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## Bill Analysis

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**Version:** As Re-Referred by House Rules and Reference

**Primary Sponsors:** Reps. Creech and John

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### SUMMARY

#### Allocation of parental rights and responsibilities

- Establishes the following state policy:
  - To assure that minor children have frequent associations and a continuing relationship with both parents after parents have legally separated, divorced, or dissolved or annulled their marriage or in situations in which the mother is unmarried;
  - To encourage parents to share the rights and responsibilities of child rearing;
  - That, to the greatest degree possible, parents share equally in parenting time and the rights and responsibilities of rearing their children.
- Permits a court to allocate parental rights and responsibilities under: (1) a shared parenting order that incorporates a shared parenting agreement that the parents jointly submit, or (2) a parental rights and responsibilities order, if no shared parenting order is issued.
- Establishes a rebuttable presumption that a jointly submitted shared parenting agreement for the allocation of parental rights and responsibilities is in the best interest of the child, unless the court finds, by clear and convincing evidence, that the allocation would be detrimental to the child.
- Establishes rebuttable presumptions, when parents do not jointly submit a shared parenting agreement that both (1) equal decision-making rights and responsibilities and (2) equal parenting time are in the best interest of the child, unless the court finds, by clear and convincing evidence, that such an allocation would be detrimental to the child.
- Requires all shared parenting orders and parental rights and responsibilities orders to include provisions covering all factors that are relevant to the care of children, such as

the designation of a parent for child support purposes, school attendance, and other purposes; a parenting time schedule; communication methods; and information sharing.

- Requires a shared parenting order or parental rights and responsibilities order to be issued no later than nine months after the date that a party files a motion for a temporary order or the date that the parties last filed a joint motion requesting an extension of a temporary order.

### **Shared parenting orders**

- Requires the court to encourage parents to jointly submit a shared parenting agreement for the allocation of parental rights and responsibilities.
- Requires the parents to file a shared parenting agreement no later than 30 days before a hearing to determine the allocation of parental rights and responsibilities, except that the court may waive the deadline for good cause shown.
- Identifies factors for the court to consider in rebutting a presumption that a shared parenting agreement is in the best interest of the child, such as the demonstrated ability of each parent to cooperate with the other parent and any history of child abuse or neglect, spouse abuse, or other domestic violence-related offenses.
- Requires the court, if it determines that a presumption is rebutted, to order the parents to make appropriate changes to remedy the court's objections.
- Requires the court to approve a shared parenting agreement if it is not rebutted or if the parents jointly submit changes to meet the court's objections to the agreement.
- Requires an approved shared parenting agreement to be incorporated into a shared parenting order, which must be issued with a final decree of dissolution, divorce, annulment, or legal separation.
- Requires a shared parenting order to take immediate effect when it is issued, subject to modification or termination under the bill's provisions.

### **Parental rights and responsibilities orders**

- Requires the court to issue a parental rights and responsibilities order when the parents have not entered into a shared parenting agreement or when the court objects to a shared parenting agreement and the court's objections are not remedied.
- Requires the parents to submit certain information to the court 30 days before a hearing to allocate parental rights and responsibilities when they have not entered into a shared parenting agreement, such as work schedules, living arrangements of the parent and child, and factors for rebutting presumptions of equality.
- Requires the parent who objects to a presumption of equal decision-making rights and responsibilities or equal parenting time to bear the burden of proof that the arrangement would be detrimental to the children.

- Identifies factors for the court to consider in rebutting the presumptions that equal decision-making rights and responsibilities and equal parenting time are in the best interest of the child, such as the recommendation of a guardian ad litem and any history of child abuse or neglect, spouse abuse, or other domestic violence-related offenses.
- Requires the court, if either presumption is rebutted, to consider whether a parent has intentionally misled the court, made false allegations of the other parent harming the child, or communicated false information to gain a tactical advantage.
- Requires the court, if the presumption of equal decision-making rights and responsibilities is rebutted, to:
  - Issue an order designating one parent as the residential parent and legal custodian of the child; and
  - Allocate most of the decision-making rights and responsibilities to the parent who has demonstrated a greater willingness to cooperate with the other parent and has not misled the court or communicated false allegations or information.
- Requires the court, if the presumption of equal parenting time is rebutted, to:
  - Issue an order allocating parental rights and responsibilities with unequal parenting time in accordance with its determination;
  - Award the majority of parenting time to the parent who (1) is more likely to honor and facilitate parenting time for the other parent, if the court determines that one parent has interfered with or continuously and willfully denied parenting time to the other parent and (2) has not misled the court or communicated false allegations or information; and
  - Construct a parenting time schedule that is consistent with the child's welfare.
- Requires the court, if neither presumption has been rebutted, to issue an order allocating both equal decision-making rights and responsibilities, with both parents designated as the residential parent and legal custodian of the child, and equal parenting time.
- Requires the court, if one presumption is rebutted but the other is not, to allocate the nonrebutted presumption equally.

## **Modification and termination of orders**

- Allows one or both parents under a shared parenting order or parental rights and responsibilities order to file a motion for the order to be modified or terminated.

### **Shared parenting orders**

- Requires the court to issue a modified shared parenting order incorporating a modified shared parenting agreement if both parents under the order agree to a modification of the agreement and jointly file a motion for modification, provided that the modified agreement is not detrimental to the child.

- Requires the court to dismiss a motion for modification of a shared parenting agreement if the court finds the modified agreement to be detrimental to the child.
- Allows a court to do one of the following when: (1) one parent files a motion for modification of the shared parenting agreement or if both parents file separate motions for modifications, and (2) based on facts that have arisen that were unknown to the court, a change in circumstances has occurred for the child or parents:
  - If the court determines that the requested changes to the shared parenting agreement are not detrimental to the child → issue a modified shared parenting order that incorporates the modified agreement.
  - If the court determines that the requested changes *are* detrimental and the existing plan is not detrimental to the child → dismiss the motion to modify the shared parenting order.
  - If the court determines that the requested changes to the agreement *are* detrimental and the existing plan is *also* detrimental to the child → terminate the existing shared parenting order.
- Allows the court to terminate a shared parenting order on the motion of one or both parents if the court determines either:
  - The shared parenting agreement incorporated into the order is detrimental to the child; or
  - One parent demonstrates a pattern of willfully creating conflict in an attempt to disrupt a current or pending shared parenting agreement, the court determines by a preponderance of evidence that it is unable to enter into a shared parenting order that will reduce conflict, and the disruptive behavior is a material change in circumstances.
- Requires the court to issue a parental rights and responsibilities order if a shared parenting order is terminated because:
  - One parent has requested modification and the court concluded that both the requested modification and the existing shared parenting plan are detrimental; or
  - One or both parents file a motion for termination and the court determines that the shared parenting agreement is detrimental to the child.
- Requires the court to issue a parental rights and responsibilities order with the nondisruptive parent as the residential parent and legal custodian of the child if a shared parenting order is terminated because one or both parents file a motion for termination and the court determines that one parent has willfully disrupted an agreement.

### **Parental rights and responsibilities orders**

- Allows both parents under a parental rights and responsibilities order to jointly motion the court to modify the order as a shared parenting order, subject to the provisions governing shared parenting agreements.
- Allows a court to make modifications when one parent files a motion or both parents file separation motions requesting modifications of a parental rights and responsibilities order if it determines:
  - The order is detrimental to the child; and
  - Based on facts that have arisen since the prior order that were unknown to the court, a change in circumstances has occurred to the child or parents.

### **Other allocation provisions**

- Allows parents to request a temporary allocation of parental rights and responsibilities in accordance with the state policy and the bill's presumptions, and to jointly move to extend a temporary order.
- Prohibits a court from drawing any presumptions from a temporary order or considering a temporary order as a factor when making a final allocation of parental rights and responsibilities in a shared parenting agreement or parental rights and responsibilities order.
- Requires the court to designate one of the parents' residences as the child's home for purposes of receiving public assistance or establishing school district residence.

### **Parenting time and companionship and visitation orders**

- Requires a court to issue a parenting time order if only one parent is designated the residential parent and legal custodian of the child, unless the court finds by clear and convincing evidence that parenting time would be detrimental to the child.
- Generally requires that the court issue a transition plan, to be completed within 12 months, if it denies parenting time to a parent who is not the residential parent and legal custodian of a child, in order to encourage, facilitate, establish, or re-establish the relationship between that parent and the child.
- Prohibits a court from issuing a transition plan if the parent has failed to demonstrate a desire and ability to establish or re-establish a relationship with the child and under other circumstances, such as when the parent has abused or neglected the child or the parent lives too far away and is unwilling to move closer.
- Requires the court to modify the parental rights and responsibilities order to provide for equal parenting time and decision-making rights and responsibilities upon timely completion of a transition plan, unless one or both parents file motions requesting to modify the order on or before completion of a transition plan and the court has ruled on the motion.

