



# OHIO LEGISLATIVE SERVICE COMMISSION

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## Bill Analysis

Niyah Walters

### **H.B. 448**

132nd General Assembly  
(As Introduced)

**Reps.** LaTourette and Boyd, Boggs, Howse, Reineke, Rezabek, K. Smith, West

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### **BILL SUMMARY**

- Permits a person to bring an action to obtain visitation rights with his or her siblings who are minors.
- Permits a minor sibling to bring the sibling visitation action through a parent, guardian, or guardian ad litem and establishes various other requirements regarding the action.
- Establishes factors a court must consider when determining whether to grant sibling visitation rights.
- Requires a juvenile court, public children services agency, or private child placing agency, whenever it has custody of a sibling group, to make reasonable efforts to place siblings together, and if not possible, to make reasonable efforts to ensure the siblings have contact through visitation or other ongoing interaction.
- Permits a sibling to file a motion with the juvenile court to enforce the requirement of reasonable efforts for sibling placement together and of reasonable efforts to permit visitation or other ongoing interaction.
- Provides that adoption does not terminate a sibling relationship and provides that adoption does not restrict or curtail a person's right to bring an action for sibling visitation.
- Provides that, except when parental rights are terminated, denied, or limited in situations in which a child resulted from rape or sexual battery, the termination or divestiture of parental rights does not terminate sibling relationships.

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## CONTENT AND OPERATION

### Introduction

The bill permits a person to bring an action to obtain visitation rights with his or her siblings who are minors. Additionally, the bill makes changes to current law regarding sibling placement by a court or agency and a sibling's rights when parental rights are terminated. The bill also extends the sibling relationship beyond adoption. Under the bill, "sibling" is defined as a person that shares at least one biological or adoptive parent or has been raised in the household as a sibling.<sup>1</sup>

### Action for sibling visitation rights

The bill provides that if a child is (1) placed in temporary custody or permanent custody under Ohio law governing juvenile protection, children in domestic relations actions, and the Uniform Child Custody Jurisdiction and Enforcement Act (R.C. Chapters 2151., 3109., and 3127., respectively) or (2) adopted under Ohio's adoption laws (R.C. Chapter 3107.), the court of common pleas in the county where the minor child resides may grant a sibling visitation rights with the minor child during the child's minority. "Visitation" includes other ongoing interaction that allows siblings to maintain frequent contact.

### Complaint

These visitation rights may be granted if the sibling files a complaint requesting reasonable visitation rights and the court determines that granting visitation rights is in the best interest of the minor child. The bill requires the court to consider all relevant factors, including factors set forth in the bill (discussed below) when determining reasonable sibling visitation rights.

### Minor sibling seeking visitation

If the sibling requesting visitation is also a minor, a parent, guardian, or guardian ad litem may petition the court on the minor's behalf.<sup>2</sup>

### Persons that may be joined as parties to the action

A court may join any of the following as a party to a proceeding for the issuance, modification, or termination of visitation rights for the sibling of a minor child:

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<sup>1</sup> R.C. 2151.411(A).

<sup>2</sup> R.C. 3109.18(C).



- The adoptive parent of the child;
- A person seeking to adopt the child;
- The child who:
  - Has been adopted or whose adoption is being sought; or
  - Is in temporary or permanent custody.
- A sibling of the child who has been adopted, is sought to be adopted, or is in temporary or permanent custody;
- The public children services agency or private child placing agency that has temporary or permanent custody of the child;
- Any person with an interest in the proceeding.<sup>3</sup>

**Deceased-parent visitation action not available**

The bill provides that any person who may be granted sibling visitation rights under the bill cannot be granted visitation rights under current law in situations in which the mother or father is deceased.<sup>4</sup>

**Fee waiver**

Any person who requests sibling visitation rights under the bill may file a motion with the court requesting it to waive all or any part of the costs of the proceedings under the waiver provisions of current law applicable to parenting time and visitation rights in other domestic relations proceedings. If the court determines the person is indigent and the waiver is in the child's best interest, the court may waive the costs.<sup>5</sup>

**Factors considered for reasonable sibling visitation rights**

In determining whether to grant visitation rights to a sibling and in establishing a visitation schedule and determining other visitation matters, the bill requires the court to consider all of the following:<sup>6</sup>

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<sup>3</sup> R.C. 3109.183.

<sup>4</sup> R.C. 3109.11.

<sup>5</sup> R.C. 3109.051(L) and 3109.18(B).

<sup>6</sup> R.C. 3109.181.



- The relationship between the child and the sibling;
- The relationship between each of the child's parents or the person with whom the child is residing and the sibling;
- The time elapsed since the child last had contact with the sibling;
- The effect that visitation will have on the relationship between the child and the child's parents or the person with whom the child is residing;
- If the adoptive parents of the child are divorced or separated, the time sharing arrangement between the parents with regard to the child;
- The good faith of the sibling in filing the complaint;
- The geographical location of the sibling's residence and the distance to the child's residence;
- The age of the child;
- The child's adjustment to home, school, and community;
- If the court has interviewed the child in chambers (using the requirements and procedures under current law applicable to parenting time and visitation rights in other domestic relations proceedings) regarding the wishes and concerns of the child as to visitation by the sibling who requested visitation, as to a specific visitation schedule, or as to other visitation matters, the wishes and concerns of the child, as expressed to the court;
- The health and safety of the child;
- The mental and physical health of all parties;
- The willingness of a sibling to reschedule missed visitation;
- Whether the sibling previously has been convicted of or pleaded guilty to any criminal offense involving any act that resulted in a child being an abused child or a neglected child;
- Whether a sibling, in a case in which a child has been adjudicated an abused child or a neglected child, previously has been determined to be the perpetrator of the abusive or neglectful act that is the basis of the adjudication;



