

As Introduced

**126th General Assembly
Regular Session
2005-2006**

H. B. No. 688

Representatives Setzer, Distel, White, D., Martin, Webster

—

A BILL

To amend sections 3109.03 and 3109.04 and to enact 1
section 3109.044 of the Revised Code to ensure 2
that court orders and decrees that allocate 3
parental rights and responsibilities with respect 4
to the care of and access to children provide for 5
substantial equality between the parents except 6
where clear and convincing evidence shows that 7
substantial equality would be harmful to the 8
children and to provide for better enforcement of 9
shared parenting orders and decrees. 10

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 3109.03 and 3109.04 be amended and 11
section 3109.044 of the Revised Code be enacted to read as 12
follows: 13

Sec. 3109.03. When husband and wife are living separate and 14
apart from each other, or are divorced, and the question as to the 15
parental rights and responsibilities for the care of their 16
children and the place of residence and legal custodian of their 17
children is brought before a court of competent jurisdiction, they 18
shall stand upon an equality as to the parental rights and 19
responsibilities for the care of their children and the place of 20

residence and legal custodian of their children, so far as 21
parenthood is involved. 22

In making any order or decree, at any stage of a proceeding, 23
that allocates parental rights and responsibilities regarding the 24
care of and access to the children of the parents, a court shall 25
grant substantially equal rights to the parents unless it finds by 26
clear and convincing evidence that substantial equality would be 27
harmful to the children. Whenever a court makes an order or decree 28
that does not provide for substantial equality, it shall explain 29
in writing the reasons for its determination. 30

Sec. 3109.04. (A) In any divorce, legal separation, or 31
annulment proceeding and in any proceeding pertaining to the 32
allocation of parental rights and responsibilities for the care of 33
a child, upon hearing the testimony of either or both parents and 34
considering any mediation report filed pursuant to section 35
3109.052 of the Revised Code and in accordance with sections 36
3127.01 to 3127.53 of the Revised Code, the court shall allocate 37
the parental rights and responsibilities for the care of the minor 38
children of the marriage. Subject to division (D)(2) of this 39
section, the court may allocate the parental rights and 40
responsibilities for the care of the children in either of the 41
following ways: 42

(1) If neither parent files a pleading or motion in 43
accordance with division (G) of this section, if at least one 44
parent files a pleading or motion under that division but no 45
parent who filed a pleading or motion under that division also 46
files a plan for shared parenting, or if at least one parent files 47
both a pleading or motion and a shared parenting plan under that 48
division but no plan for shared parenting is in the best interest 49
of the children and provides for a substantial equal allocation of 50
parental rights and responsibilities for the care of and access to 51

the children, the court, in a manner consistent with the best 52
interest of the children, shall allocate the parental rights and 53
responsibilities for the care of the children primarily to one of 54
the parents, designate that parent as the residential parent and 55
the legal custodian of the child, and divide between the parents 56
the other rights and responsibilities for the care of the 57
children, including, but not limited to, the responsibility to 58
provide support for the children and the right of the parent who 59
is not the residential parent to have continuing contact with the 60
children. The court shall grant substantially equal rights to the 61
parents unless it finds upon clear and convincing evidence that 62
substantial equality would be harmful to the children. 63

(2) If at least one parent files a pleading or motion in 64
accordance with division (G) of this section and a plan for shared 65
parenting pursuant to that division and if a plan for shared 66
parenting is in the best interest of the children and is approved 67
by the court in accordance with division (D)(1) of this section, 68
the court ~~may~~ shall allocate the parental rights and 69
responsibilities for the care of the children to both parents and 70
issue a shared parenting order requiring the parents to share all 71
or some of the aspects of the physical and legal care of the 72
children in accordance with the approved plan for shared 73
parenting. ~~If~~ 74

If the court issues a shared parenting order under this 75
division and it is necessary for the purpose of receiving public 76
assistance, the court shall designate which one of the parents' 77
residences is to serve as the child's home. ~~The~~ This designation 78
shall be for the sole purpose of receiving public assistance and 79
shall not affect the designation under division (K)(6) of this 80
section of each parent as the "residential parent," the 81
"residential parent and legal custodian," or the "custodial 82
parent" of the child. 83

The child support obligations of the parents under a shared 84
parenting order issued under this division shall be determined in 85
accordance with Chapters 3119., 3121., 3123., and 3125. of the 86
Revised Code. 87

