a parent **who is not their primary caretaker** are in emotional distress or are experiencing behavioral difficulties.”⁶² Conversely, as discussed in previously, there is evidence that children are harmed from exposure to IPV. There is also evidence

[T]hat children’s chances of recovering well psychologically after experiencing abuse or witnessing violence depend largely on whether they receive a supportive and understanding response from a parent who believes them about what took place. Parental alienation theories are having the effect of punishing mothers for giving their children precisely the kinds of responses that the psychological literature would recommend.⁶³

Given that parental alienation has been deemed “junk science” and that has been used to obscure IPV - which scientific evidence has shown harms children - the Committee should not be swayed by proponents’ position that the passage of the Bill is necessary to prevent parental alienation.

Conclusion

At first glance a presumption for shared physical and legal custody and equal parenting time has the appeal of benefitting children, and treating parents equally, because it advocates parents being equally involved in their children’s lives. Deeper analysis of joint custody presumptions, however, reveal that presumptions for shared custody and equal parenting time negatively impact children by “blindly elevat[ing] the rights of parents – even really bad parents – over the safety and well-being of children.”⁶⁴

Moreover, research has simply not supported the finding that shared custody arrangements are in the best interest of children. Notably, even where families *voluntarily* chose shared custody arrangements research demonstrates that “it does not always prove to be a stable or desirable

⁵⁹ *Id.*

⁶⁰ *Id.* at 168.

⁶¹ BANCROFT et al., *supra* note 32, at 169.

⁶² *Id.* at 168-169.

⁶³ *Id.* at 169.

⁶⁴ Davis et. al., *supra* note 2, at 2.

model over time.”⁶⁵ [This is especially true for young children.] Research has shown that shared legal and physical custody and equal parenting time is harmful to the non-abusive parent and to their children in families experiencing IPV.

Instead of benefitting children, a codified presumption for shared custody has the unintended consequence of placing children at risk of harm and reinforcing and perpetuating IPV. I, therefore, urge the House Judiciary Committee to oppose Bill 1397.

I would be more than happy to further discuss my position with the Committee and my observations of how codified statutes impact families experiencing IPV. Thank you for your time and consideration.

Sincerely,

Judith Lewis, Esquire
Legal Director

⁶⁵ *Id.* (emphasis added) (citing study conducted by Eleanor E. Maccoby & Robert H. Mnookin on joint custody families.) Additionally, research has that families who experience little or no conflict and who are able to successfully negotiate a custody arrangement rarely opt for a shared custody or equal parenting time. *Id.*