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NATIONAL PARENTS ORGANIZATION | Preserving the Bond Between Parents and Children

National Parents Organization
SB 125 Oral Opponent Testimony (10/24/2017)

Chairman, Bacon, Vice Chairman Dolan, Ranking Member Thomas, Members of the Committee,

Thank you for this opportunity to testify concerning SB 125. My name is Don Hubin. I'm the Chairman of the Ohio chapter of National Parents Organization and a member of the National Board of NPO, the nation's largest and most effective shared parenting organization. We have previously submitted written testimony concerning SB 125 when I was unable to attend the last hearing on the bill. My purpose in speaking today is to summarize that testimony in a more informal way and answer any questions the Committee members might have. Please refer to NPO's previous written testimony for a fuller explanation of our position on this bill.

NPO strongly supports SB 125's provision for a fair and appropriate self-support reserve. While more income to low-income families benefits the children in those families, it is now widely recognized that unreasonably high child support obligations on low-income obligors *does not result in more child support funds for these children*. Instead, it saddles these obligors with sanctions that further impair their ability to support their children (by, for example, drivers' license suspensions) and drives many into an underground economy that results in lower child support funds for the children.

But NPO's primary focus is on the promotion of true shared parenting when parents live apart. This requires that child support funds be divided fairly between the two parents' households based on expected child-related expenses so that children are properly supported in each of their homes. Unfortunately, in its current form SB 125 falls far short of doing this. While an approach to child support that is truly positive for shared parenting would require substantial re-writing of the bill, there are targeted amendments that could improve SB 125 significantly. In the previously submitted NPO written testimony, we outline the NPO-proposed amendments to SB 125 and the rationales for those amendments. In what follows, I provide an overview of these proposals.

Understanding Ohio's "Income Shares" Model

To appreciate NPO's concerns with how SB 125 handles the division of child support funds, it's necessary to understand the child support model Ohio uses. Like 40 other U.S. jurisdictions,[1] Ohio employs what's called the "income shares" model for determining child support obligations. This model begins with the important assumption that both parents have an obligation to financially support their children. It assigns to each parent a portion of the combined child support obligation based on that parent's share of the combined income.

To illustrate with *very* simple numbers, suppose that Dad earns $60,000 per year and Mom earns $40,000 per year. Imagine their combined child support obligation from the basic child support schedule is

[1] See, "Child Support Guideline Models by State," *National Conference of State Legislatures*, http://www.ncsl.org/research/human-services/guideline-models-by-state.aspx, visited 10/23/2017.

$10,000 per year. The income shared model implies a $6,000 per year obligation for Dad and a $4,000 per year obligation for Mom.

As you heard representatives of JFS testify, since instituting its current child support laws in the early 1990s, Ohio has presumptively put *all* of these funds in one parent's household. So, if Mom is the custodial/residential parent, her $4,000 is presumed to be expended directly on the children and Dad's $6,000 is the child support obligation he will pay to Mom. For a quarter of a century, then, Ohio has been putting 100% of the combined child support funds in one of the children's homes even though children routinely spend 25% - 35% of their time in their other home.

Standard Parenting Time Adjustment

According to the latest report from the National Conference of State Legislatures, "[a]pproximately 36 states and D.C. have an adjustment in the child support guidelines for parenting time" built into the guideline child support calculation.[2] Despite recommendations from all of the quadrennial Ohio Child Support Guideline Advisory Councils since at least 2001, Ohio law has never included a parenting time adjustment.

SB 125 proposes a standard parenting time adjustment (SPTA) of 10% of the obligor's child support obligation. At the September 26 Senate Judiciary Committee Hearing on SB 125, Senator Eklund asked Sarah Fields, (Assistant Director, of Child Support Enforcement Agency, Montgomery County Department of Job And Family Services) where this 10% figure came from. Ms. Fields responded by citing the methodology that results in an estimate of 10%.

However, as was clearly outlined in NPO's written testimony, this methodology clearly implies that a 10.5% SPTA is to be calculated from the *combined* child support obligations of both parents, not a 10% downward adjustment based on the obligation *of the child support obligor only,* as SB 125 provides.

At an interested parties meeting, JFS representatives offered two justifications for deviating from the implications of the methodology Ms. Fields described. First, a 10% SPTA based on the *combined* child support funds could result in an obligor paying less under the new guidelines than under the old. Call this 'the Ratchet Rationale' on the grounds that it assumes that a parenting time adjustment should never result in obligor parents retaining more child support funds in their homes than they currently have. Second, it would result in obligors receiving different SPTAs even though their obligation prior to this adjustment was the same and they were both exercising standard parenting time. Call this 'the Variability Rationale'. These are both specious arguments.

