



Family Benefits Statement

- Positive Impact for Ohio's Children -

Senate Bill 144 and House Bill 253
129th General Assembly

nopeusa.org

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Prepared by the **N**ational **O**rganization for **P**arental **E**quality

Senate Bill Sponsors

Sen. Michael Skindell
Sen. Timothy Grendell

Committee

Senate Judiciary Civil Justice

House Bill Sponsors

Rep. W. Carlton Weddington
Rep. Ron Young
Co-sponsors:
Reps. Burke, Reese, Yuko

Committee

House Judiciary & Ethics

Versions

As Introduced in both houses

This is the Official Statement of NOPE on SB 144 and HB 253 and our response to the Ohio Judicial Conference's Impact Statement of May 6, 2011 on SB 144.

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 Benefits Summary

The National Organization for Parental Equality (NOPE) has reviewed *The Ohio Children's Parental Involvement Act (The Children's Act)* and the May 6, 2011 Judicial Impact Statement of the Ohio Judicial Conference. Ohio's children, parents, families, domestic courts, and the citizenry of Ohio will positively benefit from *The Children's Act*. Children who are socially well adjusted are an asset to our society. *The Children's Act* will provide children equal access to both parents during the tumultuous times of separation and divorce. Children will maintain their relationship with both parents. Children will not feel abandoned which lessens their fear about losing a parent. Children will do better in school and will be less likely to become involved with drugs, criminal activity, display violent behavior or become pregnant.

The National Organization for Parental Equality (NOPE) is certain *The Ohio Children's Parental Involvement Act* will increase public confidence in the law by providing separated parents control in guiding and participating in the lives of their children. By removing the *current* adversarial concept of 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 to help with the family farm. As the industrial age took men away from dependence on our agrarian society, the adoption of the “tender years” doctrine, and later the “primary caregiver” doctrine, custody laws overwhelmingly began to favor the mother who stayed at home to raise the family. 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. The court establishes them as a “non-custodial” parent, thus creating conflict. Parents who choose to live apart can still co-parent when the opportunity is presented. *The Children’s Act* encourages cooperation and protects the relationship of children with BOTH parents. Although the state recognizes the benefits from the love and support of both parents, the current statutes remove one parent from a meaningful relationship with their children and allots minimal “visitation” time. Likewise, the lack of a meaningful relationship is denied the children who are often left alone and not permitted to see the other parent who desires to participate in their lives.

This bill was introduced to the Ohio Senate on April 7, 2011 and to the Ohio House on June 8, 2011. It is time for the General Assembly to move forward to protect the rights of parents and children in the divorce and separation process and to bring Ohio law into constitutional compliance.

During previous legislative testimony, the judges association stated to the committee that **the court makes their decisions based on a family that they know nothing about and where the court is poorly prepared or equipped to make decisions on the family dynamics in each situation.**

In an effort to provide guidance and clearly define the desired outcome, *The Children’s Act* has been changed from “shared parenting” to “equal legal and physical access.”

Constitutional Compliance

The proponents and opponents of *The Children’s Act* recognize that the “best interests of the child” is the optimum outcome the courts and parents desire to achieve for children. The State of Ohio has determined that “fit” parents act in their child’s best interest. However, the “best interests of the child” is not a recognized legal standard and cannot be defined. In a litany of cases from 1923 to the present, the U.S. Supreme Court has determined that the associational rights between children and parents are paramount fundamental rights, and therefore, only the highest civil evidentiary standard is legally sufficient and constitutionally compliant for a state to deprive fundamental rights.

In brief, *The Children’s Act* addresses these constitutional protections and brings Ohio’s custody statutes into compliance with federal law.

Claim: This bill will increase litigation.

The Children’s Act will ultimately decrease the case litigation involved in divorce and parentage actions by significantly reducing the use of children as leverage to gain control. 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 in their child’s life. Under the current statutory scheme, the State of Ohio has failed to assure that every child has equal access to both parents.

The *Ohio Children's Parental Involvement Act* will not permit the use of children as leverage and control in the dissolution of a relationship. *The Children's Act* provides a clear mandate that the custody of children will start at "equal legal and physical access." This will allow the parties to fully participate in the legal process, retain control in the rearing of their children, and, in the majority of cases, bring about a speedy resolution without the need for a trial.

