



# Ohio Legislative Service Commission

## Bill Analysis

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### **S.B. 144**

129th General Assembly  
(As Introduced)

**Sens.** Skindell, Grendell

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## **BILL SUMMARY**

- Changes the term "shared parenting" to "equal legal and physical access" and makes conforming changes.
- Generally requires a court to grant equal legal and physical access of the children to the parents unless it finds clear and convincing evidence that equal legal and physical access would be harmful to the children.
- Requires the court to grant appropriate child support deviations to account for equal legal and physical access as provided in the law regarding shared parenting child support.
- Removes the provision that a court, in its discretion, may and, upon the motion of either parent, must appoint a guardian ad litem for the child and rather allows the court, upon written motion of either parent, to appoint a guardian ad litem.
- Provides that if the court appoints a guardian ad litem, the court must order that the costs be divided equally between the parties.
- Removes the authorization of the court to order the parents and their minor children to submit to certain specified examinations and instead provides that if either party files a written motion requesting that the parties submit to those examinations, the court may order the examinations to be conducted and may divide the costs of the examinations equally between the parties or tax the costs to the moving party.
- Requires that the report of the investigation and examinations be made available to either parent or the parent's counsel of record not less than 15 days (rather than five) before the trial and requires that the investigator conduct the investigation independent of the court.

- Provides that, if each parent makes a request for equal legal and physical access and each also files a separate a plan for equal legal and physical access, the court must approve the plan that provides for more equality with regard to the rights and responsibilities for the care of and access to the children.
- Provides that if each parent makes a request for equal legal and physical access but only one parent files a plan for equal legal and physical access or if only one parent makes a request for equal legal and physical access and files a plan for equal legal and physical access the court may approve the plan if it provides for equal access or may order additional plans to be submitted and approve the one that provides for more equality.
- Provides that if the court, prior to approving a plan for equal legal and physical access, finds by clear and convincing evidence that equal legal and physical access would be harmful to the children the court must allocate parental rights and responsibilities in a manner consistent with the best interests of the children and enter into the record all findings of fact and conclusions of law.
- Requires the court to allocate parental rights and responsibilities in a manner consistent with the best interests of the children under certain circumstances.
- Prohibits the court from approving more than one equal legal and physical access plan.
- Allows the court to temporarily commit a child to a relative of the child if it finds by clear and convincing evidence that it is in the best interest of the child for neither parent to be designated the residential parent and legal custodian of the child.
- Allows a court to modify a prior decree only if it finds that a "substantial change" has occurred in the circumstances of the child or either parent and that the modification is necessary to serve the best interest of the child.
- Requires a court, if the court allocates parental rights and responsibilities for the care of and access to the children in an unequal manner based on the unsuitability of one of the parents for equal legal and physical access, to create a plan to allow that parent to eliminate the reasons for unsuitability.

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## CONTENT AND OPERATION

### Background

In a divorce, legal separation, annulment proceeding, or any proceeding pertaining to the allocation of parental rights and responsibilities for the care of a child, existing law requires the court to make the allocation in one of the following ways: allocate parental rights and responsibilities primarily to one parent, order shared parenting, commit the child to a relative, or certify jurisdiction to the juvenile court to determine custody of the child.<sup>1</sup> Ohio law provides that the objective of the court in making the allocation of parental rights and responsibilities is to make a decision that reflects the child's best interests.<sup>2</sup>

### Change from "shared parenting" to "equal legal and physical access"

Under existing law, "shared parenting" means that the parents share, in the manner set forth in the plan for shared parenting that is approved by the court and provides that each parent is the "residential parent," the "residential parent and legal custodian," or the "custodial parent" of the child, all or some of the aspects of physical and legal care of their children. The bill changes the term to "equal legal and physical

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<sup>1</sup> R.C. 3109.04(A)(1) and (2) and (D)(2).

<sup>2</sup> R.C. 3109.04(B)(1).

access" and provides that it means that the parents share equally in the legal and physical custody of the children, in the manner set forth in the plan for equal legal and physical access that is approved by the court and provides that each parent is the "residential parent," the "residential parent and legal custodian," or the "custodial parent" of the child.<sup>3</sup> The bill makes requisite changes to R.C. 3105.65, 3109.04, 3109.041, 3109.051, 3109.09, 3109.56, 3119.022, 3119.24, 3313.98, and 5120.653 to reflect this change.

