



Ohio Legislative Service Commission

122nd Senate Bill Analysis

S.B. 112

122nd General Assembly
(As Introduced)

Sens. Schafrath, Kearns, Blessing, Gaeth, Gardner, White, Nein, Dix, Drake, Ray, Suhadolnik, McLin, Cupp, Carnes, Latta, DiDonato, Shoemaker, Latell, Herington, Gillmor, Sweeney

- Replaces the terms "visitation," "shared parenting plans," and "parental rights and responsibilities" with the terms "parenting plans" and "parenting functions and responsibilities."
- Defines "parenting functions and responsibilities."
- Establishes procedures for the filing of parenting plans, including notice that must be provided to the parent not filing the parenting plan.
- Establishes a presumption of being in agreement with the parenting plan filed if a parent fails to file a competing parenting plan.
- Establishes standards and procedures for court review of a parenting plan.
- Authorizes a court to issue an interim parenting order.
- Requires the content of a parenting plan and interim parenting orders to meet specified criteria.
- Requires the court, when making the allocation of the parental functions and responsibilities for the care of children, to take into account the best interest of the children.
- Expands the list of factors used to determine the child's best interest under parenting plans.
- Expands the specified duties of a guardian ad litem appointed to protect the interests of a child when the court makes the allocation of parenting functions and responsibilities for the care of a child.

- Expands the authority of the court to cause an investigation and evaluation to be prepared when allocating parental functions and responsibilities and revises the criteria to include a broader list of people, to require an investigation and evaluation of the parent's parenting functions and parenting arrangements, and require an examination to detect substance abuse.
- Specifies procedures for the filing of a report of the investigation and evaluation performed in regards to allocating parental functions and responsibilities.
- Establishes criteria and procedures permitting a court to limit a parent's contact with and authority over a child.
- Authorizes a court to modify or terminate a parenting plan if specified criteria are met.
- Requires parents in a proceeding to allocate the parenting functions and responsibilities for the care of a child to complete a parenting education seminar.
- Requires the parents in a proceeding to allocate the parenting functions and responsibilities to attend a mediation assessment to determine whether any dispute exists between the parties with respect to the allocation of the parenting functions and responsibilities.
- Specifies permissible excuses from attending a mediation assessment and the penalties for failing to attend.
- Establishes procedures for the use in court of a mediation report.
- Revises procedures to be followed if one of the parents under a parenting plan intends to relocate, including notice to the court and the other parent and modification to the parenting plan.
- Authorizes the establishment of a parenting compliance service that permits a parent to request the parenting compliance unit of a court to enforce the parenting decree or interim parenting order.
- Authorizes the compliance officer to investigate the request for enforcement and to file a report with the court containing recommendations for further action if the parties do not reach an

agreement and establishes procedures to enforce the parenting decree or interim parenting order.

- Contains a statement of legislative intent.

CONTENT AND OPERATION

The bill repeals the provisions in existing law regarding "shared parenting" and parental visitation (secs. 2105.18(A), 3109.49 (renumbered from sec. 3109.04) and 3109.59 (renumbered from sec. 3109.051) and secs. 3109.041 and 3109.051 (outright repeal)). The bill replaces those provisions with provisions regarding "parenting plans" that are largely analogous to the provisions regarding shared parenting plans and parental visitation, with the differences noted below.

"Parenting functions and responsibilities"

The bill replaces throughout the Revised Code the phrase "parental rights and responsibilities" with the phrase "parenting rights and responsibilities," which are possessed by both parents, and otherwise eliminates references to "parental rights and responsibilities for the care of a child" (secs. 2111.08, 2151.411, 2151.56, 2301.03(S), (T), (U), (V), and (X), 2307.50(A)(3), 2307.70(B), 2317.02(H), 3101.01, 3105.63, 3107.15(A)(1), 3109.21(B), 3109.27(A)(1), 3109.28, 3109.34(A), sec. 3109.41 (renumbered from sec. 3109.03), 3109.52 (renumbered from 3109.06), 3113.31(E), 3313.64(A), 3313.672(A) and (B), 3313.98(A), 3319.321(B), 5101.31(D), 5101.324, and 5139.01).

The bill defines "parenting functions and responsibilities" to include the following (sec. 3109.40(A)): (1) providing for the physical and emotional safety and well-being of the child consistent with the child's developmental level and the parent's social and economic circumstances, (2) maintaining a loving, stable, consistent, and nurturing relationship with the child, (3) responsibly attending to the needs of the child for discipline, support, health, personal care, grooming, and supervision, (4) responsibly attending to the child's need to engage in activities appropriate to the child's developmental level and the parent's social and economic circumstances, (5) aiding the child's educational development, (6) assisting the child in developing appropriate interpersonal relationships, and (7) exercising appropriate judgment regarding the child's welfare, consistent with the child's developmental level and the parent's social and economic circumstances.

Parental visitation

Under existing law, if a divorce, dissolution, legal separation, or annulment proceeding involves a child and if the court has not issued a shared parenting decree, the court must consider any mediation report filed and, in accordance with specified procedures, must make a just and reasonable order or decree permitting each parent who is not the residential parent to visit the child at the time and under the conditions that the court directs, unless the court determines that it would not be in the best interest of the child to permit that parent to visit the child and includes in

the journal its findings of fact and conclusions of law. Whenever possible, the order or decree permitting the visitation must ensure the opportunity for both parents to have frequent and continuing contact with the child, unless frequent and continuing contact by either parent with the child would not be in the best interest of the child. The court must include in its final decree a specific schedule of visitation for that parent. (Sec. 3109.051(A).) The procedures the court uses in determining parental visitation are parallel to those for shared parenting decrees and will be discussed with shared parenting decree procedures below.

The bill repeals the provisions regarding the determination of visitation and companionship rights in existing law and incorporates visitation into parenting functions and responsibilities.

Shared parenting plans under existing law and parenting plans under the bill

Under existing law, the parties to any divorce, legal separation, or annulment proceeding and in any proceeding pertaining to the allocation of parental rights and responsibilities for the care of a child are permitted to file a pleading or motion with the court requesting the court to grant shared parental rights and responsibilities (sec. 3109.04(A) and (G)). The bill repeals the provisions regarding shared parenting and requires the parties to submit one or more "parenting plans" (sec. 3109.42(A)).

Filing the parenting plan under the bill

Under the bill, at the time of filing a petition for dissolution of a marriage that involves one or more minor children, the parties to the action must jointly file with the court a proposed joint parenting plan for the children of the marriage that sets forth the allocation of their parenting functions and responsibilities. A party who files a complaint in an action for divorce, legal separation, or annulment, or for the allocation of parenting functions and responsibilities with respect to a child pursuant to any section of the Revised Code, must file with the court a proposed parenting plan that makes the allocation of parenting functions and responsibilities for the care of the children. The plan must be filed with the court at the time the complaint is filed, except that, for good cause shown, the court may grant one 14-day extension. At the time of filing the plan, the party must serve a copy of it, accompanied by the notice described below, on the other parent who is a party to the action.

The responding party may file with the court a separate proposed parenting plan. The plan must make an allocation of parenting functions and responsibilities for the care of the children. The plan must be filed with the court not later than 28 days after the day the responding party was served the original proposed parenting plan, except that for good cause shown the court may grant one 14-day extension. If the responding party fails to file a separate proposed parenting plan not later than 42 days after being served the original proposed plan, the responding party is considered to be in agreement with the original proposed plan, and the court must treat the original proposed plan as a joint parenting plan filed with the court and review it as a joint parenting plan. (Sec. 3109.42(A) and (B).)

A proposed parenting plan must be signed by the party proposing it and include a statement that

the terms of the plan are being proposed in good faith (sec. 3109.42(D)).

Notice

A party who files a proposed parenting plan that is not jointly filed must serve the following notice on the other parent at the time the proposed parenting plan is served on that parent (sec. 3109.42(C)):

You have twenty-eight days after the date of service of the proposed parenting plan to file with the clerk of courts your own proposed parenting plan for the court to approve and incorporate into a parenting decree. For good cause shown, the court may grant you one extension of fourteen days for the filing of your proposed parenting plan. If you do not file your own proposed parenting plan, the failure to file creates a rebuttable presumption that you agree that the proposed parenting plan served on you is in the best interest of each child.

