



Family Impact Report On SB144 & HB253

**Prepared by Ohio Family Rights
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Title Information

To amend sections 3105.65, 3109.03, 3109.04, 3109.041, 3109.043, 3109.051, 3109.09, 3109.56, 3119.022, 3119.24, 3313.98 and 5120.653 of the Revised Code to ensure that court orders and decrees that allocate parental rights and responsibilities with respect to the care of and access to children provide for equality between the parents except where clear and convincing evidence shows that equal legal and physical access would be harmful to the children.

Family Impact Summary

The Ohio Family Rights has reviewed Senate Bill 144, House Bill 253, and the Judicial Impact Statement of the Ohio Judicial Conference concerning the benefits SB144/HB253 will have on the children, the parents, and the families of Ohio. With equal access of children to both parents, children will not feel abandoned, will do better in school, will be less likely to become involved with drugs, or criminal activity, display violent behavior, or become pregnant. Socially well-adjusted children are an asset to our society.

Ohio Family Rights feels this bill will increase public confidence in the law by giving separated parents control in the direction of the lives of their children. By removing the adversarial concept of a battle for control and profit in divorce, parents will be more willing to work together for the benefit of their children.

Background

As the pendulum swings so do the custody laws. In the early part of the twentieth century, fathers were presumed to have “ownership” of their children. With the adoption of the “tender years” doctrine, and later the “primary caregiver” doctrine, custody laws overwhelmingly began to favor the mother. Though the courts began to strike down these doctrines in favor of equal protection statutes, the attitudes of the courts continue to favor one parent over the other, usually the mother. According to the Judicial Impact Statement, the “courts should focus on creating custody arrangements that would lead to the best possible outcome for children.” Appointing “one parent” as the decision-maker undermines the other parent's authority and establishes them as a “lesser” parent, thus creating conflict. Parents who choose to live apart can still co-parent when the opportunity is presented. SB144 levels the field and encourages cooperation. Although the state recognizes the benefits of the love and support of both parents, the current system removes one parent and allows only minimal time for parent and child to maintain a meaningful relationship.

This is the third attempt to correct defects that exist within Ohio's custody laws that affect divorced and separated parents. The first was done during the 125th General Assembly as HB232 which our Vice President had a major part in helping to craft. The second was during the 126th as HB688 which was a reintroduction of HB232. Since that time and because of the failure of the General Assembly to move to protect the rights of parents in the divorce and separation process the legislation has been rewritten. The bill was introduced in the Ohio Senate on April 7, 2011, by Senators Michael Skindell and Timothy Grendell as SB144. SB144 is in no way a continuation of any of those previous introductions but a comprehensive solution to the problems that Ohio families face merely because they have decided to dissolve their relationship.

Of note and interest is that during testimony in opposition of HB232 Judge Richard Stucki told the committee that the judges could not define “substantially equal”. That has been changed in SB144/HB253 to “equal legal and physical custody” to clearly define the outcome desired for the Judges. During the same testimony, Judge Stucki admitted when testifying against HB232 that the court makes their decisions based on a family that they do not know and that the court is poorly prepared or equipped to make decisions on.

Claim: This will increase litigation.

SB144/HB253 will decrease the case litigation involved in the divorce because we will now reduce the use of children as leverage. The “best interests of the child” standards have never legally been defined in Ohio law. In a case heard before the United States Supreme Court, the High Court reminded all that “*There is a presumption that fit parents act in their children's best interests (Troxell v. Grandville Decided June 5, 2000)*”. While It is the public policy of the State of Ohio for both parents to have full involvement in a child’s life where appropriate the courts have regularly reduced one parent to a mere visitor to their child by not doing their best to assure that every child has equal access.

SB144/HB253 will send a clear direction to the Courts that the use of children for leverage and control in the dissolution of a marital relationship ends with a clear policy and law that every issue of custody will start at “equal legal and physical custody”. By doing this the parties will retain control of the raising of their family and will come to a speedy resolution without trial.

Should there be a question as to the ability of a parent to parent, those claims will have to be properly supported by “clear and convincing evidence” of what the inability is. By changing this, the workloads and litigation associated with the use of false allegations will be reduced.

False allegations are often used to leverage an early *status quo* situation during the “temporary orders” phase, temporary orders which the courts turn more often than not into permanent orders without ever addressing the validity of the allegations.