### **Requirement of substantially equal allocation of parental rights and responsibilities**

Under existing law, when husband and wife are living separate and apart from each other, or are divorced, and the question as to the parental rights and responsibilities for the care of their children and the place of residence and legal custodian of their children is brought before a court of competent jurisdiction, they stand upon an equality as to the parental rights and responsibilities for the care of their children and the place of residence and legal custodian of their children, so far as parenthood is involved.<sup>4</sup> The bill additionally states that generally, in making at any stage of a proceeding any order or decree that allocates parental rights and responsibilities regarding the care of and access to the children of the parents, a court must grant equal legal and physical access to the parents unless it finds by clear and convincing evidence that equal legal and physical access would be harmful to the children. Whenever a court makes an order or decree that does not provide for equal legal and physical access, the court will explain in writing the reasons for its determination.<sup>5</sup> In all determinations concerning the allocation of parental rights and responsibilities for the care of and access to children, there is a presumption that an equal allocation between the parents of rights and responsibilities for the care of and access to the children is in the best interest of the children. In the absence of clear and convincing evidence that an equal allocation would be harmful to the children, the court must allocate parental rights and responsibilities for the care of and access to the children in a way that is equal.<sup>6</sup>

Existing law provides that, in determining the best interest of a child, whether on an original decree allocating rights and responsibilities for the care of children or a modification of that decree, the court must consider all relevant factors, including whether either parent has failed to make all child support payments, including all

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<sup>3</sup> R.C. 3109.04(K).

<sup>4</sup> R.C. 3109.03.

<sup>5</sup> R.C. 3109.03.

<sup>6</sup> R.C. 3109.04(F)(1).

arrearrages, that are required of that parent pursuant to a child support order under which that parent is a obligor. The bill specifies that the court makes the determination of the best interest of a child when there is clear and convincing evidence that an equal allocation would be harmful to the children and requires the court to consider whether the parent who failed to make all child support payments had the ability to pay the support ordered.<sup>7</sup>

### **Allocating parental rights and responsibilities for care of children**

Existing law provides that 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, upon hearing the testimony of either or both parents and considering any mediation report, the court must allocate the parental rights and responsibilities for the care of the minor children of the marriage. Under existing law, the court may allocate the parental rights and responsibilities for the care of the children in either of the following ways:<sup>8</sup>

(1) 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, if at least one parent files a pleading or motion but no parent who filed a pleading or motion also files a plan for shared parenting, or if at least one parent files both a pleading or motion and a shared parenting plan but no plan for shared parenting is in the best interest of the children, the court, in a manner consistent with the best interest of the children, shall allocate the parental rights and responsibilities for the care of the children primarily to one of the parents, designate that parent as the residential parent and the legal custodian of the child, and divide between the parents the other rights and responsibilities for the care of the children, including, but not limited to, the responsibility to provide support for the children and the right of the parent who is not the residential parent to have continuing contact with the children.

(2) If at least one parent files a pleading or motion and a plan for shared parenting and if a plan for shared parenting is in the best interest of the children and is approved by the court, the court may allocate the parental rights and responsibilities for the care of the children to both parents and issue 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 the approved plan for shared parenting. If the court issues a shared parenting order and it is necessary for the purpose of receiving public assistance, the court must designate which one of the parents' residences is to serve as the child's

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<sup>7</sup> R.C. 3109.04(F)(1).

<sup>8</sup> R.C. 3109.04(A).

home. The child support obligations of the parents under a shared parenting order issued under this provision must be determined in accordance with R.C. Ch. 3119. (calculation of child support obligation), 3121. (collection and disbursement of child support), 3123. (defaults under child support orders), and 3125. (Title IV-D child support cases).

