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FISCAL IMPACT REPORT

SPONSOR Schmedes/ Gallegos, DM ORIGINAL DATE 2/12/19 LAST UPDATED _____ HB 389

SHORT TITLE Equal Time-Sharing in Joint Child Custody SB _____

ANALYST Daly

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		Moderate	Moderate	Moderate	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Duplicates SB 422

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
Children, Youth & Families Department (CYFD)

SUMMARY

Synopsis of Bill

House Bill 389 amends existing law regarding physical child custody determinations. It creates a presumption that joint custody with equal time sharing is in a child’s best interest. Currently, the only presumption applies to joint legal custody, which is presumed to be in the child’s best interest (i.e. both parents have equal decision making rights with regard to the child), with no presumption about how time sharing is to be structured.

If a court has previously made an order awarding joint custody but has not awarded equal time sharing, the bill directs the court “shall set a hearing in a timely manner on the motion to determine whether the parties shall have equal legal and physical joint custody.” It permits the court to make a determination about time sharing in these circumstances without needing a substantial change of circumstances, which is typically required for the court to change a custody order.

HB 389 also changes how a court is to consider past domestic violence on the part of a parent when making a determination about joint custody. This bill eliminates existing language that

provides the court must consider whether a “judicial adjudication has been made in a prior or the present proceeding that either parent or other person seeking custody has engaged in one or more acts of domestic abuse.” Under HB 389, the court shall consider only pending charges or a conviction for domestic violence.

In addition, the bill strikes existing language that an award of joint custody does not imply an equal division of financial responsibility for the child in provisions that set standards for determining joint custody and in the definition of “joint custody”.

Finally, HB 389 adds a new Subsection E, which provides numerous new directives to courts regarding parental planning, continuing existing parent-child relationships, and parental participation in raising their children.

FISCAL IMPLICATIONS

AOC explains that the requirement that a court set a hearing in all cases where there has been an award of joint legal custody but not equal timesharing to determine whether the parties should have equal time sharing potentially will impact a significant number of child custody cases, since there are many parents who share joint legal custody but do not have equal time sharing. This would create a significant burden on family court judges to set hearings and make a re-determination about time sharing in a large number of custody cases. LFC estimates the impact to be moderate.

SIGNIFICANT ISSUES

This bill creates a presumption that equal time sharing between parents is in a child’s best interest. As AOC reports, creation of such a presumption could limit the court’s ability to make a determination based on the unique needs and circumstances of the child and the family. The bill does not give any guidance as to what factors the court should consider when making a determination about whether to deviate from the presumption of equal time sharing. New Subsection D sets forth both a child’s and a parent’s right to a strong and healthy relationship, but does not describe specific factors to be considered.

AOC warns that equal time sharing may not be developmentally appropriate given a child’s age. Many court time sharing guidelines, which are based on mental health and child development research, do not recommend equal time sharing in all cases, particularly for very young children, and recommend that time sharing be determined on an individualized bases. (See e.g. [Massachusetts Time Sharing Guidelines](#), [Arizona Court Time Sharing Guidelines](#), and [California Court Guidelines](#))

Additionally, AOC expresses concern that the new limitations on considering domestic abuse also have the potential to cause courts to overlook domestic violence when making child custody determinations, which could have a serious impact on the well-being of the child in these determinations. This bill directs courts consider a domestic violence conviction or pending charge when making a determination about whether or not joint custody is appropriate. This language fails to recognize that there could be findings in order of protection cases or child abuse and neglect cases where there was a judicial determination (and therefore at least a preponderance of the evidence) that domestic violence occurred which a court may wish to consider, but where for whatever reason no criminal prosecution has been initiated.

Further, the removal of clarifying language that an award of joint custody does not imply an equal division of financial responsibility for the child may be inconsistent with or call into question court-adopted child support schedules, and could lead to greater confusion on this issue, resulting in greater uncertainty and litigation.

AOC notes that the new Subsection E also requires the court to take action such as facilitating parental planning about the child and securing “the maximum involvement and cooperation of parents regarding the physical, mental, moral, and emotional well-being of the child during and after a court proceeding.” It is unclear how, practically, the court could accomplish this. If the goal is to use mediation or co-parenting classes to help parents cooperate and make decisions, then it would be better to state this in the bill. Similarly, language in this subsection requiring courts to continue existing parent-child relationships fails to clarify how the court must continue this relationship, and could be read as restricting the court’s ability to put safeguards or limitations in place when there are legitimate safety concerns relating to a parent’s ability to care for a child.

PERFORMANCE IMPLICATIONS

AOC reports the courts are participating in performance-based budgeting. This bill may have an impact on the measures of the district courts in the following areas:

- Cases disposed of as a percent of cases filed
- Percent change in case filings by case type

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