If the action is for divorce, legal separation, or annulment you may ask the court to issue an interim parenting order in your answer or counterclaim or by motion served with the pleading, or you may respond to a request made for an interim parenting order by filing a counter affidavit, pursuant to Civil Rule 75 and section 3109.43 of the Revised Code. An answer, counterclaim, or motion filed with a pleading that includes a request for an interim parenting order must set forth the terms of the interim parenting plan and be accompanied by both of the following:

- (1) An affidavit in support of the answer, counterclaim, or motion that contains the following information:
 - (a) The nature and extent of the parenting functions and responsibilities performed by you and the other parent during the twelve months prior to the filing of the motion;
 - (b) The residential, employment, and activity schedules of you and the other parent, and the day-care, school, and activity schedule of each child for the twelve months prior to the filing of the motion;
 - (c) Any anticipated changes in your or the other parent's residential, employment, and activity schedules, and the anticipated day-care, school, and activity schedules of each child during the next six months;
 - (d) Facts related to the existence of any of the factors set forth in section 3109.50 of the Revised Code that could pose a serious risk of harm to the child or warrant limitation or restriction of a parent's time with a child, or any other limitation or restriction;

(2) The appropriate child support worksheet under division (E) or (F) of section 3113.215 of the Revised Code that has been completed, signed by you and the other parent, and notarized.

Court review of the proposed parenting plan

Existing law provides standards for court review of a "shared parenting plan" and permits the court to require revisions of a plan to ensure that it is in the best interest of the children. The bill largely retains these standards for the review of "parenting plans."

The bill also provides that the parents jointly are permitted to propose revisions to a plan that are not required by the court by jointly filing copies of the proposed revisions with the court, and the bill provides that a parent may propose revisions to a plan that are not required by the court by filing copies of the revisions with the court and serving them on the other parent. The proposed revisions must be filed no later than 30 days prior to the first day of the final hearing on the allocation of parenting functions and responsibilities. The bill also provides that if the court does not determine that any filed plan or any revised plan is in the best interest of the children, the court must approve a plan of its own devising that complies with the requirements for parenting plans (under existing law, the court is required in such a situation to not approve any shared parenting plan).

The bill repeals a provision in existing law requiring that whenever possible the court must require that a shared parenting plan ensure the opportunity for both parents to have frequent and continuing contact with the child, unless frequent and continuing contact with any parent would not be in the best interest of the child. (Secs. 3109.041(D)(1) and 3109.42(E).)

Interim parenting order

Under the bill, a pleading or motion requesting the issuance of an interim parenting order must specify either that the party making the request asks the court to adopt the party's proposed parenting plan as the interim parenting order or that the party asks the court to issue an order containing provisions specified in the motion. The pleading or motion must be accompanied by both the appropriate child support worksheet that has been completed, signed by both parties, and notarized and an affidavit that contains the following information (sec. 3109.43(A)):

- (1) The nature and extent of the parenting functions and responsibilities performed by the party and the other parent during the 12 months prior to the filing of the motion or pleading;
- (2) The residential, employment, and activity schedules of the party and the other parent and the day care, school, and activity schedule of each child for the 12 months prior to the filing of the motion or pleading;
- (3) Any anticipated changes in the residential, employment, and activity schedules of the party and the other parent and the anticipated day care, school, and activity schedules of each child during the next six months;

(4) Facts related to the existence of any of the specified statutory factors (sec. 3109.50(B)) that could pose a serious risk of harm to the child or warrant limitation or restriction of a parent's time with a child or any other limitation or restriction.

No later than 14 days after a pleading or motion requesting that an interim parenting order be issued is served, the other party may file with the court a counter affidavit. The counter affidavit must comply with the preceding requirements of this section, unless the party filing the counter affidavit previously asked the court to issue an interim parenting order in the proceeding and the request is pending. No later than seven days after a counter affidavit is filed, both parties are permitted to file additional affidavits addressing the issues raised in the counter affidavit. The court, on good cause shown, may grant an additional seven days to either or both parties to file additional affidavits. The court must issue an interim parenting order that is in the best interest of the child no later than 42 days after the date of service of the first pleading or motion in the proceeding requesting the court to issue an interim parenting order. If both parties request the issuance of an interim parenting order, the court is not permitted to issue an order until after expiration of all time periods during which the parties are permitted to file affidavits. If only one parent requests the issuance of an interim parenting order, the court may issue an order 14 days after service of the pleading or motion requesting the issuance of the interim parenting order. At any time prior to the issuance of a final parenting order in the proceeding, the parties may submit an agreed interim parenting order for the court's consideration and approval. (Sec. 3109.43(B).)

On the request of either or both parents or whenever the court determines it is in the best interest of the child, the court must modify the interim parenting order if the modifications comply with the requirements for parenting plans and are in the best interest of the child (sec. 3109.43(C)).

Content of parenting plans and interim parenting orders

Existing law specifies requirements for the content of shared parenting plans and visitation orders that are continued for parenting plans under the bill (secs. 3109.04(G), 3109.44(A), and 3113.215(C)). The bill specifies additional requirements that a proposed parenting plan must meet. The bill provides that a proposed parenting plan and parenting decree or an interim parenting order must make the allocation between the parents of the parenting functions and responsibilities for the care of a child or children by including provisions that do the following (sec. 3109.44(A)):

- (1) Apportion child's daily physical living arrangements between parents;
- (2) Designate child's physical location during legal and school holidays, vacations, and important days;
- (3) Assign duties to transport the child between each parent's residence and to special activities or functions in which the child is participating;
- (4) Provide for communication with the parent with whom the child is not currently residing;
- (5) Determine each parent's child support obligation;

- (6) Designate one parent as the residential parent for purposes of receiving child support;
- (7) Designate the parent required to pay health, vision, and dental insurance;
- (8) Determine each parent's responsibility to pay for health, dental, and vision care expenses not paid by insurance;
- (9) Determine the child's school and designate a parent as residential parent for school attendance;
- (10) Determine the child's participation in extracurricular activities;
- (11) Assign duties concerning arrangements for child care and allocate the child care costs between the parents;
- (12) Allocate between the parents the responsibility and authority to make decisions concerning the child's health care, education, religious training, extracurricular activities, grooming, personal care, discipline, privileges, supervision, and any other matters related to the child's welfare;
- (13) Designate one parent as the parent who may claim the child as a dependent for federal income tax purposes;
- (14) Provide for parental access to all records pertaining to the child, the child's school activities, and the day-care center attended by the child;
- (15) Require mediation of disputes between the parents regarding the parenting functions and responsibilities under the parenting decree.

Under the bill, each proposed parenting plan and decree and interim parenting order must include, if necessary for the purposes of receiving public assistance, a provision designating the residence of one of the parents as the child's home. An allocation of parenting functions and responsibilities is subject to any limitation placed on either parent described in "**Limiting parental contact with and authority over a child.**" (Sec. 3109.44(B).)

Notwithstanding the allocation of parenting functions and responsibilities made pursuant to the preceding paragraphs and except as limited by a court pursuant to the provisions described in "**Limiting parental contact with and authority over a child.**" a parenting plan or decree or interim parenting order under the bill must designate both parents as the residential parent and legal custodian of the child, the residential parent, or the custodial parent and must contain a provision permitting either parent to exercise all the authority that a parent may exercise pursuant to law and make all decisions concerning the child's health and safety, including emergency decisions. (Sec. 3109.44(C).)

Determining the allocation of parenting functions and responsibilities; determining the child's best interest

Existing law requires the court, when making the allocation of the parental rights and

responsibilities for the care of children and when determining whether to grant companionship or visitation rights to take into account the best interest of the children. The bill retains this requirement for the circumstances in which the court must allocate parental functions and responsibilities for the care of children. (Existing secs. 3109.04(B)(1) and (F)(3), 3109.051(C) and proposed sec. 3109.45(A) and (B).)

The bill also retains for parenting plans the list of factors used to determine the child's best interest under shared parenting plans but expands this list for parenting plans to require the court to additionally consider (secs. 3109.04(F), 3109.051(D), and 3109.45(A)):

- (1) The wishes of the child's parents regarding the child's care, including any oral or written agreement knowingly and voluntarily made between the parents regarding the child's care;
- (2) The child's involvement with significant activities;
- (3) Whether either parent has failed repeatedly to be financially responsible for the child by failing to provide health, dental, and vision insurance for the child or pay any health, dental, or vision care expenses for the child that are not covered by insurance;
- (4) The relative strength, nature, and stability of the child's relationship with each parent;
- (5) The willingness of the parents to communicate with each other effectively regarding the best interests of the child;
- (6) Evidence of each parent's exercise or failure to exercise appropriate parenting behavior and the potential for each parent to exercise or fail to exercise appropriate parenting behavior in the future;
- (7) The age, emotional needs, and developmental level of the child;
- (8) Each parent's employment and activity schedules;
- (9) The child's school and child care schedules;
- (10) Any mediation report filed with the court;
- (11) Any report of the investigation and evaluation of a parent admitted into evidence;
- (12) A parent's failure to attend the required parenting education seminar;
- (13) A parent's failure to attend the mediation assessment.

The factors that existing law and the bill require the court to consider to determine the child's best interest are the wishes and concern of the child; the child's interaction and interrelationship with siblings, relatives, and other persons; the child's involvement with physical surroundings, school, and community; the mental and physical health of all involved persons; any recommendation of the child's guardian ad litem; whether either parent has established a residence or is planning to

establish a residence outside Ohio; whether either parent has denied the other parent access to the child; and any other relevant factors (sec. 3109.45(A)).

