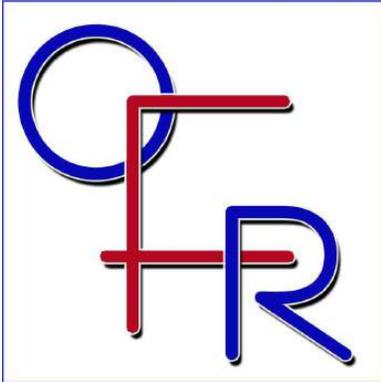


## HB508 Problems with Line Numbers



*Cause and effect, and additional comments will be included.*

Chair Hillyer, Vice-Chair Grendell, Ranking Member Galonski, and members, Richard D. Brown, Jeffrey A. Crossman, Al Cutrona, Darrell Kick, Brian E. Lampton, David Leland, Derek Merrin, Bill Seitz, Michael J. Skindell, Brian Stewart, D. J. Swearingen, and Andrea White, I want to thank all of you for allowing me to submit testimony on HB508 and detail the numerous problems that are within this bill.

While Ohio Family Rights has been a strong proponent of bringing about a comprehensive change to Ohio's "Shared Parenting" laws and the approaches the Courts and Ohio take when a bill is wrong for the State of Ohio we do feel the need to speak up and point out those problems in the bill as Introduced and additional problems within the Substitute bill. We take into consideration not only the actual legislation but the cost to the county and state courts, governments, and the families involved. We consider if the legislation will increase or decrease the time that families are in litigation and the costs of that litigation. This HB508 will increase litigation and it will increase the costs to families and the courts thereby increasing taxes to families that are not even involved.

I have personally been involved in the writing of this type of legislation back to the 125<sup>th</sup> General Assembly's HB232 and I worked with Representative Skindell on SB144 in the 129<sup>th</sup> General Assembly as well as Ron Young on the House version HB253, in the same General Assembly.

I made contact with Representative Creech in January of 2021 after reading that he was interested in making changes to the way Ohio approached custody in divorces. After a discussion, he was presented with draft legislation that had been run thru LSC by Rep. Becker in September of 2020. That draft was ready for introduction.

I kept talking to Rep. Creech trying to get him to get the proposal introduced so that a bill that had clearer and easier content and was more effective for all Ohioans was introduced. We received nothing but excuses from him as to why he had not proceeded as he indicated he was going to.

Then the bombshell was dropped when he and West did their press announcement around Fathers' Day last year with representatives of a Massachusetts-based non-profit at his side. Both Creech<sup>1</sup> and West were called and I asked for an "Interested Parties" Meeting at that time<sup>2</sup>. None was granted. As an organization, Ohio Family Rights tried to privately reach out to them for a private discussion and were told "we don't work with other groups". That is how messy and ineffective bills are created, by failing to listen to those that have walked the path and know the workings of the Statehouse.

Then after months, this 188 mess of a bill was introduced<sup>3</sup>. Ohio families cannot afford another messy bill like the child support bill that took effect in March of 2018 that has seen increased litigation as

parties fight over the number of overnights to gain minimal reductions in their child support. This bill will also significantly increase litigation and the associated costs.

After reading the entire bill, reading both LSC reports, listening to both the introduction testimony by Representatives West and Creech, and listening to the proponent testimony and comments that were made in both Committee hearings, this bill is not appropriate for Ohio or any other state.

One of the major concerns that have echoed thru the members of the Committee has been the use of “clear and convincing” vs. the current “preponderance” standard that is used. With no disrespect intended for anyone on the Committee your belief that counties in Ohio have equal custody as a standard order shoots a hole in your argument since you believed false information in the same way that too often happens in the courtroom with a custody case. Attached at the end are Tuscarawas County’s Standard orders for both Local and Long Distance cases. As to the Shared Parenting report that NPO did, please take it with a grain of salt as it only considered Domestic Relations standard orders, not Juvenile/Probate orders. We looked at both and found large differences between the counties and court divisions.<sup>4</sup> One thing Ohio Family Rights will not do is mislead you with statements that we make.

Could this bill be amended to be appropriate for Ohio? In our opinion, no. It would have to be completely replaced to fix all the problems in the language. We are urging this Committee to shelve this bill for one that is more appropriate for Ohio’s families.

Should any members of the Committee have any questions, please feel free to contact me.

**Ray R. Lautenschlager**

Legislative Director

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[Tuscarawas County Standard Order](#)  
[Tuscarawas County Long Distance Order](#)

The following is a line-by-line list of all the problems within HB508.

1. Line 808 - removal is not necessary
2. Line 893,894 there is a mediation conflict at another point
3. Line 1091-1590 - Removal of current shared parenting law and factors for determining custody
4. Line 1591<sup>5</sup> – Begins the removal of the special process for deployed or deploying active military personnel of the state.
5. Line 1591-1599 – Removes expedited hearing process for deploying
6. Line 1600-1605 – Removes the option to file before deploying
7. Line 1606 -1610 – Removes the court's ability to address the custody issues of deployment within 30 days of notice
8. Line 1611- 1622 – Removes the clause that prevents the court from holding service against a parent

9. Line 1623-1632 – Removes the ability of the court to issue a temporary order for deployment and then within 10 days of the notice.
10. Line 1633-1641 – Removes the ability of deployed or deploying from appearing by electronic means
11. Line 1642-1648 – Removes the ability to notify the court that service has ended within 30 days.
12. Line 1653 – 1660 – Removes the definition of active military service.
13. Line 1670-1673 – Removes the definition of uniformed services.
14. Line 1771-1787 – Does nothing to solve the problems of the never married.
15. Line 1788-1795 – Already covered under the ORC
16. Line 1796-1808 – Limits the court to only addressing cases of marriage. Limits the courts to only issuing rulings that comply with “policy” instead of what is best for the child or the family.
17. Line 1809-1819 – Ohio already has shared parenting and the term parental rights and responsibilities are also used to label shared parenting plans.
18. Line 1820-1825 – Annulment only applies to marriages that were fraudulently done or were never consummated.
19. Line 1826-1833 – Contents of a shared parenting plan questionable placement and more relevant content to other sections of this bill.
20. Line 1834-1842 – Black’s Law is clear that all presumptions are rebuttable. Language is conflicting here since it says that the parents agree and then the court has to decide if it is best. Negates the purpose of parents coming to an agreement and will cause more litigation rather than encouraging negotiations.
21. Line 1843-1846 – Lacks an evidentiary standard by which the factors are to be determined.
22. Line 1847-1849 – How is this supposed to be demonstrated? To what degree is it to be demonstrated? Lack of criteria.
23. Line 1850-1874 – parental kidnapping? Abuse? 2919.25
24. Line 1874-1875 – Mental and physical for all parents? Will increase costs involved in a case as ever case will likely require expensive testing. .
25. Line 1876- 1891 –No criteria for proceeding if determined by the court that the plan does not meet the objects or why.
26. Line 1892-1896 – No evidentiary standard
27. Line 1897-1904 – Ohio already has shared parenting and those orders are currently included in all final orders of divorce.
28. Line 1905-1909 – Final orders are not provisional orders when issued. Final orders are required to be marked Final and Appealable or nor right of appeal exists.
29. Line 1910-1922 – Residential parent for school and public assistance purposes. Child support has nothing to do with the residence.
30. Line 1923-1929 – No evidentiary standard as to how these decisions should not be made, nor are there any factors listed that should be used for how to make this decision.
31. Line 1930-1938 – Seems to indicate that they intend for a parent that does not physically have the child at the time to be free to enter the other parent’s home and have to say over that parent about how things are done within that home.

