Judicial Impact Statement

February 2, 2000

Prepared by Dr. Donna Childers

Senate Bill 180

Sponsor
Kearns

Status
Senate Judiciary

Version
ɜ Introduced

TITLE: S. B. 180 proposes to make changes in the laws governing child support.

The conclusions reached in this Judicial Impact Statement are based on careful reading and analysis of the latest research on child support, a survey of domestic relations and juvenile judges in Ohio, as well as private conversations with several judicial leaders and association officers in Ohio. Summary points are described on pages 1-2 in a "highlights" section. Background information is provided on pages 2-4, and specific reactions to particular provisions are provided on pages 5-11.

HIGHLIGHTS

Senate Bill 180's parenting time adjustment (PTA) program would provide an incentive for divorced parents to share equally in the rearing of children. Despite this and other laudable intentions, Senate Bill 180 would have negative consequences for Ohio Courts and Judges. Problems presented by Senate Bill 180 fall into two basic categories: (1) workload problems related to the parenting time adjustment approach, and (2) technical problems with how the statute will be interpreted and how understandable it will be to *pro se* litigants.

(1) Workload Problems and Implementation of Parenting Time Adjustment

- If enacted, Senate Bill 180 would increase court workload. It is likely that Ohio's experience will be similar to the experience in the State of Washington, in that parents will return to the court for adjustments more frequently than under current law. In particular, there may be a substantial increase in requests for adjustments necessitated by non-custodial parents who do not maintain their negotiated schedule.

- The parenting time adjustment formula is inappropriate for most cases that come before the court, and judges will experience an increase in workload as they conduct more extensive fact-finding to justify deviations required to meet the needs of real families. Child support researchers who have considered the economics of post-divorce families have concluded that parenting time adjustment formulas create a financial burden for custodial parents, especially when the custodial parent's income is less than the non-custodial parent's income.

What is a Judicial Impact Statement?

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- Senate Bill 180 provides insufficient safeguards against abuses by non-custodial parents who seek to increase time with their children in order to receive a reduction in child support payments.

(2) Technical Problems and Accessibility of *Pro Se* Litigants

- Judges have found that an increasing number of divorce and child custody cases are being brought without the aid of legal counsel. *Pro se* cases take a lot of judicial time and generally increase workload for judges and other court personnel. Senate Bill 180 would increase the number of *pro se* cases coming to the court, and the overly complex and often cumbersome nature of the wording of Senate Bill 180 will make it all that more difficult for judges to help *pro se* litigants to understand the implications of child support laws.

- Senate Bill 180 would be easier to understand if rules and procedures were handled consistently and without a distinction being made between court and agency orders.

BACKGROUND

The Family Support Act of 1988 requires states to develop and periodically evaluate child support guidelines. In developing guidelines, most child support policymakers have focused on the most common form of child custody -- that of sole physical custody by one parent and visitation for the other parent. Recent research shows, however, that shared parenting constitutes 12 to 20 percent of the child custody arrangements today. Ohio is one of seventeen states whose laws grant courts discretion to adjust child support in shared custody arrangements. Over half the states provide more guidance to their courts.

Ohio has developed child support guidelines that are consistent with federal regulations. Periodically Ohio has evaluated those guidelines, and has debated the merits of a parenting time adjustment program. The latest effort in that process is Senate Bill 180, which is an attempt to introduce more uniformity into Ohio's system by providing a formula for calculating child support. Proponents believe that the formula will allocate the burdens between parents fairly, provide incentives for both parents to spend time with their children, and reduce the costs associated with enforcement of child support orders.

Though these policy goals are laudable, there are reasons to believe that the formula and procedures established in Senate Bill 180 would reduce the amount of child support payments, but would not increase the time non-custodial parents spend with their children. This could jeopardize the financial security of the custodial parent, particularly in poor families, or families where there are disparities in parent incomes.

Before the State of Ohio considers enacting a parenting time adjustment approach, we suggest the General Assembly consider the experience of other states, the recommendations of child support researchers, and the information based upon the extensive experience that Ohio judges have with families in conflict over divorce and child custody.