The bill continues to prohibit a court from giving preference to a parent because of the parent's financial status or condition when allocating parenting functions and responsibilities (sec. 3109.45(B)).

Court interview of children

Under existing law, in determining the child's best interest for purposes of making its allocation of parenting rights and responsibilities for the care of the child and for purposes of resolving any issues related to the making of that allocation, the court is permitted and, on the request of either party, is required to interview in chambers any or all of the involved children regarding their wishes and concerns with respect to the allocation. Existing law establishes procedures in regards to the interview. A similar provision authorizes an interview when the court determines companionship and visitation rights. (Secs. 3109.04(B) and 3109.051(C).) These provisions are retained under the bill for allocating the parental functions and responsibilities for care of a child (sec. 3109.46).

Appointment of guardian ad litem and attorney for the child

Existing law provides that if the court interviews any child the court, in its discretion, may and, upon the motion of either parent, must appoint a guardian ad litem for the child (sec. 3109.04(B)(2)(a)).

The bill authorizes a court to appoint a guardian ad litem to protect the interests of a child when the court makes the allocation of parenting functions and responsibilities for the care of a child. The guardian ad litem must work with the court's evaluator and may consult with any person who may have information relevant to the allocation of parenting functions and responsibilities. The guardian ad litem has full access to the family file that addresses the child and is authorized to propose provisions for a parenting plan consistent with the best interests of any child involved. The court must order the parents to pay the fees of the guardian ad litem and must allocate the fees between the parents, except that if the parents are indigent, the court must order the fees to be paid by the county in which the child resides. The court may appoint a qualified volunteer as the guardian ad litem.

The bill also authorizes the court to appoint an attorney to represent the interests of a child in any original proceeding to allocate, or any proceeding for modification of a prior order allocating, the parenting functions and responsibilities with respect to the child. The court is required to order the parents to pay the fees of the attorney and to allocate the fees between the parents, except that if the parents are indigent, the court must order the fees to be paid by the county in which the child resides. The court may appoint as the child's attorney an attorney who has volunteered to provide services free of charge.

A person appointed guardian ad litem also is permitted to serve as the attorney for the child if the

person is an attorney admitted to the practice of law in Ohio and no conflict of interest is created or is likely to be created by the person serving as both guardian ad litem and attorney for the child. If the court or the person appointed guardian ad litem determines that a conflict of interest may exist, the court is permitted to retain the person as the guardian ad litem and appoint another person as the child's attorney. (Sec. 3109.47.)

Investigation and evaluation of each parent

Existing law

Prior to trial, the court is authorized to cause an investigation to be made as to the character, family relations, past conduct, earning ability, and financial worth of each parent and may order the parents and their minor children to submit to medical, psychological, and psychiatric examinations. The report of the investigation and examinations must be made available to either parent or the parent's counsel of record not less than five days before trial, upon written request. The report must be signed by the investigator, and the investigator is subject to cross-examination by either parent concerning the contents of the report. The court is permitted to tax as costs all or any part of the expenses for each investigation. (Sec. 3109.04(C).)

If the court determines that either parent previously has been convicted of or pleaded guilty to any criminal offense involving any act that resulted in a child being a neglected child, that either parent previously has been determined to be the perpetrator of the neglectful act that is the basis of an adjudication that a child is a neglected child, or that there is reason to believe that either parent has acted in a manner resulting in a child being a neglected child, the court is required to consider that fact against naming that parent the residential parent and against granting a shared parenting decree. When the court allocates parental rights and responsibilities for the care of children or determines whether to grant shared parenting in any proceeding, it must consider whether either parent has been convicted of or pleaded guilty to the offense of domestic violence involving a victim who at the time of the commission of the offense was a member of the family or household that is the subject of the proceeding, has been convicted of or pleaded guilty to any other offense involving a victim who at the time of the commission of the offense was a member of the family or household that is the subject of the proceeding and caused physical harm to the victim in the commission of the offense, or has been determined to be the perpetrator of the abusive act that is the basis of an adjudication that a child is an abused child. If the court determines that either parent has been convicted of or pleaded guilty to the offense of domestic violence involving a victim who at the time of the commission of the offense was a member of the family or household that is the subject of the proceeding, has been convicted of or pleaded guilty to any other offense involving a victim who at the time of the commission of the offense was a member of the family or household that is the subject of the proceeding and caused physical harm to the victim in the commission of the offense, or has been determined to be the perpetrator of the abusive act that is the basis of an adjudication that a child is an abused child, it may designate that parent as the residential parent and may issue a shared parenting decree or order only if it determines that it is in the best interest of the child to name that parent the residential parent or to issue a shared parenting decree or order and it makes specific written

findings of fact to support its determination. Visitation law contains a comparable provision. (Secs. 3109.04(C) and 3109.051(G).)

Operation of the bill

The bill would retain the authorization of the court to cause an investigation and evaluation of each parent but replaces the investigation of the parent's earning ability and financial worth with an investigation and evaluation of the parent's parenting functions and parenting arrangements and requires an examination to detect substance abuse. The court also is authorized to require an investigation and evaluation of a person who has significant contact with a child and is significantly involved in the child's life and is joined as a party to the proceeding, which must be conducted in the same manner as the investigation and evaluation of the parents.

The bill requires a report of the investigation and evaluation to be prepared and signed by an evaluator designated by the court to conduct it. The evaluator is permitted to consult any person who may have information about the child. The report and all work papers and notes related to the investigation are to be added to the family file. The family file must be made available to counsel of record for each parent, or directly to any parent not represented by counsel, no later than 30 days prior to the final hearing on the issue of the allocation of the parenting functions and responsibilities, unless a shorter period of time is ordered by the court for good cause shown. The evaluator is required to be subject to cross-examination by either parent concerning the contents of the report. (Sec. 3109.48.)

The bill does not include in the investigation and evaluation provisions the provisions in existing law regarding the behavior of a parent regarding domestic violence or that would cause the child to be an abused or neglected child when allocating parental rights and responsibilities, when determining whether to grant shared parenting, or when determining visitation. The bill includes these factors as factors used to determine whether to limit parental contact or authority over a child (sec. 3109.50). (See "**Limiting parental contact with and authority over a child,**" below.)

Parenting decree

Under existing law, the court must allocate the parental rights and responsibilities in the best interests of the child and establishes procedures and guidelines that the court must follow when deciding whether to approve a shared parenting plan (sec. 3109.04(A), (D)(1)(d), (D)(2), and (H).) The bill requires the court to follow parallel procedures when deciding whether to approve a parenting plan, with the additional requirement that in allocating the parenting functions and responsibilities in a parenting decree that includes the parenting plan, the court is not permitted to draw any presumptions from an interim parenting decree. (Sec. 3109.49(A) and (B) (renumbered from 3109.04).)

Existing law authorizes a court to require a parent to submit a shared parenting plan when the other parent has submitted a shared parenting plan. The bill does not include this authorization; instead the parent who does not file a parenting plan is considered to be in agreement with the plan that was filed (see "**Filing the parenting plan,**" above). (Existing sec. 3109.04(D)(1)(a)(iii)

and proposed sec. 3109.42(B).)

Limiting parental contact with and authority over a child

Authorization and factors

When making an allocation of the parenting functions and responsibilities with respect to a child, the bill authorizes a court to limit a parent's physical contact with the child, authority to make decisions concerning the custody and care of the child, access to records related to the child, access to activities in which the child participates, access to the day-care center attended by the child, the right to receive notice of relocation and motion to modify a parenting decree because of a change of residence, and any other aspect of the relationship between the parent and child on finding that the parent has done any of the following (sec. 3109.50(B)):

- (1) Willfully neglected or substantially failed to exhibit appropriate parenting behavior;
- (2) A long-term emotional or physical impairment that interferes with the exercise of appropriate parenting functions;
- (3) A chemical dependency that interferes with the exercise of appropriate parenting functions;
- (4) Been absent from the child for an extended period of time or caused a substantial impairment of the emotional ties between the parent and the child because of the parent's absence;
- (5) Used conflict in a manner that creates a danger of serious damage to the child's psychological development;
- (6) Withheld the child's access to the other parent for an extended period of time without good cause;
- (7) Acted in a manner resulting in a child being an abused or neglected child;
- (8) Caused the child to be in the presence of a person who has acted in a manner resulting in a child being an abused or neglected child;
- (9) Committed an act of domestic violence;
- (10) Been convicted of or pleaded guilty to the offense of domestic violence;
- (11) Caused the child to be in the presence of a person who has been convicted of or pleaded guilty to the offense of domestic violence;
- (12) Been convicted of or pleaded guilty to a sex offense;
- (13) Caused the child to be in the presence of a person who has been convicted of or pleaded guilty to a sex offense;
- (14) Been convicted of or pleaded guilty to the offenses of felonious assault, aggravated assault,

assault, aggravated menacing, menacing by stalking, or menacing;

(15) Been convicted of or pleaded guilty to any criminal offense involving any act that resulted in a child being an abused or neglected child;

(16) Been found to be the perpetrator of an act that resulted in a child being adjudicated an abused or neglected child;

(17) Caused the child to be in the presence of a person who has been found to be the perpetrator of an act that resulted in a child being adjudicated an abused or neglected child;

(18) Committed any other act or has any other impairment or condition that would impair the parent's ability to perform appropriate parenting behavior.

