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SUMMARY

Allocation of parental rights and responsibilities

- Establishes a state policy to assure:
 - That minor children have a continuing, full parent-and-child relationship with their parents; and
 - To the greatest degree possible, that parents share equally in parenting time and rights and responsibilities of rearing their children after parents have legally separated, divorced, or dissolved or annulled their marriage or in situations where the mother is unmarried.
- Establishes a rebuttable presumption that a jointly submitted shared parenting agreement for the allocation of parental rights and responsibilities is in the best interest of the child, unless the court finds, by clear and convincing evidence, that the allocation would be detrimental to the child.
- Establishes a rebuttable presumption, in cases where parents do not jointly submit a shared parenting agreement, that equal decision-making rights and responsibilities and equal parenting time are in the best interest of the child, unless shown to be detrimental to the child.

Shared parenting agreements

- Requires the court to encourage parents to jointly submit a shared parenting agreement for the allocation of parental rights and responsibilities.
- Specifies provisions covering all factors relevant to the care of children that must be included in a shared parenting agreement, including physical living arrangements, child support obligations, school placement, and more.
- Identifies factors for the court to consider in rebutting a presumption that a shared parenting agreement is in the best interest of the child, such as the demonstrated ability

of each parent to cooperate with the other parent and any history of child abuse or neglect, spouse abuse, or other domestic violence-related offenses.

- Requires the court, if it determines that a presumption is rebutted, to order the parents to make appropriate changes to remedy the court's objections.
- Requires the court to approve a shared parenting agreement if it is not rebutted or if the parents jointly submit changes to meet the court's objections to the agreement.
- Requires an approved shared parenting agreement to be incorporated into a shared parenting order, which must be issued at the same time as, and appended to, a final decree of dissolution, divorce, annulment, or legal separation.
- Requires a shared parenting order to take immediate effect on the date that it is issued, subject to modification or termination under the bill's provisions.

Parental rights and responsibilities orders

- Requires the court to issue a parental rights and responsibilities order when the parents have not entered into a shared parenting agreement or when the court objects to a shared parenting agreement and the court's objections are not remedied.
- Creates a rebuttable presumption that equal decision-making rights and responsibilities and equal parenting time in a parental rights and responsibilities order is in the best interest of the child, unless the court finds by clear and convincing evidence that the arrangement would be detrimental to the children.
- Requires the parent who objects to a presumption to bear the burden of proof that the arrangement would be detrimental to the children.
- Identifies factors for the court to consider in rebutting a presumption that equal decision-making responsibilities and equal parenting time are in the best interest of the child.
- Requires the court, if the presumption of equal decision-making rights and responsibilities is rebutted, to:
 - Issue an order designating one parent as the residential parent and legal custodian of the child; and
 - Allocate most of the decision-making rights and responsibilities to the parent who has demonstrated a greater willingness to cooperate with the other parent.
- Requires the court, if the presumption of equal parenting time is rebutted, to:
 - Issue an order allocating parental rights and responsibilities with unequal parenting time in accordance with its determination;
 - Award the majority of parenting time to the parent more likely to honor and facilitate parenting time for the other parent, if the court determines that one parent has interfered with or continuously and willfully denied parenting time to the other parent; and

- Construct a parenting time schedule with the child that is consistent with the child's welfare.
- Requires the court, if neither presumption has been rebutted, to issue an order allocating both equal decision-making rights and responsibilities, with both parents designated as the residential parent and legal custodian of the child, and equal parenting time.
- Requires the court, if one presumption is rebutted but the other is not, to allocate the nonrebutted presumption equally.

Modification and termination of orders

- Allows one or both parents under a shared parenting order or parental rights and responsibilities order to file a motion for the order to be modified or terminated.

Shared parenting orders

- Requires the court to issue a modified shared parenting order incorporating a modified shared parenting agreement if both parents under the order agree to a modification of the agreement and jointly file a motion for modification, provided that the modified agreement is not detrimental to the child.
- Requires the court to dismiss a motion for modification of a shared parenting agreement if the court finds the modified agreement to be detrimental to the child.
- Allows a court to do one of the following when: (1) one parent files a motion for modification of the shared parenting agreement or if both parents file separate motions for modifications, and (2) based on facts that have arisen that were unknown to the court, a change in circumstances has occurred for the child or parents:
 - If the court determines that the requested changes to the shared parenting agreement are not detrimental to the child → issue a modified shared parenting order that incorporates the modified agreement.
 - If the court determines that the requested changes *are* detrimental and the existing plan is not detrimental to the child → dismiss the motion to modify the shared parenting order.
 - If the court determines that the requested changes to the agreement *are* detrimental and the existing plan is *also* detrimental to the child → terminate the existing shared parenting order.
- Allows the court to terminate a shared parenting order on the motion of one or both parents if the court determines either:
 - The shared parenting agreement incorporated into the order is detrimental to the child; or
 - One parent demonstrates a pattern of willfully creating conflict in an attempt to disrupt a current or pending shared parenting agreement, the court determines by a preponderance of evidence that it is unable to enter into a shared parenting order

- that will reduce conflict, and the disruptive behavior is a material change in circumstances.
- Requires the court to issue a parental rights and responsibilities order if a shared parenting order is terminated because:
 - One parent has requested modification and the court concluded that both the requested modification and the existing shared parenting plan are detrimental; or
 - One or both parents file a motion for termination and the court determines that the shared parenting agreement is detrimental to the child.
 - Requires the court to issue a parental rights and responsibilities order with the nondisruptive parent as the residential parent and legal custodian of the child if a shared parenting order is terminated because one or both parents file a motion for termination and the court determines that one parent has willfully disrupted an agreement.