With regard to claims as to the "suitability" of a parent, the allegations must be properly supported by a finding by "clear and convincing evidence" of the inability of the parent to act in the best interest of their child. *The Children's Act* will reduce the use of false allegations to leverage favorable custody determinations upon the filing of divorce and the "temporary orders" phase of a case. Temporary orders, which become the *status quo* of the children's situation, usually turn into permanent orders, often without addressing the validity of the false allegations. False allegations are a serious issue that are routinely used for leverage and result in the improper denial of the children's relationship with both parents.

Claim: Increased workload.

The Judicial Impact Statement's concerns of increased motions and hearings under R.C 3104.041 are misleading, incomplete and unfounded. The current statute enacted in 1991 posed little or no impact to court case load. The National Organization for Parental Equality (NOPE) expects the proposed amendments will have a similar unnoticeable affect. In the long term, equal parenting will reduce some of the incentives for divorces being filed, limit post decree motions, and significantly reduce litigation that depends on the current adversarial system.

Trial

To issue an order for a child's relationship with their parents, other than an equal legal and physical access decree, *The Children's Act* would require the courts to find, by clear and convincing evidence, that an equal legal and physical access decree would be harmful to the child. When a parent poses no harm to the child, the child's access to the each parent should not be restricted by the other parent or the court.

Associational rights between children and parents are paramount, and therefore, only the highest legal standard is legally sufficient and constitutionally compliant in a civil action to address the implication of fundamental rights. The United States Supreme Court and the Ohio Supreme Court have determined that the evidentiary standard of "clear and convincing" is the highest burden of proof required **before** the court can interfere with the parent/child relationship. Parents who chose to modify their parental rights have the ability to settle their case pursuant to an agreed entry, which will in turn, significantly reduce the case load within the court system. There would be no need for expert testimony by those who do not want equal custody.

Claim: Domestic Violence is affected

The State of Ohio has current statutes in place that address domestic violence. *The Children's Act* does not change nor affect the current domestic violence statutes, but addresses domestic violence when a false allegation is made to leverage and gain control of the custody of children. A parent who makes a false allegation could jeopardize their right to equal legal and physical custody of their children where the parent making a false allegation is intentionally interfering in their child's right to a relationship with the other parent.

Claim: Lack of confidence in the court.

The Children's Act will significantly increase confidence in the court. When properly applied, the children's relationship is maintained with both parents, and each party's rights are protected. Most importantly, the familial relationships between each parent and child remain intact and the optimum outcome of meeting the "child's best interests" is achieved.

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 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 determination of child support.

Child support will not be affected under *The Children's Act* because the child will be financially supported by both parents as they are under the current child support statutes. Deviations in child support will not require any increase in testimony, evidence, or time to properly calculate. There will be no battle over "days for dollars" as alleged in the Judicial Impact Statement 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 spend more on direct support with less burden from the state system.

It is important to note that *The Children's Act* in no way limits the parties to agree to a plan that is less than equal based on their particular situation.

Of special note, *The Children's Act* contains the parenting time adjustment which was recommended to the General Assembly in the "2009 Ohio's Child Support Guidelines" and passed by a 13:0 vote with 1 abstention.

Claim: Revisiting cases will increase caseload

The Judicial Impact Statement refers to ORC 3109.041 and claiming that *The Children's Act* will cause an increased case load. We do recognize that an increase of post-decree motions will be filed by the parents whose rights were not properly protected when they first came before the court. This is a short term situation, not a permanent one. The necessity for protecting our children's best interests demands that justice is properly served to assure the rights of all affected "fit" parents. There will be a **positive impact in revisiting cases** which will result in restoring public confidence that the State of Ohio actively protects the children's relationships with their parents.

One major point where the Judicial Impact Statement fails to communicate is that while some older cases will be under review, new cases will be moving forward with much less court involvement. By setting the baseline custody arrangement at "equal legal and physical access" with an evidentiary standard of "clear and convincing evidence," the court will not have to deal with the high number of cases that involve false allegations. *The Children's Act* will encourage parents to mediate their issues rather than leave them in the hands of a third party.

