

Substitute Bill Problems
Problems Highlighted in Blue

As Re-Referred by the House Rules and Reference Committee

135th General Assembly

Regular Session

H. B. No. 14

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Representatives Creech, John

Sec. 3109.045. (A) 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, upon hearing the testimony of either or both parents and considering any mediation report filed pursuant to section 3109.0469 of the Revised Code and in accordance with sections 3127.01 to 3127.53 of the Revised Code, the court shall allocate the parental rights and responsibilities for the care of the minor children of the marriage. Subject to section 3109.0435 of the Revised Code, the court shall allocate parental rights and responsibilities for the care of the children in accordance with the policy stated in section 3109.044 of the Revised Code and in a manner that promotes the best interest of the children.

(B) In allocating parental rights and responsibilities for the care of the child, the court shall encourage the parents to jointly submit a shared parenting agreement under section 3109.047 of the Revised Code.

(C) The court may allocate parental rights and responsibilities in one of the following ways:

(1) In a shared parenting order issued under section 3109.0413 of the Revised Code;

(2) A parental rights and responsibilities order under section 3109.0412, 3109.0424, 3109.0425, or 3109.0426 of the Revised Code.

Reading Section (A) we have to question why we are requiring judges who are not trained in social work to act as social workers.

Sec. 3109.046. Every shared parenting order and parental rights and responsibilities order shall include all of the following:

(A) Provisions regarding each child's needs that are consistent with the child's age, developmental stage, and maturation;

(B) The designation of a parent for the following purposes:

(1) Paying and receiving child support, health care coverage, and cash medical support in accordance with Chapters 3119., 3121., 3123., and 3125. of the Revised Code;

(2) Determining the school district of attendance;

(3) Claiming the child as a dependent for income tax purposes;

(4) For any other purpose requiring designation of one parent, including public assistance, international treaty enforcement, or state or federal law.

(C) The parenting time schedule for weekdays, weekends, holidays, days that hold special meaning to the child or parents, vacations, and other relevant times;

(D) The frequency, time, and method of the child's communication with a parent during the parenting time;

(E) 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;

(F) The procedure for parenting time, including the meeting location and the person responsible for transportation;

(G) The frequency and method for the parents to communicate with each other about the child;

(H) 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;

(I) Any geographical restriction on relocation of the child and notification procedure prior to the relocation of the child pursuant to sections 3109.0470 to 3109.0479 of the Revised Code;

(J) Each parent's responsibility for the child's financial support, consistent with section 3109.05 and

(K) Procedures for the parents to resolve disputes through nonadversarial dispute resolution processes;

(L) 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, electronic mail address, or telephone number in compliance with section 3109.0473 of the Revised Code;

(M) Any other provisions required by statute or the court.

Section (A) This will cause parenting plans that are pages that are hundreds of pages long. All children mature at different rates. With multiple children in a plan this will require that for each of that length.

Section (D) Requires that the parents' designation when they can communicate with their child. Are we as parents supposed to tell a child that we can't talk to the because it is not time or in the case of an emergency?

Section (G) Why are we adding requirements about when and how parents are to communicate with the other parent? The frivolousness of the could prevent a parent from talking to the other parent in an emergency or if a limited opportunity comes that needs immediate attention that is outside of the designated time.

Section (L) Is this to be required as separate motion to notify the court and the other parent?

Sec. 3109.0470. A relocation of a parent's or child's residence occurs when there is a change of address.

This designates that parent file with the court for even the simples of moves or changing apartments with the same complex even if only temporary.

Sec. 3109.0471. Except as provided in section 3109.0474 of the Revised Code:

(A) A relocating parent shall 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.

(B) The clerk shall send a copy of the notice to the last known address of the nonrelocating parent.

What is to happen if the parent has requested that their address be withheld from view as provided by other sections of the Ohio revised Code?

Sec. 3109.0472. A notice of intent to relocate under section 3109.0471 of the Revised Code shall be filed not later than sixty days prior to the date of the intended relocation or not later than ten days after the relocating parent knew of the intended relocation if the relocating parent cannot satisfy the sixty-day requirement, absent exigent circumstances.

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Does this procedure need to followed in cases of emergency that related to damage to the home due to unforeseeable situations such as damage from a weather event or damage caused by another?

Sec. 3109.0473. A notice of intent to relocate shall contain all of the following:

(A) Updated residential address;

(B) Updated mailing address;

(C) Updated telephone number;

(D) Updated electronic mail address;

(E) Date of relocation;

(F) Notice to the nonrelocating parent that any objection to the relocation must be filed not later than thirty days after receipt of the notice of intent to relocate.

What is to happen if the parent has requested that their address be withheld from view as provided by other sections of the Ohio revised Code?

Sec. 3109.0475. If a parent fails, without good cause, to file a notice of intent to relocate pursuant to section 3109.0471 of the Revised Code, the court may consider the failure as follows:

(A) As a factor in making its determination regarding the relocation;

(B) As a factor in determining a modification of a shared parenting agreement that has been incorporated into a shared parenting order or a parental rights and responsibilities order, and the court shall not consider that the child has been integrated into the new surroundings;

(C) As a basis for ordering the return of the child if the relocation has taken place without notice;

(D) As a basis for awarding attorney fees and expenses;

(E) As a factor in a finding of contempt.

Does this procedure need to followed in cases of emergency that related to damage to the home due to unforeseeable situations such as damage from a weather event or damage caused by another?

What is the evidentiary standard of review that the court is to use in making this determination?