Parental rights and responsibilities orders

- Allows both parents under a parental rights and responsibilities order to jointly motion the court to modify the order as a shared parenting order, subject to the provisions governing shared parenting agreements.
- Allows a court to make modifications when one parent files a motion or both parents file separation motions requesting modifications of a parental rights and responsibilities order if it determines:
 - The order is detrimental to the child; and
 - Based on facts that have arisen since the prior order that were unknown to the court, a change in circumstances has occurred to the child or parents.

Other allocation provisions

- Allows parents to request a temporary allocation of parental rights and responsibilities in accordance with the state policy and the bill's presumptions.
- Requires the court to designate one of the parents' residences in an order to serve as the child's home for purposes of receiving public assistance or establishing a school district of residence.
- Requires the court to take certain factors into consideration when determining whether to award parenting time or temporary custody to a putative father when a parent and child relationship has not yet been established.

Parenting time and companionship and visitation

- Requires a court to issue a parenting time order if only one parent is designated the residential parent and legal custodian of the child, unless the court finds by clear and convincing evidence that it would be detrimental to the child.

- Requires the court, when determining whether to grant companionship or visitation to a grandparent or any other person related to the child, to determine that granting such rights would not be detrimental to the child.
- Creates a presumption that equal parenting time is in the best interest of the child, when the mother is unmarried and the father requests parenting time.
- Provides that, when a court must state its findings of fact and conclusions of law in writing in response to denials of parenting time and companionship and visitation, it must do so in accordance with Rule 53 of the Ohio Rules of Civil Procedure, if applicable.

Requirements for courts

- Requires each court of common pleas to adopt rules on standard parenting time guidelines, subject to the state policy and the presumption that equal parenting time is in the best interest of the child.
- Requires each court that issues various custody orders to compile an annual report of data regarding the division of parenting time, as tracked by overnight stays with a parent.

Miscellaneous

- Requires orders allocating parental rights and responsibilities, parenting time orders, and companionship or visitation orders under existing law to remain in effect upon the bill's enactment, but to be enforced and modified in accordance with the bill's provisions.
- Recodifies existing law regarding parental rights and responsibilities, parenting time, and companionship and visitation in the domestic relations context.

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DETAILED ANALYSIS

Overview

The purpose of the bill is to establish as the default in cases regarding the allocation of parental rights and responsibilities, equal decision-making responsibility and equal time spent with the child between each parent, when the parents do not submit an agreed upon parenting

plan. The allocation of parenting responsibilities is required in a divorce, dissolution, annulment, or legal separation proceeding.

Under the bill, a shared parenting plan for the custody and care of children that the parents jointly submit is rebuttably presumed to be in the best interest of the child and must be approved by the court, unless it is shown to be detrimental to the child. If no agreement exists, there is a rebuttable presumption that equal decision-making responsibilities and equal parenting time are in the best interest of the child and must be allocated accordingly, unless it is shown to be detrimental to the child.

Allocation of parental rights and responsibilities

State policy

The bill establishes a state policy to assure:

- That minor children have a continuing, full parent-and-child relationship with their parents; and
- To the greatest degree possible, that parents share equally in parenting time and rights and responsibilities of rearing their children after parents have legally separated, divorced, or dissolved or annulled their marriage or in situations in which the mother is unmarried.¹

Allocation of parental rights and responsibility in accordance with state policy

The bill requires the court to allocate parental rights and responsibilities for the care of the minor children in a marriage upon hearing the parents' testimony and considering any mediation report in any divorce, legal separation, or annulment proceeding and in any proceeding pertaining to the allocation of parental rights and responsibilities for the care of a child. Except when the court determines that neither parent is suitable to have custody, the court must allocate parental rights and responsibilities for the care of the children in accordance with the state policy and in a way that promotes the best interest of the children.²

Existing law also requires the court to allocate parental rights and responsibilities upon hearing the parents' testimony and considering any mediation report. But, the bill repeals existing law provisions for determining when to allocate these rights and responsibilities to one or both parents. Under this repealed law, a court allocates parental rights and responsibilities to *one* parent, in a manner that is consistent with the best interest of the child, if:

- Neither parent files a pleading or motion requesting the court to grant both parents shared parental rights and responsibilities for the care of the children;

¹ R.C. 3109.044.

² R.C. 3109.045(A).

- At least one parent files a pleading or motion but did not file a plan for shared parenting; or
- At least one parent files both a pleading or motion and a shared parenting plan but no shared parenting plan is in the best interest of the child.³

Also, the court allocates parental rights and responsibilities to *both* parents and issues a shared parenting order requiring the parents to share all or some of the aspects of the physical and legal care of the children in accordance with an approved parenting plan if:

- At least one parent files a pleading or motion requesting the court to grant both parents shared parental rights and responsibilities and a shared parenting plan; and
- Shared parenting is in the best interest of the child and approved by the court.⁴

The bill also repeals existing law procedures and requirements for filing, determining, modifying, and terminating shared parenting decrees and orders under this existing law scheme.⁵

Under the bill, the court may allocate parental rights and responsibilities in either: (1) a shared parenting order, or (2) a parental rights and responsibilities order.⁶

Shared parenting orders

Shared parenting agreements

In any divorce, legal separation, or annulment proceeding and in any proceeding pertaining to the allocation of parental rights and responsibilities for the care of a child, the bill allows the parents of a child to jointly make and file with the court a shared parenting agreement for the allocation of parental rights and responsibilities.⁷ In fact, the court is required to encourage the parents to jointly submit such a shared parenting agreement.⁸ Joint submission is permitted under current law, along with separate submission by either or both parents, of a shared parenting plan. The bill eliminates the separate submission option and requires the plan to be an agreement.⁹

The bill defines “shared parenting” to mean when the parents share all or some of the aspects of physical and legal care of their children. A shared parenting order is either:

³ R.C. 3109.04(A)(1), as it appears in existing law.