(B)(1) When making the allocation of the parental rights and 88
responsibilities for the care of the children under this section 89
in an original proceeding or in any proceeding for modification of 90
a prior order of the court making the allocation, the court shall 91
take into account that which would be in the best interest of the 92
children. In determining the child's best interest for purposes of 93
making its allocation of the parental rights and responsibilities 94
for the care of the child and for purposes of resolving any issues 95
related to the making of that allocation, the court, in its 96
discretion, may and, upon the request of either party, shall 97
interview in chambers any or all of the involved children 98
regarding their wishes and concerns with respect to the 99
allocation. 100

(2) If the court interviews any child pursuant to division 101
(B)(1) of this section, all of the following apply: 102

(a) The court, in its discretion, may and, upon the motion of 103
either parent, shall appoint a guardian ad litem for the child. 104

(b) The court first shall determine the reasoning ability of 105
the child. If the court determines that the child does not have 106
sufficient reasoning ability to express the child's wishes and 107
concern with respect to the allocation of parental rights and 108
responsibilities for the care of the child, it shall not determine 109
the child's wishes and concerns with respect to the allocation. If 110
the court determines that the child has sufficient reasoning 111
ability to express the child's wishes or concerns with respect to 112
the allocation, it then shall determine whether, because of 113
special circumstances, it would not be in the best interest of the 114

child to determine the child's wishes and concerns with respect to 115
the allocation. If the court determines that, because of special 116
circumstances, it would not be in the best interest of the child 117
to determine the child's wishes and concerns with respect to the 118
allocation, it shall not determine the child's wishes and concerns 119
with respect to the allocation and shall enter its written 120
findings of fact and opinion in the journal. If the court 121
determines that it would be in the best interests of the child to 122
determine the child's wishes and concerns with respect to the 123
allocation, it shall proceed to make that determination. 124

(c) The interview shall be conducted in chambers, and no 125
person other than the child, the child's attorney, the judge, any 126
necessary court personnel, and, in the judge's discretion, the 127
attorney of each parent shall be permitted to be present in the 128
chambers during the interview. 129

(3) No person shall obtain or attempt to obtain from a child 130
a written or recorded statement or affidavit setting forth the 131
child's wishes and concerns regarding the allocation of parental 132
rights and responsibilities concerning the child. No court, in 133
determining the child's best interest for purposes of making its 134
allocation of the parental rights and responsibilities for the 135
care of the child or for purposes of resolving any issues related 136
to the making of that allocation, shall accept or consider a 137
written or recorded statement or affidavit that purports to set 138
forth the child's wishes and concerns regarding those matters. 139

(C) Prior to trial, the court may cause an investigation to 140
be made as to the character, family relations, past conduct, 141
earning ability, and financial worth of each parent and may order 142
the parents and their minor children to submit to medical, 143
psychological, and psychiatric examinations. The report of the 144
investigation and examinations shall be made available to either 145
parent or the parent's counsel of record not less than five days 146

before trial, upon written request. The report shall be signed by 147
the investigator, and the investigator shall be subject to 148
cross-examination by either parent concerning the contents of the 149
report. The court may tax as costs all or any part of the expenses 150
for each investigation. 151

If the court determines that either parent previously has 152
been convicted of or pleaded guilty to any criminal offense 153
involving any act that resulted in a child being a neglected 154
child, that either parent previously has been determined to be the 155
perpetrator of the neglectful act that is the basis of an 156
adjudication that a child is a neglected child, or that there is 157
reason to believe that either parent has acted in a manner 158
resulting in a child being a neglected child, the court shall 159
consider that fact against naming that parent the residential 160
parent and against granting a shared parenting decree. When the 161
court allocates parental rights and responsibilities for the care 162
of children or determines whether to grant shared parenting in any 163
proceeding, it shall consider whether either parent has been 164
convicted of or pleaded guilty to a violation of section 2919.25 165
of the Revised Code involving a victim who at the time of the 166
commission of the offense was a member of the family or household 167
that is the subject of the proceeding, has been convicted of or 168
pleaded guilty to any other offense involving a victim who at the 169
time of the commission of the offense was a member of the family 170
or household that is the subject of the proceeding and caused 171
physical harm to the victim in the commission of the offense, or 172
has been determined to be the perpetrator of the abusive act that 173
is the basis of an adjudication that a child is an abused child. 174
If the court determines that either parent has been convicted of 175
or pleaded guilty to a violation of section 2919.25 of the Revised 176
Code involving a victim who at the time of the commission of the 177
offense was a member of the family or household that is the 178

subject of the proceeding, has been convicted of or pleaded guilty 179
to any other offense involving a victim who at the time of the 180
commission of the offense was a member of the family or household 181
that is the subject of the proceeding and caused physical harm to 182
the victim in the commission of the offense, or has been 183
determined to be the perpetrator of the abusive act that is the 184
basis of an adjudication that a child is an abused child, it may 185
designate that parent as the residential parent and may issue a 186
shared parenting decree or order only if it determines that it is 187
in the best interest of the child to name that parent the 188
residential parent or to issue a shared parenting decree or order 189
and it makes specific written findings of fact to support its 190
determination. 191

