HB14 Problems and Misrepresentations Made in Testimony

Cause and effect, and additional comments will be included.

Chair Schmidt, Vice-Chair Miller, Ranking Member Denson, and members, Barhorst, Brewer, Arthur, Lipps, Liston, Manchester, Mathews, McNally, Richardson, Blasdel, Somani, and White, I want to thank all of you for allowing me to submit written testimony on HB14 and detail the numerous problems that are within this bill, problems that it will cause, and its predecessor HB508. I also feel compel to address some misrepresentations that have been made to all of you during proponent testimony.

While Ohio Family Rights has been a strong proponent of bringing about a comprehensive changes to Ohio's "Shared Parenting" laws and the approaches the Courts and Ohio take when a bill is wrong for the State of Ohio we do feel the need to speak up and point out those problems in the bill as Introduced. We take into consideration not only the actual legislation but the cost to the county and state courts, governments, and the families involved. We consider if the legislation will increase or decrease the time that families are in litigation and the costs of that litigation.

This bill, HB14 will increase litigation and it will increase the costs to families and the courts there by increasing taxes to families that are not even involved.

Some history of my personal involvement in the writing of this type of legislation back to the 125th General Assembly's HB232 and I worked with Representative Skindell on SB144 in the 129th General Assembly as well as Ron Young on the House version HB253, in the same General Assembly. There have been more and some of you have seen the latest version of Ohio Family Rights' bill.

I made contact with Representative Creech in January of 2021 after reading that he was interested in making changes to the way Ohio approached custody in divorces. After a discussion, he was presented with draft legislation that had been run thru LSC by Rep. Becker in September of 2020. That draft was ready for introduction. I kept talking to Rep. Creech trying to get him to get the proposal introduced so that a bill that had clearer and easier content and was more effective for all Ohioans was introduced. We received nothing but excuses from him as to why he had not proceeded as he indicated he was going to.

Then the bombshell was dropped when he and West did their press announcement around Fathers' Day last year with representatives of a Massachusetts-based non-profit at his side. Both Creech[i] and West were called and I asked for an "Interested Parties" Meeting at that time[ii]. None was granted. As an organization, Ohio Family Rights tried to privately reach out to them for a private discussion and were told "we don't work with other groups". That is how messy and ineffective bills are created, by failing to listen to those that have walked the path and know the workings of the Statehouse.

Then after months, the mess of a bill (HB508) was introduced[iii]. Ohio families cannot afford another messy bill like HB508, HB14, or the child support bill that took effect in March of 2018 that has seen increased litigation as parties fight over the number of overnights to gain minimal reductions in their child support. This bill will also significantly increase litigation and the associated costs for everyone.

After reading the entire bill, reading both LSC reports, listening to both the introduction testimony by Representatives West and Creech, and listening to the proponent testimony and comments that were made in both Committee hearings, this bill is not appropriate for Ohio or any other state.

Could this bill be amended to be appropriate for Ohio? In our opinion, no. It would have to be completely replaced to fix all the problems in the language. We are urging this Committee to shelve this bill for one that is more appropriate for Ohio's families.

I have listened to both the Sponsor and he proponent testimony on HB14 and must address some misrepresentations that have been made to this committee.

Elizabeth McNeese – National Parents Organization

1. **She stated that "sole custody"[1] is the state default.** It doesn't take long to blow this misrepresentation apart and all one need to is look at is the statutes and you will find there is no set default. All references to the ORC are procedures that should do when filing.

   O.R.C. 3109.04(A)(1) *"If neither parent files a pleading or motion in accordance with division (G) of this section, if at least one parent files a pleading or motion under that division but no parent who filed a pleading or motion under that division also files a plan for shared parenting, or if at least one parent files both a pleading or motion and a shared parenting plan under that division but no plan for shared parenting is in the best interest of the children, the court, in a manner consistent with the best interest of the children, shall allocate the parental rights and responsibilities for the care of the children primarily to one of the parents, designate that parent as the residential parent and the legal custodian of the child.."*;
   O.R.C. 3109.04(A)(2) *"If at least one parent files a pleading or motion in accordance with division (G) of this section and a plan for shared parenting pursuant to that division and if a plan for shared parenting is in the best interest of the children and is approved by the court in accordance with division (D)(1) of this section, the court may allocate the parental rights and responsibilities for the care of the children to both parents and issue 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 the approved plan for shared parenting."*