⁴ R.C. 3109.04(A)(2), as it appears in existing law.

⁵ R.C. 3109.04(D)(1), (E), and (G).

⁶ R.C. 3109.045(C).

⁷ R.C. 3109.046.

⁸ R.C. 3109.045(B).

⁹ R.C. 3109.046; R.C. 3109.04(G), as it appears in existing law.

1. An order allocating parental rights and responsibilities for the care of the children as shared parenting that is issued or modified under the bill's provisions; or
2. An order allocating parental rights and responsibilities for the care of a child issued under existing law that is a decree or order for shared parenting.¹⁰

Required provisions

The bill requires a shared parenting agreement to include provisions covering all factors that are relevant to the care of the children, including, but not limited to the following:

- Physical living arrangements;
- Child support obligations;
- Provision for the children's medical and dental care;
- School placement;
- The parent with which the children will be physically located during legal holidays, school holidays, and other days of special importance.¹¹

These provisions are identical to the ones that must be included under existing law for a shared parenting plan.¹²

Shared parenting agreement presumed to be in the child's best interest

The bill creates a rebuttable presumption that if the parents agree on the terms in a shared parenting agreement to be incorporated into a shared parenting order (see "**Incorporation of an approved agreement into shared parenting order**," below), as originally issued or as modified, the agreement is in the best interest of the children, unless the court finds, by clear and convincing evidence, that the allocation would be detrimental to the children.¹³

Rebutting the presumption

In determining whether this best-interest presumption is rebutted, the bill requires the court to consider all relevant factors, including:

- The demonstrated ability of each parent to cooperate with the other parent and to encourage the sharing of love, affection, and contact between the child and the other parent.
- Any history of child abuse or neglect, spouse abuse, other domestic violence, or parental kidnapping by either parent, including:

¹⁰ R.C. 3109.04(B)(5) and (6).

¹¹ R.C. 3109.047.

¹² R.C. 3109.04(G), as it appears in existing law.

¹³ R.C. 3109.0410.

- Whether either parent or any member of the household of either parent 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 either parent, 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 an adjudication;
 - Whether either parent or any member of the household of either parent previously has been convicted of or pleaded guilty to criminal domestic violence or a sexually oriented 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;
 - Whether either parent or any member of the household of either parent previously has been convicted of or pleaded guilty to any 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; and
 - Whether there is reason to believe that either parent has acted in a manner resulting in a child being an abused child or a neglected child.
- The mental and physical health of all persons involved in the situation.¹⁴

The best interest factors here and elsewhere in the bill, as they relate to rebutting the bill's presumptions when allocating parental rights and responsibilities, are based on existing law factors for determining the best interest of the child when allocating parental rights and responsibilities and determining whether to grant shared parenting (see "**Rebutting the presumption of equal decision-making responsibilities**" and "**Rebutting the presumption of equal parenting time**" under "**Parental rights and responsibilities orders**," below).¹⁵

If a presumption is rebutted

If the court determines by clear and convincing evidence that the presumption that a shared parenting agreement is in the best interest of the child is rebutted, the court must require the parents to make appropriate changes to the plan or any part of the plan to meet the court's objections to it, unless the court determines that neither parent is suitable to be allocated parental rights and responsibilities.¹⁶ Under existing law, recodified but unchanged by the bill, if the court finds that it is in the best interest of the child for neither parent to be

¹⁴ R.C. 3109.0411.

¹⁵ R.C. 3109.05(F)(1) and (2), as they appear in existing law.

¹⁶ R.C. 3109.0412(A).

designated the residential parent and legal custodian of the child, it may commit the child to a relative or certify a copy of its findings to the juvenile court for further proceedings.¹⁷

If the parents jointly submit changes to the plan that meet the court's objections, the court must approve the plan.¹⁸ But, if the court determines that the changes to the plan do not meet the court's objections, or if the parents attempt to make changes to the plan to meet the court's objections but the court determines that the new plan or any part of it still does not meet the court's objections, the court must proceed as if no parenting agreement has been filed (see "**Parental rights and responsibilities orders**," below).¹⁹

If a presumption is not rebutted

The bill requires a court to approve a shared parenting agreement if the presumption has not been rebutted.²⁰

Incorporation of an approved agreement into shared parenting order

Upon approval, the bill requires a shared parenting agreement to be incorporated into a shared parenting order. The order must be issued at the same time as, and appended to, the final decree of dissolution, divorce, annulment, or legal separation arising out of the action out of which the question of the allocation of parental rights and responsibilities arose.²¹

Effective date of shared parenting order

The bill prohibits the issuance of a provisional order related to any shared parenting agreement that the court approves. A shared parenting order takes immediate effect as a final order on the date that it is issued, subject to modification or termination under the bill's provisions (see "**Shared parenting orders**" under "**Modification and termination of orders**," below).²²

Parental rights and responsibilities orders

When the parents have not entered into a shared parenting agreement, with the intent of having it incorporated into an original order, or a modified decree or order, to allocate parental rights and responsibilities, the bill requires the issuance of a parental rights and responsibilities order. The bill defines a parental rights and responsibilities order as either:

¹⁷ R.C. 3109.0435; R.C. 3109.04(D)(2), as it appears in existing law.