(D)(1)(a) Upon the filing of a pleading or motion by either 192
parent or both parents, in accordance with division (G) of this 193
section, requesting shared parenting and the filing of a shared 194
parenting plan in accordance with that division, the court shall 195
comply with division (D)(1)(a)(i), (ii), or (iii) of this section, 196
whichever is applicable: 197

(i) If both parents jointly make the request in their 198
pleadings or jointly file the motion and also jointly file the 199
plan, the court shall review the parents' plan to determine if it 200
is in the best interest of the children. If the court determines 201
that the plan is in the best interest of the children, the court 202
shall approve it. If the court determines that the plan or any 203
part of the plan is not in the best interest of the children, the 204
court shall require the parents to make appropriate changes to the 205
plan to meet the court's objections to it. If changes to the plan 206
are made to meet the court's objections, and if the new plan is in 207
the best interest of the children, the court shall approve the 208
plan. If changes to the plan are not made to meet the court's 209
objections, or if the parents attempt to make changes to the plan 210

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 shall not
approve a plan under this division unless it determines that the
plan is in the best interest of the children.

(ii) If each parent makes a request in the parent's pleadings
or files a motion and each also files a separate plan, the court
shall 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 provides for substantial equality with regard to
rights and responsibilities for the care of and access to the
children and is in the best interest of the children, the court
~~may~~ shall 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 and provides for
substantial equality with regard to rights and responsibilities
for the care of and access to the children, the court ~~may~~ shall
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
and provides for substantial equality with regard to rights and

responsibilities for the care of and access to the children, the 243
court may reject the portion of the parents' pleadings or deny 244
their motions requesting shared parenting of the children and 245
proceed as if the requests in the pleadings or the motions had not 246
been made. If the court approves a plan under this division, 247
either as originally filed or with submitted changes, or if the 248
court rejects the portion of the parents' pleadings or denies 249
their motions requesting shared parenting under this division and 250
proceeds as if the requests in the pleadings or the motions had 251
not been made, the court shall enter in the record of the case 252
findings of fact and conclusions of law as to the reasons for the 253
approval or the rejection or denial. Division (D)(1)(b) of this 254
section applies in relation to the approval or disapproval of a 255
plan under this division. 256

(iii) If each parent makes a request in the parent's 257
pleadings or files a motion but only one parent files a plan, or 258
if only one parent makes a request in the parent's pleadings or 259
files a motion and also files a plan, the court in the best 260
interest of the children may order the other parent to file a plan 261
for shared parenting in accordance with division (G) of this 262
section. The court shall review each plan filed to determine if 263
any plan is in the best interest of the children and provides for 264
substantial equality with regard to rights and responsibilities 265
for the care of and access to the children. If the court 266
determines that one of the filed plans is in the best interest of 267
the children and provides for substantial equality with regard to 268
rights and responsibilities for the care of and access to the 269
children, the court ~~may~~ shall approve the plan. If the court 270
determines that no filed plan is in the best interest of the 271
children and provides for substantial equality with regard to 272
rights and responsibilities for the care of and access to the 273
children, the court may order each parent to submit appropriate 274
changes to the parent's plan or both of the filed plans to meet 275

the court's objections or may select one filed plan and order each 276
parent to submit appropriate changes to the selected plan to meet 277
the court's objections. If changes to the plan or plans are 278
submitted to meet the court's objections, and if any of the filed 279
plans with the changes is in the best interest of the children and 280
provides for substantial equality with regard to rights and 281
responsibilities for the care of and access to the children, the 282
court ~~may~~ shall approve the plan with the changes. If changes to 283
the plan or plans are not submitted to meet the court's 284
objections, or if the parents submit changes to the plan or plans 285
to meet the court's objections but the court determines that none 286
of the filed plans with the submitted changes is in the best 287
interest of the children and provides for substantial equality 288
with regard to rights and responsibilities for the care of and 289
access to the children, the court may reject the portion of the 290
parents' pleadings or deny the parents' motion or reject the 291
portion of the parents' pleadings or deny their motions requesting 292
shared parenting of the children and proceed as if the request or 293
requests or the motion or motions had not been made. If the court 294
approves a plan under this division, either as originally filed or 295
with submitted changes, or if the court rejects the portion of the 296
pleadings or denies the motion or motions requesting shared 297
parenting under this division and proceeds as if the request or 298
requests or the motion or motions had not been made, the court 299
shall enter in the record of the case findings of fact and 300
conclusions of law as to the reasons for the approval or the 301
rejection or denial. Division (D)(1)(b) of this section applies in 302
relation to the approval or disapproval of a plan under this 303
division. 304

