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JUDICIAL ARREST AUTHORITY AND LEOSA: A CASE FOR INCLUSION OF JUDGES UNDER FEDERAL CONCEALED CARRY PROTECTIONS

By **Judge Eugene A. Lucci**
Eleventh District, Court of Appeals of Ohio

Executive Summary

Ohio judges possess statutory arrest authority under both federal and state law, engage directly in law enforcement functions, and face ongoing security threats—yet many remain unaware of potential protections under the Law Enforcement Officers Safety Act (LEOSA). This article demonstrates how judges who meet LEOSA's functional criteria may already qualify for federal concealed carry protections, and argues for legislative clarification to ensure consistent application nationwide.

Disclaimer: This article is intended solely to inform and educate. It does not constitute legal advice. The views expressed are those of the author and do not reflect the opinions or positions of the Ohio Judicial Conference or any other organization.

I. Introduction: Why LEOSA Matters to the Ohio Judiciary

Most Ohio judges have never heard of the Law Enforcement Officers Safety Act (LEOSA), codified at 18 U.S.C. §§ 926B and 926C. Enacted in 2004, LEOSA allows qualified active and retired "law enforcement officers" to carry concealed firearms across all 50 states, overriding conflicting state and local laws. The statute ensures that those who enforce the law are not rendered defenseless due to jurisdictional variations in firearm regulations.

Despite this protective intent, LEOSA's application to judges remains unclear—even though Ohio judges possess statutory arrest authority, perform core law enforcement functions, and face documented security threats. With over 4,500 threats made against federal judges and court personnel in 2021 alone, according to the U.S. Marshals Service, the question of judicial inclusion under LEOSA demands attention.

This article examines how 18 U.S.C. § 3041 provides federal arrest authority to state judges, how Ohio judges fulfill LEOSA's functional requirements, and why clarification of judicial eligibility serves both legal consistency and public safety.

II. LEOSA's Practical Protections and Judicial Applications

LEOSA provides significant, tangible benefits for qualifying officers:

- **Nationwide reciprocity**: Overrides most state and local concealed carry restrictions
- **Interstate mobility**: Eliminates the need for multiple state permits when traveling
- **Legal clarity**: Provides federal protection against varying local firearm laws
- **Career continuity**: Extends protection into retirement, recognizing that threats persist beyond active service.

For Ohio judges, LEOSA qualification could enable concealed carry while:

- Attending judicial conferences in restrictive jurisdictions
- Traveling between courts for assigned cases
- Engaging in public activities where judicial recognition creates security risks
- Maintaining personal protection during commutes, off-duty hours, and family vacations.

Ohio judges routinely handle cases involving violent offenders, domestic disputes, mental health crises, and contentious civil matters. Unlike many professions, judicial officers cannot choose their clientele or avoid confrontational situations. The threats judges face often persist long after cases conclude, as resentful defendants, disgruntled litigants, or ideologically motivated individuals may target judges as symbols of state authority.

Even judges uninterested in LEOSA's protections should understand the statute, as they may encounter LEOSA defenses in criminal cases involving out-of-state officers charged with weapons violations.

III. LEOSA's Functional Framework: Beyond Traditional Law Enforcement

LEOSA's eligibility criteria focus on **function, not title or governmental branch**. This functional approach reflects Congress's recognition that law enforcement duties extend beyond traditional police work to encompass various governmental roles involving public safety and legal enforcement.

Under 18 U.S.C. §§ 926B and 926C, a "qualified law enforcement officer" must:

Active Officers (§ 926B):

1. Be authorized by law to engage in or supervise the **prevention, detection, investigation, prosecution, or incarceration** of persons for law violations
2. Have **statutory powers of arrest**
3. Be **authorized by their agency** to carry a firearm (it must be a governmental agency)
4. Possess **agency-issued photographic identification**
5. **Not be subject to disciplinary action** that could affect firearms privileges
6. Meet **annual firearms qualification** standards.

Retired Officers (§ 926C):

1. **Separate in good standing** after qualifying service (set forth in § 926B)
2. Possess **agency-issued photographic identification**
3. Complete **at least 10 years of aggregate service** (or disability retirement)
4. Meet **annual firearms qualification** requirements (with documentation).