32. Line 1939-1950 – Tax codes require that a child lives within a home a majority of the time to be eligible to be claimed for tax purposes. Public assistance is based on the income amounts of that household.
33. Line 1957-1970 - 3109.0421 factors? Why factors which are different than other factors?
34. Line 1971-1981 – 3109.0422 factors? Why factors which are different than other factors?
35. Line 1988-1990 – 3109.0421(A) – This will immediately pit one parent against another in an effort to show that the other parent does not have the ability to get along or encourage cooperation that took place prior to the filing of the divorce or for the change of custody.
36. Line 1991-2000 – Ohio does not have a specific parental kidnapping law that applies to divorcing, divorced or parents going through a custody battle. Ohio’s parental kidnapping law applies to cases where a child has been placed in state or county care because of allegations of child abuse by Children’s Services.
37. Line 2015-2016 – While mental health should be considered and testing is presently able to be motioned for, making this a standalone issue with likely increase litigation costs by forcing testing of all parties within a case.
38. Line 2017-2021 – The Guardian Ad Litem has been the eyes of the court within the home. Unfortunately they are often a jaundiced eye and allow their own perceptions to cloud what is actually going on. They are an added expense that has become more prevalent since the changes were made to the child support laws were made in 2018 and the “dialing for days” began in the frivolous fight over 90 overnights to gain more days for the 20% swing that comes with it.
39. Line 2022 – 2025 – Lack of evidentiary standard by which the court is to consider the actors before it.
40. Line 2026 – 2049 – Ohio does not have a parental kidnapping law that applies to divorcing, divorced or parents going through a custody battle. Ohio’s parental kidnapping law applies to cases where a child has been placed in state or county care because of allegations of child abuse by Children’s Services.
41. Line 2050-2053 – Geographic proximity is relevant to one’s local area. Is this to be determined in miles, minutes of travel or convenience of travel. Impede parenting time?
42. Line 2054-2058 – In Camera interview process. Lack of timeline of when that interview is to take place if it is to happen or how a determination is made whether a child is mature enough to testify.
43. Line 2059-2061 – Repeat of other factors
44. Line 2064-2065 – Will increase the cost of litigation as more use psychological testing to try to gain custody or refuse allegations made in opposition to a presumption.
45. Line 2066-2068 – Describes the issues of contempt of the court’s orders
46. Line 2069-2070 – Move away and establishing residency outside of the state
47. Line 2071-2075 – Guardian Ad Litem are the eyes of the court and are supposed to give the court a set of eyes within the home. Referring back to 3109.44 limits them to only one available view that can be expressed to the court.
48. Lines 2076-2082 – Affidavit based on 3109.0422 determinations fail to consider if the affidavit is truthful as written.

49. Line 2083-2090 – Refers back to 3109.0421? Why split the decision making and custody/visitation?
50. Line 2091-2095 – The courts are not qualified to make decisions based social issues. They are not trained in social issues.
51. Line 2096 – 2100 – Lacks evidentiary standard and again circles back to 3109.420.
52. Line 2101 – 2105 – Refers back to a section that does not have factors listed.
53. Line 2106 – 2108 - Refers back to a section that does not have factors listed.
54. Line 2109 – 2117 - This asks the courts to apply a “Crystal Ball” approach to awarding custody by requiring that they predict the future actions of the parties involved.
55. Line 2118 – 2119 – Welfare of the child is a decision that can only be made by two fit parents (Parham) and would allow the courts to control the child based on their thought pattern and not that of the parents involved. This significantly raises the issue of interference in parents’ fundamental rights.
56. Line 2120 – 2125 – Again this circles back to 3109.0420.
57. Line 2126 – 2134 – Lack of evidentiary standard of review for criteria by which the “rebuttal” must be handled and a lack of standard by which the court must support its decision either way.
58. Line 2135 – 2142 – In Camera interview process. Lack of timeline of when that interview is to take place if it is to happen.
59. Line 2143 – 2147 – Does not contain criteria that a court shall use when appointing a Guardian Ad Litem or who will pay for the GAL. If the court uses its discretion, is the court going to pay the cost or assign it to the parents involved? Will those costs be split equally or unequally. Who will pay the cost of a parent cannot pay the cost.
60. Line 2148-2168 - Lack of timeline of when that interview is to take place if it is to happen. Fails to have any clear definition of what the judge must do if they deny the interview and the criteria that they used to determine why the child should not speak directly with them as requested. Fails to clearly describe what special circumstances are for denying an interview or define what a special circumstance is.
61. Line 2169 – 2173 – Under this section if a judge allows the attorney of a represented party and denies an unrepresented party (pro se), does this fall under ex parte communications?
62. Line 2185 – 2196 – What are the criteria for ordering psychological or psychiatric exams? Who is to pay this expense if the court orders this? What will happen if the parties are low income and have obvious mental problems that warrant examination? Making these reports available to parties opens up possible issues of misuse of the reports.
63. Line 2197 – 2241 – Why is the court being giving the ability to place a child with a known sexual or physical abuser? Doing such is far from acting in the best interest of any child and risks further abuse and trauma.
64. Line 2246 – 2255 – What is the evidentiary standard that the court is to use to make this determination? Why not the entire record with the court’s hands? When transferring the case from Domestic Relations to Juvenile Court, does the case remain with Juvenile Court permanently or does it transfer back to Domestic Relations once a determination has been made by the court? Which is the “Court of Competent Jurisdiction” for which issues?
65. Line 2256 – 2264 – This current law and it is unchanged.

66. Line 2267 – 2295 – Following the timeline that is laid out, the court would be making a determination based solely on affidavits, not on evidence. With no hearing or trial it would be impossible to make a determination based on clear and convincing evidence that is called for. This would greatly increase the use of false allegations in an effort to gain an advantage from the beginning of a case.
67. Line 2296-2304 – Until a prospective (punitive) father has filed for establishment of themselves as a legal father and been determined to be such by DNA, being named on the birth certificate has no legal bearing in the State of Ohio.
68. Line 2320 – 2328 - Lack of evidentiary standard that the court is to apply in making their determination. There is a recent Ohio Supreme Court case that set a new precedence for what it takes to change custody. **Bruns v Green**  
<http://www.ohiofamilyrights.com/New/Bruns%20V%20Green.htm>
69. Line 2329 – 2342 - Lack of evidentiary standard that the court is to apply in making their determination. What is detrimental to one person may not be viewed as detrimental to another or the court or vice versa.
70. Line 2343 -2356 - . Preponderance standard that the court is to apply in making their determination in this clause opens up the ability to use false allegations of disruptive behavior to their advantage to terminate a shared parenting agreement at will. When you compare this section with the previous section it becomes easier to terminate a current shared parenting plan then to make modifications.
71. Line 2357 – 2369 – The previous section laid out termination of a shared parenting agreement and now in this section directs the parents and the court to go back to arguing the presumption. Common sense tells anyone that this will throw the parties into an endless loop of litigation.
72. Line 2370 – 2386 – Previously covered in Lines 2320 – 2328 except here it uses parental rights and responsibilities rather than shared parenting.
73. Line 2387 – 2394 - Previously covered in Lines 2320 – 2328 except here it uses parental rights and responsibilities rather than shared parenting.
74. Line 2395 – 2399 – Current law renumbered. As a side note, appeals cases are rarely expedited.
75. Line 2400 – 2425 - Current law renumbered.
76. Line 2426 – 2459 – There is some very confusing language within this section as it starts with discussion of parenting time orders in divorce and then drifts into discussion of abuse and neglect cases. The language at one point limits children’s protective services from supervising parents time with their children and then flips to what a juvenile court may do when there are founded allegations of abuse.
77. Line 2460 –2481 – ORC 3109.051 renumbered
78. Line 2482 – 2566 - Current law renumbered
79. Line 2567 – 2580 – Current law renumbered
80. Line 2581 – 2616 – Previously covered in another section but with shared parenting used instead of parenting time.
81. Line 2617 – 2628 – Waiver of fees for the indigent? While this has and is currently done, why is the requirement being added that the court determine that the motion be with merit before deterring to waive the fees.