The bill removes the requirement that the court allocate the parental rights and responsibilities for the care of the children primarily to one of the parents if neither parent files a pleading or motion, if at least one parent files a pleading or motion but does not file a plan for shared parenting, or if at least one parent files both a pleading or motion and a shared parenting plan but no plan for shared parenting is in the best interest of the child. The bill also removes the provision that the court may allocate the parental rights and responsibilities for the care of the children to both parents and issue a shared parenting order requiring the parents to share all or some of the aspect of the physical and legal care of the children in accordance with the approved shared parenting plan and instead requires the court to allocate the parental rights and responsibilities for the care of the minor children of the marriage in accordance with the provisions regarding the request for equal legal and physical access.

The bill maintains the requirement that the court designate which of the parents' residences is to serve as the child's home if the court issues an order for equal legal and physical access when it is necessary for the purpose of receiving public assistance. The bill also provides that this designation is for the sole purpose of receiving public assistance and does not affect the designation of each parent as the "residential parent," the "residential parent and legal custodian," or the "custodial parent" of the child. The bill requires the court to grant appropriate child support deviations to account for equal legal and physical access as provided in the law regarding shared parenting child support.<sup>9</sup>

### **Interview of the child or children**

Existing law requires the court, when making the allocation of the parental rights and responsibilities for the care of the children under this section in an original proceeding or in any proceeding for modification of a prior order of the court *making the allocation, to take into account that which would be in the best interest of the children. In determining the child's best interest for purposes of making its allocation of the parental rights and responsibilities for the care of the child and for purposes of resolving any issues related to the making of that allocation, the court, in its discretion, may and, upon the request of either party, must interview in chambers any or all of the involved children regarding their*

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<sup>9</sup> R.C. 3109.04(A).

wishes and concerns with respect to the allocation. The bill removes the italicized language.

If the court interviews any child, under existing law all of the following apply:<sup>10</sup>

(1) The court, in its discretion, may and, upon the motion of either parent, must appoint a guardian ad litem for the child.

(2) The court first must determine the reasoning ability of the child. If the court determines that the child does not have sufficient reasoning ability to express the child's wishes and concern with respect to the allocation of parental rights and responsibilities for the care of the child, it must not determine the child's wishes and concerns with respect to the allocation. If the court determines that the child has sufficient reasoning ability to express the child's wishes or concerns with respect to the allocation, it then must determine whether, because of special circumstances, it would not be in the best interest of the child to determine the child's wishes and concerns with respect to the allocation. If the court determines that, because of special circumstances, it would *not be in the best interest of the child to determine the child's wishes and concerns with respect to the allocation, it must not determine the child's wishes and concerns with respect to the allocation and shall enter its written findings of fact and opinion in the journal. If the court determines that it would be in the best interests of the child to determine the child's wishes and concerns with respect to the allocation, it must proceed to make that determination.*

(3) The interview must be conducted in chambers, and no person other than the child, the child's attorney, the judge, any necessary court personnel, and, in the judge's discretion, the attorney of each parent is permitted to be present in the chambers during the interview.

The bill removes the provision that the court, in its discretion may and, upon the motion of either parent must appoint a guardian ad litem for the child and instead allows the court, upon the written motion of either parent, to appoint a guardian ad litem. If the court appoints a guardian ad litem, the court must order that the costs of the guardian ad litem be divided equally between the parties.<sup>11</sup> The bill also provides that if the court determines that the child has sufficient reasoning ability to express the child's wishes or concerns with respect to the allocation, it must determine whether special circumstances *exist*, rather than determine whether, because of special circumstances, it would not be in the best interest of the child to determine the child's

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<sup>10</sup> R.C. 3109.04(B)(2).

<sup>11</sup> R.C. 3109.04(B)(2)(a).

wishes and concerns with respect to the allocation. The bill also removes the italicized language in (2) above.

