

Opponent Testimony-H.B.508

May 24, 2022

Chairman Hillyer, Vice Chair Grendell, Ranking Member Galonski and Members of the Committee, thank you for the opportunity to present testimony today in opposition to HB 508.

My name is Tonya Whitsett, and I am the Managing Attorney of the Family Practice Group at the Legal Aid Society of Cleveland. I have practiced family law for 24 of my 28 years as an attorney.

HB 508 creates a rebuttable presumption of equal parenting time, equal decision making, and the designation of both parents as residential parent and legal custodian of their children. While this presumption would likely promote and affirm for some parents, fairness, and trust in the legal system; it would equally undermine parental autonomy and place undue burdens on other parents, particularly Black and Hispanic parents who have low incomes.

Low-income parents' choices are constrained by restricted family resources and limited options. As such, it is highly unlikely that these parents would be able to hire an attorney to litigate the "detriment" factors, or any other provisions in HB 508. The cost would be prohibitive. Currently, around 95% of parents appearing in family court are unrepresented.ⁱ

Between the years 2018 through 2021, Cleveland Legal Aid received 13,458 intakes where the individual was reaching out to us for representation in a family law matter. During this same period, 8,247 were rejected at the intake level for reasons other than having too much income or too many assets. They were turned away because of limited resources.

It is inevitable that the parents Legal Aid is not able to represent in their family law case would then have to represent themselves in court pro se. These self-represented parents seeking to rebut the presumption of equal parenting time, equal decision-making, or both, even under a standard of preponderance of the evidence, will have to do so by showing "detriment" to the child. Most self-represented parents are unable to discern the quality and quantity of their evidence and lack the skill to present it in a way to show detriment to the child. By imposing "detriment" over "best interest", HB 508 determined the priority of what the parents' value system should be concerning their children, which is counterintuitive to the proponents' stated intent of the bill.

Unrealistic parenting expectations can create more challenges and anxiety for parents and children. A stated preference for both parents sharing responsibility and children spending substantial amounts of time with each parent is appropriate when both parents can cooperate and focus on the needs of the children. However, mandating 50/50 can be harmful for parents

and children when a parent really is not positioned to take on those responsibilities. The disjuncture between ideals and the reality cannot be ignored.

As a Legal Aid attorney, I often find that *parents have consequential concerns about the other parent's ability to provide substantial or consistent care that the presumption imposes*. Take, for example, situations where a parent has children with other partners. From 1990 to 2016, the US has seen an increase in the number of children born to unmarried parents, with Hispanic and Black families experiencing the largest increases.ⁱⁱ Many of those children were born to parents with low income.

For unmarried parents with multiple families, does HB 508 imagine the parent living with all the children simultaneously, or sequentially? What about multiple families with children with significant age differences? Unmarried parents would have to manage before and after school care, doctor's appointments, educational supports, such as IEPs and 504 Plans. For children with disabilities, parents would have to manage, monitor, and maintain a similar structure to prevent or reduce the impact of disruption that a change of household might cause for the child--all while coordinating with the other parent and their multiple families, and with resources stretched for each because of the increased responsibilities around multiple families. Even well-intentioned, responsible parents would find equal parenting time overwhelming.

We have also encountered parents who have been released from drug treatment or a mental health facility and are unable to take on the scope of responsibility of for the children. Often, these parents just want some contact with their children, but to not take on the day-to-day care that their children require. The goal of HB 508 should not be to set up parents and children for failure.

Policy challenges arise in a context where biological and social and emotional ties are inconsistent. HB 508 ignores the inconsistency and imposes equivalent responsibilities on all parents regardless of the situation. For example, a parent with no demonstrable interest in being in the children's life is automatically restored to equal parenting and equal decision-making. Not only would this create tension between the parents but would be traumatic for the children.

Families and their experiences should not be viewed as interchangeable. Instead, decisions regarding children should be based on a thorough analysis of each family's circumstance under the child-centered "best interest" standard that already exists in current law.

Thank you.

ⁱ D.C. ACCESS TO JUSTICE COMMISSION, DELIVERING JUSTICE 17 (2019) (83% of plaintiffs and 93% of respondents unrepresented in divorce, custody, and other family court cases; 88% of petitioners and 95% of respondents in domestic violence cases).

ⁱⁱ Elizabeth Wildsmith, Jennifer Manlove & Elizabeth Cook, Dramatic Increase in the Proportion of Births Outside of Marriage in the United States from 1990 to 2016, CHILD TRENDS (Aug. 8, 2018), <https://www.childtrends.org/publications/dramatic-increase-in-percentage-of-births-outsidemarriage-among-whites-hispanics-and-women-with-higher-education-levels>. However, the percentage of all births to unmarried women has declined slightly in recent years. See Joyce A. Martin et al., Births: Final Data for 2017, 67 NATIONAL VITAL STATISTICS REPORTS, Nov. 7, 2018, at 5–6, https://www.cdc.gov/nchs/data/nvsr/nvsr67/nvsr67_08-508.pdf (finding that the percentage of all births to unmarried women was 39.8% in 2017, unchanged from 2016, and the percentage of all births to unmarried women peaked in 2009 at 41.0%).