Sec. 3109.0486. (A) Each court that issues an order allocating parental rights and responsibilities of children in a divorce, dissolution of marriage, legal separation, child support proceeding, a proceeding under section 3109.12 of the Revised Code, or any other proceeding in which parents agreed to a judgment by the court with regard to time that a parent spends with a child, shall compile a report, to be completed annually, of data regarding the division of parenting time, as tracked by overnight stays with a parent. The report shall identify the type of case involving parenting time, such as a shared parenting order, parental rights and responsibilities allocation order, or parenting time order. The report shall also track the number of cases of agreed judgment entries that were contested and ordered by the court. The report shall not include any personally identifiable information.

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(B) Records provided in division (A) of this section shall be published on the court's web site or otherwise made publicly available, upon request.

Exposing these orders to public view will endanger every child of every case in a custody case and every child in an abuse and neglect case in Ohio.

Sec. 3109.0491. On filing of a motion and supporting affidavit alleging interference with parenting time under a shared parenting order or parental rights and responsibilities order, a court shall hold a hearing not later than twenty-eight days after filing, unless for good cause shown the hearing shall be conducted earlier.

These motions fall under current show cause (contempt) procedures.

Sec. 3109.0492. Any time prior to ruling upon a motion alleging interference with parenting time under a shared parenting order or parental rights and responsibilities order, the court may issue temporary orders necessary to protect the relationship between parent and child.

Why are we permitting the court to change orders on their own and without a full hearing on these matters? Doing so would present a violation of due process rights of the parents.

As we have raised before this amended bill does not solve the problems of bifurcation of the presumption and the large number of hoops that a parent must go through to protect their rights and time with their child.

Ray R. Lautenschlager

Legislative Director

440-281-5478

[Ohio Family Rights](#)

president@ohiofamilyrights.com

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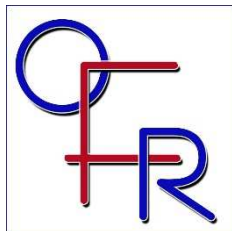
Screwy language in the substitute bill for HB14

We have found some screwy language in the substitute bill for HB14.

We have the full breakdown in a PDF and if you want to read it send us a message.

Within this substitute bill are sections that are unconstitutional on their face because of the application and how they are applied only to certain parents, not all, and only under certain situations.

- Describes every type of order except equal custody as the sponsors of this bill claim it to be about.
- The sponsor is confusing legal equal and mathematical equal.
- Initial filings generally include each parent's proposed parenting plan. As written, this requires judges and magistrates to act as social workers and/or mediators. Such detail would be impossible to write into any order or parenting plan. Every child matures at a different "speed" with some being faster and some being slower. Need I remind the members of this legislator and the committee that some of the most brilliant minds we have ever seen were seen as unteachable and slow when they were young.
- This clause applies to both parents and would require that detailed times, dates, and what can be discussed be included with the order. Parent to whom they can "communicate" with is required to be identified. Can you imagine a parent being forced to tell their child "I can't talk with you now or I can't help you with your homework" because this present time is not listed in the court order?



- This would require that everyone in a case that involves custody have a full mental and physical examination.
 - Who is to make this determination and on what basis are they making that determination? Is the parent unfit, unwilling, or unable?
 - All presumptions are rebuttable in nature. Substantially equal indicates that a mathematical rather than a legal "equal" is being applied.
- As written, this suggests that this is to be done orally instead of by motion or through a submitted parenting plan.
- While sounding like a good idea the clause lacks clarity as to what is required to do this. There is a little used clause that children's services use where they can charge you with a crime for false reporting. DV advocates often use false restraining orders or children's service claims to gain an advantage in custody cases.
- This section is unconstitutional on face due to its application and its lack of due process. This contains an automatic response and application without the ability to challenge the decision. The limited application only to the never-married father compounds the problem.
- Making decisions on sole custodial rights based on one parent saying that they do not agree without proof presented as to why will seriously hamstring the other parent's ability to be a major parent of their children's lives.
- This implies that it will reward a parent for being disruptive.
- Does not make it clear as to what degree the "changes" need to be to terminate or change an order. What is the evidentiary standard for doing this?
- Children's Service Agencies now supervise visits when there are questions of abuse or dependency. This is done to prevent further abuse and to assure that the parents of

such a case does not flee with the children. This language would open the door for more harm to children.

- Why are we allowing visitation or companionship to a person who has no more relationship with the child than liking them? We need to go back to the original intent of Ohio's third-party visitation law and apply it strictly to grandparents who have been denied access to their children by one or both parents of the child.
- The original intent of Ohio's third-party visitation law did not allow during the pendency of a divorce or custody battle between parents. This was done to prevent further confusion during the parent's private battle.
- I question the ability of the courts to find a record keeper in contempt. Record keepers are not a party to the case
- County prosecutors handle criminal matters and not matters that concern parental access to a child's school or medical records.
- At nowhere within this do we find a definition of what a "transition plan" is or what such a plan is intended to do? As written, we question the suggestion and wonder if this suggests that the courts are to create a plan to ease a parent from being involved to not being involved.
- This is suspect and appears to give the Courts the ability to limit or require a parent to live in a specific area to be involved in their child's life.
- This is overly vague and does not consider that a parent renting an apartment may move within the same complex. This would require that parents file a notice of relocation when they are moving mere feet instead of out of state or great distances within the state.
- This clause will cause every court to hire additional personnel to track these orders as the sponsors want. This is an unnecessary expense that was requested and burdened by the out-of-state non-profit that the sponsors worked with. The Ohio Supreme Court tracks and has information about caseloads and clearances on its website. Custody orders have and should never be viewable by the general public to protect the children and parties involved.

Ray R. Lautenschlager

Legislative Director

440-281-5478

[Ohio Family Rights](#)

president@ohiofamilyrights.com