Claim: Increased workload.

Trial

To order anything other than an equal legal and physical access decree, SB144 would require judges to find clear and convincing evidence that an equal legal and physical access decree would be harmful to the child. If a parent poses no harm to the child, why should access to the child be restricted any more than access by the other parent?

The evidence standard of clear and convincing is a higher burden of proof, but the higher burden of proof is required before the court can interfere with the parent/child relationship. The need for expert testimony by those who do not want equal custody will not be greater than those using expert testimony seeking equal custody under the current system.

It must be noted that SB144/HB253 in no way limits the parties to agree to a plan that is less than equal based on their particular situation.

Claim: Domestic Violence Law is affected

The Domestic Relations and Juvenile Courts that will be handling cases that will be affected by SB144/HB253 are civil courts. Domestic Violence remains a criminal issue that will be handled by the Common Pleas Courts. At nowhere in SB144/HB253 are any changes made to the domestic violence laws of this state.

The only issue that the Domestic Relations Court handles that may have any effect will be in the issuance of Temporary Restraining orders sought from the Domestic Relations Court. An individual often seeks these under false pretenses to gain an advantage during the Temporary Orders phase of a divorce or separation. These false allegations cause unnecessary litigation that is burdensome to the courts and the parent who is the victim of these accusations. The Judges are asking for and suggesting that they continue a practice of “guessing” what will happen in the future based on affidavits that contain no evidence of any crime on which to base the decision.

The Standard for review for the Common Pleas Courts is “beyond a shadow of a doubt” in the criminal matters before them. “Clear and convincing” is the civil equivalent of that level of review. For justice to be served and to maintain the integrity of the courts a consistent level of review must be maintained.

Claim: Increased paperwork in dealing with Child Support

There is no additional work required by the court in the administration of this element of the legislation. Under the proper procedure, every person filing for divorce or separation is required to submit an affidavit of income and expense. This is the information that is now and will remain in use by the court for the determination of child support.

Appropriate child support deviations will not require any increase in testimony, evidence, or time to properly calculate. There will be no battle over “days for dollars” as is the practice now because the calculations will be done on an “equal” basis. Both, rather than one parent, will be responsible for the expenses of raising the children based solely on their ability to financially contribute and the amount of time that they have decided, on their own, to spend as an active member of the child’s life. In reality, a parent that has equal access to their children will spend more on direct support with less burden on the systems of the state.

Of note is that SB144/HB253 contains the parenting time adjustment which was recommended to the General Assembly in the “2009 Ohio’s Child Support Guidelines”, and passed by a 13 to 0 vote with 1 abstention.

Claim: Revisiting cases will increase the caseload

The Judicial Impact statement refers to ORC 3109.041 and cites this as causing an increased caseload. We do concede that under this clause there may be a slight increase but these cases will be from the parents whose rights were not properly protected by the court when they first came before the court. This will be a very short-term situation and will be over within a year. This is very necessary so that justice is properly served and to assure the rights of all previously affected fit parents.

The cost of operation of the Courts will remain the same for the first year but as we enter the second year under the elements of SB144 we expect to see a drop in the operational costs of the Domestic Relations Court of 35% as we move from a Court based decision-making process to

one where the family is making decisions based on their own decisions. With the shift from adversarial litigation to a mediation and negotiation-based system, the Court will be relieved of involvement in only cases where fit parents are involved and can concentrate on cases where a parent presents a clear problem in the life of a child.

Third-year will likely bring about a 50% reduction in the operation of the Domestic Relations Divisions statewide as well as similar savings when Juvenile Court adjudicates a custody issue between fit never-married parents, this saving will have a similar impact as in the Domestic Relations Court the first and second years after passage. Often missed is the additional savings that will transfer to the Court of Appeal level which may show an additional savings of 10-15% down the road.

One major point that the Judicial Impact statement fails here is that while the older case will be under review, new cases will move forward with much less court involvement. By setting the baseline custody arrangement at "equal legal and physical custody" with an evidentiary standard of "clear and convincing evidence" the court will not have to deal with the high level of cases that weigh the system down with false allegations or the use of children as a leverage tool as is presently done. Under SB144, it will be more likely that the parents will mediate their situation in a manner that is in the best interests of the family and that will be determined by the family rather than a disinterested third party.

