

Point-Counterpoint: Major potential impacts of HB 508

by Managing Attorneys Andrea Burton and John Petit

A bill currently being considered by the Ohio General Assembly could change the lives of parents and children across the state.

House Bill 508, titled “Regards allocation of parental rights and responsibilities,” would shift the way Ohio law handles custody issues -- including cases that have already been decided. And as is often the case, the impacts of this shift could look vastly different for marginalized families -- especially for low-income families of color.

Even within the Legal Aid community, there are different perspectives on what this bill could mean for the families we serve. To understand the complexities of this issue, we offer this points/counterpoint interview with two of our managing attorneys: Andrea Burton and John Petit.

What does HB 508 do?

AB: It would set a standard that equal parenting time would be the norm, without the implication of gender stereotypes ovetop of it. Historically, our society has thought of mothers as natural primary caregivers, and our custody laws have largely reflected that. This bill tries to say, no, both parents, regardless of gender, deserve equal time and decision making power in the lives of their children.

JP: I agree exactly. It also would modify existing law that essentially requires courts to pick one parent over the other when determining custody. These existing laws require a parent (or parents) to prove to the court that shared parenting is best for the children. This bill would turn that around. With this new bill, courts would start

with the presumption that equal parenting time and parental decision making is in the best interest of the child, unless there's evidence that it would be detrimental to the child. It would encourage parents to start from a position of shared time and decision making and would require courts to give reasons if they decide not to allow for a shared model.

How will this bill impact low-income families?

JP: It would have a positive impact for parents who lack resources or who have been viewed traditionally as unworthy of equal time with their children. Historically, fathers have had to fight in court to get equal time and decision making with their kids. In an adversarial court system, parents have to artfully litigate that issue. For fathers who don't have the resources to hire an attorney, that can be difficult, if not impossible, to do. This law would help to level the playing field by giving responsible fathers the presumption of an equal opportunity to be involved in their kids' life. Although fathers have historically had to fight to be on equal footing, the law equally applies to mothers who may be facing an uphill battle to assert the right to shared time and decision making against the other parent who may have used wealth and privilege to gain an unfair advantage with the court.

AB: I think it's a complicated question. The bill would make it so that all courts are on the same baseline when it comes to custody, and that's a good thing, to have uniformity there.

It also would eliminate the bias in existing law against people with children who are unmarried. Under current law, if you are married, the assumption is that you live in the same house and share parenting time and responsibilities. But if you are unmarried, the law assumes that mom is the primary caregiver and will be the best for primary custody/decision making. This bill would eliminate that different treatment.*

There's also a racial component, and we do a disservice by not specifically saying "poor Black families, or poor Hispanic families." When these particular groups of people go to court, our experience shows a bias against giving males equal parenting time. This bill (we think) would eliminate that bias because everyone would start from the same point, regardless of race.

The problem with bills that try to remediate these racial issues is that they often create loopholes that can be exploited. In a case where one parent is rich and holds all the family's resources, it doesn't necessarily mean that that parent is better suited (or suited at all) to be a caring and nurturing parent. It creates a differential power dynamic. And that power dynamic would also be replicated in situations where there is domestic violence. So there may be places where the actual outcomes are counterintuitive to the intent of the bill.

What would this bill mean for Legal Aid clients?

AB: That's a hard question. I have represented mothers and fathers, and I've represented all races. I've also represented victims of domestic abuse, whether physical or emotional.

The issue I see isn't about gender. I hope there is a cultural shift in how we (as a society) view people's ability to parent that often arises because of gender, and I hope this bill and these discussions are the push that makes that happen.

My biggest concern would be for people who are unsafe. People who are abusive could exploit this as a tool over their victims. I've seen countless examples of abusers threatening custody challenges or "taking kids away" as a means of exerting control over their victims. This is especially worrisome when the victim of abuse has a troubling history, such as past drug use, prostitution, or mental health issues, that often stems from their abuser's control over them. This form of manipulation is abusive all on its own and can be re-traumatizing to a survivor.