¹⁸ R.C. 3109.0412(B).

¹⁹ R.C. 3109.0412(C).

²⁰ R.C. 3109.0413(A).

²¹ R.C. 3109.0413(B).

²² R.C. 3109.0413(C). A technical amendment is needed to replace "as authorized by this section" with the appropriate cross-references to the sections relating to modification or termination of a shared parenting order.

1. An order issued or modified under the bill's provisions governing parental rights and responsibilities orders; or
2. An order allocating parental rights and responsibilities for the care of a child issued under existing law that is *not* a decree or order for shared parenting.²³

The bill creates a rebuttable presumption that equal decision-making rights and responsibilities (with both parents remaining legal custodians and residential parents) and equal parenting time, is in the best interest of the children. Both presumptions are rebutted only if the court finds by clear and convincing evidence that the arrangement in question would be detrimental to the children, based on factors that the bill provides. If a parent objects to either presumption, that parent bears the burden of proof that the arrangement would be detrimental to the children. If the court finds that the presumption rebutted, it must issue findings of fact and conclusions of law supporting the determination.²⁴

The bill defines "decision-making rights and responsibilities" or "decision-making responsibilities" as the ability to determine aspects of the child's life, including the right and duty to protect, train, and discipline the child and decisions regarding food, living conditions, education, and medical care.²⁵ The bill defines "parenting time" as the time that a child is physically located with, and under the care, responsibility, tutelage, and protection of a parent.²⁶

Rebutting the presumption of equal decision-making responsibilities

In determining whether the presumption of equal decision-making rights and responsibilities between the parents, with both parents remaining legal custodians and residential parents, is rebutted, the court must consider all relevant factors, including:

- The demonstrated ability of each parent to cooperate with the other parent and to encourage the sharing of love, affection, and contact between the child and the other parent.
- Any history of child abuse or neglect, spouse abuse, other domestic violence, or parental kidnapping by either parent, including:
 - Whether either parent or any member of the household of either parent 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;

²³ R.C. 3109.04(B)(2).

²⁴ R.C. 3109.0420.

²⁵ R.C. 3109.04(A)(2).

²⁶ R.C. 3109.04(B)(3).

- Whether either parent, 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 an adjudication;
 - Whether either parent or any member of the household of either parent previously has been convicted of or pleaded guilty to criminal domestic violence or a sexually oriented 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;
 - Whether either parent or any member of the household of either parent previously has been convicted of or pleaded guilty to any 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; and
 - Whether there is reason to believe that either parent has acted in a manner resulting in a child being an abused child or a neglected child.
- The mental health of all persons involved in the situation.
 - The recommendation of the guardian ad litem of the child, if the child has a guardian ad litem, provided that the court does not rely on that recommendation as the sole basis for its determination and the recommendation is subject to the state policy.²⁷

Rebutting the presumption of equal parenting time

In determining whether the presumption of equal parenting time is rebutted, the court must consider all relevant factors, including:

- Any history of child abuse, spouse abuse, other domestic violence, or parental kidnapping by either parent, including:
 - Whether either parent or any member of the household of either parent 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 either parent, 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 an adjudication;
 - Whether either parent or any member of the household of either parent previously has been convicted of or pleaded guilty to a violation of criminal domestic violence or a sexually oriented 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;

²⁷ R.C. 3109.0421.

- Whether either parent or any member of the household of either parent previously has been convicted of or pleaded guilty to any 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; and
- Whether there is reason to believe that either parent has acted in a manner resulting in a child being an abused child or a neglected child.
- The geographic proximity of the parents to each other at the time of initial filing, as the proximity relates to the practical considerations of parenting time and whether a parent has relocated to impede equal parenting time.
- If the court has interviewed the child in chambers regarding the child's wishes and concerns as to the allocation of parental rights and responsibilities, the wishes and concerns of the child, as expressed to the court.
- The child's interaction and interrelationship with the child's parents, siblings, and any other person who has a significant relationship with the child.
- The child's adjustment to the child's home, school, and community.
- The mental and physical health of all persons involved in the situation.
- Whether a parent has continuously and willfully interfered with or denied the other parent's right to parenting time in accordance with an order of the court.
- Whether either parent has established a residence, or is planning to establish a residence, outside this state.
- The recommendation of the guardian ad litem of the child, if the child has a guardian ad litem, provided that the court does not rely on the recommendation as the sole basis for its determination and the recommendation is subject to the state policy.²⁸

If presumption of equal decision-making rights is rebutted

If the court determines by clear and convincing evidence that the presumption regarding equal decision-making rights and responsibilities is rebutted, the bill requires the court to:

1. Issue an order designating one parent as the residential parent and legal custodian of the child; and
2. Allocate most of the decision-making rights and responsibilities to the parent who has demonstrated a greater and consistent willingness to cooperate with the other parent and to encourage the sharing of love, affection, and contact between the child and other parent.²⁹

²⁸ R.C. 3109.0422.