82. Line 2629 – 2635 – Part of current law renumbered. Reasonable parenting time is vague at best because what is reasonable to one person is unreasonable to another.
83. Line 2636 – 2647 – This section will cause every parent to file a notice with the court when they move from the residence listed on their court orders. There are no specifics listed as to how soon before said move that notice is to be filed. This will over burden the court with unnecessary hearings on frivolous matters.
84. Line 2648 – 2688 – This will cause the court to do a full investigation of all parties to make the determinations required. Likely will cause the use of a GAL and those associated expenses for a simple move from one local address to the next, even a move from one apartment in the same building to another.
85. Line 2689 – 2729 – Why are we requiring a full determination of custody, fitness or abuse for a simple act of moving residences?
86. Line 2730 – 2752 – FERPA requirement that is echoed within Ohio law. While the last sentence is a novel approach to problems that often come up with school and medical records, is it even legally possible to hold a nonparty to a case in contempt?
87. Line 2753 – 2775 – Getting records is not a problem that residential parents have, it is a problem that nonresidential parents have.
88. Line 2776 – 2782 – Unnecessary and frivolous burden on the county prosecutor. Waste of tax dollars and resources.
89. Line 2783 – 2806 – Day care limits, I am sorry but this is bordering on getting silly at this point. Is this and limits it imposes also going to apply to grandparents that babysit while a parent works?
90. Line 2807 – 2831 - Is it even legally possible to hold a nonparty to a case in contempt?
91. Line 2832 – 2859 – School systems are not police departments for enforcing court orders related to custody. Again we have that question, is it even legally possible to hold a nonparty to a case in contempt?
92. Line 2860 – 2873 – Say hello to the cookie cutter approach that the judges have claimed that such bill want them to use. This clause has just done just that.
93. Line 2874 – 2895 – Why the separate section for contempt related to missed visitation time and penalties that are stronger than normal for contempt of other sections of the order? Why do we have to decide if the “make up time” is detrimental if the party already has court ordered time?
94. Line 2899 – 2997 - Mediation is nonbinding under Ohio law with the exception of that which takes place under a collaborative law agreement. Why is the court being required to make determinations related to custody and abuse before ordering mediation? Those would have already been made or determined by any investigation previously or currently being made of the parties and their households. Who is paying for mediation or is it even legally possible to hold a nonparty to a case in contempt? Is this a cost to be split equally between the parties? Does this burden fall on the tax payers? What if the parties cannot afford the expense?
95. Line 2998 – 3118 – Everything taken out before under the military section is put back in under a different number. Absolutely no need or justification for doing so other than generating busy work for LSC. No wonder Rep. Schmidt and others complained that they had problems getting LSC to get bills they wanted to introduce done.

96. Line 3148 – 3165 – This is an unnecessary reporting requirement that is being placed on the courts. This will increase the cost of operation of the courts and expose the names of parents and children to the public.
97. Line 3368 – 3448 – Lacks an evidentiary standard by which the determination is to be made.
98. Line 3449 – 3734- Affects temporary guardianship assignments that parents often have to use because of short term events in their lives. Could greatly affect those with domestic violence protections orders that involve the parents and their child. This could endanger the children involved that a parent has asked the court to help protect.
99. Line 3735 – 4342 – Will greatly affect those that have sought domestic violence orders from the local municipal courts because of a violent act that they have been a victim of.
100. Line 4343 – 4585 – Frivolous addition of “parental rights and responsibilities” to the child support section that became law in March of 2018.
101. Line 4586 – 4603 - Third party rights and child support relief as far as terminating the child support, modifying it or continuing it. No evidentiary standard of review stated.
102. Line 4604 – 5512 – These lines have changes that refer back to other sections.

## **Problems in the Substitute Bill**

### **1. Replaced Clear and Convincing with Preponderance for custody cases.**

While we have found that this bill fails in so many ways, this change brings about further failure to protect the rights of any parent. With so many attorneys and former judges and magistrates on this Committee, I am surprised that the fact that there are rights here that must be considered with the strict scrutiny that comes with “Clear and Convincing” versa the current preponderance standard. To keep it simple for all, once a court grants more time or privileges to one parent over the over there does exist an enhancement of one person’s rights and the deprivation of the other’s. Case law does suggest as well as due process clauses of the U.S. Constitution and the State Constitution that this can only take place under strict scrutiny. Yet another reason why this bill should die here and be reworked completely.

### **2. Added more specific guidelines for what needs to be included in parenting plans (pg. 63-64, 3109.046).**

*This comes from OJC, JFS, and CSEA's feedback.*

*We added a more specific list of what needs to be in a parenting plan, including child support designation, dispute resolution, child exchange procedures, etc...*

Reading the new requirement of the plans there are major concerns in that parents would be required to submit plans that control and predict the life of a child in advance of any changing interests of the child. Although not addressed, the language would require separate plans for each child, now and well into the future.

### **3. Require parents to provide proposed plans and relevant details to the court no less than 30 days before trial (pg. 65, 3109.048; pg. 69, 3109.0419).**

*This comes from OBJA's feedback*

**4. Streamlined the relocation procedures, making it more clear what is expected when parents relocate, or intend to relocate with a child** (pg. 101-105, 3109.070-3109.079).

*This comes from OJC's language and we agree*

Lines 2982 -2983- Defines relocation as “any time an address changes”. This becomes frivolous and will increase litigations that overburden the courts since even moving from apartment A to apartment B is considered a move that will be challengeable in court. This will increase litigation and cause an overburdening of the courts.

Lines 2991 – 2996 – Which is it, 60 days in advance or within 10 days of when the parents knew? With no proof of evidence, there is no ability of the court to determine which date they would have to use in making a decision.

Lines 2997 – 3006 – There is a common-sense question that needs to be answered, **“How can a relocating parent provide a new address if they have not been permitted to relocate by the court?”**

Lines 3007 – 3024 – There are major “red flags” within this as the Courts retain the ability to circumvent the due process clauses of the US and Ohio Constitutions by waving service requirements in a discretionary manner and thru ex parte hearing. There is no guidance as to how quickly a hearing should be held on the ex parte hearing or what evidentiary standard the Courts are to use.

Lines 3025 – 3028 – What determines “good cause”? The court’s discretion? To what extent does the court have to support its decision that it is a “good cause”?

Lines 3039 – Does the nonmoving parent have to file contempt or is this a situation where the court uses direct contempt?

**5. Improved the process** when a parent is found to have been withholding court-ordered parenting time, including make-up time, attorney's fees, and the ability for the court to modify a parenting plan if necessary to protect and facilitate the parent-child relationship (pg. 111-113, 3109.0491-3109.0494).

Lines 3273 – 3278 – The 28-day requirement to hold a hearing does not comply with the Rules of Civil Procedure and would not allow time to respond as is required.

Lines 3279 – 3283 – This is a contempt proceeding and your courts are required to give a parent time to “purge” that contempt before applying any “punishment” for contempt.

Lines 3284 – 3295 – Unreasonable is not definable in legal terms. What may be unreasonable to one person is not unreasonable to another.

Lines 3296 – 3300 - What may be unreasonable to one person is not unreasonable to another and may not be unreasonable to the judge or magistrate hearing the case before them. Like the previous section, there is no evidentiary standard by which the evidence should be viewed.

Lines 3301 – 3317 – We walk a very slippery slope when we allow a judge to change a custody order on their motion when the issue before the court is not following the order.

As I examine the various “punishments” available to the Court, I see nothing that brings any real solution to the court that is better than the current fine and or jail time that is present now. The problem with contempt proceedings now is that they too often end with punishment being nothing more than a warning.