The other concern I have is that when it comes to custody, the court's focus shouldn't be what's in the best interest of the parents -- it should be what's in the best interest of the child. If shared parenting time is in the best interest of the child, then it isn't detrimental. But in cases where parents want equal time as a way out of paying child support, or who pass the actual day-to-day work of parenting off to another adult (like a grandparent), that's not the intent.

The last thing I'll say here is that this bill has the potential to disrupt thousands of lives in a potentially traumatic way. Because the bill is retroactive, it wouldn't just apply to new custody cases moving forward. Any formerly resolved custody case would be able to be re-opened. Having a mechanism to ensure changes to people's

lives would be as least disruptive as possible would be important. Using transitional shared parenting agreements, for example, would allow parents who haven't had much contact with their children previously to build a relationship with them, rather than just jumping into 50/50 time with an adult they barely know. It also gives the parent the time they need to get acquainted with their child's life: Where is their doctor's office? Do they have an IEP and need extra resources in school? All of these things can cause high anxiety for everyone involved, including the child, it would be important to make sure we're taking the right steps in order for this to be effective.

JP: I do think it would make the road much easier for parents who don't already have parenting time order and want it. It would provide a pathway to get a much more balanced parenting time order than they would have had before.

The nature of family law cases is that each one is different, and so much of the outcome depends on the facts of a particular case. Take a father who has already had substantial time with his child and is simply wanting to formalize his visitation schedule in court. I would say this legislation is good news for that father. He would likely be able to more successfully advocate for shared time based on the change in the law. Rather than having to convince the court that that time would be good for the child, it would be up to the court to make specific findings that it would be detrimental to the child for him to have that time. That's because the court would be starting from the assumption that equal parenting time is the baseline.

But for a father who hasn't had much contact with his child, I don't think it's going to have a substantial impact immediately. Some parents need time to build a relationship with their children and to transition to more of a shared role. And since this bill doesn't really address those transitional periods explicitly, I don't know if it really would help that father until he has established more of a presence in the child's life.

The other way this bill could benefit our clients is by creating a system that starts mothers and fathers on equal footing, regardless of background, economic status, race, ethnicity, or other demographics. Our current system is set up based on implicit biases -- mothers are primary caregivers; wealthy parents are more capable than low-income; white parents are more likely to be involved than parents of color. As an attorney representing fathers, I've witnessed first-hand this bias. When representing white fathers, I've never had opposing counsel suggest that the reason my client has a nice car and dresses well is because he's a drug dealer. But I've had

that happen twice with Black fathers, and both times, those claims were baseless. These are the barriers our clients come up against. And having the law start both parents out on equal footing could help start to level the playing field.

Are there things that could make this bill better for Legal Aid clients?

AB: Emphatically, yes.

(1) The language around what is harmful or helpful to the child: The current standard in existing law for determining custody is what is in the “best interest” of the child. This bill uses different language that presumes shared parenting is in the best interest of the child, unless shared parenting would cause harm to them in some way. The goal shouldn’t be, will equal time with this parent cause the child harm? The goal should be, will equal time with this parent give the child the best opportunity to thrive?

(2) Different standard of proof for victims of domestic abuse: The way this bill lays out proving that shared parenting would be harmful is very high, higher than all other states who have similar custody laws, except for one. This wouldn’t be so problematic if there was a separate caveat for people who have established (or who can establish) that they are a victim of domestic violence. Making it so difficult to prove that domestic violence, child endangerment, or abuse or neglect has occurred is a burden on people who have already been victimized, and can be used as a weapon by their abuser. The language of the bill could be modified so that the standard would be lower for having to prove that these events occurred.

(3) Distinction between equal parenting time and equal decision making: As it stands, the bill speaks about these two things as if they are one in the same. This is great, as long as parents agree on decisions for their child. But what happens when one parent thinks their child should get vaccinated, and the other doesn’t? What happens when one parent signs their child up for football, but the other opposes? Is the court going to have to get involved in every decision in the child’s life? Are the parents going to have to pay for mediation services, because that presents a cost barrier to low-income families. The reality of people’s lives are just much more complicated than that.