Significantly, LEOSA imposes **no restrictions** based on:

- Jurisdictional scope (municipal, state, or federal)
- Types of laws enforced (criminal, regulatory, or civil)
- Severity of violations (felony, misdemeanor, or infraction)
- Employment status (full-time, part-time, or volunteer)
- Compensation level (paid or unpaid positions)
- Governmental branch (executive, judicial, or legislative).

Federal courts have consistently rejected attempts to narrow LEOSA's scope through judicial interpretation, instead applying the statute's plain language to determine eligibility based on objective statutory criteria. Courts have specifically declined to impose extratextual limitations based on the number

of arrests made, specific crimes enforced, whether officers carried weapons on duty, or frequency of authority exercise. Courts have also strictly construed the text of LEOSA.

Rejection of Narrow Interpretations

Courts have rejected attempts to limit LEOSA based on:

- **Frequency of arrests**: Courts refuse to impose minimum arrest quotas or activity levels
- **Types of crimes enforced**: Coverage extends beyond felonies to include any law violations
- **Weapon carry requirements**: No requirement that officers be armed during regular duties
- **Jurisdictional scope**: Coverage includes local, state, and federal law enforcement functions.

Functional Analysis Standard

Federal courts apply a functional analysis, asking whether applicants:

- **Possessed legal authority** to perform law enforcement functions
- **Satisfied statutory requirements** without regard to job titles or organizational structure
- **Met objective criteria** rather than subjective policy preferences.

To date, no state or federal court has been called upon to decide LEOSA's applicability to the judiciary.

IV. Ohio Judges and Law Enforcement Functions: A Natural Fit

State and federal judges routinely perform each function specified in LEOSA's definition, often with greater authority and broader impact than many traditional law enforcement officers.

Prevention and Detection

Ohio judges actively prevent and detect crime through:

- **Protective order issuance**: Judges issue thousands of domestic violence and civil stalking protective orders annually, directly preventing future criminal conduct
- **Emergency interventions**: *Ex parte* orders provide immediate protection when law enforcement cannot respond quickly enough
- **Warrant authorization**: Search and arrest warrants enable law enforcement detection and apprehension activities, many of which are issued even before court cases are filed
- **Preventive detention**: Bail decisions and no-contact orders prevent defendants from committing additional crimes
- **Civil enforcement with criminal penalties**: Judges enforce regulatory violations that carry criminal sanctions, bridging civil and criminal law enforcement.

Investigation

Judicial investigation powers often exceed those of individual officers:

- **Warrant issuance**: Judges authorize searches, seizures, and surveillance that form the backbone of criminal investigations

- **Evidence control**: Court orders to preserve, produce, or restrict evidence directly shape investigative outcomes
- **Discovery supervision**: Judges oversee the fact-finding process in both criminal and civil cases
- **Subpoena enforcement**: Judicial power to compel testimony and document production supports both prosecution and defense investigations
- **Expert appointment**: Judges can appoint independent experts to investigate complex technical or scientific issues.

Prosecution

Ohio judges exercise prosecutorial functions in multiple contexts:

- **Contempt prosecution**: Judges can summarily detain or arrest and prosecute individuals for direct contempt, including criminal charges for courtroom disruptions
- **Plea acceptance**: Judicial review and acceptance of guilty pleas constitute direct participation in the prosecution process; they impose legal accountability for law violations
- **Warrant enforcement**: Bench warrant issuance compels defendant appearance and supports prosecutorial case management
- **Subpoena enforcement**: Judges can hold witnesses in contempt for non-compliance, supporting prosecution efforts
- **Charging decisions**: In contempt cases, judges make charging decisions similar to prosecutors.