(b) ~~The approval of a plan under division (D)(1)(a)(ii) or~~ 305
~~(iii) of this section is discretionary with the court. The court~~ 306
shall not approve more than one plan under ~~either~~ division 307
(D)(1)(a)(ii) or (iii) of this section and shall not approve a 308

plan under either division unless it determines in accordance with 309
division (F)(1) of this section that the plan is in the best 310
interest of the children. If the court, under either division, 311
does not determine that any filed plan or any filed plan with 312
submitted changes is in the best interest of the children and 313
provides for substantial equality with regard to rights and 314
responsibilities for the care of and access to the children, the 315
court shall not approve any plan. 316

(c) ~~Whenever possible, the~~ The court shall require that a 317
shared parenting plan approved under division (D)(1)(a)(i), (ii), 318
or (iii) of this section ensure ~~the opportunity for both parents~~ 319
~~to have frequent and continuing contact with the child, unless~~ 320
~~frequent and continuing contact with any parent would not be in~~ 321
~~the best interest of the child, to the greatest extent possible,~~ 322
that parental rights and responsibilities for the care of and 323
access to the children are allocated to the parents on a 324
substantially equal basis unless there is clear and convincing 325
evidence that such an allocation would be harmful to the children. 326

(d) If a court approves a shared parenting plan under 327
division (D)(1)(a)(i), (ii), or (iii) of this section, the 328
approved plan shall be incorporated into a final shared parenting 329
decree granting the parents the shared parenting of the children. 330
Any final shared parenting decree shall be issued at the same time 331
as and shall be appended to the final decree of dissolution, 332
divorce, annulment, or legal separation arising out of the action 333
out of which the question of the allocation of parental rights and 334
responsibilities for the care of the children arose. 335

No provisional shared parenting decree shall be issued in 336
relation to any shared parenting plan approved under division 337
(D)(1)(a)(i), (ii), or (iii) of this section. A final shared 338
parenting decree issued under this division has immediate effect 339
as a final decree on the date of its issuance, subject to 340

modification or termination as authorized by this section.

341

(2) If the court finds by clear and convincing evidence, with respect to any child under eighteen 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 temporarily commit the child to a relative of the child ~~or~~, and it shall 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.

342

343

344

345

346

347

348

349

350

351

(E)(1)(a) The court shall not modify 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 shall retain 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:~~

352

353

354

355

356

357

358

359

360

361

362

363

~~(i) 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.~~

364

365

366

~~(ii) 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.~~

367

368

369

370

~~(iii) The harm likely to be caused by a change of environment~~

371

is outweighed by the advantages of the change of environment to the child. 372
373

(b) One or both of the parents under a prior decree 374
allocating parental rights and responsibilities for the care of 375
children that is not a shared parenting decree may file a motion 376
requesting that the prior decree be modified to give both parents 377
~~shared~~ substantially equal rights and responsibilities for the 378
care of the children. The motion shall include both a request for 379
modification of the prior decree and a request for a shared 380
parenting order that complies with division (G) of this section. 381
Upon the filing of the motion, if the court determines that a 382
modification of the prior decree is authorized under division 383
(E)(1)(a) of this section, the court ~~may~~ shall modify the prior 384
decree to grant a shared parenting order, provided that the court 385
shall not modify the prior decree to grant a shared parenting 386
order unless the court complies with divisions (A) and (D)(1) of 387
this section and, in accordance with those divisions, approves the 388
submitted shared parenting plan and determines that shared 389
parenting would be in the best interest of the children. 390

(c) If the court allocates parental rights and 391
responsibilities for the care of and access to the children under 392
division (E)(1) of this section in a substantially unequal manner 393
on the ground that one of the parents is unsuitable for 394
substantial equality, and the unsuitable parent removes some of 395
the grounds for the finding of unsuitability, the court on motion 396
shall modify its order or decree to provide for greater equality. 397
Where all of the grounds for the finding of unsuitability have 398
been removed, the court shall modify its order or decree to 399
provide for substantial equality. 400

(2) In addition to a modification authorized under division 401
(E)(1) of this section: 402

