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**Testimony in Opposition to H.B. 14**
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**House Families and Aging Committee**
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Chair Schmidt, Vice Chair Miller, Ranking Minority Member Denson, and members of the House Families and Aging Committee, my name is Zack Eckles and I am an attorney at the Ohio Poverty Law Center. The Ohio Poverty Law Center advocates for evidence-based policies that protect and expand the rights of low-income Ohioans. We are a non-profit law firm working closely with Ohio's legal aid community, serving Ohioans wo are living, working, and raising their families in poverty. Thank you for the opportunity to provide testimony in opposition to House Bill 14, regarding the allocation of parental rights and responsibilities.

Currently under Ohio law, a court's primary focus when dividing custodial rights and parenting time is determining the best interests of the child.[1] As introduced, H.B. 14 makes the best interests of the child a secondary consideration for courts and instead centers the analysis on the entitlements of parents. Although the bill is well-intentioned, it will increase the risk of custody orders that are not in the best interests of the children involved. These risks are exponentially greater for cases involving victims of domestic violence and low-income Ohioans. While the presumed goals of H.B. 14 of increasing parent involvement in their children's lives and establishing more consistent custody determinations across counties are commendable, H.B. 14 would likely do more harm than good.

**Concerns with H.B. 14**

H.B. 14 creates a "rebuttable presumption" that equal-time and decision-making rights for both parents, commonly referred to as shared parenting, is in the best interests of the child unless one parent is able to show by a "clear and convincing" evidence that such an arrangement would be detrimental to the child.

This limitation of judicial discretion would have very little, if any, impact on the overwhelming majority of divorces with children that are settled out of court every year. According to the Supreme Court of Ohio's tracking data, of the 11,213 divorces with children filed in 2021, only 2,158—or less than 20 percent—of those cases concluded with a contested court decision at trial.[2] Cases that are not settled more often involve complex problems, including domestic abuse, and parents that are unwilling or unable to work together to co-parent their children. H.B. 14 would impose its presumptions of equal-time and equal decision- making on these cases, where context and judicial discretion are most needed.

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[1] O.R.C. § 319.04
[2] The Supreme Court of Ohio. (n.d.). The Supreme Court of Ohio & The Ohio Judicial System. Ohio Court Statistics. Retrieved April 26, 2022, from https://www.supremecourt.ohio.gov/JCS/courtSvcs/dashboards/

***Survivors of domestic violence will suffer as a result of the one-size-fits-all approach of H.B. 14.***

The limitations placed on judicial discretion and evidentiary hurdles will be especially harmful for Ohioans who are attempting to escape an abusive relationship. In 2020, the Ohio Bureau of Criminal Investigation and Identification reported 71,507 domestic dispute calls were made to police and led to 31,800 DVI charges.[3]3 In the same year, The Supreme Court of Ohio recorded 20,915 filings for Domestic Violence Civil Protection Orders,[4] and the Ohio Domestic Violence Network assisted 111,487 survivors of domestic violence, including 8,753 children with issues extending from domestic violence.[5] There is a huge number of Ohioans who take a leap to escape an abusive relationship every year.

Unfortunately, when domestic violence occurs between partners who are married with children, abusive parents often exploit custody litigation to further harass, intimidate, and exert control over their separated partner. Abusive partners frequently manipulate each step of the legal separation process to inflict as much stress and emotional damage as possible, a tactic which is especially pernicious during custody determinations. Since most domestic violence incidents occur in the privacy of one's own home where there are no witnesses other than the two individuals involved, evidence can sometimes be limited. In these cases, and even in cases where there is some documentary evidence such as a police report, judges must largely rely on their assessments of the credibility of testimony from the two parties telling opposing stories. Under these circumstances, survivors of domestic violence are already at a distinct disadvantage due to the symptoms of trauma from enduring domestic violence and confronting your abuser in court. Enduring domestic violence and confronting one's abuser in court not only retraumatizes the survivor, but can also severely impede their ability to testify or represent themselves at a hearing where the abusive party is present.[6]

H.B. 14 would unintentionally create a legal presumption that an abusive partner is entitled to 50/50 parenting time and decision-making, unless the non-abusive parent is able to provide a judge with the evidence required to overcome the presumption. Where survivors don't have the evidence available, or just the capability to effectively present the evidence, H.B. 14 will likely preclude judges from issuing equitable custody orders.