Incarceration

Judicial incarceration powers are among the most direct law enforcement functions:

- **Sentencing authority**: Judges impose prison terms, jail sentences, and community control sanctions
- **Custody modification**: Judges exercise exclusive authority to modify sentences, revoke probation, and order re-incarceration, grant judicial release from prison and furloughs from local incarceration
- **Bail and detention**: Decisions on pretrial detention directly control liberty and public safety
- **Contempt punishment**: Summary incarceration for contempt, exercising both adjudicative and enforcement roles, are sanctions only the judge can initiate and enforce
- **Commitment procedures**: Judges order commitment to various institutions, including mental health facilities and correctional institutions
- **Bench warrants**: Judges issue bench and arrest warrants or other orders of detention.

V. Statutory Arrest Authority: Federal and State Foundations

Federal Authority: 18 U.S.C. § 3041

The most significant source of judicial arrest authority comes from federal law. Under 18 U.S.C. § 3041:

> For any offense against the United States, the offender may, **by any ... judge** of a supreme or superior court, chief or first judge of the common pleas, mayor of a city, justice of the peace, or other magistrate, of any state where the offender may be found, and at the expense

of the United States, **be arrested and imprisoned** or released [on bail] ... for trial before such court of the United States as by law has cognizance of the offense. (Emphasis added.)

This provision traces its origins to the Judiciary Act of 1789, demonstrating the historical recognition of judicial arrest authority. In Section 30 of the original Judiciary Act, regarding depositions, Congress used virtually identical language: "before any justice or judge of any of the courts of the United States, or before any chancellor, justice or judge of a supreme or superior court, mayor or chief magistrate of a city, or judge of a county court or court of common pleas of any of the United States."

When Congress codified § 3041 in 1948, it deliberately adopted this historical language, indicating familiarity with and acceptance of the terminology used since the founding era. The inclusion of "common pleas" judges specifically references the first courts established in the American colonies, brought from English legal tradition and established in New York, Pennsylvania, Massachusetts, and other colonies, as well as those created under the Northwest Ordinance of 1787.

Ohio State Authority

Ohio statutes provide judges with extensive arrest and enforcement powers that clearly satisfy LEOSA's requirements.

Direct Arrest Authority

- **R.C. 2317.22 (Subpoena Enforcement)**: Authorizes judges to arrest and imprison individuals who fail to comply with subpoenas, including immediate custody for contempt
- **R.C. 2705.01 (Contempt Powers)**: Grants summary punishment authority, including arrest and incarceration for contempt violations (supplemental and in addition to the inherent judicial authority)
- **R.C. 2935.04 (When Any Person May Arrest)**: Empowers judges (any person) to arrest any person upon probable cause that a felony has been committed
- **R.C. 2935.08 and 2935.10 (Process Authority)**: Authorizes judges to issue various forms of legal process compelling appearance and arrest
- **R.C. 2941.36 (Post-Indictment Commitment)**: Provides authority for judicial commitment and custody orders following indictment.

Criminal Rule Authority

- **Criminal Rule 4(A)**: Grants judges authority to issue warrants and summons, with specific procedures for arrest authorization
- **Criminal Rule 46**: Provides bail and detention authority that directly impacts liberty and public safety.

These statutes collectively establish a comprehensive framework of judicial arrest authority that mirrors and often exceeds the powers of many traditional law enforcement officers.

VI. Addressing the "Chief or First Judge" Question

Some may argue that 18 U.S.C. § 3041's reference to "chief or first judge of the common pleas" restricts arrest authority to a narrow subset of judges, excluding associates, municipal judges, or appellate justices. This interpretation misreads both the statute's history and purpose.

The terms "chief or first judge" reflect colonial and territorial administrative conventions, not exclusive grants of authority. Modern Ohio courts use "presiding" or "administrative" judge designations,

with these roles often rotating annually among colleagues. No Ohio court currently employs "first," "senior," or "chief" judge titles in the historical sense. In most courts, other judges routinely substitute for the presiding judge, demonstrating the functional rather than exclusive nature of these administrative roles.

Moreover, § 3041's inclusive language—"any chancellor, justice or judge of a supreme or superior court ... or other magistrate"—demonstrates Congress's intent to encompass judges across diverse state court systems. The word "any" and the phrase "other magistrate" indicate broad, inclusive coverage rather than narrow exclusion. The statute's purpose of facilitating federal law enforcement would be frustrated by narrow title-based restrictions.