Experience of Other States

The Ohio Judicial Conference has researched parenting time adjustment plans in other states, and discovered that the State of Washington abandoned and/or modified their PTA program after apparent failure. The primary problem with the parenting time adjustment program in Washington seemed to be that non-residential parents would negotiate reductions in child support based on visitation that did not occur. With residential parents returning to the courts for child support adjustments, Washington courts experienced an increase rather than a reduction in their child support enforcement costs.

Legal and Policy Research on Child Support

Researchers have documented several problems plaguing parenting time adjustment programs. Perhaps one of the most obvious problems is that shared parenting is more expensive than sole custody arrangements. The increased cost is a result of the duplication of some costs once a threshold visitation is crossed. Some scholars argue that there is no significant shift of costs until the time share is between 40 and 50 percent. Though proponents and opponents of PTA believe that shared parenting is a good idea, they also agree that it increases the total cost of raising a child. They point out that certain expenses (like providing a bedroom for the child, play or study space, and utilities) are duplicated. For example, the cost of providing a bedroom for the child is not reduced for the primary parent merely because the secondary parent is also spending more time with the child and also having to provide a bedroom. Thus, the PTA program provides challenges for those who seek to develop an appropriate formula for determining the cost of child support. Moreover, it also means that some families (especially poor ones) cannot afford to share custody because they would have trouble maintaining two child-rearing households.

Despite the added costs, most researchers agree that child support adjustment is appropriate in cases of equal time, but there is significant controversy about how to handle unequal time sharing. This problem is particularly problematic because the non-custodial parent begins to incur substantial costs (housing, transportation) before the primary parent experiences much reduction in expenses (recreation, food, child care). This problem is compounded when the nonprimary parent has a lower income than the primary parent (which apparently happens in 39 percent of the cases of unequal time, and this group is over-represented with mothers).

Experiences of Ohio Judges

Ohio's domestic relations judges are experiencing more and more *pro se* cases coming before them to resolve child support issues. Given the inexperience of the litigants, the *pro se* cases require more judicial time than cases brought with the assistance of legal counsel. Although we are sure that every effort is made to make all legislation clear, we encourage lawmakers to give child support legislation special consideration in terms of assuring very clear and easy to understand language.

SPECIFIC PROVISIONS

SECTION	ISSUE	IMPACT
Paternity		
3111.03	Paternity -- eliminates paternity presumption based on marriage or attempted marriage of a man and a child's mother after the child's birth.	No judicial impact
3111.13 (C)	Eliminates the requirement that a judgment of paternity direct the father to pay all or any part of the reasonable expenses of the mother's pregnancy and confinement. Instead, the law would permit the court to impose those expenses only if requested to do so by a party and if not prohibited by federal law.	No judicial impact
3111.13 (D)	Eliminates the option of lump sum payment or purchase of an annuity in lieu of periodic payments of support.	Sometimes it makes the most sense to order lump sum payments or annuity investments. Indeed, sometimes it is impossible to order periodic payments of support.
111.83	Requires the administrative officer to register the child support order with the clerk of the court of common pleas of the county served.	No judicial impact
3111.831	Authorizes Child Support Enforcement Agencies (CSEA's) to develop a system for the "organized safekeeping and retrieval" of support orders.	No judicial impact
3111.832	Instructs the clerk of a court of common pleas not to charge a registration fee and requires the clerk of court to assign the order a case number.	This provision does not include instructions for what the clerk of courts is supposed to do with these orders.
3111.84	Authorizes the parent subject to the administrative support order to file an appeal in the *juvenile court* within thirty days of the issuance of the order. The juvenile court is authorized to transfer the appeal to the domestic relations court if it is in the best interest of the child to do so. If no appeal is filed, the order is final and enforceable by a court.	Italics reference to juvenile court should be changed to "appropriate court" to indicate that objections should be raised in the appropriate court. See also 3111.49, 3111.84, 3119.61, and 3119.91.