- Requires the court, when determining whether to grant companionship or visitation to a grandparent, other relative, or any person other than the child's parent, to determine that granting such rights would not be detrimental to the child.
- Creates a presumption that equal parenting time is in the best interest of the child, when the mother is unmarried and the father requests parenting time.
- Provides that, when a court must state its findings of fact and conclusions of law in writing in response to denials of parenting time and companionship and visitation, it must do so in accordance with Rule 53 of the Ohio Rules of Civil Procedure, if applicable.

### **Granting rights to a putative father**

- Requires the court to consider certain factors when determining whether to award parenting time or temporary custody to a putative father when a parent and child relationship has not yet been established.

### **False accusation of abuse or neglect**

- Allows a court to impose a reasonable monetary sanction or community service, as well as compensatory parenting time, if the court has determined that a person intentionally made a false accusation of child abuse or neglect against a parent.

### **Parenting time interference**

- Requires a court to grant the following, after a hearing and finding that a parent interfered with another parent's parenting time:
  - An award of compensatory parenting time, provided that it is not detrimental to the child;
  - An award of any reasonable attorney's fees and court costs.
- Allows a court to impose additional remedies for parental interference, such as a modified order, an order to require parents or the child to attend counseling or coaching, an order to post bond, and an award of reasonable costs and fees.

### **Relocation**

- Requires, generally, a relocating parent to file a notice of intent to relocate with the clerk of the court and the clerk to send a copy of the notice to the other parent.
- Establishes requirements that must be included in a notice, including an updated address and date of relocation.
- Requires a notice to be filed at least 60 days before the intended relocation, or within ten days after the parent knew of the intended relocation if the 60-day requirement cannot be met.
- Allows a parent to file a motion for the court to determine whether the health, safety, and welfare or liberty of a person is being put at risk by filing a relocation notice.

- Allows a court, upon finding that filing a notice would be risky, to order that the notice not be disclosed, waive the notice requirement, consider any other remedy deemed necessary to facilitate the needs of the party and the best interest of the child, or conduct an ex parte hearing.
- Allows a court to consider the failure of a parent without good cause to file a notice as a factor for: making a determination regarding the relocation, modification of an order, or a finding of contempt; or as a basis for ordering the return of a child that was relocated without notice and awarding attorney fees and expenses.
- Allows a parent to object to a relocation and seek an order restricting the relocation when it would render any portion of an order impracticable or detrimental to the child.
- Requires a court, upon considering an objection, to determine whether the relocation is detrimental to the child and various other factors that affect whether the relocation would impede upon fostering a meaningful relationship between the child and nonrelocating parent.

## **Requirements for courts**

- Requires each court of common pleas to adopt rules on standard parenting time guidelines, subject to the state policy and the presumption that equal parenting time is in the best interest of the child.
- Requires each court that issues various custody orders to compile an annual report of data regarding the division of parenting time, as tracked by overnight stays with a parent.

## **Miscellaneous**

- Requires orders allocating parental rights and responsibilities, parenting time orders, and companionship or visitation orders under existing law to remain in effect upon the bill's enactment, but to be enforced and modified in accordance with the bill's provisions.
- Recodifies existing law regarding parental rights and responsibilities, parenting time, and companionship and visitation in the domestic relations context.

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## **DETAILED ANALYSIS**

### **Overview**

The purpose of the bill is to establish as the default in cases regarding the allocation of parental rights and responsibilities, equal decision-making rights and responsibility and equal time spent with the child between each parent, when the parents do not submit an agreed upon parenting plan. The allocation of parenting responsibilities is required in a divorce, dissolution, annulment, or legal separation proceeding.

Under the bill, a shared parenting agreement for the custody and care of children that the parents jointly submit is rebuttably presumed to be in the best interest of the child and must be approved by the court and incorporated into a shared parenting order, unless it is shown by clear and convincing evidence to be detrimental to the child. If no agreement exists, the court must issue a parental rights and responsibilities order. Under this order, there are rebuttable presumptions that (1) equal decision-making rights and responsibilities and (2) equal parenting time are in the best interest of the child and must be allocated accordingly, unless shown by clear and convincing evidence to be detrimental to the child.

### **Allocation of parental rights and responsibilities**

#### **State policy**

The bill establishes the following state policy:

- To assure that minor children have frequent associations and a continuing relationship with both parents after parents have legally separated, divorced, or dissolved or annulled their marriage or in situations in which the mother is unmarried;
- To encourage parents to share the rights and responsibilities of child rearing;

- That, to the greatest degree possible, parents share equally in parenting time and the rights and responsibilities of rearing their children.<sup>1</sup>

### **Allocation of parental rights and responsibility in accordance with state policy**

The bill requires the court to allocate parental rights and responsibilities for the care of the minor children in a marriage upon hearing the parents' testimony and considering any mediation report in any divorce, legal separation, or annulment proceeding and in any proceeding pertaining to the allocation of parental rights and responsibilities for the care of a child. Except when the court determines that neither parent is suitable to have custody, the court must allocate parental rights and responsibilities for the care of the children in accordance with the state policy and in a way that promotes the best interest of the children.<sup>2</sup>

Existing law similarly requires the court to allocate parental rights and responsibilities. But, the bill repeals existing law regarding when to allocate these rights and responsibilities to one or both parents. Under this repealed law, a court, in a manner that is consistent with the best interest of the child, allocates parental rights and responsibilities primarily to *one* parent, designates that parent as the child's residential parent and the legal custodian, and divides between the parents the other rights and responsibilities for the care of the child, if:

- Neither parent files a pleading or motion requesting the court to grant both parents shared parental rights and responsibilities for the care of the children;
- At least one parent files a pleading or motion but did not file a plan for shared parenting; or
- At least one parent files both a pleading or motion and a shared parenting plan but no shared parenting plan is in the best interest of the child.<sup>3</sup>

Also under current law repealed by the bill, the court allocates parental rights and responsibilities to *both* parents and issues a shared parenting order requiring the parents to share all or some of the aspects of the physical and legal care of the children in accordance with an approved parenting plan if:

- At least one parent files a pleading or motion requesting the court to grant both parents shared parental rights and responsibilities and a shared parenting plan; and
- Shared parenting is in the best interest of the child and approved by the court.<sup>4</sup>

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<sup>1</sup> R.C. 3109.044.

<sup>2</sup> R.C. 3109.045(A).

<sup>3</sup> R.C. 3109.04(A)(1), as it appears in existing law.

<sup>4</sup> R.C. 3109.04(A)(2), as it appears in existing law.

The bill also repeals existing law procedures and requirements for filing, determining, modifying, and terminating shared parenting decrees and orders under this existing law scheme.<sup>5</sup>

Under the bill, the court may allocate parental rights and responsibilities in either: (1) a shared parenting order, or (2) a parental rights and responsibilities order.<sup>6</sup>

### **Required provisions**

The bill requires every shared parenting order and parental rights and responsibilities order to include provisions covering all factors relevant to the care of the children, including all of the following:

- Provisions regarding each child's needs that are consistent with the child's age, developmental stage, and maturation;
- The designation of a parent for the following purposes:
  - Paying and receiving child support, health care coverage, and cash medical support in accordance with child support laws;
  - Determining the school district of attendance;
  - Claiming the child as a dependent for income tax purposes;
  - For any other purpose requiring designation of one parent, including public assistance, international treaty enforcement, or state or federal law.
- The parenting time schedule for weekdays, weekends, holidays, days that hold special meaning to the child or parents, vacations, and other relevant times;
- The frequency, time, and method of the child's communication with a parent during the parenting time;
- The allocation of decision-making and other responsibilities related to the welfare of the child, including education, child care, health care, and school and extracurricular activities;
- The procedure for parenting time, including the meeting location and the person responsible for transportation;
- The frequency and method for the parents to communicate with each other about the child;
- The process of information sharing and right to access the child's school records, health records, records of the childcare facilities, and school and extracurricular activities;

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<sup>5</sup> R.C. 3109.04(D)(1), (E), and (G).

<sup>6</sup> R.C. 3109.045(C).