***H.B. 14's primary function is to force a particular legal outcome in as many cases as possible, which it does without concern for the practical steps within the process or how the process applies to real people.***

Perhaps the most foundational error in H.B. 14 is its failure to properly consider how law translates to real situations when applied through court processes involving actual people.
Proponents for H.B. 14 have taken academic studies finding that positive involvement from both parents leads to better lives for children and concluded that a legal presumption in favor of equal-time

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[3] Ohio Bureau of Criminal Identification and Investigation. (2020). Domestic Violence Report: Domestic Dispute Calls. https://www.ohioattorneygeneral.gov/Files/Reports/Domestic-Violence-Reports/Domestic-Violence-Reports-2020/2020-Domestic-Dispute-Calls

[4] *Supra* note 2.

[5] Ohio Domestic Violence Network. (2021). ODVN [Fact sheet]. Retrieved from https://www.odvn.org/wpcontent/uploads/2021/05/FactSheet_May2021.pdf

[6] Joan S. Meier, Domestic Violence, Child Custody, and Child Protection: Understanding Judicial Resistance and Imagining the Solutions, 11 Am. U. J. Gender Soc. Pol'y & L. 657 (2003)

and decision-making in all custody determinations will also lead to better lives for children. The detrimental effects this will have on survivors of domestic violence have already been discussed, but the approach will also lead to worse outcomes for many families that would be better served by a different parenting plan for more innocuous, pragmatic reasons. If passed, H.B. 14 would create new issues in cases involving unmarried mothers, cases pursued by unrepresented litigants, and parents that either do not actually want shared parenting or have logistical hurdles that would prevent them from maintaining such an arrangement.

Although it is an ideal outcome when separating parents are able to work together, shared parenting is not always the preferred arrangement for parents. A California study found that in cases in which custody was resolved without court intervention only 20% of families chose a joint custody arrangement.[7] "A study of eleven hundred families in two California counties, found that, within one year of the order, most children were actually living with one parent," and "parents did not become more cooperative over time."[8] In a separate study of parents who "voluntarily agreed to joint custody, one-third had changed arrangements to sole custody, citing problems such as children feeling conflicting loyalties between parents and logistical difficulties."[9] H.B. 14 would effectively impose a parenting arrangement many parents would not choose themselves, and might be more aspirational than practical for parents who do.

According to the National Center for Access to Justice's 2020 report, in contrast to the national rate of 41.2 attorneys per 10,000 Americans, Ohio has just .75 legal aid attorneys per 10,000 Ohioans below 200% of the Federal Poverty Line (3,395,200 Ohioans below 200% FPL in 2020).[10] This means that an overwhelming number of low-income Ohioans have to navigate the court system without the benefit of counsel. In addition to procedural and technical challenges unrepresented litigants have to overcome, they are also at a severe disadvantage when facing a represented party in evaluating the relevance of facts, prioritizing arguments, and even determining what they need to prove. Custody litigation already contains a gaggle of legal terminology that can be difficult for lay persons to grasp, such as the difference between joint custody and shared parenting. H.B. 14's insertion of a legal presumption will intensify the challenges already faced by unrepresented parties, and is likely to lead to unjust orders when one party has the benefit of legal counsel and the other does not.

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[7] Eleanor E. Maccoby & Robert H. Mnookin, Dividing the Child: Social and Legal Dilemmas of Custody. 103 (1992).
[8] Lila Shapero, Esq., *The Case Against a Joint Custody Presumption*, Vt. B.J., DECEMBER 2001, at 37
[9] *Id.*
[10] David Udell, *Self Representation – 2020*, National Center for Access to Justice (April 22, 2022), https://ncaj.org/state-rankings/2020/self-representation

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**Approaches by Other States**

When evaluating whether H.B. 14 is ideal legislation for Ohio, there is a deep catalogue of approaches taken by other states both in past and present we can examine. Ironically, the proliferation of our current "best interests of the child" standard across the United States was the result of a cultural shift away from another parent-centered legal presumption in custody determinations known as the "tender years doctrine," which presumed that a mother should have primary custody of children during their tender years.[13] The rejection of the tender years doctrine was guided by the feminist movement of the 1970s and its goals of gender equality at home and in the workplace. Today, fathers' rights groups believe the movement went too far and that fathers are now at a disadvantage in custody determinations, and have pushed for legislation creating new parent-centered legal presumptions in response.

