

**OPPONENT TESTIMONY ON SUB HB 14 BY MICHAEL R. SMALZ,
ON BEHALF OF THE OHIO CHAPTER, NATIONAL ORGANIZATION FOR WOMEN
HOUSE FAMILIES AND AGING COMMITTEE, MAY 14, 2024**

CHAIRWOMAN SCHMIDT, VICE CHAIR MILLER, RANKING MEMBER DENSON, AND MEMBERS OF THE COMMITTEE:

I am testifying in opposition to Sub HB 14 on behalf of the Ohio Chapter, National Organization for Women (“Ohio NOW”). I am a Board member with Ohio NOW.¹ We strongly oppose Sub HB 14. It contravenes the best interests of children by replacing the “best interest of the child” test with statutory presumptions of “equal decision-making rights and responsibilities” and equal parenting time, and by applying a “detrimental to the child” test for rebutting those presumptions.

In Ohio, 25% of all children are exposed to domestic violence before they turn 18 years of age.² Children who witness domestic violence have significantly worse social, psychological, and academic outcomes than children in nonviolent homes.³ Moreover, there is a high correlation between adult partner domestic violence and child abuse, and children who witness intimate partner violence are approximately four times more likely to experience direct child abuse than children who have not witnessed intimate partner violence.⁴

Furthermore, “physical abuse, stalking, and harassment continue at significant rates post-separation and may even become worse.”⁵ Abusers deploy children as pawns, continuing to abuse their victims through their shared children.⁶ Children are not only likely to be exposed to violence between the abuser and the mother post-separation, but there is a higher risk of domestic violence directed toward both the child and the abused parent.⁷

The statutory presumptions in Sub HB 14 are especially troubling because, instead of applying the “best interest of the child” test, Sub HB 14 requires proof that equal parenting and equal parenting time are “detrimental to the child” to rebut the presumptions. The “detrimental to the child” standard is a more stringent and burdensome test -- mandated by a 1977 Ohio Supreme Court decision – used to determine whether child custody should be taken from the parents and awarded to a nonparent.⁸

Unlike any other state, if the presumption of equal decision-making rights and responsibilities is rebutted under Sub HB 14, the parent who has “demonstrated a greater and more consistent willingness to cooperate with the other parent” must be designated the residential parent and legal custodian. In fact, the Ohio Supreme Court’s Court Guide on Domestic Violence & The Allocation of Parental Rights and Responsibilities cautions against giving undue weight to parental cooperation in custody cases involving domestic violence because concerns for a child’s safety or the impact of trauma on a child may inhibit a parent’s ability to facilitate

parenting time or encourage love and affection for the other parent.⁹ Under Sub HB 14, if the presumption is rebutted because of domestic violence, the protective parent may then be punished by losing legal custody to the abuser. This provision will also have a chilling effect on survivors of domestic abuse.

Furthermore, Sub HB 14 is less protective of domestic violence victims than comparable statutes in other states. For example, in Kentucky there is no presumption of joint custody if a domestic violence protection order has been issued against the abusive parent. Arkansas has a rebuttable presumption that it is not in the best interest of the child to be placed in joint custody where there is proof by a preponderance of the evidence that the parent has engaged in a pattern of domestic abuse.¹⁰ And in West Virginia, if a parent is found to have engaged in domestic violence or child abuse, the court may not allocate legal or physical custody to that parent without making special written findings that the child and other parent can be adequately protected from harm by such limits as it may impose, and the abusive parent has the burden of proving that allocating custody to that parent will not endanger the child or the other parent.¹¹ Sub HB 14 does not provide any of these protections.

Sub HB 14 is also inconsistent with Kayden's Law. In March 2022 President Biden signed the Violence Against Women Act Reauthorization, which incorporated Kayden's Law.¹² (Kayden was a 7-year-old child who was brutally murdered by her father after he was granted parenting time by a Pennsylvania court.) Two Congressional findings in Kayden's Law are especially noteworthy: (1) abusive parents are often granted custody or unprotected parenting time, placing the children at ongoing risk; and (2) researchers documented nearly 800 children murdered by a divorcing or separating parent since 2008, with more than 100 of those murders known to have occurred after a court ordered the child into contact with the dangerous parent over the objection of a safe parent or caregiver.¹³ Therefore, Kayden's Law provides financial incentives to states whose child custody laws prioritize child safety, mandate judicial education on domestic violence and child abuse, and limit expert testimony regarding domestic violence and child abuse to professionals with demonstrated expertise and clinical experience, and prohibit compulsory "family reunification" camps. Colorado, Pennsylvania, Tennessee, and Utah have enacted Kayden's Law, and the new Tennessee law also protects a parent in a child custody proceeding from being penalized for making a good faith complaint about domestic violence or child abuse. Contrary to Kayden's Law, Sub HB 14 would increase the likelihood that abusive parents will be awarded equal parenting and equal parenting time.

In conclusion, we oppose Sub HB 14 because it prevents judges from issuing a custody order tailored to the best interests of the children and threatens the safety and welfare of domestic violence survivors and their children. In addition, we recommend that the legislature consider the statutory recommendations in Kayden's Law.

¹Michael Smalz is also a retired lawyer, having previously worked as a Senior Staff Attorney with the Ohio Poverty Law Center and a legal aid attorney. He served as a member of the Ohio Supreme Court’s Advisory Committee on Domestic Violence and its Advisory Committee on Children and Families. He was awarded the Ohio Domestic Violence Network’s Croucher Family Advocacy Award in 2014, and he was awarded the American Bar Association’s 20-20 Vision Award in 2015 for his leadership and advocacy on domestic violence.