- Any geographical restriction on relocation of the child and notification before relocation of the child;
- Each parent’s responsibility for the child’s financial support, consistent with existing child support laws;
- Procedures for the parents to resolve disputes through nonadversarial dispute resolution processes;
- Each parent’s responsibility to provide written notification to the other parent and the court of a change of contact information, including street address, mailing address, email address, or telephone number in compliance with the bill’s relocation provisions;
- Any other provisions required by statute or the court.<sup>7</sup>

### **Deadline to issue an order**

The bill requires a court to issue a final shared parenting order or parental rights and responsibilities order no later than nine months after either of the following, whichever is applicable:

- The date that a party files a motion for a temporary order to allocate parental rights and responsibilities;
- If a temporary order has been extended, the date that the parties last filed a joint motion requesting an extension (see “**Temporary orders,**” below).<sup>8</sup>

### **Shared parenting orders**

#### **Shared parenting agreements**

In any divorce, legal separation, or annulment proceeding and in any proceeding pertaining to the allocation of parental rights and responsibilities for the care of a child, the bill allows the parents of a child to jointly make and file with the court a shared parenting agreement for the allocation of parental rights and responsibilities.<sup>9</sup> In fact, the court is required to encourage the parents to jointly submit a shared parenting agreement.<sup>10</sup> Joint submission is permitted under current law, along with separate submission by either or both parents, of a shared parenting plan. The bill eliminates the separate submission option and requires the plan to be an agreement.<sup>11</sup>

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<sup>7</sup> R.C. 3109.046.

<sup>8</sup> R.C. 3109.0437.

<sup>9</sup> R.C. 3109.047.

<sup>10</sup> R.C. 3109.045(B).

<sup>11</sup> R.C. 3109.047; R.C. 3109.04(G), as it appears in existing law.

The bill defines “shared parenting” to mean when the parents share all or some of the aspects of physical and legal care of their children. A shared parenting order is either:

1. An order allocating parental rights and responsibilities for the care of the children as shared parenting that is issued or modified under the bill’s provisions; or
2. An order allocating parental rights and responsibilities for the care of a child issued under existing law that is a decree or order for shared parenting.<sup>12</sup>

### **Filing a shared parenting agreement**

The bill requires a shared parenting agreement to contain provisions that address all of the requirements for shared parenting orders and parental rights and responsibilities orders (see “**Required provisions**,” above) and to be filed at least 30 days before a hearing to determine the allocation of parenting responsibilities, except that the court may waive the deadline for good cause shown.<sup>13</sup>

### **Shared parenting agreement presumed to be in the child’s best interest**

The bill creates a rebuttable presumption that if the parents agree on the terms in a shared parenting agreement to be incorporated into a shared parenting order (see “**Incorporation of an approved agreement into shared parenting order**,” below), as originally issued or as modified, the agreement is in the best interest of the children, unless the court finds, by clear and convincing evidence, that the allocation would be detrimental to the children.<sup>14</sup>

### **Rebutting the presumption**

In determining whether this best-interest presumption is rebutted, the bill requires the court to consider all relevant factors, including:

- The demonstrated ability of each parent to cooperate with the other parent and to encourage the sharing of love, affection, and contact between the child and the other parent.
- Any history of child abuse or neglect, spouse abuse, other domestic violence, or parental kidnapping by either parent, including:
  - Whether either parent or any member of the household of either parent previously has been convicted of or pleaded guilty to any criminal offense involving any act that resulted in a child being an abused child or a neglected child;

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<sup>12</sup> R.C. 3109.04(B)(5) and (6).

<sup>13</sup> R.C. 3109.048.

<sup>14</sup> R.C. 3109.0410.

- Whether either parent, in a case in which a child has been adjudicated an abused child or a neglected child, previously has been determined to be the perpetrator of the abusive or neglectful act that is the basis of the adjudication;
  - Whether either parent or any member of the household of either parent previously has been convicted of or pleaded guilty to criminal domestic violence or a sexually oriented offense involving a victim who at the time of the commission of the offense was a member of the family or household that is the subject of the current proceeding;
  - Whether either parent or any member of the household of either parent previously has been convicted of or pleaded guilty to any offense involving a victim who at the time of the commission of the offense was a member of the family or household that is the subject of the current proceeding and caused physical harm to the victim in the commission of the offense; and
  - Whether there is reason to believe that either parent has acted in a manner resulting in a child being an abused child or a neglected child.
- The mental and physical health of all persons involved in the situation.
  - Whether a parent is totally incapable of supporting or caring for the child.<sup>15</sup>

The best interest factors here and elsewhere in the bill, as they relate to rebutting the bill's presumptions when allocating parental rights and responsibilities, are based on existing law factors for determining the best interest of the child when allocating parental rights and responsibilities and determining whether to grant shared parenting (see "**Rebutting the presumption of equal decision-making responsibilities**" and "**Rebutting the presumption of equal parenting time**" under "**Parental rights and responsibilities orders**," below).<sup>16</sup>

### ***If a presumption is rebutted***

If the court determines by clear and convincing evidence that the presumption that a shared parenting agreement is in the best interest of the child is rebutted, the court must require the parents to make appropriate changes to the plan or any part of the plan to meet the court's objections to it, unless the court determines that neither parent is suitable to be allocated parental rights and responsibilities.<sup>17</sup> Under existing law, recodified but unchanged by the bill, if the court finds that it is in the best interest of the child for neither parent to be designated the residential parent and legal custodian of the child, it may commit the child to a relative or certify a copy of its findings to the juvenile court for further proceedings.<sup>18</sup>

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<sup>15</sup> R.C. 3109.0411.

<sup>16</sup> R.C. 3109.05(F)(1) and (2), as they appear in existing law.

<sup>17</sup> R.C. 3109.0412(A).

<sup>18</sup> R.C. 3109.0435; R.C. 3109.04(D)(2), as it appears in existing law.

If the parents jointly submit changes to the plan that meet the court's objections, the court must approve the plan.<sup>19</sup> But, if the court determines that the changes to the plan do not meet the court's objections, or if the parents attempt to make changes to the plan to meet the court's objections but the court determines that the new plan or any part of it still does not meet the court's objections, the court must proceed as if no parenting agreement has been filed (see "**Parental rights and responsibilities orders**," below).<sup>20</sup>

### ***If a presumption is not rebutted***

The bill requires a court to approve a shared parenting agreement if the presumption has not been rebutted.<sup>21</sup>

### **Incorporation of an approved agreement into shared parenting order**

Upon approval, the bill requires a shared parenting agreement to be incorporated into a shared parenting order. The order must be issued at the same time as, and appended to, the final decree of dissolution, divorce, annulment, or legal separation arising out of the action out of which the question of the allocation of parental rights and responsibilities arose.<sup>22</sup>

### **Effective date of shared parenting order**

The bill prohibits the issuance of a provisional order related to any shared parenting agreement that the court approves. A shared parenting order takes immediate effect as a final order on the date that it is issued, subject to modification or termination under the bill's provisions (see "**Shared parenting orders**" under "**Modification and termination of orders**," below).<sup>23</sup>

### **Parental rights and responsibilities orders**

When the parents have not entered into a shared parenting agreement to allocate parental rights and responsibilities, the bill requires the court to issue a parental rights and responsibilities order. The bill defines a parental rights and responsibilities order as either:

1. An order issued or modified under the bill's provisions governing parental rights and responsibilities orders; or
2. An order allocating parental rights and responsibilities for the care of a child issued under existing law that is *not* a decree or order for shared parenting.<sup>24</sup>

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<sup>19</sup> R.C. 3109.0412(B).

<sup>20</sup> R.C. 3109.0412(C).

<sup>21</sup> R.C. 3109.0413(A).

<sup>22</sup> R.C. 3109.0413(B).

<sup>23</sup> R.C. 3109.0413(C). A technical amendment is needed to replace "as authorized by this section" with the appropriate cross-references to the sections relating to modification or termination of a shared parenting order.

<sup>24</sup> R.C. 3109.04(B)(2).

### **Submitting information to the court**

The bill requires each parent to submit the following information, at least 30 days before a hearing to determine the allocation of parental rights and responsibilities, except for good cause shown, when they have not entered into a shared parenting agreement:

- The parent’s work schedule;
- Living arrangements of the parent and the child;
- Factors for rebutting a presumption of equal decision-making rights and responsibilities or equal parenting time;
- Any other circumstances relevant to determining the allocation of parental rights and responsibilities and an appropriate parenting time schedule to maximize the child’s time with each parent.<sup>25</sup>

### **Equal decision-making rights and responsibilities and equal parenting time presumed to be in the child’s best interest**

The bill creates rebuttable presumptions that equal decision-making rights and responsibilities (with both parents remaining legal custodians and residential parents) and equal parenting time, are in the best interest of the children. Both presumptions are rebutted only if the court finds by clear and convincing evidence that the arrangement in question would be detrimental to the children, based on factors set forth in the bill. If a parent objects to either presumption, that parent bears the burden of proof that the arrangement would be detrimental to the children. If the court finds that the presumption rebutted, it must issue findings of fact and conclusions of law supporting the determination.<sup>26</sup>

The bill defines “decision-making rights and responsibilities” or “decision-making responsibilities” as the ability to determine aspects of the child’s life, including the right and duty to protect, train, and discipline the child and decisions regarding food, living conditions, education, and medical care.<sup>27</sup> The bill defines “parenting time” as the time that a child is physically located with, and under the care, responsibility, tutelage, and protection of a parent.<sup>28</sup>

### **Rebutting the presumption of equal decision-making responsibilities**

In determining whether the presumption of equal decision-making rights and responsibilities between the parents, with both parents remaining legal custodians and residential parents, is rebutted, the court must consider all relevant factors, including:

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<sup>25</sup> R.C. 3109.0419.

