Opponent Testimony – H.B. 14
May 14, 2024

Chairwoman Schmidt, Vice Chair Miller, Ranking member Denson, members of the House Committee on Families and Aging. Thank you for the opportunity to provide testimony today in opposition to HB 14.

My name is Alexandria Ruden. I am a supervising attorney with the Legal Aid Society of Cleveland. I have practiced domestic violence law since the Ohio Domestic Violence Act was enacted in 1979. I have represented thousands of survivors of domestic violence in divorce, parenting and protection order proceedings. I train attorneys, advocates, the judicial system, law enforcement and other professionals on Ohio Domestic Violence law. I am a member of the Supreme Court's Advisory Committee on Domestic Violence and the Ohio Department of Public Safety's Family Violence Prevention Center Advisory Council. I also co-author *Ohio Domestic Violence Law* with Judge Ronald Adrine and Judge Sherrie Miday, a yearly publication.

Sharing physical custody and decision-making of a child works quite well for some families: where there is no domestic violence or child abuse, little conflict, and both parents can share a demonstrated commitment and ability to work together. A necessary corollary is that the parents have frequent and ongoing contact with each other, ideally cooperating until the child reaches majority. The danger of presumptive equal parenting time and decision-making (EPT&DM) is that it assumes that it is good for *all* children, without regard to what is actually happening in a home. In effect, presumptive EPT&DM elevates the rights of all parents-even really bad parents-over the safety and well-being of children.

Current research on the issue neither absolutely supports nor absolutely rejects equal parenting time and equal decision-making. Rather, it merely questions the impact of presumptive joint custody on *all* children. The findings demand informed and careful consideration of whether equal care provides a desirable and viable developmental pathway for each child in the circumstances of each case. In other words, the weight of research calls for an individualized analysis of whether equal time and decision making is in the best interests of the child. Presumptive EPT&DM calls for none. It treats every case the same, regardless of the developmental needs of the child or the level and context of parental conflict. Uniform treatment in any category ends up hurting children the most...there is no one-size -fits-all arrangement that works for *all* families.

Moreover, good faith attempts to rebut these presumptions often backfire under the so-called "friendly parent" provisions which are common throughout HB 14. They ask the court to consider each parent's willingness to encourage and facilitate frequent and continuing contact between the child and the other parent. A parent who seeks to challenge the presumption implicitly communicates to the court a belief that frequent and continuing contact between the child and the other parent is not good for the child. Consequently, the very act of challenging the presumption can create the perception, whether real or imagined, that the objecting parent would prefer to limit, rather than encourage, contact with the other parent. That perception, in turn, can be and often is, used against the challenging parent by the court. Even though a good faith challenge represents an effort to protect the child, the very act of protection can have opposite effect: placing the child at greater risk of harm. Thus, the rebuttal to the presumption works least, when a child needs it most.

By removing the best interests of the child analysis, EPT&DM creates a legal short-cut that presupposes it is always in the best interests of the child. Unlike most presumptions which spring into effect after a predicate fact has been established, this presumption begins at the end. It starts with the legal conclusion that equal parenting time and equal decision-making is in the child's best interests. Herein lies the legal peril: the presumption universally applies a legal conclusion that is not universally true. It mandates a finding that EPT&DM is right for a child, even when the research shows that the exact opposite might be true. The objecting parent has a substantial evidentiary burden to prove that EPT&DM is *not* good for the child.

As appealing as it may seem, the idea of a presumption is a poor mechanism for decision-making in child custody cases. Without a presumption, courts must consider the actual best interests of the child in fashioning appropriate custody awards. With such a presumption, courts do not have to think about the child at all, unless one of the parents has the ability to mount a formal legal challenge, which is even more difficult in Ohio because of its "friendly parent" provisions.

In fact, research demonstrates that victims often lose when a father fights for custody. Family courts are often skeptical of mothers' and children's reports of abuse in the family by a father.[i] A recent national study of 10 years of published court opinions found that courts only believed women's claims of abuse 36% of the time, this dropped to 16-21% of child abuse claims. When a father accused of abuse responds with an allegation of parental alienation, courts are more than twice as likely to disbelieve mothers' abuse claims and almost 4 times as likely to disbelieve child abuse claims. In fact, when a parent alleges abuse in the context of a custody case, they are not seen as protective parents; rather they are often deemed an "alienator" parent who is seeking a tactical advantage in court.[ii]

As a result, an attorney might advise his or her client against challenging the presumption for fear that it could be strategically disadvantageous. Likewise, a protective parent might think twice before mounting a challenge for fear the objection could detrimentally impact the child.

