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Re: HB508 – Proponent Testimony

Civil Justice Committee
Ohio House of Representatives
134th General Assembly
March 8, 2022

Chair Hillyer, Vice Chair Grendell, Ranking Member Galonski and members of the House Civil Justice Committee,

Thank you for the opportunity to provide proponent testimony regarding HB508. My name is Anthony Slosser. I was born and raised in Tiffin as a child of divorced parents, having every-other-weekend visitation with my father. I moved to Columbus over 20 years ago to attend college and I have lived in Franklin County ever since. I am a never-married father of a nine-year-old son who currently spends the majority of the year with his mother in Findlay. Since 2013, I have been fighting a nonstop battle to gain and maintain access to my son.

I co-authored HB508, so before I get to my personal testimony, I would like to address some of the comments and concerns raised by the members during sponsor testimony.

Vice Chair Grendell, Rep. Stewart – Current Practice

Currently, Ohio custody laws set sole custody as the presumed outcome of a child custody case, as at least one of the parents must request shared parenting before a court can consider such an arrangement. Also, each county in Ohio has its own standard parenting time schedule that forms the basis for how parenting time will be divided between the parents. Each court retains the option to deviate from their standard schedule based on a consideration of certain factors that constitute the best interest of the child. It has been suggested that courts often do order 50-50 custody arrangements with equal parenting time.[1] Granting that such a statement is true, HB508 will simply codify current practice in Ohio's family courts.

Given that there is no concrete data on the outcomes of child custody cases, the best way to gauge a court's likelihood of issuing an equal parenting time order is to look at its standard parenting time guidelines. Opponents of HB508 claim that a presumption of equal parenting time will nullify each individual county's carefully crafted, evidence-based standard order, replacing it with a one-size-fits-all standard. However, a careful examination of the orders reveals that argument to be disingenuous. For example:

[1] Courts do not publish data to support said claim; however, HB508 will require such data to be collected and made publicly available (3109.0485).

Ashtabula County, Court of Common Pleas, Local Rule 19: "The following standard parenting guidelines will be applied in all cases unless otherwise ordered: 1. Presumptions: a. Shared parenting is in the best interests of the child(ren); b. Equal division of the available parenting time is in the best interests of the children."[2]

Hocking County, Court of Common Pleas, Local Rule 28: "There is hereby established and adopted as court rule Exhibit "A" and Exhibit "B", a companionship schedule for visitation, which shall be used in all contested visitation cases. The schedule shall be rebuttably presumed to be fair and in the best interests of the children involved." Exhibit "A": "This Will Not Be Normally Less Than: Weekends: Alternate weekends from Friday at 6:00 P.M. until Sunday at 6:00 P.M."[3]

To begin, each of those rules explicitly indicate they are presumptions. The reality is that each county's standard order serves as a presumption, a one-size-fits-all starting point to determine the final outcome of a parenting time schedule. While it is true that each court has the option to move off those standards based on what is in the child's best interest, it is also true that each court would still have the option to move off the standard of equal parenting time presumed by HB508.

Second, those two presumptions are irreconcilable. Are Ohioans really meant to believe that all parents in Ashtabula are capable and half of all parents in Hocking are incapable? Only one of those presumptions, Ashtabula's, is more likely to ensure active parenting in the child's life, while also aligning with the basic principle of our legal system; i.e. presumed innocence, or in this case, presumed capability. HB508 will create a unified standard for the state of Ohio; children will have as much access to each parent in Hocking as they do in Ashtabula.

Lastly, some counties (Morgan[4] and Meigs[5]) have not changed their local court rules since the early '90s. The good news for Ohioans is that each time a county does update their guidelines, they are always moving toward equality, never away. The bad news is that only a handful of counties each year make those updates and sometimes it is just a baby step. Equal parenting is coming to all of Ohio; HB508 aims to accelerate the transition.

Rep. Seitz – Clear and Convincing Evidence

To quote *Cross v. Ledford*, "Clear and convincing evidence is that measure or degree of proof which will produce in the mind of the trier of facts a firm belief or conviction as to the allegations sought to be established… It does not mean clear and *unequivocal*."[6] Opponents of HB508 portray clear and convincing as an impossibly high hurdle to clear, but the word "unequivocal" is emphasized in *Cross*, presumably to make clear that the standard is not unreachable.

Clear and convincing evidence is the standard for proving civil contempt,[7] under which parenting time interference falls. If a parent is trying to prove that their co-parent took a weekend from them, their burden is by clear and convincing evidence. Why would the court hold a parent to that standard

[2] http://courts.co.ashtabula.oh.us/rules/cpRules.pdf. (pg. 30).
[3] http://hockingcountycommonpleascourt.com/Court_Rules.
[4] https://www.supremecourt.ohio.gov/Clerk/Local%20Rules/morganCoGDandDR.pdf. (pg. 45).
[5] https://www.supremecourt.ohio.gov/Clerk/Local%20Rules/meigsCO.pdf. (pg. 29)
[6] *Cross v. Ledford* (1954), 161 Ohio St. 469, 477 (emphasis in original)(internal citation omitted); see also *Allen v. Allen*, Franklin App. No. 04AP-1341, 2005 Ohio 5993, at P21, citing *State v. Schiebel* (1990), 55 Ohio St.3d 71, 74.
[7] *Patino v. Foust*, 8th Dist. No. 90475, 2008-Ohio-6280.