Existing law prohibits a court, in determining the child's best interest for purposes of making its allocation of parental rights and responsibilities for the care of the child or for purposes of resolving any issues related to the making of that allocation, from accepting or considering a written or recorded statement or affidavit that purports to set forth the child's wishes and concerns regarding those matters. The bill removes the provision regarding the court determining the child's best interests. Therefore, the court is prohibited from accepting or considering that written or recorded statement under any circumstance, not just when determining the child's best interest.<sup>12</sup>

**Investigation as to the character, family relations, past conduct, earning ability, and financial worth of each parent**

Under existing law, prior to trial, the court may cause an investigation to be made as to the character, family relations, past conduct, earning ability, and financial worth of each parent and may order the parents and their minor children to submit to medical, psychological, and psychiatric examinations. The bill removes the provision that allows the court to order the parents and their minor children to submit to those examinations and instead provides that if either party files a written motion requesting that the parties submit to those examinations, the court, in its discretion, may order the examinations to be conducted and may divide the costs of the examinations equally between the parties or tax the costs to the moving party.<sup>13</sup>

Existing law also requires that the report of the investigation and examinations be made available to either parent or the parent's counsel of record not less than five days before trial, upon written request. The report must be signed by the investigator, and the investigator must be subject to cross-examination by either parent concerning the contents of the report. The court may tax as costs all or any part of the expenses for each investigation. The bill requires that the report be made available not less than 15 days before trial and removes the requirement that it be upon written request. The bill also requires that an investigator conduct any investigation independent of the court.<sup>14</sup>

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<sup>12</sup> R.C. 3109.04(B)(3).

<sup>13</sup> R.C. 3109.04(C).

<sup>14</sup> R.C. 3109.04(C).



## Request for equal legal and physical access

### Joint request

Under existing law, upon the filing of a pleading or motion by either parent or both parents requesting shared parenting and the filing of a shared parenting plan, the court must comply with the following provision. If both parents jointly make the request in their pleadings or jointly file the motion and also jointly file the plan, the court must review the parents' plan to determine if it is in the best interest of the children. If the court determines that the plan is in the best interest of the children, the court must approve it. If the court determines that the plan or any part of the plan is not in the best interest of the children, the court must require the parents to make appropriate changes to the plan to meet the court's objections to it. If changes to the plan are made to meet the court's objections, and if the new plan is in the best interest of the children, the court must approve the plan. If changes to the plan are not made to 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 the new plan still is not in the best interest of the children, the court may reject the portion of the parents' pleadings or deny their motion requesting shared parenting of the children and proceed as if the request in the pleadings or the motion had not been made. The court cannot approve a plan under this provision unless it determines that the plan is in the best interest of the children.<sup>15</sup>

The bill modifies this provision by instead providing that, if both parents jointly request equal legal and physical access and also jointly file a plan for equal legal and physical access, the court must approve the plan. If the court, prior to approving the plan, finds by clear and convincing evidence that equal legal and physical access would be harmful to the children, the court must proceed as provided in "**Neither parent files a pleading or motion or the court finds that equal legal and physical access would be harmful to the children**" below. If the court approves the plan or rejects the plan and proceeds as provided in "**Neither parent files a pleading or motion or the court finds that equal legal and physical access would be harmful to the children**" below, the court must enter in the record of the case findings of fact and conclusions of law as to the reasons for the approval or rejection of the plan.<sup>16</sup>

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<sup>15</sup> R.C. 3109.04(D)(1)(a)(i).

<sup>16</sup> R.C. 3109.04(D)(1)(a)(i).

## **Each parent makes a request for equal legal and physical access and each files a separate plan**

Under existing law, if each parent makes a request in the parent's pleadings or files a motion and each also files a separate plan, the court must review each plan filed to determine if either is in the best interest of the children. If the court determines that one of the filed plans is in the best interest of the children, the court may approve the plan. If the court determines that neither filed plan is in the best interest of the children, the court may order each parent to submit appropriate changes to the parent's plan or both of the filed plans to meet the court's objections, or may select one of the filed plans and order each parent to submit appropriate changes to the selected plan to meet the court's objections. If changes to the plan or plans are submitted to meet the court's objections, and if any of the filed plans with the changes is in the best interest of the children, the court may approve the plan with the changes. If changes to the plan or plans are not submitted to meet the court's objections, or if the parents submit changes to the plan or plans to meet the court's objections but the court determines that none of the filed plans with the submitted changes is in the best interest of the children, the court *may* reject the portion of the parents' pleadings or deny their motions requesting shared parenting of the children and proceed as if the requests in the pleadings or the motions had not been made. If the court approves a plan under this provision, either as originally filed or with submitted changes, or if the court rejects the portion of the parents' pleadings or denies their motions requesting shared parenting under this provision and proceeds as if the requests in the pleadings or the motions had not been made, the court must enter in the record of the case findings of fact and conclusions of law as to the reasons for the approval or the rejection or denial. The approval of the plan is discretionary with the court, and the court cannot approve more than one plan and cannot approve a plan unless it determines that the plan is in the best interest of the children.<sup>17</sup>

