

Testimony in Support of Senate Bill 125
Presented by Eric Johnson, Esq.

Before the House Community and Family Advancement Committee
May 16, 2018

Change Laws Governing Child Support

Chairman Ginter, Vice Chair LaTourette, Ranking Member Boyd, and members of the House Community and Family Advancement Committee:

Thank you for allowing me to present proponent testimony in favor of Senate Bill 125. I am Eric W. Johnson, OSBA Certified Specialist in Family Relations Law, Vice Chair of the OSBA Family Law Committee, and member of the 2013 and 2017 Child Support Guidelines Advisory Councils. I have maintained in good standing my license to practice law in the State of Ohio since 1995 and have practiced almost exclusively in the field of family law since 2004. I submit this testimony in support of S.B. 125 as a practicing family law attorney in Columbus.

S.B. 125 is the companion bill to H.B. 366, which was favorably reported out of this committee earlier this year and was passed, again unanimously, by the House. The time for passage of this much needed bill is now. As you are by now aware, Ohio's child support laws have not changed significantly in over a quarter of a century. The basis upon which Ohio's current child support laws are structured is significantly flawed, the figures supporting that flawed methodology are hopelessly outdated, and the collection of actual support money for Ohio's neediest families languishes at an appallingly unacceptable low level. Change is long overdue.

While this bill has engendered much thoughtful discussion on a variety of topics, please allow me a few moments to offer some thoughts regarding the issues I believe will most affect the private domestic relations bar.

Parenting Time Adjustment

Perhaps the greatest issues concerning the private bar and the judiciary are two proposals to adjust the child support obligation for the obligor parent when that parent is exercising parenting time with the child or children who are subject to the order. This is reflected in the proposed additions of R.C. §3119.051(A) and R.C. §3119.231.

- The proposed addition of R.C. §3119.051(A) would provide for an automatic 10% downward deviation in child support where “a court has issued or is issuing a court-ordered parenting time order that equals or exceeds ninety overnights per year.”

The rationale behind this is to combat the pervasive belief, among both practitioners and courts, that the current support guidelines have a “built-in” adjustment for parenting time. This has never been the case. In the vast majority of cases, a court will calculate guideline support and issue a child support order in accordance with the guideline worksheet,

regardless of whether the obligor parent has been awarded parenting time with the children subject to the order.

The current guidelines do not recognize certain costs of raising a child travel with that child. Instead, all of the combined support obligation for a child is shifted into the obligee's household, leaving the obligor to not only pay the support order, but additionally pay for the child's expenses while exercising parenting time. This is a fundamental error, making it more difficult for many obligor parents to meet their obligations and, in some instances, discouraging (or even preventing) the otherwise interested and involved parent from exercising all parenting time to which he or she is entitled.

The reasoning for the 10% approximation for the support adjustment has been adequately addressed in other written and oral testimony before you, as has the explanation for the determination of the ninety (90) overnight threshold before the adjustment kicks in. As importantly, however, it should be noted this moderate threshold will not encourage litigation, as I am unaware of any court whose "standard" parenting time order or orders provide for fewer than 90 overnights of parenting time. Now, for the first time, the child support calculations will recognize parents who play an active role in the lives of their children.

- Garnering greater attention of the bar and the judiciary, is the language in S.B. 125 regarding a second deviation for what would be termed "extended parenting time," (or parenting time in excess of a court's standard order). Quite often, the argument opposing this provision is couched in the catchy phrase, "trading dollars for days." While such a practice would rightfully be frustrating to practitioners and judges alike, S.B. 125 does not encourage such an offensive concept.

R.C. §3119.231, as proposed by S.B. 125, would require a court to issue *findings of fact* whenever a deviation (beyond the 10% provided by proposed R.C. §3119.051(A)) is not granted. This differs greatly from the initial draft of this legislation as set forth in last session's S.B. 262. That bill mandated the court either grant a "substantial" deviation when an obligor parent was exercising at least 147 overnights with the children or issue findings of fact if it did not. S.B. 262's proposed deviation structure did indeed create a true "dollars for days" concern, at least at the 147 overnight "cliff," and was rightly criticized by Ohio's judges and family law practitioners alike.

