



RESOLUTION IN OPPOSITION TO PRESUMPTION OF EQUALLY SHARED PHYSICAL CUSTODY

Adopted by the American Academy of Matrimonial Lawyers
Board of Governors on November 11, 2022

WHEREAS, the American Academy of Matrimonial Lawyers (AAML) is an organization of highly regarded domestic relations attorneys, the mission of which is “to provide leadership that promotes the highest degree of professionalism and excellence in the practice of family law”; and

WHEREAS the AAML provides leadership and guidance in family law policy matters, assisting states in evaluating, passing and enforcing just laws for the custody of children, protection of children, and prevention of domestic violence and sexual abuse; and

WHEREAS throughout the country, proposed legislation that would establish a presumption of equally shared, 50/50, custody, is repeatedly presented in state legislatures; and

WHEREAS many of these proposed pieces of legislation would mandate a rebuttable presumption that joint physical custody is in the best interest of the minor child, which requires the parent who opposes an equally shared parenting schedule to rebut that presumption; and

WHEREAS a rebuttable presumption requires the Court to assume in every case that equally shared physical custody is in the best interest of every child; and

WHEREAS a rebuttable presumption could result in the Court’s failure to consider all relevant facts about what is in the best interests of the child; and

WHEREAS each custody case is different and each child is unique, and a Court should hear all relevant facts before deciding what is in the best interest of each minor child; and

WHEREAS, such a presumption does not take into consideration domestic violence or sexual abuse concerns; and

WHEREAS, such a presumption does not take into consideration any special needs of the child; and

WHEREAS, such a presumption does not take into consideration the nature of the parents’ relationship and the level of conflict between the parents that may make “an equally shared parenting schedule” impractical, unworkable, and potentially harmful; and

WHEREAS, such a presumption does not take into consideration the well-reasoned preference of the child of appropriate age and maturity; and

WHEREAS, such a presumption does not take into consideration the sufficiency of economic resources of each parent as well as the negative economic consequences that could occur as a result of the increased expenses of both parents; and

WHEREAS, such a presumption ignores parental inequities such as mental health concerns, substance abuse issues, work commitments, adequacy of residences and criminal history; and

WHEREAS, such a presumption does not take into consideration the existing relationship of each parent to the child and the parenting roles assumed by each parent; and

WHEREAS such a presumption does not take into consideration the proximity of the parties;

NOW, THEREFORE, IT IS RESOLVED that the American Academy of Matrimonial Lawyers opposes legislation creating a presumption of equally shared physical custody because such a presumption is not in the best interest of the child.