The bill removes the requirement that the court review each plan filed to determine if either is in the best interest of the children and requires the court to approve the plan that the court determines provides for more equality with regard to the rights and responsibilities for the care of and access to the children. If changes to the plan or plans are submitted to meet the court's objections, and if any of the filed plans with changes *provides for equal legal and physical access* (rather than in the best interest of) to the children, the court *must* approve that plan. The bill also removes the provision that allows the court to reject the portion of the parents' pleadings or deny their motions requesting shared parenting of the children if changes to the plan or plans are not submitted to meet the court's objections or if the parents submit changes to the

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<sup>17</sup> R.C. 3109.04(D)(1)(a)(ii).

plan or plans to meet the court's objections but the court determines that none of the filed plans with the submitted changes is in the best interest of the children. Instead, the bill provides that if the court, prior to approving the plan, finds by clear and convincing evidence that equal legal and physical access would be harmful to the children, the court must proceed in accordance with the provisions described in **"Neither parent files a pleading or motion or the court finds that equal legal and physical access would be harmful to the children"** below.<sup>18</sup>

**Each parent makes a request for equal legal and physical access but only one parent files a plan**

Under existing law, if each parent makes a request in the parent's pleadings or files a motion but only one parent files a plan, the court in the best interest of the children may order the other parent to file a plan for shared parenting. The court must review each plan filed to determine if any plan is in the best interest of the children. If the court determines that one of the filed plans is in the best interest of the children, the court may approve the plan. If the court determines that no filed plan is in the best interest of the children, the court may order each parent to submit appropriate changes to the parent's plan or both of the filed plans to meet the court's objections or may select one filed plan and order each parent to submit appropriate changes to the selected plan to meet the court's objections. If changes to the plan or plans are submitted to meet the court's objections, and if any of the filed plans with the changes is in the best interest of the children, the court may approve the plan with the changes. If changes to the plan or plans are not submitted to meet the court's objections, or if the parents submit changes to the plan or plans to meet the court's objections but the court determines that none of the filed plans with the submitted changes is in the best interest of the children, the court may reject the portion of the parents' pleadings or deny their motions requesting shared parenting of the children and proceed as if the request or requests or the motion or motions had not been made. If the court approves a plan under this provision, either as originally filed or with submitted changes, or if the court rejects the portion of the pleadings or denies the motion or motions requesting shared parenting under this provision and proceeds as if the request or requests or the motion or motions had not been made, the court must enter in the record of the case findings of fact and conclusions of law as to the reasons for the approval or the rejection or denial. The approval of the plan is discretionary with the court, and the court cannot approve more than one plan and cannot approve a plan unless it determines that the plan is in the best interest of the children.<sup>19</sup>

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<sup>18</sup> R.C. 3109.04(D)(1)(a)(ii).

<sup>19</sup> R.C. 3109.04(D)(1)(a)(iii).

The bill removes the requirement that the court review each plan filed to determine if any plan is in the best interest of the children and requires the court to approve the plan that the court determines provides for more equality with regard to the rights and responsibilities for the care of and access to the children. The bill requires, rather than permits, the court to approve the plan with changes if the changes to the plan or plans are submitted to meet the court's objections and if any of the filed plans with changes provides for equal legal and physical access (rather than is in the best interest of the children). The bill also removes the provision that allows the court to reject the portion of the parents' pleadings or deny their motions requesting shared parenting of the children if changes to the plan or plans are not submitted to meet the court's objections or if the parents submit changes to the plan or plans to meet the court's objections but the court determines that none of the filed plans with the submitted changes is in the best interest of the children. Instead, the bill provides that if the court, prior to approving the plan, finds by clear and convincing evidence that equal legal and physical access would be harmful to the children, the court must proceed in accordance with the provisions described in "**Neither parent files a pleading or motion or the court finds that equal legal and physical access would be harmful to the children**" below.<sup>20</sup>

