

SB849 FWA
Yaakov Aichenbaum, PAS-Intervention MD Chapter

To the Honorable members of the JPR:

While SB 849 contains some welcome changes, there are a few problematic clauses that are of concern. First, the bill reads:

*9–103. 8 (B) NO PARENT IS PRESUMED TO HAVE ANY RIGHT TO LEGAL 9 DECISION–
MAKING OR PARENTING TIME THAT IS SUPERIOR TO THE RIGHT OF 10 ANOTHER
PARENT.*

In theory, it would seem that this is positive since it does not favor any parent. However, it ignores the solid scientific research that children generally do better when they have substantial access to both parents (see attachments). If there are not any significant reasons against it, equal shared custody should be the default starting position since it **is in the best interest of the child's development and well-being**. It is logical to start a custody decision based on what is known to be best and then modify it if the facts warrant a change from the norm. Practically speaking, the current wording of the bill and the tendency to favor mothers in custody will make it difficult for fathers to achieve joint custody even though it is in the best interest of the children.

Another problem with this bill is that it stresses the ability of the parents to communicate. We certainly do not want to have children caught in the crossfire of feuding parents. However, this becomes problematic in parental alienation cases in which the alienating parent refuses to cooperate with communication and to facilitate a relationship with the other parent. The alienated parent (who is actually the more emotionally healthy of the parents) often is willing and capable of communicating, but there is nobody to communicate with. The current wording of this bill creates the very real possibility that the healthy alienated parent will not get custody because of the belligerence of the other parent who refuses to communicate. This will thereby endorse and empower the alienation which is detrimental to the child.

Finally, the bill does not stress that a factor in determining custody is the willingness of a parent to encourage and facilitate a relationship with the other parent. The clause *“(III) MAINTAIN THE CHILD’S RELATIONSHIP WITH THE PARENTS, 28 SIBLINGS, OTHER RELATIVES, OR OTHER INDIVIDUALS WHO HAVE OR LIKELY MAY 29 HAVE A SIGNIFICANT RELATIONSHIP WITH THE CHILD”* does not specifically state this. This again can foster parental alienation.

If these issues can be addressed, then I am favorable to this bill. If they are not corrected, I request that this bill receive an unfavorable report. Thank you for addressing these important issues.

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