

Fathers and Families[®] Ohio

August 25, 2011

The Honorable Kevin Bacon
Senate Building
1 Capitol Square, Ground Floor
Columbus, OH 43215

Dear Senator Bacon:

Thank you for meeting with us. We are all volunteers for Fathers and Families of Ohio. Fathers and Families advocates for children's true best interests after parental separation or divorce. We are reforming the family courts to treat fathers and mothers as equally important to the well-being of their children, to make shared parenting after separation or divorce the norm, and to arrange finances after separation or divorce equitably.

We would like to discuss with you a number of well-defined, feasible legislative changes that will advance the interests of children of divorced and separated parents. We would like your assistance with these legislative initiatives. We ask you to consider sponsoring those you feel comfortable sponsoring and to assist us in locating potential sponsors for the others. It is worth noting that these are not partisan issues, nor do they require new funding. These issues are:

1. Presumption of Shared Parenting during Temporary Orders
2. Parenting Time Enforcement
3. Disabled Parents Protection Bill
4. Presumptive Child Support in Shared Parenting Cases
5. Child Support Self-Support Reserve Correction

Let me say a bit about each of these initiatives.

1. Presumption of Shared Parenting during Temporary Orders

Decades of social science research clearly establish that, except in rare cases, when parents divorce, children do best if the parents share in the day-to-day responsibilities of rearing the children. Unfortunately, current Ohio law does not encourage—and, in fact, actively discourages—true shared parenting. This begins at the stage of temporary orders, when parents first come before the court. At this time, the court designates one parent the custodial and residential parent and the other a mere “visitor” in the children's lives. This sets a destructive pattern for the family—one that is often difficult for the disenfranchised parent to change.

Oklahoma has successfully addressed this problem with a legal presumption of shared parenting during temporary orders when it is requested by one of the parents. Several

years ago, then Representative McGregor asked LSC to draft Ohio legislative language modeled after the Oklahoma bill. This bill was never introduced. We seek now to get this bill introduced and passed into law. We have included a copy of the bill as drafted by LSC (“LSC 125 2352”).

2. Parenting Time Enforcement

One of the most corrosive patterns of behavior exhibited in separated parenting is interference with a parent’s court-ordered parenting time. Such interference hurts the children and causes frustration and anger in the other parent. It undermines compliance with child support orders as obligors who can’t see their children seek to punish the offending parent. Currently the only legal redress for interference with parenting time is a motion for contempt. This is an inadequate remedy because it is expensive and time-consuming and unlikely to be effective unless the pattern of violation is extreme and very persistent.

Several committees impaneled by the Ohio Supreme Court have recommended strong measures for dealing with parenting time enforcement. (We have included some excerpts addressing this issue from the report of the Ohio Task Force on Family Law and Children, 2011, and the Supreme Court Advisory Committee on Children, Families, and the Courts, 2005.) The idea is to provide “right-sized,” “user-friendly” tools that will head off serious violations before they occur. Despite repeated recommendations from official state committees, nothing has been done legislatively, or in Supreme Court Rules, to address this problem.

We favor an approach pioneered by Missouri. This approach provides for aggrieved parents to file a simple “Family Access Motion” when parenting time has been unjustifiably interfered with. Courts are required to address the issue quickly and with appropriately sized sanctions for violators. Missouri’s experience with these motions has been very positive.

3. Disabled Parents Protection Bill

A parent’s disability should not affect his or her custodial status unless that disability would impair the ability to care for the child. California, among other states, has recently recognized this and acted to protect the parental rights of disabled parents. We advocate a change in Ohio law patterned on this recent California legislation, which provides as follows:

3049. In any proceeding to determine child custody or visitation under this part, in which at least one parent is disabled as defined by the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101 et seq.), there is a rebuttable presumption affecting the burden of proof that the disability of that parent may not form the basis for an order granting custody or visitation to another party, or for an order for imposing any condition or limitation on an award of custody to or visitation by the disabled parent, unless that other party

establishes by clear and convincing evidence that a grant of custody or visitation to, or a condition or limitation on custody or visitation by, the disabled parent would be detrimental to the health, safety, and welfare of the child. This section applies to any proceeding regarding custody or visitation, including, but not limited to, a request for a modification of an existing order for custody or visitation.

4. Presumptive Child Support in Shared Parenting Cases

Based on current Ohio statutory and case law, courts are required to designate one parent a presumptive obligor and one parent a presumptive recipient of child support in shared parenting cases. But neither statutory nor case law indicates how a court is to make this designation. This vagueness in the law leads to inconsistency between courts. And, in cases where the parents have roughly equal parenting time and responsibilities, it violates requirements of equal protection of the law and is manifestly unfair.

There are broad changes necessary in Ohio's child support law. But with respect to this problem we seek a rather limited remedy for a clear omission in Ohio law. We propose amending ORC 3119.07 to require a court to treat the child support obligation of both parents in a shared parenting situation where both parents are custodial and residential parents equally unless the court finds that such treatment would be unjust, inappropriate, and not in the best interest of the child.

We have attached a draft of the sort of legislative change we seek to enact.

5. Child Support Self-Support Reserve Protection

Federal law requires that state child support laws provide for a "self-support reserve." What this is intended to do is to protect a child support obligor from being pushed below the poverty line by child support obligations. The federal law is motivated by the awareness that pushing parents who pay child support obligation into abject poverty will not result in increased resources for the children and will have the effect of driving the obligor into an underground economy and, usually, out of the child's life.

When the Ohio child support law was drafted, it incorporated a very serious error: it defined the self-support reserve in terms of the *combined* income of the two parents. This causes a problem when the obligor's income is near the poverty level but the recipient's income is well above that level. In such cases, the Ohio self-support reserve will not protect this obligor from being driven below the poverty level.

This problem has been recognized by all of the recent Ohio Child Support Guidelines Councils. We know of no organization that supports this aspect of the current law. The only reason the problem has not been corrected is that legislation to correct it has always been incorporated in broad, sweeping child support reform legislation—legislation that it has proven impossible to pass.

It is wrong to hold the correction of this universally recognized problem hostage to broader child support agendas. We seek to have a bill introduced that would correct the current mistake in Ohio's definition of the self-support reserve.

Conclusion

We believe that the above legislative initiatives are well-defined, limited, and feasible. They will not involve new funding. Most importantly, they will improve the situation for Ohio's children of divorced and separated parents.

Sincerely,

Donald C. Hubin, Ph.D., Chair
Fathers and Families of Ohio Executive Committee