**Only one parent files a pleading or motion and a plan for equal legal and physical access**

Existing law provides that, if only one parent makes a request in the parent's pleadings or files a motion and also files a shared parenting plan, the court in the best interest of the children may order the other parent to file a plan for shared parenting. The court must review each plan filed to determine if any plan is in the best interest of the children. If the court determines that one of the filed plans is in the best interest of the children, the court may approve the plan. If the court determines that no filed plan is in the best interest of the children, the court may order each parent to submit appropriate changes to the parent's plan or both of the filed plans to meet the court's objections or may select one filed plan and order each parent to submit appropriate changes to the selected plan to meet the court's objections. If changes to the plan or plans are submitted to meet the court's objections, and if any of the filed plans with the changes is in the best interest of the children, the court may approve the plan with the changes. If changes to the plan or plans are not submitted to meet the court's objections, or if the parents submit changes to the plan or plans to meet the court's objections but the court determines that none of the filed plans with the submitted changes is in the best interest of the children, the court may reject the portion of the parents' pleadings or deny the parents' motion requesting shared parenting of the children and proceed as if

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<sup>20</sup> R.C. 3109.04(D)(1)(a)(iii).

the request or requests or the motion or motions had not been made. If the court approves a plan under this provision, either as originally filed or with submitted changes, or if the court rejects the portion of the pleadings or denies the motion or motions requesting shared parenting under this provision and proceeds as if the request or requests or the motion or motions had not been made, the court must enter in the record of the case findings of fact and conclusions of law as to the reasons for the approval or the rejection or denial. The approval of the plan is discretionary with the court, and the court cannot approve more than one plan and cannot approve a plan unless it determines that the plan is in the best interest of the children.<sup>21</sup>

The bill removes the requirement that the court review each plan filed to determine if any plan is in the best interest of the children and requires the court to approve the plan that the court determines provides for more equality with regard to the rights and responsibilities for the care of and access to the children. The bill requires, rather than permits, the court to approve the plan with changes if the changes to the plan or plans are submitted to meet the court's objections and if any of the filed plans with changes provides for equal legal and physical access (rather than is in the best interest of the children). The bill also removes the provision that allows the court to reject the portion of the parents' pleadings or deny their motions requesting shared parenting of the children if changes to the plan or plans are not submitted to meet the court's objections or if the parents submit changes to the plan or plans to meet the court's objections but the court determines that none of the filed plans with the submitted changes is in the best interest of the children. Instead, the bill provides that if the court, prior to approving the plan, finds by clear and convincing evidence that equal legal and physical access would be harmful to the children, the court must proceed in accordance with the provisions described in "**Neither parent files a pleading or motion or the court finds that equal legal and physical access would be harmful to the children**" below.<sup>22</sup>

The bill also provides that if the court approves the plan either as originally filed or with submitted changes or if the court rejects the portion of the pleadings or denies the motion or motions requesting equal legal and physical access and proceeds in accordance with "**Neither parent files a pleading or motion or the court finds that equal legal and physical access would be harmful to the children**" below, the court must enter in the record of the case findings of fact and conclusions of law as to the reasons for the approval or the rejection or denial.<sup>23</sup>

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<sup>21</sup> R.C. 3109.04(D)(1)(a)(iii).

<sup>22</sup> R.C. 3109.04(D)(1)(a)(iv).

<sup>23</sup> R.C. 3109.04(D)(1)(a)(iv).