If the court determines the equal decision-making presumption is rebutted, but does not determine that the equal parenting time presumption is rebutted, the court must still award equal parenting time.³⁰

If presumption of equal parenting time is rebutted

If the court determines by clear and convincing evidence that the presumption regarding equal parenting time is rebutted, the bill requires the court to:

1. Issue an order allocating parental rights and responsibilities with unequal parenting time in accordance with its determination;

2. If the court determines that one parent has interfered with or continuously and willfully denied the other parent's right to parenting time in accordance with an order of the court, award the majority of parenting time to the parent more likely to honor and facilitate parenting time for the other parent or visitation and companionship for others, unless the court finds by clear and convincing evidence that this arrangement would be detrimental to the child for other reasons (see "**Rebutting the presumption of equal parenting time,**" above); and

3. Construct a parenting time schedule with the child that is consistent with the child's welfare.³¹

If the court determines the equal parenting time presumption is rebutted, but does not determine that the equal decision-making rights and responsibilities presumption is rebutted, the court must still award equal decision-making rights and responsibilities.³²

If neither presumption is rebutted

If neither presumption has been rebutted, the court must issue an order allocating both equal decision-making responsibilities, with both parents being designated as the residential parent and legal custodian of the child, and equal parenting time.³³

Modification and termination of orders

The bill repeals existing law governing modification and termination of decrees allocating parental rights and responsibilities and instead allows one or both parents under a shared parenting order or parental rights and responsibilities order to file a motion requesting that the order be modified or terminated.³⁴

²⁹ R.C. 3109.0424(A).

³⁰ R.C. 3109.0424(B).

³¹ R.C. 3109.0425(A).

³² R.C. 3109.0425(B).

³³ RC. 3109.0426.

³⁴ R.C. 3109.0438; R.C. 3109.04(E), as it appears in existing law.

Shared parenting orders

Modification when parents agree

If both parents under a shared parenting order agree to a modification of the shared parenting agreement that was incorporated into the order and jointly file a motion requesting the modification, the court must issue a modified shared parenting order incorporating the modified agreement, as long as the modified agreement is not detrimental to the child based on the factors for rebutting a presumption under a shared parenting order (see “**Rebutting the presumption**” under “**Shared parenting orders**,” above). If, based on those factors, the court finds the modified agreement to be detrimental, it must dismiss the motion.³⁵

Modification when parents do not agree

If: (1) one parent under a shared parenting order files a motion requesting modification of the shared parenting agreement that was incorporated into the order or if both parents file separate motions requesting modifications, and (2) based on facts that have arisen that were unknown to the court at the time that the existing order was issued, a change has occurred in the circumstances of the child, the child’s residential parent, or either parent, the court may do any of the following:

- If the court determines that the requested changes to the agreement are *not* detrimental to the child → issue a modified shared parenting order that incorporates the modified agreement;
- If the court determines that the requested changes to the agreement *are* detrimental to the child and the existing plan is *not* detrimental to the child → dismiss the motion to modify the shared parenting order;
- If the court determines that the requested changes to the agreement *are* detrimental to the child and the existing plan is *also* detrimental to the child → terminate the existing shared parenting order.

In all three circumstances, the court must determine whether the requested changes or existing plan is detrimental based on the factors for rebutting a presumption under a shared parenting order (see “**Rebutting the presumption**” under “**Shared parenting orders**,” above).³⁶

Termination

A court may terminate a shared parenting order on the motion of one or both parents if the court determines either:

³⁵ R.C. 3109.0439(A).

³⁶ R.C. 3109.0439(B).

- The shared parenting agreement incorporated into the order is detrimental to the child, based on the factors for rebutting a presumption under a shared parenting order (see **“Rebutting the presumption”** under **“Shared parenting orders,”** above); or
- One parent demonstrates a pattern of willfully creating conflict in an attempt to disrupt a current or pending shared parenting arrangement and the court determines, by a preponderance of evidence, that:
 - It is unable to enter a shared parenting order that will reduce the conflict that the disruptive parent is causing; and
 - The disruptive behavior is a material change in circumstances.³⁷

If a shared parenting order is terminated either because: (1) one parent has requested a modification and the court concluded that both the requested modification and the existing plan are detrimental (see third bullet under **“Modification when parents do not agree,”** above) or (2) one or both parents file a motion for termination and the court determines that the shared parenting agreement incorporated into the order is detrimental to the child (see first bullet under this subheading), the court must issue a parental rights and responsibilities order for the care of the child based on the provisions governing these orders (see **“Parental rights and responsibilities orders,”** above) as if no shared parenting order had been issued.³⁸

If a shared parenting order is terminated because one or both parents file a motion for termination and the court determines that one parent has demonstrated a pattern of willfully creating conflict in an attempt to disrupt a shared parenting arrangement (see second bullet under this subheading), the court must issue a parental rights and responsibilities order that designates the nondisruptive parent as the residential parent and legal custodian of the child. This is based on the criteria for rebutting presumptions for equal decision-making responsibilities or equal parenting time and issuing a court order upon either presumption being rebutted under a parental rights and responsibilities order (see **“Parental rights and responsibilities orders,”** above).³⁹

Parental rights and responsibilities orders

Modification when parents agree

The bill allows both parents under a parental rights and responsibilities order to jointly file a motion requesting the court to modify the order as a shared parenting order. The motion must include a shared parenting agreement that meets the bill’s requirements (see **“Required provisions”** under **“Shared parenting agreements,”** above). When

³⁷ R.C. 3109.0440.

³⁸ R.C. 3109.0441(A).