(a) Both parents under a shared parenting decree jointly may 403
modify the terms of the plan for shared parenting approved by the 404
court and incorporated by it into the shared parenting decree. 405
Modifications under this division may be made at any time. The 406
modifications to the plan shall be filed jointly by both parents 407
with the court, and the court shall include them in the plan, 408
unless they are not in the best interest of the children. If the 409
modifications are not in the best interests of the children, the 410
court, in its discretion, may reject the modifications or make 411
modifications to the proposed modifications or the plan that are 412
in the best interest of the children. Modifications jointly 413
submitted by both parents under a shared parenting decree shall be 414
effective, either as originally filed or as modified by the court, 415
upon their inclusion by the court in the plan. Modifications to 416
the plan made by the court shall be effective upon their inclusion 417
by the court in the plan. 418

(b) The court may modify the terms of the plan for shared 419
parenting approved by the court and incorporated by it into the 420
shared parenting decree upon ~~its own motion~~ a motion by one or 421
both of the parents at any time if the court determines that the 422
modifications are in the best interest of the children ~~or upon the~~ 423
~~request of one or both of the parents under the decree.~~ 424
Modifications under this division may be made at any time. The 425
court shall not make any modification to the plan under this 426
division, unless the modification is in the best interest of the 427
children. 428

(c) The court may terminate a prior final shared parenting 429
decree that includes a shared parenting plan approved under 430
division (D)(1)(a)(i) of this section upon the request of one or 431
both of the parents or whenever it determines that shared 432
parenting is not in the best interest of the children. The court 433
may terminate a prior final shared parenting decree that includes 434

a shared parenting plan approved under division (D)(1)(a)(ii) or
(iii) of this section if it determines, upon its own motion or
upon the request of one or both parents, that shared parenting is
not in the best interest of the children. If modification of the
terms of the plan for shared parenting approved by the court and
incorporated by it into the final shared parenting decree is
attempted under division (E)(2)(a) of this section and the court
rejects the modifications, it may terminate the final shared
parenting decree if it determines that shared parenting is not in
the best interest of the children.

435
436
437
438
439
440
441
442
443
444

(d) Upon the termination of a prior final shared parenting
decree under division (E)(2)(c) of this section, the court shall
proceed and issue a modified decree for the allocation of parental
rights and responsibilities for the care of the children under the
standards applicable under divisions (A), (B), and (C) of this
section as if no decree for shared parenting had been granted and
as if no request for shared parenting ever had been made.

445
446
447
448
449
450
451

(e) If the court allocates parental rights and
responsibilities for the care of and access to the children under
division (E)(2) of this section in a substantially unequal manner
on the ground that one of the parents is unsuitable for
substantial equality, and the unsuitable parent removes some of
the grounds for the finding of unsuitability, the court on motion
shall modify its order or decree to provide for greater equality.
Where all of the grounds for the finding of unsuitability have
been removed, the court shall modify its order or decree to
provide for substantial equality.

452
453
454
455
456
457
458
459
460
461

(F)(1) In all determinations concerning the allocation of
parental rights and responsibilities for the care of and access to
children, there shall be a presumption that a substantially equal
allocation between the parents of rights and responsibilities for
the care of and access to the children is in the best interest of

462
463
464
465
466

the children. The court shall not allocate parental rights and 467
responsibilities for the care of and access to the children in a 468
way that is not substantially equal in the absence of clear and 469
convincing evidence that a substantially equal allocation would be 470
harmful to the children. In determining the best interest of a 471
child pursuant to this section, whether on an original decree 472
allocating parental rights and responsibilities for the care of 473
children or a modification of a decree allocating those rights and 474
responsibilities, the court shall consider all relevant factors, 475
including, but not limited to: 476

(a) The wishes of the child's parents regarding the child's 477
care; 478

(b) If the court has interviewed the child in chambers 479
pursuant to division (B) of this section regarding the child's 480
wishes and concerns as to the allocation of parental rights and 481
responsibilities concerning the child, the wishes and concerns of 482
the child, as expressed to the court; 483

(c) The child's interaction and interrelationship with the 484
child's parents, siblings, and any other person who may 485
significantly affect the child's best interest; 486

(d) The child's adjustment to the child's home, school, and 487
community; 488

(e) The mental and physical health of all persons involved in 489
the situation; 490

(f) The parent more likely to honor and facilitate 491
court-approved parenting time rights or visitation and 492
companionship rights; 493