## **Neither parent files a pleading or motion or the court finds that equal legal and physical access would be harmful to the children**

The bill requires the court to allocate parental rights and responsibilities in a manner consistent with the best interests of the children if neither parent files a pleading or motion or if the court finds by clear and convincing evidence that equal legal and physical access would be harmful to the children. The court must enter into the record all findings of fact and conclusions of law related to the allocation of parental rights and responsibilities.<sup>24</sup>

### **Court approval of a plan**

Under existing law, the approval of a plan where each parent files a pleading or motion and only one parent files a shared parenting plan or of a plan where only one parent files a pleading or motion and a shared parenting plan is discretionary with the court. The court cannot approve more than one plan and cannot approve a plan unless it determines that the plan is in the best interest of the children. If the court does not determine that any filed plan or any filed plan with submitted changes is in the best interest of the children, the court cannot approve any plan. The bill modifies this provision by prohibiting the court from approving more than one of either of these plans (either a plan where each parent files a pleading or motion and only one parent files a shared parenting plan or a plan where only one parent files a pleading or motion and a shared parenting plan).<sup>25</sup>

### **Allocation of parental rights and responsibilities on an equal basis**

Existing law provides that the court, whenever possible, must require that an approved shared parenting plan ensure the opportunity for both parents to have frequent and continuing contact with the child, unless frequent and continuing contact with any parent would not be in the best interest of the child. The bill modifies this requirement by stating that the court must require that a plan for equal legal and physical access ensure, to the greatest extent possible, that parental rights and responsibilities for the care of and access to the children are allocated to the parents on an equal basis.<sup>26</sup>

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<sup>24</sup> R.C. 3109.04(D)(1)(a)(v).

<sup>25</sup> R.C. 3109.04(D)(1)(b).

<sup>26</sup> R.C. 3109.04(D)(1)(c).

## **Provisional shared parenting decree and effect of a final shared parenting decree**

Existing law prohibits a provisional shared parenting decree from being issued in relation to any approved shared parenting plan. A final shared parenting decree has immediate effect as a final decree on the date of its issuance, subject to modification or termination as authorized by law.<sup>27</sup> The bill removes this provision.

### **Commitment of child to a relative**

Under existing law, if the court finds, with respect to any child under 18 years of age, that it is in the best interest of the child for neither parent to be designated the residential parent and legal custodian of the child, it may commit the child to a relative of the child or certify a copy of its findings, together with as much of the record and the further information, in narrative form or otherwise, that it considers necessary or as the juvenile court requests, to the juvenile court for further proceedings, and, upon the certification, the juvenile court has exclusive jurisdiction. The bill modifies this provision by requiring the court to make its finding by clear and convincing evidence, provides that the court may *temporarily* commit the child to a relative of the child, and requires the court (instead of permits) to certify a copy of its findings to the juvenile court.<sup>28</sup>

### **Modification of a prior decree**

Existing law prohibits the court from modifying a prior decree allocating parental rights and responsibilities for the care of children unless it finds, based on facts that have arisen since the prior decree or that were unknown to the court at the time of the prior decree, that a change has occurred in the circumstances of the child, the child's residential parent, or either of the parents subject to a shared parenting decree, and that the modification is necessary to serve the best interest of the child. In applying these standards, the court retains the residential parent designated by the prior decree or the prior shared parenting decree, unless a modification is in the best interest of the child and one of the following applies:

(1) The residential parent agrees to a change in the residential parent or both parents under a shared parenting decree agree to a change in the designation of residential parent.

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<sup>27</sup> R.C. 3109.04(D)(1)(d).

<sup>28</sup> R.C. 3109.04(D)(2).

(2) The child, with the consent of the residential parent or of both parents under a shared parenting decree, has been integrated into the family of the person seeking to become the residential parent.

(3) The harm likely to be caused by a change of environment is outweighed by the advantages of the change of environment to the child.