Required findings for limitations

The court is permitted to impose any of the limitations in a parenting decree or interim parenting order if, based on a preponderance of the evidence, the court finds that the limitation is reasonably calculated to prevent the child from being an abused or neglected child. A court that finds that any of the factors that would authorize a court to limit parental contact with and authority over a child is applicable is permitted to decide not to impose any limitation with respect to the child if it determines, based on clear and convincing evidence, that the probability that the parent's conduct will recur is remote and that the child is not in danger of being an abused or neglected child. A court that determines that the parent caused the child to be in the presence of a person who has acted inappropriately as described in paragraphs (8), (11), (13), or (17) under "**Authorization and factors**" is permitted to decide not to impose any limitations with respect to the child if the court determines, based on clear and convincing evidence, that the probability the inappropriate conduct of the person will recur is remote and that the child is not in danger of being an abused or neglected child.

A court that finds that any of the factors that would authorize a court to limit parental contact with and authority over a child that are listed in paragraphs (7) to (18) under "**Authorization and factors**" is applicable is permitted to prohibit in a parenting decree or interim parenting order all physical contact with the parent if the court determines, based on clear and convincing evidence, that the child would be in danger of being an abused or neglected child if physical contact with that parent is permitted. (Secs. 3109.50(C) and 3319.321(B).)

Hearing, supervised contact, and bad faith allegations

A court that includes any limitation in an interim parenting order is required to hold a hearing no later than ten days following the issuance of the interim order. At the hearing, the court is required to determine whether the limitation should remain part of the interim parenting order or be eliminated. The parents are permitted to present evidence and be represented by counsel at the hearing. (Sec. 3109.50(D).)

If the court imposes a limitation in a parenting decree or interim parenting order requiring all

contact between a parent and the child to be supervised, the court is required to either select a person to supervise the physical contact or require the public children services agency of the county in which the court is located to provide supervision services. The court is not permitted to approve a person to supervise physical contact unless it makes a finding in the parenting decree or interim parenting order that the person agrees to strictly comply with the provisions of the decree or order and that the person is willing and able to protect the child from harm. The court is required to revoke approval of a person to supervise if it determines that the person is no longer willing or able to protect the child or has failed to protect the child. (Secs. 3109.50(E) and 3113.31(E)(6).)

If a party alleges that one or more of the factors that would authorize a court to limit parental contact with and authority over a child is applicable to a parent in a pleading, motion, affidavit, or other paper filed with the court and the court determines that the allegation was made in bad faith or without a reasonable basis, the court is required to award attorney's fees and all reasonable litigation expenses to the offended party without regard to need or ability to pay. (Sec. 3109.50(F).)

Modifying or terminating a parenting decree

Standards for modification

Existing law. Under existing law, the court is prohibited from modifying a prior decree allocating parental rights and responsibilities for the care of children unless it finds, based on facts that have arisen since the prior decree or that were unknown to the court at the time of the prior decree, that a change has occurred in the circumstances of the child, the child's residential parent, or either of the parents subject to a shared parenting decree, and that the modification is necessary to serve the best interest of the child. In applying these standards, the court is required to 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: (1) the residential parent agrees to a change in the residential parent or both parents under a shared parenting decree agree to a change in the designation of residential parent, (2) the child, with the consent of the residential parent or of both parents under a shared parenting decree, has been integrated into the family of the person seeking to become the residential parent, or (3) the harm likely to be caused by a change of environment is outweighed by the advantages of the change of environment to the child.

One or both of the parents under a prior decree allocating parental rights and responsibilities for the care of children that is not a shared parenting decree may file a motion requesting that the prior decree be modified to give both parents shared rights and responsibilities for the care of the children. The motion must include both a request for modification of the prior decree and a request for a shared parenting order. Upon the filing of the motion, if the court determines that a modification of the prior decree is authorized, the court may modify the prior decree to grant a shared parenting order, provided that the court is prohibited from modifying the prior decree to grant a shared parenting order unless the court complies with certain statutory procedures regarding submission of a shared parenting plan, approves the submitted shared parenting plan,

and determines that shared parenting would be in the best interest of the children. (Sec. 3109.04(E)(1).)

Operation of the bill. Under the bill, the court generally is prohibited from modifying a parenting decree or a shared parenting order that was issued less than one year prior to the date modification is requested unless it finds, by *clear and convincing evidence* based on facts that have arisen since the decree or order was issued or that were unknown to the court at the time the decree or order was issued, that a *drastic change* has occurred in the circumstances of the child or either of the parents and that the modification is necessary to serve the best interest of the child. If the parenting decree or shared parenting order was issued one year or more prior to the date modification is requested, the court generally is prohibited from modifying the decree or order unless it finds, by a *preponderance of the evidence* based on facts that have arisen since the decree or order was issued or that were unknown to the court at the time the decree or order was issued, that a *change* has occurred in the circumstances of the child or either of the parents and that the modification is necessary to serve the best interest of the child. (Sec. 3109.51(B).)

The court is permitted to make the following modifications at any time on its own motion or on the request of one or both of the parents (sec. 3109.51(C)):

- (1) Modification of the child support provisions of a decree or order allocating parental rights and responsibilities primarily to one parent and designating that parent as the residential parent of the child issued prior to the effective date of the bill or of a parenting decree;
- (2) Modification of the dispute resolution process designated in a parenting decree;
- (3) Modification of the provisions of a parenting decree or order that govern the amount of time each parent spends with the child if the modification meets all of the following requirements: (a) does not change the residential parent designation or the school the child attends, (b) does not exceed 15 days in a calendar year or three days in a calendar month, and (c) is based on an involuntary change in a parent's employment schedule making the time allocation provisions of the parenting decree or order impractical.

Joint requests for modification and sua sponte modification

The bill would retain existing law provisions authorizing parents to jointly modify the terms of the parenting plan approved by the court and incorporated by it into the decree or order and additionally specifies that joint modifications are permitted to be made at any time. The bill does not include a provision in existing law authorizing a court to modify a shared parenting plan upon its own motion, if the modification is in the best interest of the children. (Existing secs. 3109.04(E)(2)(a) and (b) and proposed sec. 3109.51(D).)

Termination

Existing law. Under existing law, the court may terminate a prior final shared parenting decree that includes a shared parenting plan upon the request of one or both of the parents or whenever it determines that shared parenting is not in the best interest of the children. The court may

terminate a prior final shared parenting decree that includes a shared parenting plan 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 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. Upon the termination of a prior final shared parenting decree, the court is required to proceed and issue a modified decree for the allocation of parental rights and responsibilities for the care of the children as if no decree for shared parenting had been granted and as if no request for shared parenting ever had been made. (Sec. 3109.04(E)(2)(c) and (d).)

Operation of the bill. Under the bill, the court is permitted to terminate a parenting decree or order whenever it determines that the parents should not be allocated the parenting functions and responsibilities for the child. If modification of a parenting decree or order is attempted, is not a joint modification, and the court rejects the modifications, the court is permitted to terminate the parenting decree if it determines that the parents should not be allocated the parenting functions and responsibilities for the child. On the termination of a parenting decree, the court is required to proceed as if no parenting decree had been granted. (Sec. 3109.51(E).)

Effect of the bill on previously existing decrees

The bill provides that the parents under a decree issued prior to the effective date of the bill that allocates parental rights and responsibilities for the care of a child primarily to one parent and names that parent the residential parent and legal custodian of the child are permitted to jointly modify the decree by filing with the court a proposed joint parenting plan under the bill. Either parent under a decree issued prior to the effective date of the bill that allocates parental rights and responsibilities for the care of a child primarily to one parent and names that parent the residential parent and legal custodian of the child is permitted to ask the court to modify the decree by filing with the court a motion to modify the decree and a parenting plan. A proposed parenting plan of either nature may be filed at any time. The provisions proposed by the bill apply in determining whether the parenting plan is approved.

A custody decree issued pursuant to former section 3109.04 prior to the effective date of the bill that allocated parental rights and responsibilities for the care of a child is not affected or invalidated by the provisions in the bill authorizing the issuance of parenting decrees. Any such decree issued prior to the effective date of the bill remains in full force and effect, subject to the provisions proposed by the bill. (Sec. 3109.53.)