(g) Whether either parent has failed to make all child 494
support payments, including all arrearages, that are required of 495
that parent pursuant to a child support order under which that 496
parent is an obligor, and whether that parent had the ability to 497

pay the support ordered; 498

(h) Whether either parent previously has been convicted of or 499
pleaded guilty to any criminal offense involving any act that 500
resulted in a child being an abused child or a neglected child; 501
whether either parent, in a case in which a child has been 502
adjudicated an abused child or a neglected child, previously has 503
been determined to be the perpetrator of the abusive or neglectful 504
act that is the basis of an adjudication; whether either parent 505
previously has been convicted of or pleaded guilty to a violation 506
of section 2919.25 of the Revised Code involving a victim who at 507
the time of the commission of the offense was a member of the 508
family or household that is the subject of the current proceeding; 509
whether either parent previously has been convicted of or pleaded 510
guilty to any offense involving a victim who at the time of the 511
commission of the offense was a member of the family or household 512
that is the subject of the current proceeding and caused physical 513
harm to the victim in the commission of the offense; and whether 514
there is reason to believe that either parent has acted in a 515
manner resulting in a child being an abused child or a neglected 516
child; 517

(i) Whether the residential parent or one of the parents 518
subject to a shared parenting decree has continuously and 519
willfully denied the other parent's right to parenting time in 520
accordance with an order of the court; 521

(j) Whether either parent has established a residence, or is 522
planning to establish a residence, outside this state. 523

(2) In determining whether shared parenting is in the best 524
interest of the children, the court shall consider all relevant 525
factors, including, but not limited to, the factors enumerated in 526
division (F)(1) of this section, the factors enumerated in section 527
3119.23 of the Revised Code, and all of the following factors: 528

(a) The ability of the parents to cooperate and make decisions jointly, with respect to the children;	529 530
(b) The ability of each parent to encourage the sharing of love, affection, and contact between the child and the other parent;	531 532 533
(c) Any history of, or potential for, child abuse, spouse abuse, other domestic violence, or parental kidnapping by either parent;	534 535 536
(d) The geographic proximity of the parents to each other, as the proximity relates to the practical considerations of shared parenting;	537 538 539
(e) The recommendation of the guardian ad litem of the child, if the child has a guardian ad litem.	540 541
(3) When allocating parental rights and responsibilities for the care of children, the court shall not give preference to a parent because of that parent's financial status or condition.	542 543 544
(G) Either parent or both parents of any children may file a pleading or motion with the court requesting the court to grant both parents shared parental rights and responsibilities for the care of the children in a proceeding held pursuant to division (A) of this section. If a pleading or motion requesting shared parenting is filed, the parent or parents filing the pleading or motion also shall file with the court a plan for the exercise of shared parenting by both parents. If each parent files a pleading or motion requesting shared parenting but only one parent files a plan or if only one parent files a pleading or motion requesting shared parenting and also files a plan, the other parent as ordered by the court shall file with the court a plan for the exercise of shared parenting by both parents. The plan for shared parenting shall be filed with the petition for dissolution of marriage, if the question of parental rights and responsibilities	545 546 547 548 549 550 551 552 553 554 555 556 557 558 559

for the care of the children arises out of an action for 560
dissolution of marriage, or, in other cases, at a time at least 561
thirty days prior to the hearing on the issue of the parental 562
rights and responsibilities for the care of the children. A plan 563
for shared parenting shall include provisions covering all factors 564
that are relevant to the care of the children, including, but not 565
limited to, provisions covering factors such as physical living 566
arrangements, child support obligations, provision for the 567
children's medical and dental care, school placement, and the 568
parent with which the children will be physically located during 569
legal holidays, school holidays, and other days of special 570
importance. 571

(H) If an appeal is taken from a decision of a court that 572
grants or modifies a decree allocating parental rights and 573
responsibilities for the care of children, the court of appeals 574
shall give the case calendar priority and handle it expeditiously. 575

(I) As used in this section, "abused child" has the same 576
meaning as in section 2151.031 of the Revised Code, and "neglected 577
child" has the same meaning as in section 2151.03 of the Revised 578
Code. 579

(J) As used in the Revised Code, "shared parenting" means 580
that the parents share, in the manner set forth in the plan for 581
shared parenting that is approved by the court under division 582
(D)(1) and described in division (K)(6) of this section, all or 583
some of the aspects of physical and legal care of their children. 584

(K) For purposes of the Revised Code: 585

(1) A parent who is granted the care, custody, and control of 586
a child under an order that was issued pursuant to this section 587
prior to April 11, 1991, and that does not provide for shared 588
parenting has "custody of the child" and "care, custody, and 589
control of the child" under the order, and is the "residential 590

parent," the "residential parent and legal custodian," or the 591
"custodial parent" of the child under the order. 592

(2) A parent who primarily is allocated the parental rights 593
and responsibilities for the care of a child and who is designated 594
as the residential parent and legal custodian of the child under 595
an order that is issued pursuant to this section on or after April 596
11, 1991, and that does not provide for shared parenting has 597
"custody of the child" and "care, custody, and control of the 598
child" under the order, and is the "residential parent," the 599
"residential parent and legal custodian," or the "custodial 600
parent" of the child under the order. 601