³⁹ R.C. 3109.0441(B).

determining whether to grant the motion and issue a shared parenting order, the court must comply with the provisions governing shared parenting agreements.⁴⁰

Modification when parents do not agree

If one parent under a parental rights and responsibilities order files a motion requesting modification of the order, or if both parents file separate motions requesting modifications of the order, the court may make modifications if it determines:

- The order is detrimental to the child based on the factors to rebut the presumption of equal decision-making responsibilities or equal parenting time under a parental rights and responsibilities order; and
- That, based on facts that have arisen since the prior order that were unknown to the court at the time of the prior order, a change has occurred in the circumstances of the child, the child's residential parent, or either parent subject to the order.⁴¹

The bill allows a court to approve only modifications that are consistent with the state policy and the provisions governing a parental rights and responsibilities order, if either equal decision-making responsibility or equal parenting time is rebutted.⁴²

Repeal of provisions regarding interpretation of custody

The bill repeals provisions of law clarifying the interpretation of custody and parental designations in orders allocating parental rights and responsibilities before and after April 11, 1991.⁴³

Temporary orders

In accordance with the state policy, the bill provides that if both parents jointly request the terms of a temporary allocation of parental rights and responsibilities, the court must incorporate those terms into the temporary order, unless it finds by clear and convincing evidence that it would be detrimental to the child.⁴⁴

If the parents do not agree on the terms of a temporary allocation but one parent requests equal parenting time or equal decision-making responsibilities, the court must honor the request in the temporary order, unless it finds by clear and convincing evidence that it would be detrimental to the child. If either parent objects to the equal parenting time or equal decision-making responsibilities, that parent bears the burden of proof that equal parenting time or decision-making responsibilities would be detrimental to the child. If the court determines by clear and convincing evidence that equal parenting time or decision-making

⁴⁰ R.C. 3109.0443.

⁴¹ R.C. 3109.0442(A).

⁴² R.C. 3109.0442(B).

⁴³ R.C. 3109.04(L)(1) - (4), as they appear in existing law.

⁴⁴ R.C. 3109.0436(B)(1).

responsibilities would be detrimental to the child, it must issue findings of fact and conclusions of law supporting the determination.

If either parent objects as described above and requests to be designated the residential parent and legal custodian of the child, the court may grant the request. In such case, the court must issue findings of fact and conclusions of law supporting that designation.⁴⁵

Designation of child's home

The bill specifies that if the court issues an order allocating parental rights and responsibilities and it is necessary for the purpose of receiving public assistance or establishing the school district of residence, the court must designate which one of the parents' residences is to serve as the child's home for that purpose. This designation does not affect the child's residency for any other purpose, a parent's status as a legal custodian of the child or, a parent's status as a residential parent for any other purpose.⁴⁶ These provisions are similar to existing law, except that existing law does not specify that these designations do not affect the child's residency for other purposes.⁴⁷

Granting rights to a putative father

Under the bill, if a parent-and-child relationship has not already been established under existing parentage laws, the court must take into consideration when determining whether to award parenting time or temporary custody to a putative father any of the following:

- That the putative father is named on the child's birth record;
- That the child has the putative father's last name;
- There is a clear pattern of a parent-child relationship between the child and putative father.

Existing law allows, but does not require, the court to take these factors into consideration.⁴⁸

Parenting time and companionship and visitation

Parenting time changes

The bill makes some changes to the law regarding the issuance of parenting time orders. Under the bill, a "parenting time order" is defined as an order issued under the existing law governing the issuance of parenting time orders, which has been recodified by the bill, with only the changes described below.⁴⁹ The bill repeals the existing law definition of a "parenting

⁴⁵ R.C. 3109.0436(B)(2).

⁴⁶ R.C. 3109.0414.

⁴⁷ R.C. 3109.04(A)(2), (L)(6), and (L)(7), as they appear in existing law.

⁴⁸ R.C. 3109.0436(C).

⁴⁹ R.C. 3109.04(B)(4) and 3109.0451.

time order” as an order establishing the amount of time that a child spends with the parent who is not the residential parent or the amount of time that the child is to be physically located with a parent under a shared parenting order.⁵⁰

First, under the bill, a court only can issue a parenting time order if a shared parenting order or parental rights and responsibilities order, under which both parents are the residential parent and legal custodian of the child, has not been issued. Under current law, a court can issue a parenting time order only when the court has not issued a shared parenting decree.

Second, the bill requires the court to make a just and reasonable order permitting each parent who is not the residential parent to have parenting time with the child at the time and under the conditions that the court directs, unless the court finds by clear and convincing evidence that it would be detrimental to the child, based on existing law factors for determining whether parenting time or companionship or visitation is detrimental to the child, recodified by the bill. Under existing law, the court must do this unless the court determines that it would not be in the best interest of the child to permit that parent to have parenting time with the child.⁵¹

Third, the bill also repeals a provision regarding parenting time orders issued before April 11, 1991. This provision governs when a parent who is granted parenting time under such dated order may or may not receive a notice of relocation if it is determined that the nonresidential parent has been convicted of or pleaded guilty to various specified domestic violence and related offenses against a family or household member.⁵²

Fourth, the bill repeals a requirement that, if a party makes a written request for findings of fact and conclusions of law, the court must issue the same when it denies a request for parenting time. Instead, the court must make such written findings and conclusions upon denial, without a request to do so.⁵³

Companionship or visitation changes

The bill defines a "companionship or visitation order" as an order that is issued under the existing law section governing the issuance of companionship or visitation orders, recodified by the bill, with only the changes described below.⁵⁴ The bill provides that, when determining whether to grant companionship or visitation to a grandparent or any other person related to the child, the court must determine that granting such rights would not be detrimental to the child, based on existing law factors for determining whether to grant

⁵⁰ R.C. 3109.051(O)(4), as it appears in existing law.

⁵¹ R.C. 3109.0451; R.C. 3109.051(A), as it appears in existing law.

⁵² R.C. 3109.051(G)(3), as it appears in existing law.

⁵³ R.C. 3109.0466(A); R.C. 3109.051(F)(1), as it appears in existing law.