The bill repeals a similar provision in existing law regarding decrees issued prior to April 11, 1991 (sec. 3109.041 (outright repeal)).

Parenting education seminar

Parents in a divorce, dissolution of marriage, legal separation, or annulment proceeding involving a minor child or in a proceeding to allocate the parenting functions and responsibilities for the

care of a child under an original proceeding are required to complete a parenting education seminar no later than 45 days after the filing of the action or service of process. For good cause shown, the court is permitted to waive this requirement or extend the time period for a reasonable period of time. On completion of the seminar, each parent is required to notify the court in writing of the parent's attendance and completion of the seminar. The notice must be made a part of the record in the proceeding. The failure of a party to complete the seminar is required to be considered an additional factor the court must consider in determining the best interest of the child when allocating parenting functions and responsibilities for the care of the child. (Sec. 3109.54(A).)

In each action for divorce, dissolution of marriage, legal separation, or annulment involving a minor child or in a proceeding to allocate the parenting functions and responsibilities for the care of a child under an original proceeding, the clerk of courts is required to send by regular mail to the person initiating the action and with the service of process on the other party a notice of the date, time, and location of the seminar the parent is required to attend or a schedule of the dates, times, and locations of the seminars the parent may attend. In each action for dissolution of marriage, the clerk is required to send by regular mail to both parties either the notice or schedule. A parent that receives a schedule is responsible for registering for one of the seminars listed in the schedule. (Sec. 3109.54(B).)

The bill authorizes the Supreme Court to establish a minimum curriculum for the parenting education seminar, which is required to be uniform throughout Ohio. The curriculum must include instruction on mediation and dispute resolution. The Supreme Court also is authorized to establish standards for certifying providers of the parenting education seminars and to certify providers that meet the standards. Each court of common pleas having jurisdiction over the proceedings for which the seminar is required may prescribe seminar curriculum requirements and certification standards for seminar providers not inconsistent with the minimum requirements and certification standards established by the Supreme Court. If the state does not appropriate sufficient funds to a court of common pleas to operate the seminars, the common pleas court may tax as costs in each proceeding a portion of the expense of providing the seminar. (Sec. 3109.54(C).)

Mediation

Existing law permits the court to order mediation in specified instances and establishes procedures that must be followed when the court orders mediation. The bill repeals these provisions, proposes preliminary mediation assessment provisions, and permits the parties to mediate if they agree to mediation. (Proposed sec. 3109.55 and existing sec. 3109.052 (outright repeal).)

Existing law

Under existing law, if a proceeding for divorce, dissolution, legal separation, annulment, or the allocation of parental rights and responsibilities for the care of a child involves one or more children, if the parents of the children do not agree upon an appropriate allocation of parental

rights and responsibilities for the care of their children or do not agree upon a specific schedule of visitation for their children, the court may order the parents to mediate their differences on those matters in accordance with mediation procedures adopted by the court by local rule. When the court determines whether mediation is appropriate in any proceeding, it must consider whether either parent previously has been convicted of or pleaded guilty to the offense of domestic violence or another offense involving a victim who at the time of the commission of the offense was a member of the family or household that is the subject of the proceeding and caused physical harm to the victim in the commission of the offense and whether either parent has been determined to have abused the child. If any of these situations exist, the court may order mediation only if the court determines that it is in the best interests of the parties to order mediation and makes specific written findings of fact to support its determination.

If a court issues an order requiring mediation, it also may order the parents to file a mediation report within a specified period of time and order the parents to pay the cost of mediation. Any mediation procedures adopted by local court rule must include provisions establishing qualifications for mediators who may be employed or used and provisions establishing standards for the conduct of the mediation.

If a mediation order is issued and the order requires the parents to file a mediation report, the mediator and each parent who takes part in mediation in accordance with the order is required to file jointly a report of the results of the mediation process with the court that issued the order. A mediation report must indicate only whether agreement has been reached on any of the issues that were the subject of the mediation and, if agreement has been reached, the content and details of the agreement. A mediation report is prohibited from containing any background information concerning the mediation process or any information discussed or presented in the process. The court is required to consider the mediation report when it allocates parental rights and responsibilities for the care of children and when it establishes a specific schedule of visitation. The court is not bound by the mediation report and is required to consider the best interest of the children when making that allocation or establishing the visitation schedule.

If a mediation order is issued, the mediator is not permitted to be made a party to, and is not permitted to be called as a witness or testify in, any action or proceeding, other than a criminal, delinquency, child abuse, child neglect, or dependent child action or proceeding, that is brought by or against either parent and that pertains to the mediation process, to any information discussed or presented in the mediation process, to the allocation of parental rights and responsibilities for the care of the parents' children, or to the awarding of visitation rights in relation to their children. The mediator is not permitted to be made a party to, or be called as a witness or testify in, such an action or proceeding even if both parents give their prior consent to the mediator being made a party to or being called as a witness or to testify in the action or proceeding.

Existing law provides that the provisions authorizing a court to order mediation do not apply to either of the following: (1) any proceeding, or the use of mediation in any proceeding that is not a proceeding for divorce, dissolution, legal separation, annulment, or the allocation of parental

rights and responsibilities for the care of a child, or (2) the use of mediation in any proceeding for divorce, dissolution, legal separation, annulment, or the allocation of parental rights and responsibilities for the care of a child, in relation to issues other than the appropriate allocation of parental rights and responsibilities for the care of the parents' children and other than a specific visitation schedule for the parents' children. (Sec. 3109.052.)

Operation of the bill

Mediation assessment. Parents in a proceeding for divorce, dissolution of marriage, legal separation, or annulment involving one or more children, an original proceeding for the allocation of parenting functions and responsibilities pursuant to any section of the Revised Code, or a proceeding for modification of a prior decree allocating parenting functions and responsibilities are required to attend a mediation assessment scheduled by the court. The court is required to schedule the mediation assessment to begin on a date that is on or after the completion of the parenting education seminar, but no later than 75 days after the commencement of the action or the filing of the motion for modification. (Sec. 3109.55(A)(1).)

On the commencement of a proceeding requiring a mediation assessment, the clerk of courts is required to send by regular mail to each party, a notice that includes the date, time, and place of the mediation assessment, a description of the mediation process, and a notice of the sanctions that may be imposed for failure to appear at the mediation assessment unless attendance at the assessment is waived (sec. 3109.55(A)(3)).

Excuse from mediation assessment. The court is permitted to excuse a party from mediation assessment if one of the following applies (sec. 3109.55(A)(2)):

(1) In the case of a proceeding for divorce, legal separation, or annulment, only one parenting plan is filed in the action, and that plan is considered to be a joint parenting plan, and the parents have filed with the court an affidavit signed by both parents stating that there are no issues in dispute or anticipated to be in dispute regarding the allocation of parenting functions and responsibilities.

(2) In the case of a proceeding for dissolution of marriage, the parties have filed a proposed joint parenting plan and have filed with the court an affidavit signed by both parents stating that there are no issues in dispute or anticipated to be in dispute regarding the allocation of parenting functions and responsibilities.

(3) In the case of a proceeding to modify a prior decree allocating the parenting functions and responsibilities, the parents have jointly requested modification of the prior decree and have filed with the court an affidavit signed by both parents stating that there are no issues in dispute or anticipated to be in dispute regarding the allocation.

(4) The court, on a motion filed by either party no later than 30 days prior to the date of the mediation assessment, finds that mediation would be inappropriate for one of the following reasons: (a) the parents have mediated the issues in dispute within the last six months, (b) one of

the parents has a history of child abuse, spousal abuse, other domestic violence, or parental kidnapping, (c) one of the parents has a history of severe psychological or emotional problems, (d) one of the parents is outside of the jurisdiction of the court and is unable to or refuses to participate in mediation, or (e) any other relevant factor indicates that mediation would be inappropriate. The parent making the motion has the burden to prove that mediation would be inappropriate.

Procedure for mediation assessment and penalty for failure to attend. The mediation assessment is required to be conducted by a person designated by the court. The assessment is required to consist of at least one meeting to determine whether any dispute exists between the parties with respect to the allocation of the parenting functions and responsibilities for care of the child, the nature of any dispute that exists, and whether mediation is appropriate to resolve the dispute. As part of the mediation assessment, the person conducting the assessment is required to explain the mediation process and its possible advantages.

If either party fails to attend the mediation assessment, the person conducting it is required to terminate the mediation assessment and notify the court of the failure. A party not excused who fails to attend without good cause is in contempt of court, and the court is permitted to consider the failure to attend as a factor when determining the best interest of the child with respect to the allocation of parenting functions and responsibilities for the care of the child. In addition to any sanctions imposed by the court for contempt, the court is permitted to order the party who failed to attend to pay the costs of the mediation assessment session, the reasonable attorney's fees of the other party, and the court costs for the contempt proceeding. (Sec. 3109.55(B).)