**6. Add a "fitness" factor to all rebuttal factors** (pg. 66, 3109.0411[D]; pg. 72, 3109.0421[E]; pg. 74, 3109.0422[J]).

*This came directly from magistrates we spoke with.*

*They requested there be a specific factor to account for parents who are clearly incapable or unfit.*

To find a parent unfit or incapable to parent a child requires the strictest scrutiny. With the evidentiary standard being preponderance, we stay at the present “he said/she said” that we have today.

**7. Provide recourse for false allegations** (pg. 74, 3109.0423; pg.105-106, 3109.0481).

*OJC's bill has similar language*

*Allows the courts to consider and award attorney fees when a parent has been found to have lied, misled the court, or made false allegations against the other parent.*

*Requires the court to consider whether a parent has lied or misled the court when allocating parental rights to one parent over the other.*

The use of false allegations has been and will remain rampant within custody cases until the evidentiary standards are raised to clear and convincing evidence. These allegations have far-reaching effects on those that are the recipient and can affect their home and work life including loss of job in some cases. Is it the intent of these sections to allow the court the discretion to award dollar for dollar compensation for the financial loss of the loss of a job or until suitable replacement employment is found? Does this apply only to allegations of abuse, or are other false allegations included?

## **2. Replaced Clear and Convincing with Preponderance for custody cases.**

While we have found that this bill fails in so many ways, this change brings about further failure to protect the rights of any parent. With so many attorneys and former judges and magistrates on this Committee, I am surprised that the fact that there are rights here that must be considered with the strict scrutiny that comes with “Clear and Convincing” versa the current preponderance standard. To keep it simple for all, once a court grants more time or privileges to one parent over the over there does exist an enhancement of one person’s rights and the deprivation of the other’s. Case law does suggest as well as due process clauses of the U.S. Constitution and the State Constitution that this can only take place under strict scrutiny.

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**7. Provide recourse for false allegations** (pg. 74, 3109.0423; pg.105-106, 3109.0481).

*OJC's bill has similar language*

*Allows the courts to consider and award attorney fees when a parent has been found to have lied, misled the court, or made false allegations against the other parent.*

*Requires the court to consider whether a parent has lied or misled the court when allocating parental rights to one parent over the other.*

The use of false allegations has been and will remain rampant within custody cases until the evidentiary standards are raised to clear and convincing evidence. These allegations have far-reaching effects on those that are the recipient and can affect their home and work life including loss of job in some cases. Is it the intent of these sections to allow the court the discretion to award dollar for dollar compensation for the financial loss of the loss of a job or until suitable replacement employment is found? Does this apply only to allegations of abuse, or are other false allegations included?

## **The Elephant in the Room**

When I look at who the “advice” came from for this Substitute bill I do wonder why those in the House and Senate continue to involve Judges in creating legislation. I can hear the counter argument now, “But we always have done that.”

With all due respect to all, just because you have always done it doesn’t mean that you are doing it right.

I did examine what the Ohio Revised Code says about their involvement and have attached what I found. <sup>6</sup>

## **Testimony of Amy Roehrenbeck, Esq. of Ohio CSEA Directors’ Association**

While reading and listening to the testimony of Ms. Roehrenbeck I did have some questions that came to mind that someone from the Committee should ask her to answer.

While she claims that they aggressively attempt to collect child support from fathers that owe, why don’t her member agencies take the same aggressive approach to collecting from mothers that owe?

As a few examples:

1. A father in Columbus has an ex-wife that owes \$30,000 in back support for their child. The mother has stated in open court when asked about the arrearage that “she is the mother and does feel she should have to pay any child support”. That amount of arrearage is in the felony non-support level, yet Franklin County CSEA has not filed contempt or criminally charged her for the obvious felony.
2. A father (never-married) in Cuyahoga County is not receiving child support from the mother despite having the child full time and the mother being ordered to pay. When the father contacts the local office he is told that it is his responsibility to track her down not the local agency’s. At one point he received a letter telling him that he was in arrears despite a court order to the contrary. He called and was told that his entire case file did not exist in the system.
3. Father in the Toledo area that has waited for three years for the local office to enter his order for the mother to pay support.
4. Father in Delaware, Ohio that called to check on his child support balance which was well paid in advance. He does this because of his national security clearance. CSEA agent immediately presumed him to be “another deadbeat” trying to get out of their obligation. Her attitude changed when she saw that he was \$6000 to the good.

I thank you all for your time. Should you have any questions, please feel free to contact me.

**Ray R. Lautenschlager**

Legislative Director

440-281-5478

[Ohio Family Rights](#)

[president@ohiofamilyrights.com](mailto:president@ohiofamilyrights.com)

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<sup>1</sup> I also have to ask why Rep Creech has appeared in a promo video for this Massachusetts non-profit.

<sup>2</sup> On March 30, 2022 Rep. Creech did hold an interested parties meeting yet still did not invite Ohio Family Rights to send a representative.

<sup>3</sup> Our proposal was about 60 pages and far more comprehensive for all.

<sup>4</sup> <http://www.ohiofamilyrights.com/New/Ohio%20Local%20Orders.html>

<sup>5</sup> Lines 1591 – 1673 are reinserted later in the bill. We question why LSC did something so frivolous with in this bill and in part explains the delays that some I have talked to have expressed about getting LSC to workup bills for them.

<sup>6</sup> <http://www.ohiofamilyrights.com/Reports/White-Papers/The-Judiciary-and-Ohio-Family-/the-judiciary-and-ohio-family-law-.html>

**Tuscarawas County, Ohio, Court of Common Pleas  
General Trial Division**

**Standard Parenting Order  
and Rules Governing Parenting Time**

Based upon the Court’s consideration of the best interests of the child(ren), as set forth in the Judgment Entry which incorporates this document, the parents shall comply with the following Standard Parenting Order and Rules Governing Parenting Time. See each category based on the age of the child(ren).

**I. Standard Parenting Order**

**A. Infant – 6 months**

For infants younger than 6 months of age, Parent 1 is the parent designated as the residential parent by an order of the Court. Parent 2 is the non-residential parent and may spend time with the infant three days per week for two-hour visits, which will occur at a location agreed upon between the parties. If the parents cannot agree as to the days and times, the following schedule shall be followed:

<b>Sunday</b>	<b>Monday</b>	<b>Tuesday</b>	<b>Wednesday</b>	<b>Thursday</b>	<b>Friday</b>	<b>Saturday</b>
Parent 1	Parent 1	Parent 1	Parent 1	Parent 1	Parent 1	Parent 1
Parent 2 2:00PM to 4:00PM		Parent 2 6:00PM to 8:00PM		Parent 2 6:00PM to 8:00PM		
Parent 1		Parent 1		Parent 1		

**B. Infant: 6 months – Age 3**

Beginning at 6 months of age, Parent 1 is the parent designated as the residential parent by an order of the Court. Parent 2 is the non-residential parent and may spend at a minimum two mid-week visits and alternating weekends, Saturday morning to Sunday evening. If the parents cannot agree as to the days and times, the following schedule shall be followed:

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Parent 1	Parent 1	Parent 1	Parent 1	Parent 1	Parent 1	Parent 1
		Parent 2 5:30 PM to 8:30PM		Parent 2 5:30PM to 8:30PM		Parent 2 10:00 AM
		Parent 1		Parent 1		
Parent 2	Parent 1	Parent 1	Parent 1	Parent 1	Parent 1	Parent 1
Parent 1 6:00PM		Parent 2 5:30 PM to 8:30PM		Parent 2 5:30PM to 8:30PM		
		Parent 1		Parent 1		
Parent 1	Parent 1	Parent 1	Parent 1	Parent 1	Parent 1	Parent 1
		Parent 2 5:30 PM to 8:30PM		Parent 2 5:30PM to 8:30PM		Parent 2 10:00AM
		Parent 1		Parent 1		
Parent 2	Parent 1	Parent 1	Parent 1	Parent 1	Parent 1	Parent 1
Parent 1 6:00PM		Parent 2 5:30 PM to 8:30PM		Parent 2 5:30PM to 8:30PM		
		Parent 1		Parent 1		

