

WITNESS INFORMATION FORM

Please complete the Witness Information Form before testifying:

Date: 5-20-2022

Name: Davidia J. Dodson

Are you representing: Yourself Organization

Organization (If Applicable): The Legal Aid Society of Cleveland

Position/Title: Supervising Attorney

Address: 1223 West Sixth St.

City: Cleveland State: OH Zip: 44113

Best Contact Telephone: 440.210.4526 Email: davidia.dodson@lasclcv.org

Do you wish to be added to the committee notice email distribution list? Yes No

Business before the committee

Legislation (Bill/Resolution Number): HB 508

Specific Issue: Equal Parenting Time and Decision Making

Are you testifying as a: Proponent Opponent Interested Party

Will you have a written statement, visual aids, or other material to distribute? Yes No

(If yes, please send an electronic version of the documents, if possible, to the Chair's office prior to committee. You may also submit hard copies to the Chair's staff prior to committee.)

How much time will your testimony require? Ten minutes or less

Please provide a brief statement on your position:

children's best interest is more important than parents rights.

Please be advised that this form and any materials (written or otherwise) submitted or presented to this committee are records that may be requested by the public and may be published online.



The
Legal Aid Society
of Cleveland
Since 1905

OPPONENT TESTIMONY - HOUSE BILL 508

May 24, 2022

Chairman Hillyer, Vice Chair Grendell, Ranking Member Galonski, and members of the House Civil Justice Committee: Thank you for the opportunity to provide testimony today in opposition of House Bill 508

Introduction

My name is Davida Dodson. I am a Supervising Attorney at The Legal Aid Society of Cleveland. I have been a legal aid lawyer for 32 years. Before that, I was an Assistant Professor of Social Work and Sociology at Malone College in Canton, Ohio for approximately four years. Prior to that, I worked as a mental health therapist for children and families in Stark County. I represent low-income men and women in Lake and Geauga Counties in Domestic Relations Court and Juvenile Court. I have also represented low-income people in other areas of law such as housing, social security, education, and tax.

I believe HB 508 will have a negative impact on the children of Ohio and their quality of life. It will also have a negative impact on low-income people.

Best Interest vs. Parent's Rights in Child Custody cases

I oppose a statute that eliminates an individualized approach to what is best for children and substitutes a rights-based approach on behalf of parents. Courts should consider what type of relationship each parent has with the child, pre-divorce, and what the parenting plan would look like, post-divorce, from the child's perspective.

Most cases are settled by agreement of the parties and contain shared parenting plans. It is rare for courts to order sole custody. I support shared parenting in most cases but don't believe the courts should be required to order equal time and equal decision making. When the parents don't agree, substantial parenting time is almost always granted. Courts should have discretion to order what is best for children. Individualized plans need not be limited to the most extreme cases like convictions for domestic violence or child abuse. The quality of children's lives should be more important than the rights of parents.

Children's Wishes and Concerns:

Most states allow for children to express their wishes and concerns to the court *in camera* through a GAL. HB 508 requires a parent, requesting a schedule other than

Davida Dodson

Phone: 440-210-4526

Fax: 440-210-4527

djdodson@lasclv.org

New Clients Call:

888.817.3777 (toll-free)

or

216.687.1900

General Business:

888.808.2800 (toll-free)

or

216.861.5500

**Cleveland
& Administrative Offices**

1223 West Sixth Street
Cleveland, OH 44113

General Business: 216.861.5500

Fax: 216.586.3220

Elyria Office

1530 West River Road North

Suite 301

Elyria, OH 44035

General Business: 440.324.1121

Fax: 440.324.1179

Jefferson Office

121 East Walnut Street

Jefferson, OH 44047

General Business: 440.576.8120

Fax: 440.576.3021

Painesville Office

8 North State Street

Suite 300

Painesville, OH 44077

General Business: 440.352.6200

Fax: 440.352.0015

www.lasclv.org

equal time, to defeat the presumption and prove detriment to the child. This eliminates the opportunity for children to have a say on the most important decision that impacts their daily lives. This may also affect their opportunity for college and employment. Here are some examples when the child's wishes and concerns should be considered.

If pre-divorce, children come home after school to extended family, a hot meal, home-work assistance, and family supervision, and, post-divorce, 50% of their time is spent as before and 50% of their time is spent alone or in daycare until the parent returns from work, most children would prefer the first alternative. From one parent's perspective, it is not against the law for a child, twelve or older, to be alone for three or four hours. This would be the parent's decision under HB 508 as written. But, this is where children's best interest should defeat parent's rights. Additionally, proof of this quality-of-life issue is not sufficient to overcome the presumption. The parent would also be required to prove detriment to the child. He or she would need to wait until the child's grades decreased or the child had juvenile court involvement, to prove harm or detriment as required by HB 508.

