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Chicago Council  
of Lawyers

*The public interest bar association*

**Statement of the Chicago Council of Lawyers and Chicago Appleseed Fund for Justice  
on HB 4113 to amend the Illinois Marriage and Dissolution of Marriage Act**

[HB4113](#)—a bill currently moving through the Illinois Legislature—aims to modify provisions of the [Illinois Marriage and Dissolution of Marriage Act](#) that affect the allocation of parenting time and responsibility. The bill would change the standard used by courts to restrict a parent’s time with the child from a “preponderance of evidence” to “clear and convincing” evidence. The bill also creates a presumption that a 50/50 division of parenting time is in the best interest of all children.

The opponents of HB4113 include the Illinois Chapter of the American Academy of Matrimonial Lawyers, the Illinois State Bar Association, the Chicago Bar Association, the Lake County Bar Association, the DuPage County Bar Association, the Kane County Bar Association, the Office of the Cook County Public Guardian, the Loyola University Child Law Center, and the Illinois Coalition Against Domestic Violence.

The Chicago Council of Lawyers, and the Chicago Appleseed Fund for Justice, join with these groups in opposing the changes to Illinois law. We do not believe HB4113 accomplishes good or necessary reform to existing domestic relations law. Current law emphasizes the best interests of the child in allocating parenting time and responsibility and presumes that both parents are fit to meet those interests. Current law recognizes the need for parenting time even for parents who have not been granted decision-making responsibility for the child. Importantly, current law prioritizes parental agreement in allocating time and responsibility while allowing judicial discretion in crafting ways to implement those agreements.

The law does so within a framework that acknowledges children and their parents must be protected from domestic violence and from other conflicts that stem from a history of domestic violence. This is not an easy balance for courts and we do not believe that limiting judicial and familial discretion by raising the evidentiary standard and by creating a presumption of 50/50 parenting time will make the balancing any easier.

We are most concerned about the changing of the evidence standard for restricting parenting time. The existing standard to restrict a parent’s time with their child is a “preponderance of evidence” that a parent’s behavior endangered the child’s mental, moral or physical health or impairs the child’s emotional development. A preponderance evidence is often described as evidence that makes a conclusion more likely true than not. It allows a fair amount of judicial discretion.

Because restriction of parenting time covers a range of actions—for example, supervision during parenting time, requiring a parent to abstain from alcohol during parenting time, or requiring exchange of the child between parents through an intermediary—a discretionary standard is appropriate. It allows the court to consider each family individually both in evaluating the reliability of evidence and in setting appropriate limitations on parenting time.



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Like many other opponents of the bill, Council of lawyers and Chicago Appleseed also have some concerns with setting a presumption of 50/50 parenting time—not because we oppose equal division of parenting responsibility and equal roles for parents in their children’s lives, but because it sets a standard that does not consider the parents’ own understanding and history of how to share their responsibility.

Council of Lawyers and Chicago Appleseed recognize the value in promoting healthy, stable relationships between children and non-residential parents. We recognize that children receive—and deserve—more than simple financial support from non-residential parents and that courts have a duty to facilitate this where is in the best interests of the families.

This is the central tension for courts: identifying risks in shared parenting where they exist and ensuring the safety of children and their parents when necessary while promoting healthy familial relationships and ensuring the emotional and material support of children whose parents do not live together. We do not believe the proposed bill will help courts balance these concerns appropriately.