**C. Children: Age 3 to 13**

Beginning at the age of 3, the parents shall share equal parenting time, unless there are clearly defined special circumstances that would prevent them from doing so. Each parent is considered the residential parent when the child is with them, unless the court order states otherwise. If the parents cannot agree, the following schedule shall be followed:

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Parent 1	Parent 1	Parent 1	Parent 2	Parent 2	Parent 2	Parent 2
		Parent 2 6:00PM				
Parent 2	Parent 1	Parent 1	Parent 2	Parent 2	Parent 1	Parent 1
Parent 1 6:00PM		Parent 2 6:00PM		Parent 1 6:00 PM		
Parent 1	Parent 1	Parent 1	Parent 2	Parent 2	Parent 2	Parent 2
		Parent 2 6:00PM				
Parent 2	Parent 1	Parent 1	Parent 2	Parent 2	Parent 1	Parent 1
Parent 1 6:00PM		Parent 2 6:00PM		Parent 1 6:00PM		

**D. Teenager: Age 14 to 18**

Parents shall continue to follow the established schedule, but make reasonable accommodation for the teenager’s participation in academic, athletic, extracurricular and social activities or employment.

As a result, the teenager may spend less than equal time with one parent. However, the teenager must spend at least ten waking hours per week with each parent.

**E. Conflicting Schedules Due to Ages of Children**

If parents have children who fit into two or more parenting time schedules, the parents shall agree on which schedule to follow or present the issue to the Court by motion for a determination.

**F. Summer Schedule**

During summer break from school, parents shall follow the standard parenting schedule.

Each parent is responsible for any daycare, babysitting or supervision expenses during the exercise of their extended summer companionship, unless parents have already arranged, and agreed upon, daycare, babysitting, or supervisory providers. Any parent taking a vacation with the child(ren) shall do so during their week of companionship.

Summer school necessary for the child(ren) to pass to the next grade, or as recommended by the appropriate school official, must be attended, and official notice of such requirement must be shared between the parents. In the event a parent elects to exercise their companionship time during summer school, they shall be responsible to make sure that the child(ren) attends summer school as necessary.

**G. Spring Break and Winter Break**

Parents shall continue to follow their established schedule, and no changes are needed unless a parent is taking a vacation with the child(ren).

**H. Vacation**

Absent special circumstances, starting at the age of 2, each parent is entitled to two 7-day periods of uninterrupted vacation time with the child(ren) each year. Neither parent shall schedule their vacation time to receive more than 11 total consecutive days of parenting time when combined with the parent's standard companionship time. This vacation time can occur in the summer or spring break for school-aged children, or at any time for younger children. The parent wishing to take vacation time with the child(ren) must notify the other parent at least 60 days before the proposed vacation dates. This vacation time shall not interfere with school schedules. For any vacation travel, each parent must provide the other parent with information about the destination, times of arrival and departure, and method of travel.

In case of a conflict in schedules, Parent 1’s choice shall prevail in even-numbered years, and Parent 2’s choice shall prevail in odd-numbered years. Vacations shall not conflict with the holiday schedule.

**Vacations take precedence over the normal weekly schedule but not holidays or days of special meaning.**

**I. Days of Special Meaning**

**Child’s Birthday:** The child’s birthday shall be spent with the parent who has regularly scheduled parenting time on that day.

**Mother’s Day and Father’s Day:** Unless otherwise specifically agreed upon or ordered by the Court, Mother’s Day shall always be spent with the mother, and Father’s Day shall always be spent with the father. Unless the parties agree otherwise, the time shall be from 9:00AM to 8:00PM. The children shall spend the rest of the weekend with the parent who would otherwise be entitled to companionship that weekend under these rules.

**Other:** Parents are strongly encouraged to agree on division of time concerning other days of special meaning that are important to their individual families.

**Mother’s Day and Father’s Day shall take precedence and priority over the standard schedule and vacations.**

**J. Holiday Parenting Time**

Parents are encouraged to modify holiday companionship by agreement to reflect the customs and traditions of their family.

Holiday	Even-Numbered Years	Odd-Numbered Years	Times
Easter	Parent 1	Parent 2	10:00AM to 7:00PM
Thanksgiving	Parent 2	Parent 1	9:00AM Thursday to 9:00AM Friday
Christmas Eve	Parent 2	Parent 1	6:00PM on 12/23 to 9:00PM on 12/24

Christmas Day	Parent 1	Parent 2	9:00PM on 12/24 to 9:00AM on 12/26

**The holiday schedule takes precedence over the normal weekly schedule and vacations.**

## **II. Rules Governing Parenting Time**

Parents are encouraged to work together to establish rules and guidelines that make the companionship beneficial for both parents and the children. Unless otherwise agreed upon between the parents, the following Rules Governing Parenting Time shall apply:

### **A. Exchanges and Transportation**

Unless otherwise agreed or ordered by the Court, the parent completing his or her parenting time shall be responsible for taking the children to the exchange location and shall not be required to wait longer than 30 minutes for the other parent to appear.

Both parents shall, to the best of their ability, prepare the child(ren) physically and emotionally for all companionship contact.

Any person transporting the child(ren) for companionship periods established under these rules must possess a valid driver's license, and all child(ren) shall be properly restrained in the manner required by law during such transport.

### **B. Illness**

The parents are expected to follow the parenting time schedule despite any illness of a child, unless both parents agree that this would not be medically advisable. Medications and instructions for special care shall travel with the child. A child who is confined to bed rest pursuant to a doctor's instructions is presumed too ill for parenting time exchanges to take place. Any parenting time that is missed due to the illness of a child shall be made up the following week or as the parties may mutually agree.

**C. Telephone/Email contact/other phone or computer communication (snapchat, texting, etc.)**

Parents may communicate with the child(ren) during the other parent's scheduled parenting time, at least twice a week, but no later than 8:00PM or as otherwise agreed.

Each parent shall encourage free communication between the child(ren) and the other parent, and shall not do anything to impede or restrict that communication.

**D. Cooperation**

Each parent shall refrain from voicing criticism of the other parent, either in or out of the presence of the child(ren) and shall further do everything in their power to encourage others to refrain from similar conduct. Parenting time shall not be used by either parent to check on the other parent. Neither parent shall interrogate the child(ren) during or following the parenting time as a means to gather information regarding the other parent or activities of the other parent.

**E. Use of Alcohol or Drugs**

During their parenting time, neither parent shall consume alcohol to excess or use illegal drugs.

**F. Consistency**

Both parents shall strive for consistency and agreement in all matters regarding the child(ren), including disciplinary matters.

**G. School Issues**

Each parent must provide time for the child(ren) to study and complete homework assignments, papers or other school-assigned projects, even if the completion of this work interferes with the parent's plans with the child(ren).

**H. Exchange of School & Extracurricular Activity Information**

Both parents shall timely give to the other parent copies in their possession of grade reports, disciplinary notices and/or communications, including information regarding school pictures. Each parent is responsible to set up his or her own online access to school records and information, if available.

Scheduled periods of parenting time shall not be delayed or denied because a child has other scheduled activities (with friends, work, lessons, sports, etc.). It is the responsibility of the parents to discuss activities important to the child(ren) in advance, including time, dates, cost, and transportation needs, so that the child(ren) are not deprived of activities and maintaining friendships. The parent who has the child(ren) during the time of scheduled activities is responsible for transportation, attendance, and/or other arrangements.