A child has multiple school activities and is highly engaged in school and community. If the child asks to spend more time during the week with one parent, who is able to plan transportation to sports/activities and the other parent does not think the activity merits the resources, then, the child might have a compelling reason to not spend equal time with both parents. Most shared parenting plans include language that the parents must agree on activities, cost, and transportation without regard to the child's wishes and how the child might benefit in the future.

Medical and Educational Reasons for Individualized Plans:

A child has symptoms of ADHD. One parent does not want the child evaluated or on medication. The other parent would like the child to be evaluated. These parents will need to go back to court.

A child for three years has struggled with her reading, and she reads at 5% of the national average. One parent would like the child to work harder at their reading and the other parent would like the child to have a reading evaluation at the school. The parents are not able to accomplish equal decision making without going back to court.

One parent is breast feeding and the other parent does not think this is important. Yet according to the Cleveland Clinic, breastfed babies have, stronger immune systems, less respiratory illness, and sudden infant death syndrome (SIDS) Adults who are breast fed benefit from less rheumatoid arthritis, less heart disease, less multiple sclerosis, and less of breast cancer. One parent believes that breast feeding should continue, and the other parent believes that this practice is unnecessary and interferes with parenting time.¹ The parents will need to return to court but are the legal tests too difficult, even if it is in the best interest of the child.

The analysis of what is best for a child should come at the beginning of the analysis; not the end. The best interest analysis of 3109.04(F) (1) (a) through (j) should not be eliminated. These factors consider the wishes of the parents, but they also include factors which have received less attention. While they consider domestic violence, mental illness, or substance abuse, they also measure qualitative aspects of the child's life. The legislature should consider expanding the best interest test, not limiting it. I would recommend a factor that considered the pre-divorce relationship of the child

with his or her parents, not just the post-divorce relationship. Parents seeking equal time and decision making should prove they already have a close relationship with the minor child.ⁱⁱ

Adverse Childhood Experiences (ACEs)

HB 508 may cause additional Adverse Childhood Experiences (ACES). ACEs are linked to chronic health problems, mental illness and substance use problems in adolescence and adulthood.ⁱⁱⁱ ACEs also negatively impact education, job opportunities and earning potential for a child's future.

While 90% of all divorce and juvenile court cases settle, cases that do not settle involve high conflict and may also include domestic violence, substance abuse and mental illness. While these factors are mentioned in the bill, it is clear that their presence alone, does not ensure protection for children. The parent seeking additional time or decision making will also need to prove detriment to the child, which is not defined. This means that a child must experience actual harm and that the harm must be proven. This subjects children to more risk for ACES.

One example of an Adverse Childhood Experience is the child's experience with divorce or separation from parents. The legislature should be sensitive to subjecting children to other ACES which could result from HB 508. Other examples include separation from the child's parent who provides daily care, domestic violence, child abuse, neglect, and poverty. Children experience divorce or separation, and other ACES, with variable responses.^{iv} One child might recover quickly without significant distress and another child might experience posttraumatic stress disorder and benefit from professional help. Thus, courts must be equipped to protect children from future harm and not handicapped from making individualized decisions. When these decisions are difficult, courts should err in favor of protecting children not protecting parents.

Chilling Effect of Reporting Domestic Violence, Child Abuse, Neglect.

The inclusion of punitive action against parents reporting domestic violence, child abuse, and neglect should be reconsidered. Preventing abuse and neglect should be a high priority. Physical abuse includes hitting, kicking, shaking, burning, or other acts of force against a child.^v Emotional abuse refers to behaviors that harms a child's self-worth or emotional well-being.^{vi} Examples include name calling, shaming, rejection, withholding love, and threatening.^{vii} Neglect is the failure to provide for a child's basic needs, such as housing, food, clothing, education, and medical care.^{viii} "Self-Report data suggest that a least 1 in 7 children have experienced child abuse and/or neglect during the last year."^{ix} Younger children are more at risk to experience fatal abuse and neglect. Children living in families with a low socioeconomic status (SES) have rates of child abuse and neglect that are five time higher than those of children living in families with a higher SES.^x Children at risk for adverse childhood experiences should be provided additional supports to prevent the effects of these problems. However, punishing parents, who raise these issues, will result in fewer reports, and more children witnessing domestic violence and experience abuse and neglect.