- ***The Ratchet Rationale:*** Representatives of JFS have conceded that the current child support guidelines inappropriately place 100% of the combined child support funds on only one household that the child lives in. It is not surprising, then, that even updating the basic child support schedule to better reflect contemporary spending patterns, an appropriate SPTA would result in some obligor parents transferring a lower amount of child support funds under the new guidelines than the old.
- ***The Variability Rationale:*** The variation in SPTAs that would result from calculating the SPTA based on the *combined* child support funds is *not* arbitrary. It is based on the principle—

[2] See "Child Support and Parenting Time Orders," *National Conference of State Legislatures,* http://www.ncsl.org/research/human-services/child-support-and-parenting-time-orders.aspx, visited 4/27/2017.

> foundational to the Income Shares Model that Ohio law is based on and written into the Ohio Revised Code—that *both* parents have an obligation to support their children. Cases where the obligee earns more (and, so, the combined child support obligation is higher) will, of course, result in a larger SPTA. That's because child support is a shared responsibility of *both parents*. To say that two obligors should receive the same SPTA based only on *their* share of the combined child support obligation would be like saying that two obligees should receive the same amount of child support regardless of the child support obligation of the obligor.

Given that methodology, the SPTA should be *10.5%* of the *combined* child support obligation. The 2009, 2013, and 2017 Ohio Child Support Guidelines Advisory Councils Reports all recommend basing the SPTA on the *combined* child support obligation.[3]

The downward adjustment of 10% of only the obligor's portion of the child support obligation has absolutely no justification grounded in the rationale behind Ohio's child support model. To correct that mathematical error, National Parents Organization urges the following amendment to SB 125.

NPO Proposed Amendment #1

Sec. 3119.051. (A) Except as otherwise provided in this section, a court or child support enforcement agency calculating the amount to be paid by the obligor under a child support order shall reduce by ten-and-one-half per cent ~~the amount of the annual individual support obligation for the parent or parents~~ of the combined child support obligation of both parents when a court has issued or is issuing a court-ordered parenting time order that equals or exceeds ninety overnights per year. This reduction may be in addition to the other deviations and reductions.

Inappropriate Baseline, Failure to Provide Due Process, and Unequal Treatment

With respect to whether a parent has standing to change a Standard Parenting Time Adjustment, SB 125 treats the two parents in radically dissimilar ways. And, furthermore, it fails to explicitly require even a minimum of due process. §3119.051(B) provides that:

> "At the request of the obligee, a court may eliminate a previously granted adjustment established under division (A) of this section if the obligor, without just cause, has failed to exercise court-ordered parenting time" (lines 1350-1353).

This causes three problems:

- ***Improper Baseline:*** The first problem is that the baseline is an improper one. If an obligor is, without just cause, failing to exercise all of the court-ordered parenting time, but is, nevertheless, exercising parenting time in excess of the 90 overnights that the SPTA assumes, there is no justification for eliminating the SPTA.

[3] See: *Report to the General Assembly, Ohio's Child Support Guideline*s (2009), p. 63; *2013 Child Support Guidelines Review Report to the General Assembly* (2013), p. 14; and *2017 Child Support Guidelines Review Report to the General Assembly* (2017), p. 15. Note, though, that the 2009 and 2013 reports assumed standard parenting time of only 25% which resulted in a recommended adjustment of 8.75% but it was, appropriately, calculated from the *combined* child support obligation. Because of changes in local parenting time rules, the 2017 Council assumed 30% parenting time for the obligor. (There is no explanation offered for why 8.75% was not rounded up to 9% in the 2019 and 2013 reports but 10.5% was rounded down to 10% in the 2017 report.)

- ***Lack of Due Process:*** The second problem is that there is absolutely no provision for due process before a court makes this determination and eliminates the SPTA.
- ***Unequal Treatment:*** Finally, while §3119.051(B) provides relief for an obligee when the obligor is not exercising the appropriate amount of time, it does not provide a similar remedy for the obligor when the obligee is, without just cause, not exercising court-ordered parenting time and this results in the obligor having responsibility for the children in excess of 90 overnights when the court had ordered less parenting time.

To address all three of the problems with this section of the bill, NPO urges the following, comprehensive amendment.

NPO Proposed Amendment #2

3119.051. (B). (1) At the request of the obligee, a court may eliminate a previously granted adjustment established under division (A) of this section if the obligor, without just cause, has failed to exercise ~~court-ordered~~ parenting time on a schedule that would result in at least 90 overnights per year.

(2) When a court order has not included a standard parenting time adjustment because the court ordered parenting time was below the standard level, at the request of the obligor, a court may institute a standard parenting time adjustment under division (A) of this section if the obligee has, without just cause, failed to exercise court-ordered parenting time which has resulted in the obligor exercising parenting time that would result in at least 90 overnights per year.

