



# Ohio Judicial Conference

The Voice of Ohio Judges

**House Civil Justice Committee**  
**Judge James W. Brown**  
**Opponent Testimony on House Bill 508**  
**May 24, 2022**

Chair Hillyer, Vice Chair Grendell, Ranking Member Galonski, and members of the House Civil Justice Committee, I thank you for this opportunity to submit opponent testimony for House Bill 508 on behalf of the Ohio Judicial Conference.

I am Judge James W. Brown of the Franklin County Court of Common Pleas, Division of Domestic Relations and Juvenile Branch, where I have served since 2014. Prior to taking the bench, I was a solo practitioner representing parties in domestic relations and juvenile matters for 32 years in 44 counties. Since taking the bench I have served as a member of the Supreme Court of Ohio's Advisory Committee on Domestic Violence, a member of the Franklin County Domestic Violence Fatality Review Board and a member of the Domestic Relations Law & Procedure Committee of the Ohio Judicial Conference. I am the Vice President of the Ohio Association of Domestic Relations Judge and a member of the Board of Trustees of the Ohio Judicial College.

The Domestic Relations and Juvenile Law & Procedure Committees of the Ohio Judicial Conference continue to review Substitute H.B. 508. We thank the sponsors for switching to a preponderance of the evidence standard of review and clarifying an issue with child support orders. However, the substitute bill does not address most of the concerns we raised in our February 25, 2022 letter or in our meetings with the sponsors and the National Parents Organization on February 18, 2022 and March 30, 2022. The bill continues to stray too far from Ohio's current child-centric system toward a parental entitlement model of child custody. We continue to oppose the bill for the reasons outlined below.

## **General Principles**

Current R.C. 3109.03, which is unchanged by Sub. H.B. 508, provides for the equality of both parents regarding parental rights and responsibilities for the care of their children and the place of residence and legal custodian of their children.

Ohio has adopted a child-centered process for children and families involved in the court system. Pursuant to R.C. 3109.04, the "shared parenting statute," Ohio courts allocate parental rights and responsibilities and determine parenting time based on the best interest of the child. In determining the best interest of a child, courts must consider all relevant factors, including, but not limited to the factors codified in R.C. 3109.04(F)(1).

The division of parenting responsibilities and parenting time within high-functioning marriages is rarely absolutely equal. Work schedules often necessitate one parent to take the majority of the responsibilities, and spend the majority of the time with children. When parents divorce, the custody decision may reflect

the pre-divorce sharing of parenting responsibilities and parenting time based on the children and parents' schedules.

Courts are already able to, and often do, grant equal parenting rights whenever they deem such an order appropriate and in the best interest of the child. Equal or substantially equal parenting time, depending on work and school schedules, is already a frequent outcome of custody disputes. In meeting with the sponsors, they expressed an openness to "substantially equal time for fit parents," but the bill continues to require a strictly equal division of parenting time and decision-making unless it is detrimental to the child, which is just a step away from overt abuse.

Only a court's fact-intensive inquiry can take account of each child's unique situation and create a custody order tailored to their best interests. Equal parenting presumption legislation are an unnecessary restraint on the judiciary and will result in outcomes that are harmful to children and survivors of domestic violence.

Mandating strict equal division of parenting time without consideration of work, school and extracurricular schedules will unintentionally result in less time with parents and more time home alone unattended, in daycares, with babysitters and with the parents' new dating partners. This does not maximize parenting time, and can put children at risk from abuse by a non-parent caretaker.

### **Detrimental to the Children Standard**

While current law focuses on the best interest of the children, Sub. H.B. 508 presumes equal decision making and equal parenting time unless the preponderance of the evidence shows that equal parenting would be detrimental to the child. As a preliminary matter, we are unaware of any state that utilizes a detriment standard in place of a best interest standard. Nor are we aware how courts will implement the undefined new standard, which will essentially require courts and litigants to prove a negative. While the bill maintains the best interest factors, a court cannot even consider them until detriment to the child is proven. This will require courts to utilize additional guardians ad litem and call expert witnesses on "detriment," increasing litigation costs. While the bill would maintain the best interest factors in code, it is unclear when a court would apply them since a small handful of separate factors are available for rebutting the presumptions of equal parenting. The complicated presumptions in this bill will be confusing for attorneys and nearly impossible for self-represented litigants to navigate.

### **Age-Appropriate Orders**

Ohio's custody courts devise a default parenting order based on local practice. These standard orders are not used in the majority of cases when parents work with the court on developing a shared parenting plan. The default orders are utilized by courts when one parent chooses not to participate in the custody action or does not express interest in parenting time. Some courts use standard parenting orders that contemplate "equal parenting," however, the court's consideration begins with the best interest of the child and often utilizes age bands to determine how much time the non-residential parent will receive with the child. Some counties' standard orders grant equal parenting time to a non-residential parent over school breaks. Standard orders also contemplate the distance between parents and special situations such as military service or firefighting careers. Sub. H.B. 508 is not a codification of these counties' substantially equal parenting processes, but would effectively nullify these carefully crafted, evidence-based standard orders by neglecting to consider age-appropriate schedules based on the best interest of the child. Instead, the bill creates a one-size-fits-all parenting division regardless of the child's age or special circumstances, unless detriment to the child is proven.

## **Unmarried Parents**

As was discussed during the Ohio Child Support Enforcement Agency Director's Association testimony last week, the bill's presumption of equal parenting responsibilities and equal parenting time applies in cases involving unmarried parents. The presumption even applies to temporary initial orders before paternity has been established. This is especially concerning to juvenile judges who see an increasing number of cases involving unmarried parties where one parent has no parenting record or relationship with their children. We recognize that the bill's proponents believe this concern is addressed within the bill's complicated system of overlapping presumptions and factors. However, a lack of prior relationship between the putative father and child is not one of the limited reasons to rebut the presumption for equal parenting time under either R.C. 3109.0411 (factors to rebut when there is an agreement) or R.C. 3109.0422 of the bill (factors to rebut where there is no agreement). At a minimum, this issue should be addressed, but consideration should be given to whether all of the bill's procedural changes are truly necessary.

## **Unfunded Data Collection Requirement**

The bill would create a costly new R.C. 3109.0486 that requires courts to track ordered overnights for an annual report. We are unaware of any court management system that allows tracking of overnights and the countless variables necessary to clarify this data. This unfunded mandate will only serve to distract the courts from their mission of resolving disputes and serving their constituents. Larger counties would need to hire a dedicated staffer to keep up with the volume of custody cases they review. This provision perpetuates the fallacy that overnights are the only measure of custody cases and ignores the realities of cases involving child abuse, drug addiction, domestic violence and sex offenses, where a court may order limited or no parenting time to the harmful parent.

Thank you for the opportunity to testify in opposition to Sub. H.B. 508. We look forward to working with the sponsors and this Committee on further improvements to the bill. I am available to answer any questions you may have.