

New joint custody law puts child first

PERSONAL VIEW

By Jeffery M. Leving

The New Illinois Joint Custody Law, which became effective Jan. 1, should allow both parents the chance to have an equal voice in major decisions concerning the child's health, education and welfare.

The old law required that parents agree to joint custody before it would be awarded. Under the new law this has changed. A judge may now order joint custody when he or she feels it is in the child's best interest to do so, even if the parents do not agree to the imposition of joint custody. The new law presumes that maximum involvement and cooperation of both parents regarding the physical, mental, moral and emotional well-being of their child is in the best interest of the child. Unfortunately, the new law does not presume that an order awarding joint custody is in the best interests of the child.

The new joint custody law is an attempt to ensure that the child remain a major part of both parent's lives. Major decisions regarding the child should become a product of both parents' wishes, not just one parent's.

The bottom line is an attempt to keep the child's life as undisturbed as possible after a divorce. When parents can no longer get along, joint custody should allow the child's relationship with both parents to remain as similar as possible to the relationship they shared prior to a divorce. The child needs a stable relationship with both parents, not just one.

There are factors that parents and/or court should consider when determining if joint custody is appropriate.

They include:

- The child's wishes.
- The interrelation of the child to people who may affect his or her best interest (that is, grandparents, siblings, etc.).
- The residential circumstances of the parents with regard to the child's school and community so that major adjustments in the child's daily routine will be minimized.

- Any threat of physical violence to the child or witnessed by the child.
- The parents' emotional/economic stability as well as their ability to cooperate where the child's best interest is concerned (how close did the parents get to an agreement without court intervention?).
- All other factors relevant to the child's best interest.

In cases where joint custody is at issue, the new law requires a Joint Parenting Agreement be drafted. It is generally in the best interest of the child that the parents cooperate to determine the provisions of a Joint Parenting Agreement. If, however, the parents cannot independently reach an agreement, the court has the power to enter a Joint Parenting Order.

A Joint Parenting Agreement or Joint Parenting Order shall contain a detailed explanation of each parent's powers, right and responsibilities for the personal care of the child. Provisions for major decisions regarding the child, such as education, health care and religious training, are also required. A time period for review of the terms of the agreement or order, procedures regarding changes, disputes and alleged breaches shall be specifically set out in the agreement or order. Lastly, the child's physical residence and a detailed schedule of times the child will spend with each parent must be included.

But there is no presumption that joint custody means equal parenting time. It must be remembered, it is the child and his or her best interest that should be controlling. A positive result should naturally flow from maximum cooperation between parents in drafting a positive agreement.

Lawyer Jeffery M. Leving contributed to the drafting of the new Illinois Joint Custody Law.