(3) Prior to reaching a determination that the obligor or obligee is, without just cause, not exercising the required amount of parenting time, a court shall notify the parent alleged not to be exercising the expected parenting time and hold a hearing if that parent contests the allegation.

In the interested parties meeting on October 3, Judge Richard Wright, Licking County Common Pleas Court, Domestic Relations Division, indicated that he and, he believed, his colleagues on the bench, would not remove a SPTA without the sort of due process that NPO is urging be included in SB 125. NPO assumes that this means that judges and magistrates would not object to such provisions being explicitly included in the bill. If Judge Wright is correct, such inclusion would not alter court practices. And it would certainly reassure parents that they would receive due process before significant changes are made in their child support obligations.

Vague and Misleading Guidelines for Extended Parenting Time

SB 125 provisions for handling extended parenting time (more than 40.7%) are both vague and misleading. §3119.231 provides:

> "If court-ordered parenting time is equal to or exceeds one hundred forty-seven overnights per year, the court shall consider a substantial deviation. If the court does not grant a substantial deviation from that amount, it shall specify in the order the facts that are the basis for the court's decision" (lines 1489-1493).

The bill does not, though, give any indication of what constitutes a "substantial deviation." Furthermore, by speaking only of a deviation from the obligor's child support obligation, it misleadingly suggests that

the deviation should be based on that amount, alone. However, just as the standard parenting adjustment should be based on the combined obligation, so should the "substantial deviation" for extended parenting time.

This problem, and many others in the bill could have been avoided if the Ohio Child Support Guidelines Advisory Council had chosen to pursue an approach to parenting time adjustments that are finely adjusted to the actual parenting time. This is how Arizona and Michigan approach these issues and, in doing so, avoid many of the problems that SB 125 would enact into law. Such an approach would, as noted in the NPO Report, avoid the undesirable cliff effects that are present in SB 125—cliff effects that will encourage disputes over meaningless differences in parenting schedules.

This sort of correction of the SB 125, while desirable, would require an entire rewriting of the provisions of the bill for parenting time adjustments. As an approach to ameliorating the problems with SB 125 with respect to extended parenting time, NPO urges the following amendment.

NPO Proposed Amendment #3

> Sec. 3119.231. In determining whether to grant a deviation pursuant to section 3119.22 of the Revised Code for the reason set forth in division (C) of section 3119.23 of the Revised Code, the court shall recognize that expenses for the children are incurred in both households and shall apply the following deviation:
>
> If court-ordered parenting time is equal to or exceeds one hundred forty-seven overnights per year, the court shall consider a substantial deviation <u>based on the combined child support obligation of both parents and seeking to apportion child support funds between the households in proportion to the expected child-related expenses in each household</u>. If the court does not grant a substantial deviation from that amount, it shall specify in the order the facts that are the basis for the court's decision.

Such a change would remind the court that the entire purpose of child support is to ensure that the combined child support obligation of the two parents is to be divided between the parents' households in such a way as to meet the anticipated child-related expenses incurred by each parent.

Conclusion

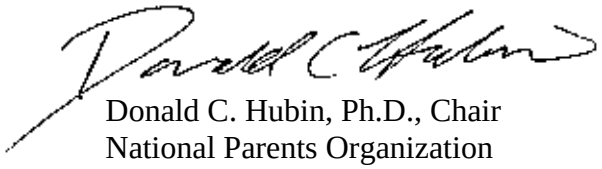
The 2017 Child Support Guidelines Advisory Council and the Ohio Department of Job and Family Services have addressed several important flaws in our current child support statutes. However, they missed a terrific opportunity to modernize Ohio's child support laws in a way that will address the increasing need to accommodate true shared parenting arrangements appropriately. Decades of social science research show that, when parents live apart, roughly equal shared parenting is in the best interest of the children in most cases. The State of Ohio should be encouraging true shared parenting arrangements. Unfortunately, the cliff effects that SB 125 would enact into law will not promote shared parenting and will, in fact, encourage senseless disputes over meaningless differences in parenting schedules.

A pro-child, pro-shared parenting child support bill would address parenting time adjustments very differently from the approach in SB 125. It would, at a minimum, create a separate worksheet and model for separated parents who are truly sharing parenting responsibilities in a meaningful way. This worksheet would be founded on a different model than the current worksheet that begins with a sole-custody assumption and then tries to handle shared parenting cases in *ad hoc* and inadequate ways.

National Parents Organization will continue to work for modifications in Ohio's child support laws so as to encourage shared parenting and treat both parents' relationship with the children as equally important. While SB 125 does not represent such an approach, the above NPO recommended amendments to SB 125 will ameliorate some the detrimental impacts of the approach that the 2017 CSGAC and JFS have chosen for dealing with parenting time issues.

Thank you for the opportunity for National Parents Organization to convey its concerns about the adverse effects of SB 125's handling of shared parenting cases.

Respectfully,



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