

**TESTIMONY BEFORE THE HOUSE JUDICIARY COMMITTEE  
ON BEHALF OF THE MICHIGAN PROBATE JUDGES ASSOCIATION  
IN OPPOSITION TO HB 4672 AND HB 4673**

June 23, 2011

Good morning. My name is Lisa Sullivan. I am a Family Division and Probate Judge in Clinton County. I am here representing the Michigan Probate Judges Association (MPJA), which, recently, voted unanimously to oppose both HB 4672 and HB 4673.

If, as represented, HB 4672 and HB 4673 simply codified the current property division scheme, as has evolved under Michigan case law, it is likely that type of revision might be something to talk about. However, that is not the case. These bills seek to impose a major policy shift in how property may be apportioned during a divorce.

Under current law, a court must first decide what is “marital” property and what is “separate” property. In large part, this determination is influenced by the date of acquisition (was it before the marriage), the length of the marriage, the role each spouse played in impacting the marital property, and the needs of the parties at the time of the divorce. The reason that these issues come into play is because Michigan recognizes a “partnership” theory in a marriage, that is marriage is treated as an **equitable** relationship in which the partners make decisions on how best to allocate their resources, time, and values so that their family (themselves and their children) have a good life – a life which, in whole, is better than the sum of their parts could have provided. These are equitable relationships because the spouses make sacrifices – leave a path or opportunity unchosen – in favor of what is best for the family, their “team”.

When there is a dissolution of a marriage, existing case law **and** existing statutes, allow the courts to consider the “big picture” and the discretion to consider how the assets and debts can be divided in a way which allows these parents to move forward, setting up two separate households so that each parent has the means to provide for the children’s emotional and material needs. The policy under current law is to equitably divide the assets and debts to give value to the sacrifices made throughout the duration of the marriage and material recognition of the unquantifiable contributions of each spouse.

A marriage cannot be equated to a “business partnership” where decisions are focused on profit and acquisition for the benefit of the owners. The work in a marriage is not properly compensated (or “reimbursed” as the bills suggest) for time and materials alone. The children are not expendable employees who get a severance package or unemployment benefits. The family once enjoyed a *lifestyle* created from the efforts of both parents. The parties and the children don’t just suffer financially from a divorce, but their day-to-day security and comforts are completely transformed.

Unfortunately, the bills before this committee would penalize the “team” approach to a marriage relationship and would, instead, reward a spouse who accumulates and compiles separate assets. While one may argue that spouses invested in a relationship would not act in such a manner, divorces often occur because one spouse becomes disenchanted, looking to leave, and has an opportunity to stockpile assets with some premeditation. If this premeditated stockpiling happened under current law, MCL 552.23 allows the court to invade the separate assets if the marital estate is not sufficient for the support and maintenance of the excluded spouse. HB 4672 isolates from invasion, almost completely, these separate assets. Similarly, under MCL 552.401, there is an alternate remedy for the left-behind spouse and children by allowing the court to access separate assets if that spouse contributed to the acquisition, accumulation, or improvement of the separate assets. HB 4673 completely guts this existing provision.

So, how do you reimburse someone for taking over sleepless nights of colic or fever; how much do you get for sitting in an emergency room; what is the rate for gas, homework help, time coaching, transportation to practice for after school activities, sitting through concerts and plays – things that the “owning” or “working” spouse could not always attend? How does one size fit all? It doesn’t. Just like the argument that “I was the primary caregiver during the marriage should not be a trump in a custody question, neither should a “my name was on it first” trump a fair property distribution.

The reality is that a cookie cutter approach does NOT work for family law matters. Equity has a necessary place in these issues. There must be an ability to look at all of the circumstances involved and the flexibility to help one family transition into two households with the least amount of financial and emotional disruption. Bills which impede those abilities – bills such as HB 4672 and HB 4673 as written – eliminate such equity and are not the vehicles this Committee should support.

Thank you for your time.