2. **She stated that several counties have "equal custody" as their default order. She referenced Ashtabula County as an example.**

   Ashtabula's Local Rule Standard is attached and it is not an equal custody as a default as she claims, it is what we call an "Age Appropriate Order" which increases time as the child gets older. This type of order sets an amount of time that a parent can spend with a child based on the age of the time. The smallest amount of time is allowed when the child is the youngest and is then increased as the child gets older. When multiple children are involved, the amount of time is generally set based on the age of the oldest child of the order.

   NPO often likes to reference their "Shared Parenting Time" report which is unfortunately flawed

[1] Types of custody explained http://www.ohiofamilyrights.com/Newsletters/Newsletters-1/Custody-Terms-/custody-terms-.html

in that because of errors such as this and the fact that they never looked at the standard orders for never-married parents which are vastly different than Domestic Relations orders in the same county. [2]

Both the Ashtabula Domestic Relations Standard Order and the Juvenile Court Standard are included with my testimony.

3. **Attempting to justify "clear and convincing" as the proper evidentiary stand.**

Unfortunately McNeese didn't read the entire section of the statues here when she used this to support. The medical marijuana law's clear and convincing standard can only be used if it is the sole reason for denying or terminating rights in a case of abuse. Throughout her written testimony she confuses Juvenile and Domestic Relations procedure in how the courts are required to proceed and on the timelines they are to use.

We do agree that the evidentiary standard needs to be raise to clear and convincing in all cases for consistency. I have had judges and attorney both like and agree that it is the proper standard to use. [3]

O.R.C. 3796.24(B) *"Unless there is clear and convincing evidence that a child is unsafe, the use, possession, or administration of medical marijuana in accordance with this chapter shall not be the sole or primary basis for any of the following: (1) An adjudication under section 2151.28 of the Revised Code determining that a child is an abused, neglected, or dependent child; (2) An allocation of parental rights and responsibilities under section 3109.04 of the Revised Code; (3) A parenting time order under section 3109.051 or 3109.12 of the Revised Code.*

4. **Answering questions from committee members**

Several questions were asked of her about content of the bill and she could not answer the questions. One has to wonder if she is misrepresenting herself as the author as she claims.

When asked if the bill contained an equal division of bills for damages caused by a minor, she couldn't answer. It does not.

When asked about a situation where a disabled minor has turned eighteen but the parents have not gone through permanent guardianship yet, she was silent.

HB14 does not address either of these common problems.

More reason why this bill is not appropriate for Ohio.

Don Hubin

[2] Standard orders are frequently adjusted by the Administrative judge of the court. http://www.ohiofamilyrights.com/New/Ohio%20Local%20Orders.html

[3] http://www.ohiofamilyrights.com/Reports/White-Papers/Clear-and-Convincing-vs-Prepon/clear-and-convincing-vs-preponderance-.html

1. Don's statement that several states have equal custody holds little merit for us and we have examined the bills that created the "presumptions" in Kentucky, Arkansas, and West Virginia. These states already had a presumption of equal custody in their statutes and all that was added was the term rebuttable to existing law.
2. To answer Rep. Brewer's question which Hubin dodged, no state has equal custody as a starting part within their laws. Ohio does have a presumption in place in ORC 3109.03 and a presumption is also echoed in state policy. [4]
3. The Kentucky law that Hubin claims were the first was not and it does have a clause that the mere mention of domestic violence automatically rebuts the presumption.
4. We have to wonder how HB14 solves anything and Hubin presented not which showed what language within the bill would.
5. Like McNeese, Hubin brings up the report that he says NPO did on standard county orders. All should question this report since it was not thorough and did not include juvenile courts which deal with the never-married.

With no corrections made from HB508, this proposed bill remains a hodgepodge of language that no one, professional or pro se can understand. NPO who worked with Rep. Creech has yet to explain why this bill should move forward beyond committee, all we have heard is "its best children for the children".