At the completion of the mediation assessment, the person designated to conduct the assessment is required to prepare a written report and file it with the court. The person is required to send copies of the report to the parents, the guardian ad litem of the child, and the attorneys for the parent and the child. The report must state whether a dispute exists concerning the allocation of the parenting functions and responsibilities for the care of the child, that if a dispute exists, the nature of the dispute and whether mediation would be appropriate to settle the dispute, and that if mediation is appropriate, whether the parties have agreed to participate in mediation. If the parties agree to participate in mediation, the report also must contain a mediation agreement between the parents that specifies the name of the person selected by the parties to be the mediator, the schedule of mediation, the time period in which the mediation process is to be completed, and the issues to be addressed in mediation. On receipt of the report, the court is required to issue an order requiring the parties to participate in mediation consistent with the agreement contained in the report.

The attorneys for each party are permitted to attend and participate in the mediation sessions. On the request of either party, the guardian ad litem and attorney for the child is permitted to attend and participate in the mediation sessions. No other persons are permitted to attend and participate in mediation sessions unless the mediator and both parties agree.

If the state does not appropriate sufficient funds to a court of common pleas to pay for the cost of mediation assessments and no more than two mediation sessions pursuant to any proceeding

requiring a mediation assessment, the court is required to order the parents to pay the cost of the mediation assessment and mediation sessions. If the parents participate in more than two mediation sessions, the court is required to order the parents to pay the cost of the third and subsequent mediation sessions. The court is required to allocate between the parents the costs the court orders the parents to pay. (Sec. 3109.55(C).)

At the conclusion of the mediation process, the mediator is required to submit a report of the results of the mediation to the court. The report is required to indicate whether any agreement, full or partial, had been reached concerning the issues addressed in the mediation. The bill prohibits a mediation report from containing any background information concerning the mediation process or any information discussed or presented in the process. Any memorandum of understanding containing the agreements reached through mediation must be sent only to the parties and their attorneys. At any time while the proceeding is pending, the parties may agree to commence or resume mediation.

The mediator may not be made a party to, and may not be called as a witness to testify in, any action or proceeding, other than a criminal, delinquency, child abuse, child neglect, or dependent child action or proceeding, brought by or against either parent that pertains to the mediation process, to any information discussed or presented in the mediation process, or to the allocation of parenting functions and responsibilities for the care of the parents' children. The mediator may not be made a party to, or be called as a witness or testify in, such an action or proceeding even if both parents give their prior consent. (Sec. 3109.55(D).)

The preceding provisions regarding mediation assessments and mediation do not apply to any proceeding, or the use of mediation in any proceeding, that is not a proceeding for divorce, dissolution of marriage, legal separation, annulment, an original proceeding for the allocation of parenting functions and responsibilities for the care of a child, or a proceeding for the modification of a prior decree for the allocation of parenting functions and responsibilities for the care of a child. The preceding provisions regarding mediation assessments and mediation also do not apply to the use of mediation in any proceeding for divorce, dissolution of marriage, legal separation, annulment, an original proceeding for the allocation of parenting functions and responsibilities for the care of a child, or a proceeding for the modification of a prior decree for the allocation of parenting functions and responsibilities for the care of a child, in relation to issues other than the appropriate allocation of parenting functions and responsibilities for the care of the parents' children. (Sec. 3109.55(E).)

The bill authorizes the Supreme Court to establish minimum qualification standards that a person must meet to act as a mediator under the preceding provisions. Each court of common pleas is permitted to establish qualifications that are not inconsistent with the qualifications established by the Supreme Court. Each court of common pleas is required to certify each mediator who meets the qualifications established by the Supreme Court and that court of common pleas to provide mediation services in the county served by the court. Any person who meets those qualifications is permitted to be certified as a mediator. (Sec. 3109.55(F).)

Parental right to records and day-care centers

Existing Companionship and Visitation Law provides that, subject to specified statutory limitations, each parent is required to have access to any record related to the parent's child, any child day-care center that is, or that in the future may be, attended by that child, and any student activity that is related to the child under the same terms and conditions that any parent of a child would be legally provided access. Existing law also provides procedures to enforce this right. (Secs. 3109.051(H)(2), (I), (J), and (N) and 5104.011(C)(3).) The bill accords parallel rights to each parent under a parenting plan, unless access by a parent is limited or prohibited under an order granting companionship and visitation rights with respect to a child or under a parenting decree (sec. 3109.56).

Relocation of parent

Under existing Companionship and Visitation Law, if the residential parent intends to move to a residence other than the residence specified in the visitation order or decree of the court, the parent must file a notice of intent to relocate with the court that issued the order or decree. Unless the court has determined that the parent who is not the residential parent, has been convicted of or pleaded guilty to the offense of domestic violence involving a victim who at the time of the commission of the offense was a member of the family or household that is the subject of the proceeding, has been convicted of or pleaded guilty to any other offense involving a victim who at the time of the commission of the offense was a member of the family or household that is the subject of the proceeding and caused physical harm to the victim in the commission of the offense, or has been determined to be the perpetrator of the abusive act that is the basis of an adjudication that a child is an abused child, the court must send a copy of the notice to the parent who is not the residential parent. Upon receipt of the notice, the court, on its own motion or the motion of the parent who is not the residential parent, may schedule a hearing with notice to both parents to determine whether it is in the best interest of the child to revise the visitation schedule for the child. (Sec. 3109.051(G).)

The bill repeals the preceding provisions and replaces them with the provisions described in the following paragraphs.

Notice to the court

If a parent intends to move to a residence other than the residence specified in the parenting decree or shared parenting order and the new residence is in the same county or a contiguous county, the parent is required to file with the court no later than three days prior to the date the parent intends to move, a notice of relocation that includes the new residence address and telephone number. The court is required to serve a copy of the notice on the other parent, unless the other parent has been prohibited from receiving the notice of relocation. No fee may be imposed for filing the notice.

If a parent intends to move to a residence other than the residence specified in the parenting decree or shared parenting order and the new residence is not in the same county or a contiguous county, the parent is required to file with the court no later than 30 days prior to the intended date of the move a notice that includes the new residence address and telephone number. At the time

of filing the notice, the parent is required to file a motion requesting modification of the parenting decree and a proposed modified parenting plan that sets forth the allocation of parenting functions and responsibilities for the care of the child and meets the requirements for parenting plans. The proposed modified parenting plan must be signed by the party proposing it and include a statement that the terms of the plan are being proposed in good faith. (Sec. 3109.57(A), (B), (C), and (G).)

Notice to the other parent

Generally, no later than five days after the date they are filed with the court, the court is required to send copies of the notice, motion, and plan to the other parent. If a court has determined that a parent is not to receive a copy of the notice, motion, and plan that the other parent intends to relocate to another county that is not a contiguous county, the court is permitted to send copies only if the court determines that it is in the best interest of the child to give a copy of the notice, motion, and plan to that parent, issues an order stating that the parent will be given copies, and makes specific findings of fact and conclusions of law supporting its determination and enters them on the record.

If a court has not imposed a prohibition preventing a parent from receiving a copy of the notice, motion, and plan that the other parent intends to relocate to another county that is not a contiguous county but the parent who intends to relocate does not want the other parent to receive a copy of the notice, motion, and plan because one of the factors authorizing a court to limit a parent's contact with and authority over a child that is listed in paragraphs (8) to (17) of "**Limiting parental contact with and authority over a child--authorization and factors**," above, are applicable with respect to the other parent, the parent intending to relocate is permitted to file a motion with the court requesting that the other parent not receive a copy of the notice, motion, and plan. On the filing of the motion, the court is required to schedule a hearing on the motion and give both parents notice of the date, time, and location of the hearing. If the court determines that one of the specified factors applies with respect to the other parent, the court is required to issue an order that the other parent is not to receive a copy of the notice, motion, or plan, unless the court determines that it is in the best interest of the child that the other parent be given copies, issues an order stating that the parent will be given copies, and issues specific findings of fact and conclusions of law supporting its determination and enters them on the record. If the court finds that none of the specified factors apply to the other parent, the court is required to dismiss the motion. (Sec. 3109.57(D).)

Objections to the proposed modified parenting plan

A parent has 14 days from receipt of the notice, motion, and plan to object to the proposed modified parenting plan. A parent who fails to make a timely objection is considered to be in agreement with the proposed modified parenting plan, and the court is required to treat the plan as if it was jointly proposed by the parties. Objection may be made by filing a motion to modify the parenting order or decree because of the relocation of a parent. The motion must be accompanied by a proposed modified parenting plan that allocates the parenting functions and responsibilities for the care of the child that complies with the requirements for parenting plans.

