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Re: Senate Bill 174 – Opponent Testimony

Judiciary Committee
Ohio Senate
136th General Assembly
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Chair Manning, and members of the Senate Judiciary Committee:

Though Senate Bill 174 has undergone changes in recent weeks, the newest iteration of the bill will have no effect on the parent-sidelining culture that has existed in Ohio for decades.

TEMPORARY ORDERS

Amendment 136_1079, “Eliminates a provision [3109.0411]¹ that would have prohibited a court from considering a temporary parenting order as a factor in making a final decision when allocating or approving parenting responsibilities.”² As originally written, that provision *might* have made some marginal difference in changing the culture. Far too often, a disproportionate parenting time schedule that is temporarily established at the outset of a custody case is finalized months or years later under the logic that the children have become adjusted to that disproportionate schedule. However, that practice is now free to continue with the current version of the bill.

BEST INTEREST FACTORS

Senate Bill 174 does not “more clearly define” the best interest of the child, because current law lacks a definition in the first place. The best interest factors, established in 1975 by Amended Substitute House Bill 1, are not a definition of best interest in and of themselves. Moreover, the original best interest factors did not produce acceptable results, as the 1987 Ohio Domestic Relations Task Force identified public dissatisfaction with the family law system, warning that “the judicial system needs to police itself more stringently or face increasing pressure from the public to justify its actions.”³

In 1990, the best interest factors were overhauled with Amended Substitute Senate Bill 3. Aside from adding ten factors to the original five, courts were explicitly told the new list was not exhaustive (i.e., the words “but not limited to” were added before listing the best interest factors). Cosmetic changes to the best interest factors were implemented with Senate Bill 180 in 2000. Even still, the new factors did not produce acceptable results, as the 2001 Ohio Supreme Court Task Force on Family Law and Children identified the continued existence of a win-lose culture. Furthermore, that same task force recognized that a parent expecting to be victorious had little incentive to mediate or engage in any other constructive, cooperative process to create a parenting plan.⁴

¹ SB174 as Introduced, pg. 164.

² Amendment 136_1079, pg. 59.

³ Final Report of the Domestic Relations Task Force, 6/30/1987; pg. 31.

⁴ Final Report of the Task Force on Family Law and Children, 6/20/2001; pg. 8.

CONCLUSION

The fundamental flaw with Ohio's family court system is the subjective nature of the best interest test, whereby a dozen different jurists can conclude a dozen different things about the same case, leading them to implement their preferred parenting style. In the 50-year existence of the factors, no evidence has been presented to show that courts are capable of, let alone adept at, determining a child's best interest. On the other hand, we have mountains of research indicating that children do better with the involvement of both parents and we have evidence that courts routinely make decisions that fly in the face of that research.⁵

In proposing to overhaul the best interest factors yet again, Senate Bill 174 simply offers the same failed solutions of previous decades. And because courts are currently directed to consider all relevant factors, the expansion proposed by Senate Bill 174 is not an expansion at all, just more window dressing. Rather than actively tackle the issues of family court, Senate Bill 174 engages in language manipulation, meant to give the appearance of reform while maintaining the status quo.

-Anthony Slosser

⁵ ODJFS 2023 Child Support Guidelines Review, Appendix B, pg. 117-132.