<sup>26</sup> R.C. 3109.0420.

<sup>27</sup> R.C. 3109.04(A)(2).

<sup>28</sup> R.C. 3109.04(B)(3).

- The demonstrated ability of each parent to cooperate with the other parent and to encourage the sharing of love, affection, and contact between the child and the other parent.
- Any history of child abuse or neglect, spouse abuse, other domestic violence, or parental kidnapping by either parent, including:
  - Whether either parent or any member of the household of either parent previously has been convicted of, or pleaded guilty to, any criminal offense involving any act that resulted in a child being an abused child or a neglected child;
  - Whether either parent, in a case in which a child has been adjudicated an abused child or a neglected child, previously has been determined to be the perpetrator of the abusive or neglectful act that is the basis of an adjudication;
  - Whether either parent or any member of the household of either parent previously has been convicted of or pleaded guilty to criminal domestic violence or a sexually oriented offense involving a victim who at the time of the commission of the offense was a member of the family or household that is the subject of the current proceeding;
  - Whether either parent or any member of the household of either parent previously has been convicted of or pleaded guilty to any offense involving a victim who at the time of the commission of the offense was a member of the family or household that is the subject of the current proceeding and caused physical harm to the victim in the commission of the offense; and
  - Whether there is reason to believe that either parent has acted in a manner resulting in a child being an abused child or a neglected child.
- The mental health of all persons involved in the situation.
- The recommendation of the guardian ad litem of the child, if the child has a guardian ad litem, provided that the court does not rely on that recommendation as the sole basis for its determination and the recommendation is subject to the state policy.
- Whether a parent is totally incapable of supporting or caring for a child.<sup>29</sup>

### **Rebutting the presumption of equal parenting time**

In determining whether the presumption of equal parenting time is rebutted, the court must consider all relevant factors, including:

- Any history of child abuse, spouse abuse, other domestic violence, or parental kidnapping by either parent, including the same offenses outlined in “**Rebutting the**

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<sup>29</sup> R.C. 3109.0421.

**presumption of equal decision-making responsibilities”** immediately above.

- The geographic proximity of the parents to each other at the time of initial filing, as the proximity relates to the practical considerations of parenting time and whether a parent has relocated to impede equal parenting time.
- If the court has interviewed the child in chambers regarding the child’s wishes and concerns as to the allocation of parental rights and responsibilities, the wishes and concerns of the child, as expressed to the court.
- The child’s interaction and interrelationship with the child’s parents, siblings, and any other person who has a significant relationship with the child.
- The child’s adjustment to the child’s home, school, and community.
- The mental and physical health of all persons involved in the situation.
- Whether a parent has continuously and willfully interfered with or denied the other parent’s right to parenting time in accordance with an order of the court.
- Whether either parent has established a residence, or is planning to establish a residence, outside this state.

The recommendation of the guardian ad litem of the child, if the child has a guardian ad litem, provided that the court does not rely on the recommendation as the sole basis for its determination and the recommendation is subject to the state policy.

- Whether a parent is totally incapable of supporting or caring for the child.<sup>30</sup>

### **If either or both presumptions are rebutted**

#### ***“Friendly parent” determination***

If the court determines that either or both presumptions have been rebutted, the bill requires a court to determine whether a parent has intentionally done any of the following:

- Misled the court to cause an unnecessary delay, increase the cost of litigation, or persuade the court to give that parent a preference regarding the presumption that has been rebutted;
- Made false allegations against the other parent of harm to the child;
- Communicated false information to law enforcement, a public children services agency, or the court in order to gain a tactical advantage in a proceeding to determine the allocation of parental rights and responsibilities.<sup>31</sup>

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<sup>30</sup> R.C. 3109.0422.

<sup>31</sup> R.C. 3109.0423.

### ***If presumption of equal decision-making rights is rebutted***

If the court determines by clear and convincing evidence that the presumption regarding equal decision-making rights and responsibilities is rebutted, the bill requires the court to:

1. Issue an order designating one parent as the residential parent and legal custodian of the child; and
2. Allocate most of the decision-making rights and responsibilities to the parent who has:  
(a) demonstrated a greater and consistent willingness to cooperate with the other parent and to encourage the sharing of love, affection, and contact between the child and other parent, and (b) not been determined to have done any of the actions described under **“Friendly parent” determination,** above.<sup>32</sup>

If the court determines the equal decision-making presumption is rebutted, but does not determine that the equal parenting time presumption is rebutted, the court must still award equal parenting time.<sup>33</sup>

### ***If presumption of equal parenting time is rebutted***

If the court determines by clear and convincing evidence that the presumption regarding equal parenting time is rebutted, the bill requires the court to:

1. Issue an order allocating parental rights and responsibilities with unequal parenting time in accordance with its determination;
2. Award the majority of parenting time to the parent who: (a) is more likely to honor and facilitate parenting time for the other parent or visitation and companionship for others, if the court determines that one parent has interfered with or continuously and willfully denied the other parent’s right to parenting time in accordance with the court order, unless the court finds by clear and convincing evidence that this arrangement would be detrimental to the child for other reasons (see **“Rebutting the presumption of equal parenting time,”** above), and (b) has not been determined to have done any of the actions described under **“Friendly parent” determination,** above; and
3. Construct a parenting time schedule that is consistent with the child’s welfare.<sup>34</sup>

If the court determines the equal parenting time presumption is rebutted, but does not determine that the equal decision-making rights and responsibilities presumption is rebutted, the court must still award equal decision-making rights and responsibilities.<sup>35</sup>

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<sup>32</sup> R.C. 3109.0424(A).

<sup>33</sup> R.C. 3109.0424(B).

<sup>34</sup> R.C. 3109.0425(A).

<sup>35</sup> R.C. 3109.0425(B).

### **If neither presumption is rebutted**

If neither presumption has been rebutted, the court must issue an order allocating both equal decision-making rights and responsibilities, with both parents being designated as the residential parent and legal custodian of the child, and equal parenting time.<sup>36</sup>

### **Modification and termination of orders**

The bill repeals existing law governing modification and termination of decrees allocating parental rights and responsibilities and instead allows one or both parents under a shared parenting order or parental rights and responsibilities order to file a motion requesting that the order be modified or terminated.<sup>37</sup>

#### **Shared parenting orders**

##### ***Modification when parents agree***

If both parents under a shared parenting order agree to modify the shared parenting agreement that was incorporated into the order and jointly file a motion requesting modification, the court must issue a modified shared parenting order incorporating the modified agreement, as long as the modified agreement is not detrimental to the child based on the factors for rebutting a presumption under a shared parenting order (see “**Rebutting the presumption**” under “**Shared parenting orders**,” above). If, based on those factors, the court finds the modified agreement to be detrimental, it must dismiss the motion.<sup>38</sup>

##### ***Modification when parents do not agree***

If: (1) one parent under a shared parenting order files a motion requesting modification of the shared parenting agreement that was incorporated into the order or if both parents file separate motions requesting modifications, and (2) based on facts that have arisen that were unknown to the court at the time that the existing order was issued, a change has occurred in the circumstances of the child, the child’s residential parent, or either parent, the court may do any of the following:

- If the court determines that the requested changes to the agreement are *not* detrimental to the child → issue a modified shared parenting order that incorporates the modified agreement;
- If the court determines that the requested changes to the agreement *are* detrimental to the child and the existing plan is *not* detrimental to the child → dismiss the motion to modify the shared parenting order;

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<sup>36</sup> RC. 3109.0426.

<sup>37</sup> R.C. 3109.0438; R.C. 3109.04(E), as it appears in existing law.

<sup>38</sup> R.C. 3109.0439(A).

- If the court determines that the requested changes to the agreement *are* detrimental to the child and the existing plan is *also* detrimental to the child → terminate the existing shared parenting order.