The proposed modified parenting plan must be signed by the party proposing it and include a statement that the terms of the plan are being proposed in good faith. (Sec. 3109.57(E)(1) and (G).) At the time the court sends copies of the notice, motion, and plan to the other parent, the court is required to send an additional notice stating the following (sec. 3109.57(E)(1)):

You have fourteen days from the receipt of this notice to object to the notice of intent to relocate, the motion to modify the parenting decree because of the relocation of a parent, and the proposed modified parenting plan filed by the parent intending to relocate. You may object by filing your own motion to modify the parenting decree or order and proposed modified parenting plan. If you fail to object within the fourteen-day time period, you will be presumed to be in agreement with the proposed modified parenting plan filed by the parent intending to relocate and the court shall consider that plan to be jointly proposed by the parents.

Effect of objection or failure to object

If the other parent fails to make a timely objection to the notice, motion, and plan that the other parent intends to relocate to another county that is not a contiguous county, the court is required to review the proposed modified parenting plan of the parent intending to relocate to determine whether it is in the best interest of the child. If it determines that the plan is in the best interest of the child, the court is required to approve it. If the court determines that the plan or any part of the plan is not in the best interest of the child, it must require the parents to make appropriate changes to the plan to meet the court's objections. If changes are made and the new plan is in the best interest of the child, the court is required to approve the plan. If changes to the plan that meet the court's objections are not made, the court is permitted to reject the parenting plan. If the court rejects the proposed modified parenting plan, the court is required to approve its own plan, which must comply with the requirements for parenting plans. The court is not permitted to approve any plan unless it determines that the plan is in the best interest of the child. The court is required to enter in the record of the case findings of fact and conclusions of law as to the reasons for the approval or rejection of the plan. (Sec. 3109.57(E)(2).)

If the other parent makes a timely objection to the notice, motion, and plan, the court is required to review each plan filed to determine whether either is in the best interest of the child. If the court determines that one of the plans is in the best interest of the child, it is permitted to approve the plan. If it determines that neither plan is in the best interest of the child, the court is permitted to order each parent to submit appropriate changes to the parent's plan or both of the plans to meet the court's objections, or to select one of the plans and order each parent to submit appropriate changes to the selected plan to meet the court's objections. If changes are submitted to meet the court's objections and any of the plans with the changes is in the best interest of the child, the court is permitted to approve the plan with the changes. If changes to the plan that meet the court's objections are not made, the court is required to reject the parents' proposed plans.

The court is not permitted to approve more than one plan and is not permitted to approve a plan unless it determines that the plan is in the best interest of the child. If the court does not

determine that any plan or plan with submitted changes is in the best interest of the child, the court is required to approve its own plan, which must comply with the requirements for parenting plans. The court is required to enter in the record of the case findings of fact and conclusions of law as to the reasons for the approval or rejection of a plan.

The court is required to schedule a hearing to review proposed modified parenting plans to be held no later than five days after the 14-day period for objection has elapsed. The parties are permitted to present evidence concerning the proposed plans and the best interest of the child at the hearing. The court is required to make its determination concerning whether to approve a plan or reject the plans and approve its own plan and is required to issue a new parenting decree or order no later than five days after the termination of the hearing. The new parenting decree or order must not be issued later than 30 days after the notice, motion, and plan that the other parent intends to relocate to another county that is not a contiguous county are filed with the court. A parent intending to relocate to another county that is not a contiguous county is not permitted to physically relocate the child to the new residence without prior approval of the court. (Sec. 3109.57(E)(3) and (4).)

Visitation orders

The residential parent who intends to move to a residence other than the residence specified in a visitation order or decree that was issued under provisions repealed by the bill that is still in effect on and after the effective date of the bill is required to comply with the provisions regarding relocation. If the court has previously issued an order stating that the parent granted visitation is not to be given any notice of relocation, that order is to be treated as a limitation prohibiting that parent from receiving a relocation notice. (Sec. 3109.57(F).)

Enforcement

Existing law

Existing law provides that if any person is found in contempt of court for failing to comply with or interfering with any order or decree granting companionship or visitation rights, the court that makes the finding, in addition to any other penalty or remedy imposed, must assess all court costs arising out of the contempt proceeding against the person and require the person to pay any reasonable attorney's fees of any adverse party, as determined by the court, that arose in relation to the act of contempt, and may award reasonable compensatory visitation to the person whose right of visitation was affected by the failure or interference if the compensatory visitation is in the best interest of the child. Any compensatory visitation awarded must be included in an order issued by the court and, to the extent possible, be governed by the same terms and conditions as was the visitation that was affected by the failure or interference. (Sec. 3109.051(K).)

Parenting compliance service under the bill

Request to enforce compliance. Under the bill, if a parent is not complying with a parenting decree or an interim parenting order, the other parent is permitted to file a request for

enforcement with the compliance unit of the court that issued the decree or order. The parent filing the request is required to attach to it an affidavit in support of the request for enforcement that sets forth the facts supporting the allegation that the other parent is not complying with the decree or order. The parent filing the request is required to serve it and the affidavit on the other parent pursuant to the Civil Rules.

Immediately on the filing of the request, the compliance unit is required to assign a compliance officer to the request. The compliance officer is required to schedule a conference with the parents to be held no later than 30 days after the date the request was filed, unless the parent that filed the request asks for an expedited conference in the request. If an expedited conference is requested, the compliance officer is required to schedule a conference with the parents to be held no later than seven days after the request for compliance is filed. The compliance officer is required to issue an order to appear at the conference to both parents and is required to include as part of the order a notice of the date, time, and place of the conference. The court is required to serve the order on the parents pursuant to the Civil Rules. The court is required to serve the order on the parents no later than three days prior to the date of the conference.

Prior to the date of the conference, the parents are permitted to enter into an agreement resolving the conflict that resulted in the filing of the request for compliance. The agreement must be filed with the court not later than the date of the scheduled conference. If the court determines that the agreement is in the best interest of the child, the court is required to modify the existing parenting decree or interim parenting order to include the terms of the agreement. If an agreement is reached before the conference is held, the court is required to issue an order canceling the conference.

If a conference is held, the parents may be represented by counsel and may present evidence. If the parties reach an agreement at the conclusion of the conference resolving the conflict that resulted in the filing of the request for compliance, the parents are required to submit the agreement in writing to the court for approval. The agreement is required to be filed no later than three days after the termination of the hearing. If the court determines that the agreement is in the best interest of the child, the court is required to modify the existing parenting decree or order to include the terms of the agreement. If the parties do not reach an agreement at the conclusion of the conference, the compliance officer is required to submit a report to the court that includes a summary of the request for compliance and all evidence presented at the conference and an evaluation of the conflict with recommendations for further court action.

The compliance officer may recommend that any of the following be done: (1) the court schedule a hearing to determine what action should be taken to enforce compliance with the decree or order, (2) the court issue an order finding a parent in contempt of court for violation of the provisions of the decree or order, (3) the court issue an order requiring one or both of the parents' time with the child to be supervised, requiring exchange of the child in a neutral place, or requiring counseling, (4) the court issue a temporary emergency order to protect the child because the current situation is or may be harmful to the child, or (5) the court issue an order requiring any other action to be taken, or issue an order modifying the decree or order, in order to

resolve the conflict that was the basis for the request for compliance. (Sec. 3109.58(B).)

Procedure upon filing the compliance officer's report. The compliance officer must file the report with the court. The court is required to serve copies of the report on the parents by regular mail. A party may object to the report by filing written objections with the court no later than ten days after receiving notice from the court. The objecting parent is required to serve the objections on the other parent pursuant to the Civil Rules.

If no timely objection is made, the court may issue an order consistent with the recommendations of the compliance officer. If a parent makes a timely objection, the court must schedule a hearing to be held no later than seven days after the objection is filed. The court must send written notice of the date, time, and place of the hearing to the parties no later than five days prior to the date of the hearing. No later than three days after termination of the hearing, the court must issue an order based on the report, objection, and all evidence presented at the hearing.

If the compliance officer's report includes the recommendation that the court issue a temporary emergency order to protect the child, the court must immediately issue a temporary emergency order concerning the child once the report is filed with the court. No later than two days after issuing the temporary emergency order, the court must hold a hearing on the matter. The court, at the time it issues the temporary emergency order, must send a copy of the order to the parents with notice of the date, time, and place of the hearing. The temporary emergency order must expire no later than three days after the termination of the hearing. The court must issue an order modifying the parenting decree allocating the parenting functions and responsibilities for the care of the child or the interim parenting order on the termination of the hearing that supersedes the temporary emergency order or take effect on the termination of that temporary order.

If the court issues an order requiring a parent's time with the children subject to the decree or order to be supervised, it must order a volunteer agreed upon by both parents or an employee of the compliance unit or the public children services agency of the county in which the child resides to provide the supervision. If the court issues an order requiring the parents to exchange possession of the children in a neutral location, the compliance unit must establish the neutral location. If the court orders the parents to participate in counseling, the compliance unit must provide the counseling. (Sec. 3109.58(C).)