S.B. 125 recognizes the flaws of that predecessor bill and eliminates the expected battle to obtain a magical number of overnights, a battle that would often have been motivated on one side, the other, or both by anything but the best interests of the affected children. The bill now merely asks the court to exercise its discretion to grant an additional deviation in child support when a parent will be exercising approximately 40% of the overnights with the children. It *does not require a deviation* or impose on a court's discretion to deny an additional deviation. A court may fairly determine a further deviation is not in the best interests of the children. The proposed language merely requires that court to explain, to the highly involved and interested parent, why a deviation is inappropriate even where that parent is exercising substantial, often equal, quality parenting time with the children.

Increase in the Basic Child Support Schedule

This committee has been repeatedly reminded the child support guidelines have not been updated in over a quarter of a century. The antiquated support schedule (the “table”) contained in current R.C. §3119.021 is not only based on inaccurate data pertaining to the cost of raising children and contemplates an unworkable self-support reserve, its cap of combined household income at \$150,000 is no longer manageable considering today’s incomes.

Currently, if the parents’ combined incomes exceed \$150,000 per year, the court or child support enforcement agency must determine the obligor’s support obligation on a case-by-case basis. Few of us need further information than provided by our memories to know times were quite different back when the current support table was created. A combined household income of \$150,000 was substantial and generally anomalous back then. That is not so much the case today. According to figures provided by the U.S. Census, median incomes for Ohio families in 1989 were as follows:

Married-couple with children:

- Including earnings of wives:¹ \$50,613
- Excluding earnings of wives: \$38,124

Female householder with children, no spouse: \$17,651

Male householder with children, no spouse: \$34,646

By 2016, those figures had significantly increased. Median incomes for similar Ohio households were:

Family households:

- Married-couple: \$87,057

Female householder, no husband present: \$41,027

Male householder, no wife present: \$58,051

These figures show the median income for Ohio families with married parents increased approximately 48% in the years since the child support table was last published. Figures for single-mother and single-father households increased approximately 132% and 68%, respectively. Yet our flawed and inaccurate table has not budged during this time. No longer can a combined family income of \$150,000 or more be considered unusual in light of these increases in earnings. In 1989, the \$150,000 cap represented almost three times the median income of a married, two-parent family. Now it is merely 1.7 times that income amount.

Nevertheless, Ohio’s courts and agencies are forced to “wing it” when it comes to setting support amounts for combined incomes of more than \$150,000. This often results in a default to ordering support as calculated by the child support worksheet—thus perhaps providing less support than necessary—and causes substantial disparity and unpredictability in orders issued on a case-by-case

¹ The Census Bureau’s term, not mine. Did I mention times were different back then? (All terms used are those provided by the Census Bureau.)

basis across the eighty-eight courts and agencies in Ohio. S.B. 125 addresses this issue, providing more appropriate and predictable support orders throughout the state.

Conclusion

Thank you for permitting me to offer this written testimony in support of S.B. 125. Passage of this bill will create long-overdue changes to Ohio's child support system, allowing for increased collection of support orders, more manageable (and therefore collectible) payments for low-income obligors, correction of the flawed figures and calculations that have been in place for decades, greater accuracy and predictability in child support orders, and increased recognition of an obligor parent's true role in parenting. As such, I encourage this Committee to act favorably upon this bill. The time for this much-needed legislation is now.

I remain available to answer questions at any time should the Committee have any for me.

Eric W. Johnson | O.S.B.A Certified Specialist in Family Relations Law
400 South Fifth Street • Suite 101 • Columbus, OH 43215
(614) 464-1877 • Fax: (614) 464-2035
ejohnson@sowaldlaw.com • www.sowaldlaw.com