Ohio's constitutional and statutory framework supports broad judicial authority. Article IV, Section 5(A)(3) of the Ohio Constitution and Ohio Revised Code § 2501.02 permit judges to be assigned across court levels, ensuring that all Ohio judges may exercise general trial court powers when circumstances require. This flexibility reinforces the functional rather than title-based nature of judicial authority, supporting LEOSA eligibility based on actual powers rather than formal court designations.

VII. Firearm Authorization

Ohio law explicitly authorizes judicial firearm carry through multiple statutory provisions:

- **R.C. 2923.12(C)(1)**: Exempts judges from concealed carry prohibitions when authorized by their court
- **R.C. 2923.123(C)(1)**: Provides similar exemptions for courthouse carry restrictions
- **Rule 9 of the Rules of Superintendence for Ohio Courts**: Establishes statewide standards for judicial security, including firearm authorization procedures
- **Court Security Standards 7 and 12**: Provide detailed guidelines for judicial officer security training and equipment.

Many courts throughout the state authorize their judges to carry firearms, including within the courthouse. The Eleventh District Court of Appeals takes it a step further, and permits its judges to carry firearms within the courthouse provided they meet annual qualification standards through the Ohio Peace Officer Training Academy—a requirement that aligns with LEOSA's qualification mandates. This policy demonstrates that Ohio courts can and do implement firearm authorization procedures that satisfy LEOSA's training and oversight requirements. The OPOTA qualification standards mirror those used by Ohio law enforcement agencies, ensuring consistent training and competency across the criminal justice system.

Interestingly, LEOSA does not require a particular firearm qualification regime for active officers, or any at all, if the agency has none; for retired officers, the default qualification is as used by a certified police firearms instructor.

State Law Parallels: The Indiana Model

Indiana law provides a compelling parallel for judicial LEOSA eligibility in terms of arrest power and firearm authorization. Under Indiana Code:

- **IC 35-47-16-1 and 35-47-16-2**: Judicial officers may possess and use firearms in any location where on-duty law enforcement officers may, with identical civil and criminal immunities
- **IC 35-33-1-2**: Grants judges arrest authority, including power to arrest individuals when crimes occur in their presence
- **Statutory equivalence**: Indiana law treats judicial officers and law enforcement officers identically for firearms and arrest purposes.

This statutory framework demonstrates how states can recognize the functional equivalence between judicial and law enforcement authority, supporting LEOSA's functional approach to eligibility.

VIII. Disciplinary Oversight: Ohio's Equivalent to Law Enforcement Internal Affairs

LEOSA requires that qualifying officers not be subject to disciplinary action that could affect firearms privileges. Ohio's judicial disciplinary system provides oversight equivalent to law enforcement internal affairs.

Ohio's Disciplinary Structure

- **Board of Professional Conduct**: Investigates and hears complaints against judicial officers, similar to police internal affairs divisions
- **Supreme Court of Ohio**: Exercises ultimate disciplinary authority, including suspension and removal powers
- **Judicial Ethics Advisory Opinions**: Provides guidance on ethical and professional conduct issues, preventing disciplinary violations
- **Continuing Education Requirements**: Mandates ongoing training in judicial ethics, conduct, and professionalism, among other matters.

Disciplinary Standards and Procedures

Ohio's judicial disciplinary system employs standards and procedures that mirror law enforcement oversight:

- **Investigation protocols** similar to police internal affairs procedures
- **Due process protections** equivalent to those provided to law enforcement officers
- **Graduated sanctions** ranging from public reprimand to removal from office
- **Appeals procedures** through the Supreme Court of Ohio
- **Public reporting** of disciplinary actions, and civilian (non-lawyer) participation in the process, ensuring transparency and accountability.

A judge who has not been subject to adverse disciplinary findings can reasonably be considered to satisfy LEOSA's disciplinary requirements, just as a law enforcement officer in good standing meets the same criteria.