It is clear to us that this bill will increase litigation (Rep. Skindell agreed).

This will increase costs to the counties, the state, and the courts across Ohio. That increase in costs will be passed on to all tax payers.

Because of the way the "presumptions" are written each of what used to be factors for determining custody will now have to be argued separately by parents.

Please allow your heads not your hearts to control your thinking and end this bill now with a strong no vote.

Should any members of the Committee have any questions, please feel free to contact me.

Ray R. Lautenschlager
Legislative Director
440-281-5478
Ohio Family Rights

[4] http://www.ohiofamilyrights.com/New/Ohio%20and%20the%20Presumption%20of%20Equal%20Custody.htm

president@ohiofamilyrights.com

Tuscarawas County Standard Order
Tuscarawas County Long Distance Order

The following is a line-by-line list of all the problems within HB508 which is the same as HB14.

1. Line 808 - removal is not necessary
2. Line 893,894 there is a mediation conflict at another point
3. Line 1091-1590 - Removal of current shared parenting law and factors for determining custody
4. Line 1591[iv] – Begins the removal of the special process for deployed or deploying active military personnel of the state.
5. Line 1591-1599 – Removes expedited hearing process for deploying
6. Line 1600-1605 – Removes the option to file before deploying
7. Line 1606 -1610 – Removes the court's ability to address the custody issues of deployment within 30 days of notice
8. Line 1611- 1622 – Removes the clause that prevents the court from holding service against a parent
9. Line 1623-1632 – Removes the ability of the court to issue a temporary order for deployment and then within 10 days of the notice.
10. Line 1633-1641 – Removes the ability of deployed or deploying from appearing by electronic means
11. Line 1642-1648 – Removes the ability to notify the court that service has ended within 30 days.
12. Line 1653 – 1660 – Removes the definition of active military service.
13. Line 1670-1673 – Removes the definition of uniformed services.
14. Line 1771-1787 – Does nothing to solve the problems of the never married.
15. Line 1788-1795 – Already covered under the ORC
16. Line 1796-1808 – Limits the court to only addressing cases of marriage. Limits the courts to only issuing rulings that comply with “policy” instead of what is best for the child or the family.
17. Line 1809-1819 – Ohio already has shared parenting and the term parental rights and responsibilities are also used to label shared parenting plans.
18. Line 1820-1825 – Annulment only applies to marriages that were fraudulently done or were never consummated.
19. Line 1826-1833 – Contents of a shared parenting plan questionable placement and more relevant content to other sections of this bill.
20. Line 1834-1842 – Black’s Law is clear that all presumptions are rebuttable. Language is conflicting here since it says that the parents agree and then the court has to decide if it is best. Negates the purpose of parents coming to an agreement and will cause more litigation rather that encouraging negotiations.
21. Line 1843-1846 – Lacks an evidentiary standard by which the factors are to be determined.
22. Line 1847-1849 – How is this supposed to be demonstrated? To what degree is it to be demonstrated? Lack of criteria.
23. Line 1850-1874 – parental kidnapping? Abuse? 2919.25