HB 14 is dangerous for victims of domestic violence. For example, in 1/8/2022, Jane's 9 month old daughter was killed by her father who then killed himself. She was also shot. She had called the police at least 4 times leading up to the murder/suicide. She was told that his behaviors were not enough to obtain a protection order or file charges. Had HB 14 been in place at the time of the murder, she probably would not have had the requisite evidence to rebut either presumption.

What happens when there are no bruises, broken bones or black eyes...We know that domestic violence is seldom committed in the presence of eyewitnesses. In many cases, medical evidence is absent. Often the only credible evidence of domestic violence is the testimony of the victim."[iii] Moreover, the incident bringing a DV victim to the justice system for help is often not the worst incident. It may be a threat such as a bullet on the kitchen table or an act of stalking. The victim who challenges equal decision-making and equal parenting time might never have enough evidence to demonstrate "detriment." That same parent could be accused of making a false allegation of abuse or of failing to encourage and facilitate access. Imposing sanctions upon a parent who is accused of making a "false report" is dangerous and just creates another hurdle and barrier for victims and children.

An EPT&DM presumption necessarily requires ongoing contact between an abuser and the children, which greatly increases the amount of contact, including physical contact, with the victim. Despite separation or divorce, batterers use joint custody arrangements as a tool to coercively control

and manipulate the victim and continue their emotional and verbal abuse, with the children either forgotten or worse, placed in the middle. This court-sanctioned endorsement of an abuser's use of the legal system to maintain contact buttresses their position, at the expense of the victim parent who seeks to restrict contact and communication. Considering the data on separation violence and escalation, EPT&DM is not a workable parenting arrangement for victims of domestic violence.

Such parenting arrangements in the context of domestic violence have negative outcomes for children because they prolong children's exposure to violence. Domestic violence is considered an "adverse childhood experience" (ACE), even if the child is not directly abused.[iv] The harms to children of highly conflicted parents can only be mitigated when a court has the discretion to look at the severity and frequency of the conflict, safety and lethality factors, and the ability of each parent to provide high quality parenting. A child's post-divorce wellbeing should never depend upon the frequency with which they see both parents, but upon the extent to which the parenting agreement reflects pre-divorce caretaking and parenting.[v]

EPT&DM represents a worst-case scenario for families experiencing DV and because there is no guaranteed way to ensure that those cases are identified and treated differently, an EPT&DM presumption should not be advanced by the Ohio legislature. It ignores the frequency with which families with custody disputes are affected by DV, and tacitly condones the violence by forcing families into the very arrangement that is most dangerous for victims of DV and the children.

Presumptive EPT&DM lacks the requisite foundation for sound policy because it errs on the side of risk instead of caution. It provides no benefit for those families who are best suited for it because those are the families who are most likely to choose it without court intervention. Rather, it would only apply to cases least suited for it because those are the cases in which violence and conflict are the most entrenched. It is more likely to lead to increased litigation, decreased post-decision involvement by the losing parent and will discourage and create a chilling effect for victims who will no longer seek protection from the courts.

As written, HB 14 practically ensures EPT&DM, meaning that the presumption is really not rebuttable at all. More importantly, it fails to account for the best interests of the child altogether. A presumption that ignores the safety and wellbeing of children, especially children who are at heightened risk of harm due to the presence of DV, is bad public policy. It is a step backward for the state of Ohio. These presumptions will create situations where the children of DV victims will likely experience abuse themselves or continue to suffer its ill effects. Their ACES scores will continue to rise. They will continue to experience trauma and the cycle of violence will likely repeat itself in successive generations. Is this what Ohio will be known for? Is this what we want for our children?

REFERENCES

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[i] Meier & Dickson, Mapping Gender: *Shedding Empirical Light on Family Courts' Treatment of Cases involving Abuse and Alienation*, 35 Law and Ineq. 311,313 (2017)

[ii] Meier & Dickson, et al.; *Child Custody Outcomes in Cases Involving Parental Alienation and Abuse Allegations,* GW Law School Public Law Research Paper No. 2019-56 (2019)

[iii] *Felton v. Felton*, 79 Ohio St.3d 34, 1997-Ohio-302, 679 NE2d 672 (1997)

[iv] Kitzmann, Gaylord, Holt & Kenny, *Child Witnesses to Domestic Violence: A Meta-Analytic Review,* 71 Journal of Consulting and Clinical Psychology 339-352 (2003); https://acestohigh.com/got-your-ace-score

[v] Anja Steinback, *Children's and Parents' Well-being in Joint Physical Custody: A Literature Review*, Family Process (2018); Ann-Rigt Poortman, *Postdivorce Parent-Child Contact and Child Well-being: The importance of Predivorce Parental Involvement*, 80 Journal of Family and Marriage 671-863 (2018)