IX. Security Threats: The Compelling Need for Protection

The risks facing judges extend far beyond the courtroom. Unlike law enforcement officers who can choose their assignments or prosecutors who can decline cases, judges must hear whatever matters come before them. Every individual arrested by law enforcement ultimately appears before a judge, creating an unavoidable intersection between judicial officers and the criminal population.

Recent data underscores these risks:

- The U.S. Marshals Service documented over 4,500 inappropriate threats and communications directed at federal judges and court personnel in 2021
- Threats often persist years or decades after cases conclude
- Sources include resentful defendants, disgruntled litigants, and ideologically motivated individuals
- Social media and public records make judges' personal information increasingly accessible.

Ohio recognizes these risks through statutes permitting judicial firearm carry and requiring security training. Many Ohio courts have implemented comprehensive security protocols, including armed judicial officers programs that mirror law enforcement standards.

On January 18, 2021, President Donald J. Trump issued Executive Order 13977, committing the federal government to enhanced safety for federal judges and prosecutors, and remove state and local interference with LEOSA protections. *See*, https://trumpwhitehouse.archives.gov/presidential-actions/executive-order-protecting-law-enforcement-officers-judges-prosecutors-families/?utm_source=link (last accessed 6/16/2025).

In short, this order reinforces the principle that judicial officials—regardless of jurisdiction—merit enhanced protective measures, even if state judges receive no direct benefit under the executive order.

X. Recommendations: A Path Forward

Legislative Action

Congress should amend LEOSA to explicitly include judges and prosecutors who meet statutory qualifications. Clear legislative language would eliminate interpretive uncertainty and ensure consistent application nationwide.

Administrative Guidance

The Department of Justice should issue guidance clarifying that judges who meet LEOSA's functional criteria qualify for protection under current law. Such guidance would provide practical certainty while legislative solutions develop.

Professional Advocacy

Ohio judicial organizations, including the Ohio Judicial Conference and Ohio State Bar Association, should advocate for federal clarification of judicial LEOSA eligibility. Professional support would strengthen legislative and administrative efforts.

Court Implementation

Individual Ohio courts should consider adopting formal policies recognizing judicial LEOSA eligibility for qualified judges, and issuing the requisite identification credentials for active and retired judges (who have served at least ten years), thus providing local guidance while broader clarification develops.

XI. Conclusion: Fulfilling Congress's Promise

Judges are not passive observers of the criminal justice system — they are active participants in law enforcement's core functions. Federal law recognizes this reality through statutes like 18 U.S.C. § 3041, which grant judges arrest authority comparable to traditional law enforcement officers.

LEOSA's functional approach to defining law enforcement officers, combined with judges' statutory authorities and documented security risks, creates a compelling case for judicial inclusion. Recognition under LEOSA would not grant special privileges but would fulfill Congress's promise to protect all those who enforce the law.

Ohio judges who issue warrants, sentence violent offenders, handle domestic disputes, and manage mentally unstable litigants deserve the same federal protections available to their executive branch counterparts. The law, properly interpreted, may already provide these protections. Congressional clarification would simply make explicit what the statute's functional language already implies.

As threats against judicial officers continue to rise, ensuring judges have access to appropriate self-defense tools becomes not just a matter of personal security, but of judicial independence and public confidence in our court system. LEOSA represents one important tool in maintaining that security—and Ohio judges should have access to its protections.

Judge Eugene A. Lucci serves on the Eleventh District Court of Appeals of Ohio and is a retired peace officer qualified under 18 U.S.C. § 926C. He is a certified firearms instructor, and conducts annual firearms qualifications, through the Ohio Peace Officer Training Academy and has served the Ohio judiciary for 25 years. The author welcomes professional discussion of these issues and can be contacted through the Eleventh District Court of Appeals.

The Importance of Trauma-Informed Judicial Responses

By Judge Theresa Dellick

Mahoning County Juvenile Court

A jail diversion study revealed that trauma is nearly universal among individuals involved in the criminal justice system. Among women, 96% reported experiencing trauma during their lifetime, and 74% were currently experiencing trauma. For men, the numbers were similarly high — 89% lifetime trauma and 86% currently experiencing trauma[1]. These statistics make it clear: most defendants who appear before a court are not only trauma survivors but are often actively living through ongoing trauma.