(3) A parent who is not granted custody of a child under an 602
order that was issued pursuant to this section prior to April 11, 603
1991, and that does not provide for shared parenting is the 604
"parent who is not the residential parent," the "parent who is not 605
the residential parent and legal custodian," or the "noncustodial 606
parent" of the child under the order. 607

(4) A parent who is not primarily allocated the parental 608
rights and responsibilities for the care of a child and who is not 609
designated as the residential parent and legal custodian of the 610
child under an order that is issued pursuant to this section on or 611
after April 11, 1991, and that does not provide for shared 612
parenting is the "parent who is not the residential parent," the 613
"parent who is not the residential parent and legal custodian," or 614
the "noncustodial parent" of the child under the order. 615

(5) Unless the context clearly requires otherwise, if an 616
order is issued by a court pursuant to this section and the order 617
provides for shared parenting of a child, both parents have 618
"custody of the child" or "care, custody, and control of the 619
child" under the order, to the extent and in the manner specified 620
in the order. 621

(6) Unless the context clearly requires otherwise and except 622
as otherwise provided in the order, if an order is issued by a 623
court pursuant to this section and the order provides for shared 624
parenting of a child, each parent, regardless of where the child 625
is physically located or with whom the child is residing at a 626
particular point in time, as specified in the order, is the 627
"residential parent," the "residential parent and legal 628
custodian," or the "custodial parent" of the child. 629

(7) Unless the context clearly requires otherwise and except 630
as otherwise provided in the order, a designation in the order of 631
a parent as the residential parent for the purpose of determining 632
the school the child attends, as the custodial parent for purposes 633
of claiming the child as a dependent pursuant to section 152(e) of 634
the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C.A. 635
1, as amended, or as the residential parent for purposes of 636
receiving public assistance pursuant to division (A)(2) of this 637
section, does not affect the designation pursuant to division 638
(K)(6) of this section of each parent as the "residential parent," 639
the "residential parent and legal custodian," or the "custodial 640
parent" of the child. 641

Sec. 3109.044. (A) If a party to a divorce, legal separation, 642
or annulment proceeding or a proceeding pertaining to the 643
allocation of parental rights and responsibilities with respect to 644
the care of and access to children does not comply with that 645
portion of an order or decree that allocates parental rights and 646
responsibilities, an aggrieved party may file a family access 647
motion with the court stating the specific facts that constitute a 648
violation of the order or decree. On finding on a family access 649
motion or motion for contempt that the party against whom the 650
motion was filed has failed, without good cause, to comply with 651
the order allocating parental rights and responsibilities, the 652

court shall order a remedy that may include any or all of the following:

653
654

(1) A compensatory period of parenting time at a time convenient for the aggrieved party that is not less than the period denied;

655
656
657

(2) Participation by the violator in counseling to educate the violator about the importance of providing the children with a continuing and meaningful relationship with both parents;

658
659
660

(3) The assessment of a fine of up to five hundred dollars against the violator payable to the aggrieved party;

661
662

(4) A requirement that the violator post bond or security to ensure compliance with the order or decree;

663
664

(5) An order that the violator pay the cost of counseling to re-establish the parent-child relationship between the aggrieved party and the children;

665
666
667

(6) An award to an aggrieved party of reasonable expenses incurred as a result of the unreasonable denial of or interference with parental rights and responsibilities, including attorney's fees and the costs of the family access motion, if requested and for good cause;

668
669
670
671
672

(7) Any other remedy that the court could have provided in the absence of this section.

673
674

(B) The cost of filing a family access motion shall be the standard court cost otherwise due for instituting a civil action in the court of common pleas.

675
676
677

(C) Final disposition of a family access motion shall take place not more than sixty days after the service of the motion unless a later date is agreed to by the parties or is determined to be in the best interest of the children. Final disposition does

678
679
680
681

not include appellate review.

682

(D) A family access motion shall be made using a form that is substantially the same as the following and includes the notice in boldface type and all capital letters:

683

684

685

"COURT OF COMMON PLEAS

686

DIVISION OF DOMESTIC RELATIONS

687

..... COUNTY, OHIO

688

..... CASE NO.

689

PLAINTIFF JUDGE

690

VS. FAMILY ACCESS

691

..... MOTION

692

DEFENDANT

693

An order/decreed allocating parental rights and responsibilities for the care of a child has been entered in County, Ohio.

