

OHIO ASSOCIATION OF MAGISTRATES

The Voice of Ohio Magistrates

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House Families and Aging Committee

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Opponent Testimony on House Bill 14

March 21, 2023

Chair Schmidt, Vice Chair Miller, Ranking Member Denson, and members of the House Families and Aging Committee, we thank you for this opportunity to submit opponent testimony for House Bill 14 on behalf of the Ohio Association of Magistrates.

We, Deborah Drexler and Penny Ann Gates, are submitting this joint written testimony as Co-Chairs of the Education Committee of the Ohio Association of Magistrates and as members of the Domestic Relations Law & Procedure Committee of the Ohio Judicial Conference.

I am Magistrate Penny Gates of the Clermont County Court of Common Pleas, Division of Domestic Relations which I have served since February 1996. Prior to taking the bench, I was a practitioner representing parties in domestic relations matters for more than eleven years in five counties. I have served on various Supreme Court workgroups, a member of the group revising the Supreme Court Domestic Relations Resource/Curriculum Guide, an appointed member of the Supreme Court Commission on Dispute Resolution, the Domestic Relations Practice Area Chair of the Ohio Association of Magistrates, the Twelfth District Representative for the Ohio Association of Magistrates, the Education Committee Co-Chair for the Ohio Association of Magistrates. I have been a member of the Board of Trustees of the Ohio Association of Magistrates for almost ten years. I serve on the Ohio Association of Domestic Relations Judges and am a member of the Domestic Relations Law & Procedure Committee of the Ohio Judicial Conference.

I am Magistrate Deborah Drexler of the Allen County Domestic Relations Court serving Allen County for thirty years, presently serving full time. I previously served Mercer County Common Pleas Court, part time, for twenty years in the Domestic Relations Division. I gained a unique perspective working in two counties with two different size populations and varying demographics. I was in private practice for ten years representing mothers and fathers, husbands and wives and children in domestic relations and juvenile matters in multiple counties. I have been a faculty member of the Ohio Supreme Court Judicial College since 1994 and was a faculty member of the National Judicial College in 2003. I served on the

Supreme Court Domestic Relations Resource/Curriculum Guide task force. In addition to being Education Co-Chair for the Ohio Association of Magistrates, I serve as the Third District Representative for the Association. I serve as Nominating Chair and have been a member of the Ohio Association of Magistrates Board of Trustees for several years. I served for the past three years as a member of the Domestic Relations Law & Procedure Committee of the Ohio Judicial Conference.

Ohio Revised Code 3109.03 states that separated parents or divorced parents stand in equality as to their rights and responsibilities for the care of their children. The current Ohio statutes related to the establishment and modification of parenting rights, responsibilities, and parenting time are Revised Code 3109.04 and 3019.051. These statutes provide a list of factors—approximately 20 in all—that the court is required to consider in determining what parenting orders are in a child's best interest.

Parents often come to the court with an informal schedule of managing their time with their children, based on a variety of real-life issues. These include work schedules, children's activities, availability of affordable day care, transportation, and each parent's involvement in parenting responsibilities. For example, a parent who is a firefighter, EMT, or law enforcement officer probably has a revolving schedule that makes an equal parenting time schedule nearly impossible. A parent who is working second shift—a medical care provider—may not be available for an equal parenting time schedule. The court is frequently required to consider parents who do not have reliable transportation or affordable day care which requires the availability of extended family members.

Equally important in the court's consideration are parents who have not been, historically in the parents' relationship, the parent primarily responsible for the children's day-to-day care—medical appointments, school appointments, transportation to activities, caring for an ill child, etc.

The current statutes provide the court with the flexibility to determine what is in the child's best interest based on that child's unique situation. HB 14 turns this standard on its ear and requires the court to consider what is detrimental to the child. This is a much lower standard and places the central consideration on what a parent wants, not what the child needs.

Courts across the state of Ohio have developed parenting schedules if the parents are unable to agree on a schedule of parenting time. These schedules take into account the needs of the community members that the court serves. Requiring a court to start from a requirement that each parent have equal time does a disservice to the reality of a child and families. Almost all of the counties have had input from the local attorneys who represent the parents.

The courts welcome parents who present an agreement to the court regarding parenting time and responsibilities. It is unrealistic to argue that if parents cannot agree on an arrangement for equal responsibility for decision making, that those parents will function in a plan that calls for the sharing of those responsibilities—a shared arrangement that is being forced on those

parents. This process creates conflict between the parents that often takes place in front of the child, sometimes with the involvement of law enforcement. This situation occurs more often than one might expect. No one would argue that this occurrence is in the child's best interest.

The demonstration of what is "detrimental" to a child will certainly require the involvement of more experts including mental health professionals, guardians ad litem, attorneys for the children, etc. than is necessary in the current statutory scheme. The first requirement would be to define "detrimental"—physical health, danger, safety, mental health, or all of those considerations. Certainly, there will be decisions that are appealed to the appellate courts and the Supreme Court until there is a judicial definition of "detrimental". This process involves considerable financial resources, resources that could be better spent on caring for the parents' child.

The requirement of HB 14 to track ordered overnight parenting time will require additional funding for the courts. There is currently no way to track this information through the use of court management systems. Consequently, courts would have to hire additional employees to perform this task. Would there be a breakdown in the number of overnight parenting time agreed to by the parents as opposed to an order after a contested hearing? What is the purpose and use of this data collection requirement?

HB 14 requires that the court find, by clear and convincing evidence, that equal parenting time and responsibilities is detrimental to the child. Then, and only then, is the court allowed to consider what arrangement is in the child's best interest. This is a high hurdle—and a double procedural process—to determine what is in the child's best interest. This requires additional litigation and cost to parents. In cases involving domestic violence and child abuse, this finding would be nearly impossible. Most cases involving violence and abuse turn on evidence presented by the victim of the violence or abuse—the children. Seldom are there other witnesses.

HB 14 changes the focus from a child-centered consideration to a parent-centered consideration. The court, and the legislature, should be concerned with doing what is best for a child, not what is best for a parent or the least harmful to a child.

Thank you for the opportunity to present our concerns with HB 14.

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