False allegations are too often used to cloud issues and leverage the courts into a "status quo" that the courts refuse to change even when it is found that the claims made are false. These false allegations often place children in a position of having to go through unnecessary and intrusive examinations that scare them for life and bog down the system as they wade through these issues.

The societal costs of these are borne by the entire citizenry of the state through massive programs to treat the children of the state and repair that damage. To put this in simple terms, don't screw the children up in the first place and society does not have to bear that cost in the future. Current practices lead to recidivism and a process that is likely to repeat itself when children face similar situations as adults.

Many of the cases presented to us were ones in which the parent in question was told simply to "accept what you are offered and don't fight or you will end up with less". One of the common statements made to fathers throughout the state is "You will never get custody because you are a male". This has been a major issue for many and is a major reason that the Courts have lost the respect and confidence of the general public. The unbridled discretionary powers of the Domestic Relations judges are so extreme that should a judge order that a child play in the middle of the freeway during rush hour, there is little recourse for the affected parents but to appeal to a higher court. This causes continued and unnecessary litigation burdening both the courts and the parents.

Claim: Finding of Facts and Conclusion of Law is an extra burden on the Court

This is common practice and proper procedure in the issuance of any final order by the court. There is no increased burden on the court as they are already doing this as they issue their final orders.

Claim: Reunification Plan

The introduction of the reunification plan into the Domestic Relations Courts is new but it does clear up a major conflict that exists in Ohio law. Often used as an example is the fact that an unfit parent has an easier time being reunited with their children than a fit parent who simply dissolves a marital relationship.

To explain this:

Example #1 - A parent is brought before the Juvenile court due to a defect that has been identified with their ability to properly parent their children. Full evidentiary hearings are held on the issues before that court and recommendations, based on clear and convincing evidence, are made by the court of corrective measures that the parent has to make to be reunited with their child. Once the parent removes the barriers that the court has identified then the parent is then reunited with their child.

Example #2 - A parent comes before the domestic relations court and through an affidavit of the opposing party a claim is made that the parent is deficient in some manner. The Domestic Relations Court through Civ. Rule 75N and ORC 3109.043 make a discretionary decision as to handle the parent and their relationship with their children which may be supervised visitation or total denial of rights to a part of the child's life. No manner is set forth for the parent to remove these barriers and these terms may be required of the parent until the child becomes emancipated essentially making it impossible for that parent to maintain any relationship with the child with the only evidence being that of a statement made that may or may not be true, only a discretionary call that the parent "may now be or may in the future be" be a harm to the child.

In our view, this is a major conflict that exists between the two courts. These procedures are followed even in the counties where juvenile and domestic court issues are handled by the same judge under Ohio's blended Family Courts. Consistency will bring about better protection of the parent-child relationship and that goes with both the evidentiary standard and the process for reunification should a parent have a definable defect.

Claim: Lack of confidence in the court.

Current practices under the law have led to a lack of confidence in the courts by failing to protect the due process rights to be heard and be equally protected. Decisions are made without a proper evidentiary standard which has been clearly defined by the United States Supreme Court in numerous decisions. Equality promised by standards set within the U.S. Constitution is ignored rather than protected by the Judiciary. These practices of unbridled discretion have created a lack of confidence in the court and the judiciary.

SB144/HB253 corrects this by following the standards set by the High Court and Constitution.

What the courts have done is operate a system that they claim is in the "best interest of the child" which is further from the truth than closer. This standard has become outmoded and while popular in naming takes no consideration for the needs of the family. We have used an example in explaining this by saying that is it the equivalent of walking into a total stranger's household and telling them that this is how you are going to raise your family from now on, this

is when and where you will see your children, this is how you will interact with them. This is not the village raising the child but the village taking over in place of the family. While the personal marital relationship of the parents is dissolved through the legal action of divorce, those parents and the children remain a family.

The practices and standards set for in SB144 HB253 will restore public confidence in the Court by providing the Court clear direction on how to handle the matter before them.

In Conclusion

SB144 will protect the children and families of the State of Ohio. SB144 will restore confidence in a judiciary that has long acted in a manner that has failed to protect the rights of parents and children. SB144 will not only benefit families and children but benefit the court system. The State of Ohio will benefit from the savings of millions of dollars in all courts that address family law issues that involve the custody of a child. We recommend that this legislation be given a top priority by the Ohio Senate's Judiciary - Civil Justice committee with a strong recommendation of passage by the entire Senate.

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