False allegations are far 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. The societal costs of these massive programs are borne by the entire State's citizenry to treat children for psychological problems and emotional upheaval. The cost savings in reducing public mental health services is another benefit for the State of Ohio to enact *The Ohio Children's Parental Involvement Act*. To put this in simple terms, society does not have to bare the cost to fix our children in the future where under *The Children's Act* our children can be protected now.

Discretion remains in the Ohio court system. *The Children's Act* does not remove discretion of Ohio courts where the child's welfare is in jeopardy. *The Children's Act* provides a structure and constitutionally compliant guideline for Ohio judges to follow that protects our children's best interests. However, *The Children's Act* removes unbridled discretion that has detrimentally impacted children's relationships with their parents. *The Children's Act* equally protects both parents, reduces costs in all areas, and removes the adversary element required in our current adversarial system. Ohio courts have lost the respect and confidence of the general public because in many cases, the parent is simply told to *accept what you are offered...don't fight it or you will end up with less*. Another common pattern of practice in Ohio courts is that fathers are told that *you will never get custody because you are a male*. Such inequitable protections are no longer acceptable and go against the optimum outcome of protecting our children's best interests in maintaining a healthy relationship with both 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 an order by the court, however, the parties must require findings of fact and conclusions of law. There is no change under *The Children's Act*, and no increased burden on the court where findings of fact and conclusions of law are included when requested in final orders. Absent long hearings, the number of requested findings of fact and conclusions of law will decrease providing a positive impact by increasing the efficiency of Ohio courts.

Claim: Reunification Plan

The introduction of the reunification plan, used in Ohio Juvenile courts, into the Domestic Relations courts is new but it does eliminate 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 that simply dissolves a marital relationship.

To explain this:

A parent must appear 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 are made by the court, **based on clear and convincing evidence**, 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 that parent is then reunited with their child.

A parent comes before the domestic relations court and, through affidavit of the opposing party, a claim is made that the parent is deficient in some manner. The Domestic Relations Court, pursuant to Civ. Rule 75N and ORC 3109.043, makes a purely discretionary decision affecting the parent and their relationship with their children which may include supervised visitation or total denial of rights to remain a part of their child's life. Due to false allegations, the court may well be in error, but the parent and the child suffer! No procedure 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. Note that the only evidence of the allegation is that of a statement, which may or may not be true, only a discretionary call that the parent "**may** now be

or **may** in the future be” a harm to the child. Where the hearing usually consist of affidavits-only, the failure of current legislation to provide a hearing and the right to confront witnesses against you is a clear violation of due process. Furthermore, the legal basis for the deprivation of associational rights currently denies the clear and convincing evidentiary standard required by the United States Supreme Court and the Ohio Supreme Court where fundamental rights are implicated in a civil case.

In the National Organization for Parental Equality’s point of view, this is a major conflict that exists between Ohio juvenile and domestic relations 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 policy. Consistency in Ohio law will better protect the parent/child relationship and earn the respect and confidence of the general public.

Ohio courts operate a system that they claim is in the “best interest of the child.” While popular in name only, the current desire of protecting the child’s welfare fails to take into consideration the needs of the relationship between children and both of their parents.

The National Organization for Parental Equality (NOPE) uses the example in explaining the current system where it is the equivalent of walking into a total stranger’s household and telling them how they are going to raise their family from now on; i.e., this is when and where you will see your children and 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 parents.

While the personal marital relationship of the parents is dissolved through the legal action of divorce or separation, those children now become a part of a divided 2 family household.

Claim: Lack of confidence in the court.

Current practices under the law have lead to a lack of confidence in the courts by failing to protect the due process rights of the parties to be heard and to be equally protected. Judicial 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 are ignored rather than protected by the judiciary. These practices of unbridled discretion have created a lack of confidence in the courts and the judiciary.

The Children’s Act corrects this by following the standards set by the High Court and the Constitution.

The practices and standards to be adopted in *The Children’s Act* will restore public confidence in the courts by providing a clear direction in the handling of family matters before them.

In Conclusion

The Children’s Act will protect the children and families of the State of Ohio. *The Ohio Children’s Parental Involvement Act* will restore confidence in a judiciary that has long acted in a manner that has failed to protect the rights of parents and children. *The Children’s Act* will not only benefit families and children of Ohio but will benefit the court system as well. We recommend that this legislation be given a top priority by the Senate and House Committees with a strong recommendation of passage in both houses.