SECTION	ISSUE	IMPACT
3115.33 through 3115.37	"employer" is replaced by "PAYOR"	A better alternative for "employer" needs to be selected, because some states use the term "payor" to mean "obligor." We should be careful in this area to use Uniform Interstate Family Support Act (UIFSA) definitions of these words. Also, at line 10,969, could there be some clarification as to the exact meaning of "payor's principal place of business"? For example, would "principal place of business" be Ford in Michigan or Ford in Lorain County?
Definitions		
3119.01(A)	Child Support Enforcement Agency is defined as an agency or a private government entity.	The definition of these private agencies needs to be very clear and precisely limited, especially since they are given tribunal status at 3115.01(X), and provided with contempt powers at 3115.16.
3119.01(C)(4) and 3119.05(F)	3119.01(C)(4) defines "extraordinary medical expenses" as those that exceed $100 in a calendar year. 3119.05(F) relies on a distinction between "reasonable and ordinary" expenses and "extraordinary" ones.	The definition contained in 3119.01(C)(4) should be consistently used in 3119.05(F). The language, in one instance, sets a standard based on a $100 per calendar year limit, the other appears to be based on the nature of the treatment or type of care. It is difficult to have two different, and conflicting standards to interpret and apply to individual cases of medical care.
3119.01(C)(7)	Definition of gross income includes "wages, overtime pay, and bonuses... commissions; royalties; tips; rents; dividends..."	Since the worksheet (at line 11,735) has a specific entry for "overtime, bonuses, and commissions," we suggest moving the reference to "commissions" at line 11,216 to line 11,214-11215 so that it appears linked to wages, overtime and bonuses, rather than being linked to royalties, tips, etc.
3119.01(C)(7) and 3119.05(I)	These sections rely on the distinction between "means-tested" and "non-means tested" benefits.	These terms need to be defined in the definition section (perhaps when gross income is defined) and then need to be used in a clear and consistent manner.

SECTION	ISSUE	IMPACT
3119.01(C)(7) and 3119.05(B)	"Spousal support actually received" (at line 11,226) and "amount of any court-ordered spousal support" (at line 12,501) reference the fact that spousal support counts as gross income.	It needs to be clear whether this includes temporary orders that apply to the present family or only to final court orders of pre-existing spousal support orders.
3119.01(C)(7) (d)	Gross income does not include mandatory deductions. Gross income does include taxes, social security, retirement in lieu of social security, and union dues.	This is a paraphrase of what is said and we believe the existing language needs to be changed to make it easier to understand.
3119.01(C)(10)	"Personal Earnings" is defined.	The definition of "personal earnings" in existing law [Section 3113.21(P)(8)] is clearer than the considered revision. We recommend that "but is not limited to" be re-inserted and that "or any other compensation" be deleted.
3119.022 (worksheet line 17b)	At lines 11,887-11,893 the worksheet includes non-means-tested benefits received by a child or a child's representative due to death, disability, or retirement of the parent.	The bill's drafters may want to follow the *McNeil* precedent; however, there is also precedent for deducting the full benefit from the obligor's responsibility. These conflicting precedents are currently before the Supreme Court of Ohio for resolution. There is no statute regarding this provision, and perhaps it would be better if it was not included on the worksheet.
3119.022 (worksheet lines 19, 20, 21, and 22)		Existing law is clearer than the proposed revision. We suggest that current worksheet calculations be retained. *Pro se* litigants will have more difficulty understanding the new calculations.
3119.022 (worksheet line 23a)	At line 11,981 the worksheet asks that you enter the number of overnights the children are in the physical custody of the obligor.	Under split parenting there is no PTA adjustment.
3119.022	In worksheet (lines 12,005 and 12,369) the court is instructed to state "specific facts and monetary value" for any deviations. However, at line 12,853 the court is instructed to state "findings of fact supporting that determination [to deviate]."	The factsheet and worksheet provide inconsistent instructions.
3119.022	The phrase "in the best interest of the child" is not contained in the worksheet (lines 12,005 and 12.368), but it is in the text at 12,846 and 12,853.	There is a need for consistency: "[I]n the best interest of the child" should be deleted from Section 3119.22. "Parental obligation" would be a better criterion with respect to child support provisions.