California was one of the first states in the country to pass legislation codifying a presumption in favor of joint custody, in 1979.[14] In the years soon after enactment a survey revealed "over two-thirds of California judges found that imposition of joint custody under the operation of the presumption led to mixed or worse results for the children due to lack of parental cooperation, continuing conflict between the parents, children experiencing instability when shuttled between homes, and logistical difficulties for parents."[15] In response to the harmful consequences of imposing a shared parenting arrangement on parents that were unwilling or unable to co-parent, California reversed course, and amended its statute in 1994 to remove its presumption and encouraged shared parenting only when both parents agree to such a parenting plan.[16]

Despite the experience in California, similar legislation has been considered in states across the country. A 2022 survey of the National Conference of State Legislature's Bill Tracking Database found 22 bills introduced across the country since 2012 which attempted to establish a rebuttable

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[12] R.C. § 3109.12(A)

[13] Linda D. Elrod & Milfred D. Dale, *Paradigm Shifts and Pendulum Swings in Child Custody: The Interests of Children in the Balance*, 42 Fam. L.Q. 381, 392 (2008).

[14] *See* Nancy K. Lemon, *Joint Custody As a Statutory Presumption: California's New Civil Code Sections 4600 and 4600.5*, 11 Golden Gate U.L. Rev. 485, 487 (1981) ("Joint custody, whether legal or physical, is statutorily authorized in only a few states, and is presumed to be in the child's best interests only in California."

[15] Lila Shapero, *The Case Against a Joint Custody Presumption*, 27 Vt. B.J. 37, 37 (2001) (citing Thomas J. Reidy et al., Child Custody Decisions: A Survey of Judges, 23 Fam. L.Q. 75, 80 (1989); Gerald W. Hardcastle, Joint Custody: A Family Court Judge's Perspective, 32 Fam. L.Q. 201 (1998)).

[16] Maritza Karmely, *Presumption Law in Action: Why States Should Not Be Seduced into Adopting a Joint Custody Presumption*, 30 Notre Dame J.L. Ethics & Pub. Pol'y 321, 328 (2016)

presumption in favor of equal-time and/or decision-making with a preponderance of the evidence standard used to overcome the presumption. Of those, 17 failed, and different variations have passed in Wisconsin, West Virginia, Utah, and Kentucky. Only Kentucky passed a bill that included a rebuttable presumption in favor of both equal time and equal custodial rights.

Proponents of H.B. 14 have sought to dismiss concerns about how the bill will affect victims of domestic violence by pointing to Kentucky's recent drop in reported domestic violence incidents over the last two years. However, there is absolutely no evidence that the decline in reports of domestic violence during the pandemic is reflective of a decline in the occurrence of domestic violence. Nor is there any evidence that the passage of H.B. 528 in Kentucky had any causal effect on the perceived reduction in domestic violence in Kentucky. More to the point, the concerns held by advocates for domestic violence survivors have regarding H.B. 14's impact on their clients is not that the bill will increase the occurrence of domestic violence, but that it will make it even more difficult for survivors to achieve a peaceful and safe life with their children.

**Conclusions**

There is no doubt that H.B. 14 is well-intentioned legislation, with a noble goal of increasing parental involvement and improving children's lives. Shared Parenting is an excellent outcome in cases where, although legally separated, parents are able to work together effectively to raise their children. In those cases, parents can already agree to and implement a shared parenting agreement.

Unfortunately, not all parents are able to do that, oftentimes through no fault of their own. In too many cases, H.B. 14's approach of imposing one particular legal outcome by minimizing the experiences and concerns of the parents involved will result in unjust and inequitable outcomes. The potential benefits of H.B. 14 are far outweighed by the unintended costs it would inflict on those who are already most disadvantaged in custody determinations.

For these reasons, I urge you to oppose H.B. 14.