**Tuscarawas County, Ohio, Court of Common Pleas  
General Trial Division**

**Long-Distance Standard Parenting Order  
and Rules Governing Parenting Time**

Based upon the Court’s consideration of the best interests of the child(ren), as set forth in the Judgment Entry which incorporates this document, the parents shall comply with the following Long-Distance Standard Parenting Order and Rules Governing Parenting Time. This Order is intended for cases in which parents reside more than 150 miles (one-way) from each other, unless the parents otherwise agree.

**I. Standard Parenting Order**

**A. Infants: Birth to 6 months of age**

For infants and children younger than 6 months of age, the non-residential parent may spend time with the infant 3 times per week for 3-hour sessions. If the parents cannot agree as to the days and times, the non-residential parent shall have parenting time as follows:

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
				5:30PM to 8:30PM	10:00AM to 1:00PM	Noon to 3:00PM

In odd-numbered years, the non-residential parent may have parenting time from Noon to 3:00 PM on Easter and Thanksgiving Day but shall not have parenting time on Christmas Day.

In even-numbered years, the non-residential parent may have parenting time from Noon to 3:00 PM on Christmas Day but shall not have parenting time on Easter or Thanksgiving Day.

**B. Infants and children: 6 months of age to age 2**

For infants and children between 6 months of age and 2 years, the non-residential parent parenting time schedule shall be as follows on alternating weeks, unless otherwise agreed:

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
				4:00PM to 8:00PM	10:00AM to 2:00PM	Noon to 4:00PM
					Overnight Begins at 10:00 AM	Overnight Ends at 7:00 PM

In odd-numbered years, the non-residential parent may have parenting time from Noon to 4:00 PM on Easter and Thanksgiving Day but shall not have parenting time on Christmas Day.

In even-numbered years, the non-residential parent may have parenting time from Noon to 4:00 PM on Christmas Day but shall not have parenting time on Easter or Thanksgiving Day.

**C. Children: Age 2 to age 5 or 6**

Beginning at age 2 to age 5 or 6, before the child enters kindergarten, the non-residential parent is permitted parenting time with the child a minimum of one week per month and a maximum of 2 weeks per month from Friday 7:00PM to the following Saturday at 7:00PM. Parents are strongly encouraged to take their child’s preschool schedule into account.

In odd-numbered years, the non-residential parenting time may include Easter and Thanksgiving Day but shall not include Christmas Day.

In even-numbered years, the non-residential parenting time may include Christmas Day but shall not include Easter or Thanksgiving Day.

**D. Children: Age 5 or 6 (kindergarten) to age 14**

Beginning at age 5 or 6, or whenever the child starts kindergarten, up to age 14, the non-residential parent shall be afforded 6 weeks of parenting time with the child during the traditional summer school vacation months of June, July and August. These visits shall occur in blocks of time of 2 weeks if the child is age 5 to 10 years, and 4-week blocks of time if the child is age 10 to 14 years.

The non-residential parent shall be entitled to 1 additional week during the Christmas/Winter break and 1 additional week during the Spring/Easter break.

In odd-numbered years, the non-residential parenting time may include Easter but shall not include Christmas Day.

In even-numbered years, the non-residential parenting time may include Christmas Day but shall not include Easter.

**E. Teenager: Age 14 to 18**

For a child age 14 and older, parents shall continue to follow the above schedule for children age 5 to age 14, including parenting time during Christmas/Winter break and Spring/Easter break, but make reasonable accommodation for the teenager's participation in academic, athletic, extracurricular and social activities or employment.

**F. Conflicting Schedules Due to Ages of Children**

If parents have children who fit into two or more parenting time schedules, the parents shall agree on which schedule to follow or present the issue to the Court by motion for a determination.

**II. Rules Governing Parenting Time**

Parents are encouraged to work together to establish rules and guidelines that make parenting time beneficial for both parents and the children. Unless otherwise agreed upon between the parents, the following Rules Governing Parenting Time shall apply:

## **A. Notice of Intent to Exercise Parenting Time**

**General Parenting Time** – The non-residential parent shall give the residential parent notice of intent to exercise parenting time no later than 48 hours in advance unless earlier notice is required by one of the following sections.

**Spring/Easter Break, Christmas/Winter Break and Thanksgiving** – The non-residential parent shall give the residential parent notice of intent to exercise parenting time during Spring/Easter Break, Christmas/Winter Break or on Thanksgiving no later than 30 days in advance.

**Vacations, Summer Break and Special Plans** – The non-residential parent shall give the residential parent notice of intent to exercise parenting time during summer break and of vacations or other special plans at least 60 days in advance.

Likewise, the residential parent must give the non-residential parent notice of vacations and other special plans or events at least 60 days in advance to avoid planning conflicts.

The non-residential parent's choice of vacation has priority over the residential parent's choice, unless the residential parent has given prior notice of a vacation or other special plans.

Each parent must provide the other parent with destination, times of arrival and departure, method of travel, together with emergency telephone or contact numbers, if any extended vacation will be taken away from that parent's residence.

The non-residential parent shall not schedule vacation or parenting time for the week before school starts.

## **B. Exchanges and Transportation**

Both parents shall prepare the child physically and emotionally for all exchanges to the best of their ability.

**Transportation by Plane, Bus, other Public Transportation.** If using airlines for transportation, the parties are encouraged to work together and obtain a round-trip ticket and split the costs. The residential parent must deliver the child to the designated

airport or bus/train station. A child younger than age 12 shall not travel long distances for parenting time unless accompanied by a parent or mutually agreed-upon adult. Approval of a non-parent travel companion shall not be unreasonably withheld.

**Transportation by Car.** The non-residential parent shall be responsible for picking up the child or otherwise arranging transportation at the beginning of his or her parenting time. The residential parent shall be responsible for picking up the child or otherwise arranging transportation at the end of the non-residential parent's parenting time. Any person transporting a child must possess a valid driver's license, and the child shall be properly restrained in the manner required by law during transportation.

**C. Telephone/Email contact/other phone or computer communication (snapchat, texting, etc.)**

Parents may have unmonitored communication with the child during the other parent's scheduled parenting time, at least once a day, but no later than 8:00PM or as otherwise agreed.

Each parent shall encourage free communication between the child and the other parent, and shall not do anything to impede or restrict that communication.

**D. Cooperation**

Each parent shall refrain from voicing criticism of the other parent, either in or out of the presence of the child, and shall further do everything in his or her power to encourage others to refrain from similar conduct. Parenting time shall not be used by either parent to check on the other parent. Neither parent shall interrogate the child during or following the parenting time as a means to gather information regarding the other parent.

**E. Use of Alcohol or Drugs**

During parenting time, neither parent shall consume alcohol to excess or use illegal drugs.

**F. Consistency**

Both parents shall strive for consistency and agreement in all matters regarding the child, including disciplinary matters.

**G. Exchange of School & Extracurricular Activity Information**

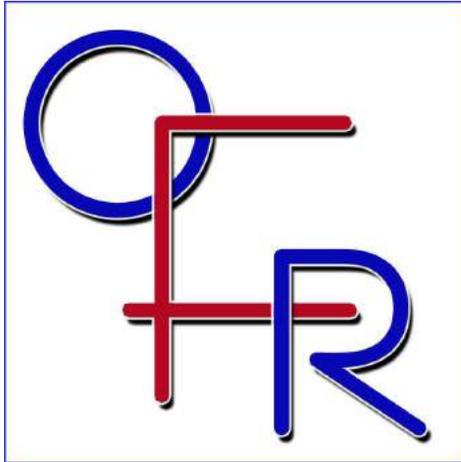
Both parents shall timely give to the other parent copies in their possession of grade reports, disciplinary notices and/or communications, including information regarding school pictures. Each parent is responsible to set up his or her own online access to school records and information, if available.