²The Health Path Foundation of Ohio, (2017), *Impact of Domestic Violence Exposure: Recommendations to Better Serve Ohio’s Children*, Cincinnati, Ohio. Available from <http://www.healthpathohio.org/dvimpact>.

³E.g., Kitzmann, Gaylord, Holt & Kenny, *Child Witnesses to Domestic Violence: A Meta-Analytic Review*, 71 JOURNAL OF CONSULTING AND CLINICAL PSYCHOLOGY 339-352 (x); <https://acestoohigh.com/got-your-ace-score/>.

⁴VIOLENCE AGAINST WOMEN REAUTHORIZATION ACT OF 2022, Section 1602. Findings. (signed into law by President Biden on March 16, 2022); see, also, Jeffrey E. Edleson, *The Overlap Between Child Maltreatment and Woman Battering*, 5 VIOLENCE AGAINST WOMEN 134 (1998) (studies show that children are direct victims of violence in 30 to 60% of cases where a male partner is violent toward his spouse).

⁵Peter G. Jaffe et al., *Parenting Arrangements After Domestic Violence*, J. OF THE CENTER FOR FAMILIES, CHILDREN AND THE COURTS 81,82 (2005) (internal citations omitted). See also K.M. Kitzmann et al., *Child Witnesses to Domestic Violence: A Meta-Analytic Review*, 71 JOURNAL OF CONSULTING AND CLINICAL PSYCHOLOGY 339 (2003); D.A. Wolfe, *The Effects of Children’s Exposure to Domestic Violence: A Meta-Analysis and Critique*, CLINICAL CHILD & FAMILY PSYCHOLOGY REVIEW 171 (2003); American Psychological Association, VIOLENCE AND THE FAMILY, REPORT OF THE AMERICAN PSYCHOLOGICAL ASSOCIATION PRESIDENTIAL TASK FORCE ON VIOLENCE AND THE FAMILY 40 (1996); Michelle L. Toews & Autumn M. Bermea, “I Was Naïve in Thinking ‘I Divorced this Man; he is Out of My Life’ “: A Qualitative analysis of Post-Separation Power and Control Tactics Experienced by Women, J. OF INTERPERSONAL VIOLENCE 1, 18 (2015); and Shalansky et al., *Abused Women and Child Custody: The Ongoing Exposure to Abusive Ex-Partners*, 29 J. OF ADVANCED NURSING 416, 417 (1999).

⁶Brittany E. Hayes, PhD., *Indirect Abuse Involving Children During the Separation Process*, J. OF INTERPERSONAL VIOLENCE 4 (2015). See also Daniel G. Saunders & Karen Oehme, *Child Custody and Visitation Decisions in Domestic Violence Cases: Legal Trends, Risk Factors, and Safety Concerns*, CHILD CUSTODY AND VISITATION DECISIONS IN DOMESTIC VIOLENCE CASES 4 (2007); ABA Child Custody and Adoption Pro Bono Project, A JUDGE’S GUIDE: MAKING CHILD-CENTERED DECISIONS IN CUSTODY CASES 87 (2nd ed. 2008) Custody and Visitation Decisions in Domestic Violence Cases 4 (2007).

⁷National Council of Juvenile and Family Court Judges, Model Code on Domestic and Family Violence, Sec. 405 Commentary, in A JUDGE’S GUIDE: MAKING CHILD-CENTERED DECISIONS IN CUSTODY CASES (2nd Ed. 2008); see also ABA Child Custody and Adoption Pro Bono Project, A JUDGE’S GUIDE: MAKING CHILD-CENTERED DECISIONS IN CUSTODY CASES 87 (2nd ed. 2008). Custody and Visitation Decisions in Domestic Violence Cases 4 (2007); Zeoli et al, *Post-Separation Abuse of Women and Their Children: Boundary Setting and Family Court Utilization Among Victimized Mothers*, J. Fam. Violence 547 (2013), Brittany E. Hayes, PhD., *Indirect Abuse Involving children During the Separation Process*, J. of Interpersonal Violence 4 (2015). See also Daniel G. Saunders & Karen Oehme, *Child Custody and Visitation Decisions in Domestic Violence Cases: Legal Trends, Risk Factors, and Safety Concerns*, Child Custody and Visitation Decisions in Domestic Violence Cases 4 (2007); ABA Child Custody and Adoption Pro Bono Project, A Judge’s Guide: Making Child-Centered Decisions in Custody CaseS 87 (2nd ed. 2008); Peter J. Jaffe et al., *Custody Disputes Involving Allegations of Domestic Violence: Toward a Differentiated Approach to Parenting Plans*, 46 FAM. CT. REVIEW 500, 515 (2008); Peter J. Jaffe et al., *Custody Disputes Involving Allegations of Domestic Violence: Toward a Differentiated Approach to Parenting Plans*, 46 FAM. CT. REVIEW 500, 515 (2008).

⁸*In re Perales*, 52 Ohio St.2d 89 (1977).

⁹The Supreme Court of Ohio, *Domestic Violence & Allocation of Parental Rights and Responsibilities: Court Guide 5*, 6 (May 2016), available at

<https://www.supremecourt.ohio.gov/JCS/domesticViolence/publications/DVAllocationParentalRights.pdf>.

¹⁰ A.C.A. 9-13-101.

¹¹ WV Code 48-9-209(c)

¹² Public Law No. 117-103, 136 Stat. 951-962; <https://www.congress.gov/bill/117th-congress/senate-bill/3623>

¹³ Id. At 903-904.