SECTION	ISSUE	IMPACT
119.05(F)	The subject of this provision is health care.	This should be moved to the health care section of the statute [see also 3119.01 (C)(4) p. 254, line 11,189].
3119.06	This provision authorizes the court to issue minimum support orders under stated circumstances.	Is it really intended (or just an oversight) that only courts (and not agencies as well) should have the authority to issue minimum support orders?
3119.07	This provision distinguishes between arrangements where one parent is the residential parent and the other not, when both are the residential parents, and when neither is the residential parent.	This provision may not be necessary.
3119.08	Adds "parenting time" to the list of things a court must make specific provision for in the child support order.	The provision needs to provide more guidance about "parenting time." We suggest a clear definition be given along with a determination of what constitutes a standard order (e.g., is it 90 days at 10 percent deviation?)
3119.14	This provision authorizes the court or agency to adjust the amount of child support based on the amount of parenting time the obligor is to have with the children.	We suggest this provision be eliminated and worked on by the Advisory Council. Perhaps the Council will make specific recommendations in this area. As it is written judges anticipate abuses that will lead to reductions in child support and no increased time with children. For example, a father (all the while intending to maintain a 90-93 overnight arrangement) could request and obtain a 122-25 overnight arrangement, have his children spend 92 overnights (75% of expected time), and receive a 20.8% reduction in child support payments (instead of the 10% reduction that a 92 overnight arrangement would produce).
3119.15	Adjustment table	We suggest that this table be reviewed and evaluated by the Council.
3119.16(B)	This provision prohibits adjustments that would bring the obligee's income below poverty level according to family size.	This provision would be very confusing for *pro se* litigants to apply and we suggest some clarification about who would be included as a member of "obligee's family" for purposes of calculating poverty level. For example, would it be the same as in the original order or might it include any additional children born to obligee?

SECTION	ISSUE	IMPACT
119.17	This provision lists the conditions that would make someone eligible for a reduction in the amount of their child support payments. These conditions include: (1) a court-ordered visitation or shared parenting schedule has been established, (2) child support payments are current for the last six months, and (3) a timeshare adjustment would reduce the obligation by more than 20 percent.	This language is very confusing and would present difficulties for *pro se* litigants. We suggest that the Council review this section and recommend clearer language and specific procedures for how a parent eliminates or establishes adjustments under the parenting time adjustment provisions.
3119.18	This provision indicates that a court or agency may eliminate the adjustment if the obligor fails to exercise twenty-five percent or more parenting time, and may make an adjustment if obligor proves that s/he has been exercising more than seventy-five percent of parenting time obligation.	This language is very confusing and would present difficulties for *pro se* litigants. We suggest that the Council review this section and recommend clearer language and specific procedures for how a parent eliminates or establishes adjustments under the parenting time adjustment provisions.
3119.19	This provision indicates that to establish or eliminate adjustments the obligor or obligee may "file a motion" with the court or "make a request" of the agency for a modification.	This language is very confusing and would present difficulties for *pro se* litigants. We suggest that the Council review this section and recommend clearer language and specific procedures for how a parent eliminates or establishes adjustments under the parenting time adjustment provisions.
3119.22	This provision contains language "in the best interest of the child" (as in existing code), but is inconsistent with the new worksheet at 3119.022.	We suggest the Child Support Enforcement Agency also be included in this section.
3119.24	"best interest of the child"	This phrase may be inconsistent with the new worksheet at 3119.022. In general the term "extraordinary circumstances" may be inconsistent with the concept of parenting time adjustment.
3119.28(A)		We suggest that "current support payment" and "arrearages" to be included and defined in this section (and also included in the definitions section 3119.01). Is it necessary to say "the obligor shall pay the amount imposed" ?

SECTION	ISSUE	IMPACT
119.30	Health Orders	It needs to be stated explicitly that the health order is a separate order from the child support order. We suggest that provision for health orders be separated (e.g., different section number) completely from the child support provisions.
3119.44		We suggest that all health orders be combined together and separated from the child support provisions. Further, we suggest that all health care provisions include agency actions (not just court orders). [Move 3119.01(C)(4) and 3119.05(F) to this section with other health order provisions].
3119.46	Standard forms for health insurance coverage notices	No judicial impact
3119.63	As in existing Section 3113.216(C)(3) of the revised code, this provision requires the Child Support Enforcement Agency to calculate a revised amount of child support before the parties are given a right to an administrative hearing.	This section is confusing as to what the agency must do with deviations. We suggest that the agency follow the same deviation process that the court follows in Section 3119.22. The amount should not be calculated until after the parties have been notified of their right to an administrative hearing.
3119.74	Consideration of parenting time adjustment when court or Child Support Enforcement Agency conducts review of a child support order.	Courts and agencies should have the same review process.
3119.82	As in existing statute, Section 3113.21(C)(1)(e), the court is authorized to consider which parent may claim the children as dependents for federal income tax purposes.	We suggest that agencies be given the power to consider tax issues.