**H. Summer School**

Summer School necessary for the child to pass to the next grade, or as recommended by the appropriate school official, must be attended and official notice of such requirement shall be shared between the parents. In the event the non-residential parent elects to exercise his or her parenting time during summer school, they shall be responsible to make sure that the child attends summer school.

**I. Medications**

If the child is prescribed medication that is to be administered during parenting time, the residential parent shall provide the medication to the non-residential parent along with clear instructions. The non-residential parent shall follow the instructions that are provided.



## Has the Ohio Judiciary Overstepped Their Bounds?

### *A Look at the Judiciary and Objections to Reforms in Family Law*

It may be time for us to examine current Ohio laws and stated policies of the state, policies that were enacted by the General Assembly. What we need to look at is whether or not those policies are truly being followed or if the Ohio judiciary has

overstepped its bounds and is now usurping the authority of the General Assembly to control the policies on how the families of Ohio are treated. This report intends to analyze if the judges of the State of Ohio have in the past stepped outside of the legal authority contained in the Ohio Revised Code, Ohio and United States Constitution and their Canons of Conduct, when it comes to commenting on introduced bills that affect public policy on the families in this state.

To fully piece this together three different elements come into play that I will give general overviews of and then later show how they all piece together as the argument for telling judges to stop their objections to changes to the law that will benefit every citizen of the State of Ohio as well as the operation of the courts in the end.

### **Separation of Powers**

The intent of separation of powers in a tripartite system of government is to limit role members of the judiciary, executive branch, and the legislative branches have it the function of the other branches. This is to assure checks and balances between the three branches of government in its constitutional structure; that no branch became so powerful that it took authority over another. That none of the three branches blatantly interfered with the operation of another branch.

**The Executive Branch** has the responsibility of running the daily operations of the government's multiple agencies. They can suggest changes to the law but cannot under normal circumstance write and pass a law or rule without the approval of the Legislature.

**The Judicial Branch** has the responsibility of operating the court system of the state and deciding issues of controversy or criminal activity that are brought before the Courts.

**The Legislative Branch** is solely responsible for writing and passing the laws which govern the state and protect its citizens.

This is a simple concept that is intended to keep the power and authority of one branch from becoming totalitarian over the citizenry or the other branches of government and prevent the monarchy type of government that the original settlers to this land left England to get away from. A simple concept that is often forgotten in times where we see and hear often about the courts making rulings on laws that they did not write nor did they pass. Too often in the media frenzy of these cases, it is forgotten that it is the individual citizen and not the Courts that have brought these cases before them for a decision based on a particular set of circumstances that have occurred. The Court cannot comment until the suit is filed and must remain silent until asked to decide if a true controversy exists.

## **Authority to Comment Under the Ohio Revised Code**

While the judges of this state are permitted to comment on newly introduced bills there are limitations on what they can comment on if they oppose and procedures that they have to follow in doing so. The following is the Ohio Revised Code that spells out the process with a couple of key phrases highlighted that have been keys to pass bills that make changes to family law.

### **105.911 Judicial impact statement. (Emphasis added)**

(A) If a bill or resolution introduced in the general assembly appears to affect the revenues or expenditures of the courts of Ohio, to *increase or decrease<sup>i</sup> the workload or caseload of judges* or members of their staffs, or to affect case disposition, the Ohio judicial conference may prepare a judicial impact statement of the bill or resolution on its own initiative or at the request of any member of the general assembly. The Ohio judicial conference may prepare a judicial impact statement before the bill or resolution is recommended for passage by the house of representatives or senate committee of the general assembly to which the bill was referred

and again before the bill or resolution is taken up for final consideration by either house of the general assembly. The judicial impact statement shall include ***an estimate, in dollars, of the amount by which the bill or resolution would increase or decrease revenues or expenditures*** and any other information the Ohio judicial conference considers necessary to explain the fiscal effect of the bill or resolution. The statement also shall include an ***analysis of the bill or resolution's administrative and procedural effects on the courts of this state.***

(B) The Ohio judicial conference shall distribute copies of a judicial impact statement as follows:

(1) For consideration by the senate or house of representatives rules committee, or the standing committee to which a bill is referred, two copies to the chairman together with a copy to each member of the committee;

(2) For final consideration, a copy to each member of the house that is considering the bill. If the member who introduced the bill or resolution or who requested the statement is not a member of the house or rules committee considering the bill, the Ohio judicial conference shall send the member a copy.

(C) In preparing a judicial impact statement the Ohio judicial conference may request any court, department, division, institution, board, commission, authority, bureau, or other instrumentality or officer of the state or of a county, municipal corporation, township, school district, or other governmental entity of the state to provide any of the following information:

(1) An estimate, in dollars, of the amount by which the bill or resolution would increase or decrease the revenues or expenditures received or made by the court, instrumentality, officer, or entity;

(2) Any other information the Ohio judicial conference considers necessary for it to understand or explain the fiscal, administrative, and procedural effects of the bill or resolution.

The Ohio judicial conference ***first shall contact the Ohio legislative budget office*** for information regarding the fiscal effects of the bill or resolution. If the Ohio legislative budget office does not have the fiscal information sought by the Ohio judicial conference, then the Ohio judicial conference and the Ohio legislative budget office jointly may request any of the entities described in division (C) of this section to provide the fiscal information.

A court, instrumentality, officer, or entity shall comply with a request for information as soon as reasonably possible after receiving it. The Ohio judicial conference shall specify the manner of compliance in its request and, if necessary, may specify a period of no longer than five days for

compliance. The Ohio judicial conference may consider any information provided under division (C) of this section in preparing a judicial impact statement.

(D) The failure of the Ohio judicial conference to prepare a judicial impact statement before a bill or resolution is taken up for consideration by the house of representatives or senate committee, or by either or both houses for final consideration, shall not impair the validity of any bill or resolution passed by either or both houses of the general assembly.

(E) This section does not affect the duty of the Ohio legislative budget office to prepare fiscal analyses pursuant to section [103.14](#) of the Revised Code.

(F) As used in this section:

(1) With regard to a bill or resolution, "procedural effects" includes all court-related procedures, including pretrial, trial, and post-trial proceedings.

(2) With regard to a bill or resolution, "administrative effects" includes matters pertaining to the business of the courts, including clerical processes, records management, planning and research, changes in court personnel, calendar management, facilities and equipment, workload distribution, court reorganization, and the creation or addition of judgeships.

Effective Date: 10-06-1994

**Related Legislative Provision:** See 129th General Assembly File No.39, SB 171, §4

**The Ohio Revised Code** is clear in its intent and in showing under what conditions the judges of the state allowed to comment on proposed legislation or resolutions. They must show that a proposal will increase or decrease the workload for the courts. They must also show by asking the budget office to analyze the cost of the proposal on the courts. The third element is the proof that these proposals would make changes to procedures or the administration of the courts.

What the judges are not permitted to comment on is changes to the law that affect the State's overall policies or the court's use of items such as evidentiary standards that they are to use. Those are set by the Legislative Branch of the state in the manner in which the law is written. Procedures for the handling of cases are well defined which the Rules of Civil Procedure that the Courts have the authority to define, albeit with input from the judges, attorneys, and the public of the state.

To provide a bit of a history of comments on past family law bills, the judges have always complained of a loss of discretion. Discretion or the use of preponderance standard of review is not **an administrative process**; it is a function of law that is determined by the Legislative Branch.

In past bills where they have asked for a financial analyst of these changes, the budget has come back with a showing of no additional cost. That analysis was asked for on GA 125<sup>th</sup> HB232, GA 126<sup>th</sup> HB688 but never asked for with either GA 129<sup>th</sup> SB144 or HB253 even though the judges opposed the latter two bills partially on claims of increased costs to the courts.