In all three circumstances, the court must determine whether the requested changes or existing plan is detrimental based on the factors for rebutting a presumption under a shared parenting order (see “**Rebutting the presumption**” under “**Shared parenting orders,**” above).<sup>39</sup>

### ***Termination***

A court may terminate a shared parenting order on the motion of one or both parents if the court determines either:

- The shared parenting agreement incorporated into the order is detrimental to the child, based on the factors for rebutting a presumption under a shared parenting order (see “**Rebutting the presumption**” under “**Shared parenting orders,**” above); or
- One parent demonstrates a pattern of willfully creating conflict in an attempt to disrupt a current or pending shared parenting arrangement and the court determines, by a preponderance of evidence, that:
  - It is unable to enter a shared parenting order that will reduce the conflict that the disruptive parent is causing; and
  - The disruptive behavior is a material change in circumstances.<sup>40</sup>

If a shared parenting order is terminated either because: (1) one parent has requested a modification and the court concluded that both the requested modification and the existing plan are detrimental (see third bullet under “**Modification when parents do not agree,**” above) or (2) one or both parents file a motion for termination and the court determines that the shared parenting agreement incorporated into the order is detrimental to the child (see first bullet under this subheading), the court must issue a parental rights and responsibilities order for the care of the child based on the provisions governing these orders (see “**Parental rights and responsibilities orders,**” above) as if no shared parenting order had been issued.<sup>41</sup>

If a shared parenting order is terminated because one or both parents file a motion for termination and the court determines that one parent has demonstrated a pattern of willfully creating conflict in an attempt to disrupt a shared parenting arrangement (see second bullet under this subheading), the court must issue a parental rights and responsibilities order that designates the nondisruptive parent as the residential parent and legal custodian of the child.

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<sup>39</sup> R.C. 3109.0439(B).

<sup>40</sup> R.C. 3109.0440.

<sup>41</sup> R.C. 3109.0441(A).

This is based on the criteria for rebutting presumptions for equal decision-making rights and responsibilities or equal parenting time and issuing a court order upon either presumption being rebutted under a parental rights and responsibilities order (see “**Parental rights and responsibilities orders**,” above).<sup>42</sup>

### **Parental rights and responsibilities orders**

#### ***Modification when parents agree***

The bill allows both parents under a parental rights and responsibilities order to jointly file a motion requesting the court to modify the order as a shared parenting order. The motion must include a shared parenting agreement that meets the bill’s requirements (see “**Required provisions**,” above). When determining whether to grant the motion and issue a shared parenting order, the court must comply with the provisions governing shared parenting agreements.<sup>43</sup>

#### ***Modification when parents do not agree***

If one parent under a parental rights and responsibilities order files a motion requesting modification of the order, or if both parents file separate motions requesting modifications of the order, the court may make modifications if it determines:

- The order is detrimental to the child based on the factors to rebut the presumption of equal decision-making responsibilities or equal parenting time under a parental rights and responsibilities order; and
- That, based on facts that have arisen since the prior order that were unknown to the court at the time of the prior order, a change has occurred in the circumstances of the child, the child’s residential parent, or either parent subject to the order.<sup>44</sup>

The bill allows a court to approve only modifications that are consistent with the state policy and the provisions governing a parental rights and responsibilities order, if either equal decision-making responsibility or equal parenting time is rebutted.<sup>45</sup>

### **Temporary orders**

In accordance with the state policy, the bill provides that if both parents jointly request the terms of a temporary allocation of parental rights and responsibilities, the court must incorporate those terms into the temporary order, unless it finds by clear and convincing evidence that it would be detrimental to the child.<sup>46</sup>

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<sup>42</sup> R.C. 3109.0441(B).

<sup>43</sup> R.C. 3109.0443.

<sup>44</sup> R.C. 3109.0442(A).

<sup>45</sup> R.C. 3109.0442(B).

<sup>46</sup> R.C. 3109.0436(B)(1).

If the parents do not agree on the terms of a temporary allocation but one parent requests equal decision-making rights and responsibilities or equal parenting time, the court must honor the request in the temporary order, unless it finds by clear and convincing evidence that it would be detrimental to the child. If either parent objects to the equal decision-making rights and responsibilities (and requests to be designated as the sole residential parent and legal custodian of the child) or equal parenting time, that parent bears the burden of proof that equal decision-making rights and responsibilities or equal parenting time would be detrimental to the child. If the court determines by clear and convincing evidence that either would be detrimental to the child, it must issue findings of fact and conclusions of law supporting the determination.<sup>47</sup>

The bill allows the court to extend a temporary order if the parents file a joint motion requesting an extension.<sup>48</sup>

### **No presumptions to be drawn from a temporary order**

The bill prohibits the court from drawing any presumptions from a temporary order or considering a temporary order as a factor in making a final decision when allocating parental rights and responsibilities in either a shared parenting order or parental rights and responsibilities order.<sup>49</sup>

### **Designation of child's home**

The bill specifies that if the court issues an order allocating parental rights and responsibilities and it is necessary for the purpose of receiving public assistance or establishing school district residence, the court must designate which one of the parents' residences is to serve as the child's home for that purpose. This designation does not affect the child's residency for any other purpose, a parent's status as a legal custodian of the child or, a parent's status as a residential parent for any other purpose.<sup>50</sup> These provisions are similar to existing law, except that existing law does not specify that these designations do not affect the child's residency for other purposes.<sup>51</sup>

## **Parenting time and companionship and visitation orders**

### **Parenting time changes**

The bill makes some changes to the law regarding the issuance of parenting time orders. Under the bill, a "parenting time order" is defined as an order issued under the existing law governing the issuance of parenting time orders, which has been recodified by the bill, with

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<sup>47</sup> R.C. 3109.0436(B)(2).

<sup>48</sup> R.C. 3109.0436(D).

<sup>49</sup> R.C. 3109.0434.

<sup>50</sup> R.C. 3109.0414.

<sup>51</sup> R.C. 3109.04(A)(2), (L)(6), and (L)(7), as they appear in existing law.

only the changes described below.<sup>52</sup> The bill repeals the existing law definition of a “parenting time order” as an order establishing the amount of time that a child spends with the parent who is not the residential parent or the amount of time that the child is to be physically located with a parent under a shared parenting order.<sup>53</sup>

First, under the bill, a court can only issue a parenting time order if neither a shared parenting order nor a parental rights and responsibilities order under which both parents are the residential parent and legal custodian of the child, has been issued. Under current law, a court can issue a parenting time order only when the court has not issued a shared parenting decree.

Second, the bill requires the court to make a just and reasonable order permitting each parent who is not the residential parent to have parenting time with the child at the time and under the conditions that the court directs, unless the court finds by clear and convincing evidence that it would be detrimental to the child, based on existing law factors for determining whether parenting time or companionship or visitation is detrimental to the child, recodified by the bill. Under existing law, the court must do this unless the court determines that it would not be in the best interest of the child to permit that parent to have parenting time with the child.<sup>54</sup>

Third, the bill repeals a provision regarding parenting time orders issued before April 11, 1991. This provision governs when a parent who is granted parenting time may or may not receive a notice of relocation if it is determined that the nonresidential parent has been convicted of or pleaded guilty to various specified domestic violence and related offenses against a family or household member.<sup>55</sup>

Fourth, the bill repeals a requirement that, if a party makes a written request for findings of fact and conclusions of law, the court must issue them when it denies a request for parenting time. Instead, the court must make those written findings and conclusions upon denial, without a request to do so. The court must also issue a transition plan (see “**Transition plan**,” below).<sup>56</sup>

### **Transition plans**

Generally, the bill requires that if a court denies parenting time to a parent who is not the residential parent and legal custodian of a child, it must establish a transition plan, to be issued at the same time as the denial of parenting time. The purpose of the transition plan is to encourage, facilitate, and establish or re-establish the relationship between that parent and the child.

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<sup>52</sup> R.C. 3109.04(B)(4) and 3109.0451.

<sup>53</sup> R.C. 3109.051(O)(4), as it appears in existing law.

<sup>54</sup> R.C. 3109.0451; R.C. 3109.051(A), as it appears in existing law.

<sup>55</sup> R.C. 3109.051(G)(3), as it appears in existing law.

<sup>56</sup> R.C. 3109.0466(A); R.C. 3109.051(F)(1), as it appears in existing law.