SECTION	ISSUE	IMPACT
ge of Majority		
3119.86	Child support "shall not remain in effect after the child reaches nineteen years of age."	Judges suggest that the language used here be compared with the language in Section 3103.031 (p. 117, line 4981) and that the two sections be worded exactly alike so that no confusion exists and so that there is no difference between court and agency orders.
3119.91	Termination--Right to appeal administrative determination concerning termination	At line 14,200 we suggest that obligor or obligee may bring action in the appropriate court of common pleas such as juvenile court <u>or</u> domestic relations court.
3119.92	Termination-- Appeal to juvenile court	
3121.25	As required by existing law [Section 3113.21(G)(5)] this provision (at line 15,608) requires the court to notify the Child Support Enforcement Agency when a party requests a modification of an order.	We suggest that the "support order" constitute notification. It would be cumbersome for courts to notify CSEA agencies.
3121.54	Orders commencing on day other than first day of the month	No judicial impact
3123.01	Definitions of court support order; personal earnings; default; financial institution; payor; and support order	We suggest that this section be moved to 3119.01 and that all definitions be in one place.
3123.05		We suggest that the Council evaluate this provision and develop a better procedure that is less cumbersome and which provides judges with more time and flexibility.

SECTION	ISSUE	IMPACT
123.14	When an order is terminated, but the obligor still owes an arrearage, the obligee may solicit the aid of the Child Support Enforcement Agency to obtain arrearages, and secure payment in the amount that was previously established in the child support order (before termination).	We suggest that the Council review this provision. Judicial experience teaches that mandatory collection will not work. Judges need more flexibility and discretion in this area.
3123.19		We suggest that arrearages go to obligee first (as in the past) instead of being funneled through Department of Human Services.
3123.21	Collection of at least 20% of arrearages with every current support payment	Arrearages sections need to be reviewed by Council.
3123.22	Multiple means to collect arrearages amounts	Arrearages sections need to be reviewed by Council.
3123.35		This provision needs to be made consistent with Section 3123.05.
3125.58	When establishing a parent-child relationship, the court must complete 75% (instead of 98%) of all actions within 6 months and 90% (instead of 100%) of all actions within 12 months.	This provision is unnecessary because the matter is covered by the Rules of Superintendents.
3125.60	Authorizes the court to appoint magistrates (replacing the term "referees")	No judicial impact.

Judicial Impact Statement

July 6, 2000

Prepared by Dr. Donna Childers

Addendum for Senate Bill 180

Sponsor
Senator Merle Kearns

Status
Introduced House

Version
As Passed by Senate

On February 2, 2000 the Ohio Judicial Conference submitted an assessment of the judicial impact of Senate Bill 180 as introduced. The Child Support Guidelines Advisory Council subsequently recommended that the parenting time adjustment and schedule provisions be removed from that bill and in May 2000 Senator Kearns presented a substitute version of Senate Bill 180 that responded to the Advisory Council's request.

Ohio's domestic relations and juvenile judges believe that Senator Kearns acted properly when she removed the parenting time adjustment (PTA) provision and schedule. Ohio judges realize that Senator Kearns and others would like Ohio to implement a parenting time adjustment program at some point in the future and the judges appreciate the Senator's willingness to provide the Advisory Council additional time to more thoroughly review the experience of other states before implementing a program in Ohio.

Ohio judges believe the end result will be a better piece of legislation that will have the proper incentives to prevent problems like those that have been experienced by the courts in states like Washington (see Judicial Impact Statement on Senate Bill 180, introduced version). Ohio judges also believe that the Advisory Council will be able to make recommendations for solving any remaining technical problems in order to make the child support provision of the revised code more accessible to *pro se* litigants.

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