⁵⁴ R.C. 3109.04(B)(1).

companionship or visitation or parenting time, among other requirements. Existing law instead requires a determination that granting such rights is in the best interest of the child.⁵⁵

The bill also repeals a requirement that, if a party makes a written request for findings of fact and conclusions of law, the court must issue the same when it denies a request for companionship or visitation. Instead, the court must make such written findings and conclusions upon denial, without a request to do so.⁵⁶

When the mother is unmarried

The bill makes changes to the laws governing parenting time orders and companionship or visitation orders when the mother is unmarried.

The first change is the repeal of the provision that allows a court to grant parenting time or companionship and visitation rights if it determines that granting it is in the best interest of the child. Instead, the bill creates a presumption that equal parenting time is in the best interest of the child, subject to the factors for determining whether parenting time orders are in the best interest of the child and other provisions governing parenting time, including the consideration of mediation reports, interviewing a child regarding the child's wishes, indigent parents, and the effect of remarriage. All of these considerations are in existing law and have been recodified by the bill.

Second, the bill removes "reasonable" from references to the granting of "reasonable parenting time" to the father, based on the presumption of equal parenting time between the mother and father being in the best interest of the child.

Third, the bill repeals a requirement that, if a party makes a written request for findings of fact and conclusions of law, the court must issue the same when it denies a request for parenting time or companionship or visitation. Instead, the court must make such written findings and conclusions upon denial, without a request to do so.⁵⁷

Civil Rule 53

The bill adds that when a court must state its findings of fact and conclusions of law in writing in response to denials in all cases addressing parenting time and companionship and visitation, it must do so in accordance with Civil Rule 53, if applicable, in addition to Civil Rule 52; existing law requires this action to be taken in accordance with Civil Rule 52 only. Rule 53 of the Ohio Rules of Civil Procedure governs various requirements for magistrates, including their appointment, compensation, scope of authority, and governance of proceedings that are referred to them.⁵⁸

⁵⁵ R.C. 3109.0452(A)(3); R.C. 5109.051(B)(1)(c), as it appears in existing law.

⁵⁶ R.C. 3109.0466(A); R.C. 3109.051(F)(1), as it appears in existing law.

⁵⁷ R.C. 3109.12.

⁵⁸ R.C. 3109.0466(A), 3109.11, and 3109.12(D); Ohio R. Civ. Pro. 53; R.C. 3109.051(F)(1) and 3109.012(B), as they appear in existing law.

Requirements for courts

Adoption of parenting time guidelines

The bill requires each court of common pleas to adopt rules on standard parenting time guidelines, subject to the state policy and the presumption that equal parenting time is in the best interest of the child. The bill grants the court discretion to deviate from its guidelines based upon the factors governing the issuance of parenting time and companionship and visitation orders under existing law, which are recodified, but unchanged by the bill.⁵⁹

The bill repeals an existing law provision that required each court of common pleas to adopt rules regarding standard parenting time guidelines on or before July 1, 1991.⁶⁰

Parenting time reports

The bill requires each court that issues various orders to compile an annual report of data regarding the division of parenting time, as tracked by overnight stays with a parent. This requirement applies to courts that issue an order in any of the following:

- Proceedings allocating parental rights and responsibilities of children in a divorce, dissolution, or legal separation;
- Proceedings for child support;
- Proceedings allocating parenting time or companionship or visitation when the mother is unmarried;
- Any other proceeding in which the parents agreed to a judgment by the court with regard to time that a parent spends with a child.

This report must identify the type of case involving parenting time, such as a shared parenting order, parental rights and responsibilities order, or a parenting time order. The report must also track the number of cases of agreed judgment entries that were contested and ordered by the court. The report must not contain personally identifiable information. The court must publish this data on the court's website or otherwise make it publicly available, upon request.⁶¹

Transition provisions

The bill contains transitional provisions that address orders allocating parental rights and responsibilities, parenting time orders, and orders for companionship and visitation under

⁵⁹ R.C. 3109.0466(B).

⁶⁰ R.C. 3109.051(F)(2), as it appears in existing law.

⁶¹ R.C. 3109.0485. A technical amendment is needed to this section to clarify that proceedings under R.C. 3109.12, and other proceedings in which the parents agreed to a judgment by the court with regard to time that a parent spends with a child, are not necessarily proceedings "allocating parental rights and responsibilities of children."

existing law. Under the bill, these orders that were issued under existing law will remain in effect upon the bill's enactment, but must be enforced and modified in accordance with the bill's provisions.⁶²

Recodification

The bill recodifies existing law regarding parental rights and responsibilities, parenting time, and companionship and visitation in the domestic relations context. The following table shows the new organization and includes new provisions enacted under the bill.

Topic	Current Law	Bill
Definitions for Parental Rights and Responsibilities (PRR) allocations, including: <ul style="list-style-type: none"> ▪ Shared parenting (SP) order (defined in bill as order issued under 3109.0413); ▪ PRR allocation order (defined in bill as order issued under 3109.0412, 3109.0424, 3109.0425, or 3109.0426); ▪ Parenting time orders (PTOs) (defined in bill as order issued under 3109.0451); ▪ Companionship or visitation orders (CVOs) (defined in bill as order issued under 3109.0452) 	3109.04(J) and (K), as applicable; new	3109.04
Unmarried mother custody of child	3109.042	3109.042
State policy for PRR allocations	New	3109.044
PRR allocations comply with state policy/child's best interest	3109.04(A)	3109.045
Joint filing of shared parenting agreement (SPA)	3109.04(G); new	3109.046
SPA requirements	3209.04(G), fifth sentence	3109.047
Best interest presumption for SPA	New	3109.0410
Criteria to rebut best interest of SPA	New	3109.0411
Court PRR allocation order if best interest of SPA rebutted	New	3109.0412
Shared Parenting (SP) order issued allocating PRR if presumption not rebutted	New	3109.0413

⁶² R.C. 3109.0482.