The court is required to do this only if the parent has demonstrated a desire and ability to establish or re-establish a relationship with the child.<sup>57</sup> The bill prohibits the court from issuing a transition plan if:

- The parent who was denied parenting time:
  - Has been convicted of or pleaded guilty to any criminal offense involving any act that resulted in a child being an abused child or a neglected child;
  - Has been determined to be the perpetrator of the abusive or neglectful act that is the basis of an adjudication of child abuse or neglect; or
  - Has acted in a manner resulting in a child being an abused child or a neglected child;
- The court, after considering the geographical location of the residence of each parent and the distance between those residences, determines that the parent lives too far away geographically from the child and is not willing to relocate closer in order to establish or re-establish a relationship with the child.<sup>58</sup>

A parent must be allowed to complete the transition plan no later than 12 months after the date of the denial of parenting time and the issuance of the plan. On or before satisfactory completion of the transition plan, either of the following may apply:

- Both parents may jointly file a motion requesting the court to modify the parental rights and responsibilities order as a shared parenting order (see “**Modification when parents agree**” under “**Modification and termination of orders – Parental rights and responsibilities orders,**” above). If this happens, the court must suspend the 12-month period for the length of time from the filing of the motion to the issuance of a decision on the motion.<sup>59</sup>
- One parent may file a motion, or both parents may file separate motions, requesting modifications of the parental rights and responsibilities order (see “**Modification when parents do not agree**” under “**Modification and termination of orders – Parental rights and responsibilities orders,**” above).<sup>60</sup> Satisfactory completion of a transition plan must be considered a change in circumstances for the modification of a parental rights and responsibilities order.<sup>61</sup>

If one of the above motions is not filed, the court, on its own motion and upon satisfactory completion of the transition plan, must modify the parental rights and

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<sup>57</sup> R.C. 3109.0467(A).

<sup>58</sup> R.C. 3109.0467(B).

<sup>59</sup> R.C. 3109.0467(C)(1).

<sup>60</sup> R.C. 3109.0467(D)(1).

<sup>61</sup> R.C. 3109.0467(C)(2).

responsibilities order to provide for equal decision-making rights and responsibilities and equal parenting time.<sup>62</sup>

### **Companionship or visitation changes**

The bill defines a “companionship or visitation order” as an order that is issued under the existing law section governing the issuance of companionship or visitation orders, recodified by the bill, with only the changes described below.<sup>63</sup> The bill provides that, when determining whether to grant companionship or visitation to a grandparent, other relative, or any other person other than a parent, the court must determine that granting those rights would not be detrimental to the child, based on existing law factors for determining whether to grant companionship or visitation or parenting time, among other requirements. Existing law instead requires a determination that granting those rights is in the best interest of the child.<sup>64</sup>

The bill also repeals a requirement that, if a party makes a written request for findings of fact and conclusions of law, the court must issue them when it denies a request for companionship or visitation. Instead, the bill requires the court to make written findings and conclusions upon denial, without a request to do so.<sup>65</sup>

### **When a child is born to an unmarried woman**

The bill makes changes to the laws governing parenting time orders and companionship or visitation orders when a child is born to an unmarried woman.

First, the bill repeals a provision that allows a court to grant parenting time or companionship and visitation rights if it determines that granting it is in the best interest of the child. Instead, the bill creates a presumption that equal parenting time is in the best interest of the child, subject to the factors for determining whether parenting time orders are in the best interest of the child and other provisions governing parenting time, including the consideration of mediation reports, interviewing a child regarding the child’s wishes, indigent parents, and the effect of remarriage. All of these considerations are in existing law and have been recodified by the bill.

Second, the bill removes “reasonable” from references to the granting of “reasonable parenting time” to the father, based on the presumption of equal parenting time between the mother and father being in the best interest of the child.

Third, the bill repeals a requirement that, if a party makes a written request for findings of fact and conclusions of law, the court must issue them when it denies a request for parenting

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<sup>62</sup> R.C. 3109.0467(D)(2).

<sup>63</sup> R.C. 3109.04(B)(1).

<sup>64</sup> R.C. 3109.0452(A)(3); R.C. 5109.051(B)(1)(c), as it appears in existing law.

<sup>65</sup> R.C. 3109.0466(A); R.C. 3109.051(F)(1), as it appears in existing law.

time or companionship or visitation. Instead, the bill requires the court to make written findings and conclusions upon denial, without a request to do so.<sup>66</sup>

### **Civil Rule 53**

The bill adds that when a court must state its findings of fact and conclusions of law in writing in response to denials in all cases addressing parenting time, companionship, and visitation, it must do so in accordance with Civil Rule 53, if applicable, in addition to Civil Rule 52; existing law requires this action to be taken in accordance with Civil Rule 52 only. Rule 53 of the Ohio Rules of Civil Procedure governs various requirements for magistrates, including their appointment, compensation, scope of authority, and governance of proceedings that are referred to them.<sup>67</sup>

### **Granting rights to a putative father**

Under the bill, if a parent-and-child relationship has not already been established under existing parentage laws, the court must take into consideration the following, when determining whether to award parenting time or temporary custody to a putative father:

- That the putative father is named on the child’s birth record;
- That the child has the putative father’s last name; and
- There is a clear pattern of a parent-child relationship between the child and putative father.

Existing law allows, but does not require, the court to take these factors into consideration.<sup>68</sup>

### **False accusations of abuse or neglect**

The bill allows a court to impose a reasonable fine or community service against a person that the court has determined, based on an investigation or other evidence presented, to have intentionally made a false accusation of child abuse or neglect against a parent. For purposes of this provision, “person” is defined as a party, a party’s attorney, or a witness.<sup>69</sup>

The fine cannot exceed the total of all costs directly incurred by the parent as a result of defending the accusation and reasonable attorney’s fees incurred in recovering the sanction against the person making the accusation.<sup>70</sup> A court may order a parent to perform an appropriate amount of community service instead of imposing a fine if the court determines

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<sup>66</sup> R.C. 3109.12.

<sup>67</sup> R.C. 3109.0466(A), 3109.11, and 3109.12(D); Ohio R. Civ. Pro. 53; R.C. 3109.051(F)(1) and 3109.012(B), as they appear in existing law.

<sup>68</sup> R.C. 3109.0436(C); R.C. 3109.043(C), as it appears in existing law.

<sup>69</sup> R.C. 3109.0481(D).

<sup>70</sup> R.C. 3109.0481(A).

that a fine would negatively impact the well-being of the child. The community service must be scheduled when that parent is not exercising parenting time with the child.<sup>71</sup> In addition, a court must order reasonable makeup parenting time if a false accusation results in the accused parent being denied parenting time.<sup>72</sup>

## Parenting time interference

The bill establishes provisions regarding interference with parenting time rights under a shared parenting order or parental rights and responsibilities order. Under existing law, repealed by the bill, the interference provisions apply to any person found in contempt of court for failing to comply with or interfering with any order granting parenting time rights to a nonresidential parent or companionship or visitation rights.<sup>73</sup>

Under the bill, a court must hold a hearing on a motion alleging interference with parenting time no later than 28 days after the filing of the motion and supporting affidavit, unless the hearing should be conducted earlier for good cause shown.<sup>74</sup> A court may issue a temporary order necessary to protect the relationship between the parent and child any time before ruling on an interference motion.<sup>75</sup>

If the court finds, after a hearing, that there was unreasonable interference with parenting time, the court must grant:

- An award of compensatory parenting time, provided that compensatory parenting time is not detrimental to the child, based on the factors for: rebutting a presumption that a shared parenting agreement is in the best interest of the child (see “**Rebutting a presumption**” under “**Shared parenting orders**,” above), rebutting a presumption that equal decision-making rights and responsibilities or equal parenting time in a parental rights or responsibilities order is in the best interest of a child (see “**Rebutting the presumption of equal decision-making responsibilities**” and “**Rebutting the presumption of equal parenting time under Parental rights and responsibilities orders**,” above), or denying an order for parenting time, whichever is applicable; and
- An award of any reasonable attorney’s fees and court costs arising in relation to the act of interference with parenting time.<sup>76</sup>

The court may also, but is not required to, issue any of the following:

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<sup>71</sup> R.C. 3109.0481(B).

<sup>72</sup> R.C. 3109.0481(C).

<sup>73</sup> R.C. 3109.051(K), as it appears in existing law.

<sup>74</sup> R.C. 3109.0491.

<sup>75</sup> R.C. 3109.0492.

<sup>76</sup> R.C. 3109.0493.

- On the court's own motion or upon motion by one or both parents, a modified shared parenting order or parental rights and responsibilities order to prevent future interference with parenting time in the best interest of a child;
- An order to require parents or the child to attend counseling, education, or coaching;
- An order to post bond, either in cash or with sufficient sureties, conditioned upon compliance with the parenting time provisions in the shared parenting order or parental rights and responsibilities order;
- An award of reasonable costs and fees for mediation, counseling, parent and child education, and supervised parenting time or exchange;
- Any other remedy that the court considers appropriate.<sup>77</sup>

Under existing law, if the court finds that a person is found in contempt of court for noncompliance or interference with a parenting time or companionship or visitation order, it must assess all court costs arising out of the contempt proceeding against the person and require the person to pay any reasonable attorney's fees of any adverse party that arose in relation to the contempt action, as determined by the court. It may also award reasonable compensatory parenting time or visitation to the person whose right of parenting time or visitation was affected by the failure or interference, if it is in the best interest of the child.<sup>78</sup>

## Relocation

The bill makes several changes to, and expands, existing law regarding relocation, and applies these provisions to any relocating parent under a shared parenting order and parental rights and responsibilities order. Under existing law, repealed by the bill, the provisions apply only to a residential parent under a parenting time order.<sup>79</sup>

Generally, a relocating parent must file a notice of intent to relocate with the clerk of the court where the shared parenting order or parental rights and responsibilities order was issued, and the clerk must send a copy of the notice to the last known address of the nonrelocating party.<sup>80</sup> The bill specifies that a relocation of a parent or child's residence occurs when there is a change of address.<sup>81</sup>

The notice must include all of the following:

- Updated residential address;

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<sup>77</sup> R.C. 3109.0494. A technical amendment is needed to remove the provision regarding the award of reasonable costs and fees for supervised parenting time or exchange, as it is not an available remedy.