24. Line 1874-1875 – Mental and physical for all parents? Will increase costs involved in a case as ever case will likely require expensive testing. .
25. Line 1876- 1891 –No criteria for proceeding if determined by the court that the plan does not meet the objects or why.
26. Line 1892-1896 – No evidentiary standard
27. Line 1897-1904 – Ohio already has shared parenting and those orders are currently included in all final orders of divorce.
28. Line 1905-1909 – Final orders are not provisional orders when issued. Final orders are required to be marked Final and Appealable or nor right of appeal exists.
29. Line 1910-1922 – Residential parent for school and public assistance purposes. Child support has nothing to do with the residence.
30. Line 1923-1929 – No evidentiary standard as to how these decisions should not be made, nor are there any factors listed that should be used for how to make this decision.
31. Line 1930-1938 – Seems to indicate that they intend for a parent that does not physically have the child at the time to be free to enter the other parent's home and have to say over that parent about how things are done within that home.
32. Line 1939-1950 – Tax codes require that a child lives within a home a majority of the time to be eligible to be claimed for tax purposes. Public assistance is based on the income amounts of that household.
33. Line 1957-1970 - 3109.0421 factors? Why factors which are different than other factors?
34. Line 1971-1981 – 3109.0422 factors? Why factors which are different than other factors?
35. Line 1988-1990 – 3109.0421(A) – This will immediately pit one parent against another in an effort to show that the other parent does not have the ability to get along or encourage cooperation that took place prior to the filing of the divorce of for the change of custody.
36. Line 1991-2000 – Ohio does not have a specific parental kidnapping law that applies to divorcing, divorced or parents going through a custody battle. Ohio's parental kidnapping law applies to cases where a child has been placed in state or county care because of allegations of child abuse by Children's Services.
37. Line 2015-2016 – While mental health should be considered and testing is presently able to be motioned for, making this a standalone issue with likely increase litigation costs by forcing testing of all parities within a case.
38. Line 2017-2021 – The Guardian Ad Litem has been the eyes of the court within the home. Unfortunately they are often a jaundiced eye and allow their own perceptions to cloud what is actually going on. They are an added expense that has become more prevalent since the changes were made to the child support laws were made in 2018 and the "dialing for days" began in the frivolous fight over 90 overnights to gain more days for the 20% swing that comes with it.
39. Line 2022 – 2025 – Lack of evidentiary standard by which the court is to consider the actors before it.
40. Line 2026 – 2049 – Ohio does not have a parental kidnapping law that applies to divorcing, divorced or parents going through a custody battle. Ohio's parental kidnapping law applies to

cases where a child has been placed in state or county care because of allegations of child abuse by Children's Services.

41. Line 2050-2053 – Geographic proximity is relevant to ones local area. Is this to be determines in miles, minutes of travel or convenience of travel. Impede parenting time?
42. Line 2054-2058 – In Camera interview process. Lack of timeline of when that interview is to take place if it is to happen or how a determination is made whether a child is mature enough to testify.
43. Line 2059-2061 – Repeat of other factors
44. Line 2064-2065 – Will increase the cost of litigation as more use psychological testing to try to gain custody or refuse allegations made in opposition to a presumption.
45. Line 2066-2068 – Describes the issues of contempt of the court's orders
46. Line 2069-2070 – Move away and establishing residency outside of the state
47. Line 2071-2075 – Guardian Ad Litems are the eyes of the court and are supposed to give the court a set of eyes within the home. Referring back to 3109.44 limits them to only one available view that can be expressed to the court.
48. Lines 2076-2082 – Affidavit based on 3109.0422 determinations fail to consider if the affidavit is truthful as written.
49. Line 2083-2090 – Refers back to 3109.0421? Why split the decision making and custody/visitation?
50. Line 2091-2095 – The courts are not qualified to make decisions based social issues. They are not trained in social issues.
51. Line 2096 – 2100 – Lacks evidentiary standard and again circles back to 3109.420.
52. Line 2101 – 2105 – Refers back to a section that does not have factors listed.
53. Line 2106 – 2108 - Refers back to a section that does not have factors listed.
54. Line 2109 – 2117 - This asks the courts to apply a "Crystal Ball" approach to awarding custody by requiring that they predict the future actions of the parties involved.
55. Line 2118 – 2119 – Welfare of the child is a decision that can only be made by two fit parents (Parham) and would allow the courts to control the child based on their thought pattern and not that of the parents involved. This significantly raises the issue of interference in parents' fundamental rights.
56. Line 2120 – 2125 – Again this circles back to 3109.0420.
57. Line 2126 – 2134 – Lack of evidentiary standard of review for criteria by which the "rebuttal" must be handled and a lack of standard by which the court must support its decision either way.
58. Line 2135 – 2142 – In Camera interview process. Lack of timeline of when that interview is to take place if it is to happen.
59. Line 2143 – 2147 – Does not contain criteria that a court shall use when appointing a Guardian Ad Litem or who will pay for the GAL. If the court uses its discretion, is the court going to pay the cost or assign it to the parents involved? Will those costs be split equally or unequally. Who will pay the cost of a parent cannot pay the cost.
60. Line 2148-2168 - Lack of timeline of when that interview is to take place if it is to happen. Fails to have any clear definition of what the judge must do if they deny the interview and the criteria that they used to determine why the child should not speak directly with them as requested.