In addition to trauma, many individuals in the criminal justice system suffer from co-occurring disorders such as mental illness and substance use disorders. The close rates between men and women underscore the universality of trauma in this population. What does this mean for judges? Simply put: it should be assumed that nearly every person appearing in court carries a history of trauma.

Trauma-Informed Practices in the Courtroom

Understanding this reality calls for trauma-informed judicial practices. These practices don't involve leniency or excusing behavior — they focus on ensuring the courtroom does not become another source of trauma. Judges can take simple but powerful steps to reduce the risk of re-traumatization:

- Show respect and dignity to every individual.
- Clearly explain the legal process and each step of the proceedings.
- Create a physically and emotionally safe environment.
- Provide appropriate choices and explain consequences where possible.

These actions can help prevent unexpected outbursts or shutdowns and foster a more orderly, respectful courtroom. They also allow the judge to view the defendant as a whole person, leading to more thoughtful, individualized sentencing.

Understanding Trauma and Its Impact

Trauma can take many forms — physical or sexual abuse, neglect, accidents, natural disasters, combat, community violence, and even secondary trauma. It may stem from a single incident or be the result of repeated exposure. According to the Substance Abuse and Mental Health Services Administration (SAMHSA), trauma is defined as an event or series of events experienced as physically or emotionally harmful or life-threatening, with lasting adverse effects on functioning and well-being.

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[1] The referenced study was conducted by SAMSHA in 2007.

Trauma affects how individuals present in court. A person may appear withdrawn, flat in affect, angry, distrustful, or suspicious. These behaviors may be misinterpreted by court personnel as rudeness, aggression, or indifference — but often they are survival mechanisms developed to cope with past trauma.

Avoiding Jurigenic Harm

"Jurigenic harm" refers to the unintended consequences caused by the judicial system that can worsen a person's condition. As judges, we have an obligation similar to medical professionals: *first, do no harm*. Ignoring trauma signals or dismissing the emotional state of a defendant can escalate a situation, create fear or confusion, and ultimately compromise courtroom safety and effectiveness.

To reduce jurigenic harm and foster a trauma-informed courtroom, judges should consider the following approaches:

- Begin proceedings on time or explain delays.
- Speak plainly, avoiding legal jargon.
- Look at individuals when speaking, and call them by name.
- Identify all courtroom personnel and their roles.
- Be transparent and explain the purpose of each hearing.
- Acknowledge and respect cultural backgrounds and lived experiences.

These practices uphold the dignity of all participants and align with the Judicial Canons requiring fairness, impartiality, and respect.

The Role of the Judge in Recovery-Oriented Justice

While not every defendant can or will be rehabilitated, trauma-informed responses help create an environment that supports recovery, reduces recidivism, and promotes safer courtroom interactions. This approach does not compromise legal standards or judicial impartiality; rather, it strengthens them.

Ultimately, adopting trauma-informed practices is about ensuring safety, dignity, and effectiveness in our courtrooms. These modest changes in behavior and perspective can make a meaningful difference — for the defendant, the staff, and the judge. A trauma-informed bench leads to better outcomes and reinforces the integrity of the justice system.

Since 2001, Judge Theresa Dellick has served as judge of the Mahoning County Juvenile Court overseeing the administration of the Court as well as the Detention Center, intake services, probation, Clerk of Courts, counseling services, community services. Her administration of the Court has been directed to balanced and restorative justice with focused attention to youth accountability and responsibility, public safety and restoration of victims' rights.

FAMILY LAW REFORM IN OHIO

By Judge Denise Herman McColley (retired)
Henry County Common Pleas Family Court

Perhaps you have heard of the family law reform bill recently introduced in the Ohio Senate by Senators Theresa Gavarone and Paula Hicks-Hudson as Senate Bill 174.

The bill has a long history starting with the Ohio Task Force on Family Law and Children created by the 122nd General Assembly in 1999. Individuals from nine different disciplines were appointed to the task force and, in 2001, submitted their report, *Family Law Reform: Minimizing Conflict, Maximizing Families*, to the legislature and to Chief Justice Thomas J. Moyer. The report outlined several goals for reforming Ohio's family law, including specific proposed changes to Ohio Revised Code Chapter 3109.