when the dispute is over a small fraction of parenting time, but when the dispute is over an entire childhood the standard is preponderance? Furthermore, clear and convincing is the standard to be met to influence an allocation of parental rights and responsibilities and/or a parenting time order under Ohio's medical marijuana statutes.[8]

Some counties already practice equal parenting time, but don't use clear and convincing as a standard of evidence; Tuscarawas, for example.[9] However, it is important to note that equal parenting time is a relatively new, and voluntary, change to the Tuscarawas local court rules. In other words, not only are the individuals responsible for making the change still operating the court system, but they are already receptive to equal parenting time. There is no need to fortify equal parenting time with clear and convincing evidence in Tuscarawas, because they already believe in it. That same type of buy-in will not be present among the vast majority of counties that still adhere to the outdated every-other-weekend model. If HB508 is watered down with weak language, those courts will find a way to maintain status quo and, as a result, equal parenting time will not be implemented as intended.

Chair Hillyer – Pro Se Litigants

There should not be a policy to encourage or discourage pro se litigants, but current law definitely discourages a person from representing themselves. To begin, current law is convoluted, which is why all of 3109.04 and 3109.051 have been re-codified, rather than merely making targeted changes, as originally proposed.

It is reasonable to assume that most parties in a divorce haven't done anything illegal; they just simply do not like each other anymore. In criminal law, the accused is innocent until proven guilty and if they cannot afford an attorney, one is provided. Those luxuries are absent in family law. Thanks to the local court rules, in most counties one parent is essentially presumed guilty of being incapable, forced to prove their innocence. Worse still, if a parent cannot afford an attorney, they are on an island. The fight for equality is long, repetitive and exhausting. As it currently stands, family law is a minefield, wherein one's relationship with their child is always one step away from disaster.

HB508 simplifies and streamlines family law. Most importantly, it aligns family law with the basic principle of our legal system. It may lead to more pro se litigants, but that is not necessarily a bad thing. It is reasonable to assume that more pro se litigation will lead to a negative result for the bar association, but it will be a boon for Ohio's families, as they can take the fortune that they would have spent in a custody battle and invest it in the family.

Personal Testimony

I am a never-married father, meaning I had no parental rights until I filed a complaint. I was eventually granted standard weekend parenting time and had to fight my way to shared parenting. Opponents of HB508 are going to boast about how many custody cases settle, as proof that the system works. Just because parties settle does not mean that the outcome was fair or acceptable or even related to the best interest of the child. For example, I was told by my attorney that if I went to trial, my chances of receiving 50-50 were slim to none; there was a much greater chance that I would remain at

[8] HB523 – 131st General Assembly; ORC 3796.24(B)(2) and (B)(3).
[9] https://www.co.tuscarawas.oh.us/Courts/media/1316/standard-parenting-schedule-and-rules-for-2019-8-2019.pdf.

the standard. As such, I took the deal on the table that gave me little more than a third of the parenting time. I would equate that to a scenario in which a person gets arrested, the judge sets an excessive cash bail and the person pleads guilty; not because they are guilty, but because that is the quickest way to resume life.

My goal was to work up from standard parenting time to equality, a problem in itself given how time consuming the process is; by the time a parent reaches equality, the child is a teenager. Unfortunately, within a few months of receiving shared parenting, a motion was filed to relocate our son 100 miles away. The motion was approved after another protracted legal battle, based on the recommendation of the GAL, a recommendation that came with the following stamp of "certainty":

> "When I do a Guardian ad Litem recommendation, the vast majority of the time when I do one, I am probably 95 percent sure in what it is that I am recommending the vast majority of the time. This is one of those cases where I am probably 60 percent sure that what I am recommending is the right thing to do."

Think about that. He was not recommending the soup or the salad. He was recommending the forced separation of a child from his parent and the level of certainty was closer to a coin flip than a sure thing. That is unacceptable.

I still have shared parenting today, though it is not what anyone outside of family law would understand to be shared parenting. For one thing, I did not agree to it. I have less than a third of the parenting time and I have no say in major decisions regarding our son. That is the problem with today's shared parenting; it means whatever the court wants it to mean. Courts will tell the legislature that they order shared parenting all the time, but in reality, there could be nothing shared about it.

Conclusion

Under HB508, we will have true shared parenting, as shared parenting orders will only be issued when the parents jointly agree to it. Those orders can range from 50-50 parenting to orders in which one parent gets only a week in the summer and chooses the child's dentist. The point is, the parents will have agreed to the division of rights and responsibilities. Starting from a position of equality means that neither parent will go into the negotiation fearing losing their child and neither parent will feel pressured to agree to something that they know is not in the best interest of their child.

When parents do not agree, that is when it is most crucial for the court to protect the child's right to engage in a relationship with both parents equally. HB508 will protect that right by inverting Ohio's current process to allocate parental rights and responsibilities. Instead of starting with one parent and one visitor working through the best interest factors toward equality (someday), we start with equality as the baseline best interest and work through largely the same factors to deviate away from equality, if necessary. Forty years of research supports that equal parenting is in the best interest of the child. HB508 is what Ohio's children and parents deserve.

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Chair Hillyer, members of the committee, thank you for your consideration.

Sincerely,
Anthony Slosser