<sup>78</sup> R.C. 3109.051(K), as it appears in existing law.

<sup>79</sup> R.C. 3109.0470 to 3109.0479; R.C. 3109.051(G)(1), (2), and (4) as they appear in existing law.

<sup>80</sup> R.C. 3109.0471.

<sup>81</sup> R.C. 3109.0470.

- Updated mailing address;
- Updated telephone number;
- Updated email address;
- Date of relocation;
- Notice to the nonrelocating parent that any objection to the relocation must be filed not later than 30 days after receipt of the notice of intent to relocate.<sup>82</sup>

The notice must be filed at least 60 days before the intended relocation or not later than ten days after the parent knew of the intended relocation, if the 60-day requirement cannot be met, absent exigent circumstances.<sup>83</sup>

The bill allows a parent to file a motion for the court to make a determination regarding the health, safety, and welfare or liberty of a person being put at risk by filing a relocation notice. If the court makes such a finding, it may do any of the following:

- Order that the intent to relocate not be disclosed;
- Waive the notice requirement to the extent necessary to protect the confidentiality and the health, safety, and welfare of the child or parent;
- Consider any other remedy deemed necessary to facilitate the legitimate needs of the parties and protect the best interest of the child;
- If appropriate, conduct an *ex parte* hearing, with a full hearing with notice to the parents if an *ex parte* order is issued.<sup>84</sup>

Under existing law, repealed by the bill, the court is required to do the following when it issues a parenting time order to a parent who is not the residential parent:

- Determine whether a parent has been convicted of or pleaded guilty to domestic violence or an offense against a family or household member or perpetrated an abusive act causing a child to be an abused child;
- Issue, upon finding the first bullet in the negative, an order stating that a copy of any notice of relocation will be sent to the parent who is given parenting time rights;
- Issue, upon finding the first bullet in the positive, an order stating that the parent will not be given a copy of any notice of relocation, unless the court determines that it is in the best interest of the child to do so.<sup>85</sup>

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<sup>82</sup> R.C. 3109.0473.

<sup>83</sup> R.C. 3109.0472.

<sup>84</sup> R.C. 3109.0474.

<sup>85</sup> R.C. 3109.051(G)(2), as it appears in existing law.

Existing law allows a residential parent to file a motion with the court requesting that the nonresidential parent not receive a copy of any relocation notice if:

- A nonresidential parent who is granted parenting time rights is allowed to receive a copy of a notice of relocation; and
- The residential parent intends to move and does not want the nonresidential parent to receive a copy of the relocation notice because the parent has been convicted of or pleaded guilty to domestic violence or an offense against a family or household member or perpetrated an abusive act causing a child to be an abused child.

The court is required to schedule a hearing upon receipt of a motion to prevent disclosure, and give both parents notice of the date, time, and location of the hearing. After the hearing, the court must issue an order stating that the nonresidential parent will not receive a copy of a notice to relocate if it determines that the parent has been convicted of or pleaded guilty to domestic violence or an offense against a family or household member or perpetrated an abusive act causing a child to be an abused child, unless it determines that it is in the best interest of the child to do so.<sup>86</sup>

### **Failure to file notice of intent to relocate**

The bill allows the court, if a parent fails without good cause to file a notice of intent to relocate, to consider the failure as follows:

- As a factor in making its determination regarding the relocation;
- As a factor in determining a modification of a shared parenting order or a parental rights and responsibilities order;
- As a basis for ordering the return of the child if the relocation has taken place without notice;
- As a basis for awarding attorney fees and expenses;
- As a factor in a finding of contempt.<sup>87</sup>

### **Objection to relocation**

The bill allows a nonrelocating parent to file a motion to object to the relocation and seek an order restricting the relocation when it would render any portion of a shared parenting order or parental rights and responsibilities order impracticable or detrimental to the child.<sup>88</sup> A motion objecting to relocation must be filed not later than 30 days after the receipt of the notice of intent to relocate; otherwise, the objection is waived.<sup>89</sup> The court must conduct a

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<sup>86</sup> R.C. 3109.051(G)(4), as it appears in existing law.

<sup>87</sup> R.C. 3109.0475.

<sup>88</sup> R.C. 3109.0476.

<sup>89</sup> R.C. 3109.0477.

hearing if a motion objecting to the relocation is filed and must give all matters relating to the relocation priority scheduling.<sup>90</sup>

When reaching a decision on a proposed relocation, the court must determine whether the relocation is detrimental to the child based on the factors for rebutting a presumption regarding a shared parenting agreement (see “**Rebutting the presumption**” under “**Shared parenting orders**”), equal decision-making rights and responsibilities or equal parenting time under a parental rights and responsibilities order (see “**Rebutting the presumption of equal decision-making responsibilities**” and “**Rebutting the presumption of equal parenting time**” under “**Parental rights and responsibilities orders**”), or a parenting time order, whichever is applicable. In addition, it must consider all of the following factors to foster a meaningful relationship between the child and nonrelocating parent:

- The reason presented for seeking or opposing the relocation;
- The realistic ability to preserve the relationship between the child and the nonrelocating parent through any proposed new arrangements that consider the logistics and costs of contact, access, and parenting time;
- The effect the relocation will have on the child’s relationship with extended family;
- The enhancement of the quality of life for the child and the relocating parent that the relocation may afford;
- Whether a presumption has previously been rebutted regarding a shared parenting agreement, equal decision-making rights and responsibilities and equal parenting time under a parental rights and responsibilities order, or a parenting time order;
- The child’s stability;
- Any other factor the court determines relevant.<sup>91</sup>

### **Repeal of provisions regarding interpretation of custody**

The bill repeals provisions of law clarifying the interpretation of custody and parental designations in orders allocating parental rights and responsibilities before and after April 11, 1991, which was when Ohio law establishing shared parenting and changing terminology in domestic relations cases took effect.<sup>92</sup>

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<sup>90</sup> R.C. 3109.0478.

<sup>91</sup> R.C. 3109.0479.

<sup>92</sup> R.C. 3109.04(L)(1) to (4), as they appear in existing law.

## Requirements for courts

### Adoption of parenting time guidelines

The bill requires each court of common pleas to adopt rules on standard parenting time guidelines, subject to the state policy and the presumption that equal parenting time is in the best interest of the child. The bill grants the court discretion to deviate from its guidelines based upon the factors governing the issuance of parenting time and companionship and visitation orders under existing law, which are recodified, but unchanged by the bill.<sup>93</sup>

The bill repeals an existing law provision that required each court of common pleas to adopt rules regarding standard parenting time guidelines on or before July 1, 1991.<sup>94</sup>

### Parenting time reports

The bill requires each court that issues various orders to compile an annual report of data regarding the division of parenting time, as tracked by overnight stays with a parent. This requirement applies to courts that issue an order in any of the following:

- Proceedings allocating parental rights and responsibilities of children in a divorce, dissolution, or legal separation;
- Proceedings for child support;
- Proceedings allocating parenting time or companionship or visitation when the mother is unmarried;
- Any other proceeding in which the parents agreed to a judgment by the court with regard to time that a parent spends with a child.

This report must identify the type of case involving parenting time, such as a shared parenting order, parental rights and responsibilities order, or a parenting time order. The report also must track the number of cases of agreed judgment entries that were contested and ordered by the court. The report must not contain personally identifiable information. The court must publish this data on the court's website or otherwise make it publicly available, upon request.<sup>95</sup>

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<sup>93</sup> R.C. 3109.0466(B).

<sup>94</sup> R.C. 3109.051(F)(2), as it appears in existing law.

<sup>95</sup> R.C. 3109.0486. Technical amendments are needed to this section (1) to clarify that proceedings under R.C. 3109.12, and other proceedings in which the parents agreed to a judgment by the court with regard to time that a parent spends with a child, are not necessarily proceedings "allocating parental rights and responsibilities of children," and (2) to correct "parental rights and responsibilities allocation order" to "parental rights and responsibilities order," and (3) to clarify that a parenting time order is issued when a parental rights and responsibilities order designates only one parent as the residential parent and legal custodian of the child.