Fails to clearly describe what special circumstances are for denying an interview or define what a special circumstance is.

61. Line 2169 – 2173 – Under this section if a judge allows the attorney of a represented party and denies an unrepresented party (pro se), does this fall under ex parte communications?
62. Line 2185 – 2196 – What are the criteria for ordering psychological or psychiatric exams? Who is to pay this expense if the court orders this? What will happen if the parties are low income and have obvious mental problems that warrant examination? Making these reports available to parties opens up possible issues of misuse of the reports.
63. Line 2197 – 2241 – Why is the court being giving the ability to place a child with a known sexual or physical abuser? Doing such is far from acting in the best interest of any child and risks further abuse and trauma.
64. Line 2246 – 2255 – What is the evidentiary standard that the court is to use to make this determination? Why not the entire record with the court's hands? When transferring the case from Domestic Relations to Juvenile Court, does the case remain with Juvenile Court permanently or does it transfer back to Domestic Relations once a determination has been made by the court? Which is the "Court of Competent Jurisdiction" for which issues?
65. Line 2256 – 2264 – This current law and it is unchanged.
66. Line 2267 – 2295 – Following the timeline that is laid out, the court would be making a determination based solely on affidavits, not on evidence. With no hearing or trial it would be impossible to make a determination based on clear and convincing evidence that is called for. This would greatly increase the use of false allegations in an effort to gain an advantage from the beginning of a case.
67. Line 2296-2304 – Until a prospective (punitive) father has filed for establishment of themselves as a legal father and been determined to be such by DNA, being named on the birth certificate has no legal bearing in the State of Ohio.
68. Line 2320 – 2328 - Lack of evidentiary standard that the court is to apply in making their determination. There is a recent Ohio Supreme Court case that set a new precedence for what it takes to change custody. ***Bruns v Green*** http://www.ohiofamilyrights.com/New/Bruns%20V%20Green.htm
69. Line 2329 – 2342 - Lack of evidentiary standard that the court is to apply in making their determination. What is detrimental to one person may not be viewed as detrimental to another or the court or vice versa.
70. Line 2343 -2356 -. Preponderance standard that the court is to apply in making their determination in this clause opens up the ability to use false allegations of disruptive behavior to their advantage to terminate a shared parenting agreement at will. When you compare this section with the previous section it becomes easier to terminate a current shared parenting plan then to make modifications.
71. Line 2357 – 2369 – The previous section laid out termination of a shared parenting agreement and now in this section directs the parents and the court to go back to arguing the presumption. Common sense tells anyone that this will throw the parties into an endless loop of litigation.
72. Line 2370 – 2386 – Previously covered in Lines 2320 – 2328 except here it uses parental rights and responsibilities rather that shared parenting.

