



May 22, 2022

TO: Ohio Civil Justice Committee CivilJusticeCommittee@ohiohouse.gov

FROM: The National Family Violence Law Center at GW Law

RE: House Bill 508 - Oppose

Good afternoon Chairman Hillyer, Vice Chair Grendell, and Esteemed Committee Members,

Thank you for the opportunity to provide testimony on HB508. We join over 90 organizations in opposing HB508.¹

To frame the problems that HB508 presents, one must first consider the essential goal of child custody decisions – to ensure that the **best interests of the child** – not parents – are protected. HB508 would replace Ohio’s current child-centric model with a parent-entitlement model.

- Such a model is contrary to common sense child protection policies, out of step with the rest of the country, and not in children’s best interests.
- It would likely increase, not decrease custody litigation, which would be costly for families and create backlog in courts.²
- It would deprive courts of necessary discretion in determining the best custody arrangement for each child’s unique needs and circumstances from the outset.³
- It would be particularly damaging in families with a history or risk of abuse, and it would put countless at-risk Ohio children in the way of grave harm, and possibly death.⁴

With HB508, both parents would automatically be granted 50% custody regardless of any past harms perpetrated by a parent against a family member, present risk, a lack of previous caregiving or involvement in the child’s life, a habitual use of illegal controlled substances, or other circumstances likely not in a child’s best interest.

¹ Ohio Domestic Violence Network, “Vote No on HB508, Protect the Best Interests of Children” (April 4, 2022).

² Brining, M. Does Parental Autonomy Require Equal Custody at Divorce? 65 LA. L. REV. 1345, 1368 (2005).
https://scholarship.law.nd.edu/law_faculty_scholarship/632/

³ For example, with HB508 the court could no longer at the outset order an age-appropriate custody arrangement for a nursing child until the nursing mother could first litigate and prove detriment to the child – a difficult standard to reach and one which would likely require the nursing mother to return to court multiple times. Without legal representation, it would be highly unlikely a litigant could prove detriment. In many counties, most litigants are *pro se* because they do not have the means to retain representation.

⁴ Pack, L. (2022, January 25). Preble County Sheriff: Deaths of father, 2 children believed to be murder-suicide. *Journal News*
<https://www.journal-news.com/crime/preble-county-family-deaths-police-were-called-by-mother-for-welfare-check/EWFTZPKZ6NCHLC3PDKGV4RB47A/>; reporting on recent child murders by an Ohio father who supported shared parenting policies such as HB508.



HB508 shifts the evidentiary burden and cost onto a caring, competent, and victimized parent to prove that a 50/50 custody arrangement causes detriment to a child in cases involving family violence or risk. Most survivors do not have the financial means, power, and resources to do so. With HB508, a safe parent - oftentimes a domestic abuse victim suffering trauma, housing and income instability, and a variety of other challenges (which the domestic abuser is not facing) - would need to find the resources and representation to “outlitigate” her/her child’s abuser in order to keep her children safe and overcome the presumption of 50% custody to the abusive parent. The safe parent would need to prove detriment to the child, which is an extremely difficult standard to meet even for a parent who is not disadvantaged in some of these ways, before the court could begin its best interest analysis and move to put safeguards in place for the child.

There are reports of family violence in approximately 75% of contested custody cases, which is a disproportionately higher rate than the average family in dissolution.⁵ The vast majority (over 90%) of separating parents *reach agreement on parenting time out of court*. Those that go to court have high rates of dysfunction, including abuse. Empirical research shows that custody courts are reluctant to give weight to valid claims of abuse in custody litigation for a variety of reasons; HB 508 would likely deepen that resistance.⁶

Studies have found that false allegations of abuse are rare and that most claims of child maltreatment are not fabricated. Though proponents of HB508 argue that current law is unfair to fathers because of the prevalence of false allegations in custody litigation, research shows that overall fabricated claims are rare and that those most likely to make fabricated claims of child maltreatment in the context of custody litigation are a non-custodial parent – mostly fathers.⁷ Creating a law which makes it *more* difficult for any safe parent and vulnerable children to obtain a custody order which ensures their safety from further harm, as HB508 would, is ill-advised.

Currently courts can and frequently do award shared custody to each parent and nothing in Ohio law bars them from doing this. Nothing in current law allows for discrimination by courts for or against mothers or fathers. Ohio now has a gender-neutral law which prioritizes the best interest of the child, as do most states in the nation.

Proponents of 50/50 presumption bills are misrepresenting Kentucky court data. Each year, 50/50 presumption bills are put forward in states by an organization called the National Parents

⁵ See generally, Jaffe, Zerwer & Poisson, *Access Denied: The Barriers of Violence & Poverty for Abused Women and their Children After Separation* 1 (citing four studies, all of which found 70-75% of cases in litigation involved allegations of domestic violence).

⁶ Meier, Joan S., "Denial of Family Violence in Court: An Empirical Analysis and Path Forward For Family Law" (2021). *GW Law Faculty Publications & Other Works*. 1536 https://scholarship.law.gwu.edu/faculty_publications/1536; Epstein, Deborah and Goodman, Lisa A., "Discounting Women: Doubting Domestic Violence Survivors' Credibility and Dismissing Their Experiences" (2019). *Georgetown Law Faculty Publications and Other Works*. 2037. <https://scholarship.law.georgetown.edu/facpub/2037>

⁷ Trocmé, N. and Bala, N. False allegations of abuse and neglect when parents separate, *Child Abuse & Neglect*, Volume 29, Issue 12, 2005, Pages 1333-1345, ISSN 0145-2134, <https://doi.org/10.1016/j.chiabu.2004.06.016>. Study with a large sample (7000+) found that in the context of custody, only 12% of child maltreatment claims were fabricated.



Organization, originally a father's rights organization, which makes questionable conclusions about available data.⁸ For example, their website states: "These [50/50] laws are overwhelmingly popular and have resulted in fewer contested divorces, fewer allegations of domestic violence, and better lives for Kentucky's children. NPO wants to replicate this success in every state in the Union." There is no basis for claiming such causality, and the **Kentucky Administration for the Courts rejects it** in the attached letter. Proponents of HB508 have relied heavily on this distortion of Kentucky data to mislead Ohio lawmakers and garner support for this bill.

For many of the above reasons, more than 90 organizations, including the courts, have expressed serious concerns about HB508 and oppose it. Among others, such organizations include the Ohio Judicial Conference, the Ohio State Bar Association, the Ohio Chapter of the American Academy of Matrimonial Attorneys, the Ohio Domestic Violence Network, the Ohio Poverty Law Center, and we the undersigned.⁹ HB508 is not in the best interest of children. The rights of parents should never outweigh the protection and best interest of children. Please vote NO on HB508.

Thank you kindly for your consideration and please do not hesitate to reach out if we can be of assistance.

Sincerely,

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Joan Meier
Founder and Director, National Family Violence Law Center

⁸ Matt Hale, Courier Journal, *Opinion: Kentucky's popular joint-custody law shows why it's the most effective at helping families*. August 30, 2019 <https://www.courier-journal.com/story/opinion/2019/08/30/kentuckys-joint-custody-law-leads-decline-family-court-cases/2158216001/>

⁹ Ohio Domestic Violence Network, "Vote No on HB508, Protect the Best Interests of Children" (April 4, 2022).