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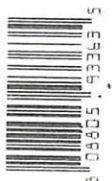
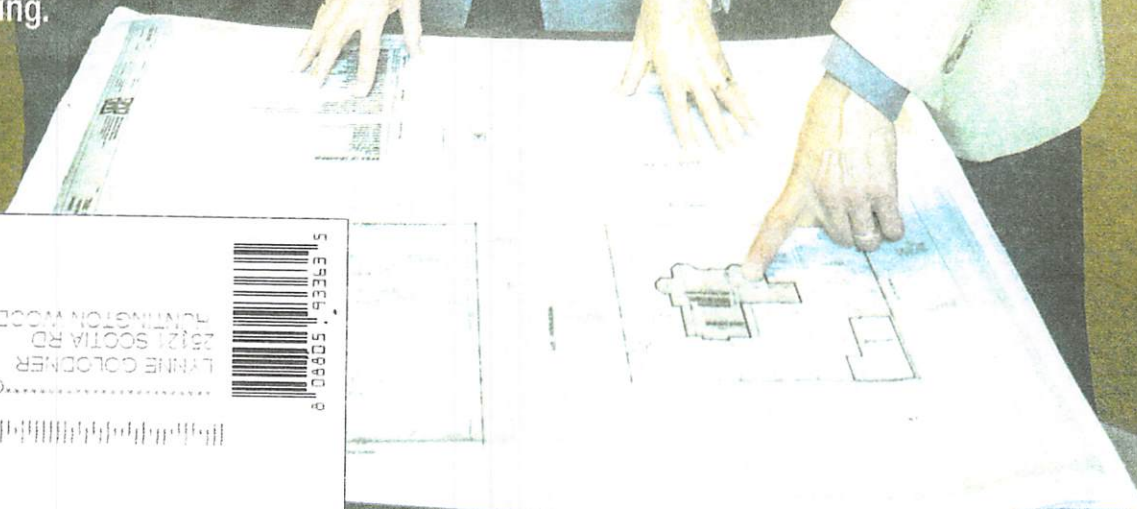
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guest column

The Best Interests Of Our Children

Judaism is a family-focused, child-centric way of life, focused on making meaning and guiding the thoughtful growth of our offspring. So it doesn't surprise me that Jewish law considers the best interests of the children when deciding which parent retains custody in a divorce.

Since 1970, Michigan law has directed judges, family law practitioners and divorcing couples to determine parenting time arrangements based on the best interests of the children. However, pending legislation, House Bill 4691, proposes changing that to mandate giving roughly equal parenting time to both parents — regardless of what is truly best for the children. As a family law attorney and a Jewish mother, I cannot support this proposal.

The Torah mentions divorce in *Deuteronomy 24:1*, when a dissatisfied husband sends his wife away. Much Talmudic discussion about divorce ensues.

The biblical mandate for child custody traces to a story of King Solomon and two conflicting mothers. Considering one infant and two mothers, King Solomon suggests cutting the child in half to give each mother an equal portion. One mother agrees; the other, horrified, refuses, insisting she would rather the child go to the other woman than be harmed.

King Solomon decides that selfless act is evidence of the true parent and awards custody to her. (*I Kings, 3:16-27*)

In modern times, rabbinical courts

have determined that mothers keep custody of children until age 6; after that, boys go to the father and girls to the mother, according to *Child Custody in Jewish Law: A Pure Law Analysis* by Rabbi Michael J. Broyde. The Talmud (*Ketubot 59b*) assumes both parents want custody and are capable of handling it. The Talmud also assigns all financial responsibility for children to the father.



Alisa Peskin-Shepherd

But Jewish law, like our current civil system, is not set in stone. Both allow specific circumstances to override legal parameters.

When parents are unfit, unwilling, too swamped with work or travel — or when a parent has had no role in his or her child's life — they should not have joint custody or substantially equal parenting time. Perhaps they shouldn't have any custody.

Divorce is tricky. Emotions often lead couples to split and often override common sense when determining divorce details.

Every couple experiences different circumstances leading to the dissolution of a marriage, just as every child has different needs. There is no one-size-fits-all resolution for divorce. We are dealing with people and must be flexible enough to take situations into account.

That's why this proposed shared parenting legislation is so alarming. Why fix a system that isn't broken? While Michigan's family courts are far from perfect, the base line for parenting time has worked for more than four decades because it takes into

account the specificity of each case.

In fact, between 1990 and 2015, according to the Michigan Department of Health and Human Services, the number of divorce cases resolving with joint custody has increased from 13 percent to 44 percent. Based on my experience in practice, this is due to the increased involvement, ability and willingness of both parents. As parents get more involved in their children's lives, parenting time arrangements reflect this — because current law allows flexibility to change and evolve with the times.

The new bill demands a certain number of overnights for each parent regardless of whether that is best for the children. The focus shifts from children's needs to numbers, effectively removing the human element from the equation.

Currently, 12 factors are considered when determining parenting time — things like existing love and emotional ties between parents and children, parental capability to guide, provide and love, the mental, physical and moral health of parents, and more. Current law considers where a child lives, attends school, has a sense of continuity.

These are important details that cannot be ignored. If we are to act in the best interests of our children, we must truly look at what is best for them — and set aside our own parental desires and fears. As Jews, it's our moral obligation. It's our heritage. 🌟

Alisa Peskin-Shepherd has been a practicing family law attorney and mediator for more than 25 years. She is principal of Transitions Legal law firm in Birmingham, www.transitionslegal.com.