73. Line 2387 – 2394 - Previously covered in Lines 2320 – 2328 except here it uses parental rights and responsibilities rather that shared parenting.
74. Line 2395 – 2399 – Current law renumbered. As a side note, appeals cases are rarely expedited.
75. Line 2400 – 2425 - Current law renumbered.
76. Line 2426 – 2459 – There is some very confusing language within this section as it starts with discussion of parenting time orders in divorce and then drifts into discussion of abuse and neglect cases. The language at one point limits children's protective services from supervising parents time with their children and then flips to what a juvenile court may do when there are founded allegations of abuse.
77. Line 2460 –2481 – ORC 3109.051 renumbered
78. Line 2482 – 2566 - Current law renumbered
79. Line 2567 – 2580 – Current law renumbered
80. Line2581 – 2616 – Previously covered in another section but with shared parenting used instead of parenting time.
81. Line 2617 – 2628 – Waiver of fees for the indigent? While this has and is currently done, why is the requirement being added that the court determine that the motion be with merit before deterring to waive the fees.
82. Line 2629 – 2635 – Part of current law renumbered. Reasonable parenting time is vague at best because what is reasonable to one person is unreasonable to another.
83. Line 2636 – 2647 – This section will cause every parent to file a notice with the court when they move from the residence listed on their court orders. There are no specifics listed as to how soon before said move that notice is to be filed. This will over burden the court with unnecessary hearings on frivolous matters.
84. Line 2648 – 2688 – This will cause the court to do a full investigation of all parties to make the determinations required. Likely will cause the use of a GAL and those associated expenses for a simple move from one local address to the next, even a move from one apartment in the same building to another.
85. Line 2689 – 2729 – Why are we requiring a full determination of custody, fitness or abuse for a simple act of moving residences?
86. Line 2730 – 2752 – FERPA requirement that is echoed within Ohio law. While the last sentence is a novel approach to problems that often come up with school and medical records, is it even legally possible to hold a nonparty to a case in contempt?
87. Line 2753 – 2775 – Getting records is not a problem that residential parents have, it is a problem that nonresidential parents have.
88. Line 2776 – 2782 – Unnecessary and frivolous burden on the county prosecutor. Waste of tax dollars and resources.
89. Line 2783 – 2806 – Day care limits, I am sorry but this is bordering on getting silly at this point. Is this and limits it imposes also going to apply to grandparents that babysit while a parent works?
90. Line 2807 – 2831 - Is it even legally possible to hold a nonparty to a case in contempt?
91. Line 2832 – 2859 – School systems are not police departments for enforcing court orders related to custody. Again we have that question, is it even legally possible to hold a nonparty to a case in contempt?

92. Line 2860 – 2873 – Say hello to the cookie cutter approach that the judges have claimed that such bill want them to use. This clause has just done just that.
93. Line2874 – 2895 – Why the separate section for contempt related to missed visitation time and penalties that are stronger than normal for contempt of other sections of the order? Why do we have to decide if the "make up time" is detrimental if the party already has court ordered time?
94. Line 2899 – 2997 - Mediation is nonbinding under Ohio law with the exception of that which takes place under a collaborative law agreement. Why is the court being required to make determinations related to custody and abuse before ordering mediation? Those would have already been made or determined by any investigation previously or currently being made of the parties and their households. Who is paying for mediation or is it even legally possible to hold a nonparty to a case in contempt? s this a cost to be split equally between the parties? Does this burden fall on the tax payers? What if the parties cannot afford the expense?
95. Line 2998 – 3118 – Everything taken out before under the military section is put back in under a different number. Absolutely no need or justification for doing so other than generating busy work for LSC. No wonder Rep. Schmidt and others complained that they had problems getting LSC to get bills they wanted to introduce done.
96. Line 3148 – 3165 – This is an unnecessary reporting requirement that is being placed on the courts. This will increase the cost of operation of the courts and expose the names of parents and children to the public.
97. Line 3368 – 3448 – Lacks an evidentiary standard by which the determination is to be made.
98. Line 3449 – 3734- Affects temporary guardianship assignments that parents often have to use because of short term events in their lives. Could greatly affect those with domestic violence protections orders that involve the parents and their child. This could endanger the children involved that a parent has asked the court to help protect.
99. Line 3735 – 4342 – Will greatly affect those that have sought domestic violence orders from the local municipal courts because of a violent act that they have been a victim of.
100. Line 4343 – 4585 – Frivolous addition of "parental rights and responsibilities" to the child support section that became law in March of 2018.
101. Line 4586 – 4603 - Third party rights and child support relief as far as terminating the child support, modifying it or continuing it. No evidentiary standard of review stated.
102. Line 4604 – 5512 – These lines have changes that refer back to other sections.

I thank you all for your time. Should you have any questions, please feel free to contact me.

Ray R. Lautenschlager
Legislative Director
440-281-5478
Ohio Family Rights
president@ohiofamilyrights.com

[i] I also have to ask why Rep Creech has appeared in a promo video for this Massachusetts non-profit.

[ii] On March 30, 2022 Rep. Creech did hold an interested parties meeting yet still did not invite Ohio Family Rights to send a representative.

[iii] Our proposal was about 65 pages and far more comprehensive for all.

[iv] Lines 1591 – 1673 are reinserted later in the bill. We question why LSC did something so frivolous with in this bill and in part explains the delays that some I have talked to have expressed about getting LSC to workup bills for them.