## Transition provisions

The bill contains transitional provisions that address orders allocating parental rights and responsibilities, parenting time orders, and orders for companionship and visitation under existing law. Under the bill, these orders that were issued under existing law will remain in effect upon the bill's enactment, but must be enforced and modified in accordance with the bill's provisions.<sup>96</sup>

## Recodification

The bill recodifies existing law regarding parental rights and responsibilities, parenting time, and companionship and visitation in the domestic relations context. The following table shows the new organization and includes new provisions enacted by the bill.

Topic	Current Law	Bill
Definitions for Parental Rights and Responsibilities (PRR) allocations, including: <ul style="list-style-type: none"> <li>▪ Shared parenting (SP) order (defined in bill as order issued under 3109.0413);</li> <li>▪ PRR allocation order (defined in bill as order issued under 3109.0412, 3109.0424, 3109.0425, or 3109.0426);</li> <li>▪ Parenting time orders (PTOs) (defined in bill as order issued under 3109.0451);</li> <li>▪ Companionship or visitation orders (CVOs) (defined in bill as order issued under 3109.0452)</li> </ul>	3109.04(J) and (K), as applicable; new	3109.04
Unmarried mother custody of child	3109.042	3109.042
State policy for PRR allocations	New	3109.044
PRR allocations comply with state policy/child's best interest	3109.04(A)	3109.045
Shared parenting agreement (SPA) and parental rights and responsibilities order (PRRO) requirements	3109.04(G), fifth sentence; new	3109.046
Joint filing of SPA	3209.04(G); new	3109.047
SPA filing deadline	New	3109.048
Best interest presumption for SPA	New	3109.0410
Criteria to rebut best interest of SPA	New	3109.0411

<sup>96</sup> R.C. 3109.0485.

Topic	Current Law	Bill
Court PRR allocation order if best interest of SPA rebutted	New	3109.0412
Shared Parenting (SP) order issued allocating PRR if presumption not rebutted	New	3109.0413
Designation of child's home SP order	3109.04(A)(2), second and third sentences	3109.0414
Interpretation of designations in PRR allocation orders	3109.04(L)(5) to (7)	3109.0415
Information for court when parents do not enter into SPA	New	3109.0419
Best interest presumption of Equal Decision-Making Rights and Responsibilities (EDMR) and Equal Parenting Time (EPT) if no SPA	New	3109.0420
Criteria to rebut EDMR if no SPA	New	3109.0421
Criteria to rebut EPT if no SPA	New	3109.0422
Determination of "friendly parent" factors	New	3109.0423
Court order if EDMR, but not EPT, is rebutted	New	3109.0424
Court order if EPT, but not EDMR, is rebutted	New	3109.0425
Court order requiring EDMR and EPT if presumption not rebutted	New	3109.0426
Interview child in chambers re: wishes and concerns	3109.04(B)	3109.0430
Court investigation; effect of findings	3109.04(C)	3109.0431
No PRR allocation preference based on financial status	3109.04(F)(3)	3109.0432
Parental affidavit regarding offenses	3109.04(M)	3109.0433
No presumptions to be drawn from a temporary order	New	3109.0434
Juvenile court jurisdiction if neither parent suitable to receive PRR allocation	3109.04(D)(2)	3109.0435
Temporary PRR allocation orders	3109.043; new	3109.0436
Court deadline to issue final SP or PRR order	New	3109.0437

Topic	Current Law	Bill
Parental motion to modify or terminate SP or PRR order	New	3109.0438
Consideration of motion to modify SP order	New	3109.0439
Criteria for terminating SP order	New	3109.0440
PRR issued on termination of SP order	New	3109.0441
Court consideration of motion to modify PRR order	New	3109.0442
Joint motion to modify PRR order to SP order	New	3109.0443
Appeal priority	3109.04(H)	3109.0445
Definitions for PTOs and CVOs: <ul style="list-style-type: none"> <li>▪ Abused child;</li> <li>▪ Confidential law enforcement investigatory record;</li> <li>▪ Record</li> </ul>	3109.051(O)(1), (3), and (5)	3109.0450
PTOs	3109.051(A)	3109.0451
CVOs	3109.051(B)	3109.0452
PTO/CVO factors	3109.051(D)	3109.0453
Consideration of mediation report and PTO/CVO factors in establishing PTO/CVO	3109.051(C), first sentence	3109.0454
Interview in chambers re: child's wishes and concerns about PTO/CVO	3109.051(C), sentences two to five	3109.0455
Indigent parents	3109.051(L)	3109.0456
Effect of remarriage	3109.051(E)	3109.0457
Record access requirements	3109.051(H)	3109.0461
Day care access requirements	3109.051(I)	3109.0462
School activity access requirements	3109.051(J)	3109.0463
Court duties if deny PTO/CVO	3109.051(F)	3109.0466
Transition plan when PTO denied	New	3109.0467
Juvenile court jurisdiction	3109.051(N)	3109.0468

Topic	Current Law	Bill
Mediation	3109.052	3109.0469
Relocation – when it occurs	New	3109.0470
Relocation – filing notice and sending copy to the other parent	3109.051(G)(1); new	3109.0471
Relocation – deadline to file notice	New	3109.0472
Relocation – notice requirements	New	3109.0473
Relocation – motion and determination that disclosure of notice is risky	3109.051(G)(2) and (4); new	3109.0474
Relocation – failure to file notice	New	3109.0475
Relocation – objection	New	3109.0476
Relocation – deadline to file objection	New	3109.0477
Relocation – hearing for objection	New	3109.0478
Relocation – factors for court consideration on proposed relocation	New	3109.0479
Parenting classes or counselling	3109.053	3109.0480
False accusation of abuse or neglect	New	3109.0481
Definitions: Active Military Service (AMS) and PRR allocation orders and PTOs: <ul style="list-style-type: none"> <li>▪ AMS (current definition under 3109.04);</li> <li>▪ Uniformed services (current definition under 3109.04)</li> </ul>	3109.04(J)(2) and (5)	3109.0482
AMS and SP order or PRR allocation order	3109.04(I)	3109.0483
AMS and PTO/CVO	3109.051(M)	3109.0484
Transitional provisions	New	3109.0485
Parenting time reports	New	3109.0486
Parenting time interference – hearing on motion	New	3109.0491
Parenting time interference – temporary order before ruling on motion	New	3109.0492

Topic	Current Law	Bill
Parenting time interference – required remedies	3109.051(K); new	3109.0493
Parenting time interference – optional remedies	New	3109.0494

## Cross-reference and other nonsubstantive updates

The bill amends many sections of the Revised Code to update cross-references and update or remove terms as a result of the extensive recodification of, and changes to, existing law. For example, a “plan for shared parenting” under existing law has been changed under the bill to a “shared parenting agreement” and references to a shared parenting “decree” have been removed because the bill provides instead for shared parenting orders.<sup>97</sup>

## HISTORY

Action	Date
Introduced	02-15-23
Recalled and re-referred to H. Families & Aging	02-21-23

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<sup>97</sup> These changes are included in the following sections: 2151.23, 2317.02, 2705.031, 2710.05, 2710.06, 3105.21, 3105.63, 3105.65, 3109.04, 3109.042, 3109.045 (recodified from 3109.04(A)), 3109.0415 (recodified from 3109.04(L)(5) to (7)), 3109.0433 (recodified from 3109.04(M)), 3109.0430 (recodified from 3109.04(B)), 3109.0451 (recodified from 3109.051(A)), 3109.0452 (recodified from 3109.051(B)), 3109.0453 (recodified from 3109.051(D)), 3109.0454 (recodified from 3109.051(C), first sentence), 3109.0455 (recodified from 3109.051(C), sentences two to five), 3109.0456 (recodified from 3109.051(L)), 3109.0461 (recodified from 3109.051(H)), 3109.0462 (recodified from 3109.051(I)), 3109.0463 (recodified from 3109.051(J)), 3109.0466 (recodified from 3109.051(F)), 3109.0494 (recodified from 3109.051(K)), 3109.0469 (recodified from 3109.052), 3109.0483 (recodified from 3109.04(I)), 3109.0484 (recodified from 3109.051(M)), 3109.05, 3109.06, 3109.061, 3109.09, 3109.11, 3109.12, 3109.41, 3109.53, 3109.55, 3109.56, 3109.65, 3113.31, 3119.01, 3119.08, 3119.24, 3119.964, 3310.51, 3313.98, 3319.321, 3333.26, 3796.24, 5104.039, 5120.653, 5153.16.