The bill modifies this provision by providing that the court may modify the prior decree if it finds that a *substantial* change has occurred in the circumstances of the child or either of the parents and removes the provision that the court consider the circumstances of the child's residential parent. The bill also removes the requirement that the court retain the residential parent designated by the prior decree or the prior shared parenting decree and removes paragraphs (1), (2), and (3) above.<sup>29</sup>

The bill also provides that if the court allocates parental rights and responsibilities for the care of and access to the children in an unequal manner on the grounds that one of the parents is unsuitable for equal legal and physical access, the court must create a plan to allow that parent to eliminate the reasons for the unsuitability. When the unsuitable parent removes the grounds for the finding of unsuitability, the court, upon a motion by that parent, must modify its order or decree to provide for equal legal and physical access.<sup>30</sup>

### **Modification of terms upon motion by one or both of the parents**

Under existing law, the court may modify the terms of the plan for shared parenting approved by the court and incorporated by it into the shared parenting decree upon its own motion at any time the court determines that the modifications are in the best interest of the children or upon the request of one or both of the parents under the decree. The bill removes the provision that allows the court to modify the plan on its own motion and removes the provision that it can modify the plan upon the request of one or both of the parents and instead allows the court to modify the plan *upon a motion* by one or both of the parents.<sup>31</sup>

### **Termination of a prior final equal legal and physical access decree**

Under existing law, the court may terminate a prior final shared parenting decree that includes a shared parenting plan that the parents jointly requested upon the request of one or both of the parents or whenever it determines that shared parenting is

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<sup>29</sup> R.C. 3109.04(E)(1)(a).

<sup>30</sup> R.C. 3109.04(E)(1)(c).

<sup>31</sup> R.C. 3109.04(E)(2)(b).



not in the best interest of the children. The bill requires the court to make that determination by clear and convincing evidence.<sup>32</sup>

### **Allocation by the court in an unequal manner**

The bill states that if the court allocates parental rights and responsibilities for the care of and access to the children in a modified decree in an unequal manner on the grounds that one of the parents is unsuitable for equal legal and physical access, and that parent removes the grounds for the finding of unsuitability, the court, upon a motion by that parent, must modify its order or decree to provide for equal legal and physical access.<sup>33</sup>

### **Factors the court must consider in determining equal legal and physical access**

Existing law requires the court to consider several relevant factors in determining whether shared parenting is in the best interest of the children, including any history of, or potential for, child abuse, spouse abuse, other domestic violence, or parental kidnapping by either parent. The bill requires the court to find *clear and convincing evidence* of this history of abuse and removes the requirement that the court consider any potential for these types of abuse.<sup>34</sup>

### **Temporary custody order**

Under existing law, in any proceeding pertaining to the allocation of parental rights and responsibilities for the care of a child, when requested in the complaint, answer, or counterclaim, or by motion served with the pleading, upon satisfactory proof by affidavit duly filed with the clerk of the court, the court, without oral hearing and for good cause shown, may make a temporary order regarding the allocation of parental rights and responsibilities for the care of the child while the action is pending. The bill removes the requirement that satisfactory proof by affidavit be duly filed with the clerk of the court, removes the provision that there is no oral hearing and that there be good cause shown, and requires the court to make a temporary order regarding the allocation of parental rights and responsibilities for the care of the child while the action is pending. The bill also provides that when determining the temporary allocation of parental rights and responsibilities, there is a presumption that equal parenting is in the best interest of the children, and the court sets parenting time as equally as possible for

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<sup>32</sup> R.C. 3109.04(E)(2)(c).

<sup>33</sup> R.C. 3109.04(E)(2)(e).

<sup>34</sup> R.C. 3109.04(F)(2)(c).

both parents unless clear and convincing evidence can be presented as to the unfitness of either parent or the parents have agreed to an alternate schedule.<sup>35</sup>

Existing law also provides that if a parent and child relationship has not already been established, the court may take into consideration when determining whether to award parenting time, visitation rights, or temporary custody to a putative father that the putative father is named on the birth record of the child, the child has the putative father's surname, or a clear pattern of a parent and child relationship between the child and the putative father exists. The bill requires the court when determining parenting time to take into consideration that the putative father is named on the birth record of the child, the child has the putative father's surname, or a clear pattern of a parent and child relationship between the child and the putative father exists. The bill removes the provision regarding awarding visitation rights or temporary custody to a putative father, and states that the putative father must stand as an equal to the mother in all custody determinations unless clear and convincing evidence can be presented as to the unfitness of either parent.<sup>36</sup>

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## HISTORY

ACTION	DATE
Introduced	04-07-11

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<sup>35</sup> R.C. 3109.043.

<sup>36</sup> R.C. 3109.043.