- Whether a sibling previously has been convicted of or pleaded guilty to the offense of domestic violence involving a victim who at the time of the commission of the offense was a member of the family or household that is the subject of the current proceeding;
- Whether a sibling previously has been convicted of an offense involving a victim who at the time of the commission of the offense was a member of the family or household that is the subject of the current proceeding and caused physical harm to the victim in the commission of the offense;
- Whether there is reason to believe that the sibling has acted in a manner resulting in a child being an abused child or neglected child;
- The wishes and concerns of the child's parents, as expressed by them to the court;
- Any other factor in the best interest of the child.<sup>7</sup>

### **Denial of sibling visitation rights**

If the court denies a request for visitation and the complainant to file a written request for findings of fact and conclusions of law, the court must provide them, in writing, in accordance with the Ohio Rules of Civil Procedure.<sup>8</sup>

### **Public Children Services Agency supervision**

Except for supervision by a public children services agency (PCSA) required in domestic violence situations under current law (described below), if the court grants sibling visitation rights, it must not require a PCSA to provide supervision or other services related to the sibling's exercise of visitation rights. However, this limitation does not prevent a juvenile court from issuing orders with respect to children who are alleged or adjudicated to be abused, neglected, or dependent children. Additionally, this limitation does not prevent a common pleas court from issuing orders under current law regarding domestic violence protection orders.<sup>9</sup>

The bill applies current law regarding domestic violence protective orders so that if the petitioner for an order, or child of the petitioner, obtains a protection order, consent agreement, or temporary protection order and is the subject of a sibling

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<sup>7</sup> R.C. 3109.051(C), 3109.18(B), and 3109.181.

<sup>8</sup> R.C. 3109.18; Civ. R. 52, not in the bill.

<sup>9</sup> R.C. 3109.18(E).

visitation order, the court may require the PCSA of the county where the court is located to supervise the sibling's visitation. The court may order PCSA supervision if it finds (1) the child is in danger from the sibling and (2) no other person or agency is available to provide supervision.<sup>10</sup>

### **Contempt for failure to comply with sibling visitation order**

The bill also applies current law in other domestic relations proceedings regarding contempt for failure to comply with parenting time and visitation rights. As a result, if anyone is found in contempt for failing to comply or interfering with a sibling visitation order, the court making the finding may assess court costs for the contempt proceeding against the person found in contempt. The court may also require that person to pay any reasonable attorney's fees of an adverse party. The court may also order reasonable compensatory visitation to the sibling of the child if it is in the child's best interest.<sup>11</sup>

### **Termination or modification of visitation order on adoption**

If a child in the custody of a PCSA or private child placing agency (PCPA) is placed for adoption, the bill requires the agency to provide the court with jurisdiction over the adoption proceedings with a copy of any sibling visitation order regarding the child. The court must conduct a hearing to determine whether to terminate or modify the order using the factors described above under "**Factors considered for reasonable sibling visitation rights.**"<sup>12</sup> But, the bill also provides that a sibling's ability to obtain visitation rights with his or her minor sibling by the action under the bill is not restricted or curtailed by the minor child's adoption.<sup>13</sup>

### **Requirement to place siblings together/provide ongoing interaction**

The bill provides that whenever a child comes into the custody of a juvenile court, PCSA, or PCPA, either as part of a sibling group or after the previous placement of a sibling, the court or agency must make reasonable efforts to place the siblings together, unless it would be against their best interest or well-being. If siblings cannot be placed together, the bill requires the court or agency to make reasonable efforts to ensure the siblings maintain frequent connections through visitation and other ongoing interaction, unless contrary to the siblings' placement or well-being. The bill,

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<sup>10</sup> R.C. 3113.31(E)(6)(a).

<sup>11</sup> R.C. 3109.051(K) and 3109.18(B).

<sup>12</sup> R.C. 3109.182.

<sup>13</sup> R.C. 3107.15(D).

additionally, allows a sibling to file a motion with the juvenile court to enforce the requirements of placement together and ongoing interaction.<sup>14</sup>

Under current law, placement of siblings together and connection through visitation and other ongoing interaction only applies to a PCSA with custody. In addition, current law only provides that the PCSA "is strongly encouraged to make reasonable efforts" to place the siblings together. And, if not placed together, current law provides that the PCSA "should make reasonable efforts to ensure" frequent connections through visitation or other ongoing interaction.<sup>15</sup>

### **Effect of adoption on sibling relationship**

The bill also modifies current law to specify that adoption does not terminate the legal relationship between the adopted person and his or her siblings. Under current law, adoption, in most cases, terminates all legal relationships between the adopted person and the adopted person's relatives so that the adopted person becomes a stranger to the former relatives for all purposes.<sup>16</sup>

### **Effect of parental rights termination on sibling relationship**

The bill provides that, unless parental rights have been terminated, denied, or limited as a result of the child being conceived from a rape or sexual battery, the termination or divesture of parental rights under Ohio law does not terminate sibling relationships.<sup>17</sup>

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## **HISTORY**

<b>ACTION</b>	<b>DATE</b>
Introduced	12-12-17

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<sup>14</sup> R.C. 2151.411(B) and (C).

<sup>15</sup> R.C. 2151.411(B).

<sup>16</sup> R.C. 3107.15(A)(1).

<sup>17</sup> R.C. 3109.90.