Impact on Low Income Parents

Children in Ohio increasingly facing hunger, insecurity, and poverty. A recent study from the Ohio Department of Education indicates that 49% of Ohio's school age children are economically disadvantaged.^{xi} HB 508 will create a two-tiered system for custody cases. Those who can afford private lawyers and those who cannot. In order to assert a plan other than equal parenting,

protracted litigation will be necessary. Parents will need to make a motion for a guardian ad litem and cases will need to be heard at trial. GAL fees can be as much as \$150.00 per hour which may pose a fee of more than \$5,000.00 or more, and for indigent parents, this is nearly impossible. It would be much more equitable to provide all litigants with access to best interest analysis and not just parents who can afford it. Self-represented people will not be able to use the complicated analysis of HB 508. Low- and middle-class families will not be able to afford to address the courts with concerns about their children's best interest. Child support will certainly decrease as a direct result of this action. More children will receive fewer financial resources than under the former statute. Some will enter poverty for the first time.

The Studies Cited Are Not Conclusive

HB 508 eliminates the best interest analysis for the custody of children and substitutes in its place, a policy establishing a rebuttable presumption for equal parenting time and decision making. Proponents of the bill cite to numerous studies but are these studies measuring the variables as cited by HB 508; or are the studies measuring something entirely different?^{xii} For example, the studies cited, used parents who agreed to shared parenting. These are not the high conflict families that this statute intends to address. This is self-selection. The parties agreed to shared parenting and the children had a positive experience. However, the question, scientifically speaking, is: Is there a cause-effect relationship? Or is there another plausible explanation?^{xiii} The studies cited discussed shared parenting which is different from equal parenting. Additionally, from a scientific perspective, the cause-and-effect conclusions of the studies do not rule out the other variables that may have led to positive outcomes for the children including socio-economic status, education, as well as the variable described above, self-selection.

CONCLUSION

In conclusion, decisions about child custody should be decided by Judges under a best interest analysis. Shared Parenting is important for the well-being of children, but it need not be equal parenting time and decision making. HB 508 imposes a nearly impossible standard for parents who believe their children would be better served by a more individualized plan. Parents should not be punished for trying to protect the safety of their children. Issues regarding the protection of children should be investigated, not punished; otherwise, there will be a steep increase of domestic violence, abuse, and neglect.

Respectfully,



Davida J. Dodson
Supervising Attorney
The Legal Aid Society of Cleveland

REFERENCES

-
- ⁱ CLEVELAND CLINIC. The Benefits of Breastfeeding for Baby & for Mom. www.clevelandclinic.org. accessed May 18, 2022.
- ⁱⁱ CAULLEY, *Equal isn't always equitable: Reforming the use of Joint Custody Presumptions in Judicial Child Custody Determinations*. 27 B.U.Pub. Int. L.J. 403 (2018).
- ⁱⁱⁱ CENTER FOR DISEASE CONTROL AND PREVENTION, *Fast Facts: Preventing Adverse Childhood Experiences* (April 2, 2021).
- ^{iv} See Jessica Dym Bartlett and Vanessa Sacks *Adverse Childhood experiences are different than child trauma, and it's critical to understand why*" (April 10, 2019.) CHILD TRENDS.
- ^v CENTER FOR DISEASE CONTROL AND PREVENTION, *Preventing Child abuse and Neglect: A Technical Package for Policy, Norm, and Programmatic Activities*. (2016) Accessed May 18, 2022. P.8
- ^{vi} *Id.*
- ^{vii} *Id.*
- ^{viii} *Id.*
- ^{ix} *Id.*
- ^x See also. Sedlak, A.J., Mettenburg, J., Basena, M., Petta, I., McPherson, K., Green, A., & Li, S. (2010), *Fourth National Incidence Study of Child Abuse and Neglect (NIS-4); Report to Congress, executive summary*. Washington, DC: U.S. Department of Health and Human Services, administration for Children and Families.
- ^{xi} OHIO DEPARTMENT OF EDUCATION, Advanced Report (<https://reportcard.education.ohio.gov/advanced>) (SY 2020-21). Accessed May 18, 2022.
- ^{xii} BRAVER AND VOTRUBA, *Does Joint Physical Custody "Cause" Children's Better Outcomes?* JOURNAL OF DIVORCE & REMARRIAGE 59 (2018) P3.
- ^{xiii} *Id.*