To expand upon and explain this claim that the courts would lose their “discretion”, we need to look at the standard of review currently in use. Currently, the courts use a preponderance of evidence standard in making determinations of custody. This allows for the use of extremely broad use of and personal interpretation of the evidence presented rather than the use of clear of convincing evidence<sup>ii</sup> that the United States Supreme Court stated within Santosky v Kramer<sup>iii</sup> was the only acceptable standard of review for the courts to show that there exists a compelling state’s interest to interfere with a parent’s legal rights. Any time that a Court decides terms under which a parent may or may not see their child there must be a clear show as to why the rights of that parent should be changed to protect the child. The mere dissolution of a personal relationship thru a divorce is not sufficient to cause to interfere with the rights of a parent. If it were, then every child of every divorcing couple would have to be taken into the care of the state for protection.

**Legal definitions of both follow:**

**preponderance of the evidence**

n. the greater weight of the evidence required in a civil (non-criminal) lawsuit for the trier of fact (jury or judge without a jury) to decide in favor of one side or the other. This preponderance is based on the more convincing evidence and its probable truth or accuracy, and not on the amount of evidence. Thus, one clearly knowledgeable witness may provide a preponderance of evidence over a dozen witnesses with hazy testimony, or a signed agreement with definite terms may outweigh opinions or speculation about what the parties intended. Preponderance of the evidence is required in a civil case and is contrasted with "beyond a reasonable doubt," which is the more severe test of evidence required to convict in a criminal trial. No matter what the definition stated in various legal opinions, the meaning is somewhat subjective.

### **clear and convincing evidence<sup>iv</sup>**

n. evidence that proves a matter by the "preponderance of evidence" required in civil cases and beyond the "reasonable doubt" needed to convict in a criminal case.

One needs to question why a court or its officers would not want to be held to the highest standards and quality of work when it comes to making a determination of custody. Making this claim also steps far outside of the bounds of what they are permitted to comment on as stated under the Ohio Revised Code.

## **Ohio Code of Judicial Conduct**

The third element is what the Judicial Cannons or Code of Conduct have to say in respect to how and under what circumstances a judge may comment on the law.

### **RULE 3.2 Appearances before Governmental Bodies and Consultation with Government Officials**

**A judge shall not appear voluntarily at a public hearing before, or otherwise consult with, an executive or a legislative body or official, except as follows:**

- (A) In connection with matters concerning the law, the legal system, or the administration of justice;
- (B) In connection with matters about which the judge acquired knowledge or expertise in the course of the judge's judicial duties;
- (C) When the judge is acting pro se in a matter involving the judge's legal or economic interests, or when the judge is acting in a fiduciary capacity

Every time there have been bills introduced that concerns family law, or whether it changes to the way we view and award custody or alimony reforms (GA 129 HB348), the judges have asked for and been allowed meetings with representatives or senators to discuss these changes. Based on their code of conduct, these meetings are in direct violation of permissible behavior for the judiciary of Ohio. They have not appeared or been summoned to testify under the power of subpoena as would be indicated by the own Code of Conduct. I will verify that I have been at one House Public Testimony Hearing where Judge Richard Stuckey<sup>v</sup> who at that time was sitting on the bench in Stark County, testified against HB232. The judges did ask for a meeting with us to discuss the "problems" within HB232 but when told

that we were willing to meet, they never stated the time or place for that meeting to take place when we accepted their offer. The second was a stakeholder's meeting held at the request of Senator LaRose where a judge gave his opposition to SB144. I cannot verify but was told that the judges also were granted a meeting with Representative Pelanda on her alimony reform bill, HB348. I have to wonder how many other meetings have taken place contrary to what the Judicial Code of Conduct states that the judges may do.

## **The Tie Together**

To tie this all together for ease of understanding, Separation of Powers intention is to keep the branches of government from interfering with the function and authority of the coexisting other branches of government, it is in short, a checks and balances principle with the intent to keep all from having too much power over the citizens that they represent. The Ohio Revised Code places specific requirements on what, how, and what must be shown for the judges to comment on a proposed bill or resolution that is being considered by the Legislative Branch which is responsible for creating policies and laws that govern the state. The final is the restrictions and under what terms a judge comments on law outside of deciding on a "case of controversy" that is brought before the Court.

If the State of Ohio is to move forward with long-needed updates to the policies that address the families of Ohio this must stop today. These reforms have been called for twice in the past in written reports with the Task Force on Family Law in 2001<sup>vi</sup> and again with the Ohio Father Commission's report to incoming Governor Strickland in 2007<sup>vii</sup>. The introduction by the General Assembly of four previous bills speaks volumes in itself of the need for rethinking these policies now and that these laws be updated to meet the needs of current society and its problems. That will not take place until the General Assembly tells the judges of the state to return to their area and stay out of the legislative process.

As an appendix to this report, I will include the Judicial Impact statement from GA 125<sup>th</sup> HB232 and for GA 129<sup>th</sup> SB144 that clearly show that the judiciary has stepped over the limited bounds on commenting on the proposed changes to Ohio's Shared Parenting law. While in each of their comments on these bills the Judiciary has complained of what they claim is a loss of confidence in the judiciary, it is this insertion into the legislative process which is why many have lost confidence in the judiciary. Those that have gone thru the process of the family courts of Ohio have very much lost confidence in them and in the willingness of the courts to reduce the involvement a parent for no other reason except that the parents

can't get along or have chosen to dissolve a personal relationship. Add to this the slowness and expense of what should be a relatively simple legal process taking years to complete while draining bank accounts and the college funds of children, confidence is not all that has been lost by many. For those of us that have been working on these reforms, our confidence is lost in the numerous smoke screen defenses that have been put forth in the Judicial Impact Statements that are clear misinterpretations of the bills that they have chosen to comment on. These are done to make it appear that they are doing a proper job for the State of Ohio when they have failed all. Confidence has been lost because of inconsistencies in the decision making of the judges of this state in the cases before them. Two cases with the same circumstances more than not produce differing results all because of the broad discretionary powers that exist in an area of law that lacks two major factors that the judges need to assist and guide them in their decisions.

It is time to tell the judges of the state to respect the families of the state, the legislators of the state and the Constitution of the state, and return to what they were elected to do; decide cases of controversy, not legislate.

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<sup>i</sup> Frankly, we should be encouraging a decrease in the workloads on the Courts. Within the family court system of Ohio, several courts have taken to task for the slow movement of cases in various counties. This has been done in both the media and by the Ohio Supreme Court.

<sup>ii</sup> <http://www.ohiofamilyrights.com/Reports/White-Papers/Clear-and-Convincing-vs-Prepon/clear-and-convincing-vs-preponderance-.html>

<sup>iii</sup> [Santosky v. Kramer, 455 US 745 - Supreme Court 1982](#)

<sup>iv</sup> Clear and convincing is the civil court's equivalent of beyond a shadow of doubt.

<sup>v</sup> Now retired and currently a visiting judge and serving on divorce and custody cases

<sup>vi</sup> <http://www.ohiofamilyrights.com/Reports/Special-Reports-Page-3/Ohio-Task-Force-on-Family-Law-and-Children.pdf>

<sup>vii</sup> [http://www.ohiofamilyrights.com/Reports/Special-Reports-Page-1/2007\\_Final\\_Report\\_-\\_Ohio\\_Commission\\_on\\_Fatherhood\\_Transition\\_Committee.pdf](http://www.ohiofamilyrights.com/Reports/Special-Reports-Page-1/2007_Final_Report_-_Ohio_Commission_on_Fatherhood_Transition_Committee.pdf)