(4) Transitional schedules: Include a requirement that courts provide template parenting time schedules, including transitional schedules, that parents can begin working from. Right now, some courts have these available, while others do not. Having these in place would make the process much smoother for families, if this bill is passed.

JP: This is one area that Andrea and I don't fully agree on, although we agree in principle on some of these things.

(1) Best interest and burden of proof: I take almost the opposite view. Why would we think courts are in a better position to make decisions for families than parents are? What I like about this bill is that it would leave the decision power to the parents. I think it should be a high burden for the court to come in and say: We don't think this parent should have the same rights as the other parent. Rather than starting with the presumption that the court needs to pick one parent over the other for custody, this bill would presume that both parents are capable of being caring and nurturing parents. Courts should have a high burden of proof to negate shared parenting, especially when both parents agree to share responsibilities. Now, this is obviously easier when parents agree with each other and gets more complicated when they don't. However, presuming shared parenting is in the best interest of the children unless it is shown to be detrimental feels right and just. The bill has sufficient safeguards to protect parents who are victims of domestic abuse and children from irresponsible parents.

(2) Funding: As Legal Aid advocates, we look at these issues from the perspective of our clients. And our client base has difficulty accessing the court -- and when I say "court," I mean the structures and processes that go along with that. There's often a gap between what wealthy individuals and low-income individuals can access. For example, the court may recommend a guardian be appointed in a custody case. This is an impartial person (usually a lawyer) who interviews all the parties involved and makes recommendations to the court based on what they think is in the best interest of the child. They can often easily construct transitional schedules and address any problems as they arise. But guardians cost money, and many times, our clients don't have the ability to pay for that. So allowing for some funding to cover these types of costs when they arise would be important.

(3) Referencing transitional schedules: Like Andrea said, I think it would be very helpful to have these, especially in cases where there hasn't been a lot of contact

with one parent. Having a requirement of the court to consider this as a pathway for parents to build relationships with their children would be beneficial to all involved.

(4) Affidavits: Current law allows grandparents to act as a caretaker for a child by filing a simple form (affidavit) with the court. This gives them the authority to enroll the child in school or seek medical treatment without having to go to court. Current law does NOT give parents, or in particular, fathers the same consideration. If a child is abandoned or willfully given to a father from the mother, he cannot get them into a new school or doctor until he goes to court. This bill could be improved by addressing this unmet justice gap.

Any closing thoughts you want to share?

JP: We talked a lot about how this bill could impact fathers, but it's not solely a fathers' issue. Roughly a quarter of all of those who come in through our [Parenthood Project](#) are mothers who have lost their custodial rights and are seeking to re-engage with their children, and they are met with pretty fierce resistance fairly often. Under this bill, mothers would enjoy the same presumption of shared parenting as fathers who may be exerting undue influence by their wealth and status. Furthermore, Ohio has 88 counties, and that means there are 88 different domestic relations courts with their own distinct tendencies and biases. Some favor shared parenting more than others. Some treat fathers on a more equal footing than others. Some view minorities in a different light than others. This law will at least require the same starting point of presuming shared parenting and decision making.

AB: Biases are replicated and encouraged by bad legislation. This bill would seek to address that, if done in the right way. Of course, legislation is just one way to do this. Another is to put more people of color in positions of power, in judgeships, as attorneys, guardians ad litem, domestic violence advocates. Legal Aid is always looking to remove racial disparities within our justice system, particularly where children are involved and where there is the potential for the most harm. There is more than one pathway there.

**Note: This would only be true in cases where both parents have established parental rights. As it currently stands, HB 508 would not repeal Ohio's Unwed*

Mothers Law.

You can learn more about the bill, and read the entire current text, [here](#).

See a side-by-side comparison of [how custody laws impact the lives of real Legal Aid clients](#).

This article is part of Legal Aid's ["Big Ideas" series](#).

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