Highlights of Senate Bill 174 can be traced back to Goal One of the 2001 Task Force Report which provided the following:

> Establishing and maintaining a parent-child relationship is of fundamental importance to the welfare of a child. Therefore, the relationship between a child and both parents should be fostered unless inconsistent with the child's best interest. Further, any legal process that allocates parenting functions and responsibilities should be guided by each child's best interests.

Recommendations for implementing this goal:

- Language used in the Ohio Revised Code, Ohio Rules of Civil Procedure, Ohio Rules of Juvenile Procedure, and Rules of Superintendence for the Courts of Ohio should reflect that both parents have continuing roles and responsibilities as parents when they are not living together. To the furthest extent possible, terms of conflict and empowerment should be removed from Ohio statutes involving parenting issues.
- Developmentally appropriate guidelines for parenting plans should be developed and available for use by all families and courts.
- Courts should continue to be guided by the best interest standard.
- The allocation of parenting functions and responsibilities should be presented in a single document called a parenting plan, regardless of whether the terms are a result of parental agreement or judicial intervention.

- All parenting plans should provide for the allocation of parenting functions and responsibilities for all aspects of each child's daily needs consistent with the child's age and developmental level.

- Courts should be given more statutory options for dealing with the difficult problems involved in the consideration of requests by one parent to deny or limit access of the other parent to their children, or to information about their children.

Upon the submission of the Task Force's Report, Chief Justice Moyer created the Advisory Committee on Children, Family, and the Courts (now the Advisory Committee on Children and Families). The Advisory Committee reviewed the Task Force Report, and, in December 2005, it delivered its *Report and Recommendations on Family Law Reform* to Chief Justice Moyer, which included many, if not most, of the proposals from the 2001 report, again including proposals for changes to Chapter 3109.

After submission of the 2005 report, the Subcommittee on Family Law Reform Implementation ("FLRI") was created as part of the Advisory Committee on Children and Families to "implement" these recommendations. Over the last two decades, FLRI has successfully implemented many of these proposals.

The Task Force's recommendations for revising Chapter 3109 and related statutes required more time. It has taken over a decade to flesh out the original proposals to create a new statutory scheme for family law in Ohio. The initial draft of a significantly revised Chapter 3109 was twenty pages long. Senate Bill 174, originally introduced in the last General Assembly as Senate Bill 325, a document of more than 400 pages. Obviously, reading this can be daunting!

The original draft of the legislation was subject to additional revisions suggested by interested parties, including the Ohio State Bar Association, the Ohio Child Support Directors Association, the Ohio Domestic Violence Network, the Public Children Services Association of Ohio, and members of the Ohio Commission on Fatherhood. Text of the bill as introduced may be found at https://www.legislature.ohio.gov/legislation/136/sb174. If you decide to give it a go and read through it, please note that the bulk of the proposed changes to current law are set out in pages 153 – 233.

The goals of the original Task Force continue to be reflected in many of the proposed changes, and the bill currently provides the following:

- Discontinuation of labels such as "residential parent" or "custodial parent" to remove the perception that one parent may have the upper hand or more authority than the other. This was deliberate to help minimize the adversarial nature of these types of proceedings. A parent may be the "designated parent" to fulfill a certain roll in a child's life, but they are not in a position of ownership.
- A change in terminology from "parental rights and responsibilities" to "parenting responsibilities." This change more accurately reflects that children should be treated as persons, not property (or assets) to be divided when the parents are no longer together. "Parenting responsibilities" are set out in §3109.04(A)(20).
- The fact that a court is not to draw any presumptions from a temporary parenting order or consider it a factor in making a final parenting plan decision [§3109.0411].
- A modification to an existing parenting plan may be granted due to a change in circumstances of ***either*** parent, legal custodian, or the child, not just that of the residential parent or the child [§3109.0419]. Note: the factors for granting the modification remain the same.
- A court may assess reasonable attorney fees and expenses if it finds that a motion to modify was brought in bad faith or the party's actions constituted frivolous conduct [§3109.0420].
- All parenting responsibilities are allocated in the parenting plan, which seeks to ensure that "parents or legal custodians share in the responsibilities of raising a child, enable a child to enjoy a meaningful relationship with both parents or legal custodians, and maximize parenting time with each parent when it is the best interest of the child" [§3109.044] . Parenting responsibilities to be allocated per the plan are spelled out in §3109.044 (A) – (M).
- Parties may submit an agreed-upon parenting plan, may each submit their own plan for consideration by the court, or the court may create its own plan based on the facts and circumstances of a case [§§3109.045 – 3109.048]. Within R.C. §3109.046, added responsibilities are placed upon a court that objects to a parenting plan that proposes substantially equal parenting time. If a court does not approve a plan calling for substantially equal parenting time, it must determine that the plan is not in the child's best interest, that it endangers the safety of the parties, or other good cause shown, and must provide ***written*** findings of fact to support that conclusion.
- The OSBA Family Law Committee's proposal to amend the Revised Code to address parental suitability is included [§§3109.0414 to 3109.0417].
- If a court issues a temporary order allocating parenting responsibilities, without an oral hearing, a party may file a written request for oral hearing and the court shall conduct the hearing within 28 days after the request is filed [§3109.0423].
- Best interest considerations are expanded to 25 different factors [§3109.0430]. Additional considerations include actions of a parent to mislead the court or cause unnecessary delay in the case; the recommendations of other court-appointees (e.g., guardian *ad litem*, parenting coordinator, custody evaluator, investigator); the child's and parents' safety; and parents' past ability to provide for the child's daily needs.
- Specific instruction about when and under what circumstances a parent's contact with a child may be limited is included [§§3109.0455 – 3109.0458].
- The bill includes requirements for motions alleging "interference with parenting time or companionship or visitation" and sets out potential orders for the court to issue upon finding that interference [§§3109.0491 – 3109.0493].
- Statements more clearly supporting the involvement of both parents in their children's lives include that "(i)t is …the public policy of this chapter, when it is in the child's best interest (1)to foster and continue the relationship between the child and each parent…;(2)(f)or the child's parents to have substantial, meaningful, and developmentally appropriate parenting time with the child; (3) to have both parents participate in decision-making regarding the child" [§3109.401, pp.231-233].

- Establishment of parental responsibilities in a paternity case is simplified [3111.14, pp. 260-263].
- A non-codified section, Section 4 [p. 417], indicates a request that each court with jurisdiction over domestic relations matters review and update the court's local rules regarding parenting time to comply with the provisions of the act.
- Other items are spelled out more carefully and at greater length than previously:
    - The court's ability to order parent or child education [§§3109.0433--3109.0436].
    - Provisions regarding investigation and evaluation [§§3109.0439 – 3109.0442].
    - Clarification of the process for court interviews of children [§§3109.0445 -- 3109.0451].
    - Procedures to utilize when ordering supervised parenting time [§3109.0459].
    - Procedures to utilize when ordering an attorney for a child [§§3109.0465 -- 3109.0468].
    - Specific direction to follow when a parent wishes to relocate [§§3109.0470 – 3109.0479].
    - Expanded procedures to follow when considering granting companionship or visitation rights to a relative or kinship caregiver [§§3109.054 – 3109. 0512].

For those of us who have practiced in the family law area, there ***will*** be changes, but these changes have been created to provide a system in which children's best interests are observed, children's and parents' safety remains paramount, both parents are regarded as important to children's lives, and terms of ownership for parents have been eliminated. Courts are directed to consider additional best interest factors and to have a more hands-on approach in ensuring parents have individualized parenting plans for their children. All of this bodes well for the children and families of Ohio.

Retired Judge Denise Herman McColley has long been an advocate for children and families, first as an educator and then later in her career as a lawyer, magistrate, and judge. During her legal career, Judge McColley served as domestic relations and juvenile judge in Henry County and a magistrate in Henry and Fulton counties.

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