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HB 4480 – Amends MCL 722.23(j) of the best interest factors

Comments of Michigan Poverty Law Program

The Michigan Child Custody Act provides that when custody of a child is in dispute, the court must determine custody based on the best interests of the child and the Act sets out 12 factors the court must consider and evaluate. *See* MCL 722.23. Factor (k) of the best interest factors requires the court to consider “domestic violence regardless of whether it’s directed at or witnessed by the child.” Factor (j) requires the court to consider each parent’s willingness and ability to facilitate and encourage a close relationship between the child and the other parent. HB 4480 would amend factor (j) to add: “A court shall not consider negatively for the purposes of this factor any action taken by a parent to protect a child or that parent from the child’s abusive parent.”

The purpose of HB 4480 is to reconcile an inconsistency in current custody law. The court is already required to determine the presence of domestic violence pursuant to factor (k). However, even in cases with domestic violence, factor (j) also requires an evaluation of a parent’s willingness to facilitate a relationship between the child and the other parent. There are no exceptions to factor (j). Thus, a parent who leaves a violent relationship is still expected to encourage a relationship between the child and the abusive parent.

The best interest factors are directed at and applied by many in the judicial system, including parents considering whether to file a custody case, attorneys considering the likelihood of their client prevailing, court evaluators, mediators and judges. While many of the professionals involved in the court process do not apply factor (j) in cases involving domestic violence, others do. Those who determine that



victims of domestic violence must facilitate a relationship between the child and other parent often fail to appreciate that domestic violence always affects children. Some who evaluate the factor against domestic violence victims wrongly believe that once the victim has separated from the abuser, the abuse ends and the parent and child are safe. Even though, we know from years of studies that separation is the most dangerous time for victims when the risks of stalking and homicide are greatest.

Without this legislative fix to harmonize these two factors, domestic violence survivors will face a “catch-22.” If they leave the abusive relationship with their children – which is what we encourage victims to do – they are punished under factor (j) when they keep their children away from the abuser. If they stay, they are accused of “failure to protect” for not removing their children from a dangerous environment.

This bill is necessary to give a consistent message to survivors and members of the judicial system who are involved in determining what’s best – and safe – for children.

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