Establishment of parenting compliance unit. The bill requires each court of common pleas, on a date that is six months after the effective date of the bill, to establish a parenting compliance unit to enforce the provisions of parenting decrees and interim parenting orders, other than the child support provisions. In order to comply with the duty to enforce the decrees or orders, the compliance unit must do the following (sec. 3109.581(A)):

- (1) Employ compliance officers;
- (2) Provide for office space, conference rooms, and other facilities necessary to perform the functions of the compliance unit;

- (3) Provide supervision of a parent's time with the parent's child;
- (4) Provide neutral sites for the exchange of children between parents;
- (5) Provide counseling to limit disputes between and resolve conflicts concerning the children.

The bill authorizes the Supreme Court to create forms for the request for enforcement, the affidavit in support of the request for enforcement, and the order to appear to be used by each court of common pleas in proceedings to enforce compliance (sec. 3109.581(B)).

Applicability. The bill specifies that the provisions of the bill regarding parenting compliance units and proceedings to enforce compliance are not applicable to Ohio courts of common pleas during any fiscal biennium that the state does not make appropriations sufficient to permit all of the courts to comply with the provisions (sec. 3109.58(A)).

Action to allocate parenting functions or responsibilities

If a man is presumed to be the father of a child or is determined to be the father of a child pursuant to specified provisions of law, the mother or father is permitted to bring an action to allocate parenting functions and responsibilities for the care of the child between the mother and the father that must be made pursuant to the provisions proposed by the bill. Until a parenting decree is issued giving parenting functions and responsibilities to the father, the mother is the only parent with the legal right to exercise parenting functions and responsibilities with respect to the child and to have the legal right to have contact with the child. The juvenile court has exclusive original jurisdiction concerning this action, and the action may be brought in the juvenile court of the county in which the child, the child's mother, or the child's father resides or is found. (Secs. 2151.23(A)(13), 3109.62, 3111.13(C), 5101.324(D), and 5104.011(C)(3).)

Child support

Under existing law, the court may deviate from the amount of support that otherwise would result from the use of the child support schedule and the applicable worksheet when the application of the schedule and applicable worksheet would be unjust or inappropriate and would not be in the best interest of the child. In determining whether that amount would be unjust or inappropriate and would not be in the best interest of the child, the court may consider extended times of visitation or extraordinary costs associated with visitation, provided that this authorization may not interfere with the child support schedule and applicable worksheet for sole residential parents or shared parenting orders or any escrowing, impoundment, or withholding of child support because of a denial of or interference with a right of companionship or visitation granted by court order. The bill instead authorizes the court to consider extraordinary circumstances of the parents, including, but not limited to: (1) the amount of time that children spend with each parent, (2) the ability of each parent to maintain adequate housing for the children, and (3) each parent's expenses, including, but not limited to, child care expenses, school tuition, medical expenses, and dental expenses. This latter provision is relocated from a provision in existing law regarding shared parenting orders. (Proposed sec. 3113.215(B)(3)(d) and existing sec. 3113.215(B)(6).)

Am. Sub. S.B. 115, enacted by the 120th General Assembly and effective October 12, 1993, created a temporary basic child support schedule applicable to parents with combined gross income of between \$6,000 and \$21,600. The schedule was to be used to determine child support obligations while the Department of Human Services studied the impact on the General Revenue Fund caused by the adoption of the new permanent basic child support schedule under that same bill. The temporary schedule was to remain in effect until July 1, 1994, or, if necessary, until a later date set by the Controlling Board. According to the Department of Human Services, the temporary schedule is no longer in effect. Therefore, the bill eliminates it. (Sec. 3113.215(D)(2).)

Applicability

Existing law contains provisions delineating how the law related to orders regarding the care, custody, and control of a child under an order issued prior to April 11, 1991 (sec. 3109.04(K).) The bill retains these provisions and includes two additional provisions. Under the bill, for purposes of the Revised Code (sec. 3109.40(B)(7) and (9)):

(1) If a shared parenting order has been issued, the parent to whom child support is required to be paid under the order is the "residential parent for purposes of receiving child support" under the order. The parent required to pay child support under the order is the "parent who is not the residential parent for purposes of receiving child support" under the order. The designation in this paragraph of one parent as the "residential parent for purposes of receiving child support" and the other parent as the "parent who is not the residential parent for purposes of receiving child support" does not affect the designation for shared parenting orders of each parent as the "residential parent," "residential parent and legal custodian," or the "custodial parent" of the child under the order.

(2) The following designations in a parenting decree or interim parenting order do not affect the designation required of each parent as the "residential parent," the "residential parent and legal custodian," or the "custodial parent" of the child:

(a) Designation of a parent as the residential parent for the purpose of determining the school the child attends;

(b) Designation of a parent as the custodial parent for purposes of claiming the child as a dependent for federal income tax purposes;

(c) Designation of one of the parents' residences as the child's home for purposes of receiving public assistance;

(d) Designation of a parent as residential parent for purposes of receiving child support;

(e) Designation of a parent as the residential parent for any other purpose, including the enforcement of an international treaty and state and federal criminal laws;

(f) Designation of the parent responsible for the provision of health, dental, and vision insurance for the child.

Conforming changes

The bill amends a number of provisions of existing law to reflect the expanded number of sections and relocated sections in the bill (secs. 2317.02(H), 2705.031(B)(2), 3105.21(A), 3105.63(A)(1), 3105.65(B), 3109.05(D), 3109.09(A)(2), 3109.21(A), 3109.27(A)(3), 3109.52 (renumbered from sec. 3109.06), 3109.59(B), (C), (F), and (G) (renumbered from sec. 3109.051), 3109.60 (renumbered from sec. 3109.11), 3109.61 (renumbered from sec. 3109.12), 3111.13(C), 3111.23(E)(4)(a), 3113.21(C)(1)(f) and (G)(4)(a), 3113.215(A), (C), (D), 3113.31(E), 5104.011(C)(3), and 5153.16(B).)

Statement of legislative intent

The bill specifies that the General Assembly finds the following (sec. 3109.401(A)):

- (1) That the parent and child relationship is of fundamental importance to the welfare of a child and that the relationship between a child and each parent should be fostered unless inconsistent with the child's best interests;
- (2) That parents have the responsibility to make decisions and perform other parenting functions necessary for the care and growth of their children;
- (3) That the courts, when allocating parenting functions and responsibilities with respect to the child in a divorce, dissolution, legal separation, annulment, or any other proceeding addressing the allocation of parental functions and responsibilities, must determine the child's best interests;
- (4) That the courts and parents must take into consideration the following general principles when allocating parenting functions and responsibilities and developing appropriate terms for parenting plans: (a) children are served by a parenting arrangement that best provides for a child's safety, emotional growth, health, stability, and physical care, (b) exposure of the child to harmful parental conflict should be minimized as much as possible, (c) whenever appropriate, parents should be encouraged to meet their responsibilities to their children through agreements rather than by relying on judicial intervention, (d) when a parenting plan provides for mutual decision-making responsibility by the parents but they are unable to make decisions mutually, they should make a good faith effort to utilize the mediation process, as required by the parenting plan, and (e) in apportioning between the parents the daily physical living arrangements of the child and the child's location during legal and school holidays, vacations, and days of special importance, a court may not adopt, promulgate, or apply any type of standard schedule.

The bill specifies that it is, therefore, the purpose of sections 3109.40 to 3109.62, when it is in the child's best interest, to foster the relationship between the child and each parent when a court allocates parenting functions and responsibilities with respect to the child in a divorce, dissolution, legal separation, annulment, or any other proceeding addressing the allocation of parental functions and responsibilities (sec. 3109.401(B)).

Definitions

Family file

As used in the provisions regarding the allocation of parenting functions and responsibilities, the bill defines "family file" to mean a separate file maintained by the court regarding any family whose members are parties to a case involving the allocation of parenting functions and responsibilities. A family file may include the family's history, the court-appointed evaluator's report and work notes from interviews, psychological or psychiatric evaluations, substance abuse evaluations or tests, school records, health records, results of inquiries made pursuant to an investigation and evaluation of the parents, and other material relevant to the best interests of a child. A family file is not a public record under the Public Records Law. (Sec. 3109.40(A).)

Shared parenting order

For the purposes of the Revised Code, the bill defines "shared parenting order" to mean an order issued under former section 3109.04 of the Revised Code that allocates to both parents the parental rights and responsibilities for the care of the child and requires them to share all or some of the physical and legal care of the child. "Shared parenting order" includes an order issued under former section 3109.04 of the Revised Code as it existed prior to April 11, 1991, that grants joint custody, care, and control of a child. (Sec. 3109.40(B)(10).)

HISTORY

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