

Ohio's Shared Parenting Bill: A catalyst for conversation



by Darci Jay and Michael Watson, staff attorneys and John Petit, managing attorney

The courts handle few matters more sacred than child custody. Who makes major decisions for a child around religion and medical care? Where does a child live and go to school? And who manages the countless array of other parental judgment calls that arise daily or even hourly?

These are rights and responsibilities that matter profoundly to most parents, and are inextricably tied up with their love for their child. Moreover, they can deeply impact a child's experience and wellbeing.

Change is on the horizon in Ohio's custody landscape. It's been happening organically in many local courts for some time, but recently emerged more formally in [Ohio House Bill 14](#). Just as a judge in a custody case weighs and balances interests of children and their parents, so legal aid advocates are carefully considering the pros and cons as we watch what this bill becomes.

House Bill 14 could change the way child custody decisions are made by courts in cases regarding the children of unmarried mothers as well as in divorce, dissolution, legal separation, or annulment proceedings. While language in the bill is still changing, it proposes that every child custody case start with a rebuttable presumption that shared parenting (the language in the bill references "equal decision making rights" and "equal parenting time") is in the best interest of the child. This presumption could be overcome if "clear and convincing" evidence demonstrates that shared parenting would be detrimental to the child, giving a parent who disagrees with shared parenting the burden of presenting this proof in court.

This would constitute a major change to existing law which doesn't lay out a shared parenting starting point, but rather requires courts to make decisions about custody and visitation based on what it believes is in the best interest of the child. Crucially, under current law, courts start from a position of picking one parent over the other as the primary legal custodian. Courts are unable to make an order for shared parenting unless at least one parent specifically requests that type of arrangement.

Ideally, both parents are equally involved in their child's upbringing. Most agree these changes sound good on paper. In fact, many courts are adopting parenting schedules that mimic this idea of 50/50 time already. But in reality, it's not that simple.

The pros to this bill are more obvious. Research points to multiple benefits for children when both parents are invested in their lives. We've specifically seen

burgeoning evidence around the involvement of dads, who historically have not had equal footing on parenting issues. The proposed changes in House Bill 14 would bring both parents into a custody determination on equal footing, removing what can sometimes be exorbitant attorney fee barriers to parents who want to be more involved in their child's lives. And increasingly, courts have been moving away from the idea that one parent needs to be picked over the other. So House Bill 14 serves to formalize what is already happening naturally in many courtrooms.

While House Bill 14 would have a positive impact on many families, other families could face new risks. As is often the case in the law, there are pitfalls for parties who don't come to litigation on equal footing. Many advocates believe these proposed changes will exacerbate them. With a rigorous burden of proof, low-income parents who can't access legal assistance will be unequipped to rebut the shared parenting presumption. Judges aren't able to see the whole picture, especially where one parent's case may be presented by an attorney while the other parent's is not, therefore, it's hard for them to make a true child-focused best interest determination.

Further, parents who are victims of domestic violence at the hands of their co-parent could face devastating power dynamics and fear that make it that much harder to escape the cycle of abuse. Unfortunately, abusers will use the children as tools to continue their control over a victim who has finally escaped the abusive situation. Finally, there is concern that the changes move us away from the traditional "best interest of the child" standard and closer to a "best interest of the parent" mindset.

To address these risks, the bill could include broad and trauma-informed language protecting victims of domestic violence. It can be incredibly difficult to define and measure abuse, and it would be traumatic and inefficient to undertake that determination in a custody hearing. Additionally, the debate surrounding House Bill 14 brings to the fore systemic issues that, if addressed, could mitigate the risks posed by this bill. The courts lack resources for a thorough independent evaluation of the facts in custody proceedings. Access to a [Guardian ad litem](#) who investigates and advocates for the child's best interest is often cost prohibitive, and the fees are

not waived nor are payment plans accepted for low-income litigants.

It could be some time before the sorts of changes proposed in House Bill 14 come to fruition, but the bill catalyzes important conversations. While it's not time for broad community education yet, it can help to begin thinking about what's coming legislatively and frankly, what is already here in many Ohio courts. We will keep our community posted as this bill (or others like it) inevitably become reality.

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