694

695

696

(Plaintiff)(Defendant) hereby states that

697

(Your Name)

698

parental rights and responsibilities as ordered by the court have been interfered with by a parent or third party without good cause. The following facts constitute a violation of the court order. (Please provide the specific facts, including dates and times, that constitute a violation of the court order.)

699

700

701

702

703

704

705

706

707

708

709

710

711

712

713

..... 714
..... 715
..... 716
..... 717
..... 718
..... 719
..... 720
..... 721

Pursuant to section 3901.044 of the Ohio Revised Code, I 722
request that the court find that (defendant)(plaintiff) violated 723
the order allocating parental rights and responsibilities. 724

I request that the (defendant)(plaintiff) be ordered to: 725
(check boxes that apply) 726

..... Provide a compensatory period of parenting time at a 727
time convenient for the aggrieved party not less than the period 728
denied. 729

..... Participate in counseling to be educated about the 730
importance of providing the children with a continuing and 731
meaningful relationship with both parents. 732

..... Pay a fine of up to five hundred dollars (\$500.00). 733

..... Post bond or security to ensure compliance with the 734
court's order. 735

..... Pay the cost of counseling to reestablish the 736
parent-child relationship between the aggrieved party and the 737
children. 738

..... Pay the reasonable expenses, including attorney's 739
fees and court costs, actually incurred by the aggrieved party as 740
a result of the violation of the court's order. 741

..... Other relief 742

..... 743

The court may schedule alternative dispute resolution. 744

NOTICE 745

PURSUANT TO THE OHIO RULES OF CIVIL PROCEDURE, YOU ARE REQUIRED TO 746

RESPOND TO THE CLERK'S OFFICE OF THE COURT OF COMMON PLEAS, 747

DOMESTIC RELATIONS DIVISION, ON OR BEFORE 748

(DATE) 749

FAILURE TO RESPOND TO THE COURT CLERK'S OFFICE MAY RESULT IN THE 750

FOLLOWING: 751

(1) AN ORDER FOR A COMPENSATORY PERIOD OF PARENTING TIME AT A TIME 752

CONVENIENT FOR THE AGGRIEVED PARTY NOT LESS THAN THE PERIOD 753

DENIED; 754

(2) PARTICIPATION BY THE VIOLATOR IN COUNSELING TO EDUCATE THE 755

VIOLATOR ABOUT THE IMPORTANCE OF PROVIDING THE CHILDREN WITH A 756

CONTINUING AND MEANINGFUL RELATIONSHIP WITH BOTH PARENTS; 757

(3) ASSESSMENT OF A FINE OF UP TO FIVE HUNDRED DOLLARS (\$500.00) 758

AGAINST THE VIOLATOR; 759

(4) REQUIRING THE VIOLATOR TO POST BOND OR SECURITY TO ENSURE 760

FUTURE COMPLIANCE WITH THE COURT'S ORDER; 761

(5) AN ORDER THAT THE VIOLATOR PAY THE COST OF COUNSELING TO 762

RE-ESTABLISH THE PARENT-CHILD RELATIONSHIP BETWEEN THE AGGRIEVED 763

PARTY AND THE CHILDREN; 764

(6) A JUDGMENT IN AN AMOUNT NOT LESS THAN THE REASONABLE EXPENSES, 765

INCLUDING ATTORNEY'S FEES AND COURT COSTS, ACTUALLY INCURRED BY 766

THE AGGRIEVED PARTY AS A RESULT OF THE VIOLATION OF THE ORDER 767

ALLOCATING PARENTAL RIGHTS AND RESPONSIBILITIES. 768

Plaintiff/Defendant under oath says that the facts stated in 769

the above motion are true according to his or her best knowledge 770

and belief. Any false statement of a material fact may serve as 771

the basis for prosecution and conviction for perjury or the denial 772

of the motion. 773

.....	774
<u>DATE</u>	<u>PLAINTIFF/DEFENDANT'S</u>	775
	<u>SIGNATURE</u>	
<u>Subscribed to and sworn before me on</u>	776
	777
	<u>Deputy Clerk/Notary Public</u>	778
<u>KEEP A COPY OF THIS MOTION</u>		779
<u>AND BRING IT TO COURT"</u>		
<u>(E) The clerk of the court of common pleas shall explain to</u>		780
<u>persons wishing to file a family access motion the procedures for</u>		781
<u>filing the motion. The clerk shall conspicuously post in the</u>		782
<u>clerk's office notice that the clerk will provide such assistance</u>		783
<u>and shall conspicuously post in the court building the location of</u>		784
<u>the office where family access motions may be filed.</u>		785
Section 2. That existing sections 3109.03 and 3109.04 of the		786
Revised Code are hereby repealed.		787