Topic	Current Law	Bill
Designation of child's home SP order	3109.04(A)(2), second and third sentences	3109.0414
Interpretation of designations in PRR allocation orders	3109.04(L)(5) to (7)	3109.0415
Best interest presumption of Equal Decision-Making Responsibilities (EDMR) and Equal Parenting Time (EPT) if no SPA	New	3109.0420
Criteria to rebut EDMR if no SPA	New	3109.0421
Criteria to rebut EPT if no SPA	New	3109.0422
Parental affidavit regarding offenses	3109.04(M)	3109.0423
Court order if EDMR, but not EPT, is rebutted	New	3109.0424
Court order if EPT, but not EDMR, is rebutted	New	3109.0425
Court order requiring EDMR and EPT if presumption not rebutted	New	3109.0426
Interview child in chambers re: wishes and concerns	3109.04(B)	3109.0430
Court investigation; effect of findings	3109.04(C)	3109.0431
No PRR allocation preference based on financial status	3109.04(F)(3)	3109.0432
Juvenile court jurisdiction if neither parent suitable to receive PRR allocation	3109.04(D)(2)	3109.0435
Temporary PRR allocation orders	3109.043; new	3109.0436
Parental motion to modify or terminate PRR or SP order	New	3109.0438
Consideration of motion to modify SP order	New	3109.0439
Criteria for terminating SP order	New	3109.0440
PRR issued on termination of SP order	New	3109.0441
Court consideration of motion to modify PRR order	New	3109.0442
Joint motion to modify PRR order to SP order	New	3109.0443

Topic	Current Law	Bill
Appeal priority	3109.04(H)	3109.0445
Definitions for PTOs and CVOs: <ul style="list-style-type: none"> ▪ Abused child; ▪ Confidential law enforcement investigatory record; ▪ Record 	3109.051(O)(1), (3), and (5)	3109.0450
PTOs	3109.051(A)	3109.0451
CVOs	3109.051(B)	3109.0452
PTO/CVO factors	3109.051(D)	3109.0453
Consideration of mediation report and PTO/CVO factors in establishing PTO/CVO	3109.051(C), first sentence	3109.0454
Interview in chambers re: child's wishes and concerns about PTO/CVO	3109.051(C), sentences two to five	3109.0455
Indigent parents	3109.051(L)	3109.0456
Effect of remarriage	3109.051(E)	3109.0457
Parental relocation and notification requirements	3109.051(G)(1), (2), and (4)	3109.0460
Record access requirements	3109.051(H)	3109.0461
Day care access requirements	3109.051(I)	3109.0462
School activity access requirements	3109.051(J)	3109.0463
Court duties if deny PTO/CVO	3109.051(F)	3109.0466
Remedies for PTO/CVO interference	3109.051(K)	3109.0467
Juvenile court jurisdiction	3109.051(N)	3109.0468
Mediation	3109.052	3109.0470
Definitions: Active Military Service (AMS) and PRR allocation orders and PTOs: <ul style="list-style-type: none"> ▪ AMS (current definition under 3109.04); ▪ Uniformed services (current definition under 3109.04) 	3109.04(J)(2) and (5)	3109.0475
AMS and SP order or PRR allocation order	3109.04(I)	3109.0476

Topic	Current Law	Bill
AMS and PTO/CVO	3109.051(M)	3109.0477
Parenting classes or counselling	3109.053	3109.0480
Transitional provisions	New	3109.0482
Parenting time reports	New	3109.0485

Cross-reference and other nonsubstantive updates

The bill amends many sections of the Revised Code to update cross-references and update or remove terms as a result of the extensive recodification of, and changes to, existing law. For example, a “plan for shared parenting” under existing law has been changed under the bill to a “shared parenting agreement” and references to a shared parenting “decree” have been removed because the bill only provides for shared parenting orders.⁶³

HISTORY

Action	Date
Introduced	12-08-21

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⁶³ These changes are included in the following sections: 2151.23, 2317.02, 2705.031, 2710.05, 2710.06, 3105.21, 3105.63, 3105.65, 3109.04, 3109.042, 3109.045 (recodified from 3109.04(A)), 3109.0415 (recodified from 3109.04(L)(5)-(7)), 3109.0423 (recodified from 3109.04(M)), 3109.0430 (recodified from 3109.04(B)), 3109.0451 (recodified from 3109.051(A)), 3109.0452 (recodified from 3109.051(B)), 3109.0453 (recodified from 3109.051(D)), 3109.0454 (recodified from 3109.051(C), first sentence), 3109.0455 (recodified from 3109.051(C), sentences two to five), 3109.0456 (recodified from 3109.051(L)), 3109.0460 (recodified from 3109.051(G)(1), (2), and (4)), 3109.0461 (recodified from 3109.051(H)), 3109.0462 (recodified from 3109.051(I)), 3109.0463 (recodified from 3109.051(J)), 3109.0466 (recodified from 3109.051(F)), 3109.0467 (recodified from 3109.051(K)), 3109.0470 (recodified from 3109.052), 3109.0476 (recodified from 3109.04(I)), 3109.0477 (recodified from 3109.051(M)), 3109.05, 3109.06, 3109.061, 3109.09, 3109.11, 3109.12, 3109.41, 3109.53, 3109.55, 3109.56, 3109.65, 3113.31, 3119.01, 3119.08, 3119.24, 3119.964, 3310.51, 3313.98, 3319.321, 3333.26, 3796.24, 5104.039, 5120.653, 5153.16.